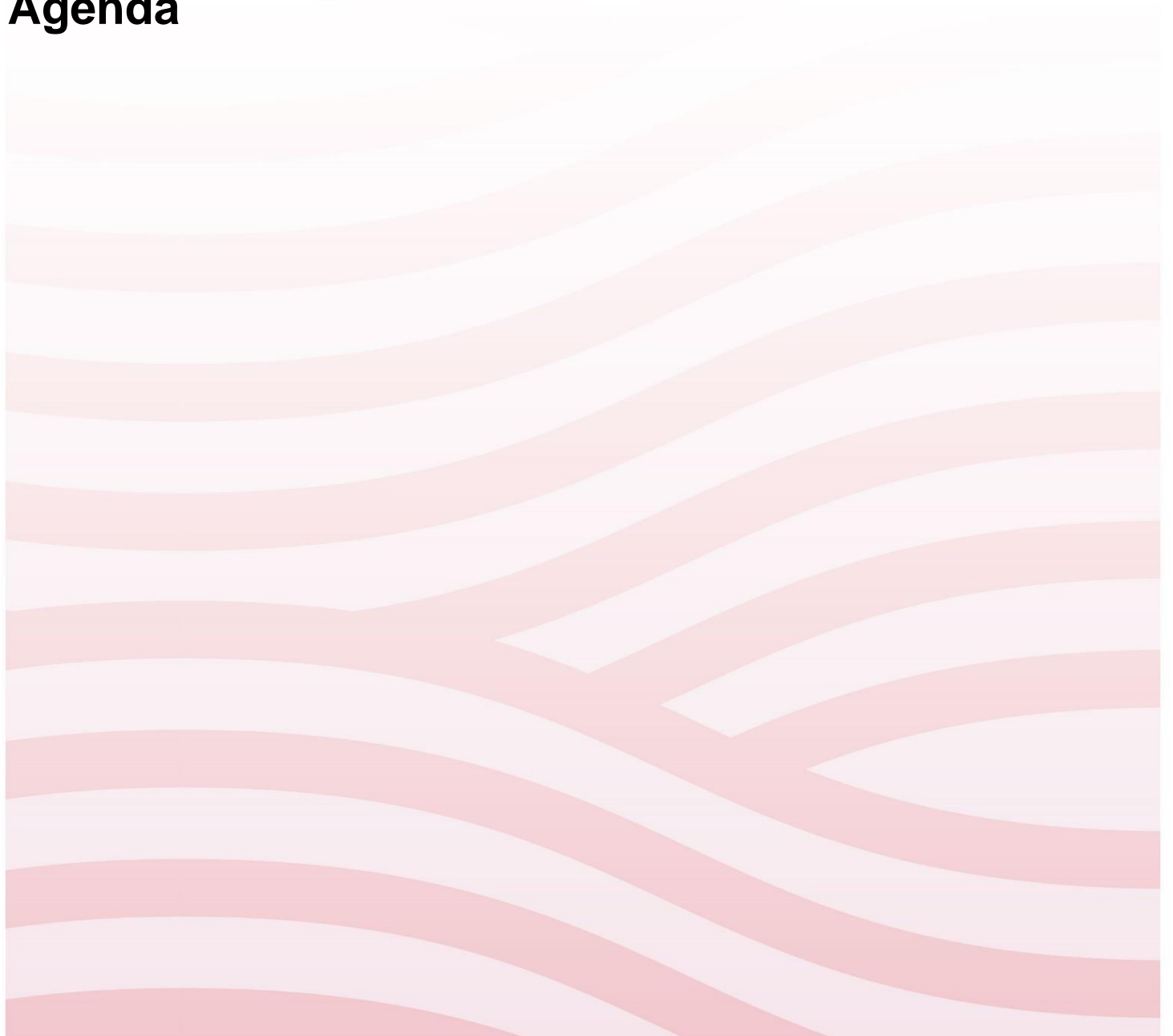




# Woollahra Local Planning Panel (Electronic Meeting)

Thursday 25 July 2024  
at the Conclusion of the Public Meeting

## Agenda



### **Woollahra Local Planning Panel (Electronic Meetings):**

Woollahra Council will be holding Woollahra Local Planning Panel (Electronic Meetings) remotely using conferencing technology.

The Chair of the panel, members of the Panel and staff will be participating in meetings by an audio-visual link instead of attending in person.

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

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

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

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

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

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

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

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

**Woollahra Local Planning Panel Membership:** 1 Chair, 2 Experts and 1 Community Representative

**Quorum:** 3 Panel members



# Woollahra Municipal Council

## Notice of Meeting

16 July 2024

To: Woollahra Local Planning Panel Members  
*Chair*  
*Experts*  
*Community Representative*

Dear Panel Members,

### Woollahra Local Planning Panel (Electronic Meeting) – 25 July 2024

In accordance with the provisions of the Local Government Act 1993, I request your attendance at Council's **Woollahra Local Planning Panel (Electronic Meeting)** meeting to be held in the **Council Chambers, 536 New South Head Road, Double Bay, on Thursday 25 July 2024 at the Conclusion of the Public Meeting.**

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

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

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

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

Regards,

Craig Swift-McNair  
General Manager



Woollahra Local Planning Panel

(Electronic Meeting)

Agenda

Item	Subject	Page
1	Opening	
2	Acknowledgement of Country (Gadigal People and Birrabirragal People)	
3	Leave of Absence and Apologies	
4	Disclosures of Interest	
Items to be Decided by the Panel		
D1	DA81//2024/1 - 98-100 Wolseley Road Point Piper - 24/122451 .....7 *See Recommendation Page 35	
D2	DA230/2023/2 - 22 Military Road Watsons Bay (Robertson Park) - 24/122146.....97 *See Recommendation Page 105	
D3	DA197/2023/1 - 31 Wentworth Road Vaucluse - 24/117131 ..... 121 *See Recommendation Page 152	
D4	DA444/2023/1 - 79 Victoria Road, Bellevue Hill - 24/123853 .....281 *See Recommendation Page 305	
D5	DA446/2013/4- 11 Davies Avenue Vaucluse - 24/117286.....429 *See Recommendation Page 446	



## **LOCAL PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT**

<b>ITEM No.</b>	D1
<b>FILE No.</b>	DA81/2024/1
<b>ADDRESS</b>	98-100 Wolseley Road POINT PIPER
<b>COUNCIL WARD</b>	Double Bay
<b>SITE AREA</b>	1,426m <sup>2</sup> (As per Survey)
<b>ZONING</b>	R2 Low Density Residential
<b>PROPOSAL</b>	Alterations and additions to the existing dwelling house including a new lift
<b>TYPE OF CONSENT</b>	Local Development
<b>COST OF WORKS</b>	\$710,600.00
<b>DATE LODGED</b>	20/03/2024
<b>APPLICANT</b>	Mrs L R Penn
<b>OWNER</b>	Mr D P & Mrs L R Penn
<b>AUTHOR</b>	Mr W Ou
<b>ACTING TEAM LEADER</b>	Mr B McIntyre
<b>SUBMISSIONS</b>	Nil.
<b>RECOMMENDATION</b>	Conditional Approval

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

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

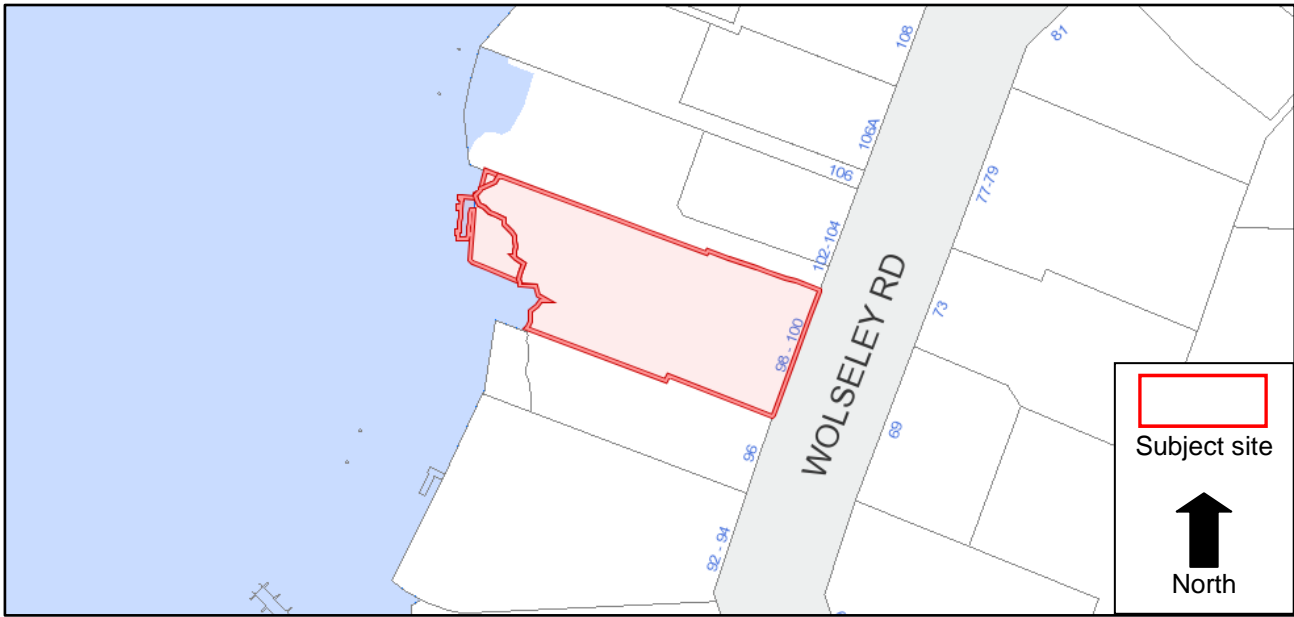
- Departure from development standards
  - (a) Development that contravenes a development standard imposed by an environmental planning instrument by more than 10%

### **2. REASONS FOR RECOMMENDATION**

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

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

3. LOCALITY PLAN



**Fig.** Aerial view of the subject site (Source: WMC)



*Fig. Outlook of subject site viewed from Wolseley Road (Source: WMC)*

#### **4. PROPOSAL**

The proposal involves alterations and additions to the existing dwelling. More specifically, the proposal involves the following works:

##### Level 1

- Minor internal modifications
- Excavation towards the south-east to accommodate the proposed extensions to the storage and plant rooms and new lift hall
- New glazed doors to the north-west facing verandah
- Changes of windows to doors to the north-west facing hall and Bedroom 4

##### Level 2

- New Lift

##### Level 3

- Minor internal reconfiguration
- Removal of the existing timber pergola to the terrace located on the south-eastern side
- Extension of the dwelling into the existing terrace area to accommodate a new dressing room, lift hall and terrace. The extension results in a similar alignment to that of the built form at Level 3
- New Lift

### Roof Level

- New roof to the Level 3 extension to match the ridge height of the existing roof
- Terracotta roof tiles to match existing

## 5. ISSUES

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

Clause	Development Standard	Departure from Control	Conclusion
Part 4.3	Height of Buildings – 9.5m	Proposed Height: 13.52 (4.02m or 42.3% departure from the 9.5m control)  Existing dwelling: 14.5m (5m or 47.5% departure from the 9.5m control)	Satisfactory*

\*The submitted written Clause 4.6 is considered to be well founded in this instance

### 5.2 Primary Issues

Issue	Conclusion	Section
Non-compliance with the Height of Buildings development standard	Satisfactory. The submitted written request pursuant to Clause 4.6 of the WLEP 2014 is considered to be well founded.	13.3 and 13.5
Heritage Conservation	Satisfactory. Subject to <b>Conditions</b> , the proposal achieves the relevant objectives of this Part.	13.7
Excavation (LEP and DCP)	Satisfactory. The proposal achieves the relevant objectives of the controls of these Parts.	13.10 and 14.2.2
Front and side setbacks	Satisfactory. Subject to <b>Conditions</b> , the numerical non-compliances are considered to be acceptable as the proposal satisfies the relevant objectives of the controls of these Parts.	14.2.1
Wall height and inclined plane	Satisfactory. The proposal is considered to be acceptable as the proposal satisfies the relevant objectives of the controls of this Part.	14.2.1
Acoustic privacy	Satisfactory. Subject to <b>Conditions</b> , the proposal satisfies the relevant objectives of the controls of this Part.	14.2.3

## PROPERTY DETAILS AND REFERRALS

### 6. SITE AND LOCALITY

<b>Physical features</b>
The subject site is located on western side of Wolseley Road and is an irregularly shaped allotment with the eastern boundary fronting Wolseley Road and the western boundary fronting the Sydney Harbour. The street frontage measures 25.09m while the northern and southern boundary are 64.415m and 49.605m respectively, providing a total calculated site area of 1426m <sup>2</sup> .
<b>Topography</b>
The site falls steeply from Wolseley Road down to the Sydney Harbour by approximately 23m.
<b>Existing buildings and structures</b>
The site is occupied by a part two, part three storey dwelling house which is largely obscured by the car parking and entrance lobby structure at street level, which presents as a single storey structure when viewed from Wolseley Road. A swimming pool is located at the lower level adjoining Sydney Harbour.
<b>Surrounding Environment</b>
The site is located within the Point Piper residential precinct under the Woollahra DCP 2015. The immediate locality is characterised by large multi-storey dwelling houses. The topography in this locality slopes steeply from east to west. Development to the east of Wolseley Road is significantly elevated above street level, with development to the west of Wolseley Road presenting as one to two storeys from the road but presenting as three to five storeys when viewed from the Harbour.





**Fig. Aerial View of Subject Site (Source: Nearmap)**



**Fig. Outlook of subject site when viewed from Wolseley Road (Source: WMC)**





**Fig.** Outlook of Level 3 facing north (Source: WMC)



**Fig.** Outlook of the ground floor facing south (Source: WMC)

## 7. RELEVANT PROPERTY HISTORY

<b>Current use</b>
Residential Dwelling
<b>Relevant Application History</b>
Nil.
<b>Relevant Compliance History</b>
Nil.
<b>Pre-DA</b>
Nil.
<b>Requests for Additional Information and Replacement Applications</b>
04/04/2024 – A Stop the Clock Letter was sent to the applicant identifying the following deficiencies / lack of information:
1. <i>Aboriginal Heritage Impact Assessment</i>
On 10/04/2024, the Applicants Town Planner provided a response to Council requesting the above requirement be withdrawn, given the nature of the works being sought.
On 10/04/2024, the requirement for the Aboriginal Heritage Impact Assessment was withdrawn as any concerns with regard to Aboriginal Heritage can be addressed by Council's standard Conditions of Consent.
<b>Relevant Development Application History</b>
DA 351/2021/1: 98-100 Wolseley Road, Point Piper – Retaining walls, protection of trees" Upgrade works to existing garages upon street frontage – Approved on 09/02/2022
<b>Land and Environment Court Appeal(s)</b>
Nil.

## 8. REFERRALS

Referral	Summary of Referral Response	Attachment
La Perouse Local Aboriginal Land Council	No response was received.	N/A

## A) ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

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

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

## 9. ADVERTISING AND NOTIFICATION

### 9.1 Submissions

The application was advertised and notified from 10/04/2024 to 25/04/2024 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. No submissions were received.

## 9.2 Statutory Declaration

The applicant has completed the statutory declaration dated 29/04/2024 declaring that the site notice for DA81/2024/1 was erected and maintained during the notification period in accordance with Schedule 1 of the Woollahra Community Participation Plan 2019.

## 10. SEPP (BIODIVERSITY AND CONSERVATION) 2021

### 10.1 Chapter 2 – Vegetation in Non-rural Areas

Chapter 2 of the Biodiversity and Conservation SEPP applies to the subject site.

Furthermore, Clause 2.9(1) defers assessment to the appropriate development control plan in determining vegetation to which Chapter 2 applies. Accordingly, *Chapter E3 Tree Management* under WDCP 2015 is applicable.

The proposed works are largely contained within the existing building footprint and will therefore result in no impacts on existing vegetation on or within the vicinity of the site.

The proposed development is acceptable with regards to Chapter 2 of the Biodiversity and Conservation SEPP.

### 10.2 Chapter 6 – Water Catchments

#### Chapter 6 – Water Catchments

Chapter 6 (Water Catchments) of the SEPP applies to the subject land which is located within a regulated catchment being the Sydney Harbour Catchment.

Pursuant to section 6.1(b), Chapter 6 applies to land in the *Sydney Harbour Catchment*. The site is located in the *Sydney Harbour Catchment* and in the *Foreshores and Waterways Area*.

Therefore, the provisions in Part 6.2 “Development in regulated catchments”, Division 2 and Part 6.3 “Foreshores and Waterways Area”, Divisions 1-3 of the Chapter applies in the assessment.

Clause 6.25 provides that the local council is the consent authority for land-based development and land/water interface development.

#### **Part 6.2: Division 2 Controls on development generally – matters for consideration**

In deciding whether to grant development consent to development on land in a regulated catchment, matters relating to water quality and quantity, aquatic ecology, flooding, recreation and public access and total catchment management must be considered.

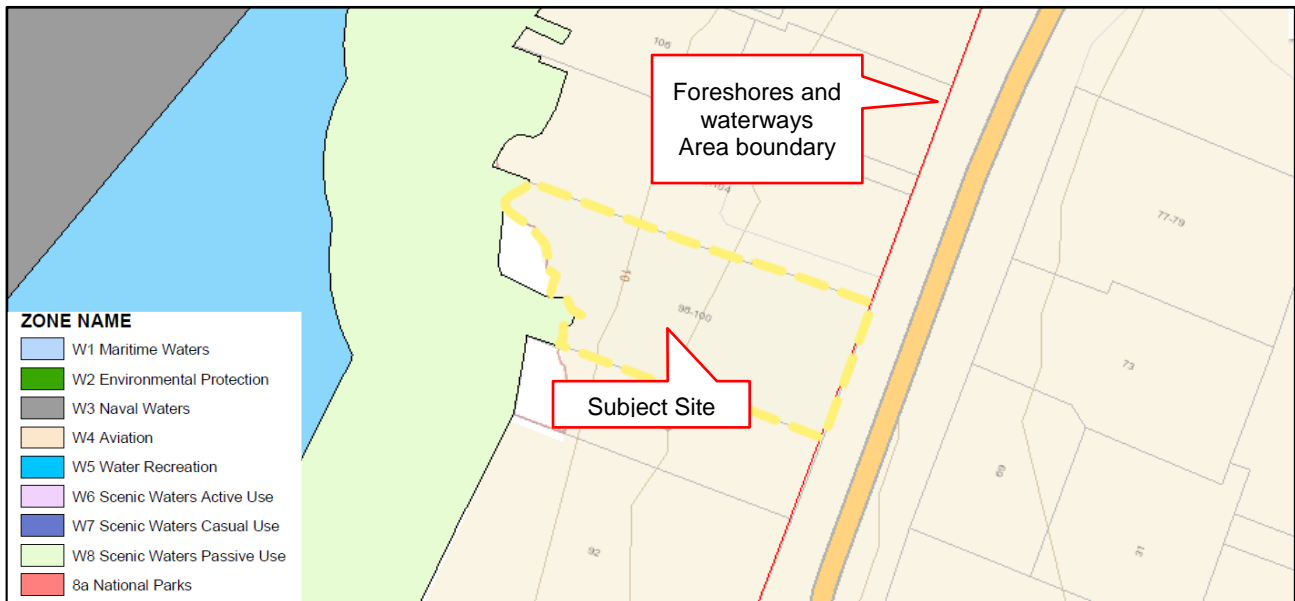
The proposed development is considered minor and would not significantly alter the approved stormwater system or result in any impacts on aquatic ecology or public access.

#### **Part 6.3: Foreshores and Waterways Area**

##### Zoning (Clause 6.26) and Zone Objectives (Clause 6.27)

Clause 6.26 sets out land/water interface zonings which apply to the Harbour.

Pursuant to section 6.26(1), the lower portion of the site is within *Zone W8 – Scenic Waters – Passive Use* and within the “Foreshores and Waterways Area”. Refer to **Zoning Map** below:



**Zoning Map – SEPP (Biodiversity and Conservation) 2021 Foreshores and Waterways Area Map.**

As no works are proposed within the foreshores and waterways area in *Zone W8 – Scenic Waters – Passive Use*, there are no further matters for consideration.

### **Division 3 Development in Foreshores and Waterways Area – Matters for consideration**

Part 6.3, Division 3 identifies the matters which must be considered in the assessment of a DA located within the “Foreshores and Waterways Area”.

In deciding whether to grant development consent to development on land in the Foreshores and Waterways Area, matters relating to biodiversity value, dredging, rocky foreshores and seagrasses, boat related structures, marinas and subdivision must be considered.

The proposal is considered to be minor and would not significantly alter the approved relationship of the development on the scenic quality of the surrounding area when viewed from the waterway.

### **Sydney Harbour Foreshores & Waterways Area Development Control Plan (SHDCP)**

The SHDCP applies to the proposed development as it applies to all development within the foreshores and waterways area as identified in Part 6 of the SEPP. The proposal would not alter the satisfactory conclusions of the proposal when assessed against the relevant matters for consideration under the SHDCP.

### **Conclusion**

The proposal is considered to be satisfactory with regard to relevant provisions prescribed by Chapter 6 – Water Catchments of the Biodiversity and Conservation SEPP 2021 and the applicable Sydney Harbour DCP 2005.

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

### **11.1 Chapter 2 – Coastal Management**

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



Whilst the subject land is located within the Coastal Environment Area (Clause 2.10) and the Coastal Use Area (Clause 2.11), subclauses 2.10(3) and 2.11(2) state:

*This section does not apply to land within the Foreshores and Waterways Area within the meaning of State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 6.*

On the basis that the subject land is located within the Foreshores and Waterways Area pertaining to Chapter 6 of the Biodiversity and Conservation SEPP 2021, it is only the following aim of the policy that is relevant to the subject development application:

*a) managing development in the coastal zone and protecting the environmental assets of the coast.*

The proposed works will not impact upon the environmental assets of the coast.

The proposal is therefore acceptable with regard to Chapter 2, SEPP (Resilience and Hazards) 2021.

## **11.2 Chapter 4 – Remediation of Land**

The Object of this Chapter aims to *promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment:*

- a) *By specifying when consent is required, and when it is not required, for a remediation work*
- b) *By specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular*
- c) *By requiring that a remediation work meet certain standards and notification requirements*

Consideration with respect to Clause 4.6(a) of Chapter 4 has been given as to whether the subject site on which the development is occurring is contaminated.

As the site has a long history of residential use, the land does not require further consideration under Section 4.6(3) and 4.6(4) of Chapter 4 of the Resilience and Hazards SEPP 2021.

The proposal is therefore acceptable with regard to Chapter 4, SEPP (Resilience and Hazards) 2021.

## **12. STATE ENVIRONMENTAL PLANNING POLICY (SUSTAINABLE BUILDINGS) 2022**

State Environmental Planning Policy (Sustainable Buildings) 2022 (SB SEPP) encourages the design and construction of more sustainable buildings across NSW. This policy generally applies to all residential developments (excluding alterations and additions less than \$50,000) and all non-residential developments, except those excluded in Chapter 3.1 of the policy.

The SB SEPP came into effect on 1 October 2023. Pursuant to Section 4.2 entitled *Savings and Transitional Provisions*, development applications submitted on the NSW Planning Portal but not finally determined before 1 October 2023 are not subject to assessment under the SB SEPP.

The proposal was lodged with Council on 20/03/2024. As such, the SB SEPP does apply to the proposed development.

## 12.1 Chapter 2 Standards for residential development—BASIX

Chapter 2 applies to the proposed development. It relates to commitments within the proposed development in relation to thermal comfort, water conservation and energy efficiency sustainability measures.

The development application was accompanied by BASIX Certificate No. A1731968 demonstrating compliance with the SEPP. These requirements are imposed by standard conditions.

## 13. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

### 13.1 Part 1.2: Aims of Plan

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

### 13.2 Land Use Table

The proposal is defined as alterations and additions to an existing dwelling which is permitted and consistent with the objectives of the R2 Low Density Residential zone.

- To provide for the housing needs of the community within a low density residential environment.*
- To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.*
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.*
- To ensure development conserves and enhances tree canopy cover.*

#### Comment

The proposal satisfies the relevant objectives in the following way:

- The proposed development will not be visible from the primary streetscape along Wolseley Road;
- The proposed alterations and additions will enhance the use of the existing dwelling;
- The proposal will achieve compatibility with the character of the existing locality, in an area which is characterised by a mix of residential development of varying architectural designs;
- The proposal will achieve a consistent built form along the northern and southern boundaries at Level 3;
- The proposed development does not exceed the existing maximum height of the existing and is largely obscured from the public domain;
- The proposed design, in terms of bulk and scale of the development, is appropriate and acceptable given the context of the locality and will achieve the desired future character of the area.

### 13.3 Part 4.3: Height of Buildings

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

	Existing	Proposed	Control	Complies
Maximum Building Height	14.5m* (47.5% variation)	13.52m (42.3% variation)	9.5m	No

*\*Existing non-compliance*

The proposal does not comply with Part 4.3 of the Woollahra LEP 2014 as detailed below in Section 13.5.

### 13.4 Part 4.4: Floor Space Ratio

Part 4.4E limits dwelling houses to a maximum floor space ratio of 0.75:1.

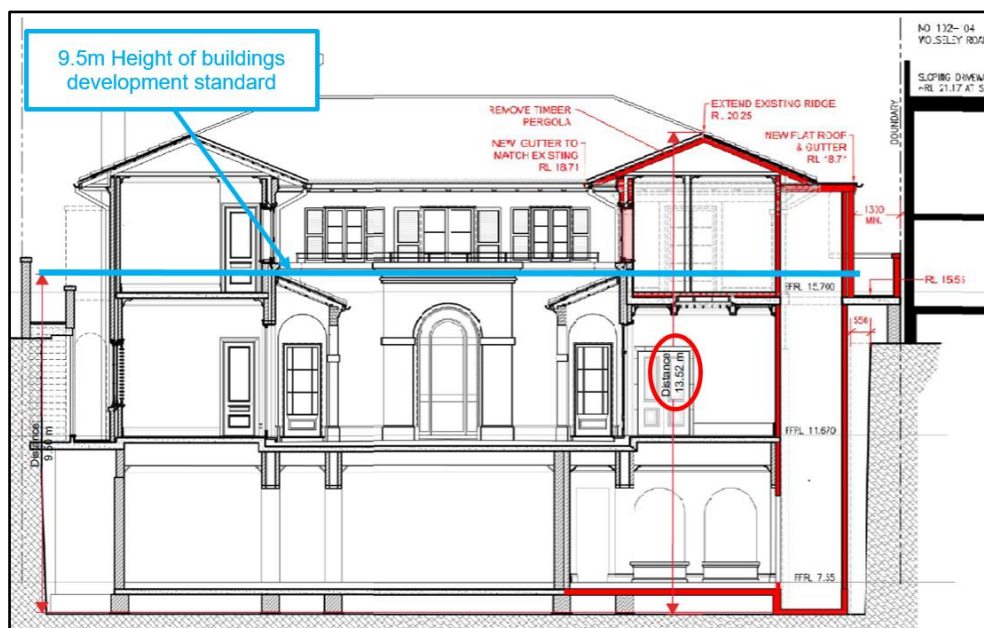
Site Area: 1426m <sup>2</sup>	Existing	Proposed	Control	Complies
Floor Space Ratio	0.66:1 (952m <sup>2</sup> )	0.7:1 (1003m <sup>2</sup> )	0.75:1 (1069.5m <sup>2</sup> )	Yes

The proposal complies with maximum Floor Space Ratio prescribed by Part 4.4(2) of Woollahra LEP 2014.

### 13.5 Part 4.6: Exceptions to Development Standards

#### Departure

The proposal results in a non-compliance with the prescribed 9.5m maximum Height of Building statutory control under Part 4.3 of the Woollahra LEP 2014. It is noted that the existing dwelling has a height of 14.5m, representing an existing 5m (47.5%) non-compliance with the standard. The proposed alterations and additions to the existing dwelling do not further exacerbate the existing breach of the building height and achieves a maximum height of 13.52m, resulting in a 4.02m (42.3%) breach from the 9.5m Height of Building Standard.



**Fig.** Section illustrating the proposed non-compliance with the Height of buildings development standard  
(Source: Sachs Architecture)

#### Purpose

Clause 4.6 allows for the contravention of a development standard (provided that the standard is not expressly excluded from the section), with the objectives of the clause being:

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



## Applicant's Written Request

Section 35B of the *Environmental Planning and Assessment Regulation 2021* requires a development application for development that proposes to contravene a development standard to be accompanied by a document [the written request] setting out the grounds on which the applicant seeks to demonstrate the matters in clause 4.6(3) paragraphs (a) and (b).

The applicant has provided a written request (Attachment 2) in accordance with Section 35B of the *Environmental Planning and Assessment Regulation 2021*.

## Council's Assessment

Clause 4.6(3) requires Council to be satisfied that the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention.

Council is required to undertake a critical review of the written request, and any other material that the Applicant has provided seeking to demonstrate the matters in clause 4.6(3). This is set out below.

### Step 1: Are the planning instrument, development standard and proposed variation identified in the written request accurate?

In determining whether the information contained within the written request is accurate, the following questions have been considered:

- *Is the provision proposed to be varied a development standard?*
- *Is the development standard proposed to be varied one that can be varied, and not excluded from the operation of section 4.6 by section 4.6(8)?*
- *Is the correct LEP or SEPP section (and objectives if relevant) referenced?*
- *Is the extent of the variation correctly identified?*

### Assessment:

Having regard to the definition of 'development standards' under the EP&A Act, Council is satisfied that the provision proposed to be varied is a development standard and is not excluded from the operation of Clause 4.6 by Clause 4.6(8).

The submitted CI 4.6 written request (**Attachment 2**) has accurately referenced Clause 4.3 Height of Buildings and the associated objectives under the WLEP 2014. The extent of variation with Clause 4.3 has been accurately identified in the submitted written request.

### Step 2: Section 4.6(3)(a): Is compliance unreasonable or unnecessary?

In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (Wehbe), Preston CJ established five potential tests (the Wehbe test) for determining whether a development standard could be considered unreasonable or unnecessary:

- The first is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved, notwithstanding the non-compliance with the standard.
- The second is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.
- The third is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

- The fourth is 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.
- The fifth is 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."

However, the five tests set out in *Wehbe* above are not the only ways that an applicant can demonstrate that compliance with a development standard is unreasonable or unnecessary. In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (Initial Action), Preston CJ stated at paragraph 22:

*These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

#### Assessment:

The submitted Section 4.6 Written Request to Clause 4.3 Height of Buildings and the arguments provided are relevant to Test 1 – in that the objectives of the development standard are achieved notwithstanding non-compliance with the standard - are largely agreed with and supported.

The applicant's written request principally adopts the first method of the *Wehbe* tests to demonstrate that compliance is unreasonable or unnecessary in the circumstances.

The applicant's written request has adequately demonstrated that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. An assessment against the objectives of the subject development standard is included below.

Objectives underlying Clause 4.3 Height of Buildings are as follows:

- (a) *To establish building heights that are consistent with the desired future character of the neighbourhood*
- (b) *To establish a transition in scale between zones to protect local amenity*
- (c) *To minimise the loss of solar access to existing buildings and open space*
- (d) *To minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion*
- (e) *To protect the amenity of the public domain by providing public views of the harbour and surrounding areas*

The proposal is assessed against the objectives of Clause 4.3 as follows:

- The proposal will achieve a built form, scale and height that is consistent with the desired future character of the neighbourhood. Due to the slope of the land and existing development, the proposed additions will be largely obscured when viewed from Wolseley Road and Sydney Harbour.
- The proposed height does not extend beyond the non-compliant ridge height of the existing building.
- The height of the development achieves an acceptable relationship with the neighbouring properties when viewed from the streetscape and is consistent with the character of development within the streetscape.

- The non-compliant height does not contribute to any unreasonable additional overshadowing impacts upon adjoining properties. Furthermore, the proposal complies with the solar access controls outlined in the WDCP 2015.
- As discussed throughout this report, the non-compliant height does not have an adverse impact upon views, loss of privacy or overshadowing and is acceptable with regard to the amenity of the neighbourhood.
- The non-compliant height will not have an adverse impact upon the amenity of the public domain and will not impact upon any public views of the harbour and surrounding areas.

**Step 3: Section 4.6(3)(b) Are there sufficient environmental planning grounds to justify the contravention?**

In *Initial Action* Preston CJ provided the following guidance (at paragraphs 23 and 24) concerning whether there will be sufficient environmental planning grounds to justify a contravention of the development standard:

- 23 *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be 'environmental planning grounds' by their nature: See Four2Five Pty Ltd. v Ashfield Council. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act including the objects in s1.3 of the EPA Act.*
- 24 *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". ... the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15].*

Section 1.3 of the EPA Act reads as follows:

**1.3 Objects of Act**

*The objects of this Act are as follows:*

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

- j) *to provide increased opportunity for community participation in environmental planning and assessment.*

Assessment:

To determine whether the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of the development standard, the following questions have been considered:

- What environmental planning grounds have been put forward to justify the variation?
- Are the environmental planning grounds specific to the proposed variation?
- Are there sufficient environmental planning grounds to justify the proposed variation to the development standard?

The applicant has provided the following environmental planning grounds to justify the variation:

*“For the reasons referred to in this Clause 4.6 and the accompanying SEE, I consider that the Objectives of the Height of Buildings Standard and Objectives of the Low Density R2 zone are achieved, notwithstanding non-compliance with the Development Standard.*

- *The proposed development will provide a new northern wing which will be in symmetry with the existing southern wing. This is one of the Positive Outcomes of the proposed development. Thus, the proposed development adopts the floor levels and levels of the roof consistent with the existing southern wing. Adopting the same levels as the southern wing, ensures a symmetrical proposed northern wing. To require the levels of the proposed northern wing to be lower than the existing southern wing will result in an asymmetrical northern wing which is not a desirable Planning Outcome.*
- *A further Positive Outcome is the proposed internal Lift which extends above the Height of Buildings Standard. The proposed Lift provides equity of access for the whole development, comprising the existing development and new proposed development. Despite the breach of the Height of Buildings Standard, I consider that the proposed Lift is a very desirable element.*
- *The proposed development, notwithstanding the breach of the Height of Buildings Standard, does not result in adverse amenity impacts on adjoining properties nor the public domain. On this point, I reiterate the fact that the proposed northern wing is sunken well below the road (to the east) and is also located well behind the rear façade (to the west). Accordingly, the proposed northern wing will be neither visible from the road or Sydney Harbour. Furthermore, the proposed northern wing sits significantly below the adjoining property to the north and is also a significant distance from the adjoining property to the south.”*

The environmental planning grounds forwarded by the applicant are considered to be specific to the proposed variation against the Clause 4.3 Height of Buildings.

The written request provides explanation of how the proposed development and in particular the breach of the Height standard is reasonable and supportable in the circumstances. In doing so, the written request provides sufficient environmental planning grounds to justify contravention of the Clause 4.3 Height of Buildings development standard, as it demonstrates that the proposal achieves Objects (c) and (g) of Section 1.3 of the Act.

Accordingly, there are sufficient environmental planning grounds to justify the proposed variation to the Clause 4.3 Height of Buildings development standard of the Woollahra LEP 2014.

## Conclusion

Council is satisfied that the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention.

### 13.6 Part 5.7: Development Below Mean High Water Mark

The subject application does not involve works below the mean high water mark and is therefore acceptable with regard to the objectives in Part 5.7 of the Woollahra LEP 2014.

### 13.7 Part 5.10: Heritage Conservation

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

The proposed development is not located in a Heritage Conservation Area, nor is it identified as a Heritage Item.

The site is however identified as being within both an area of Aboriginal Heritage Sensitivity and Potential Aboriginal Heritage Sensitivity. In this regard, Council's standard conditions are recommended to be imposed at Conditions **B.3, B.4, B.5, B.6** and **F.2**.

As conditioned, the proposal is acceptable with regard to the objectives in Part 5.10 of the Woollahra LEP 2014.

### 13.8 Part 5.21: Flood Planning

The objectives of Part 5.21 are:

- a) *to minimise the flood risk to life and property associated with the use of land,*
- b) *to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,*
- c) *to avoid adverse or cumulative impacts on flood behaviour and the environment,*
- d) *to enable the safe occupation and efficient evacuation of people in the event of a flood.*

Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:

- a) *is compatible with the flood function and behaviour on the land, and*
- b) *will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- c) *will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- d) *incorporates appropriate measures to manage risk to life in the event of a flood, and*
- e) *will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

In deciding whether to grant development consent on land to which Part 5.21 applies, the consent authority must consider the following matters:

- a) *the impact of the development on projected changes to flood behaviour as a result of climate change,*
- b) *the intended design and scale of buildings resulting from the development,*

- c) *whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- d) *the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion*

The subject site is not identified as being within a Flood Planning Area.

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

### **13.9 Part 6.1: Acid Sulfate Soils**

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

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

### **13.10 Part 6.2: Earthworks**

The proposal involves excavation to accommodate the proposed extension to the south-east which comprises of a lift and extension to the store and plant rooms. The excavation is setback approximately 1.45m from the side (northern) boundary. The supporting documentation identifies that the proposal involves a compliant total excavation volume of 155m<sup>3</sup>.

An assessment of the proposed excavation against the relevant objective set out under Part 6.2(1) of the Woollahra LEP 2014, and the matters of consideration set out under Part 6.2(3) of the Woollahra LEP 2014 is provided below.

Part 6.2(1) states:

*The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.*

Part 6.2(3) states:

In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—

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

The following comments are made in this regard:

- The extent, siting and location of the proposed excavations are not expected to cause detrimental impact upon the amenity or environmental functions of surrounding land;

- The relevant matters for consideration in Part 6.2(3) above, have been suitably considered and reflected by the imposition of suitable conditions of consent.

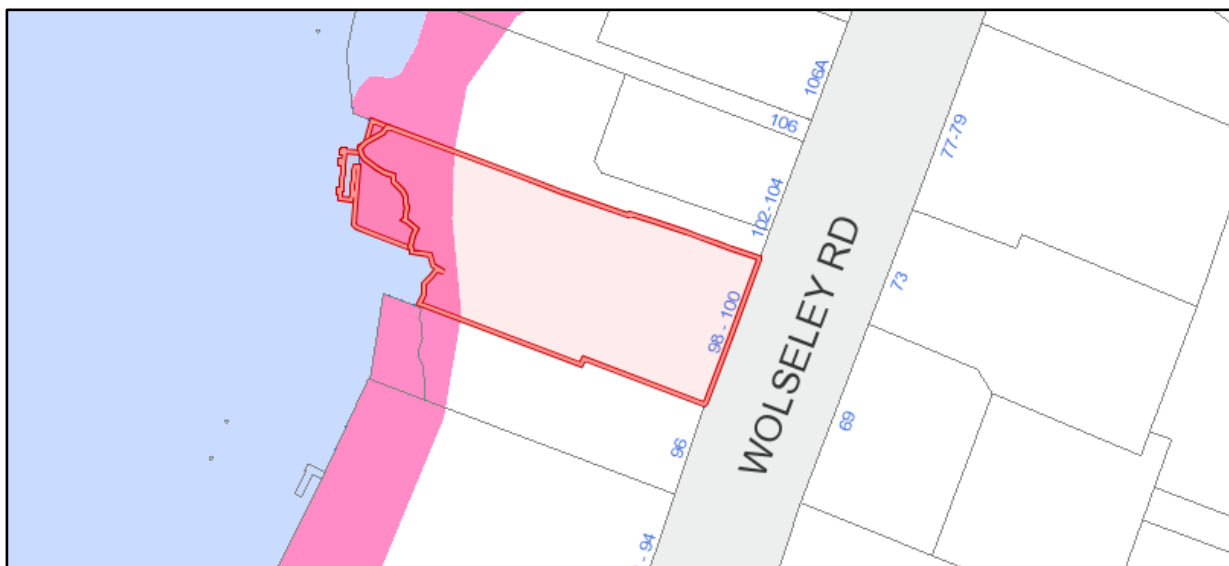
The extent of the proposed works has been considered by Council's Development Engineer and is considered to be satisfactory, subject to the imposition of **Conditions** requiring measures to ensure the maintenance of amenity on the surrounding neighbourhood and structural integrity of any existing and supporting structures during the excavation/construction phase of the development.

The proposal is acceptable with regard to Part 6.2 of the Woollahra LEP 2014.

### 13.11 Part 6.4: Limited Development on Foreshore Area

In Part 6.4, development on the foreshore of Sydney Harbour is permitted subject to it not impacting upon natural foreshore processes or the significance and amenity of the area.

Part 6.4(2) specifies a minimum foreshore building line of 12m. No works are proposed within the foreshore area.



**Fig.** Extract of Foreshore Building Line Map Layer (Source: WMC)

The proposal complies with the foreshore building line prescribed by Part 6.4(2) of WLEP 2014.

### 13.12 Part 6.9: Tree canopy cover in Zones R2 and R3

Part 6.9 aims to conserve and enhance tree canopy cover in the R2 Low Density Residential zone and R3 Medium Density Residential zone.

Part 6.9(3) requires Council to consider whether the development incorporates planning and design measures to enable the retention and planting of trees to minimise the urban heat island effect, and will avoid, minimise or mitigate adverse impacts on the existing tree canopy.

The proposal results in no impacts to any existing trees on or within the vicinity of the site.

The proposal is acceptable with regard to Part 6.9 of Woollahra LEP 2014.

## 14. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

### 14.1 Chapter B1: Point Piper Residential Precinct

The relevant streetscape character and key elements of the precinct encourages development that respects and enhances the existing elements of the neighbourhood character, including:

- *a rich mixture of architectural styles and forms;*
- *views and glimpses of the harbour between buildings from public spaces;*
- *the stepping of development down the hillside;*
- *stone and brick retaining walls on public and private land; and*

The relevant desired future character objectives read as follows:

*O1 To respect and enhance the streetscape character and key elements of the precinct.*  
*O2 To maintain the evolution of residential building styles through the introduction of well-designed contemporary buildings, incorporating modulation and a varied palette of materials.*  
*O4 To design and site buildings to respond to the topography and minimise cut and fill.*  
*O5 To protect iconic and harbour views from the street and other public spaces in the precinct, including views between buildings and over or through front fences.*  
*O6 To ensure that development facilitates view sharing to adjoining and adjacent private properties.*

#### Comment

The proposal achieves the relevant objectives of this Part for the following reasons:

- The immediate locality is characterised by large multi-storey dwelling houses. The topography in this locality slopes steeply from east to west. Development to the east of Wolseley Road is significantly elevated above street level, with development to the west of Wolseley Road presenting as one to two storeys from the road but presenting as three to five storeys when viewed from the Harbour;
- The proposal maintains the existing single storey presentation to Wolseley Road and ensures that the development is compatible with the existing built form on the site and does not result in any adverse impact upon adjoining and/or surrounding properties;
- The proposed works are largely located towards the Wolseley Road side and are located below the existing ridgeline. Given the topography and scale of existing development in this location, the works would be largely obscured when viewed from Sydney Harbour and the streetscape;
- The proposed lift has been skillfully integrated within the existing development;
- The proposal respects the streetscape character and key elements of the precinct, thereby achieving consistency with the built form in this locality;
- The proposal ensures view corridors between properties are maintained.

Given the commentary provided above, the proposal meets the streetscape character and key elements of the precinct and desired future character objectives of the Point Piper precinct, as noted in Part B1.6.2 of the Woollahra DCP 2015.



## 14.2 Chapter B3: General Development Controls

### 14.2.1 Part B3.2: Building Envelope

Site Area: 1426m <sup>2</sup> Site Width: 25.08m	Existing	Proposed	Control	Complies
Side Boundary Setbacks (Northern) (C1)	Level 3: Approx. 2.35m*	Level 3: 0.20m (terrace)  1.45m (lift)	Min 3.4m	No
	Level 2: Approx. 1.95m*	Level 2: 1.45m (lift)	Min 3.4m	No
	Level 1: Approx. 1.8m*	Level 1: 1.45m (lift)	Min 3.4m	No

\*existing non-compliance

#### Part B3.2.2: Front Setback

The proposal complies with the controls and objectives of this part.

#### Part B3.2.3: Side Setbacks

The objectives of this part of the DCP states:

*O1 To avoid an unreasonable sense of enclosure and to facilitate an appropriate separation between buildings.*

*O3 To protect the acoustic and visual privacy of residents on adjoining properties.*

*O4 To facilitate solar access to habitable windows of adjoining properties.*

*O7 To allow external access between the front and rear of the site.*

With a lot width of 25.08m, C1 requires a minimum side setback of 3.4m.

The proposed additions to the existing dwelling result in an encroachment within the side (northern) setback, resulting in a non-compliance with Control C1, as illustrated in the compliance table above. Notwithstanding the numerical non-compliance with Control C1, the proposal is acceptable with the relevant objectives for the following reasons:

- The areas of non-compliance within the side setback is located well below the street level and is not readily discernible from the public domain or adjoining properties;
- The proposed lift does not result in an adverse sense of enclosure upon No. 102 – 104 Wolseley Road as the existing northern boundary wall largely obscures the proposed development and therefore does not result in any additional sense of enclosure upon the adjoining property at No. 102 – 104 Wolseley Road (see Figure below);
- Similarly, the proposed lift and enclosure of the existing terrace will not result in any additional overshadowing or loss of solar access upon adjoining properties as the existing north-eastern boundary wall, and established mature vegetation along the boundary, mostly extends higher than the proposed works (see Figure below);
- Development immediately adjoining the proposed lift includes the vehicular access to the garages of No. 102 – 104 Wolseley Road which provides adequate separation between the dwellings, as illustrated in the below figure. The proposed lift would not result in any adverse acoustic privacy impacts upon No. 102 – 104 Wolseley Road as the immediate adjoining areas are primarily utilised as access and/or non-habitable areas;

- In addition, to mitigate any potential adverse additional acoustic impacts, relevant **Conditions** are recommended to ensure acoustic impacts from mechanical plant associated with the development are mitigated;
- View corridors between buildings are maintained;
- External access between the front and rear of the site is maintained.



*Fig. Oblique Aerial view of subject site (Source: GSA Planning)*

#### Part B3.2.4: Rear Setback

The proposal complies with the controls and objectives of this part.

#### Part B3.2.5: Wall Height and Inclined Plane

Control C1 of this part specifies a maximum external wall height of 7.2m with an inclined plane of 45° above this height. It is noted that due to the steep topography in this location, and existing excavation, the existing dwelling already significantly breaches the maximum wall height.

The relevant objectives of Part B3.2.5 of the Woollahra DCP 2015 require the development to be of a bulk and scale which does not adversely impact on adjoining properties in terms of acoustic and visual privacy, overshadowing and views between buildings. The proposed additions to the existing dwelling do not significantly exacerbate the non-compliance with the wall height and inclined plane control, with the exceedance generally being maintained.

The proposal is considered to maintain the bulk and scale which is generally consistent with the bulk and scale of development in this locality. In this instance the non-compliance is considered reasonable and the proposal achieves consistency with the relevant objectives in the following manner:

- The proposed alterations and additions are considered to be an appropriate response to the topography and are generally consistent with the bulk and scale of development in this locality;
- The proposal will not result in any significant additional overshadowing on adjoining properties;
- The proposal, subject to **Conditions**, will ensure acoustic privacy impacts to adjoining properties are mitigated;
- The proposal will not obscure any existing significant views from adjoining properties;
- The proposal will maintain adequate separation and will not result in a sense of enclosure upon adjoining properties.

The proposal is considered reasonable as the proposal achieves consistency with the relevant objectives of this part.

### Conclusion

The proposal is acceptable with Part 3.2 of the Woollahra DCP 2015.

#### **14.2.2 Part B3.4: Excavation**

<b>Site Area: 1426m<sup>2</sup></b>	<b>Proposed</b>	<b>Control</b>	<b>Complies</b>
Maximum Volume of Excavation (C1)	155m <sup>3</sup>	<312.5m <sup>3</sup>	Yes
Excavation, Piling and Subsurface Wall Setback (C6)	1.45m	>3.4m	No

The relevant controls and objectives are outlined below:

*C1 limits the volume of excavation to 312.5m<sup>3</sup>.*

*C6 requires a minimum setback of excavation of 3.4m.*

*O1 To set maximum acceptable volumes of excavation which:*

- a) require buildings to be designed and sited to relate to the existing topography of the site*
- b) ensure excavation, including the cumulative impacts of excavation, does not adversely impact land stabilisation, ground water flows and vegetation;*
- c) avoid structural risks to surrounding structures;*
- d) ensure noise, vibration, dust and other amenity impacts to surrounding properties during construction are reasonable;*
- e) enable deep soil planting in required setbacks;*
- f) ensure traffic impacts and impacts on local infrastructure arising from the transfer of excavated material from the development site by heavy vehicles are reasonable;*

### Comment

As outlined in Section 13.10 above, the proposal involves excavation to accommodate the proposed extension to the south-east which comprises of a lift and extension to the store and plant rooms. The proposal involves 155m<sup>3</sup> of excavation which complies with Control C1 but does not comply with Control C6.

Notwithstanding the non-compliance with Control C6, the extent of excavations are deemed to be consistent with the objectives of this part of the DCP for the following reasons:

- The proposed excavation volume complies with Control C1;
- The proposed excavation works do not vary the site's topography;
- The proposed excavation does not significantly affect the extent of the existing deep soil landscaping within the site;
- The proposed excavation has been considered by Council's Development Engineer who has no objections on technical grounds subject to recommended **Conditions of Consent**.

### Conclusion

The proposal, as conditioned, is therefore acceptable with regard to the excavation controls in Part B3.4 of the Woollahra DCP 2015.

### 14.2.3 Part B3.5: Built Form and Context

Site Area: 1426m <sup>2</sup>	Proposed	Control	Complies
Siting of Development	Stepped Down with the Slope	Stepped Down with the Slope	Yes
Colour Scheme	Consistent	Consistent	Yes
Solar Access to Open Space of Neighbouring Properties	>50% for 2 hours on 21 June	50% for 2 hours on 21 June	Yes
Solar Access to Nth Facing Living Areas of Neighbouring Properties	>3 hours on 21 June	3 hours on 21 June	Yes

#### Part B3.5.1: Streetscape and Local Character

The proposal satisfies the relevant objectives of Part B3.5.1 of the Woollahra DCP 2015 in the following manner:

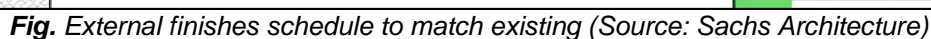
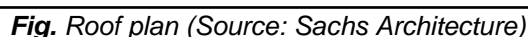
- The proposal is consistent with the desired future character provisions of the Point Piper Precinct as discussed in Section 14.1;
- The site maintains the single-storey street presentation to Wolseley Road;
- The development maintains a stepping down profile that follows the topography of the land;
- The proposed additions would reflect a more consistent built form and maintains the existing roof form of the development;
- The proposed external materials are consistent with the materiality of the existing development and the proposal has been skilfully designed to respect its surrounds, and the built form of the existing building;
- The proposed alterations and additions are not visible from the public domain (Wolseley Road and Sydney Harbour) and would have no discernible impact upon the streetscape or when viewed from Sydney Harbour.

Having regard to the above, the proposal is considered to be satisfactory with regard to the provisions of B3.5.1 of Woollahra DCP 2015.



**Fig.** Oblique aerial view of subject site (Top) v Outlook of Level 3 of subject site (Below) (Source: WMC)





The shadow diagrams submitted demonstrate that the proposal will not cast additional shadows upon adjoining properties and therefore complies with Control C1.

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Part B3.5.3: Public and Private Views

The proposal will not obstruct any significant private or public views, thereby achieving the relevant controls and objectives of Part B3.5.3 of the Woollahra DCP 2015.

Part B3.5.4: Acoustic and Visual Privacy

Acoustic Privacy

*O1 To ensure adequate acoustic privacy for occupants and neighbours.*

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

The proposed additions are generally limited to the enclosure of the existing north-eastern level 3 terrace to match the south-eastern built form as illustrated above. Additionally, there is a new lift and terrace along the north-eastern boundary.

The proposed new terrace and lift are considered acceptable for the following reasons:

- As discussed in Section 14.2.1, the proposed lift would not result in adverse acoustic impacts upon No. 102 – 104 Wolseley Road as the immediate adjoining areas are primarily utilised as access and/or non-habitable areas;
- The subject site would retain the use as a single dwelling;
- Relevant Conditions of Consent are recommended to be imposed requiring acoustic treatments to any mechanical plant associated with the development to ensure acoustic impacts upon adjoining properties are mitigated;
- It is also noted that no objections were received from adjoining neighbours with regards to the proposal.

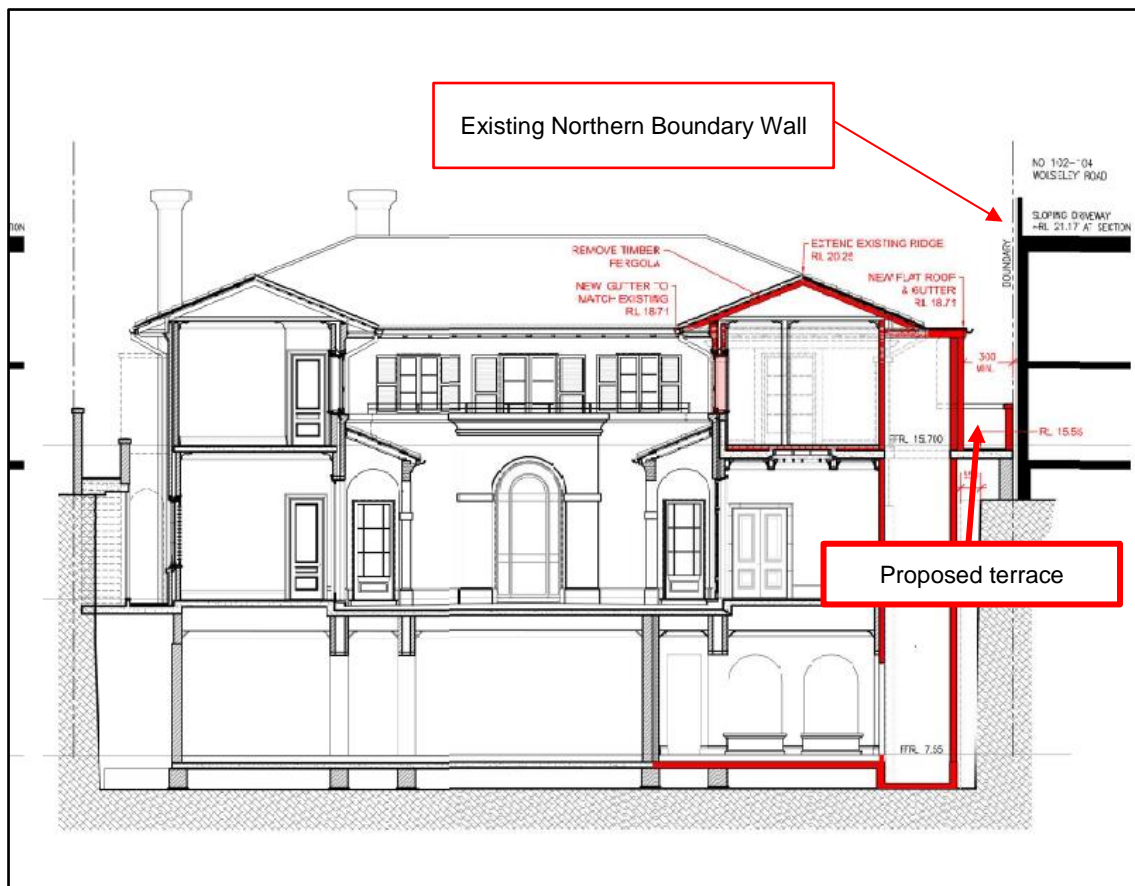
The proposal, **as conditioned**, satisfies the relevant Acoustic Privacy controls and objectives of Part B3.5.4.

Visual Privacy

*O2 To ensure adequate visual privacy for occupants and neighbours while balancing the need to provide for reasonable levels of environmental amenity, including access to sunlight and ventilation, and good architectural outcomes.*

The proposed new terrace to the north-eastern boundary would not result in any visual privacy impacts as no direct sightlines would occur. This is illustrated in the below figure which demonstrates that the existing northern boundary wall obscures any possible visual sightlines.

The proposal satisfies the relevant Visual Privacy controls and objectives of Part B3.5.4.



**Fig. Section of proposed development (Source: Sachs Architecture)**

#### Part B3.5.5: Internal Amenity

The proposed alterations and additions would ensure adequate internal amenity to habitable spaces within the existing dwelling is achieved. Furthermore, the development is subject to standard conditions which enforce compliance with the Building Code of Australia standards for habitable rooms.

The proposal is acceptable with regard to the relevant controls and objectives of Part B3.5.5 of the Woollahra DCP 2015.

#### Conclusion

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

#### **14.2.4 Part B3.7: External Areas**

Site Area: 1426m <sup>2</sup>	Proposed	Control	Complies
Minimum Area of Primary Open Space at Ground Level (C6)	>35m <sup>2</sup>	>35m <sup>2</sup>	Yes

#### Part 3.7.1: Landscaped Areas and Private Open Space

The proposed works are largely located within the footprint of the existing building and therefore do not significantly alter the extent or location of the existing deep soil landscaped and private open space areas currently afforded the site.

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

### Part 3.7.3: Site Facilities

C12 requires site services to be suitably integrated with the development including the landscape design and are not visually intrusive within the streetscape.

The proposed lift, and the mechanical plant associated with the lift, have been suitably integrated with the existing built form in that it would not be visible from adjoining properties or the public domain.

In addition, and for reasons discussed throughout this report, relevant conditions of consent are recommended requiring all mechanical plant associated with the development be acoustically treated to ensure acoustic impacts upon adjoining properties are mitigated

### Conclusion

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

## **14.3 Chapter E2: Stormwater and Flood Risk Management**

Council's Development Engineer has reviewed the application and is satisfied, subject to recommended Conditions of Consent.

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

## **14.4 Chapter E3: Tree Management**

Council's Tree Officer (DARC) considers the proposal acceptable and advised that no referral was required.

The proposed development would not impact any existing trees within or adjoining the site.

The proposal is acceptable with regard to Chapter E3 of the Woollahra DCP 2015.

## **14.5 Chapter E5: Waste Management**

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

### Conclusion

The proposal is acceptable with regard to Chapter E5 of the Woollahra DCP 2015.

## **15 CONTRIBUTION PLANS**

### **15.1 Section 7.12 Contributions Plan**

A levy applies with the monies being used for a variety of works as outlined in Schedule 1 of the Section 7.12 Contributions Plan 2022.

Refer to **Condition D.4.**



## **16 APPLICABLE ACTS/REGULATIONS**

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

#### **Clause 61(1) Additional matters that consent authority must consider**

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

## **17 THE LIKELY IMPACTS OF THE PROPOSAL**

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

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

The site is suitable for the proposed development.

## **19 THE PUBLIC INTEREST**

The proposal is considered to be in the public interest.

## **20 CONCLUSION**

This assessment has considered the application in terms of the relevant matters under Section 4.15(1) of the Environmental Planning and Assessment Act and other relevant considerations and is considered acceptable in this regard.

## **21 DISCLOSURE STATEMENTS**

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

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

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

### **AND**

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, grant development consent to Development Application No. 81/2024/1 for alterations and additions to the existing dwelling house including a new lift on land at 98-100 Wolseley Road Point Piper, subject to the following conditions:

## **ALL DEVELOPMENT TYPES**

### **A. GENERAL CONDITIONS**

A. 1.	<p><b>Conditions</b></p> <p>Consent is granted subject to the following conditions imposed under section 4.16 of the Environmental Planning and Assessment Act 1979 (“the Act”), and the provisions of the Environmental Planning and Assessment Regulation 2021 (“the Regulations”) and the provisions of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 (“the Development Certification and Fire Safety Regulations”), such conditions being reasonable and relevant to the development as assessed under section 4.15 of the Act.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• Failure to comply with this development consent and any condition of this consent is a criminal offence. Failure to comply with other environmental laws is also a criminal offence.</li> <li>• Where there is any breach Council may without any further warning: <ul style="list-style-type: none"> <li>a) Issue Penalty Infringement Notices (On-the-spot fines);</li> <li>b) Issue notices and orders;</li> <li>c) Prosecute any person breaching this consent; and/or</li> <li>d) Seek injunctions/orders before the courts to restrain and remedy any breach.</li> </ul> </li> <li>• Maximum penalties under NSW environmental laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.</li> <li>• Should Council have to take any action to enforced compliance with this consent or other environmental laws Council’s policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order.</li> <li>• This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.</li> <li>• The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of the Crimes (Sentencing Procedure) Act 1999, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious.</li> </ul> <p><b>Condition Reason:</b> To ensure all parties are aware of the relevant legislation that applies to the development.</p>
A. 2.	<p><b>Definitions</b></p> <p>Unless specified otherwise, words have the same meaning as defined by the <i>Act</i>, the <i>Regulations</i>, the <i>Development Certification and Fire Safety Regulations</i> and the <i>Interpretation Act 1987</i> as in force at the date of consent.</p> <p><b>Applicant</b> means the applicant for this consent.</p> <p><b>Approved Plans</b> mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.</p> <p><b>Local native plants</b> means species of native plant endemic to Sydney’s eastern suburbs.</p> <p><b>Owner-builder</b> has the same meaning as in the <i>Home Building Act 1989</i>.</p> <p><b>PC</b> means the Principal Certifier under the <i>Act</i>.</p>

	<p><b>Principal Contractor</b> has the same meaning as in the <i>Act</i>, or where a Principal Contractor has not been appointed by the Owner of the land being developed Principal Contractor means the Owner of the land being developed.</p> <p><b>Professional engineer</b> has the same meaning as in the <i>BCA</i>.</p> <p><b>Public place</b> has the same meaning as in the <i>Local Government Act 1993</i>.</p> <p><b>Road</b> has the same meaning as in the <i>Roads Act 1993</i>.</p> <p><b>SEE</b> means the final version of the Statement of Environmental Effects lodged by the Applicant.</p> <p><b>Site</b> means the land being developed subject to this consent.</p> <p><b>Site work</b> means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.</p> <p><b>Woollahra LEP</b> means <i>Woollahra Local Environmental Plan 2014</i></p> <p><b>Woollahra DCP</b> means <i>Woollahra Development Control Plan 2015</i></p> <p><b>Work</b> for the purposes of this consent means:</p> <ul style="list-style-type: none"> <li>• the use of land in connection with development,</li> <li>• the subdivision of land,</li> <li>• the erection of a building,</li> <li>• the carrying out of any work,</li> <li>• the use of any site crane, machine, article, material, or thing,</li> <li>• the storage of waste, materials, site crane, machine, article, material, or thing,</li> <li>• the demolition of a building,</li> <li>• the piling, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,</li> <li>• the delivery to or removal from the <i>site</i> of any machine, article, material, or thing, or</li> <li>• the occupation of the <i>site</i> by any person unless authorised by an occupation certificate.</li> </ul>
	<p><b>Condition Reason:</b> To ensure all parties are aware of the relevant definitions.</p>
<p><b>A. 3.</b></p>	<p><b>Approved Plans and Supporting Documents</b></p> <p>Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with both the architectural plans to which is affixed a Council stamp “Approved” and supporting documents listed below unless modified by any following condition.</p> <p>Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.</p>

Reference	Description	Author	Date
DA 01	Site Plan	All prepared by Sachs Architecture Pty Ltd	All dated 08/01/2024
DA 02	Roof Plan		
DA 03	Level 3 Floor Plan		
DA 04	Level 2 Floor Plan		
DA 05	Level 1 Floor Plan		
DA 06	Elevation West		
DA 07	Elevation - North		
DA 08	Section - Central		
DA 09	Sections – New Lift & Dressing		
DA 08	External Finishes Schedule		
A1731968	BASIX Certificate	Planning Industry And Environment	08/01/2024
<b>Notes:</b> <ul style="list-style-type: none"><li>Warning to Principal Certifier – You must always insist on sighting the original Council stamped approved plans. You must not rely solely upon the plan reference numbers in this condition. Should the Applicant not be able to provide you with the original copy Council will provide you with access to its files so you may review our original copy of the approved plans.</li><li>These plans and supporting documentation may be subject to conditions imposed under section 4.17(1)(g) of the Act modifying or amending the development.</li></ul>			
<b>Condition Reason:</b> To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.			
A. 4.	<b>Ancillary Aspects of Development (section 4.17(2) of the Act)</b>		
The Owner must procure the repair, replacement or rebuilding of all road pavement, kerb, gutter, footway, footpaths adjoining the site or damaged as a result of work under this consent or as a consequence of work under this consent. Such work must be undertaken to Council's satisfaction in accordance with Council's Specification for Roadworks, Drainage and Miscellaneous Works (2012) unless expressly provided otherwise by these conditions at the Owner's expense.			
<b>Notes:</b> <ul style="list-style-type: none"><li>This condition does not affect the Principal Contractor's or any sub-contractors obligations to protect and preserve public infrastructure from damage or affect their liability for any damage that occurs.</li></ul>			
<b>Condition Reason:</b> To ensure all parties are aware of works required to public infrastructure and to ensure payment for works.			

## DEMOLITION WORK

### B. BEFORE DEMOLITION WORK COMMENCES

<b>B. 1.</b>	<b>Construction Certificate Required Prior to Any Demolition</b>
<p>Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is "commencement of erection of building" under section 6.6 of the Act.</p> <p>In such circumstance all conditions included at the following development stages of this consent must be satisfied prior to any demolition work:</p>	

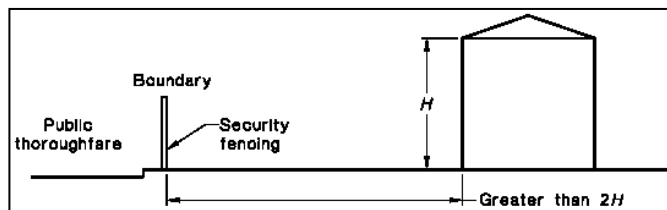
	<ul style="list-style-type: none"> <li>• Before issue of a construction certificate</li> <li>• Before building work commences</li> </ul> <p>This includes, but is not limited to, the issue of a Construction Certificate, appointment of a Principal Certifier, and Notice of Commencement under the Act.</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>• See Over our Dead Body Society Inc v Byron Bay Community Association Inc [2001] NSWLEC 125.</li> </ul>
	<p><b>Condition Reason:</b> To ensure appropriate conditions are complied with for development for the alteration and extension of an existing building.</p>
<b>B. 2.</b>	<p><b>Public Road Assets Prior to Any Work/Demolition</b></p> <p>Prior to any site works, a full record of the condition of the public infrastructure on public land adjacent to the development site must be submitted to Council.</p> <p>The report must include photographs and/or CCTV footage showing the current condition and any existing damage fronting and adjoining the site to the:</p> <ul style="list-style-type: none"> <li>• road pavement,</li> <li>• street signage including street lights,</li> <li>• kerb and gutter,</li> <li>• footway including pedestrian crossings, footpath, and driveways,</li> <li>• retaining walls, or other significant structures,</li> <li>• Heritage Items, including street name inlays,</li> <li>• utility service items including historical utility covers, and</li> <li>• drainage structures/pits/pipes (CCTV footage).</li> </ul> <p>The reports are to be supplied in electronic format in Word and if applicable accompanied by CCTV footage. Photographs are to be in colour, digital and date stamped.</p> <p>If the required report is not submitted then Council will assume there was no damage to any infrastructure in the immediate vicinity of the site prior to the commencement of any site works under this consent.</p>
	<p><b>Condition Reason:</b> To clarify the condition of the existing public infrastructure prior to the commencement of any site works.</p>
<b>B. 3.</b>	<p><b>Archaeological Features – Unexpected Findings</b></p> <p>While site work is being carried out, if a person reasonably suspects archaeological features are discovered, work must cease immediately in the affected area(s) and the Heritage Council must be notified.</p> <p>Site work may recommence at a time confirmed in writing by the Heritage Council or its delegate.</p> <p>Additional assessment and approval under the Heritage Act 1977 may be required prior to works continuing in the affected area(s) based on the nature of the discovery.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• Definition of archaeological feature as per the NSW Heritage Manual: Any physical evidence of past human activity.</li> </ul>

	<ul style="list-style-type: none"> <li>Archaeological features include buildings, works, relics, structures, foundations, deposits, cultural landscapes and shipwrecks.</li> <li>During an archaeological excavation the term 'feature' may be used in a specific sense to refer to any item that is not a structure, a layer or an artefact (for example, a post hole).</li> </ul>
	<b>Condition Reason:</b> To protect archaeological features.
<b>B. 4.</b>	<b>Skeletal Remains</b>
	<p>While site work is being carried out, if any skeletal remains suspected of being human are found, work must cease immediately and no further disturbance of the site must occur. The following must be notified:</p> <ol style="list-style-type: none"> <li>NSW Police, and</li> <li>The person who is the authority for the protection of Aboriginal objects under the National Parks and Wildlife Act 1974, section 85.</li> </ol> <p>Details of the remains and their precise location are to be provided.</p> <p>Site work may recommence at a time confirmed in writing by the NSW Police and the person who is the authority for the protection of Aboriginal objects under the National Parks and Wildlife Act 1974, section 85.</p>
	<b>Condition Reason:</b> To ensure the appropriate management of skeletal remains.
<b>B. 5.</b>	<b>Aboriginal Objects – Unexpected Findings</b>
	<p>While site work is being carried out, if unexpected Aboriginal objects or bones are found, you must:</p> <ol style="list-style-type: none"> <li>Not further disturb or move these objects or bones.</li> <li>Immediately cease all work at the particular location.</li> <li>In the case of suspected human remains, notify NSW Police.</li> <li>Notify the Heritage NSW Environment Line on 131 555 and the La Perouse Land Council (LALC) on (02) 9311 4282 as soon as practicable and provide available details of the objects or remains and their location.</li> <li>Notify the person who is the authority for the protection of Aboriginal objects under the National Parks and Wildlife Act 1974, section 85.</li> <li>Not recommence any work at the particular location unless authorised in writing by the police (in the case of human remains) and the person who is the authority for the protection of Aboriginal objects under the National Parks and Wildlife Act 1974, section 85. Additional assessment and approval under the National Parks and Wildlife Act 1974 may be required prior to works continuing in the affected area(s) based on the nature of the discovery.</li> </ol> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>The Definition of Aboriginal object, as per the National Parks &amp; Wildlife Act 1974, is any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.</li> </ul>
	<b>Condition Reason:</b> To protect Aboriginal objects

B. 6.	<p><b>Aboriginal Heritage Due Diligence Responsibilities</b></p> <p>While site work is being carried out, nothing in this approval allows to cause harm to an Aboriginal object as defined in the National Parks &amp; Wildlife Act 1974. Under the National Parks &amp; Wildlife Act 1974, it is an offence to harm Aboriginal ‘objects’ (consisting of any material evidence of the Aboriginal occupation of NSW) without a valid Aboriginal Heritage Impact Permit under Section 90 of the Act. This applies whether the harm occurs either knowingly [s86(1)] or unknowingly [s86(2)].</p> <p>It is a defence to the strict liability offence of harm to an Aboriginal object under s86(2) if a process of Due Diligence was followed which reasonably determined that the proposed activity would not harm an Aboriginal object.</p> <p><b>Condition Reason:</b> To protect Aboriginal heritage.</p>																								
B. 7.	<p><b>Payment of Security and Fees</b></p> <p>Prior to any site works, the following security and fees must be paid in full:</p> <table><tr><th>Description</th><th>Amount</th><th>Indexed</th><th>Council Fee Code</th></tr><tr><td colspan="4"><b>SECURITY</b> under section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i></td></tr><tr><td><b>Property Damage Security Deposit</b> - making good any damage caused to any property of the Council</td><td>\$21,430.00</td><td>No</td><td>T115</td></tr><tr><td colspan="4"><b>INSPECTION FEES</b> under section 608 of the <i>Local Government Act 1993</i></td></tr><tr><td>Security Deposit Administration Fee</td><td>\$225.00</td><td>No</td><td>T16</td></tr><tr><td><b>TOTAL SECURITY AND FEES</b></td><td colspan="3">\$ 21,655.00</td></tr></table> <p><b>How must the payments be made?</b> Payments must be made by:</p> <ul style="list-style-type: none"><li>• cash deposit with Council,</li><li>• credit card payment with Council, or</li><li>• bank cheque made payable to Woollahra Municipal Council.</li></ul> <p>The payment of a security may be made by a bank guarantee where:</p> <ul style="list-style-type: none"><li>• the guarantee is by an Australian bank for the amount of the total outstanding contribution,</li><li>• the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable],</li><li>• the bank agrees to pay the guaranteed sum without reference to the Applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent,</li><li>• the bank guarantee is lodged with the Council prior to any site works being undertaken, and</li></ul>	Description	Amount	Indexed	Council Fee Code	<b>SECURITY</b> under section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>				<b>Property Damage Security Deposit</b> - making good any damage caused to any property of the Council	\$21,430.00	No	T115	<b>INSPECTION FEES</b> under section 608 of the <i>Local Government Act 1993</i>				Security Deposit Administration Fee	\$225.00	No	T16	<b>TOTAL SECURITY AND FEES</b>	\$ 21,655.00		
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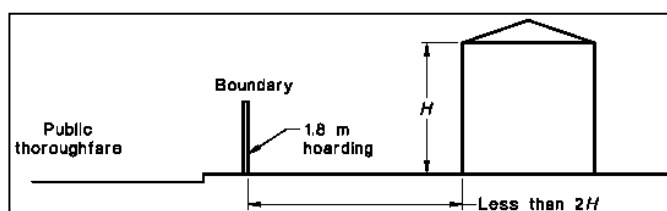
	<ul style="list-style-type: none"> <li>the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.</li> </ul> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>An application must be made to Council by the person who paid the security for release of the securities held under section 4.17 of the Act.</li> <li>The securities will not be released until the Occupation Certificate has been lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council's requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council's requirements.</li> <li>Council will only release the security upon being satisfied that all damage or all works, the purpose for which the security has been held have been remedied or completed to Council's satisfaction as the case may be.</li> <li>Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed.</li> <li>Upon completion of each section of road, drainage and landscape work to Council's satisfaction, 90% of the bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.</li> <li>The Refund of Security Bond Application form can be downloaded from <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a></li> </ul>
	<p><b>Condition Reason:</b> To ensure any relevant security and fees are paid.</p>
<b>B. 8.</b>	<p><b>Works (Construction) Zone – Approval and Implementation</b></p> <p>If the Construction Management Plan relies upon a Works Zone, before any site work commences, a Works Zone application must be made.</p> <p>If the works zone is approved, all fees for the Works Zone must be paid before it can be installed.</p> <p>All Works Zone signs must have been erected by Council to permit enforcement of the Works Zone by Council's Rangers and NSW Police before commencement of any site work. Signs are not erected until full payment of Works Zone fees is made.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>A minimum of four to six weeks must be allowed (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under clause 20 of the Transport Administration (General) Regulation 2018 to exercise those functions delegated by Transport for New South Wales under section 31(3) of the Transport Administration Act 1988.</li> <li>The enforcement of the Works Zone is at the discretion of Council's Rangers and the NSW Police Service. Any breach of the Works Zone must be reported to either Council or the NSW Police Service.</li> </ul>
	<p><b>Condition Reason:</b> To facilitate the efficient operation of construction projects and to minimise traffic disruption.</p>
<b>B. 9.</b>	<p><b>Security Fencing, Hoarding (including 'Creative Hoardings') and Overhead Protection</b></p> <p>Before any site work commences, security fencing must be provided around the perimeter of the development site, including any additional precautionary measures taken to prevent unauthorised entry to the site at all times during the demolition, excavation and construction period. Security fencing must be the equivalent 1.8m high chain wire as specified in AS 1725.</p>





### Type A Hoarding

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



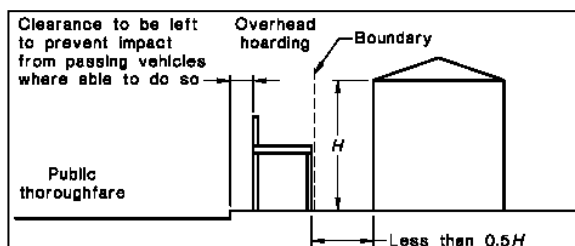
### Type B Hoarding

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

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

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

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



The overhead protective structures must be installed and maintained in accordance with the NSW "Code of Practice - Overhead Protective Structures 1995". This is code available at [www.safework.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0008/52883/Overhead-protective-structures-Code-of-practice.pdf](http://www.safework.nsw.gov.au/__data/assets/pdf_file/0008/52883/Overhead-protective-structures-Code-of-practice.pdf)

	<p><b>All Hoardings</b> Security fencing, hoarding and overhead protective structure must not obstruct access to utilities services including but not limited to man holes, pits, stop valves, fire hydrants or the like.</p> <p><b>Hoardings on Public Land including ‘Creative Hoardings’</b> All fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection must be paid in full.</p> <p>A creative hoarding (i.e. an approved artwork or historic image affixed to the hoarding) is required if the hoarding meets the criteria in Council’s Creative Hoardings Policy (adopted March 2020). The cost of printing and affixing the creative hoarding is the responsibility of the person with the benefit of this consent. The Creative Hoardings Policy can be downloaded from Council’s website <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a></p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• A minimum of two (2) weeks from the date of making a hoarding application to determination must be allowed. Any approval for a hoarding or overhead protection under the Roads Act 1993 will be subject to its own conditions and fees.</li> <li>• Council seeks to increase public art in the public domain by requiring artwork or historic images on hoardings located on public land. Under the Creative Hoardings Policy an application for a hoarding proposed on public land will require an approved artwork or historic image affixed to the hoarding if the hoarding meets the criteria in section 3 of the Policy: <ul style="list-style-type: none"> <li>A. Hoardings proposed on land zoned E1 Local Centre, or MU1 Mixed Use, or SP2 Infrastructure under Woollahra Local Environmental Plan 2014 AND erected for 8 weeks or more OR</li> <li>B. Hoardings proposed on land located along a State classified road (regardless of the zone) AND erected for 8 weeks or more OR</li> <li>C. Hoardings proposed in any other location than that referred to in A. and B. above AND erected for 12 weeks or more, except where: <ol style="list-style-type: none"> <li>1. the capital investment value of the work to which the hoarding relates is less than \$1 million, or</li> <li>2. the land is zoned R2 Low Density Residential, or</li> <li>3. the land is zoned R3 Medium Density Residential and the hoarding is located in a lane or street that does not have through traffic (e.g. a cul-de-sac or no through road).</li> </ol> </li> </ul> </li> <li>• Artwork and historic images for the hoardings are assessed and approved in accordance with the Creative Hoardings Policy. Details of the artwork or images proposed to be affixed to the hoardings must be submitted with Council’s form “Application for a permit to use a footpath for the erection of a hoarding/scaffolding”. The Creative Hoardings Policy can be downloaded from <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a></li> </ul> <p><b>Condition Reason:</b> To ensure public safety.</p>
<p><b>B. 10.</b></p>	<p><b>Site Signs</b></p> <p>Before any site work commences, the sign/s required by clauses 70 of the Regulation and 75 of the Development Certification and Fire Safety Regulation must be erected and maintained at all times.</p> <p>Clause 70 of the Regulation provides:</p>

### **Erection of signs**

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

Clause 75 of the Development Certification and Fire Safety Regulation provides:

### **Signs on development sites**

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

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

### **Notes:**

- Clause 75 of the Development Certification and Fire Safety Regulations imposes a maximum penalty of 55 penalty units if these requirements are not complied with.
- If Council is appointed as the Principal Certifier it will provide the sign to the Principal Contractor or Owner-builder who must ensure that the sign is erected and maintained as required by clause 70 of the Regulation and clause 75 of the Development Certification and Fire Safety Regulation.

**Condition Reason:** To ensure that contact details for the principal certifier and principal contractor are provided on a sign at the development site.

## **B. 11. Toilet Facilities**

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

Each toilet provided:

- a) must be a standard flushing toilet, and
- b) must be connected to a public sewer, or

	<p>c) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council, or</p> <p>d) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.</p> <p>The provision of toilet facilities in accordance with this condition must be completed before any other work is commenced.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>In this condition 'sewage management facility' and 'public sewer' are as defined by clause 25 of the Local Government (Approvals) Regulation 1999.</li> <li>This condition does not set aside the requirement to comply with SafeWork NSW requirements.</li> </ul> <p><b>Condition Reason:</b> To ensure toilet facilities are provided for workers at the work site.</p>
<b>B. 12.</b>	<p><b>Erosion and Sediment Controls – Installation</b></p> <p>Before any site work commences, water pollution, erosion and sedimentation controls must be installed and maintained in accordance with:</p> <p>a) “Do it Right On Site, Soil and Water Management for the Construction Industry” and accompanying factsheets published by the Southern Sydney Regional Organisation of Councils, and</p> <p>b) “Managing Urban Stormwater - Soils and Construction” 2004 published by the NSW Government (The Blue Book).</p> <p>Where there is any conflict The Blue Book takes precedence.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>The “Do it Right On Site, Soil and Water Management for the Construction Industry” publication and accompanying factsheets can be downloaded from <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a> and The Blue Book is available at <a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a></li> <li>A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act 1997 without any further warning. It is a criminal offence to cause, permit or allow pollution.</li> <li>Section 257 of the Protection of the Environment Operations Act 1997 provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”.</li> <li>Warning: Irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.</li> </ul> <p><b>Condition Reason:</b> To prevent potential water pollution and dust nuisance.</p>
<b>B. 13.</b>	<p><b>Identification of Hazardous Material</b></p> <p>Prior to any site works, and in accordance with Australian Standard AS2601: The Demolition of Structures, all hazardous substances located on the site must be identified, including asbestos, polychlorinated biphenyls (PCBs), lead paint, underground storage tanks, chemicals, etc.</p>

	<p>In this regard, prior to any site works, Council must be provided with a written report prepared by a suitably qualified competent person detailing:</p> <ul style="list-style-type: none"> <li>• all hazardous materials identified on the site,</li> <li>• the specific location of all hazardous materials identified,</li> <li>• whether the hazardous materials are to be removed from the site as part of the works to be undertaken, and</li> <li>• safety measures to be put in place.</li> </ul> <p><b>Condition Reason:</b> To protect the health and safety of all persons while works are being undertaken and to ensure all safety measures have been identified and are in place to protect all parties in the immediate vicinity of the site.</p>
<p><b>B. 14.</b></p>	<p><b>Establishment of Boundary Location, Building Location and Datum</b></p> <p>Before any site work commences, a surveyor registered under the Surveying and Spatial Information Act 2002 must:</p> <ol style="list-style-type: none"> <li>set out the boundaries of the site by permanent marks (including permanent recovery points),</li> <li>set out the location and level of foundation excavations, footings, walls and slabs by permanent marks, pegs or profiles relative to the boundaries of the land and relative to Australian Height Datum (AHD) in compliance with the approved plans,</li> <li>establish a permanent datum point (bench mark) within the boundaries of the site relative to AHD, and</li> <li>provide a copy of a survey report, prepared by the registered surveyor, detailing the title boundaries, pegs/profiles, recovery points and bench mark locations as established under this condition to the Principal Certifier.</li> </ol> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• Where there is any discrepancy between the approved development consent and the Construction Certificate, especially in relation to the height, location or external configuration of the building (but not limited to these issues) the site works must not proceed until the variations as shown are consistent with the consent. Failure to do so may result in a breach of development consent.</li> <li>• On larger developments, or where boundary redefinition is required, the placement of new State Survey Marks as permanent marks must be considered by the registered surveyor.</li> </ul> <p><b>Condition Reason:</b> To ensure that the boundary locations, building location, and a datum point is established by a surveyor.</p>

## REMEDIATION WORK

### C. ON COMPLETION OF REMEDIATION WORK

Nil.

## BUILDING WORK

### D. BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

<p><b>D. 1.</b></p>	<p><b>Payment of Long Service Levy</b></p> <p>Before the issue of any construction certificate, the original receipt(s) for the payment of the following levy must be provided to the Principal Certifier:</p>
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Description	Amount	Indexed	Council Fee Code
<b>LONG SERVICE LEVY</b> under <i>Building and Construction Industry Long Service Payments Act 1986</i>			
<b>Long Service Levy</b> <a href="http://www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator">www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator</a>	Contact LSL Corporation or use online calculator	No	
<p><b>Building and Construction Industry Long Service Payment</b></p> <p>The long service levy under section 34 of the Building and Construction Industry Long Service Payment Act 1986, must be paid and proof of payment provided to the Principal Certifier prior to the issue of any construction certificate. The levy can be paid directly to the Long Service Corporation or to Council. Further information can be obtained from the Long Service Corporation website <a href="http://www.longservice.nsw.gov.au">www.longservice.nsw.gov.au</a> or the Long Service Corporation on 131 441.</p> <p><b>How must the payments be made?</b></p> <p>Payments must be made by:</p> <ul style="list-style-type: none"> <li>• cash deposit with Council,</li> <li>• credit card payment with Council, or</li> <li>• bank cheque made payable to Woollahra Municipal Council.</li> </ul> <p><b>Condition Reason:</b> To ensure any relevant levy is paid.</p>			
<b>D. 2.</b>			
<b>BASIX Commitments</b>			
<p>Before the issue of any construction certificate, BASIX Certificate No. A1731968 must be submitted to the Principal Certifier with any application for a construction certificate.</p> <p>All commitments in the BASIX Certificate must be shown on the construction certificate plans and specifications prior to the issue of any construction certificate.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• Where there is any proposed change in the BASIX commitments the Applicant must submit a new BASIX Certificate to the Principal Certifier and Council. If any proposed change in the BASIX commitments are inconsistent with development consent (see: clauses 19 and 20 of the Development Certification and Fire Safety Regulation) the Applicant will be required to submit an amended development application to Council under section 4.55 of the Act.</li> <li>• Clause 19(1)(a) of the Development Certification and Fire Safety Regulation 2021 provides: a certifier must not issue a construction certificate for building work unless: the relevant building work plans and specifications include the matters required by a relevant BASIX certificate, if any.</li> </ul>			
<p><b>Condition Reason:</b> To ensure all commitments in the BASIX Certificate are incorporated into the development.</p>			
<b>D. 3.</b>			
<b>Erosion and Sediment Control Plan – Submission and Approval</b>			
<p>Before the issue of any construction certificate, an erosion and sediment control plan, prepared by a suitably qualified person in accordance with the following documents, must be submitted to the Principal Certifier. The erosion and sediment control plan must comply with:</p>			

- a) “Do it Right On Site, Soil and Water Management for the Construction Industry” and the accompanying factsheets published by the Southern Sydney Regional Organisation of Councils; and
- b) “Managing Urban Stormwater - Soils and Construction” 2004 published by the NSW Government (The Blue Book).

Where there is any conflict The Blue Book takes precedence.

The Principal Certifier must be satisfied that the erosion and sediment control plan complies with the publications above prior to issuing any construction certificate.

**Notes:**

- The International Erosion Control Association – Australasia [www.austieca.com.au](http://www.austieca.com.au) lists consultant experts who can assist in ensuring compliance with this condition. Where erosion and sedimentation plans are required for larger projects it is recommended that expert consultants produce these plans.
- The “Do it Right On Site, Soil and Water Management for the Construction Industry” publication and accompanying factsheets can be downloaded from [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au), and The Blue Book is available at [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)
- Under clause 73(2)(a)(v) of the Development Certification and Fire Safety Regulation an Accredited Certifier may be satisfied as to this matter.

**Condition Reason:** To prevent potential water pollution and dust nuisance.

**D. 4. Payment of S7.12 Contributions Levy**

A payment of a levy authorised by section 7.12 of the Environmental Planning and Assessment Act 1979 must be paid prior to the issue of any Construction Certificate or Subdivision Works Certificate. The Principal Certifier is to be provided with the original receipt for payment under the Woollahra Section 7.12 Development Contributions Plan 2022.

A cost estimate report, no more than 3 months old, demonstrating the proposed cost of carrying out the development must be completed and submitted to Council for determination of the costs of work. This report must incorporate all approved modification applications. The costs and expenses of the proposed cost of development must be established in accordance with clause 208 of the Environmental Planning and Assessment Regulation 2021.

The cost estimate report must be in the form of:

- A cost summary report, prepared by the applicant or a suitably qualified person for a development up to \$749,999; or
- A quantity surveyor’s report, for development over \$750,000.

The applicable levy rate is to be calculated using the summary schedule below.

<b>Summary Schedule</b>	
<b>Development Cost</b>	<b>Levy Rate</b>
• Up to and including \$100,000	Nil
• More than \$100,000 and up to and including \$200,000	0.5% of the cost
• More than \$200,000	1% of the cost

**How must the payments be made?**

Payments must be made by:

- Cash deposit with Council,
- Credit card payment with Council, or

	<ul style="list-style-type: none"> <li>• Bank cheque made payable to Woollahra Municipal Council.</li> </ul> <p><b>Deferred or periodic payment of section 7.12 levy</b> Where the Applicant makes a written request supported by reasons for payment of the section 7.12 levy other than as required by clause 2.9, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:</p> <ul style="list-style-type: none"> <li>• the reasons given,</li> <li>• whether any prejudice will be caused to the community deriving benefit from the public facilities,</li> <li>• whether any prejudice will be caused to the efficacy and operation of the Plan, and</li> <li>• whether the provision of public facilities in accordance with the adopted works schedule will be adversely affected.</li> </ul> <p>Council may, as a condition of accepting deferred or periodic payment, require the provision of a bank guarantee where:</p> <ul style="list-style-type: none"> <li>• the guarantee is by an Australian bank for the amount of the total outstanding contribution,</li> <li>• the bank unconditionally and irrevocably agrees to pay the guaranteed sum to the Council on written request by Council prior to the issue of an occupation certificate,</li> <li>• a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable,</li> <li>• the bank agrees to pay the guaranteed sum without recourse to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent, and</li> <li>• the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.</li> </ul> <p>Any deferred or periodic payment of the section 7.12 levy will be adjusted in accordance with clause 2.12 of the Plan. The Applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.</p> <p><b>Do you need HELP indexing the levy?</b> Please contact Council's Customer Service Team on 02 9391 7000. Failure to correctly calculate the adjusted development levy will delay the issue of any certificate issued under section 6.4 of the Act and could void any such certificate (e.g. construction certificate, subdivision certificate, or occupation certificate).</p> <p><b>Condition Reason:</b> To ensure any relevant contributions are paid.</p>
D. 5.	<p><b>Structural Adequacy of Existing Supporting Structures</b></p> <p>Before the issue of any construction certificate, a certificate from a professional structural engineer, certifying the adequacy of the existing supporting structure to support the additional loads proposed to be imposed by the development, must be provided to the Principal Certifier and submitted with the construction certificate application.</p> <p><b>Condition Reason:</b> To ensure that the existing structure is able to support the additional loads proposed.</p>



D. 6.	<p><b>Professional Engineering Details</b></p> <p>Before the issue of any construction certificate, the construction certificate plans and specifications, required under clause 7 of the Development Certification and Fire Safety Regulation, must include detailed professional engineering plans and/or specifications for all structural, electrical, hydraulic, hydrogeological, geotechnical, mechanical and civil work complying with this consent, approved plans, and supporting documentation.</p> <p>Detailed professional engineering plans and/or specifications must be submitted to the Principal Certifier with the application for any construction certificate.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>This does not affect the right of the developer to seek staged construction certificates.</li> </ul> <p><b>Condition Reason:</b> To ensure professional engineering details and technical specifications are provided.</p>
D. 7.	<p><b>Stormwater Discharge to Existing Stormwater Drainage System</b></p> <p>Before the issue of any construction certificate, the applicant must submit, for approval by the Principal Certifier, detailed stormwater management plans prepared by a chartered professional civil engineer, which include the following:</p> <ol style="list-style-type: none"> <li>The stormwater management plans must specify any components of the existing drainage system to be retained and certified to be in good condition and of adequate capacity to convey additional runoff and be replaced or upgraded if required.</li> <li>Detail the location of the existing stormwater drainage system including all pipes, inspection openings, surface drains, pits and their discharge location as well as any new stormwater drainage system.</li> <li>Detail any remedial works required to upgrade the existing stormwater drainage system.</li> <li>Internal stormwater drainage pipes and pits are to be designed for rainfall intensities up to and including the 1% AEP event if an unimpeded overland flow path to the street drainage system is not available. Design details and calculations must be included in the stormwater management plans.</li> <li>The discharge of stormwater from the site to the street kerb located within the frontage of the site. Only one stormwater outlet with a maximum discharge rate of 20 l/s in the 1% AEP storm event will be permitted. Full supporting calculations must be included in the stormwater management plans. The stormwater outlet pipe across the Council's property must have a minimum grade of 1% to comply with Council's DCP and AS3500.3.</li> <li>All below ground structures are to be fully tanked or appropriately designed such that subsoil drainage/seepage water is NOT discharged to the kerb and gutter to comply with Chapter E2.2.5 of Council's DCP. Notation to this requirement must be clearly depicted on the drawings.</li> <li>Dimensions of all drainage pit and access grates must comply with AS3500.3 and Council's DCP.</li> <li>Interceptor drain(s) at the site boundary to prevent stormwater flows from the site crossing the footpath; and General compliance with the Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.</li> <li>General compliance with the Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.</li> </ol> <p>The Stormwater Management Plan must also include the following specific requirements:</p>

	<p><b>Layout plan</b> A detailed drainage plan at a scale of 1:100 based on drainage calculations prepared in accordance with the Australian Government publication, Australian Rainfall and Run-off, 2019 edition or most current version thereof. It must include:</p> <ol style="list-style-type: none"> <li>All pipe layouts, dimensions, grades, lengths and material specification.</li> <li>Location and dimensions of all downpipes.</li> <li>All invert levels reduced to Australian Height Datum (AHD).</li> <li>Location and dimensions of all drainage pits.</li> <li>Point and method of connection to Councils drainage infrastructure.</li> <li>Overland flow paths over impervious areas.</li> </ol> <p>Where new Stormwater Drainage System crosses the footpath area within any road, separate approval under section 138 of the Roads Act 1993 must be obtained from Council for those works before the issue of any construction certificate.</p> <p>All Stormwater Drainage System work within any road or public place must comply with Woollahra Municipal Council's Specification for Roadworks, Drainage and Miscellaneous Works (2012).</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>The collection, storage and use of rainwater is to be in accordance with Standards Australia HB230 "Rainwater Tank Design and Installation Handbook".</li> </ul> <p><b>Condition Reason:</b> To ensure that site stormwater is disposed of in a controlled and sustainable manner.</p>
<p><b>D. 8.</b></p>	<p><b>Acoustic Certification of Mechanical Plant and Equipment</b></p> <p>Before the issue of any construction certificate, the construction certificate plans and specifications required under clause 7 of the Development Certification and Fire Safety Regulation, must be accompanied by a certificate from a professional acoustic engineer certifying that the noise level measured at any boundary of the site at any time while the proposed mechanical plant and equipment is operating will not exceed the background noise level. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed background noise level, at any time.</p> <p>The background noise level is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the LA90, 15 minute level measured by a sound level meter.</p> <p>Where sound attenuation is required this must be detailed.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>Further information including lists of Acoustic Engineers can be obtained from: <ul style="list-style-type: none"> <li>Australian Acoustical Society - professional society of noise-related professional <a href="http://www.acoustics.asn.au">www.acoustics.asn.au</a></li> <li>Association of Australian Acoustical Consultant - professional society of noise related professionals <a href="http://www.aaac.org.au">www.aaac.org.au</a></li> </ul> </li> </ul> <p><b>Condition Reason:</b> To ensure the development does not result in any unreasonable acoustic impacts.</p>

## E. BEFORE BUILDING WORK COMMENCES

E. 1.	<p><b>Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989</b></p> <p>Before any building work commences, and under section 4.17(11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:</p> <ol style="list-style-type: none"> <li>that the work must be carried out in accordance with the requirements of the Building Code of Australia,</li> <li>in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.</li> </ol> <p>This condition does not apply:</p> <ol style="list-style-type: none"> <li>to the extent to which an exemption is in force under the Home Building Regulation 2014, or</li> <li>to the erection of a temporary building.</li> </ol> <p>In this condition, a reference to the BCA is a reference to that code as in force on the date the application for the relevant Construction Certificate is made.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>This condition must be satisfied prior to commencement of any work in relation to the contract of insurance under the Home Building Act 1989. This condition also has effect during the carrying out of all building work with respect to compliance with the Building Code of Australia.</li> <li>All new guttering is to comply with the provisions of AS3500.</li> </ul> <p><b>Condition Reason:</b> To ensure that works are carried out in accordance with the Building Code of Australia and any required contract of insurance is in force.</p>
E. 2.	<p><b>Erosion and Sediment Controls – Installation</b></p> <p>Before any building work commences, water pollution, erosion and sedimentation controls must be installed and maintained in accordance with:</p> <ol style="list-style-type: none"> <li>The Soil and Water Management Plan if required under this consent;</li> <li>“Do it Right On Site, Soil and Water Management for the Construction Industry” and accompanying factsheets published by the Southern Sydney Regional Organisation of Councils, and</li> <li>“Managing Urban Stormwater - Soils and Construction” 2004 published by the NSW Government (The Blue Book).</li> </ol> <p>Where there is any conflict The Blue Book takes precedence.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>The International Erosion Control Association – Australasia (<a href="http://www.austieca.com.au/">www.austieca.com.au/</a>) lists consultant experts who can assist in ensuring compliance with this condition.</li> <li>Where Soil and Water Management Plan is required for larger projects it is recommended that this be produced by a member of the International Erosion Control Association – Australasia.</li> <li>The “Do it Right On Site, Soil and Water Management for the Construction Industry” publication and the accompanying factsheets can be downloaded from <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a> and The Blue Book is available at <a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a></li> </ul>

	<ul style="list-style-type: none"> <li>A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act 1997 without any further warning. It is a criminal offence to cause, permit or allow pollution.</li> <li>Section 257 of the Protection of the Environment Operations Act 1997 provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”.</li> <li>Warning: Irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of their occupation of the land being.</li> </ul>
	<p><b>Condition Reason:</b> To prevent potential water pollution and dust nuisance.</p>
E. 3.	<p><b>Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the Act)</b></p> <p>Building work must not commence, until:</p> <ol style="list-style-type: none"> <li>A construction certificate for the building work has been issued by the consent authority, the Council (if the Council is not the consent authority) or an accredited Certifier, and</li> <li>The person having the benefit of the development consent has: <ul style="list-style-type: none"> <li>appointed a Principal Certifier for the building work, and</li> <li>notified the Principal Certifier that the person will carry out the building work as an Owner-builder, if that is the case, and</li> </ul> </li> <li>The Principal Certifier has, no later than 2 days before the building work commences: <ul style="list-style-type: none"> <li>notified the consent authority and the Council (if the Council is not the consent authority) of his or her appointment, and</li> <li>notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and</li> </ul> </li> <li>The person having the benefit of the development consent, if not carrying out the work as an Owner-builder, has: <ul style="list-style-type: none"> <li>appointed a Principal Contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and</li> <li>notified the Principal Certifier of any such appointment, and</li> <li>unless that person is the Principal Contractor, notified the Principal Contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and</li> <li>given at least 2 days’ notice to the Council of the person’s intention to commence the erection of the building.</li> </ul> </li> </ol> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li><b>Building</b> has the same meaning as in section 1.4 of the Act and includes part of a building and any structure or part of a structure.</li> <li><b>New building</b> has the same meaning as in section 6.1 of the Act and includes an altered portion of, or an extension to, an existing building.</li> <li>The commencement of demolition works associated with an altered portion of, or an extension to, an existing building is considered to be the commencement of building work requiring compliance with section 6.6(2) of the Act (including the need for a Construction Certificate) prior to any demolition work. See: <i>Over our Dead Body Society Inc v Byron Bay Community Association Inc</i> [2001] NSWLEC 125.</li> <li>Construction Certificate Application, PC Service Agreement and Notice of Commencement forms can be downloaded from Council’s website <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a></li> <li>It is an offence for any person to carry out the erection of a building in breach of this condition and in breach of section 6.6(2) of the Act.</li> </ul>

	<ul style="list-style-type: none"> <li>Under the Home Building Act 1989 any property owner who intends undertaking construction work to a dwelling house or dual occupancy to the value of \$12,000 or over must complete an approved education course and obtain an owner-builder permit from NSW Fair Trading.</li> </ul>
	<p><b>Condition Reason:</b> To ensure a construction certificate has been issued, a Principal Certifier is appointed, a Principal Contractor (if applicable) is appointed, and a notice of commencement has been submitted.</p>
<b>E. 4.</b>	<p><b>Notification of Home Building Act 1989 requirements</b></p> <p>Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:</p> <p>a) In the case of work for which a Principal Contractor is required to be appointed:</p> <ul style="list-style-type: none"> <li>the name and licence number of the Principal Contractor, and</li> <li>the name of the insurer by which the work is insured under Part 6 of that Act,</li> </ul> <p>b) In the case of work to be done by an Owner-builder:</p> <ul style="list-style-type: none"> <li>the name of the Owner-builder, and</li> <li>if the Owner-builder is required to hold an Owner-builder permit under that Act, the number of the Owner-builder permit.</li> </ul> <p>If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.</p> <p>This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the Act, to comply with the Building Code of Australia.</p> <p>For the purposes of section 4.17(11) of the Act, the requirements of this condition are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the Home Building Act 1989.</p> <p><b>Condition Reason:</b> To ensure Council is notified of the Home Building Acts 1989 requirements.</p>

## F. DURING BUILDING WORK

<b>F. 1.</b>	<p><b>Compliance with BCA and Insurance Requirements under the Home Building Act 1989</b></p> <p>While site work is being carried out:</p> <p>a) work must be carried out in accordance with the requirements of the Building Code of Australia (BCA),</p> <p>b) in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.</p> <p>This condition does not apply:</p> <p>a) to the extent to which an exemption is in force under the Development Certification and Fire Safety Regulations, or</p>
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	<p>b) to the erection of a temporary building.</p> <p>In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant construction certificate is made.</p> <p>For the purposes of section 4.17(11) of the Act, the above condition is prescribed in relation to a development consent for development that involves any building work.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>All new guttering is to comply with the provisions of AS 3500.</li> </ul> <p><b>Condition Reason:</b> To ensure compliance with the BCA and Home building Act 1989.</p>
<b>F. 2.</b>	<p><b>Requirement to Notify about New Evidence</b></p> <p>While site work is being carried out, any new information that comes to light, which has the potential to alter previous conclusions about site contamination, heritage significance, threatened species or other relevant matters must be immediately notified to Council and the Principal Certifier.</p> <p><b>Condition Reason:</b> To ensure Council and the Principal Certifier are made aware of new information.</p>
<b>F. 3.</b>	<p><b>Critical Stage Inspections</b></p> <p>While site work is being carried out, critical stage inspections must be called for by the Principal Contractor or Owner-builder as required by the Principal Certifier, any PC service agreement, the Act, the Development Certification and Fire Safety Regulation, and the Regulation.</p> <p>Work must not proceed beyond each critical stage until the Principal Certifier is satisfied that work is proceeding in accordance with this consent, the construction certificate(s) and the Act.</p> <p>Critical stage inspections means the inspections prescribed by the Development Certification and Fire Safety Regulations, and Regulations for the purposes of section 6.5 of the Act or as required by the Principal Certifier and any PC Service Agreement.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>The Principal Certifier may require inspections beyond mandatory critical stage inspections in order that the Principal Certifier be satisfied that work is proceeding in accordance with this consent.</li> <li>The Principal Certifier may, in addition to inspections, require the submission of Compliance Certificates, survey reports or evidence of suitability in accordance with Part A2G2 of the BCA in relation to any matter relevant to the development.</li> </ul> <p><b>Condition Reason:</b> To ensure that building work progresses in accordance with the approved plans, conditions of consent, and requirements of the act.</p>
<b>F. 4.</b>	<p><b>Hours of Work –Amenity of the Neighbourhood</b></p> <p>While site work is being carried out:</p> <ol style="list-style-type: none"> <li>No work must take place on any Sunday or public holiday.</li> <li>No work must take place before 7am or after 5pm any weekday.</li> <li>No work must take place before 7am or after 1pm any Saturday.</li> </ol>



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

**Notes:**

- The use of noise and vibration generating plant and equipment and vehicular traffic, including trucks in particular, significantly degrade the amenity of neighbourhoods and more onerous restrictions apply to these activities. This more invasive work generally occurs during the foundation and bulk excavation stages of development. If you are in doubt as to whether or not a particular activity is considered to be subject to the more onerous requirement (9am to 4pm weekdays and 9am to 1pm Saturdays) please consult with Council.
- Each and every breach of this condition by any person may be subject to a separate penalty infringement notice or prosecution.
- The delivery and removal of plant, equipment and machinery associated with wide loads subject to Transport for NSW and NSW Police restrictions on their movement outside the approved hours of work will be considered on a case by case basis.
- Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the Protection of the Environment Operations Act 1997, the Protection of the Environment Operations (Noise Control) Regulation 2017.
- NSW EPA Noise Guide is available at [www.epa.nsw.gov.au/noise/nglg.htm](http://www.epa.nsw.gov.au/noise/nglg.htm)

**Condition Reason:** To mitigate the impact of work upon the amenity of the neighbourhood.

**F. 5. Public Footpaths – Safety, Access and Maintenance**

While site work is being carried out, any person acting with the benefit of this consent must:

- a) Not erect or maintain any gate or fence that swings out, or encroaches upon the road or the footway.
- b) Not use the road or footway for the storage of any article, material, matter, waste or thing.
- c) Not use the road or footway for any work.
- d) Keep the road and footway in good repair free of any trip hazard or obstruction.

	<p>e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be immediately made safe and then repaired, to the satisfaction of Council.</p> <p>f) Not stand any plant and equipment upon the road or footway.</p> <p>g) If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or operate a crane, hoist or concrete pump on or over Council land, an application must be submitted to and approved by Council beforehand.</p> <p>h) Provide a clear safe pedestrian route a minimum of 1.5m wide.</p> <p>i) Protect heritage listed street name inlays located in the footpath, kerb and gutter, and any other structure, to ensure they are not removed or damaged during development.</p> <p>This condition does not apply to the extent that a permit or approval exists under the section 148B of the Road Transport Act 2013, section 138 of the Roads Act 1993 or section 68 of the Local Government Act 1993 except that at all time compliance is required with:</p> <p>a) Australian Standard AS 1742 (Set): Manual of uniform traffic control devices and all relevant parts of this set of standards.</p> <p>b) Australian Road Rules.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• Section 148B of the Road Transport Act 2013 allows the NSW Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose.</li> <li>• Section 138 of the Roads Act 1993 provides that a person must not: <ul style="list-style-type: none"> <li>- erect a structure or carry out a work in, on or over a public road, or</li> <li>- dig up or disturb the surface of a public road, or</li> <li>- remove or interfere with a structure, work or tree on a public road, or</li> <li>- pump water into a public road from any land adjoining the road, or</li> <li>- connect a road (whether public or private) to a classified road,</li> <li>- otherwise than with the consent of the appropriate roads authority.</li> </ul> </li> <li>• Section 68 of the Local Government Act 1993 provides that a person may carry out certain activities only with the prior approval of the Council including: <ul style="list-style-type: none"> <li>- Part C Management of waste: <ul style="list-style-type: none"> <li>a) For fee or reward, transport waste over or under a public place</li> <li>b) Place waste in a public place</li> <li>c) Place a waste storage container in a public place.</li> </ul> </li> <li>- Part E Public roads: <ul style="list-style-type: none"> <li>a) Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway</li> <li>b) Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.</li> </ul> </li> </ul> </li> </ul> <p><b>Condition Reason:</b> To ensure safe access is maintained to footpaths and roads during building works.</p>
<p><b>F. 6.</b></p>	<p><b>Maintenance of Environmental Controls</b></p> <p>While site work is being carried out, the following monitoring, measures and controls must be maintained:</p> <ul style="list-style-type: none"> <li>a) erosion and sediment controls,</li> <li>b) dust controls,</li> <li>c) dewatering discharges,</li> <li>d) noise controls,</li> <li>e) vibration monitoring and controls, and</li> </ul>

	<p>f) ablutions.</p> <p><b>Condition Reason:</b> To ensure that environmental controls are maintained during building works to protect the public and surrounding environment.</p>
<b>F. 7.</b>	<p><b>Support of Adjoining Land and Buildings</b></p> <p>While site work is being carried out, a person must not to do anything on or in relation to the site (the supporting land) that removes the support provided by the supporting land to any other land (the supported land) or building (the supported building).</p> <p>For the purposes of this condition, supporting land includes the natural surface of the site, the subsoil of the site, any water beneath the site, and any part of the site that has been reclaimed.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>This condition does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is considered necessary upon any adjoining or supported land by any person the Principal Contractor or Owner-builder must obtain: <ul style="list-style-type: none"> <li>the consent of the owners of such adjoining or supported land to trespass or encroach, or</li> <li>an access order under the Access to Neighbouring Land Act 2000, or</li> <li>an easement under section 88K of the Conveyancing Act 1919, or</li> <li>an easement under section 40 of the Land and Environment Court Act 1979 as appropriate.</li> </ul> </li> <li>Section 177 of the Conveyancing Act 1919 creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).</li> <li>Clause 17 of the Roads Regulation 2018 prohibits excavation in the vicinity of roads as follows: "Excavations adjacent to road - A person must not excavate land in the vicinity of a road if the excavation is capable of causing damage to the road (such as by way of subsidence) or to any work or structure on the road." Separate approval is required under the Roads Act 1993 for any underpinning, shoring, soil anchoring (temporary) or the like within or under any road. Council will not give approval to permanent underpinning, shoring, soil anchoring within or under any road.</li> <li>The encroachment of work or the like is a civil matter of trespass or encroachment and Council does not adjudicate or regulate such trespasses or encroachments except in relation to encroachments upon any road, public place, Crown land under Council's care control or management, or any community or operational land as defined by the Local Government Act 1993.</li> </ul> <p><b>Condition Reason:</b> To ensure that the support of adjoining land is not removed.</p>
<b>F. 8.</b>	<p><b>Erosion and Sediment Controls – Maintenance</b></p> <p>While site work is being carried out, water pollution, erosion, and sedimentation controls must be maintained in accordance with:</p> <ol style="list-style-type: none"> <li>the Soil and Water Management Plan required under this consent,</li> <li>"Do it Right On Site, Soil and Water Management for the Construction Industry" and the accompanying factsheets published by the Southern Sydney Regional Organisation of Councils, and</li> <li>"Managing Urban Stormwater - Soils and Construction" 2004 published by the NSW Government (The Blue Book).</li> </ol> <p>Where there is any conflict The Blue Book takes precedence.</p>

	<p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act 1997 without any further warning. It is a criminal offence to cause, permit or allow pollution.</li> <li>• Section 257 of the Protection of the Environment Operations Act 1997 provides that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”.</li> <li>• Warning: Irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of the occupation of the land being developed whether or not they actually cause the pollution.</li> </ul> <p><b>Condition Reason:</b> To prevent potential water pollution and dust nuisance.</p>
<p><b>F. 9.</b></p>	<p><b>Disposal of Site Water During Construction</b></p> <p>While site work is being carried out:</p> <ol style="list-style-type: none"> <li>Prior to pumping any water into the road or public stormwater system, approval must be obtained from Council under section 138(1)(d) of the Roads Act 1993.</li> <li>Water pollution, as defined by the Protection of the Environment Operations Act 1997, must not occur as the result of the discharge to the road, public stormwater system or other place of any site water.</li> <li>That stormwater from any roof or other impervious areas is linked, via temporary downpipes and stormwater pipes, to a Council approved stormwater disposal system immediately upon completion of the roof installation or work creating other impervious areas.</li> </ol> <p><b>Condition Reason:</b> To ensure that adjoining and neighbouring land is not adversely affected by unreasonable overland flows of stormwater and that site water does not cause erosion and water pollution.</p>
<p><b>F. 10.</b></p>	<p><b>Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum</b></p> <p>While site work is being carried out, a registered surveyor must carry out check surveys and provide survey certificates confirming the location of the building(s), ancillary works, flood protection works and the stormwater drainage system relative to the boundaries of the site and that the height of buildings, ancillary works, flood protection works and the stormwater drainage system relative to Australian Height Datum complies with this consent at the following critical stages.</p> <p>Work must not proceed beyond each of the following critical stages until compliance has been demonstrated to the Principal Certifier’s satisfaction:</p> <ol style="list-style-type: none"> <li>Upon the completion of foundation walls prior to the laying of any floor or the pouring of any floor slab and generally at damp proof course level.</li> <li>Upon the completion of formwork for floor slabs prior to the laying of any floor or the pouring of any concrete and generally at each storey.</li> <li>Upon the completion of formwork or framework for the roof(s) prior to the laying of any roofing or the pouring of any concrete roof.</li> <li>Upon the completion of formwork and steel fixing prior to pouring of any concrete for any ancillary structure, flood protection work, swimming pool or spa pool or the like.</li> </ol>

	<p>e) Upon the completion of formwork and steel fixing prior to pouring of any concrete for driveways showing transitions and crest thresholds confirming that driveway levels match Council approved driveway crossing levels and minimum flood levels.</p> <p>f) Stormwater drainage Systems are in place prior to back filling over pipes confirming location, height and capacity of works.</p> <p>g) Flood protection measures are in place confirming location, height and capacity.</p> <p><b>Condition Reason:</b> To ensure that development occurs in the location and at the height approved under this consent, which is critical to ensure that buildings are constructed to minimum heights for flood protection and maximum heights to protect views and the amenity of neighbours.</p>
<b>F. 11.</b>	<p><b>Placement and Use of Skip Bins</b></p> <p>While site work is being carried out, all waste storage containers, including but not limited to skip bins, must be stored within the site unless:</p> <p>a) Activity Approval has been issued by Council under section 68 of the Local Government Act 1993 to place the waste storage container in a public place; and</p> <p>b) where located on the road it is located only in a positions where a vehicle may lawfully park in accordance with the Australian Road Rules.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>Waste storage containers must not be located on the footpath without a site specific activity approval. Where such site specific activity approval is granted a 1.5m wide clear path of travel is maintained free of any trip hazards.</li> </ul> <p><b>Condition Reason:</b> To ensure waste storage containers are appropriately located.</p>
<b>F. 12.</b>	<p><b>Prohibition of Burning</b></p> <p>While site work is being carried out, there must be no burning of any waste or other materials. The burning of copper chrome arsenate (CCA) or pentachlorophenol (PCP) treated timber is prohibited in all parts of NSW. All burning is prohibited in the Woollahra local government area.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>Under the Protection of the Environment Operations (Clean Air) Regulation 2021 all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.</li> </ul> <p><b>Condition Reason:</b> To ensure no burning of waste occurs.</p>
<b>F. 13.</b>	<p><b>Dust Mitigation</b></p> <p>While site work is being carried out, dust mitigation must be implemented in accordance with “Dust Control - Do it right on site” and the accompanying facts sheets published by the Southern Sydney Regional Organisation of Councils.</p> <p>This generally requires:</p> <p>a) Dust screens to all hoardings and site fences.</p> <p>b) All stockpiles or loose materials to be covered when not being used.</p> <p>c) All equipment, where capable, being fitted with dust catchers.</p> <p>d) All loose materials being placed bags before placing into waste or skip bins.</p> <p>e) All waste and skip bins being kept covered when not being filled or emptied.</p>

	<p>f) The surface of excavation work being kept wet to minimise dust. g) Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• “Dust Control - Do it right on site” and the accompanying factsheets can be downloaded from Council’s website <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a></li> <li>• Special precautions must be taken when removing asbestos or lead materials from development sites. Additional information can be obtained from <a href="http://www.safework.nsw.gov.au">www.safework.nsw.gov.au</a> and <a href="http://www.epa.nsw.gov.au">www.epa.nsw.gov.au</a>. Other specific conditions and advice may apply.</li> <li>• Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution.</li> </ul> <p><b>Condition Reason:</b> To mitigate the impact of dust upon the amenity of the neighbourhood and prevent water pollution.</p>
<p><b>F. 14.</b></p>	<p><b>Asbestos Removal</b></p> <p>While site work is being carried out, all asbestos removal work must be carried out safely according to NSW work health and safety legislation.</p> <p>Where hazardous material, including bonded or friable asbestos has been identified in accordance with the conditions in Section B above, and such material must be demolished, disturbed and subsequently removed, all such works must comply with the following criteria:</p> <ol style="list-style-type: none"> <li>a) Be undertaken by contractors who hold a current SafeWork NSW “demolition licence” and a current SafeWork NSW “Class A licence” for friable asbestos removal.</li> <li>b) Be carried out in accordance with the relevant SafeWork NSW codes of practice.</li> <li>c) No asbestos products may be reused on the site.</li> <li>d) No asbestos laden skip or bins must be left in any public place.</li> </ol> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• Before starting work, a work site-specific permit approving each asbestos project must be obtained from SafeWork NSW. A permit will not be granted without a current SafeWork licence.</li> <li>• All removal, repair or disturbance of or to asbestos material must comply with: <ul style="list-style-type: none"> <li>- Work Health and Safety Act 2011,</li> <li>- Work Health and Safety Regulation 2017,</li> <li>- SafeWork NSW “Code of Practice: How to Safely Remove Asbestos” (2016), and</li> <li>- SafeWork NSW “Code of Practice: How to Manage and Control Asbestos in the Workplace” (2016).</li> </ul> </li> <li>• For more information go to the SafeWork NSW website on asbestos <a href="http://www.safework.nsw.gov.au/health-and-safety/safety-topics-a-z/asbestos">www.safework.nsw.gov.au/health-and-safety/safety-topics-a-z/asbestos</a>, and <a href="http://www.safework.nsw.gov.au/law-and-policy/legislation-and-codes/codes-of-practice">www.safework.nsw.gov.au/law-and-policy/legislation-and-codes/codes-of-practice</a> or call 131 050</li> </ul> <p><b>Condition Reason:</b> To ensure the safe removal of asbestos and protect the health and safety of persons working on the site and the public.</p>



<b>F. 15.</b>	<b>Classification of Hazardous Waste</b>
	While site work is being carried out, and prior to the exportation of hazardous waste (including hazardous fill or soil) from the site, the waste materials must be classified in accordance with the provision of the Protection of the Environment Operations Act 1997 and the NSW EPA Waste Classification Guidelines, Part1: Classifying Waste, 2014.
	<b>Condition Reason:</b> To ensure that where hazardous waste will be removed from a site an asbestos licensed contractor can definitively determine where the waste may be legally taken for disposal.
<b>F. 16.</b>	<b>Disposal of Asbestos and Hazardous Waste</b>
	While site work is being carried out, asbestos and hazardous waste, once classified in accordance with the hazardous waste classification condition must only be transported to waste facilities licensed to accept asbestos and appropriate classifications of hazardous waste.
	<b>Condition Reason:</b> To ensure that asbestos and other hazardous waste is disposed of lawfully under the Protection of the Environment Operations Act 1997 and relevant NSW EPA requirements.
<b>F. 17.</b>	<b>Asbestos Removal Signage</b>
	While site work is being carried out and when asbestos is being removed, standard commercially manufactured signs containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm are to be erected in prominent visible positions on the site.
	<b>Condition Reason:</b> To ensure awareness of any hazard to the health and safety of persons working on the site and public.
<b>F. 18.</b>	<b>Notification of Asbestos Removal</b>
	While site work is being carried out, in addition to the requirements for licensed asbestos removalists to give written notice to SafeWork NSW, all adjoining properties and those opposite the development site must be notified in writing of the dates and times when asbestos removal is to be conducted.
	The notification is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone and facsimile numbers and email addresses.
	<b>Condition Reason:</b> To ensure that local residents are informed and have adequate contact details for incidents of asbestos removal.
<b>F. 19.</b>	<b>Site Waste Minimisation and Management – Demolition</b>
	While site work is being carried out, in order to maximise resource recovery and minimise residual waste from demolition activities: a) the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,

	<p>b) an area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements),</p> <p>c) separate collection bins and/or areas for the storage of residual waste are to be provided,</p> <p>d) the purpose and content of the bins and/or storage areas are to be clearly 'signposted',</p> <p>e) measures to prevent damage by the elements, odour, health risks and windborne litter are to be implemented, and</p> <p>f) site disturbance must be minimised, and unnecessary excavation limited.</p> <p>When implementing the SWMMP the Applicant must ensure:</p> <p>a) footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval,</p> <p>b) any material moved offsite is transported in accordance with the requirements of the Protection of the Environment Operations Act 1997,</p> <p>c) waste is only transported to a place that can lawfully be used as a waste facility,</p> <p>d) generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the NSW Environment Protection Authority, and relevant occupational health and safety legislation administered by SafeWork NSW, and</p> <p>e) evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>Materials that have an existing reuse or recycling market must not be disposed of in a land fill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.</li> </ul> <p><b>Condition Reason:</b> To maximise resource recovery and minimise residual waste from demolition activities.</p>
<p><b>F. 20.</b></p>	<p><b>Site Waste Minimisation and Management – Construction</b></p> <p>While site work is being carried out, in order to maximise resource recovery and minimise residual waste from construction activities:</p> <p>a) the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,</p> <p>b) deliveries of materials must be arranged so that materials are delivered 'as needed' to prevent the degradation of materials through weathering and moisture damage,</p> <p>c) consideration must be given to returning excess materials to the supplier or manufacturer,</p> <p>d) an area must be allocated for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation),</p> <p>e) the purpose and content of the storage areas must be clearly 'signposted',</p> <p>f) contractors must be arranged for the transport, processing and disposal of waste and recycling and all contractors must be aware of the legal requirements for disposing of waste,</p> <p>g) separate collection bins or areas for the storage of residual waste must be promoted,</p> <p>h) measures to prevent damage by the elements, odour and health risks, and windborne litter must be implemented,</p> <p>i) site disturbance must be minimised and unnecessary excavation limited,</p>

	<p>j) all waste must be transported to a place that can lawfully be used as a waste facility, and</p> <p>k) records demonstrating lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as Council, the NSW EPA or SafeWork NSW.</p>
	<p><b>Condition Reason:</b> To maximise resource recovery and minimise residual waste from construction activities.</p>

## G. BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

<p><b>G. 1.</b></p>	<p><b>Occupation Certificate (section 6.9 of the Act)</b></p> <p>A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 6.10 of the Act) unless an occupation certificate has been issued in relation to the building or part.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• New building includes an altered portion of, or an extension to, an existing building.</li> </ul> <p><b>Condition Reason:</b> To ensure the building is suitable to occupy.</p>
<p><b>G. 2.</b></p>	<p><b>Commissioning and Certification of Systems and Works</b></p> <p>Before the issue of any occupation certificate, works-as-executed (WAE) plans prepared by a registered surveyor, compliance certificates, and evidence of suitability in accordance with Part A5G1 of the BCA confirming that the works, as executed and as detailed, comply with the requirement of this consent, the Act, the Regulations, any relevant construction certificate, the BCA and relevant Australian Standards must be submitted to the satisfaction of the Principal Certifier.</p> <p>Works-as-executed plans, compliance certificates, and evidence of suitability in accordance with Part A5G1 of the BCA must include, but may not be limited to:</p> <ol style="list-style-type: none"> <li>a) Certification from the supervising professional engineer that the requirement of the Geotechnical/Hydrogeological conditions and report recommendations were implemented and satisfied during development work.</li> <li>b) All flood protection measures.</li> <li>c) All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1: Off-Street car parking.</li> <li>d) All stormwater drainage and storage systems.</li> <li>e) All mechanical ventilation systems.</li> <li>f) All hydraulic systems.</li> <li>g) All structural work.</li> <li>h) All acoustic attenuation work.</li> <li>i) All waterproofing.</li> <li>j) Such further matters as the Principal Certifier may require.</li> </ol> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• The PC may require any number of WAE plans, certificates, or other evidence of suitability as necessary to confirm compliance with the Act, Regulation, development standards, BCA, and relevant Australia Standards. As a minimum WAE plans and certification is required for stormwater drainage and detention, mechanical ventilation work, hydraulic services (including but not limited to fire services).</li> </ul>

	<ul style="list-style-type: none"> <li>The PC must submit to Council, with any occupation certificate, copies of WAE plans, compliance certificates and evidence of suitability in accordance with Part A5G1 of the BCA upon which the PC has relied in issuing any occupation certificate.</li> </ul>
	<b>Condition Reason:</b> To ensure that systems and works as completed meet development standards as defined by the Act, comply with the BCA, and this consent, and to ensure a public record of works as executed is maintained.
<b>G. 3.</b>	<b>Fulfilment of BASIX Commitments – Clause 44 of the Development Certification and Fire Safety Regulation</b>
	<p>Before the issue of any occupation certificate, all BASIX commitments must be effected in accordance with the BASIX Certificate No. A1731968</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>Clause 44 of the Development Certification and Fire Safety Regulation applies to an occupation certificate if a relevant BASIX certificate requires a certifier to monitor fulfilment of a commitment listed in the certificate in relation to a building. The certifier must not issue an occupation certificate for the building unless the commitment has been fulfilled.</li> </ul>
	<b>Condition Reason:</b> To ensure that sustainable building commitments, to reduce water and energy consumption, are fulfilled prior to the occupation.
<b>G. 4.</b>	<b>Removal of Ancillary Works and Structures</b>
	<p>Before the issue of any occupation certificate for the whole of the building, The following articles must be removed from the land and any adjoining public place:</p> <ol style="list-style-type: none"> <li>the site sign,</li> <li>ablutions,</li> <li>hoarding,</li> <li>scaffolding, and</li> <li>waste materials, matter, article or thing.</li> </ol>
	<b>Condition Reason:</b> To ensure that all ancillary matter is removed prior to occupation.

## H. OCCUPATION AND ONGOING USE

<b>H. 1.</b>	<b>Maintenance of BASIX Commitments</b>
	<p>During the occupation and ongoing use, all BASIX commitments must be maintained in accordance with BASIX Certificate No. A1731968.</p> <p>This condition affects successors in title with the intent that environmental sustainability measures must be maintained for the life of development under this consent.</p>
	<b>Condition Reason:</b> To ensure the approved environmental sustainability measures are maintained for the life of development.
<b>H. 2.</b>	<b>Waste Management – Residential</b>
	<p>During the occupation and ongoing use, waste management must comply with the approved site waste minimisation and management plan (SWMMP) and with Woollahra DCP 2015, Chapter E5–Waste Management.</p>

		<p>The waste and recycling bins/crates must be placed on the footpath for collection, but not earlier than 12 hours prior to the designated collection time.</p> <p>The occupier of the site must remove waste and recycling bins/crates from the footpath within 12 hours of being emptied by Council's waste service and they must be stored within the site in the approved waste storage area.</p> <p>No commercial waste must be placed within residential waste and recycling bins/crates.</p> <p><b>Notes:</b> For further residential wastes management policy information go to <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a></p> <p><b>Condition Reason:</b> To ensure that the provisions of the approved SWMMP and Woollahra DCP are complied with during the ongoing operations of the development.</p>
H. 3.		<p><b>Noise from Mechanical Plant and Equipment</b></p> <p>During the occupation and ongoing use, the noise level measured at any boundary of the site at any time while the mechanical plant and equipment is operating must not exceed the background noise level. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed background noise level at any time.</p> <p>The background noise level is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the LA90, 15 minute level measured by a sound level meter.</p> <p><b>Notes:</b> Words in this condition have the same meaning as in the Noise Policy for Industry (2017) <a href="http://www.epa.nsw.gov.au/your-environment/noise/industrial-noise/noise-policy-for-industry-(2017)">www.epa.nsw.gov.au/your-environment/noise/industrial-noise/noise-policy-for-industry-(2017)</a> and Noise Guide for Local Government (2013) <a href="http://www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government">www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government</a></p> <p><b>Condition Reason:</b> To protect the amenity of the neighbourhood.</p>
H. 4.		<p><b>Noise Control</b></p> <p>During the occupation and ongoing use, the use of the premises must not give rise to the transmission of offensive noise to any place of different occupancy. Offensive noise is defined in the Protection of the Environment Operations Act 1997.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• Council will generally enforce this condition in accordance with the Noise Guide for Local Government (<a href="http://www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government">www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government</a>) and the NSW Industrial Noise Policy (<a href="http://www.epa.nsw.gov.au/your-environment/noise/industrial-noise">www.epa.nsw.gov.au/your-environment/noise/industrial-noise</a>) published by the NSW Environment Protection Authority. Other State Government authorities also regulate the Protection of the Environment Operations Act 1997.</li> <li>• Useful links: <ul style="list-style-type: none"> <li>- Community Justice Centres—free mediation service provided by the NSW Government <a href="http://www.cjc.nsw.gov.au">www.cjc.nsw.gov.au</a>.</li> <li>- NSW Environment Protection Authority— see “noise” section <a href="http://www.environment.nsw.gov.au/noise">www.environment.nsw.gov.au/noise</a>.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"><li>- NSW Government legislation- access to all NSW legislation, including the Protection of the Environment Operations Act 1997 and the Protection of the Environment Noise Control Regulation 2017 is available at <a href="http://www.legislation.nsw.gov.au">www.legislation.nsw.gov.au</a>.</li><li>- Australian Acoustical Society—professional society of noise related professionals <a href="http://www.acoustics.asn.au">www.acoustics.asn.au</a>.</li><li>- Association of Australian Acoustical Consultants—professional society of noise related professionals <a href="http://www.aaac.org.au">www.aaac.org.au</a>.</li><li>- Liquor and Gaming NSW—<a href="http://www.liquorandgaming.nsw.gov.au">www.liquorandgaming.nsw.gov.au</a>.</li></ul>
	<b>Condition Reason:</b> To protect the amenity of the neighbourhood.

## SUBDIVISION WORK

### I. BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

Nil.

### J. BEFORE SUBDIVISION WORK COMMENCES

Nil.

### K. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

Nil.

## LAND SUBDIVISION

### L. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE



Nil.

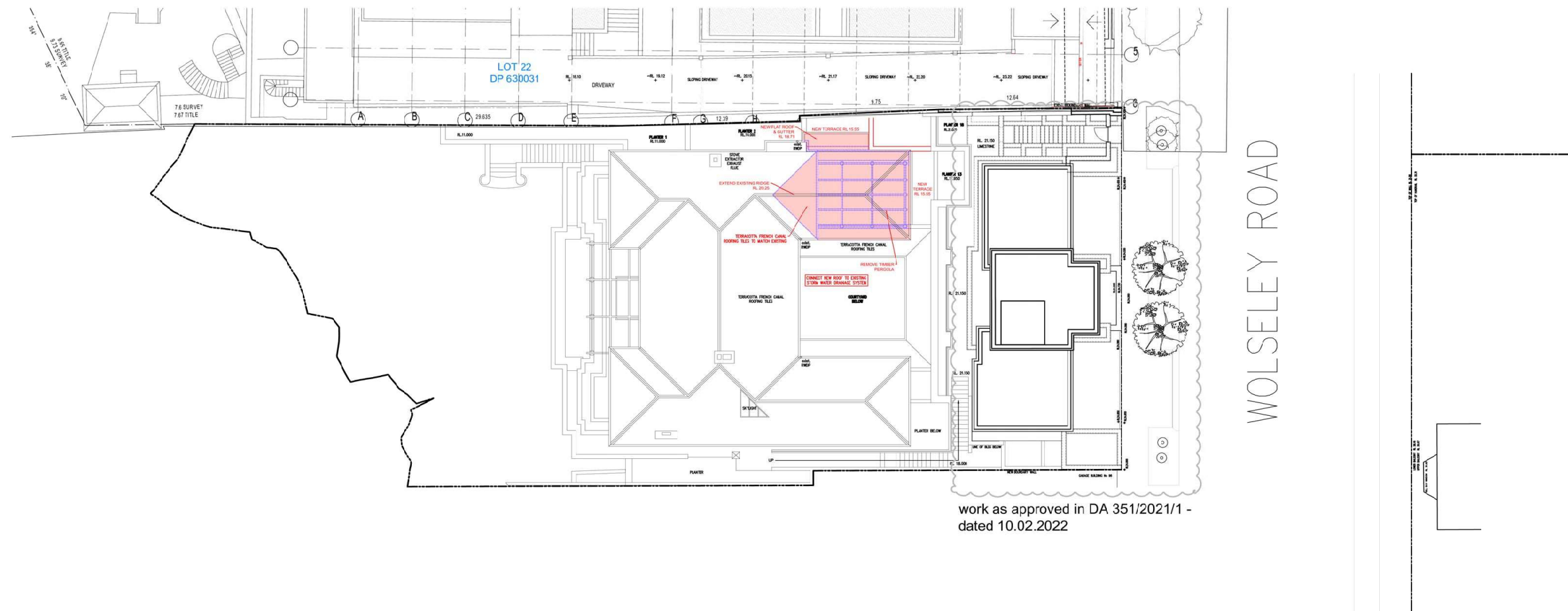
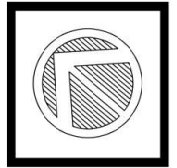
## STRATA SUBDIVISION

### M. BEFORE ISSUE OF A STRATA CERTIFICATE

Nil.


## Attachments

1. Plans, Sections and Elevations [↓](#) 
2. Clause 4.6 Written Request – Height of Buildings [↓](#) 

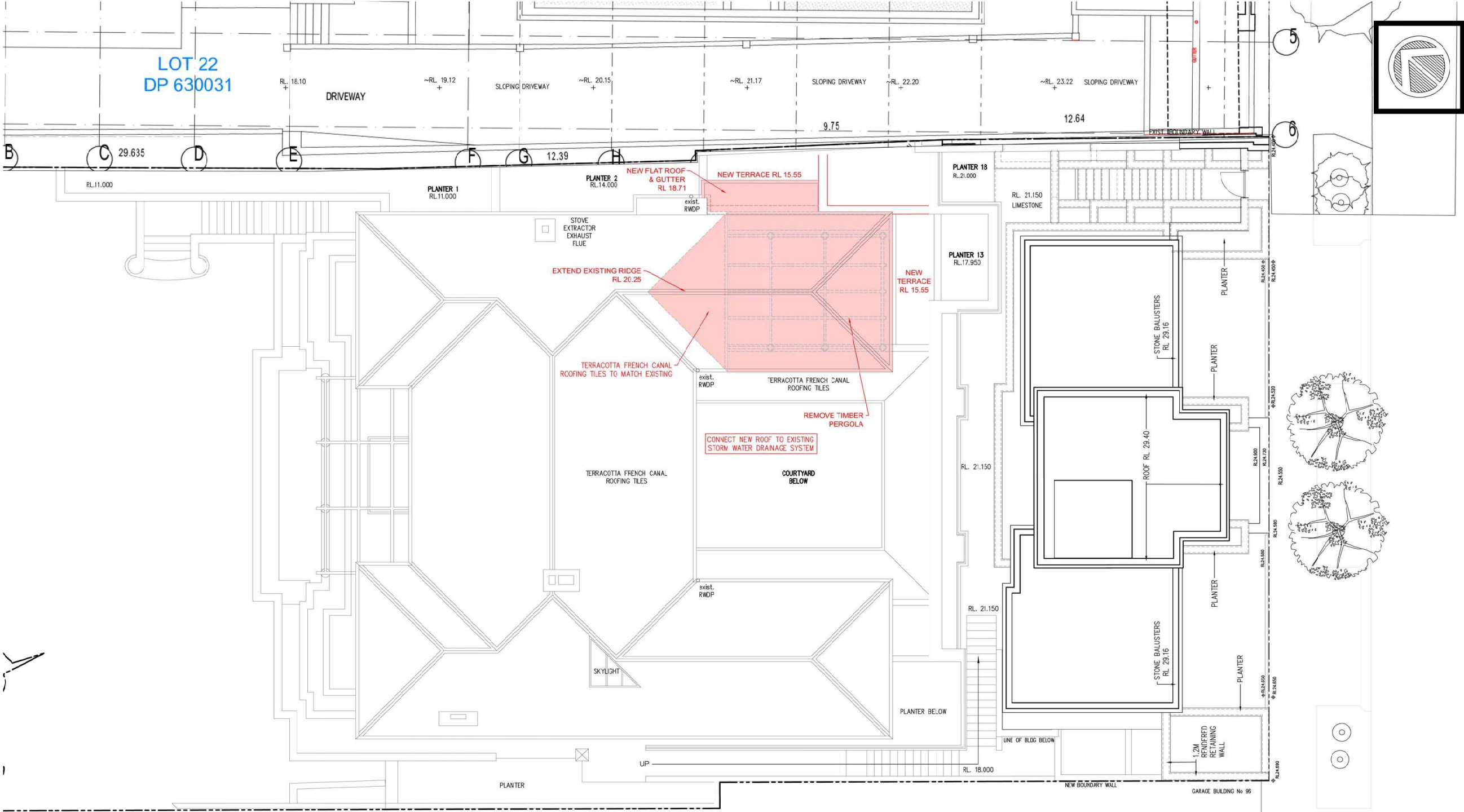


work as approved in DA 351/2021/1 -  
dated 10.02.2022

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	<p>DATE: 08.01.2024</p>	
	<p>JOB No. ~</p>	
	<p>Drawing No.</p>	
<p><b>Mr &amp; Mrs Penn</b></p>	<p><b>DA 01</b></p>	
<p>Alterations &amp; Additions to Villa Veneto 98 - 100 Wolseley Road POINT PIPER NSW</p>		
<p><b>SITE PLAN</b></p> <p>~</p>		

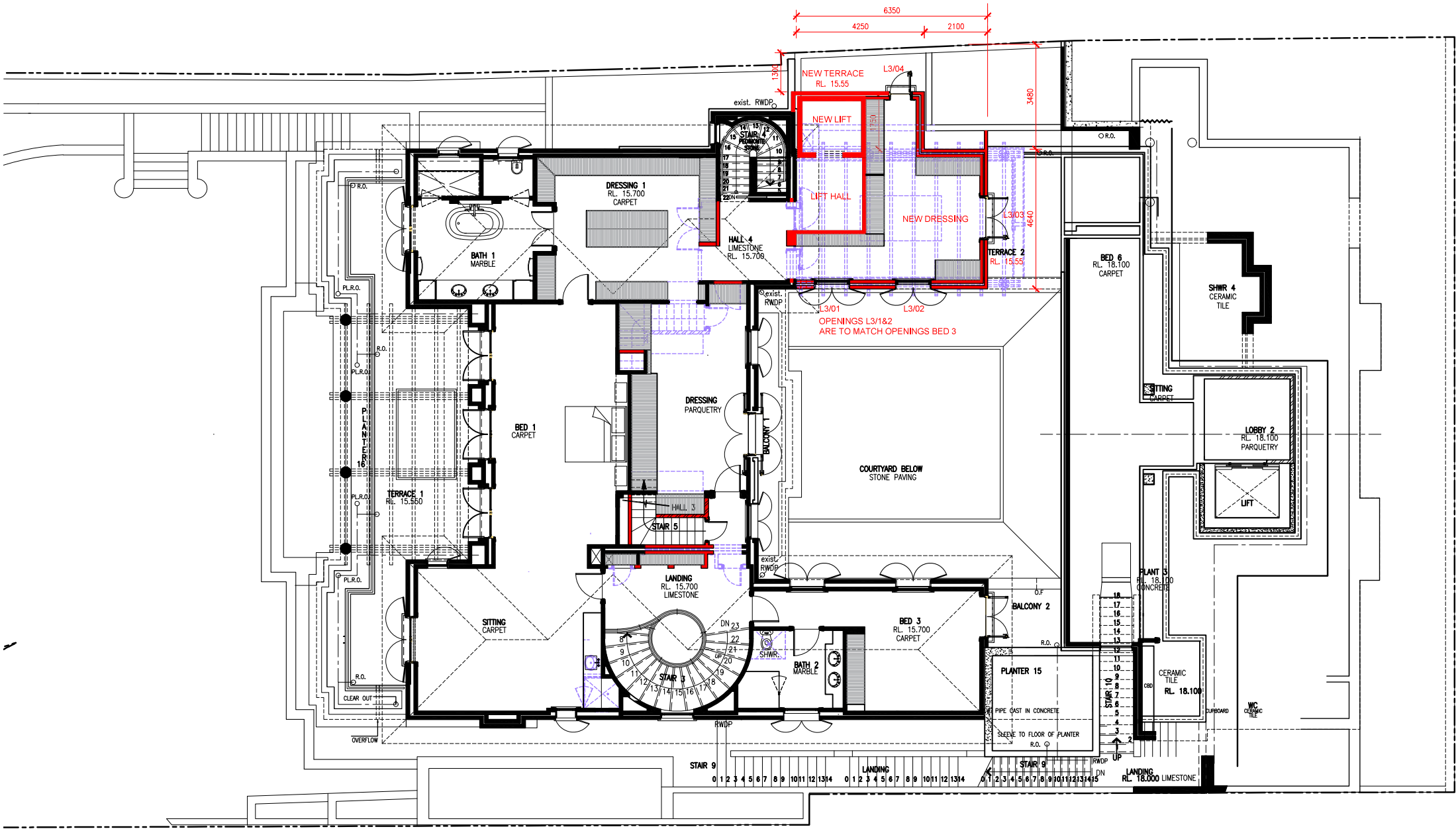
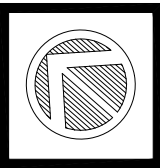




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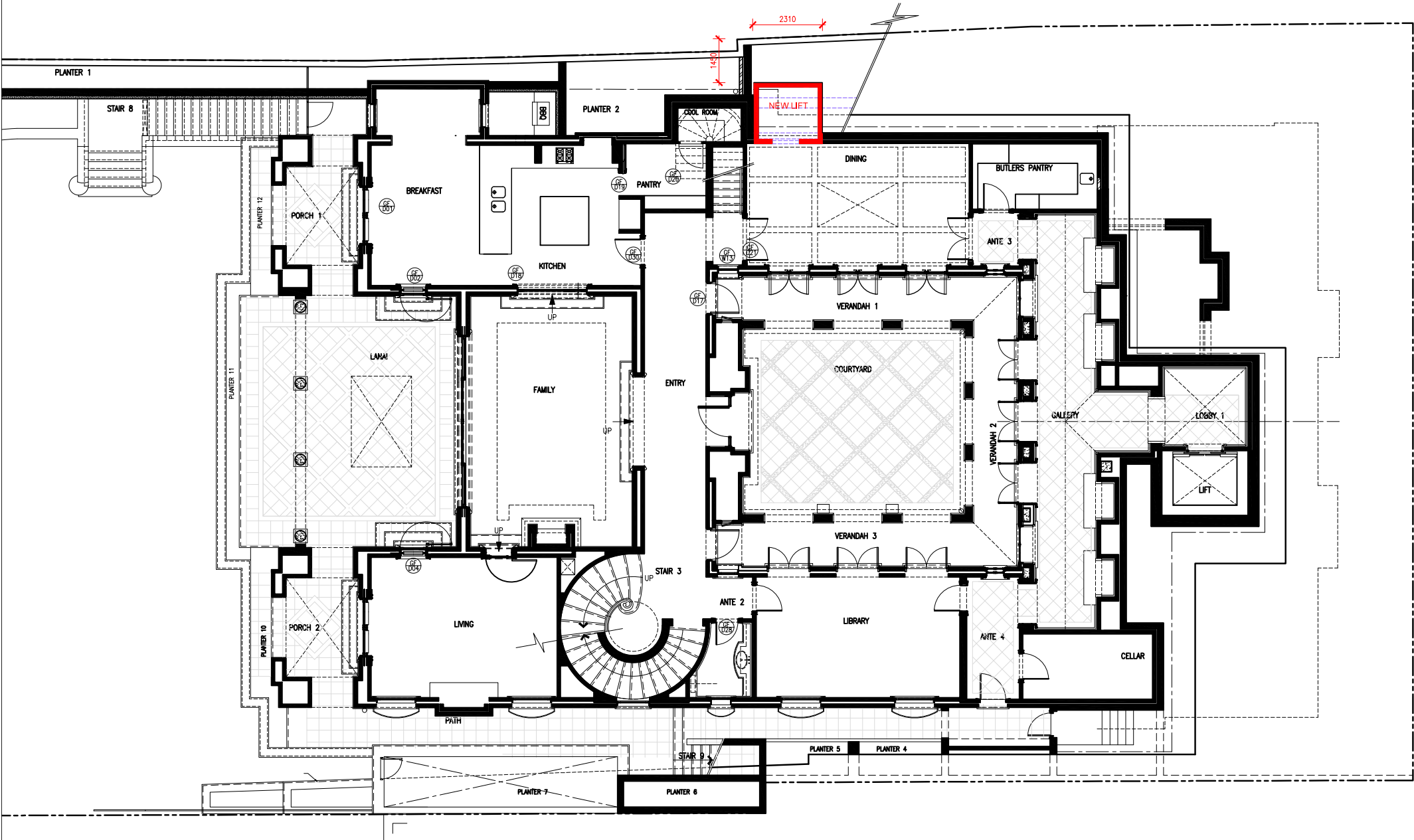
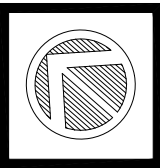
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	DATE: 08.01.2024		
	JOB No. ~		
	Drawing No.		DA 02
	Mr & Mrs Penn Alterations & Additions to Villa Veneto 98 - 100 Wolseley Road POINT PIPER NSW ROOF PLAN		






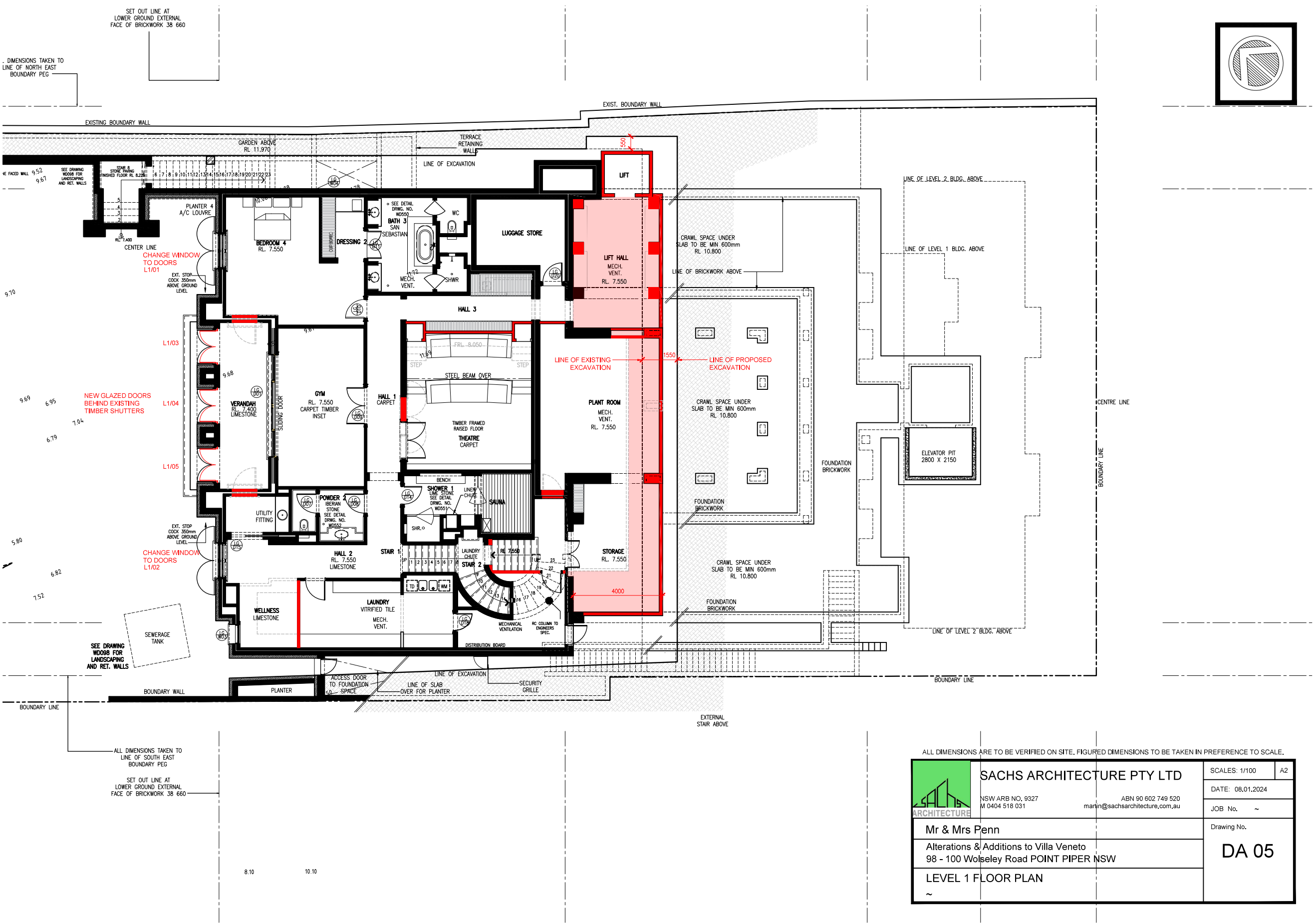
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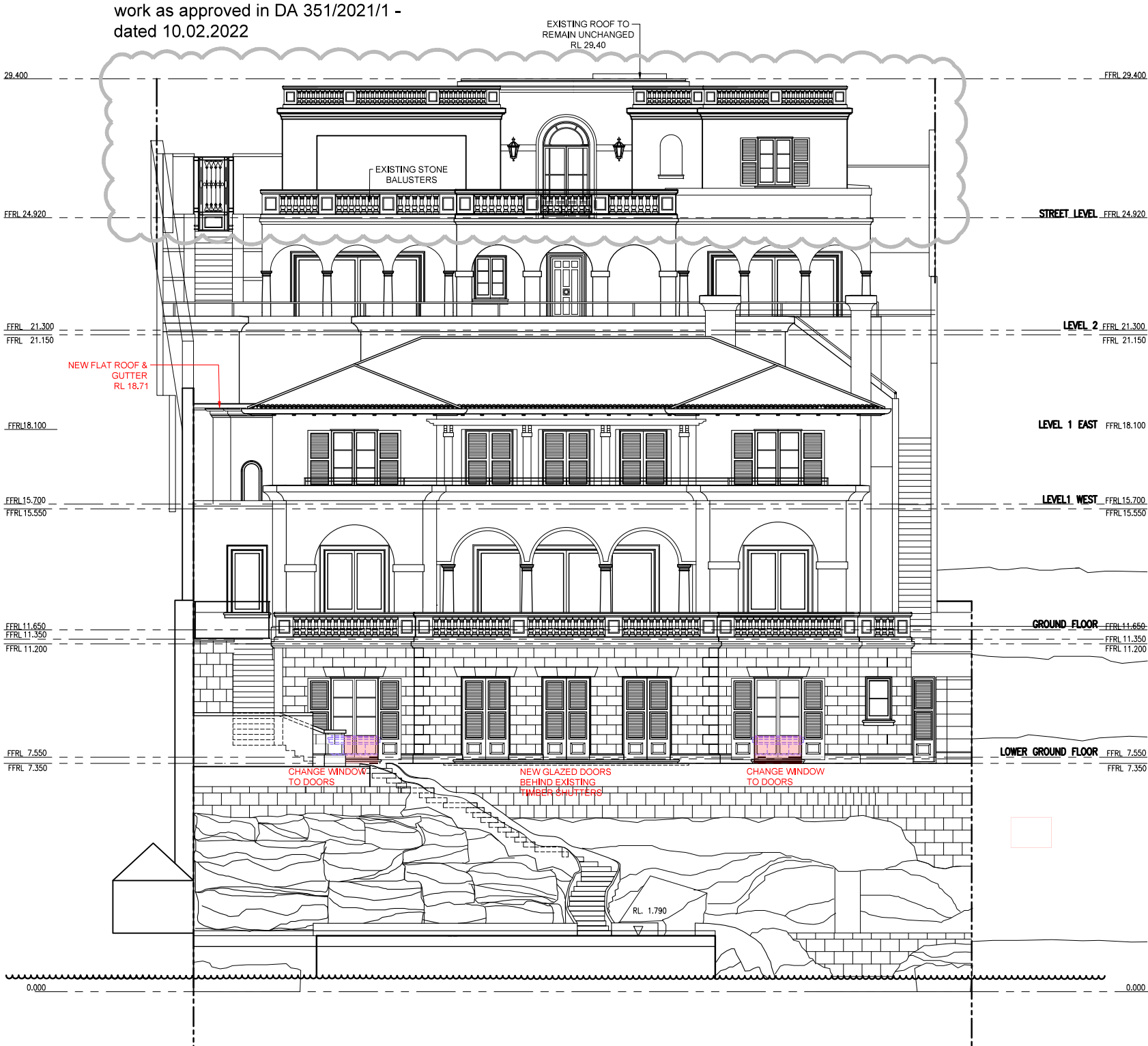
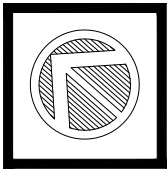
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	DATE: 08.01.2024	
	JOB No. ~	
	Drawing No.	DA 03
Mr & Mrs Penn		
Alterations & Additions to Villa Veneto 98 - 100 Wolseley Road POINT PIPER NSW		
LEVEL 3 FLOOR PLAN		
~		



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	JOB No. ~	
	Drawing No.	DA 04
Mr & Mrs Penn		
Alterations & Additions to Villa Veneto 98 - 100 Wolseley Road POINT PIPER NSW		
LEVEL 2 FLOOR PLAN		
~		





BASIX Commitments				
Certificate No	A1731968			
Fixtures and systems				
Lighting	min 40% of new or altered artificial light fixtures are fluorescent, compact fluorescent or LED			
Fixtures	showerheads	min. 3 star		
	toilets	min. 3 star		
	taps Bathrooms	min. 3 star		
Construction				
Insulation	suspended floor above enclosed subfloor, concrete floor above existrg dwelling or building		R 1.3 incl. construction	
	cavity brick		Nil	
	flat ceiling, pitched roof	medium colour	ceiling R3.0, roof foil/sarking	
Glazing	Height	Width	shading device	frame & glass
L3-01	1600	1600	ext. adj shutter or blind	timber single clear
L3-02	1800	1800	ext. adj shutter or blind	timber single clear
L3-03	2400	1800	none	timber single clear
L3-04	2400	900	none	timber single clear
L1-01	2400	1800	ext. adj shutter or blind	timber single clear
L1-02	2400	1800	ext. adj shutter or blind	standard aluminium, single clear
L1-03	2400	1800	ext. adj shutter or blind	standard aluminium, single clear
L1-04	2400	1800	ext. adj shutter or blind	standard aluminium, single clear
L1-05	2400	1800	ext. adj shutter or blind	timber single clear

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SCALES: 1/100

A2

DATE: 08.01.2024

JOB No. ~

Drawing No.

DA 06

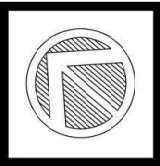
Mr & Mrs Penn

Alterations & Additions to Villa Veneto  
98 - 100 Wolseley Road POINT PIPER NSW

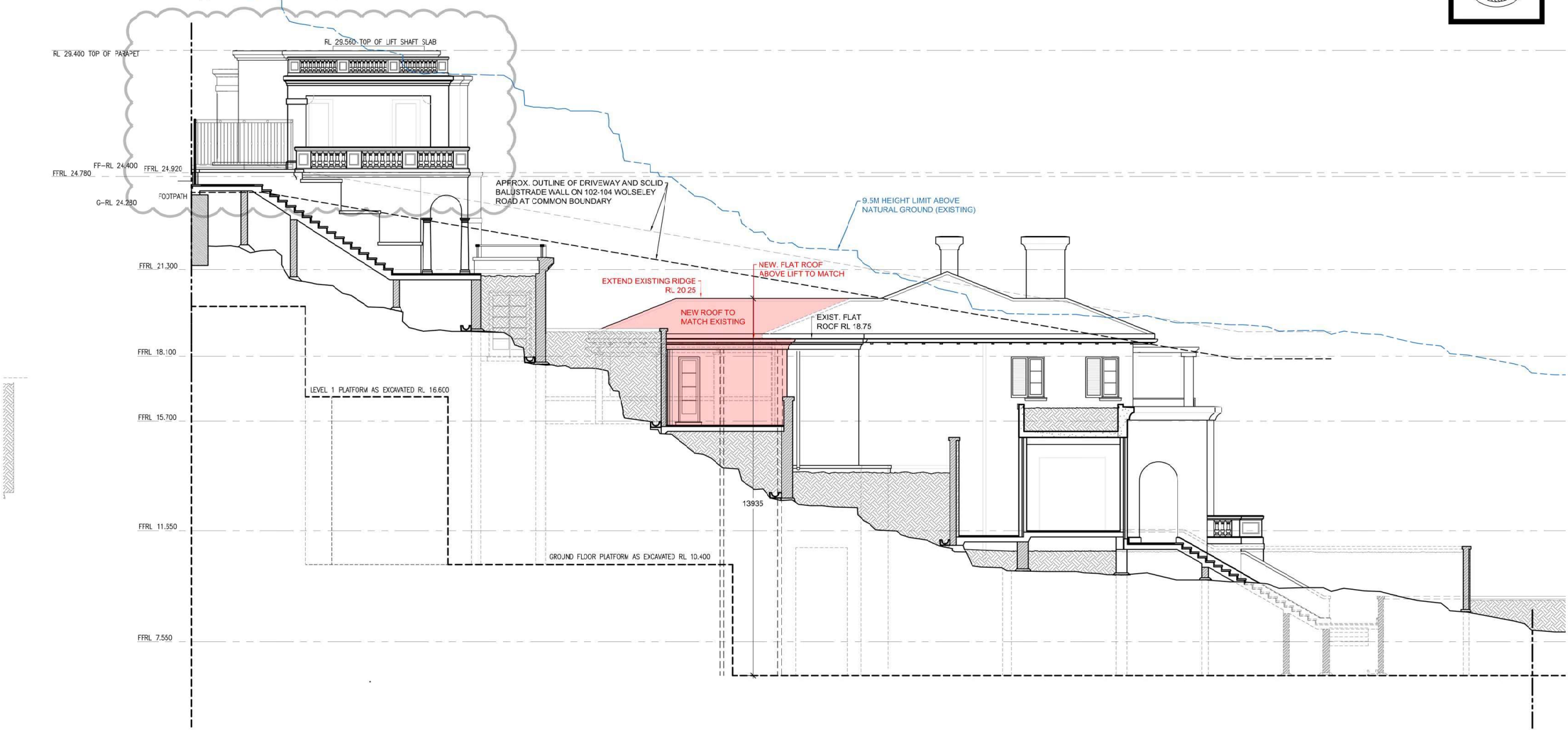
ELEVATION WEST

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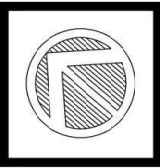


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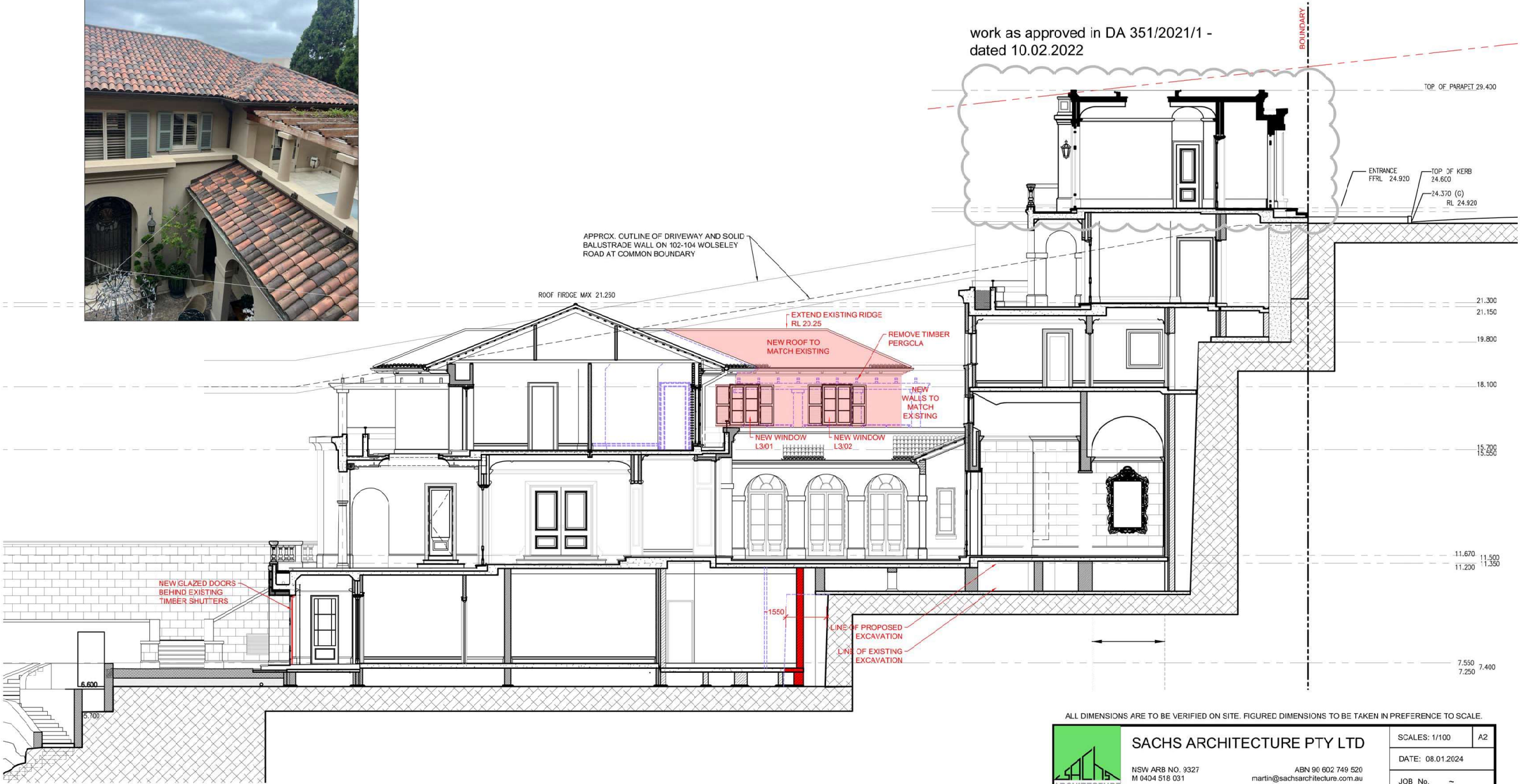


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	JOB No. ~		
	Drawing No.		
Mr & Mrs Penn		DA 07	
Alterations & Additions to Villa Veneto 98 - 100 Wolseley Road POINT PIPER NSW			
ELEVATION - NORTH			
~			



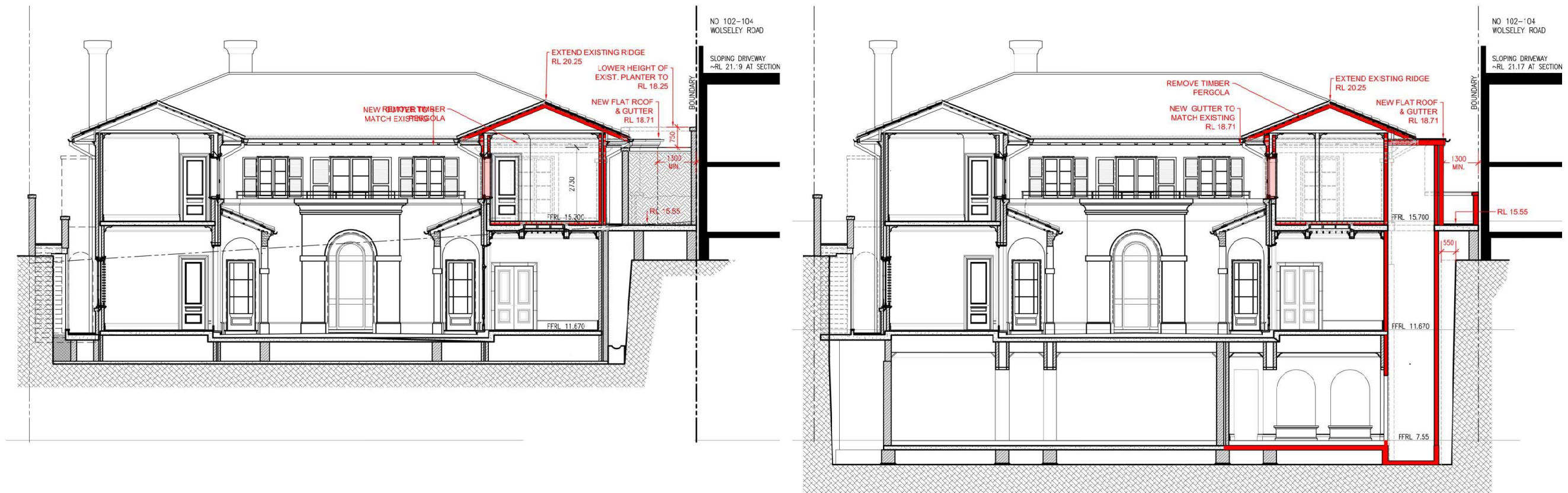
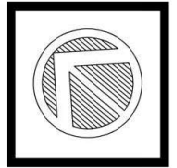
EXTERNAL FINISHES  
TO MATCH EXISTING RESIDENCE




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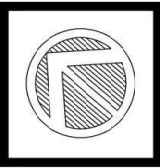
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	NSW ARB NO. 9327 M 0404 518 031		DATE: 08.01.2024	
	ABN 90 602 749 520 martin@sachsarchitecture.com.au		JOB No. ~	
Mr & Mrs Penn			Drawing No.  DA 08	
Alterations & Additions to Villa Veneto 98 - 100 Wolseley Road POINT PIPER NSW				
SECTION - CENTRAL  ~				



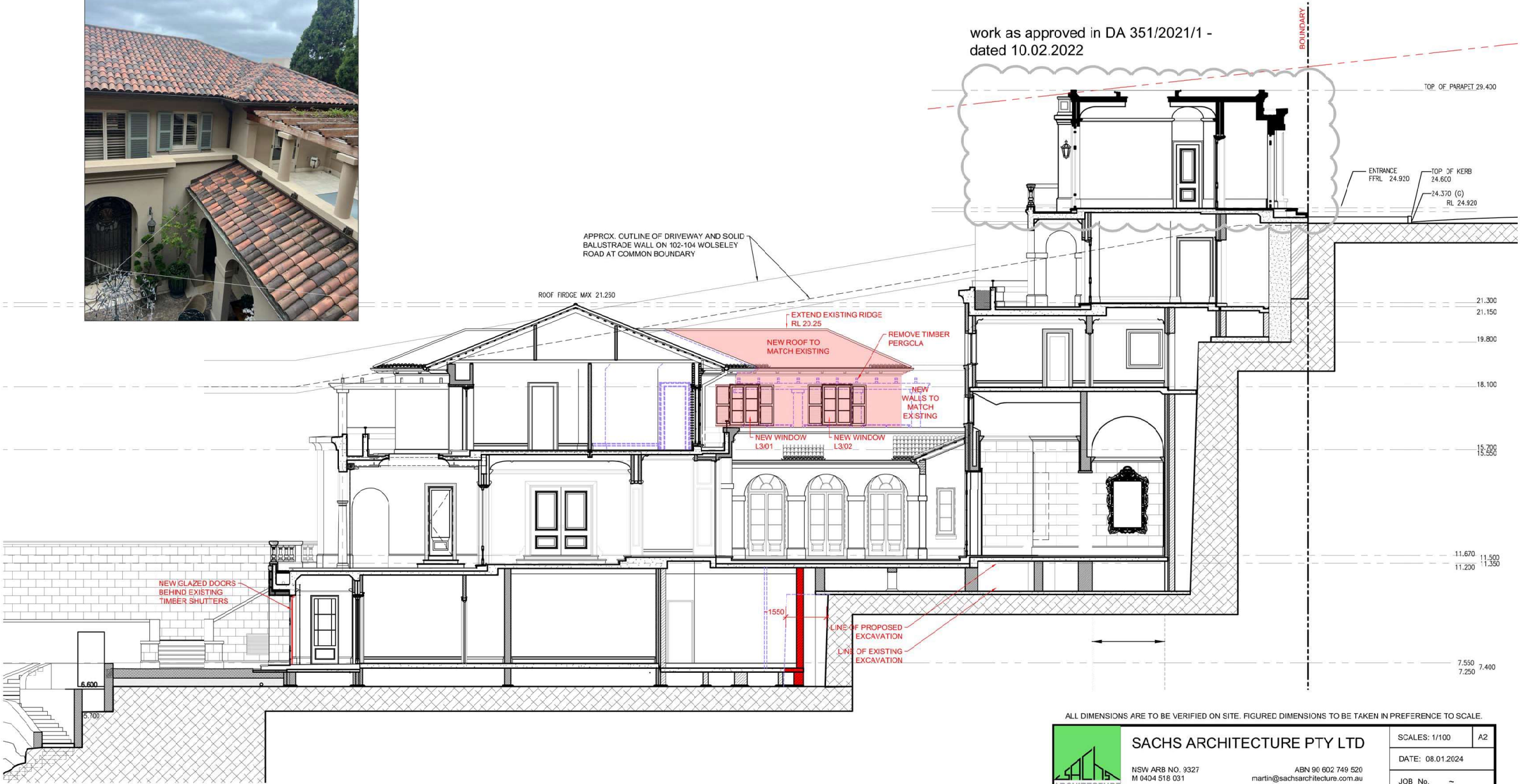


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 <p><b>SACHS ARCHITECTURE PTY LTD</b></p> <p>NSW ARB NO. 9327 M 0404 518 031</p> <p>ABN 90 602 749 520 martin@sachsarchitecture.com.au</p>	<p>SCALE: 1/100</p> <p>A2</p>
	<p>DATE: 08.01.2024</p>
	<p>JOB No. ~</p>
<p>Mr &amp; Mrs Penn</p> <p>Alterations &amp; Additions to Villa Veneto 98 - 100 Wolseley Road POINT PIPER NSW</p> <p>SECTIONS - NEW LIFT &amp; DRESSING</p> <p>~</p>	<p>Drawing No.</p> <p><b>DA 09</b></p>



EXTERNAL FINISHES  
TO MATCH EXISTING RESIDENCE



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 SACHS ARCHITECTURE	SACHS ARCHITECTURE PTY LTD		SCALE: 1/100	A2
	NSW ARB NO. 9327 M 0404 518 031		DATE: 08.01.2024	
	ABN 90 602 749 520 martin@sachsarchitecture.com.au		JOB No. ~	
Mr & Mrs Penn			Drawing No.  DA 08	
Alterations & Additions to Villa Veneto 98 - 100 Wolseley Road POINT PIPER NSW				
SECTION - CENTRAL				
~				



**CLAUSE 4.6 REQUEST FOR VARIATION OF  
HEIGHT OF BUILDINGS STANDARD UNDER CLAUSE 4.3 OF  
WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014**

**FOR:**

**PROPOSED ALTERATIONS AND ADDITIONS TO EXISTING  
DWELLING**

**AT:**

**98-100 WOLSELEY ROAD, POINT PIPER**

*Tony Moody  
BTP (UNSW), LL.B (UTS) (Hons.), MPIA  
Email: [tonymoody@tonymoody.com.au](mailto:tonymoody@tonymoody.com.au)  
Mobile: 0414 330 807*

CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT STANDARD  
98-100 Wolseley Road, Point Piper

## 1.0 INTRODUCTION

This request is made pursuant to the provisions of Clause 4.6 of Woollahra Local Environmental Plan 2014 (LEP 2014).

Variation under Clause 4.6 of LEP 2014 is requested in relation to the Height of Buildings Standard under Clause 4.3 of LEP 2014 in support of a Development Application (DA) seeking approval for “*Proposed Alterations and Additions to Existing Dwelling*” on the combined area of the properties known as 98-100 Wolseley Road, Point Piper (subject site).

The Objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes arising from a proposed development.

I consider that variation of the Height of Buildings Standard in the circumstances of this current DA would achieve a better planning outcome rather than requiring strict adherence to the Height of Buildings Standard.

Clause 4.6 of LEP 2014 allows a Consent Authority to grant a variation to a Development Standard as prescribed below.

### **Clause 4.6 – Exceptions to Development Standards**

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

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

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

CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT STANDARD  
98-100 Wolseley Road, Point Piper

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
  - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) *the public benefit of maintaining the development standard, and*
  - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
  - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*

CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT STANDARD  
98-100 Wolseley Road, Point Piper

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

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

- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) *a development standard for complying development,*
- (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated*
- (c) *clause 5.4.*
- (caa) *clause 5.5.*

In the case of *Al Maha Pty Ltd v Strathfield Council* [2017] NSWLEC 1083, Presiding Commissioner C Dickson of the Land and Environment Court (Court) held that:

*"[63] It is clear from a reading of cl 4.6 of WLEP 2012 that the onus is on the applicant to meet the tests of cl 4.6 in seeking flexibility to the Height or FSR standards by demonstrating that the breaches of the 2 development standards are justified. Ms Ogg provided a written request under cl 4.6(3) which seeks to justify the contravention of the FSR Standard (FSR Request).*

*[64] In Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7, Preston CJ outlines that Commissioners on appeal exercising the functions of the consent authority have power to grant consent to developments that contravene the building height standard, or the FSR standard (cl 4.6(2)). However, they cannot grant such a development consent unless they:*

- (1) *are satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii))*
- (2) *are satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii))*
- (3) *have considered a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of*

CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT STANDARD  
98-100 Wolseley Road, Point Piper

- the case and with they are satisfied that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6 (4)(a)(i)).*
- (4) *have considered a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl. 4.6(3)(b) and cl 4.6(4)(a)(i)).”*

In addition to the above-mentioned Court judgments, there are other relevant Court judgements relating to the application of a Clause 4.6 Request including, but not limited to, *Winton Property Group v North Sydney Council [2001] NSW LEC 46*, *Wehbe v Pittwater Council [2007] NSW LEC 827*, *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC 90* and *Moskovich v Waverley Council [2016] NSW LEC 1015*.

Given the above judgment of his Honour, Chief Judge Preston, which was followed by Presiding Commissioner C Dickson, this Clause 4.6 Request seeks to address the matters raised in (1) - (4) above and the provisions of Clause 4.6 of LEP 2014.

I note that the Height of Buildings Development Standard is not specifically excluded from the operation of Clause 4.6 of LEP 2014.

CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT STANDARD  
98-100 Wolseley Road, Point Piper

## 2.0 THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT

### ***Clause 4.3 – Height of Buildings***

#### ***Objectives***

- (1) *The objectives of this clause are as follows:*
- (a) *To establish building heights that are consistent with the desired future character of the neighbourhood,*
  - (b) *To establish a transition in scale between zones to protect local amenity,*
  - (c) *To minimise the loss of solar access to existing buildings and open space,*
  - (d) *To minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*
  - (e) *To protect the amenity of the public domain by providing public views of the harbour and surrounding areas.*

#### **Comment:**

A Height of Buildings Standard of 9.5m applies to the subject site.

The proposed Maximum Height under the Amended Plans is 13.935m according to the Architect, this represents a variation of 46.7%.

I consider that variation is eminently reasonable for the reasons outlined in the accompanying Clause 4.6 Request relating to the Height of Buildings Standard.

I note that the Court has previously held that the degree of a breach is not determinative as to whether a Clause 4.6 Request should be supported.

CLAUSE 4.6 – REQUEST FOR VARIATION OF HEIGHT OF BUILDINGS DEVELOPMENT STANDARD  
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### **3.0 PROPOSAL WILL BE IN PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE DEVELOPMENT STANDARD**

Based on Clause 4.3(1) of LEP 2014, the Objectives of the Height of Buildings Standard are as follows:

- (1) *The objectives of this clause are as follows:*
- (a) *To establish building heights that are consistent with the desired future character of the neighbourhood,*
  - (b) *To establish a transition in scale between zones to protect local amenity,*
  - (c) *To minimise the loss of solar access to existing buildings and open space,*
  - (d) *To minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*
  - (e) *To protect the amenity of the public domain by providing public views of the harbour and surrounding areas.*

#### **Comment:**

I consider that the proposed development satisfies the Objectives of the Height of Buildings Standard for the following reasons:

- (a) In relation to Objective (a), the proposed Alterations and Additions have been designed in response to the sloping topography of the subject site. Further, the proposed development will provide a new northern wing which will be in symmetry with the existing southern wing which is one of the Positive Outcomes of the prospect development. Thus, I consider that the compliance with the Height of Buildings Standard is unreasonable, as the proposed development appropriately responds to the topography of the subject site and is consistent with existing approved residential development.
- (b) For the reasons outlined in this Clause 4.6 and the accompanying SEE, I consider that the proposed development provides an appropriate Height, Bulk and Scale within the R2 Low Density zone.
- (c) Shadow Diagrams have been prepared at 9am, 12pm, and 3pm on 21 June by David and Linda Penn. It is clear that there will be no unreasonable Overshadowing Impact on adjoining dwellings. Thus, no further consideration is required.

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- (d) I consider that the proposed development will not have adverse View Loss, Acoustic and Visual Privacy on adjoining properties for the following reasons:
- In terms of View Loss, the property directly adjoining to the north (102-104 Wolseley Road) sits significantly above the subject site. Thus, the proposed development will not impact the existing panoramic views enjoyed by 102-104 Wolseley Road. Furthermore, the proposed Alterations and Additions will not be readily visible from the adjoining dwelling to the south or from the dwellings adjacent on the opposite side of the road. Thus, no adverse View Loss from private properties will arise as a result of the proposed development. The proposed development will also not impact on any Significant Views and Vistas from the public domain identified under DCP 2015 relating to public views.
  - In terms of Acoustic Impact, the proposed development will not likely generate adverse Acoustic Impact as the proposed development will still involve only activities associated with a single dwelling and an existing swimming pool. Council should impose its standard Condition of Consent relating to noise from all plant & equipment.
  - In terms of Visual Privacy, the existing windows of the existing dwelling will be maintained. Furthermore, there will be no Overlooking Impact from windows associated with the proposed Alterations and Additions.
  - In terms of Overlooking Impact from the proposed terraces, there will be no Overlooking Impact from the proposed terraces on to the adjoining dwelling to the north, due to the fact that 102-104 Wolseley Road sits significantly higher than the subject site.
- (e) As previously noted, the proposed development will not impact on any Significant Views and Vistas identified under DCP 2015 relating to public views.

Based on the points outlined above and accompanying the SEE, I consider that the breach of the Height of Buildings Standard is justified.



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#### **4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?**

For the reasons outlined in this Clause 4.6 Request and SEE, I consider that the compliance with the Height of Buildings Standard under LEP 2014 is unreasonable and unnecessary in the circumstances of the proposed development.

I wish to particularly note the following points: -

- For the reasons referred to in this Clause 4.6 and the accompanying SEE, I consider that the Objectives of the Height of Buildings Standard and Objectives of the Low Density R2 zone are achieved, notwithstanding non-compliance with the Development Standard.
- The proposed development will provide a new northern wing which will be in symmetry with the existing southern wing. This is one of the Positive Outcomes of the proposed development. Thus, the proposed development adopts the floor levels and levels of the roof consistent with the existing southern wing. Adopting the same levels as the southern wing, ensures a symmetrical proposed northern wing. To require the levels of the proposed northern wing to be lower than the existing southern wing will result in an asymmetrical northern wing which is not a desirable Planning Outcome.
- A further Positive Outcome is the proposed internal Lift which extends above the Height of Buildings Standard. The proposed Lift provides equity of access for the whole development, comprising the existing development and new proposed development. Despite the breach of the Height of Buildings Standard, I consider that the proposed Lift is a very desirable element.
- The proposed development, notwithstanding the breach of the Height of Buildings Standard, does not result in adverse amenity impacts on adjoining properties nor the public domain. On this point, I reiterate the fact that the proposed northern wing is sunken well below the road (to the east) and is also located well behind the rear façade (to the west). Accordingly, the proposed northern wing will be neither visible from the road or Sydney Harbour. Furthermore, the proposed northern wing sits significantly below the adjoining

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property to the north and is also a significant distance from the adjoining property to the south.

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## **5.0 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?**

For the reasons outlined in the SEE and this Clause 4.6 Request, I consider that there are strong environmental planning grounds to justify contravention of the Height of Buildings Standard.

The adjectival phrase “*environmental planning grounds*” is not defined but would refer to grounds that relate to the subject matter, scope and purpose of the Environmental Planning and Assessment Act (the Act), including the Objects in Section 1.3 of the Act.

The environmental planning grounds which justify a contravention of Height of Buildings Standard are expressed in the SEE and this Clause 4.6 Request. I wish to particularly note the following environmental grounds or, in other words, the Positive Outcomes arising from the proposed development:

- The proposed development proposes a northern wing which will be in symmetry with the existing southern wing.
- The proposed Lift will provide an important element to ensure equity of access.
- The proposed external finishes will be consistent with the existing dwelling.
- The proposed development will not be readily discernible from the adjoining Wolseley Road or Sydney Harbour. Even if the proposed development was readily discernible, I consider that the design is meritorious, particularly as it provides a symmetrical proposed northern wing to the existing southern wing.

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## **6.0 PROPOSAL WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE ZONE**

In accordance with Clause 4.6(4)(a), Development Consent must not be granted to a development that contravenes a Development Standard unless Council is satisfied in relation to the following matters:

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

The above matters are addressed in the SEE and this Clause 4.6 Request, including the following comments:

The subject site is zoned R2 Low Density Residential. I note the following Objectives of the R2 Low Density Residential zone:

### **Zone R2 Low Density Residential**

#### **Objectives of zone**

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.*
- *To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.*
- *To ensure development conserves and enhances tree canopy cover.*

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**Comment:**

The subject site is zoned R2 Low Density Residential. The proposed Alterations and Additions comprise part of a “*dwelling house*”, which is a permissible use within the R2 Low Density Residential zone.

In relation to the relevant Objectives of the R2 Low Density Residential zone. I particularly note the following:

- As to the first Objective, the proposed development assists in providing housing for the needs of the community within a low-density residential zone.
- As to the second Objective, this Objective does not apply to the proposed development.
- As to the third Objective, I consider that the proposed development is compatible with the character and amenity of the surrounding neighbourhood for the reasons outlined in the provided SEE.
- As to the fourth Objective, I consider that the proposed development is of a satisfactory Bulk, Height and Scale and achieves the Desired Future Character of the Area for the reasons outlined in the provided SEE.
- As to the fifth Objective, the proposed development does not propose the removal of any existing tree canopy cover.

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**7.0 STATE OR REGIONAL ENVIRONMENTAL PLANNING SIGNIFICANCE AND  
THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT  
STANDARD**

Clause 4.6 (5) relates to matters for consideration by the Secretary as to “*whether contravention of the Development Standard raises any matter of significance for State or regional environmental planning.*”

The contravention of the Height of Buildings Standard in the circumstances of the proposed development does not raise any matter of significance for State or regional environmental planning.

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### **8.0 IS THE OBJECTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?**

I consider that this variation to the Development Standard is well founded for the reasons outlined in the Clause 4.6 Request and the accompanying SEE.

I also consider that the proposed development will not have an adverse impact on adjoining properties or the public domain and will achieve the Objectives of the Height of Buildings Standard and the Objectives of the R2 Low Density Residential zone.

I also consider that the proposed development will result in a range of Positive Outcomes for the reasons referred to in this Clause 4.6 Request and the accompanying SEE.

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## 9.0 CONCURRENCE OF PLANNING SECRETARY

- (4) *Development consent must not be granted for development that contravenes a development standard unless—*
  - (b) *the concurrence of the Planning Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*
  - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) *the public benefit of maintaining the development standard, and*
  - (c) *any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

### **Comment:**

The Department issued Planning Circular No. PS 20-002 (dated 5<sup>th</sup> May, 2020) which notified Council of arrangements “...*when the Secretary’s concurrence to vary development standards may be assumed (including when council or its Independent Hearing and Assessment Panel are to determine applications when development standards are varied) and clarify requirements around reporting and record keeping where that concurrence has been assumed*”.

Clause 64 of the EPA Regulations provides that Council may assume the Secretary’s concurrence for exceptions to Development Standards, thus satisfying the terms of this provision.

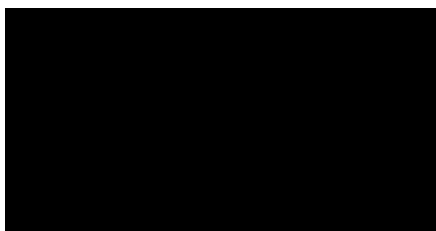


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## **10.0 CONCLUSION**

Notwithstanding the breach of the Height of Buildings Standard, I consider that this request for variation of the Height of Buildings Standard is well founded.

For the reasons outlined in this Clause 4.6 Request, I fully support variation of the Height of Buildings Standard.



**TONY MOODY**

**BTP(UNSW), LL.B (UTS)(Hons.), MPIA**

**Dated: 15 March, 2024.**



## **LOCAL PLANNING PANEL**

### **SECTION 4.55 APPLICATION ASSESSMENT REPORT**

<b>ITEM No.</b>	D2
<b>FILE No.</b>	DA230/2023/2
<b>ADDRESS</b>	Robertson Park, 22 Military Road Watsons Bay
<b>COUNCIL WARD</b>	Vaucluse
<b>ZONING</b>	RE1 Public Recreation
<b>EXISTING CONSENT</b>	A market to be held in Robertson Park Watsons Bay twice a year for five years from 2024 - 2028
<b>DATE OF CONSENT</b>	16 November 2023
<b>TYPE OF CONSENT</b>	Local development
<b>CONSENT AUTHORITY</b>	Woollahra Council
<b>PROPOSED MODIFICATION</b>	The modification of the approved market dates
<b>TYPE OF MODIFICATION</b>	Section 4.55(1a)
<b>DATE S4.55 LODGED</b>	11/06/2024
<b>APPLICANT</b>	Cambridge Markets
<b>OWNER</b>	Woollahra Municipal Council
<b>AUTHOR</b>	Mr D Booth
<b>TEAM LEADER</b>	Mr M Moratelli
<b>RECOMMENDATION</b>	Approval

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

The application is to be determined by the Local Planning Panel as it falls under the category of *conflict of interest, development for which the landowner is Council*.

#### **2. REASONS FOR RECOMMENDATION**

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

- The development consent as proposed to be modified, is considered to be substantially the same as the originally approved development;
- The proposed modification is considered to be satisfactory with regard to the provisions of section 4.55 of the Environmental Planning and Assessment Act 1979;
- The proposed modification is considered to be satisfactory with regard to the provisions of all relevant planning policies;
- The proposed modification will not have any significant adverse environmental impacts;
- The site is suitable for the proposed modified development; and
- The modification is considered to be in the public interest.

### 3. SITE AND LOCALITY

Physical features
Robertson Park is a public park located on the western and southern sides of Military Road, Watsons Bay. The application relates to the western part of Robertson Park.
Topography
Robertson Park slopes gently from east to west.
Environment
Robertson Park is adjoined: <ul style="list-style-type: none"> <li>To the north: Watsons Bay Hotel and residential uses.</li> <li>To the south: Dunbar House and residential uses.</li> <li>To the east: Gap Park.</li> <li>To the west: Watsons Bay Beach, promenade and ferry wharf.</li> </ul>



### 4. RELEVANT PROPERTY HISTORY

Current use
Recreational
Relevant Application History
<b>Activity Application</b> Approved for the <i>Taste Orange</i> one-day event on Sunday 25 May 2014.  <b>DA42/2015/1 – Approved by Council on 13/04/2015</b> Two day <i>Taste Orange</i> food event on 16 and 17 May 2015.  <b>DA184/2017/1 - Approved by Council on 17/07/2017</b> Spring Market with 120 stalls to be held on Sunday 17 September 2017.  <b>DA330/2017 - Approved by Council on 30/10/2017</b> Summer Christmas Market and a Christmas Twilight Market with 120 stalls to be held on Sunday 26 November 2017 and Wednesday 20 December 2017 respectively.

**DA97/2018/1 – Approved 17/05/2018 (WLPP)**

Seasonal market of 120 stalls and rides (including a licensed area) on 3/06/2018 from 10am to 3pm (bump in from 6:30am and bump out until 6pm); and on 7/12/2018 from 3pm to 9pm (bump in from 11am and bump out until 11pm)

**DA191/2018/1 – Approved 08/08/2019 (WLPP)**

An annual market of 120 stalls plus amusement devices, food trucks and a coffee van from 10am to 4pm on Sunday 15/9/2019, 20/09/2020, 19/9/2021, 18/09/2022 & 17/09/2023, bump in from 6:30am and bump out until 6:40pm.

## 5. SUMMARY OF THE APPROVED DEVELOPMENT

The approved development is for a market to be held in Robertson Park Watsons Bay twice a year for five years from 2024 to 2028 on the following Sundays:

- 04/02/2024 with a 03/03/2024 backup;
- 15/09/2024 with a 03/11/2024 backup;
- 02/02/2025 with a 02/03/2025 backup;
- 21/09/2025 with a 02/11/2025 backup;
- 01/02/2026 with a 01/03/2026 backup;
- 20/09/2026 with a 01/11/2026 backup;
- 07/02/2027 with a 07/03/2027 backup;
- 19/09/2027 with a 07/11/2027 backup;
- 06/02/2028 with a 05/03/2028 backup; and
- 17/09/2028 with a 05/11/2028 backup.

## 6. SUMMARY OF THE PROPOSED MODIFICATION

The modification of the approved market dates from those specified above to the following Sundays:

- 15/9/2024 with a 20/10/2024 backup;
- 9/2/2025 with a 9/3/2025 backup;
- 21/9/2025 with a 19/10/2025 backup;
- 8/2/2026 with a 8/3/2026 backup;
- 20/9/2026 with a 18/10/2026 backup;
- 14/2/2027 with a 14/3/2027 backup;
- 19/9/2027 with a 17/10/2027 backup;
- 13/2/2028 with a 12/3/2028 backup; and
- 17/9/2028 with a 15/10/2028 backup.

## 7. ISSUES

There are no issues with the proposed modification to the approved market dates.

## ASSESSMENT UNDER SECTION 4.55

### 8. 4.55(1A) MODIFICATIONS INVOLVING MINIMAL ENVIRONMENTAL IMPACT

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and

- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
- (c) it has notified the application in accordance with:
  - (i) the regulations, if the regulations so require, or
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

### **8.1 Extent of environmental impact**

The proposed modification to the approved market dates does not increase the overall number of dates from that as approved and is considered to be sufficiently minor in scope to fall under the ambit of Section 4.55(1A).

### **8.2 Substantially the same development**

The qualitative and quantitative aspects of the original consent have been compared to the proposed modification to the approved market dates and the following comments are made:

- The proposed modification does not radically change the approved development with no increase in the number of market days proposed.
- The development consent as proposed to modified is considered to be essentially and materially the same.
- The proposed modification will not substantially change how the approved development is to be carried out.
- The proposed modification does not alter any aspect of the approved development which was essential to the development when it was originally approved.

The development consent as proposed to be modified is considered to be substantially the same as the approved development.

### **8.3 Notification/Advertising**

The proposed modification to the approved market dates was not advertised or notified on the basis that it was considered that it did not involve any potential for any adverse environmental impacts, given that the application does not change the total number of events.

## **ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15(1)**

The relevant matters for consideration under section 4.15(1) of the *Environmental Planning and Assessment Act 1979* as required by Section 4.55(3) of the Act are assessed under the following headings:

## **9. SEPP (RESILIENCE AND HAZARDS) 2021**

### **9.1 Chapter 2 Coastal management**

The provisions of Chapter 2 Coastal Management, gives effect to the objectives of the Coastal Management Act 2016 from a land use planning perspective, by specifying how development proposals are to be assessed if they fall within the Coastal Zone.

Whilst the subject land is located within the Coastal Environment Area (Clause 2.10) and the Coastal Use Area (Clause 2.11), subclauses 2.10(3) and 2.11(2) state:

*This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.*

On the basis that the subject land is located within the *Foreshores and Waterways Area* pertaining to Chapter 6.3 of SEPP (Biodiversity and Conservation) 2021 which has replaced the repealed SREP (Sydney Harbour Catchment) 2005, it is only the aims and the relevant provisions of Division 5 of Chapter 2 that are relevant to the subject development application.

The proposed modification is considered to be satisfactory with regard to these provisions on the basis that it does not involve the potential for any increased risk of coastal hazards on the subject land or other land.

The proposed modification to the approved market dates is considered to be satisfactory with regard to the relevant provisions of Chapter 2 Coastal Management.

## **9.2 Chapter 4 Remediation of land**

Clause 4.6(1)(a) of SEPP (Resilience and Hazards) 2021, requires consideration to be given as to whether the subject land is contaminated. The assessment of the original development application concluded that there was not a site contamination issue and it is considered that the proposed modification to the approved market dates does not involve the potential to alter that conclusion.

## **10. SEPP (BIODIVERSITY AND CONSERVATION) 2021**

### **10.1 Chapter 2 Vegetation in non-rural areas**

The provisions of *Chapter 2 Vegetation in non-rural areas* require the consideration of the proposed modification with regard to tree impacts.

It is considered that existing conditions of consent designed to protect trees within Robson Park adequately cover the scope of the proposed modification to the approved market dates.

### **10.2 Chapter 6 Water Catchments and the Sydney Harbour Foreshores and Waterways Area DCP 2005**

With regard to the provisions of Chapter 6 and the Sydney Harbour Foreshores and Waterways Area DCP 2005, it is considered that existing conditions of consent designed to require adequate waste management so as to prevent litter from entering the harbour and to limit the use of single-use plastic adequately cover the scope of the proposed modification.

The proposed modification to the approved market dates is considered to be satisfactory with regard to the relevant provisions of SEPP (Biodiversity and Conservation) 2021 and the Sydney Harbour Foreshores and Waterways Area DCP 2005.

## **11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014**

### **11.1 Part 1.2: Aims of Plan**

The proposed modification to the approved market dates is considered to be consistent with the aims in Part 1.2(2) of the Woollahra LEP 2014.

## 11.2 Part 2.8: Temporary Use of Land

The objective of Clause 2.8 is *to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.*

Clause 2.8(2) states that “*development consent may be granted for development on land in any zone for a temporary use for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months*”. Accordingly, the proposed modification to the development consent for the use of the site for the purpose of a *market* may be permitted by virtue of Clause 2.8 of the Woollahra LEP even though such a use is prohibited in the RE1 Public Recreation zone.

Clause 2.8(3) sets out the relevant matters for which the consent authority must be satisfied in order to grant consent. An assessment of the proposed modification against these matters is provided below:

**a) *The temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument.***

It is considered that the proposed modification to the dates for the approved temporary use of the site for biannual market events over a period of five years will not prejudice the subsequent carrying out of development on the land.

**b) *The temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood.***

The proposed modification does not result in any increase in the number of market events from that as approved. It is considered that the proposed modification to the dates for the approved temporary use of the site for biannual market events over a period of five years will not result in any significant environmental impacts upon the locality including residential and public domain amenity.

**c) *The temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land.***

On the basis that the proposed modification do not result in any increase in the number of market events from that as approved, it is considered that the proposed modification to the dates for the approved temporary use of the site for biannual market events over a period of five years will not result in any significant environmental impacts upon the subject site.

**d) *At the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.***

The proposed modification does not result in any increase in the number of market events from that as approved. At the conclusion of each market event, all temporary structures will be removed and the park will be reinstated to its former condition. In this regard, existing conditions of consent require the restoration and repair of any damage to the park and infrastructure.

### Conclusion

It is considered that the proposed modification to the approved market dates is satisfactory with regard to the provisions of Clause 2.8 of the Woollahra LEP 2014.



### 11.3 Land Use Table

A market is defined under Woollahra LEP 2014, as follows:

***market** means an open-air area, or an existing building, that is used for the purpose of selling, exposing or offering good, merchandise or materials for sale by independent stall holders, and includes temporary structures and existing permanent structures used for that purpose on an intermittent or occasional basis". Note: Markets are a type of **retail premises**.*

Retail premises are a subcategory of commercial premises which is a prohibited use within the RE1 Public Recreation zone. However, the temporary use of the site for the purpose of a market is permitted under Clause 2.8 of the Woollahra LEP 2014 as discussed above.

### 11.4 Part 5.10: Heritage Conservation

Parts 5.10(2) and 5.10(4) require Council to consider the effect of works proposed upon a heritage conservation area.

Robertson Park is located within the Watsons Bay Heritage Conservation Area. Council's Heritage section have raised no objection to the proposed modification and it is therefore considered to be satisfactory with regard to the provisions of Clause 5.10 of Woollahra LEP 2014.

## 12. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

### 12.1 Chapter C3: Watsons Bay Heritage Conservation Area (HCA)

Council's Heritage section have raised no objection to the proposed modification.

The proposed modification does not result in any increase in the number of market events from that as approved. It is considered that the proposed modification to the dates for the approved temporary use of the site for biannual market events over a period of five years is satisfactory with regard to all relevant controls and objectives of Chapter C3 and will not have any significant impact upon the heritage significance of the Watsons Bay Heritage Conservation Area.

### 12.2 Chapter E1 Parking

The aims and objectives, as outlined in Section E1.1.3 of the DCP, are:

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

There is no car parking provision rate for a market in Council's DCP 2015 Chapter E1: Parking and Access.

The proposed modification does not result in any increase in the number of market events from that as approved or the scale of the markets and therefore does not involve any potential for parking and traffic impacts from that associated with the approved development. Council's Traffic Engineer has raised no objection to the proposed modification. Existing conditions of development consent are considered to adequately address parking and traffic impacts.

The proposed modification is considered to be satisfactory with regard to the provisions of Chapter E1 of Woollahra DCP 2014.

### **12.3 Chapter E5: Waste Management**

It is considered that existing conditions of consent designed to require adequate waste management adequately address the requirements of Chapter E5 of Woollahra DCP 2014 with regard to the scope of the proposed modified market dates.

## **13 ROBERTSON PARK PLAN OF MANAGEMENT**

The purpose of the Robertson Park Plan of Management (POM) is as follows:

*“to balance open space and recreational values with conservation of the inherent physical and cultural heritage qualities of Robertson Park. The plan will provide a basis for Woollahra Council’s ongoing management, enhancement and maintenance of this important open space resource and provide a suitable basis for day to day and long term decision making.”*

The proposed modification does not result in any increase in the number of market events from that as approved. It is considered that the proposed modification to the dates for the approved temporary use of the site for biannual market events over a period of five years is satisfactory with regard to the Robertson Park Plan of Management for the following reasons:

- The eastern part of the park including the playground area will remain available for public recreation.
- The temporary structures will not significantly impact upon the amenity of the existing grassed area within Robertson Park.
- The POM acknowledges that Robertson Park can be hired out for public events, including for recreational and community purposes. The market events will provide positive cultural activities for the locality.
- Existing conditions of development consent adequately mitigate potential impacts upon Robertson Park.

The proposed modification is considered to be acceptable in terms of the provisions of the Robertson Park POM.

## **14 APPLICABLE ACTS/REGULATIONS**

### **14.1 Clause 63 Environmental Planning and Assessment Regulation 2021: Fire safety and other considerations applying to the erection of temporary structures**

Clause 63 of the Environmental Planning and Assessment Regulation 2021 sets out the prescribed matters of consideration in determining a development application for the erection of a temporary structure including fire protection, the structural capacity of the structure and stability of the ground or other surface on which the structure is to be erected. These matters are addressed via an existing condition.

## **15 THE LIKELY IMPACTS OF THE PROPOSED MODIFICATIONS**

All likely impacts have been addressed elsewhere in the report.

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

The site is considered suitable for the proposed modified development.

## 17 THE PUBLIC INTEREST

In determining whether or not the proposal is in the public interest, both the wider public interest and the sectionalised public interest (protecting residential amenity of surrounding residential properties) must be taken into consideration. In the event that the wider public interest outweighs the sectionalised public interest, the proposed modification can be determined to be in the public interest.

With regard to the wider public interest, the proposed modified market dates maintain the approved one-day duration market events as cultural activities that can be enjoyed by the local and wider community.

With regard to the sectionalised public interest, it is considered that the proposed modified market dates do not involve any additional potential for amenity impacts upon the locality beyond that associated with the approved development with existing conditions of consent addressing potential impacts upon the local environment.

As such, the proposed modification is considered to be in the public interest.

## 18 CONCLUSION

This assessment has considered the application in terms of the relevant matters under Sections 4.55 and 4.15(1) of the Environmental Planning and Assessment Act and other relevant considerations and the proposed modification is considered to be satisfactory in this regard.

## 19 DISCLOSURE STATEMENTS

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

## 20 RECOMMENDATION:

THAT the Woollahra Local Planning Panel, exercising the functions of Council, modify development consent to Development Application No. 230/2023/1 for a market to be held in Robertson Park Watsons Bay twice a year for five years from 2024 - 2028 on land at Robertson Park, 22 Military Road Watsons Bay, subject to the following conditions:

### Modification Summary

DA Application Number (PAN Number)	Determination Date	Modification Description
DA230/2023/2 PAN-440529	25/07/2024	Amendment of Condition E.5

### A. General Conditions

#### A.1 Conditions

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

## A.2 Definitions

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

**Applicant** means the applicant for this consent.

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

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

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

**Council** means Woollahra Municipal Council

**Court** means the Land and Environment Court

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

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

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

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

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

**PC** means the Principal Certifier under the *Act*.

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

**Professional engineer** has the same meaning as in the *BCA*.

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

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

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

**Site** means the land being developed subject to this consent.

**Woollahra LEP** means *Woollahra Local Environmental Plan 2014*

**Woollahra DCP** means *Woollahra Development Control Plan 2015*

**Work** for the purposes of this consent means:

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

**Note: Interpretation of conditions** - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.

### A.3 Approved Plans and Supporting Documents

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

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

Reference	Description	Author/Drawn	Date(s)
Watsons Bay Market	Site Plan	Not specified	Undated
Saeed Marzouk No: TCT 0064762	Traffic Management Plan	Asta Traffic Management	29/07/2022
Waste management plan	Waste management plan	Not specified	Undated

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

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

### A.4 Permitted Structures and Equipment and requirements for activity approvals

Approved structures and amusement devices for each of the 10 market events are:

- 150 x 3m x 3m stalls/marquees secured with weights not pegs;
- 1 x Shrek slide inflatable (10m long x 6m wide and 7m high);
- 1 x Tea Cup ride (8m diameter circle);
- 1 x Safari experience jumping castle (9.5m long x 7m wide and 3m high);
- 1 x Disney Frozen Combo inflatable (6.7m long x 6m wide and 6m high);
- 1 x coffee van; and
- 4 x food trucks.

### A.5 Emergency and Risk Management

The event organiser’s strategies for emergency and risk management must comply with Australian Standards AS/NZS ISO 31000/2009.

## **A.6 Your Responsibilities as an Event Organiser**

An event organiser is defined as a legal entity responsible for the event, that is, the entity who has taken out public liability insurance for the event. In most cases, this would be the director(s) of the organisation or company holding the event. Legal liability and responsibility are not diminished if the event is a community or not-for-profit.

The event organiser may or may not also be an employer. The employer has specific details and responsibilities under Work Health and Safety legislation. All event organisers have a duty of care to provide for a safe event.

It is recommended that all event organisers have recognised skills and qualifications, although this is not currently a legal requirement. However, it is a legal requirement that event organisers obtain all relevant statutory and regulatory permits required to stage events within the Woollahra Municipal Council Local Government Area.

## **A.7 Directions of Council Officers**

Any direction of the Council is to be complied with. In this regard, it should be noted that Council reserves the right to refuse or limit any activity associated with the event if in its opinion, the activity is likely to cause damage, danger, nuisance or it is not in the Council's interest.

## **A.8 No Interruption to Bus Services**

All bus movements shall be maintained and all bus stops in proximity to the site shall remain operational during the event.

## **A.9 Road Closures Times and Dates**

Any road closure must accord with the relevant Traffic Management Plan approved by the Woollahra Traffic Committee as required by Condition D.1 of this development consent.

## **A.10 Public Transport**

Any event advertising is to promote patrons to use Sydney Buses and Sydney Ferries to access the event.

## **A.11 Wet Weather**

In the event of excessive rain either before or during the event, the Director of Infrastructure and Sustainability, or the Director's nominated representative, is authorised to direct that all or part of the park not be used, if, in the opinion of the Director, or the Director's nominated authorised representative, excessive damage to the park will result.

## **A.12 Restoration of Robertson Park by Woollahra Council**

Council reserves the right to carry out turf maintenance and renovation works in Robertson Park from time to time. Renovation works may include, for example, verti-draining, aeration works, topdressing, fertilising and re-turfing.

The Park may need to be closed whilst these rectification works take place. Any required works will be discussed with the applicant and event organisers, prior to closing the park.

### **A.13 Making Good Damage to Park and Infrastructure**

Council staff will conduct a pre-event and post-event assessment of Robertson Park, and may also assess the condition of the turf during market operation to ascertain any damage and restoration required. If Council Staff determine that restoration is required (outside of normal wear and tear), the applicant may be required to fund the full cost of these works.

The applicant will be responsible for funding any repair works required to be undertaken. The applicant must repair or meet the cost of making good any damage to Robertson Park and Council's infrastructure, as a consequence of the activities associated with the Consent.

Council staff will organise and undertake any repairs. Payment of cost for damage repairs undertaken by Council must be paid within 30 days from issue of Council's invoice.

### **A.14 Power, Generators and Cabling**

Council is able to supply limited 3 phase power (32Amps) from the existing power outlet in Robertson Park for the duration of the markets. The applicant must consider the amount of power required. Additional generators (to be supplied by the applicant at their expense) may be necessary to meet power requirements. All generators are to be silent.

A key is required to access the power box in Robertson Park. Contact Council's Open Space and Trees Department with one (1) week's prior notice to arrange the collection of the key. A key deposit of \$125 may be applicable.

The applicant is responsible for ensuring that power cables do not affect pedestrian movement or present risks to the safety of pedestrians, and that Safe Work NSW practices and industry standards are adhered too in relation to cabling and supplying power for events in open spaces and parks.

Electrical services serving the stage and/or associated structures shall meet with the requirements in AS/NZS 3000 & 3002 and be certified by a licenced electrical contractor prior to the commencement of use.

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

Nil.

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

Nil.

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

#### **D.1 Approval of Temporary Road Closure**

A Temporary Road Closure application accompanied by Traffic Management Plan (TMP) and Traffic Guidance Scheme (TGS) prepared by a suitably qualified person must be submitted by the applicant at least 8 weeks prior to each of the market event days for approval by Woollahra Traffic Committee. The Temporary Road Closure approval in general stipulates conditions as follows:

- a) That the special event be categorised as a Category 2 event.
- b) The applicant shall obtain approval for the event from Police by completing a 'Notice of Intention to Hold a Public Assembly' application.
- c) The applicant shall submit a TMP and TGS in a format suitable to Local Traffic Committee prior to each event for review and approval.
- d) The applicant shall inform the Transport Management Centre of the approved event, temporary closures (including the TfNSW approval document) and provide them with all associated documentation at least 21 days prior to the event.
- e) The applicant shall inform all business proprietors, residents and other occupants within 200 metres (walking distance) of any part of the Military Road closure, at least fourteen (14) days before the event via a letterbox drop and an advertisement placed in the local paper at least seven (7) days before the event.
- f) The traffic controllers working on the day of the event shall be instructed that residents of any properties with access from this closed section of road must not be inconvenienced as a result of these closures.
- g) The applicant shall supply and erect all barriers and traffic signs necessary for the road closure and remove them at the completion of the event.
- h) Council shall be indemnified against all claims for damage or injury that may result from either the activities or from the occupation of part of the public road reserve during the activities. A copy of Public Liability Insurance Cover to the value of \$10,000,000 shall be provided to Council prior to the event and Council must be listed as an interested party on the insurance policy.
- i) Council shall be reimbursed for the cost of repair of any damage caused to Council property as a result of the activities.
- j) The applicant shall inform all Emergency Services of the proposed road closure (that is NSW Police, Fire Brigade, Ambulance, SES and TfNSW) and must maintain a four-metre wide emergency vehicle lane at all times, with all services (eg. fire hydrants) remaining free of any obstruction.
- k) Noise created by the use of equipment or activity must be controlled as required by the 'Protection Of the Environment Operations (Noise Control) Regulation 2000'.
- l) The applicant shall make arrangements to remove all waste from the site at the end of the event.
- m) Woollahra Council reserves the right to cancel this approval at any time.

The event organiser must ensure all necessary pre-event conditions be fulfilled.

## **D.2 Approval required for proposed off-street parking**

Approval must be obtained from National Parks and Wildlife Service (NPWS) for the use of the Gap Bluff car parking areas to facilitate at least 150 spaces as well as from Vaucluse Public School (VPS) if required for the use of the school ground during each event to ensure the adequate supply of parking. Written approval shall be provided to Council at least 21 days prior to the event and prior to the lodgement of each of the Temporary Road Closure applications.

## **D.3 Park Hire Approval**

The applicant is required to apply to Council to seek approval to use Robertson Park at least four (4) weeks before the start of each event. This is to include relevant applications for park hire, temporary structures and/or amusement devices, and is to ensure that Council is satisfied that:

- The park is available and in a condition that is suitable for use for the event.
- The applicant has previously complied with conditions of this consent.
- The applicant can supply a guarantee to Council's satisfaction that they will comply with conditions of consent relating to repair of any damage and clean up.



Council may also impose further conditions of hire that aim to protect the park environment and other park users, after assessment of applications submitted for each event.

#### **D.4 Activity approvals**

Activity approvals are to be obtained for each amusement device prior to each market event. The Activity approvals must be in the applicant's possession and on-site at all times during each market event.

#### **D.5 Site Plans**

A site plan to scale identifying the exact locations of the amusement devices and structures to be located within Robertson Park must be submitted to and approved by Council for each event. The site plan is to be submitted to Council's Open Space & Recreation Officer for approval at least four (4) weeks before the start of the event.

#### **D.6 Payment Park Hire Fees**

The applicant is required to make payment in accordance with Council's adopted Fees and Charges for park hire, temporary structures, amusement devices and electricity at least four (4) weeks prior to the event. An invoice will be forwarded to the applicant upon approval of the Consent.

A bond of \$15,000 for each event shall be paid to Council at least four (4) weeks prior to the event, as security for the restoration of the park at the conclusion of the event and to ensure compliance with the Conditions on Hire and Consent. Robertson Park will be inspected at the completion of each event to assess any damage caused, such as (but not limited to) damage to trees, the turf surface, amenities block, existing park infrastructure and presence of litter. Council may use all or part of the bond to carry out rectification works if necessary or if there is breach of the Conditions of Hire and Consent. An invoice will be forwarded to the applicant upon approval of the Consent.

#### **D.7 Damage Bond**

A bond of \$15,000 for each event shall be paid to Council at least four (4) weeks prior to the event as security for the restoration of the park at the conclusion of the event. Robertson Park will be inspected at the completion of each event to assess any damage caused, such as, but not limited to, damage to trees, the turf surface, amenities block, existing park infrastructure and presence of litter. Council may use all or part of the bond to carry out rectification works if necessary. An invoice will be forwarded to the applicant upon approval of the Consent.

#### **D.8 Public Liability**

The applicant must provide a copy of a Certificate of Currency prior to each event showing Public Liability Insurance to the value of \$20,000,000 for each event, including nominating Woollahra Council as an interested party.

Copies of Certificates of Currency for Public Liability Insurance are also to be supplied by each of the entertainment and amusement device providers operating at each of the events.

## **D.9 Notification**

Residents and businesses within a 200m radius of Robertson Park (including Marine Parade, Clovelly Street, Military Road, Gap Road, Dunbar Street, Robertson Place and Short Street, Watsons Bay) shall be provided with written notice of each intended event at least two (2) weeks prior to the event. This notice shall include the name and mobile number of an Event Liaison representative that can be contacted on the day of the event.

## **D.10 Fire safety and other considerations applying to erection of temporary structures (Clause 94A of the Regulation)**

*Council* considers, pursuant to clause 94A of the *Regulation*, that it is appropriate to require the temporary structures to be brought into partial conformity with the *Building Code of Australia* (BCA) because in determining the development consideration is given to:

- (a) Whether the fire protection and structural capacity of the structure will be appropriate to the proposed use of the structure, and
- (b) Whether the ground or other surface on which the structure is to be erected will be sufficiently firm and level to sustain the structure while in use.

Accordingly, it is considered appropriate to require the temporary structures to conform to the BCA.

The Certifying Authority must be satisfied that such work, to be implemented as part of the development, will ensure the temporary structures comply with the following provisions of the BCA as in force at the date of the commencement of any development work:

- a) That the fabric materials used in the temporary structures have a flammability index of not more than twenty five (25) in accordance with the requirements of NSW H102.8 of the BCA.
- b) That the proposed temporary structures shall be structurally secured in accordance with the requirements of the BCA and relevant Australian Standards.
- c) That all electricity serving the temporary structures shall be in accordance with the requirements of NSW H102.14 of the BCA.
- d) That the main paths of access or travel around the stalls shall be a minimum of two (2) metres or more in accordance with the requirements of NSW H102.4 of the BCA.

## **D.11 Provision of sanitary facilities**

In addition to the existing public amenities permanently located within Robertson Park, additional port-a-loos shall be provided throughout the event duration to ensure that adequate sanitary facilities are provided for attending members of the public, stallholders and their staff as follows:

- Male Patrons <1000: 2 WC, 4 Urinals, 4 Hand-Basins
- Female patrons <1000: 9 WC, 4 Hand-Basins
- Male Patrons <2000: 4 WC, 8 Urinals, 6 Hand-Basins
- Female patrons <2000: 12 WC, 6 Hand-Basins

## **E. Conditions which must be satisfied during any development work (i.e. during the event)**

### **E.1 Implementation of Traffic Management Plan**

The event organiser must supply and erect the traffic control measures detailed in the approved Traffic Management Plan and Traffic Control Plans, for each event and remove them at the completion of each event.

## **E.2 Protection of Vegetation**

To ensure vegetation is protected:

- a) Equipment is not to be stored or set-up within 2 metres of any tree trunk, shrub or garden bed.
- b) No vehicle is to drive or stand within 2 metres of any tree trunk, shrub or garden bed.
- c) Speakers, lights or the like are not to be attached to or placed within any tree, shrub or garden bed.
- d) Shrubs, trees or other vegetation are not to be moved, lopped or damaged.
- e) Any chairs to be used must have feet designed to minimise damage to the grassed surface (e.g. Triangle shaped feet).

## **E.3 Park Management and Maintenance**

To avoid damage as a result of the markets held at Robertson Park and ensure preservation of the parklands:

- a) No marquees or structures are permitted other than those specified in this consent.
- b) Erection of temporary structures made permissible by this consent must not interfere with the existing underground irrigation system or quality of the playing field turf surfaces.
- c) No advertising signage can be hung between park trees or from park furniture including light poles.
- d) No existing park signage is to be obstructed or interfered with in the conduct of the event.

## **E.4 Security**

The applicant is to provide adequate security measures (at their expense) at the event from bump-in to bump-out. All security personnel must be appropriately licensed in accordance with current NSW legislative and regulatory requirements.

## **E.5 Dates of Market Events, Hours of Operation and Capacity**

The hours of operation of the markets are limited to between 10:00am – 4:00pm on the following dates:

- 15/9/2024 with a 20/10/2024 backup;
- 9/2/2025 with a 9/3/2025 backup;
- 21/9/2025 with a 19/10/2025 backup;
- 8/2/2026 with a 8/3/2026 backup;
- 20/9/2026 with a 18/10/2026 backup;
- 14/2/2027 with a 14/3/2027 backup;
- 19/9/2027 with a 17/10/2027 backup;
- 13/2/2028 with a 12/3/2028 backup; and
- 17/9/2028 with a 15/10/2028 backup.

The bump-in of stalls and other activities are not to commence prior to 6.30am and bump-out is to conclude no later than 6.30pm on the day of the event.

The maximum capacity per market event is limited 3000 attendees.

(Amended on 25/07/2024 under DA230/2023/2 (PAN 440529))

## **E.6 Residential Amenity**

All activities are to be carried out and conducted in such a manner so as to not interfere with the amenity of the surround residents or those within the locality, particularly by way of noise emission and rubbish.

## **E.7 Inflatable devices and rides**

- a) Inflatable devices shall be designed and constructed in accordance with Australian standard AS 3533,1 –1997
- b) Each inflatable device, while operating, shall be under the supervision of a person at least 18 years of age, who is fully trained in all aspects of safe operation.
- c) The owner of each inflatable device shall ensure that at all times that the device is in operation it is covered by a public risk insurance policy. The policy value of 20 million dollars required for other amusement devices would also be appropriate for inflatable devices.
- d) The device shall not be operated in wind velocities exceeding 45km/hr. If the wind velocity approaches this figure, the device must be cleared and deflated immediately.
- e) Each device shall be held down in accordance with the manufacture's recommendations.
- f) The device is registered under Work, Health & Safety legislation.
- g) The device is to be or has been erected in accordance with all conditions (if any) relating to its erection set out in the current certificate of registration issued for the device under Work, Health & Safety legislation.
- h) Inflatable devices must have a minimum setback of 10 metres from all playgrounds, children's play equipment and buildings.

## **E.8 Marquees, Stalls and Temporary Infrastructure**

- a) All event infrastructure is to be constructed and secured in accordance with the manufacturers'/structural specifications and certified as structurally adequate for the intended purposes in accordance with relevant standards and codes, including the Building Code of Australia.
- b) Marquees, Stalls and Temporary Infrastructure must not be used for the storage or handling of inflammable materials.
- c) Marquees, Stalls and Temporary Infrastructure must be set back a minimum of 1.5 metres from all boundaries.
- d) Sanitary services must not be installed within the structure.
- e) There must be no demolition of existing structures or damage to gardens.
- f) All structures must be installed in accordance with the approved site plan.

## **E.9 Vehicle Access**

Only Essential Vehicles are permitted to access the Park for the purpose of dropping off and/or picking up large event structures including; portable toilets, amusement devices and generators. Essential vehicles do not include drop off for individual stall holders. To minimise disturbance to adjoining residences, unloading and setting up of large equipment (portable toilets and amusement devices) is not permitted until 8am (as per Protection of the Environment Operations (Noise Control) Regulation 2017).

- a) No vehicle is to be parked within the boundaries of the Park with the exception of the 1 x coffee van and 4 x food trucks, which will be parked for the duration of each event.
- b) When driving within the boundaries of the Park vehicles are not to exceed 10km per hour in speed. The Park is a shared space and all care is to be taken when driving within the boundary of the Park. Spotters are required when vehicles are reversing within the boundaries of the Park.

- c) Ground protection track mats are required to be used for all vehicle entry points into the Park and during inclement weather.

## **E.10 Waste Services and Cleaning**

Where recycling and general rubbish bins are provided, you shall ensure that all waste is disposed of in an appropriate manner.

It is the responsibility of the event organiser to arrange private contractors to remove rubbish from the site. Rubbish is not permitted to be placed in Council park bins.

The event organisers must leave the park and surrounds with the same level of cleanliness as at the start of the event. Any cleaning costs incurred by the Councils' Parks Department for cleaning of the park (including the removal of litter, and the removal of any grease stains from roads, footpaths and paving) after the event will be deducted from the bond.

For special events please contact Steven Fisher at least 2 weeks prior to your event on 9391 7968 or email [Steven.Fisher@woollahra.nsw.gov.au](mailto:Steven.Fisher@woollahra.nsw.gov.au).

## **E.11 Rubbish Disposal**

- The stalls are to be provided with a garbage bin for the storage of the stall's wastes. Separate storage of paper, cardboard or other recyclable material is encouraged.
- Suitable garbage bins must be provided near the food stall for the public to dispose of used takeaway food containers, drink containers and other refuse.
- Provision must be made for the storage of waste water and cooking oils generated within the stall.
- Waste water and oils must not be disposed of into the stormwater system or on the ground.
- The Waste Management Plan must be adhered to at all times. During the event, effective waste management must be organised to ensure that no litter enters Sydney Harbour or surrounding bushland areas. Bins must be removed before they are full so that the lids remain closed and litter does not overflow or blow away.

## **E.12 Washing Facilities**

- A sealed container of potable water with a tap and suitable bowls or containers must be provided for cleaning, sanitising and hand washing.
- Separate hand-washing facilities must be provided within the food stall. The waste water is to be disposed of into a waste water container.
- An adequate supply of warm running water, liquid soap and disposable paper towels must be provided at each hand wash (station) basin.

## **E.13 Food Safety Supervisors**

Food businesses operating mobile food vending vehicles may need to appoint a Food Safety Supervisor (FSS) if the food they prepare and serve is:

- Ready-to-eat.
- Potentially hazardous, that is temperature control.
- Not sold and served in the supplier's original package.

The business needs to ensure an FSS is appointed and the FSS certificate is available in the vehicle before commencement of operation.

## **E.14 Food Safety Controls**

Operators of temporary food stalls also need to practice safe food handling including:

- Storing potentially hazardous foods at the correct temperature.
- Avoiding cross contamination.
- Storing raw food separately from ready to eat food.
- Keeping food handling areas clean.
- Ensuring food handlers have the appropriate food safety skills and knowledge.
- Not handling food when ill.
- Practicing effective handwashing.
- Checking that packaged food is appropriately labelled.

Further information is available in the [Guidelines for food businesses at temporary events](#) document and includes a self-checklist for businesses, based on the requirements in the Food Standards Code.

## **E.15 Premises Construction**

Temporary food stalls need to ensure the stall is:

- Located in a dust free area.
- Away from toilets and garbage bins.
- Supplied with sufficient potable water.
- Is suitably constructed, that is floor, walls and ceiling.
- Fitted with food handling facilities for storage, cooking, hot/cold holding, preparation and serving, including handwashing facilities.

See also: [Guidelines for food businesses at temporary events](#)

## **E.16 Legislation and Standards**

Temporary food stalls need to practice safe food handling and preparation to meet the same food safety requirement as other retail food businesses. This includes:

- Notifying Woollahra Council of their business and food activity details.
- Appointing a [Food Safety Supervisor](#).
- Meeting the requirements of the [Food Standards Code](#).  
[Standard 3.2.2 - Food Safety Practices and General Requirements](#)  
[Standard 3.2.3 - Food Premises and Equipment](#)  
[Part 1.2 - Labelling and other information requirements](#)

## **E.17 Public Footpaths – Safety, Access and Maintenance**

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

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

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

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

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

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

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

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

- Part C Management of waste:
  - a. For fee or reward, transport waste over or under a public place
  - b. Place waste in a public place
  - c. Place a waste storage container in a public place.
- Part E Public roads:
  - a. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
  - b. Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.

## E.18 Prohibition of single-use plastic

On 12 March 2018, Woollahra Council adopted a policy that *all local festivals and events that Council sponsors, endorses and/or participates in, be free of single-use plastic*. There is also a state government ban in place: [Single-use plastics ban in NSW | NSW Dept of Planning and Environment](#). As such, each market event must be free from single-use plastics.

*Single use plastic* is defined as:

- *plastic packaging e.g. take-away food containers, plastic bags, plastic wrap*
- *disposable coffee cups*
- *plastic water, soft-drink & juice bottles*
- *plastic cups, plates & cutlery*
- *plastic straws and stirrers*
- *balloons*
- *polystyrene.*

## E.19 Pony Rides

- a) Any pony rides are to be set-up in the designated area marked on the site plan for each event submitted for approval in accordance with Condition D.5.
- b) The ponies are to be under effective control at all times.
- c) No rider is to be left unattended on a pony. I.e. the Pony Handler must lead the pony at all times whilst rider is astride pony.
- d) A responsible adult is to be present and supervise the event at all times.
- e) All waste and manure is to be removed by the applicant on the day of the event.
- f) Pony rides must be conducted with a minimum setback of 10 metres from all playgrounds, children's play equipment and buildings

## E.20 Petting Zoo

- a) Any Petting Zoo is to be set-up in the designated area marked on the site plan for each event submitted for approval in accordance with Condition D.5.
- b) A responsible adult is to be present and supervise the event at all times.
- c) All waste and manure is to be removed by the applicant on the day of the event.
- d) Ensure all activities are undertaken in accordance with relevant health and safety guidelines, refer to NSW Health Fact sheet “Petting Zoos and Personal Hygiene”
- e) Petting zoo enclosure must have a minimum setback of 10 metres from all playgrounds, children’s play equipment and buildings.

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

Nil.

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

Nil.

## H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (section 6.4 (c))

Nil.

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

### I.1 Noise Control

The use of the premises must not give rise to the transmission of *offensive noise* to any place of different occupancy. *Offensive noise* is defined in the *Protection of the Environment Operations Act 1997*.

This condition has been imposed to protect the amenity of the neighbourhood.

**Note:** Council will generally enforce this condition in accordance with the *Noise Guide for Local Government* (<http://www.environment.nsw.gov.au/noise/nglg.htm>) and the *Industrial Noise Guidelines* (<http://www.environment.nsw.gov.au/noise/industrial.htm>) published by the Department of Environment and Conservation. Other state government authorities also regulate the *Protection of the Environment Operations Act 1997*.

#### Useful links:

**Community Justice Centres**—free mediation service provided by the NSW Government ([www.cjc.nsw.gov.au](http://www.cjc.nsw.gov.au)).

**Department of Environment and Conservation NSW**, Noise Policy Section web page ([www.environment.nsw.gov.au/noise](http://www.environment.nsw.gov.au/noise)).

**New South Wales Government Legislation** home page for access to all NSW legislation, including the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Noise Control Regulation 2000* ([www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)).

**Australian Acoustical Society**—professional society of noise-related professionals ([www.acoustics.asn.au/index.php](http://www.acoustics.asn.au/index.php)).

**Association of Australian Acoustical Consultants**—professional society of noise related professionals ([www.aaac.org.au](http://www.aaac.org.au)).

**Department of Gaming and Racing** - ([www.dgr.nsw.gov.au](http://www.dgr.nsw.gov.au)).



## I.2 Noise from mechanical plant and equipment

The noise level measured at any boundary of the site at any time while the mechanical plant and equipment is operating must not exceed the *background noise level*. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed *background noise level* at any time.

The *background noise level* is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the  $L_{A90, 15 \text{ minute}}$  level measured by a sound level meter.

This condition has been imposed to protect the amenity of the neighbourhood.

**Note:** Words in this condition have the same meaning as in the:

*NSW Industrial Noise Policy* ([http://www.environment.nsw.gov.au/resources/ind\\_noise.pdf](http://www.environment.nsw.gov.au/resources/ind_noise.pdf))

ISBN 0 7313 2715 2, dated January 2000, and

*Noise Guide for Local Government* (<http://www.environment.nsw.gov.au/noise/nglg.htm>)

ISBN 1741370671, dated December 2004.

## I.3 Noise from performers & audio

- Acoustic music shall be the only form of music played at the event.
- Neighbouring businesses and residents are to be provided with a mobile number made available for any concerns regarding the level of noise arising from music.
- All music and performers are not to start before 10am and will cease by 4pm.
- Speakers are to be orientated away from local residents and businesses in order to minimize any adverse impact in terms of noise.
- The audio/amplification system(s) shall be set at a volume prior to performances by way of a noise limiter. Noise emanating from the audio/amplification system(s) shall not exceed the background noise level by more than 5 dBA when measured at the boundary of any residential/business property.

## J. Miscellaneous Conditions

Nil.

## K. Advisings

### K.1 Time Limited Development Consent

This development consent is only for the Cambridge Markets and is limited to the dates and times set out in Condition E.5 of the development consent.

## Attachments

1. Amended Market Dates [↓](#) 

**NEW AMENDED DATES for Watsons Bay Market**

Watsons Bay Market–5 Yearly Dates for DA Sunday

1. 15/9/2024, 20/10/2024(backup) - SPRING
2. [9/2/2025, 9/3/2025\(backup\)- SUMMER](#)
3. 21/9/2025, 19/10/2025(backup) - SPRING
4. [8/2/2026, 8/3/2026\(backup\) - SUMMER](#)
5. 20/9/2026, 18/10/2026(backup) - SPRING
6. [14/2/2027, 14/3/2027\(backup\) - SUMMER](#)
7. 19/9/2027, 17/10/2027(backup) - SPRING
8. [13/2/2028, 12/3/2028\(backup\) - SUMMER](#)
9. 17/9/2028, 15/10/2028(backup) -SPRING

**Reference number:**

PAN-345776

**Council Id:**

DA230/23

## LOCAL PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	D3
FILE No.	DA197/2023/1
ADDRESS	31 Wentworth Road Vaucluse
COUNCIL WARD	Vaucluse
SITE AREA	945.3m <sup>2</sup>
ZONING	R2 Low Density Residential
PROPOSAL	Alterations and additions to the existing dwelling house, including a first floor addition, new garage with office below, new swimming pool, decking, mini basketball court, landscaping and site works
TYPE OF CONSENT	Local development
COST OF WORKS	\$1,680,981
DATE LODGED	05/06/2023
APPLICANT	Mr J Bell
OWNER	Mr J G Bell & Ms V K Hyland
AUTHOR	Mr D Booth
TEAM LEADER	Mr M Moratelli
SUBMISSIONS	Two
RECOMMENDATION	Conditional approval

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

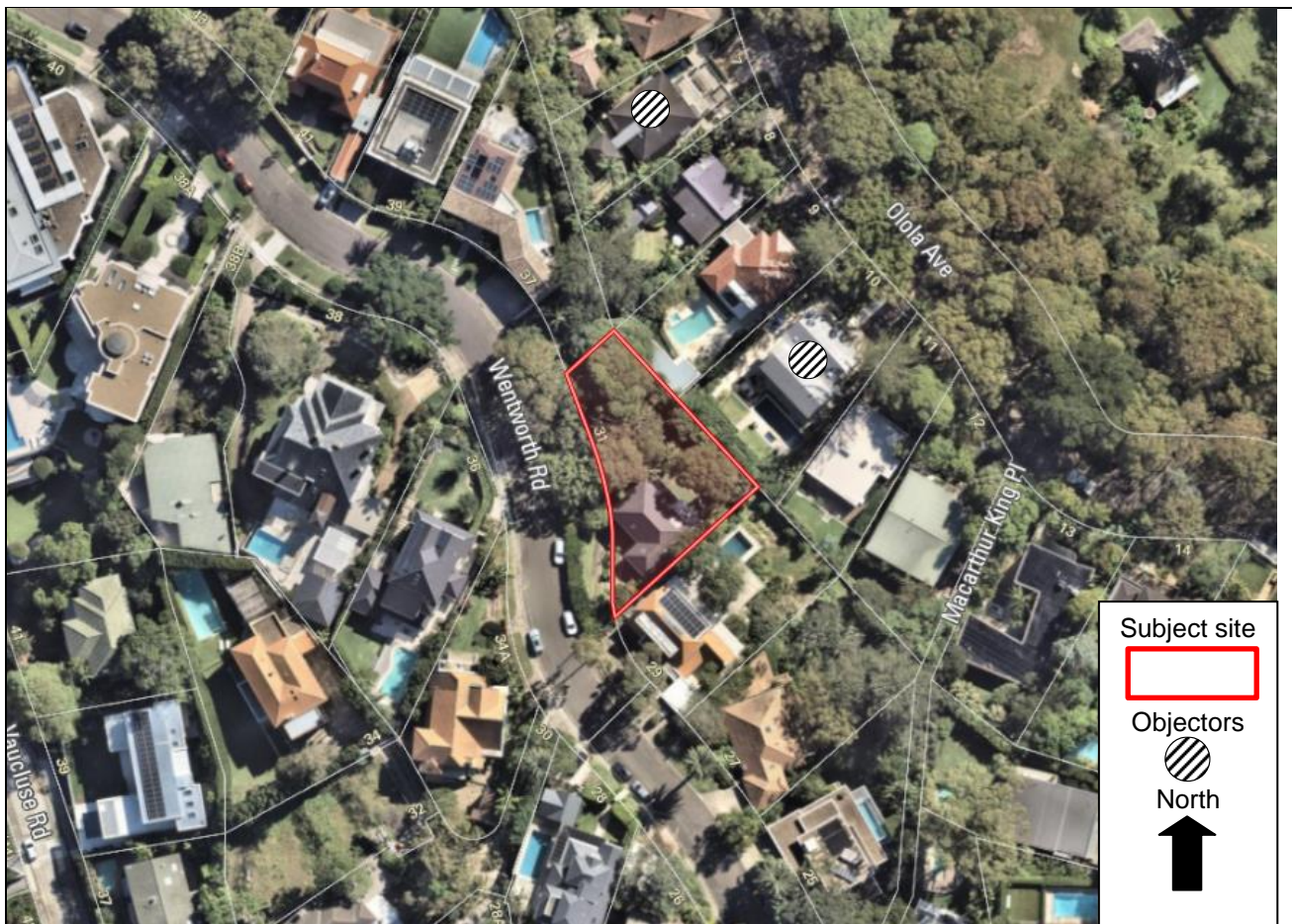
The application is to be determined by the Woollahra Local Planning Panel as it contravenes Council's 9.5m height of buildings development standard by more than 10%.

### 2. REASONS FOR RECOMMENDATION

The application has been assessed within the framework of the matters for consideration under section 4.15(1) of the Environmental Planning and Assessment Act 1979 and is recommended for approval because it is considered that:

- subject to recommended **Conditions C.1a & b**, the Clause 4.6 written request to vary Council's 9.5m height development standard is considered to be well-founded with sufficient planning grounds;
- it is satisfactory with regard to all relevant planning policies including the provisions of WLEP 2014 and WDCP 2015 subject to conditions;
- it will not have significant adverse impacts upon the local built and natural environment subject to conditions;
- it will not have significant adverse social and economic impacts upon the locality;
- the site is suitable for the proposed development, as conditioned; and
- the proposal is not contrary to the public interest.

### 3. LOCALITY PLAN



### 4. SITE AND LOCALITY

The subject site has a 48.7m frontage to Wentworth Road, a 41.4m rear boundary, a 12.4m north-western side boundary, a 37.5m south-eastern side boundary and a site area of 945.3m<sup>2</sup>.

The topography falls approximately 12m from the Wentworth Road frontage to the rear boundary.

The subject site is currently occupied by a 1-2 storey dwelling house.

Both adjacent side properties, 29 & 37 Wentworth Road, are occupied by 2 storey dwelling houses and garaging extending to the street alignment.

The immediate locality is characterised by 2 storey dwelling houses with garaging located within the front setbacks.

### 5. DESCRIPTION OF THE PROPOSAL

The proposal involves the following works:

- the demolition of the existing pitched roof and the construction of a first floor level with a gable roof and front and rear balconies;
- the conversion of the existing attached garage into a habitable room.

- the construction of a 2 storey with gable roof north-western side addition to the existing dwelling house consisting of a home gym/office at the lower level (*gym/entertainment floor level*) and a large single garage above at *lower garage floor level* attached to the existing dwelling house and accessed from the site frontage, the rear section of the site and the north-western side elevations by proposed decking and stairs at *gym/entertainment floor level*.
- The construction of an above-ground swimming pool with surrounding pool deck and adjacent above-ground mini basketball court to the rear section of the site.
- The addition of a lift adjacent to the north-western side elevation.
- The addition of a porch/patio to the front elevation at ground floor level.
- Fenestration alterations and additions.
- Internal alterations including the addition of a fireplace at ground floor level.
- New external finishes to the existing levels.
- Landscaping works.

Below are perspectives of the proposal.



FRONT PERSPECTIVE



STREET PERSPECTIVE



REAR PERSPECTIVE



DRIVEWAY PERSPECTIVE

## 6. ISSUES

### 6.1. Exceptions to Development Standards in Woollahra Local Environmental Plan 2014

Clause	Development Standard	Departure from Control	Conclusion
4.3	Height of buildings	3.3m or 35% departure from Councils 9.5m development standard.	Subject to recommended <b>Condition C.1a &amp; b</b> , the residual non-compliances are considered to be acceptable.



## 6.2. Other issues

Issue	Conclusion	Section
Objectors' concerns.	Addressed by recommended conditions of consent or otherwise are not considered to warrant further design amendments or the refusal of the application.	8.1
South-eastern side boundary setback non-compliance.	Satisfactory, subject to recommended <b>Conditions C.1a &amp; b.</b>	13.2
Front boundary setback non-compliance.	Satisfactory.	13.2
External wall height/inclined plane non-compliances.	Satisfactory, subject to recommended <b>Conditions C.1a &amp; b.</b>	13.2
Height of proposed swimming pool above existing ground level non-compliance	Satisfactory, subject to recommended <b>Condition C.1d.</b>	13.2
Height of proposed mini basketball court (an outbuilding) above existing ground level non-compliance	Satisfactory, subject to recommended <b>Condition C.1e.</b>	13.2

## 7. REFERRALS

Referral	Summary of Comment	Attachment
Consultant Development Engineer	Satisfactory, subject to conditions.	3
Consultant arborist	Satisfactory, subject to conditions.	4
Heritage Officer	Satisfactory, subject to conditions.	5
Senior Environment and Sustainability Officer	Satisfactory, subject to conditions.	6

## ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The relevant matters for consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979 include the following:

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

## 8. ADVERTISING AND NOTIFICATION

### 8.1. Submissions

The development application was advertised and notified during the period 28 June to 13 July 2023.

Objections were received from:

1. **Veron and Marie Phitidis – 7 Olola Avenue Vacluse; and**
2. **Mark and Natalie Samuelson – 10 Olola Avenue Vacluse.**

The objections raised the following concerns:

- *Excessive height and associated visual impacts upon adjoining Olola Avenue properties to the rear*

Subject to recommended **Condition C.1a** requiring the rear elevation of the proposed first floor level to be set back an additional 600mm from the rear boundary in order to bring it into compliance with Council's height development standard, the residual non-compliances are due to the previous excavation of the site, the steeply falling topography of the site from front to rear, are predominantly associated with a proposed pitched roof form which is considered to be contextually compatible and are satisfactory in terms of amenity impacts upon the locality and a rear deck at first floor level which is compliant in terms of distances of lines of sight to privacy sensitive areas of adjoining properties subject to recommended **Condition C.1b** requiring privacy screening to be provided its south-eastern side.

These issues are discussed in greater depth under section 12.5 of this report.

- *Excessive bulk and scale*

The proposal is considered to be satisfactory in terms of visual impacts upon the locality. This issue is discussed in greater depth under sections 12.5, 13.1 & 13.2 of this report.

- *Loss of visual and acoustic privacy*

Subject to **Conditions C.1a & b and I.4**, the proposal is considered to be compliant with Council's visual and acoustic privacy requirements. These issues are discussed in greater depth under subsequent section 13.2 of this report.

- *Non-compliances with Council's DCP building envelope controls including side and rear boundary setbacks*

The proposal is fully compliant with Council's rear boundary setback requirements.

Subject to **Conditions C.1a & b**, the proposal is considered to be satisfactory in terms of adequately upholding the objectives of Council's DCP building envelope controls that are not complied with (the south-eastern side boundary setback and wall height inclined plane control. These issues are discussed in greater depth under subsequent section 13.2 of this report.

- *Overshadowing*

The proposal will maintain compliance with Council's solar access requirements. This issue is discussed in greater depth under section 13.2 of this report.

## **8.2. Statutory declaration**

The applicant has completed a statutory declaration declaring that the site notice was erected and maintained during the original notification/advertising period.

## **9. SEPP (BUILDING SUSTAINABILITY INDEX: BASIX) 2004**

SEPP (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The development application was accompanied by BASIX Certificate A486812 committing to environmental sustainability measures. These requirements have been addressed by recommended conditions of consent.

## **10. SEPP (RESILIENCE AND HAZARDS) 2021**

Clause 4.6(1)(a) of SEPP (Resilience and Hazards) 2021, requires consideration to be given as to whether the subject land is contaminated. In the absence of any information indicating the potential contamination of the site, further consideration of this issue is not warranted in this instance. The subject application is considered to be satisfactory with regard to the relevant provisions of SEPP (Resilience and Hazards) 2021.

## **11. SEPP (BIODIVERSITY AND CONSERVATION) 2021**

### **11.1. Chapter 2 Vegetation in non-rural areas**

The provisions of Chapter 2 Vegetation in non-rural areas require the consideration of the proposal with regard to tree impacts.

Council's consultant arborist has provided the following tree impact assessment of the proposal.

*A total of 30 trees have been identified within and adjacent to the site that will be impacted by the proposal. This includes 9 trees proposed for removal and the remaining 21 trees to be retained and protected.*

*The following tree numbering has been adopted from the Arboricultural Impact Assessment prepared by Urban Arbor dated 8 December 2022.*

#### *Tree Removal – Exempt Species*

*The plans indicate trees 4, 13 and 15 are proposed for removal to facilitate the proposed works.*

*These trees have been identified as species that exempt from the provisions of the WMC DCP Chapter E.3 – Tree Management and can be removed without consent regardless of the proposed development.*

#### *Tree Removal – Low Retention Value*

*The plans indicate trees 19, 20 and 21 are proposed for removal to facilitate construction of the new building and landscape upgrade works.*

*The trees have been rated as having Low Landscape Significance and Low Retention Value and are not considered worthy of any design changes to allow for their retention.*

*Therefore, no objections to their removal are raised subject to replacement planting being undertaken at the completion of the works.*

#### *Tree Removal – Medium Retention Value*

*The plans indicate trees 14, 17 and 18 are proposed for removal as they are located within footprint of the new swimming pool and building extension works.*

*Although these trees have been rated as having Medium Landscape Significant and Medium Retention Value in the applicants Arborist Report, they have been identified as small Palm trees that provide minimal canopy cover to the immediate area. It is considered that their removal will not have any negative impacts on amenity and canopy cover.*

*Therefore, the removal of these palms is supported.*



### Tree Retention

*The plans indicate trees 1, 2, 3, 5, 6, 10, 11, 22, 25, 28 and 30 will not be the subject of any encroachments into their Tree Protection Zones from the proposed works. However, to ensure these trees are not damaged during the works, tree protection measures are to be installed and maintained in accordance with recommended conditions.*

*The plans indicate works are proposed within the Tree Protection Zones of trees 7, 8, 9, 12, 16, 23, 24, 26, 27 and 29 of varying levels. However, the majority of the works are elevated structures supported on pier foundations and will only require localised excavations for footings. Provided the footing locations can be repositioned if any tree roots greater than 40mm are identified during the works, these trees are not expected to be adversely impacted by the proposed works.*

*To ensure these trees remain viable and are protected during the works, tree protection conditions have been recommended.*

Council's consultant arborist considers the subject application to be satisfactory in terms of tree impacts subject to conditions.

## **11.2. Chapter 6 Water catchments**

The land is located within the Sydney Harbour Catchment, outside the Foreshores and Waterways Area of the Catchment.

The proposal is considered to be satisfactory in terms of the *Division 2 Controls on development generally* subject to Council's standard conditions addressing stormwater run-off and sedimentation control.

The proposal as conditioned is considered to be satisfactory with regard to the relevant provisions of SEPP (Biodiversity and Conservation) 2021.

## **12. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014**

### **12.1 Clause 1.2: Aims of Plan**

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

### **12.2 Land Use Table**

The proposal is associated with a dwelling house use or uses that are ancillary to the dwelling house use which is permissible within the R2 Low Density Residential zone.

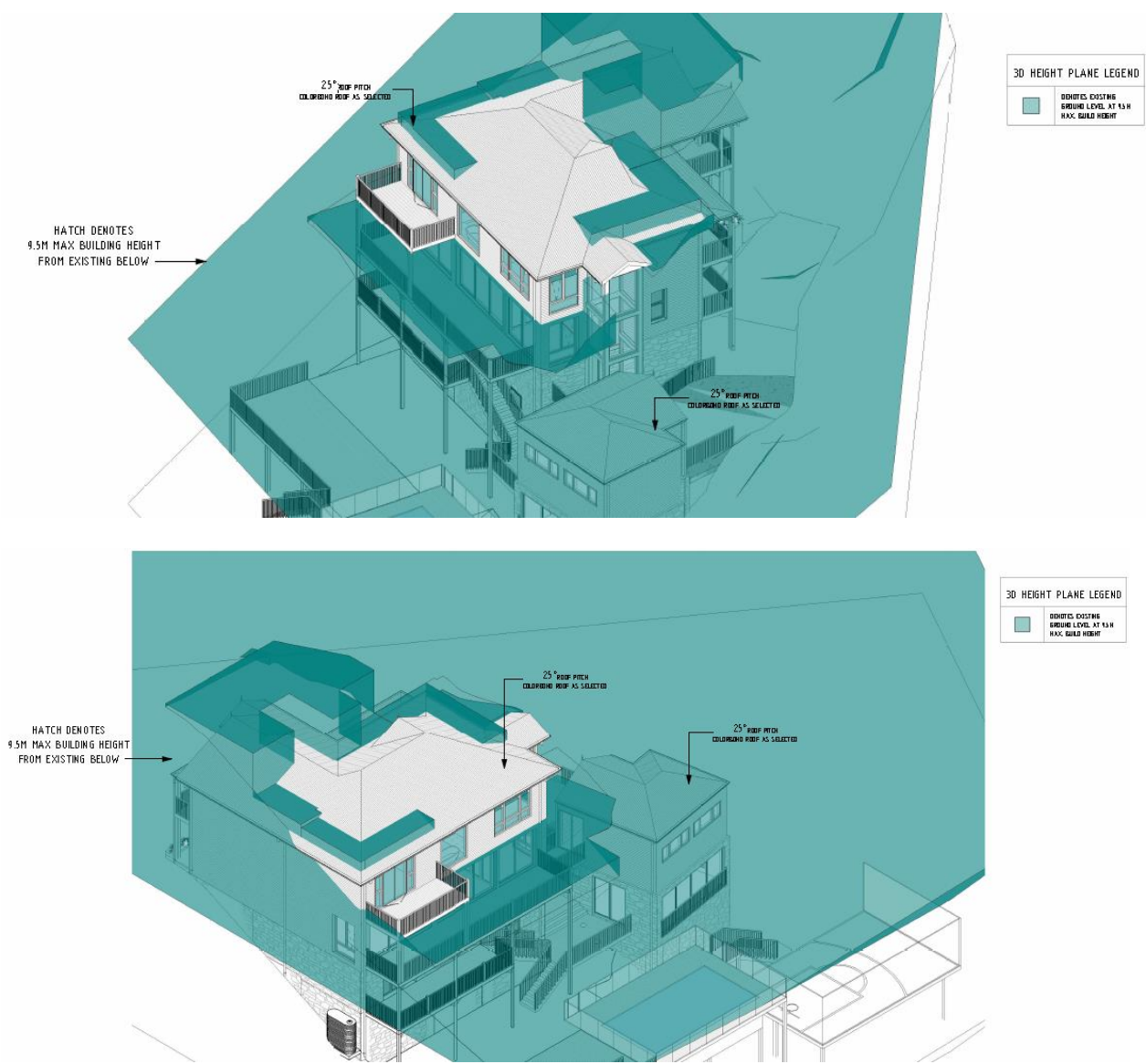
### **12.3 The objectives of the zone**

The proposal as conditioned is considered to be consistent with the objectives of the R2 Low Density Residential zone.

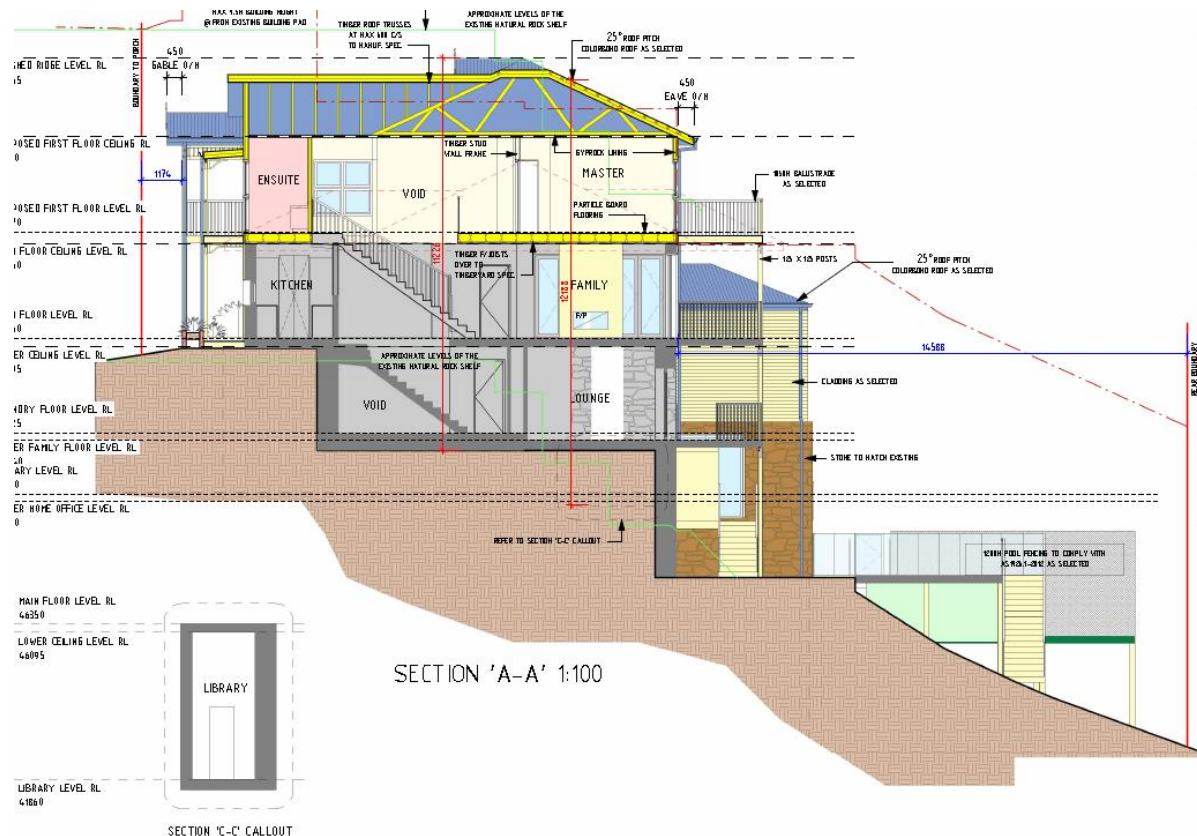
### **12.4 Clause 4.3: Height of Buildings**

Clause 4.3 limits development to a maximum height of 9.5m as measured above existing ground level. The proposal involves a maximum height of approximately 12.8m, a non-compliance of 3.3m or 35%.

The non-compliances relate to the sections of the proposal coloured grey extending outside the green 9.5m height blanket as documented in the images below.



The non-compliances relate to the sections of the proposal extending above the red broken line in the image below.



## 12.5 Clause 4.6: Exceptions to Development Standards

### Departure

Sections of the proposed first floor level and roof are non-compliant with Council's 9.5m maximum building height development standard prescribed under Clause 4.3 of Woollahra LEP 2014 as detailed above under Section 12.4.

### Purpose

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

### Written Request

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

A Clause 4.6 written statement submitted with the development application in summary makes the case that:

- *Compliance with the development standard is unreasonable and unnecessary as the proposed building height and bulk is of an appropriate form and scale and is compatible with surrounding development and with the desired future character for the locality.*
- *The component of the development above the height control is limited to the rear part of the proposed first floor level and is a consequence of the land falling away. The remainder of the proposed works comply with the building height standard.*

- *The proposed first floor addition will not visually dominate the property or streetscape.*
- *The proposed height is compatible with existing surrounding dwellings. It is noted that the adjoining dwelling to the north at 37 Wentworth Road has a non-compliant building height.*
- *The site slopes steeply from the front to the rear by approximately 12m. The height breach is attributed to the steep topography of the site. It is site specific conditions that result in the numerical variation. The proposed works will not impact the existing topography and natural vegetation.*
- *Despite the height variation, the proposal will present as a 2-storey form to the streetscape.*
- *Exceedance of the height control will not create unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity.*
- *The proposed scale and bulk is appropriate contextually and will not appear out of character with other buildings in the vicinity.*
- *The proposed development achieves compliance with the relevant underlying objectives of the standard and the objectives of the zone.*

The Clause 4.6 written statement submitted with the development application is included in full as Attachment 7.

On the basis of the above, the case is made that compliance with the development standard is unreasonable/unnecessary and that there exists an environmental planning ground (the steep topography of the site) to justify contravening the development standard.

#### **Clause 4.6(4) Assessment**

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

*a) The consent authority is satisfied that:*

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

*b) The concurrence of the Secretary has been obtained.*

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

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

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

Subject to recommended **Conditions C.1a & b** requiring the rear elevation of the proposed first floor level to be setback an additional 600mm from the rear boundary in order to bring it into compliance with Council's height development standard and requiring privacy screening to be provided to the south-eastern side of the height non-compliant proposed rear balcony at first floor level, it is considered that the residual non-compliances satisfy the unreasonable or unnecessary tests established by the Court in *Wehbe* and the provisions of cl 4.6(3)(a).

The objectives of the development standards are discussed further in the assessment of Clause 4.6(4)(a)(ii).

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

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

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

S1.3 of the EPA Act states:

### *1.3 Objects of Act*

*The objects of this Act are as follows:*

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

Subject to recommended **Conditions C.1a & b**, it is considered that the residual non-compliances above existing ground level adequately uphold the above-mentioned objects of the Act that on the basis that:

- They are the result of the previous excavation of the site and the steeply sloping topography of the site.
- They are considered to be contextually compatible within the locality.
- It is considered that they will not result in any significant amenity impacts upon adjoining properties or the public domain.
- They are considered to be consistent with the objectives of Council's height of buildings development standard and the desired future character for the locality.



With regard to the establishment of an environmental planning ground based upon height above natural ground level i.e. the ground level that existed prior to previous excavation of the site, the interpretation of height was considered by the Court in *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070. There was discussion in *Bettar* concerning the interpretation of *existing ground level* and *basement* which are separately defined.

The LEP definition of *building height* requires a measurement from existing ground level, rather than the ground level that existed prior to the previous excavation of the site.

In considering application of the height development standard, it was indicated by the Court that relying on existing basement levels would result in the height control artificially rising and falling across the site. In *Bettar*, the Court took the approach of measuring height with the intent, in part, of relating the development proposal to its context in the streetscape.

The Court made the following relevant comments:

*"It is relevant to consider the objectives of the building height development standard in considering how best to determine the maximum height of the building using the dictionary definitions in LEP 2012....As one of the purposes of the development standard is to relate the proposal to its context, it follows that the determination of the existing ground level should bear some relationship to the overall topography that includes the site..."*

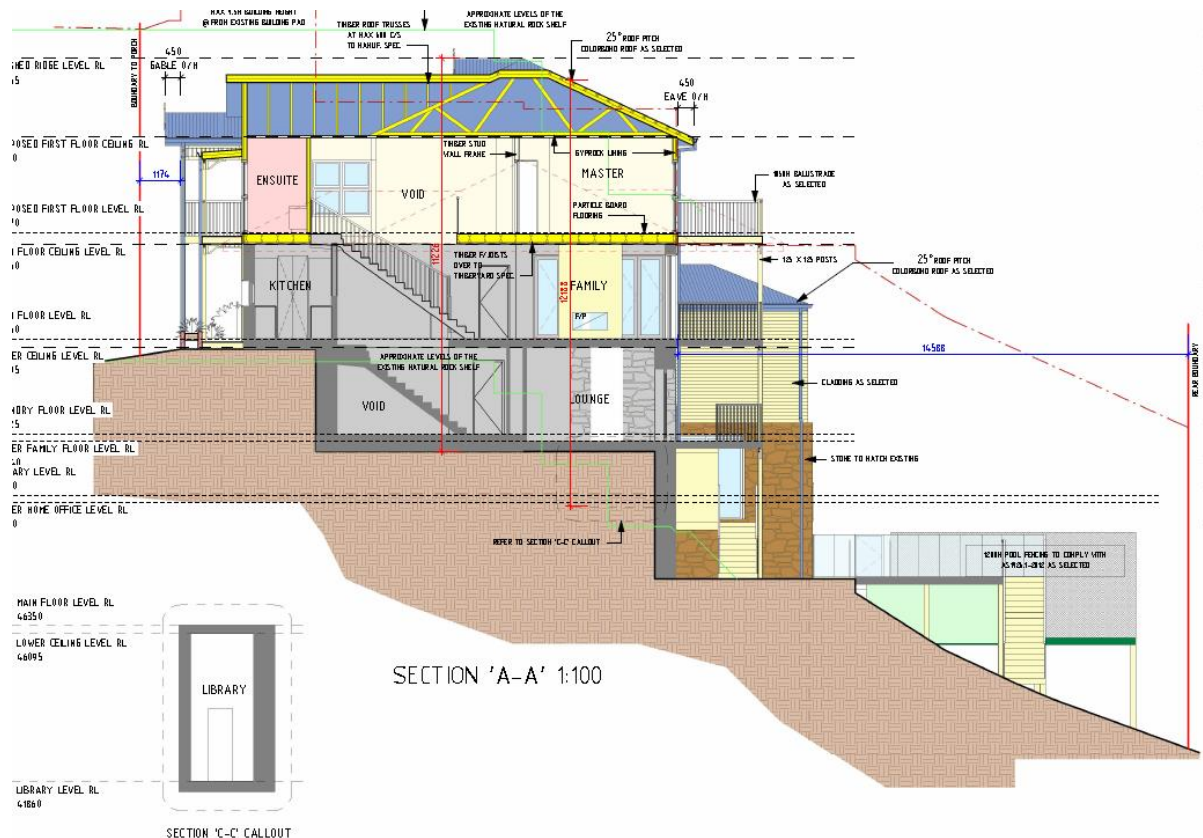
*The definition of basement in LEP 2012 is the space of a building where the floor level of that space is predominantly below existing ground level and where the floor level of the storey immediately above is less than 1 metre above existing ground level [italics added]. From this definition, it does not follow that existing ground level becomes the level of the basement floor or the soil beneath the basement following the construction of a basement. A basement is, by definition, below ground level and so the level of the basement floor cannot be taken to be existing ground level.*

*For these reasons, I do not accept [the] approach of defining existing ground level as the ground floor level of the existing building and then dropping it down to the basement level in the north-eastern corner of the site where the existing basement is located. This... relates only to a building that is to be demolished and has no relationship to the context of the site...*

*I prefer [the alternate] approach to determining the existing ground level because the level of the footpath at the boundary bears a relationship to the context and the overall topography that includes the site and remains relevant once the existing building is demolished." (emphasis added).*

In light of the above judgement, regard has been given to the height of the non-compliant components above natural ground level, i.e. the ground level that existed prior to previous excavation of the site.

The image below is a longitudinal section documenting an estimation of the natural ground level. The 9.5m height plane above natural ground level is indicated by the upper green line.



Subject to recommended **Condition C.1a**, the residual elements of the proposal that extend beyond 9.5m above both existing and natural ground level are considered to be justifiable on the basis of the steeply sloping topography of the site.

The residual non-compliances with Council's 9.5m height development standard are considered to be contextually compatible with development within the locality and accordingly is considered to uphold objects 1.3(c) and (g) of the EPA Act. In this regard, the proposed roof ridge RL54.365 is comparable with that of both adjacent side properties; RL55.5 with regard to 29 Wentworth Road and RL54.7 with regard to 37 Wentworth Road.

On the basis of the above, it is considered that there exists sufficient environmental planning grounds in this instance to justify the contravention of the development standard as required by Clause 4.6(3)(b) and the consent authority can be satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

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

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

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

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

### **The objectives underlying Clause 4.3 – Height of Buildings**

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

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

Subject to recommended **Condition C.1a**, the residual non-compliances are considered to be of an appropriate scale and form contextually so as to be adequately compatible with the character and amenity of the surrounding neighbourhood. Accordingly, the residual non-compliances are considered to be consistent with the above-mentioned objectives of the height of buildings development standard.

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

The residual non-compliances will not result in any significant overshadowing to adjoining properties with solar access maintained in accordance with Council's requirements. Accordingly, the residual non-compliances are considered to be consistent with the above-mentioned objective of the height of buildings development standard.

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

The residual non-compliances will not result in any significant view loss, loss of privacy, overshadowing or visual intrusion to adjoining properties. Accordingly, the residual non-compliances are considered to be consistent with the above-mentioned objective of the height of buildings development standard.

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

The residual non-compliances will not result in any significant loss of public views.

Accordingly, the residual non-compliances are considered to be consistent with the above-mentioned objective of the height of buildings development standard.

### **The objectives of the R2 Low Density Residential zone**

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

The dwelling house use is permissible within the subject R2 Low Density Residential zoning. The residual non-compliances are considered to be compatible with the low-density residential surrounds. Accordingly, the residual non-compliances are considered to be consistent with the above-mentioned objective of the zone.

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

This objective is not relevant to the subject application.

- To provide for development that is compatible with the character and amenity of the surrounding neighbourhood; and*
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.*



Subject to recommended **Conditions C.1a & b**, it is considered that the residual non-compliances adequately uphold the above-mentioned objectives on the basis that:

- They are the result of previous excavation and the steeply sloping topography of the site.
- They are considered to be contextually compatible within the locality.
- They will not result in any significant amenity impacts upon adjoining properties.

Accordingly, the residual non-compliances are considered to be consistent with the above-mentioned objective of the zone.

#### **Clause 4.6(4)(a)(b) - Assessment**

The Department issued Planning Circular No.PS20-002 (dated 5 May 2020) which notified Councils of arrangements “...where the Director General’s concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6 ...of the Standard Instrument...”. Clause 64 of the EPA Regulations provides that Council may assume the Director-General’s [Secretary’s] concurrence for exceptions to development standards, thus satisfying the terms of this clause.

#### **Conclusion**

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

The consent authority may also be satisfied that the proposal is not contrary to the public interest as the non-compliance is deemed to be consistent with the objectives of the development standard and those applicable to development within the subject R2 Low Density Residential zone.

The proposal is therefore considered to be satisfactory with regard to the provisions of Clause 4.6 of Woollahra LEP 2014.

#### **12.6 Clause 5.10: Heritage Conservation**

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

The subject site is not heritage affected with regard to the provisions of Clause 5.10 of Woollahra LEP 2014.

Council’s Heritage Officer has raised no objection to the proposal in terms of the demolition of the existing dwelling house or impacts upon the local heritage items located within the vicinity of the subject site.

Council’s Heritage Officer considers the proposal to be satisfactory with regard to potential impacts upon Aboriginal archaeological objects and skeletal remains subject to recommended conditions relating to the protection of an existing sandstone outcrop to the north-western section of the site, the protection of unexpected findings of Aboriginal archaeological objects and skeletal remains and associated training requirements.

The proposal as conditioned is considered to be satisfactory with regard to the provisions of Clause 5.10 of Woollahra LEP 2014.

## **12.7 Clause 5.21: Flood Planning**

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

The subject site is not located within Council's flood planning area and is considered to be satisfactory with regard to the provisions of Clause 5.21 of Woollahra LEP 2014.

## **12.8 Clause 6.1: Acid Sulfate Soils**

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

The subject site is located within a Class 5 area as specified in the Acid Sulfate Soils Map. The subject works will not lower the water table below 1m AHD on any land within 500m of a Class 1, 2 and 3 land classifications. Accordingly, a preliminary assessment is not required in this instance.

## **12.9 Clause 6.2: Earthworks**

Clause 6.2(1) requires Council to ensure that any earthworks and associated groundwater dewatering will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. In deciding whether to grant consent for earthworks and associated groundwater dewatering, the consent authority must consider the following matters:

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

The proposal involves significant earthworks associated with the proposed gym/office/garage and the new pedestrian access.

Council's consultant Development Engineer considers the proposed earthworks to be satisfactory in terms of geotechnical/ hydrogeological issues subject to recommended conditions of consent. Council's consultant arborist considers the proposed earthworks to be satisfactory in terms of tree impacts, subject to conditions.

Council's Heritage Officer considers the proposed earthworks to be satisfactory in terms of potential disturbance of relics, subject to conditions.

Additional conditions of consent have been recommended limiting the times and duration of machine excavation and requiring adequate dust mitigation.

The proposal as conditioned is considered to be acceptable with regard to the provisions of Clause 6.2 of the Woollahra LEP 2014.

### 13. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

#### 13.1 Chapter B1.10: Vaucluse West Residential Precinct

The desired future character objectives of the Vaucluse West Precinct are as follows:

- O1 *To respect and enhance the streetscape character and key elements of the precinct.*
- O2 *To retain the scenic qualities provided by the dramatic topography and natural vegetation that provide an attractive setting on Sydney Harbour.*
- O3 *To maintain the evolution of residential building styles through the introduction of good contemporary buildings incorporating modulation and a varied palette of materials.*
- O4 *To minimise building bulk and scale of three storey development by designing development to generally present as a two storey form to the street.*
- O5 *To design and site buildings to respond to the topography and minimise cut and fill.*
- O6 *To protect important views from the public spaces of the precinct to the harbour and the city skyline including view corridors between buildings.*
- O7 *To reinforce the landscape setting and maintain the existing tree canopy.*
- O8 *To retain and reinforce the green setting of mature street trees, private trees and garden plantings.*

Streetscape character and key elements of the Vaucluse West Precinct:

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

- a) *the relationship of the precinct to the harbour;*
- b) *the rich mixture of architectural styles, and the emphasis on their connection to the landform;*
- c) *buildings set within highly visible gardens;*
- d) *buildings addressing the street; and*
- e) *the harbour and iconic views available from the streets of the precinct, including view corridors between buildings.*

The proposal presents a 2 storey, adequately articulated form to Wentworth Road.

A sufficiently varied palette of external materials is proposed including timber, metal, glass and stone.

The proposal is considered to be contextually appropriate and satisfactory in terms streetscape visual impacts.

The proposed excavation is not considered to be excessive.

No significant loss of public views is envisaged.

Council's consultant arborist considers the proposal to be satisfactory in terms of tree impacts, subject to conditions.

The proposal as conditioned is considered to be consistent with the desired future character objectives for the Vaucluse West precinct.

## 13.2 Chapter B3: General Development Controls

### Part B3.2.2: Front boundary setback

*C1 The front setback of the building envelope is determined by averaging the three most typical setbacks of the four closest residential buildings that face the same side of the street. Note: The setback is determined by the distance between the primary street boundary and the outside face of the front building wall, or any protruding balcony deck or the like (excluding car parking structures).*

*C2 The building has a maximum unarticulated width of 6m to the street frontage.*

Council's minimum front setback requirement (C1) is 1.5-7.4m (the existing front setback) in this instance.

The proposed front porch, patio and balcony additions encroach approximately 1-2.5m forward of the existing front setback to within 0-6.4m of the front boundary and are non-compliant.

The objectives of Council's front setback control are as follows:

- O1 To reinforce the existing streetscape and character of the location.*
- O2 To provide consistent front setbacks in each street.*
- O3 To provide for landscaped area and deep soil planting forward of the building.*

It is considered that the proposed front porch/patio addition is sufficiently open in design to be contextually compatible within the locality.

Compliance with C2 is achieved.

The proposal is considered to be satisfactory with regard to the provisions of B3.2.2 of Woollahra DCP 2015.

### Part B3.2.3: Side boundary setbacks

*C1 The minimum side setback for dwelling houses, semi-detached dwellings and dual occupancies is determined by the table in Figure 5A.*

*C4 The building has a maximum unarticulated wall length of 12m to the side elevation.*

Recommended **Condition C.1a** achieves compliance with C4, by reducing the length of the south-eastern side elevation from 12.5m to 11.9m.

The side boundary setbacks required by C1 are 3.4m in this instance. Whilst the minimum north-western side boundary setback of 16.2m is compliant, the proposed first floor addition adopts the same 1.2m south-eastern side boundary setback as the existing dwelling house which is non-compliant.

The objectives of the side boundary setback control are:

- O1 To avoid an unreasonable sense of enclosure and to facilitate an appropriate separation between buildings.*
- O2 To ensure the side elevation of buildings are well articulated.*
- O3 To protect the acoustic and visual privacy of residents on adjoining properties.*
- O4 To facilitate solar access to habitable windows of adjoining properties.*
- O5 To facilitate views between buildings.*
- O6 To provide opportunities for screen planting.*

*O7 To allow external access between the front and rear of the site.*

The south-eastern setback of the proposed first floor addition is consistent with the existing dwelling house and will not have any significant adverse amenity impacts upon the adjoining property to the south-east (29 Wentworth Road). In this regard, whilst the non-compliance will result in additional overshadowing to the north-western elevation of the adjoining property, solar access will be maintained in accordance with Council's requirements.

Screen planting potential and access to the existing south-eastern setback will not be diminished.

The proposal is considered to be satisfactory with regard to the provisions of B3.2.3 of Woollahra DCP 2015.

**Part B3.2.4: Rear boundary setback**

*C1 The rear setback is a consequence of the site depth, front setback and building depth.*

*C4 Notwithstanding C1 above, the minimum rear setback is 3m.*

A rear boundary setback of approximately 8m is required in this instance. The proposed additions are fully compliant with proposed rear boundary setbacks of approximately 10.8-12.8m. The proposal is considered to be satisfactory with regard to the provisions of B3.2.4 of Woollahra DCP 2015.

**Part B3.2.5: Wall height and inclined plane**

*C1 On land zoned R2 Low Density Residential and for a dwelling house, semi-detached dwelling or dual occupancy in the R3 Medium Density Residential zone:*

- a) the wall height is 7.2m above existing ground level; and*
- b) an inclined plane is taken from a point 7.2m above existing ground level at each of the setbacks (the inclined plane is at 45 degrees from horizontal); and*
- c) roof eaves may protrude into the setback if below the inclined plane.*

*C2 A variation to the wall height of 7.2m may be considered where the slope of the site within the building envelope is greater than 15 degrees. The variation will only be considered to walls located nearest to the downslope section of the building envelope, i.e. the section with the lowest existing ground level.*

The front and south-eastern side elevations of the proposed works are non-compliant with Council's 7.2m wall height/ 45° inclined plane control due to the above-mentioned boundary setback non-compliances and additionally, in the case of the south-eastern side elevation, due to the steeply sloping site. In this regard, the 22° slope on the site qualifies for the above-mentioned potential variation under C2.

The objectives of Council's wall height and inclined plane control are as follows:

- O1 To limit the bulk, scale and visual impact of buildings as viewed from the street and from adjoining properties.*
- O2 To limit overshadowing of adjoining properties across side boundaries.*
- O3 To limit overshadowing to south facing rear yards.*
- O4 To provide acoustic and visual privacy to adjoining and adjacent buildings.*
- O5 To facilitate views between buildings.*

It is considered that subject to recommended **Conditions C.1a & b** requiring the rear elevation of the proposed first floor level to be setback an additional 600mm from the rear boundary in order to bring it into compliance with Council's height development standard and requiring privacy screening to be provided to the south-eastern side of the height non-compliant rear balcony at first floor level,

the non-compliances adequately uphold the above-mentioned objectives with no significant amenity impacts upon the adjoining properties or the streetscape envisaged.

The proposal as conditioned is considered to be satisfactory with regard to the above-mentioned objectives of B3.2.5 of Woollahra DCP 2015.

### **Part B3.3: Floorplate**

- C1 The total floorplate of a development does not exceed 165% of the buildable area.*
- C2 New floorplate is to be wholly within the building envelope.*
- C3 The floorplates at each level are distributed to:
  - a) respond to the predominant character of the immediate streetscape;*
  - b) retain public views; and*
  - c) provide for view sharing of private views.**
- C4 The built form complies with solar access and privacy controls in Section 3.5.2 Overshadowing and Section 3.5.4 Acoustic and visual privacy.*
- C5 Where car parking is provided within the building envelope, the garage area (up to 40m<sup>2</sup>) is added to the permitted total floorplate.*

The proposal is compliant with Council's floorplate control (C1) with 583m<sup>2</sup> proposed v 691m<sup>2</sup> permitted and accordingly the proposal is considered to be satisfactory with regard to the provisions of B3.3 of Woollahra DCP 2015.

### **Part B3.4: Excavation**

- C1 For a dwelling house, dual occupancy or semi-detached dwelling (including attached and detached garaging)—the maximum volume of excavation permitted is no greater than the volume shown in Figure 14A.*
- C6 Basement walls and any piling (or similar structural elements) must be no closer to the boundary than permitted by the setback controls.*

The proposal involves approximately 181m<sup>3</sup> of excavation which complies with Council's maximum permissible volume of excavation of 239m<sup>3</sup>.

No basement walls are proposed.

Accordingly, the proposal does not involve any non-compliances with C1 or C6 and is considered to be satisfactory with regard to the provisions of B3.4 of Woollahra DCP 2015.

### **Part B3.5.1: Streetscape and local character**

- C1 The building is consistent with the desired future character of the area set out in the precinct controls in Parts B1 and B2 of this DCP.*
- C2 Development retains vegetation of landscape value.*
- C3 Development steps down sloping sites and follows the topography of the land.*
- C4 External building materials and colours do not detract from the streetscape. Bright or obtrusive colour schemes are avoided.*

- C5 *Roof forms and roof structures (including roof terraces, lifts, lift overruns, stairwells, access hatches, and other like structures) are well-designed, contribute positively to the streetscape, and are well-integrated with the architecture of the building.*
- C6 *The use of reflective materials is minimal (including windows, access hatches, skylights and balustrades).*
- C7 *In heritage conservation areas or where the existing the immediate streetscape is predominantly characterised by pitched roof forms, new development incorporates pitched roof forms.*
- C8 *Roof materials are non-reflective and do not cause excessive glare to adjacent properties.*
- C9 *The building addresses the street and provides opportunities for casual surveillance. At least one habitable room window overlooks the street.*

The proposed pitched roof forms are compliant with C7 and the proposed colorbond roof is considered to be satisfactory in terms of reflectivity (C6).

The proposed external materials and finishes consisting of timber, metal, glass and stone are considered to be acceptably unobtrusive and a high level of articulation will be provided to the front elevation via the proposed front porch, patio and balcony additions thereby adequately mitigating visual impacts upon the streetscape.

Council's consultant arborist considers the proposal to be satisfactory with regard to tree impacts subject to conditions.

The proposal is considered to be satisfactory with regard to the provisions of B3.5.1 of Woollahra DCP 2015.

### **Part 3.5.2: Overshadowing**

- C1 *The development is designed so that:*
  - a) *sunlight is provided to at least 50% (or 35m<sup>2</sup> with a minimum dimension of 2.5m, whichever is the lesser) of the main ground level private open space of adjacent properties for a minimum of 2 hours between 9am and 3pm on 21 June. Where existing overshadowing is greater than this, sunlight is not further reduced; and*
  - b) *north-facing windows to upper level habitable rooms of adjacent dwellings receive at least all 3 hours of sun between 9am and 3pm on 21 June over a portion of their surface.*
- C2 *Lot orientation may make C1 above difficult to achieve so a reduced amount of solar access may be considered, provided the proposed building complies with all setback controls.*

The proposed development is compliant with Council's solar access controls and is considered to be satisfactory with regard to the provisions in Part B.3.5.2 of Woollahra DCP 2015.

### **Part 3.5.3: Public and Private Views**

#### Public views

- C1 *Development is sited and designed so that the following public views are maintained or enhanced:*
  - a) *significant views and vistas identified in the precinct maps in this Chapter B1 Residential Precincts and Chapter B2 Neighbourhood HCAs of this DCP; and*

- b) views from other public open space areas, particularly from ridgelines to Sydney Harbour and the Sydney CBD skyline.*
- C2 Vistas along streets are preserved or enhanced through sensitive development location and form.*
- C3 Development on the low side of the street preserves district, iconic and harbour views from the street by:*
  - a) providing substantial breaks between buildings, front fences, car parking and other structures; and*
  - b) incorporating fences with transparent or open end panels at each side boundary to provide for views.*
- C4 Roof forms on the low side of streets are designed to allow public views and add interest to the scenic outlook. Flat expansive roofs with vents, air conditioning units, plant equipment (including lifts and lift overruns) and similar structures are inappropriate.*

#### Public views

No significant loss of public views are envisaged as a result of the proposal.

#### Private views

The controls applicable to private views are as follows:

- C5 Development is sited and designed to enable a sharing of views with surrounding private properties, particularly from the habitable rooms.*
- C6 Development steps down the hillside on a sloping site.*
- C7 The design of the roof form (including roof terraces, lifts, lift overruns, stairwells, access hatches, screens, and other like structures) provides for view sharing.*
- C8 Roof terraces are uncovered to provide for view sharing. All elements on roof terraces are to comply with the maximum building height control. Note: Access to roofs should not comprise visually prominent stand-alone structures such as lifts or large stairways, particularly on flat roofs.*

The objective underlying the above-mentioned private views controls states:

- O3 To encourage view sharing as a means of ensuring equitable access to views from private property.*

No significant loss of private views are envisaged as a result of the proposal.

#### Landscaping based private view loss

- C9 The location and species of new tree planting frames and preserves public and private views. Planting must not be used to block views.*
- O4 To ensure that views are not compromised by landscaping.*

The proposed landscaping is considered to be satisfactory in terms of view impacts.



The proposal is considered to be satisfactory with regard to the provisions of Part B3.5.3 of Woollahra DCP 2015.

**Part B3.5.4: Acoustic and Visual Privacy**

- C1 *Dwellings are designed to ensure adequate acoustic separation and privacy to the occupants of all dwellings.*
- C2 *Dwellings located close to high noise sources, such as a busy road or railway line are to:*
- a) be designed to locate habitable rooms and private open space away from the noise source; and*
  - b) include sound attenuation measures, such as acoustic glazing and insulation.*
- C3 *Electrical, mechanical, hydraulic and air conditioning equipment is housed so that it does not create an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 either within or at the boundaries of any property at any time of the day.*
- C4 *New windows in habitable rooms are designed to prevent a direct sightline to the habitable room windows or private open space of an adjacent dwelling within 9m.*

*This may be achieved by options including, but not limited to (in order of preference):*

- a) Window location—primary windows to habitable rooms are located and designed to provide an outlook to the front and rear setbacks, not the side boundaries.*
- b) Layout and separation—offsetting windows from the windows/private open spaces of the adjoining dwelling to limit views between the windows/private open space.*
- c) Architectural design solutions and devices—redirecting and limiting sightlines using deep sills with planter boxes, fixed horizontal or vertical louvres, or other screening devices set off the windows internally or externally.*
- d) Glazed opening windows—using windows with translucent glazing to a height of 1.5m above floor level and fitted with a winder mechanism to control the maximum angle of the opening to limit views.*
- e) Glazed fixed windows or high sills—using fixed windows with translucent glazing in any part of the window below 1.5m above floor level, or window sill heights of 1.5m above floor level.*

*Note: Applicants may be required to demonstrate how privacy impacts are resolved by way of view line diagrams, photographs and other suitable means.*

- C5 *Windows to bathrooms and toilet areas have translucent glazing where these have a direct view to, and from, habitable rooms and private open space on adjoining and adjacent properties.*
- C6 *Architectural design solutions and screening devices referred to in C4 (c) above are integrated with the overall design and contribute to the architectural merit of the building, having particular regard to:*
- a) aesthetics of the building including impacts on visual bulk;*
  - b) compliance with minimum boundary setback controls;*
  - c) appearance from adjoining properties; and*
  - d) views from adjoining or adjacent properties.*
- C7 *Private open spaces and the trafficable area of roof terraces (at or below the second storey) are to be suitably located and screened to prevent direct views to neighbouring:*

- a) *habitable rooms (including bedrooms) within 9m; and*
- b) *private open space within 9m.*

*Note: Private open space includes an area external to a building including land, terrace, balcony or deck.*

- C8 *For a dwelling house, dual occupancy, semi-detached dwelling, or attached dwelling— the acceptability of any elevated balcony, deck, or terrace will depend on the extent of its impact, its reasonableness and its necessity.*

*Note: Refer to Super Studio vs Waverley Council, (2004) NSWLEC 91*

- C9 *Windows and balconies of an upper-level dwelling are designed to prevent overlooking of the private open space of a dwelling below within the same development.*

- C10 *The trafficable area of a roof terrace (above the second storey) is setback so that there is no direct line of sight, from that part of the building where the terrace or deck is, to:*

- a) *neighbouring private open space within 12m; or*
- b) *windows of habitable rooms in neighbouring dwellings within 12m.*

- C11 *Lighting installations on a roof terrace or upper level deck are:*

- a) *contained within the roof terrace area and located at a low level; or*
- b) *appropriately shaded and fixed in a position so light is projected downwards onto the floor surface of the terrace.*

*Note: Lighting of roof terraces must be designed in compliance with Australian Standards 4282-1997 Control of obtrusive effects of outdoor lighting.*

#### Visual privacy assessment

In order to achieve compliance with the above-mentioned visual privacy requirements, the following visual privacy mitigation measures are recommended via **Conditions C.1b, d & e**.

- The provision of privacy screening to the south-eastern side of the proposed rear balcony at first floor level;
- The provision of fixed translucent glazing or alternatively privacy louvres to a minimum height of 1.5m above floor level to the south-eastern side elevation of the proposed family room;
- The deletion of the rear component of the swimming pool decking surround and the adjacent stair access; and
- The provision of 1.65m high privacy screening to the rear alignment of the proposed mini basketball court.

In other respects, compliant distances of lines of sight from the proposed balconies, windows, swimming pool and basketball court are achieved.

Council's standard condition pertaining to the control of outdoor lighting has been recommended (see **Condition I.3**).

#### Acoustic privacy assessment

It is considered that the proposal will not result in any significant acoustic privacy impacts upon adjoining properties subject to the imposition of Council's standard condition relating to the control of offensive noise (see **Condition I.4**).

The proposal as conditioned is considered to be satisfactory with regard to the provisions of Part B3.5.4 of Woollahra DCP 2015.

**Part B3.5.5: Internal amenity**

- C1 All habitable rooms in a dwelling must have at least one external wall primarily above the existing ground level which provides an unobstructed window opening.*
- C2 All habitable rooms and sanitary compartments in a dwelling must have direct natural light and direct natural ventilation.*
- C3 The area of unobstructed window openings should be equal to at least 20% of the room floor area for habitable rooms.*
- C4 Light wells must not be the primary air source for habitable rooms.*
- C5 Any room of a dwelling either partially or fully below existing ground level (excluding basement parking and storage areas) is limited to a maximum room depth of twice the ceiling height.*

The proposal is considered to be satisfactory with regard to Council's internal amenity requirements stipulated under B3.5.5 of Woollahra DCP 2015.

**Part B3.6: On-Site Parking**

- C1 On-site parking is designed and located so that it:
  - a) does not dominate the street frontage;*
  - b) preserves significant trees and vegetation of landscape value; and*
  - c) is located within the buildable area.**
- C2 For garages facing the street frontage, the maximum garage width is no greater than 40% of the site frontage width or 6m, whichever is the lesser.*
- C3 Where possible on-site parking is to be accessed from the rear.*
- C4 Where there is no rear lane access, on-site parking is located within the building envelope.*
- C6 Notwithstanding C4, car parking structures may be located in the front setback (i.e. outside the building envelope) where:
  - a) the rise or fall measured to a distance of 7m from the street frontage is greater than 1 in 3 (refer to Figure 20A); and*
  - b) the car parking structures is incorporated into a podium or street wall; and*
  - c) the car parking structures is not more than 40m<sup>2</sup> in area.**
- C7 For garages located in the front setback, the maximum height of the garage structure is 2.7m above the footpath level.*
- C9 For separate structures, the roof form, materials and detailing complement the principal building.*
- C10 Garage doors are designed to complement the building design and any important character elements within the street.*
- C11 The width of driveways is minimised. Generally the width is no more than the minimum width required to comply with the relevant Australian Standards (see Section E1).*

*C12 Only one driveway entrance is provided. For example, development involving more than one dwelling shares the driveway access.*

The proposed garage is considered to be compliant with the above-mentioned controls and to be satisfactory with regard to the provisions of Part B3.6 of Woollahra DCP 2015.

### **Part B3.7: External Areas**

#### **Part 3.7.1: Landscaped Areas and Private Open Space**

	<b>Proposed</b>	<b>Control</b>	<b>Complies</b>
C1 Deep Soil External to Buildable Area	322m <sup>2</sup>	50% (275m <sup>2</sup> )	<b>Yes</b>
C2 Deep Soil in Front Setback	50m <sup>2</sup>	40% (30m <sup>2</sup> )	<b>Yes</b>
C4 Deep Soil in Rear Setback	160m <sup>2</sup>	50% (135m <sup>2</sup> )	<b>Yes</b>

*C1 For development in the R2 and R3 residential zones—at least 50% of the site area outside the buildable area is deep soil landscaped area.*

*C2 At least 40% of the front setback comprises deep soil landscaped area.*

*C4 At least 50% of the rear setback comprises deep soil landscaped area.*

*C5 The deep soil landscaped area is free of garaging, paving, outbuildings, tennis courts, swimming pools, above ground and below ground structures including stormwater works.*

*C6 For a dwelling house—a primary open space area of at least 35m<sup>2</sup> is provided.*

*C8 The primary open space area in C6 above has a gradient of no more than 1 in 10.*

*C9 Excavation or fill is permitted to achieve the required level area of primary open space up to 1.2m from existing ground level.*

*C10 Part of the primary open space area is directly accessible from a habitable room.*

*C12 Development takes advantage of opportunities to provide north-facing private open space to achieve comfortable year round use.*

*C13 Private open space is clearly defined for private use through planting, fencing or landscape features.*

*C14 The location of private open space:*

- a) takes advantage of the outlook and natural features of the site;*
- b) reduces the adverse privacy and overshadowing impacts; and*
- c) addresses surveillance and privacy where private open space abuts public space.*

*C16 Existing trees and vegetation of landscape value are incorporated into the landscape area and treatment.*

*C17 Native species are preferred, and landscape designs are encouraged to provide at least 50% of the plants as native species.*

*C18 Landscaping provides for a diversity of native species and a complexity of habitat through vertical layering. Note: Vertical layering, by planting a variety of vegetation in different sizes and heights provides more cover and feeding opportunities for wildlife species.*

*C19 Landscaping facilitates the linking of open space reserves through wildlife corridors and reduces habitat fragmentation and loss.*

*C20 The landscape design:*

- a) uses vegetation types and landscaping styles which contribute to the streetscape and desired future character objectives for the locality;*
- b) uses vegetation types that will not block views;*
- c) does not adversely affect the structure of the proposed building or buildings on adjoining properties;*
- d) considers personal safety by ensuring good visibility along paths and driveways and avoiding shrubby landscaping near thoroughfares;*
- e) contributes to energy efficiency and amenity by providing substantial shade in summer, especially to west facing windows and open car park areas and admitting winter sunlight to outdoor and living areas and other habitable rooms;*
- f) improves privacy between dwellings;*
- g) minimises risk of damage to overhead power lines and other services; and*
- h) provides adequate sight lines for vehicles and pedestrians, especially near street corners and intersections.*

The proposal is compliant with Council's deep soil landscaped area and private open space requirements.

The proposed plantings are considered to be satisfactory in terms of amenity impacts upon adjoining properties.

Council's consultant arborist considers the proposal to be satisfactory in terms of tree impacts and proposed landscaping subject to conditions.

The proposal as conditioned is considered to be satisfactory with regard to the provisions of Part B3.7.1 of Woollahra DCP 2015.

#### Part 3.7.3: Site Facilities

- C1 Lockable mail boxes are provided close to the street and are integrated with front fences or building entries.*
- C3 Development that includes a residential component provides opportunity for at least one external clothes drying area.*
- C4 External clothes drying areas have access to sunlight, and are located in a secure place away from public spaces and screened from public view. Note: External drying areas may be located in the deep soil landscaped area.*
- C7 Mechanical plant equipment (including lift overruns) are not be visible from the streetscape or public domain.*
- C8 Mechanical plant equipment (including lift overruns) do not unreasonably impact on the visual or acoustic amenity of adjoining properties. The impact on neighbours is less than the impact on the occupants of the site where the air-conditioning unit is located.*
- C9 Mechanical plant equipment (including lift overruns) are suitably enclosed or screened to minimise noise impacts to adjoining properties. Note: Noise emissions from mechanical plant equipment must not exceed the background noise levels when measured at the boundary of the development site. The provisions of the Protection of the Environment Operations Act 1997 apply.*

- C10 New fireplaces burn non-solid fuels, e.g. gas or electricity.*
- C12 Site services are suitably integrated with the development including the landscape design and are not visually intrusive within the streetscape.*
- C13 Hydraulic fire services such as fire hydrants and booster installations are concealed. These services are to be:*
- a) enclosed with doors if located in the building façade, or*
  - b) housed in a cabinet or enclosure if located external to the building.*

*The location, design, colour and material of the doors, cabinet or enclosure are visually unobtrusive and suitably integrated with the development, including fencing and landscaping.*

The proposal is considered to be compliant with the above-mentioned provisions, subject to recommended **Condition C.1c** requiring the proposed fireplace to utilise only non-solid fuel and Council's standard conditions requiring adequate sound attenuation of mechanical plant (see recommended **Conditions I.2 & I.5**).

The proposal as conditioned is considered to be satisfactory with regard to the provisions of Part B3.7.3 of Woollahra DCP 2015.

#### Part 3.7.4: Ancillary Development - Swimming pools

- C1 The swimming pool does not occupy the deep soil landscaped area.*
- C2 Excavation beyond the controls in Section B3.4 is permitted to accommodate a backyard swimming pool, where the pool is outside the building envelope.*
- C3 The swimming pool (measured from the water edge) is at least 1.8m from property boundaries.*
- C4 The swimming pool surrounds are no more than 1.2m above or below the existing ground level.*
- C5 The swimming pool is no deeper than 2m from the pool surround level.*
- C6 The location and design of the swimming pool and associated works do not adversely impact on prescribed trees.*

The proposed swimming pool and associated surround decking are elevated approximately 1.5-4.3m above existing ground level which is non-compliant with Council's 1.2m maximum control C4. The proposed swimming pool is otherwise compliant with the above-mentioned controls.

The objectives of the control state:

- O1 To provide for recreational opportunities for swimming without compromising the amenity of the adjoining properties.*
- O2 To limit excavation.*
- O3 To retain trees and vegetation of landscape value.*

In order to mitigate potential visual amenity impacts upon adjoining properties, it is recommended that the pool be required to be lowered by 1.5m (the maximum possible without requiring additional excavation), the residual exposed pool casement be required to be adequately screened and the rear pool surround/ terrace be deleted (see recommended **Condition C.1d**).

It is considered that the pool as conditioned will not result in any significant amenity impacts upon adjoining properties and is considered to be satisfactory with regard to the provisions of Part B3.7.4 of Woollahra DCP 2015.

#### B3.7.4: Ancillary Development - Outbuildings

- C1 The outbuilding is located within the building envelope or the rear setback.*
- C2 Maximum height of the outbuilding is 3.6m and the outbuilding is to be sited a minimum of 1.5m from the side and rear boundaries.*
- C3 The outbuilding, if located outside the building envelope, does not reduce the deep soil landscaped area and the private open space areas below the minimum required for development, as specified in Section 3.7.1 Landscaped areas and private open space.*

The proposed mini basketball court including the fencing thereto involves a height of 3.8-6.2m which is non-compliant with C2. It is otherwise compliant with the above-mentioned controls.

The objective of the controls are:

- O1 To ensure that outbuildings do not unreasonably compromise the amenity of the occupants or the adjoining properties.*

Concern is raised that the proposed elevated mini basketball court would impart significant visual and visual privacy impacts upon adjoining properties to the rear (9 & 10 Olola Avenue). Accordingly, it is recommended that the court be lowered by 900mm, the maximum possible without requiring additional significant excavation and that privacy screening be provided to the rear alignment of the court (see recommended **Condition C.1e**).

The proposal as conditioned is considered to be satisfactory with regard to the provisions of Part B3.7.4 of Woollahra DCP 2015.

### **13.3 Chapter E1: Parking and Access**

#### **Part E1.4: Residential parking**

The proposal provides 1 off-street car parking space which does not exceed Council's maximum requirement for 2 car parking spaces for a dwelling house development as per E1.4.2.

#### **Part E1.10: Parking and access design standards**

Council's consultant Development Engineer considers the proposal to be satisfactory in terms of parking and access design subject to recommended conditions.

### **13.4 Chapter E2: Stormwater and Flood Risk Management**

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

Council's consultant Development Engineer considers the proposal to be satisfactory in terms of stormwater management subject to a condition.

The subject site is not located within Council's flood planning area.

The proposal as conditioned is considered to be acceptable with regard to the provisions of Part E2 of Woollahra DCP 2015.



### **13.5 Chapter E5: Waste Management**

The provisions of this chapter aim to establish waste minimisation and sustainable waste management during demolition and construction phases and throughout the on-going use of the building.

Council's standard conditions adequately addressing the provisions of Chapter E5 of Woollahra DCP 2015 have been recommended.

### **13.6 Chapter E8: Adaptable Housing**

C2 states that dwelling-houses and dual occupancies are encouraged to provide adaptable housing design.

The proposal provides internal lift access and is considered to be satisfactory with the relevant provisions of Chapter E8 of Woollahra DCP 2015.

## **14. CONTRIBUTION PLAN**

The Section 7.12 Contributions Plan is applicable. A 1% levy (of the total cost of works) applies. With a cost of works of approximately \$1,680,981, a payment of \$16,810 is required by condition which will be used for a variety of works as outlined in the Section 7.12 Contributions Plan.

## **15. APPLICABLE ACTS/REGULATIONS**

### **15.1 Clause 61(1) of the EPA Regulation 2021**

Clause 61(1) of the EPA Regulation 2021 requires Council to take into consideration Australian Standard AS 2601-1991: The demolition of structures. This requirement is addressed by Council's standard condition.

### **15.2 Swimming Pools Act 1992**

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

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

These requirements are addressed by recommended conditions.

### **15.3 National Parks and Wildlife Act 1974**

Council's Senior Environment and Sustainability Officer has provided the following assessment of the proposal:

*The proposed development is located within a habitat corridor and in close proximity to the habitat areas of Vaucluse House, Nielsen Park and Sydney Harbour. Various threatened species are known to occur in the locality, including Powerful Owls.*

*A hedge of 7 Lilly Pillies will be planted, and most of the significant vegetation on the site is proposed for retention.*

Council's Senior Environment and Sustainability Officer considers the proposal to be satisfactory subject to **Conditions** requiring tree protection measures, pre-clearance surveys and threatened species protection.

Council's Heritage Officer considers the proposal to be satisfactory with regard to potential impacts upon Aboriginal archaeological objects and skeletal remains subject to recommended **Conditions** relating to the protection of an existing sandstone outcrop to the north-western section of the site, the protection of unexpected findings of Aboriginal archaeological objects and skeletal remains and associated training requirements.

## **16. DRAFT AMENDMENTS TO WOOLLAHRA LEP 2014**

Public Exhibition commenced on 10 August 2022 for new floor space ratio development standards for low density residential development, and urban greening requirements for all residential development. The proposed amendments to the Woollahra Local Environmental Plan 2014 aim to ensure that all new development is of an appropriate scale, retains and enhances tree canopy whilst including high-quality landscaping.

Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979, requires that provisions of proposed planning instruments are to be considered by a consent authority when determining a development application if they are or have been the subject of public consultation.

As it applies to the subject application, reference is made to *Alamdo Holdings Pty Limited v The Hills Shire Council* [2012] NSWLEC 1302 which had regard to the proper interpretation of savings provisions under the relevant LEP.

The current savings provisions under Clause 1.8A of the Woollahra LEP 2014 read as follows:

*If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.*

As detailed in the *Alamdo* case, because the savings provision did not include the wording 'had been exhibited' in the savings provision, the provision did not specify whether the instrument was to be treated as a proposed instrument. Based on the specific wording, the Court accepted that because the LEP had to be treated as if it had not commenced it could not be considered under Section 4.15(1)(a)(i). Furthermore, it was not considered a proposed instrument i.e. one that has already been made, noting that the savings provision did not specify it should be treated as though it had. It could therefore not be considered under Section 4.15(1)(a)(ii).

Having considered the wording of Clause 1.8A of the Woollahra LEP 2014 and the above discussion the proposed amendments would have no effect upon the subject application.

## **17. THE LIKELY IMPACTS OF THE PROPOSAL**

All likely impacts have been addressed elsewhere in the report.

## **18. THE SUITABILITY OF THE SITE**

The site is considered suitable for the proposed development as conditioned.

## 19. CONCLUSION

This assessment has considered the application in terms of the relevant matters under Section 4.15(1) of the Environmental Planning and Assessment Act and other relevant considerations and the proposal is considered to be satisfactory in this regard, subject to conditions.

## 20. DISCLOSURE STATEMENTS

Under Section 10.4 of the Environmental Planning and Assessment Act, 1979 there have been no disclosure statements regarding political donations or gifts made to any Councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.

## 21. RECOMMENDATION PURSUANT TO SECTION 4.16 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

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

AND

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, grant development consent to Development Application No. 197/2023/1 for alterations and additions to the existing dwelling house, including a first floor addition, new garage with office below, new swimming pool, decking, mini basketball court, landscaping and site works on land at 31 Wentworth Road Vaucluse, subject to the following conditions:

### A. General Conditions

#### A.1 Conditions

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

#### A.2 Definitions

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

***Applicant*** means the applicant for this consent.

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

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

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

**Council** means Woollahra Municipal Council

**Court** means the Land and Environment Court

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

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

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

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

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

**PC** means the Principal Certifier under the *Act*.

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

**Professional engineer** has the same meaning as in the *BCA*.

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

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

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

**Site** means the land being developed subject to this consent.

**Woollahra LEP** means *Woollahra Local Environmental Plan 2014*

**Woollahra DCP** means *Woollahra Development Control Plan 2015*

**Work** for the purposes of this consent means:

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

**Note: Interpretation of conditions** - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.

### A.3 Approved Plans and Supporting Documents

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

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

Reference	Description	Author/Drawn	Date
J1736 Pages 3, 5-14 & 18 Issue I	Architectural drawings	Atria Designs	18/06/2024
J1736 Page 19 Issue I	Landscape Plan	Atria Designs	18/06/2024
221208-31	Arboricultural Impact Assessment Report	Urban Arbor	8/12/22
22149 SW01 Rev C SW02 Rev C SW03 Rev C SW03 Rev C	Stormwater Management Plans	Elite Australian Engineering	18/04/2024

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

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

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

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

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

### A.5 No Underpinning works

This development consent does NOT give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties and Council's property.

### A.6 Tree Preservation & Approved Landscaping Works

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

a) The following trees shall be retained

- Trees on Private Land

Council Ref No.	Species	Location	Dimension (metres)
1	<i>Archontophoenix alexandrae</i>	Refer to the Arboricultural impact Assessment prepared by Urban Arbor for tree locations and numbers.	4 x 1
2	<i>Murraya paniculata</i>		4 x 2
3	<i>Plumeria spp</i>		4 x 2
5	<i>Howea forsteriana</i>		4 x 1
6	<i>Howea forsteriana</i>		9 x 1
7	<i>Archontophoenix alexandrae</i>		7 x 2
8	<i>Angophora costata</i>		14 x 5
9	<i>Pittosporum undulatum</i>		6 x 2
10	<i>Brachychiton acerifolius</i>		7 x 2
11	<i>Macadamia spp</i>		7 x 1
12	<i>Castanospermum australe</i>		7 x 2
16	<i>Howea forsteriana</i>		7 x 2
19	<i>Howea forsteriana</i>		3 x 2
22	<i>Phoenix canariensis</i>		6 x 3
23	<i>Lophostemon confertus</i>		18 x 6
24	<i>Phoenix canariensis</i>		8 x 3
26	<i>Persea americana</i>		12 x 3
27	<i>Eucalyptus botryoides</i>		17 x 6
28	<i>Pittosporum undulatum</i>		6 x 3
29	<i>Glochidion ferdinandi</i>		10 x 4
30	<i>Pittosporum undulatum</i>		4 x 2

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

b) The following trees may be removed:

Council Ref No.	Species	Location	Dimension (metres)
4	<i>Ligustrum lucidum</i>	Refer to the Arboricultural impact Assessment prepared by Urban Arbor for tree locations and numbers.	6 x 2
13	<i>Olea europaea subsp. cuspidata</i>		6 x 2
14	<i>Howea forsteriana</i>		8 x 2
15	<i>Ligustrum lucidum</i>		12 x 3
17	<i>Howea forsteriana</i>		7 x 1
18	<i>Howea forsteriana</i>		7 x 1
20	<i>Glochidion ferdinandi</i>		9 x 4
21	<i>Macadamia spp</i>		5 x 2

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

**Note:** The species marked (\*) is exempt from the WMC DCP 2015 and can be removed without requiring consent from Council.

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

**B.1 Construction Certificate Required Prior to Any Demolition**

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

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

**Note:** See *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.

## **B.2 Identification of Hazardous Material**

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

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

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

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

## **B.3 Aboriginal Heritage – Induction**

Prior to any ground disturbance works commencing on site, all construction staff and contractors must be made aware of their statutory obligations for Aboriginal heritage under the National Parks and Wildlife Act 1974. This must be implemented as a heritage induction programme provided by a heritage consultant with Aboriginal heritage expertise.

## **B.4 Archaeological monitoring**

Prior to any site works, an appropriately qualified and experienced heritage consultant is to be appointed for the project. That person is to be approved by Council's Heritage Staff.

The heritage consultant and a representative from the La Perouse LALC shall monitor the initial phases of construction, particularly during initial ground disturbance and bulk excavation to ensure no significant archaeological fabric is damaged or removed without approval.

## **B.5 Sandstone outcrop**

A physical barrier (such as temporary construction fencing) is to be placed between the area where the proposed works are to be carried out and the sandstone outcrop located in the north-western corner of the allotment. This is to be installed prior to works commencing and not removed until works have been completed.

## **B.6 Establishment of Tree Protection Zone (TPZ) Fence**

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

a) Tree Protection Zone areas

Council Ref No.	Species	Tree Location	Fence Radius from Centre of Trunk (Metres)
1	<i>Archontophoenix alexandrae</i>	Refer to the Arboricultural Impact Assessment prepared by Urban Arbor dated 8 December 2022 for tree locations and numbers.	Tree Protection Fencing shall be installed in the locations as shown on Appendix 1B: Proposed Site Plan in the AIA Report Assessment prepared by Urban Arbor dated 8 December 2022.
2	<i>Murraya paniculata</i>		
3	<i>Plumeria spp</i>		
5	<i>Howea forsteriana</i>		
6	<i>Howea forsteriana</i>		
7	<i>Archontophoenix alexandrae</i>		
8	<i>Angophora costata</i>		
9	<i>Pittosporum undulatum</i>		
10	<i>Brachychiton acerifolius</i>		
11	<i>Macadamia spp</i>		
12	<i>Castanospermum australe</i>		
16	<i>Howea forsteriana</i>		
19	<i>Howea forsteriana</i>		
22	<i>Phoenix canariensis</i>		
23	<i>Lophostemon confertus</i>		
24	<i>Phoenix canariensis</i>		
26	<i>Persea americana</i>		
27	<i>Eucalyptus botryoides</i>		
28	<i>Pittosporum undulatum</i>		
29	<i>Glochidion ferdinandi</i>		
30	<i>Pittosporum undulatum</i>		

**Note:** Where this condition relates to street trees and the fence cannot be placed at the specified radius, the fencing shall be positioned so that the entire verge (nature strip) area in front of the subject property, excluding existing driveways, footpaths and bus stops is protected.

**Note:** Where this condition relates to trees on private property the radial distance of fencing shall be positioned only within the subject property.

- b) Tree Protection Zones shall be fenced with a 1.8 metre high chainmesh or weldmesh fence and secured to restrict access. The fence shall be established prior to any materials being brought onto the site and before the commencement of works including demolition. The area within the fence shall be mulched and maintained to a depth of 75mm. The soil within the TPZ shall be kept in a moist condition for the duration of the construction works. Unless approved by the site arborist there shall be no access within the TPZ.

Trunk protection shall consist of a padding material such as hessian or thick carpet underlay wrapped around the trunk. Hardwood planks (50mm x100mm or similar) shall be placed over the padding and around the trunk of the tree at 150mm centres. The planks shall be secured with 8-gauge wire at 300mm spacing. Trunk protection shall extend a minimum height of 2 metres or to the maximum possible length permitted by the first branches.

- c) A sign identifying the Tree Protection Zone shall be erected on each side of the protection fence indicating the existence of a TPZ. Signage must be visible from within the development site.
- d) No excavation, construction activity, grade changes, storage of materials, stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is permitted within Tree Protection Zones, unless specified in this consent.
- e) Temporary access within the TPZ for pedestrian and machinery movements shall only be permitted with the approval of the site arborist or unless specified in this consent.



- f) The site supervisor must be made aware of all tree protection requirements associated with these conditions of consent by the project arborist. Any subsequent site personnel and contractors to the site must be made aware of all tree protection requirements by the site foreman.
- g) The project arborist shall provide written certification of compliance with the above condition.

## B.7 Permissible work within Tree Protection Zones

The following works are permissible within the Tree Protection Zone:

Council Ref No.	Species	Radius from Trunk (metres)	Approved works
7	<i>Archontophoenix alexandrae</i>	2.5m	Construction of new deck
8	<i>Angophora costata</i>	5.9m	Construction of new deck
9	<i>Pittosporum undulatum</i>	5.7m	Construction of new deck
12	<i>Castanospermum australe</i>	4.1m	Construction of new swimming pool
16	<i>Howea forsteriana</i>	3m	Construction of new deck and building extension works
19	<i>Howea forsteriana</i>	2m	Construction of new garage and gym and building extension works
23	<i>Lophostemon confertus</i>	14.7m	Construction of new basketball court
24	<i>Phoenix canariensis</i>	4m	Construction of new basketball court
26	<i>Persea americana</i>	5.6m	Construction of new basketball court
27	<i>Eucalyptus botryoides</i>	8.8m	Construction of new garage and gym and building extension

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

## B.8 Demolition and Construction Management Plan

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

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

## B.9 Arborists Documentation and Compliance Checklist

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

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

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

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

Stage of arboricultural inspection and supervision	Compliance documentation and photos shall be included
Prior to the demolition of any building or construction and prior to the commencement of any development work	<ul style="list-style-type: none"> <li>• Project Arborist to hold pre construction site meeting with the principal contractor to discuss methods and importance of tree protection measures and resolve any issues in relation to feasibility of tree protection requirements that may arise. Project Arborist to mark all trees approved for removal under DA consent.</li> <li>• The project arborist shall install or supervise the installation of tree protection fencing, trunk protection, ground protection and traffic height control beam.</li> </ul>
During any development work	<ul style="list-style-type: none"> <li>• The project arborist shall supervise all demolition and excavation works within the Tree Protection Zones or specified distances of nominated trees listed in this consent.</li> <li>• The project arborist shall supervise the construction of the new garage and gym within the TPZ of any tree listed for retention, documenting the condition of roots and soil.</li> <li>• The project arborist shall ensure pier holes within the Tree Protection Zones or specified distances of nominated trees listed in this consent are positioned to avoid the severance of and damage to roots greater than 50mm diameter.</li> <li>• The project arborist shall inspect the installed irrigation system to plants in garden beds. The arborist shall certify there is an appropriate distribution of water to planted and existing trees.</li> <li>• Project Arborist to approve relocation of tree protection for landscaping. All landscaping works within the TPZ of trees to be retained are to be undertaken in consultation with the project Arborist to minimise the impact to trees.</li> </ul>
Prior to any occupation or use of the building	<ul style="list-style-type: none"> <li>• Ensure all trees conditioned to be planted as part of this consent have been planted in accordance with the details prescribed in this consent.</li> </ul>
Prior to the issue of a Final Occupation Certificate	<ul style="list-style-type: none"> <li>• The project arborist shall supervise the dismantling of tree protection measures</li> <li>• After all demolition, construction and landscaping works are complete the project Arborist shall assess that the subject trees have been retained in the same condition and vigour. If changes to condition are identified the project Arborist should provide recommendations for remediation.</li> </ul>

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

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

#### **B.10 Tree Protection Measures**

Prior to the commencement of works, tree protection measures must be installed on site for all vegetation to be retained, in accordance with AS 4970 Protection of trees on development sites and to the satisfaction of the certifier. Parking or storing of building supplies or equipment within the fenced areas around trees is prohibited. Tree protection measures must be maintained until construction is complete.

#### **B.11 Pre-Clearance Surveys**

Pre-clearance surveys must be undertaken by the project arborist or other suitably qualified person prior to any tree removal works. If any nesting fauna is identified, works must be postponed until the breeding cycle is complete.

### **C. Conditions which must be satisfied prior to the issue of any construction certificate**

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

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

- a) In order to reduce the extent of the non-compliance with Council's 9.5m height of buildings development standard and to achieve a recessive rear elevation appearance, the proposed first floor level, including the rear balcony, must be set back an additional 600mm from the rear (north-eastern) boundary without altering the front and side setbacks. Internal layout on this level may be altered, if necessary, to achieve this requirement.
- b) In order to mitigate visual privacy impacts upon adjoining properties in accordance with the provisions of B3.5.4 of Woollahra DCP 2015, the following visual privacy mitigation measures are required:
  - i) The provision of privacy screening to the south-eastern side of the proposed rear balcony at first floor level;
  - ii) The provision of fixed translucent glazing or alternatively privacy louvres to a minimum height of 1.5m above the main ground floor level to the south-eastern side facing window to the proposed family room.
- c) In order to prevent air pollution, the proposed outdoor fireplace is to utilise only non-solid fuel in accordance with the requirements of Control C10 of B3.7.3 of Woollahra DCP 2015.
- d) In order to adequately mitigate amenity impacts upon adjoining properties and to accord with the provisions of *B3.7.4 Ancillary development - swimming pools*, the finished level of the proposed swimming pool, including the surrounding deck/terrace, shall be lowered by 1.5m to RL38.06, the residual exposed pool casement must be either screened with timber or faced in stone. In addition, the rear pool deck/terrace and adjacent stairs must be deleted. Alternative stair access to the pool is permitted on the south-western side of the pool.
- e) In order to adequately mitigate amenity impacts upon adjoining properties and to accord with the provisions of *B3.7.4 Ancillary development – outbuildings*, the proposed mini basketball court must be lowered by 900mm and privacy screening must be provided to the entire rear alignment of the court to a height of 1.65m above the level of the court.

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

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

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

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

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

Description	Amount	Indexed	Council Fee Code
<b>LONG SERVICE LEVY</b> under <i>Building and Construction Industry Long Service Payments Act 1986</i>			
<b>Long Service Levy</b> <a href="http://www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator">www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator</a>	Contact LSL Corporation or use online calculator	No	
<b>SECURITY</b> under section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>			
<b>Property Damage Security Deposit</b> -making good any damage caused to any property of the Council	\$44,137	No	T115
<b>INSPECTION FEES</b> under section 608 of the <i>Local Government Act 1993</i>			
Public Road and Footpath Infrastructure Inspection Fee (\$138 Fee)	\$645	No	T45
<b>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</b>	\$44,782 plus any relevant indexed amounts and long service levy		

### Building and Construction Industry Long Service Payment

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

### How must the payments be made?

Payments must be made by:

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

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

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

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

### C.3 Payment of S7.12 Contributions Levy

A payment of a levy authorised by section 7.12 of the Environmental Planning and Assessment Act 1979 must be paid prior to the issue of any Construction Certificate or Subdivision Works Certificate. The Principal Certifier is to be provided with the original receipt for payment under the Woollahra Section 7.12 Development Contributions Plan 2022.

A cost estimate report, no more than 3 months old, demonstrating the proposed cost of carrying out the development must be completed and submitted to Council for determination of the costs of work. This report must incorporate all approved modification applications. The costs and expenses of the proposed cost of development must be established in accordance with clause 208 of the Environmental Planning and Assessment Regulation 2021.

The cost estimate report must be in the form of:

- A cost summary report, prepared by the applicant or a suitably qualified person for a development up to \$749,999; or
- A quantity surveyor's report, for development over \$750,000.

The applicable levy rate is to be calculated using the summary schedule below.

Summary Schedule	
Development Cost	Levy Rate
• Up to and including \$100,000	Nil
• More than \$100,000 and up to and including \$200,000	0.5% of the cost
• More than \$200,000	1% of the cost

#### How must the payments be made?

Payments must be made by:

- Cash deposit with Council,
- Credit card payment with Council, or
- Bank cheque made payable to Woollahra Municipal Council.

#### Deferred or periodic payment of section 7.12 levy

Where the Applicant makes a written request supported by reasons for payment of the section 7.12 levy other than as required by clause 2.9, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:

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

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

- the guarantee is by an Australian bank for the amount of the total outstanding contribution,
- the bank unconditionally and irrevocably agrees to pay the guaranteed sum to the Council on written request by Council prior to the issue of an occupation certificate,
- a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable,
- the bank agrees to pay the guaranteed sum without recourse to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent, and
- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

Any deferred or periodic payment of the section 7.12 levy will be adjusted in accordance with clause 2.12 of the Plan. The Applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.

**Do you need HELP indexing the levy?**

Please contact Council's Customer Service Team on 02 9391 7000. Failure to correctly calculate the adjusted development levy will delay the issue of any certificate issued under section 6.4 of the Act and could void any such certificate (e.g. construction certificate, subdivision certificate, or occupation certificate).

**Condition Reason:** To ensure any relevant contributions are paid.

#### **C.4 BASIX Commitments**

The Applicant must submit to the Certifying Authority BASIX Certificate No. A486812 with any application for a Construction Certificate.

**Note:** Where there is any proposed change in the BASIX commitments the Applicant must submit of a new BASIX Certificate to the Certifying Authority and Council. If any proposed change in the BASIX commitments are inconsistent with development consent (see: clauses 145 and 146 of the *Regulation*) the Applicant will be required to submit an amended development application to Council pursuant to section 4.55 of the *Act*.

All commitments in the BASIX Certificate must be shown on the Construction Certificate plans and specifications prior to the issue of any Construction Certificate.

**Note:** Clause 145(1)(a1) of the *Environmental Planning and Assessment Regulation 2000* provides: "A certifying authority must not issue a Construction Certificate for building work unless it is satisfied of the following matters: (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires".

#### **C.5 Road and Public Domain Works – Council Approval Required**

A separate application under section 138 of the *Roads Act 1993* is to be made to, and be approved by Council as the road authority, for the following infrastructure works prior to the issuing of any Construction Certificate. The following infrastructure works must be carried out at the Applicant's expense:

- a) The modification of the existing vehicular crossing to allow vehicular access to the proposed garage. The construction of the modified vehicular crossing should be in accordance with Council's Crossing Specification, Council's Standard Driveway Drawing RF2\_D and to the satisfaction of Council's Assets Engineers. Design longitudinal profiles along each edge/side of the proposed crossing, starting from the road centreline, to the parking slab, must be submitted for assessment.
- b) The installation of stormwater outlet pipe across the nature strip to Wentworth Road in accordance with Council's Specification for Roadworks, Drainage and Miscellaneous Works and to the satisfaction of Council's Assets Engineers.
- c) The reinstatement of all damaged footpath, kerb and gutter and road pavement to Council's Specification and to the satisfaction of Council's Assets Engineers.
- d) Where a grass verge exists, the balance of the area between the footpath and the kerb over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of Couch turf.

**Note:** To ensure that this work is completed to Council's satisfaction, this consent by separate condition, may impose one or more Infrastructure Works Bonds.

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

**Note:** The intent of this condition is that the design of the road, footpaths, driveway crossings and public stormwater drainage works must be detailed and approved prior to the issue of any *Construction Certificate*. Changes in levels may arise from the detailed design of buildings, road, footpath, driveway crossing grades and stormwater. Changes required under *Roads Act* 1993 approvals may necessitate design and levels changes under this consent. This may in turn require the applicant to seek to amend this consent.

**Note:** Refer to the advising titled *Roads Act Application* under Section *K Advising*s of this consent.

## C.6 Soil and Water Management Plan – Submission and Approval

The Principal Contractor or Owner-builder must submit to the Certifying Authority a soil and water management plan complying with:

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

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

The Certifying Authority must be satisfied that the soil and water management plan complies with the publications above prior to issuing any Construction Certificate.

**Note:** This condition has been imposed to eliminate potential water pollution and dust nuisance.

**Note:** The International Erosion Control Association – Australasia [www.austieca.com.au](http://www.austieca.com.au) lists consultant experts who can assist in ensuring compliance with this condition. Where erosion and sedimentation plans are required for larger projects it is recommended that expert consultants produce these plans.

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

**Note:** Pursuant to clause 161(1)(a)(5) of the *Regulation* an Accredited Certifier may be satisfied as to this matter.

## C.7 Structural Adequacy of Existing Supporting Structures

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

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

## C.8 Professional Engineering Details

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

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

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

## C.9 Engineer Certification

This development consent does NOT give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties and Council's property.

Any structural design is not to incorporate any temporary or permanent underpinning works or ground anchors, bolts, etc which encroach outside the boundaries of the subject property. Engineer certification to this effect shall be submitted to the Certifying Authority prior to issue of any Construction Certificate.

## C.10 Geotechnical and Hydrogeological Design, Certification & Monitoring

Prior to the issue of the Construction Certificate, the applicant must submit, for approval by the Principal Certifier, a detailed geotechnical report prepared by a geotechnical engineer with National Engineering Register (NER) credentials in accordance with Council's DCP and Councils document "*Guidelines for Preparation of Geotechnical and Hydrogeological Reports*". In particular, minimum two cored boreholes drilling to the depth of excavation must be carried out. The report must also include a Geotechnical / Hydrogeological Monitoring Program together with civil and structural engineering details for foundation retaining walls, footings, basement tanking, and subsoil drainage systems, as applicable, prepared by a professional engineer, who is suitably qualified and experienced in geotechnical and hydrogeological engineering.

These details must be certified by the professional engineer to:

- a) Provide appropriate support and retention to ensure there will be no ground settlement or movement, during excavation or after construction, sufficient to cause an adverse impact on adjoining property or public infrastructure,
- b) Provide appropriate support and retention to ensure there will be no adverse impact on surrounding property or infrastructure as a result of changes in local hydrogeology (behaviour of groundwater),
- c) Provide details of cut-off walls or similar controls prior to excavation such that any temporary changes to the groundwater level, during construction, will be kept within the historical range of natural groundwater fluctuations. Where the historical range of natural groundwater fluctuations is unknown, the design must demonstrate that changes in the level of the natural water table, due to construction, will not exceed 0.3m at any time,
- d) Provide tanking of all below ground structures to prevent the entry of all ground water/seepage water such that they are fully tanked and no subsoil drainage/ seepage water is discharged to the street kerb to comply with Council's DCP,
- e) Provide a Geotechnical and Hydrogeological Monitoring Program that:



- will detect any settlement associated with temporary and permanent works and structures,
- will detect deflection or movement of temporary and permanent retaining structures (foundation walls, shoring bracing or the like),
- will detect vibration in accordance with AS 2187.2-1993 Appendix J including acceptable velocity of vibration (peak particle velocity),
- will detect groundwater changes calibrated against natural groundwater variations,
- details the location and type of monitoring systems to be utilised,
- details the pre-set acceptable limits for peak particle velocity and ground water fluctuations,
- details recommended hold points to allow for the inspection and certification of geotechnical and hydrogeological measures by the professional engineer, and
- details of the contingency plan.

### C.11 Ground Anchors

This development consent does NOT give approval to works or structures over, on or under adjoining properties, public roads and/or footpaths. Prior written consent must be obtained from all relevant adjoining property owner(s) for the use of any Ground Anchors extending beyond the boundaries of the subject property.

The use of permanent ground anchors under Council land is not permitted. Temporary ground anchors under Council's land may be permitted, in accordance with Council's "Rock Anchor Policy", where alternative methods of stabilisation would not be practicable or viable, and where there would be benefits in terms of reduced community impact due to a shorter construction period, reduced disruption to pedestrian and vehicular traffic on adjacent public roads, and a safer working environment.

If temporary ground anchors under Council land are proposed, a separate application, including payment of fees, must be made to Council under Section 138 of the *Roads Act 1993*. Application forms and Council's "Rock Anchor Policy" are available from Council's website. Approval may be granted subject to conditions of consent. Minimum Four weeks should be allowed for assessment.

**Note:** To ensure that this work is completed to Council's satisfaction, this consent by separate condition, may impose one or more Infrastructure Works Bonds.

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

**Note:** Section 17 of the Roads Regulation 2018 prohibits excavation in the vicinity of roads as follows:  
"Excavations adjacent to road - A person must not excavate land in the vicinity of a road if the excavation is capable of causing damage to the road (such as by way of subsidence) or to any work or structure on the road." Separate approval is required under the *Roads Act 1993* for any underpinning, shoring, soil anchoring (temporary) or the like within or under any road. Council will not give approval to permanent underpinning, shoring, soil anchoring within or under any road.

### C.12 Stormwater Management Plan

Prior to issue of the Construction Certificate, the applicant must submit, for approval by the Certifying Authority, detailed stormwater management plans prepared and certified by a Chartered Professional Civil Engineer, which include the following:

- a) General design in accordance with stormwater management plans, referenced 22149 Rev C, prepared by Elite Australian Engineering, dated 18/04/2024, other than amended by this and other conditions,

- b) The discharge of stormwater from the site to the street kerb in Wentworth Road, the stormwater outlet pipe must be located within the frontage of the site. Only one stormwater outlet with a maximum discharge rate of 20 l/s in the 1% AEP storm event will be permitted. Full supporting calculations must be included in the stormwater management plans.
- c) The installation of rainwater retention and reuse system (RWT) with a minimum storage volume of 68.06m<sup>3</sup> to comply with the Council's DCP. Runoff from all roof areas shall be directed to the proposed RWT for non-potable uses such as toilet flushing, laundry device, garden irrigations etc. Notation to this requirement must be clearly depicted on the drawings. Overflow from the RWT shall be directed to the proposed pumpout system,
- d) The installation of the holding tank with a minimum storage volume of 11.34m<sup>3</sup> to comply with the Council's DCP. Surface runoff shall be directed to the proposed holding tank for non-potable uses such as car washing and garden irrigations etc. Notation to this requirement must be clearly depicted on the drawings. Overflow from the holding tank shall be directed to the proposed pumpout system,
- e) The installation of a pumpout system with a minimum storage capacity of 5.98m<sup>3</sup> to comply with Section 8 of AS3500.3 and the Council's DCP,
- f) All below ground structures are to be fully tanked such that subsoil drainage/seepage water is NOT collected and discharged to the kerb and gutter to comply with Chapter E2.2.5 and E2.2.10 of the Council's DCP. Notation to this requirement shall be clearly depicted on the drawings,
- g) Dimensions of all drainage pits and access grates must comply with AS3500.3,
- h) Compliance the objectives and performance requirements of the BCA,
- i) General compliance with the Council's Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.

The *Stormwater Management Plan* must also include the following specific requirements:

#### **Layout plan**

A detailed drainage plan at a scale of 1:100 based on drainage calculations prepared in accordance with the Australian Government publication, *Australian Rainfall and Run-off*, 2019 edition or most current version thereof. It must include:

- a) All pipe layouts, dimensions, grades, lengths and material specification,
- b) Location of proposed rainwater tanks,
- c) All invert levels reduced to Australian Height Datum (AHD),
- d) Location and dimensions of all drainage pits,
- e) Point and method of connection to Councils drainage infrastructure, and
- f) Overland flow paths over impervious areas.

#### **Rainwater Reuse System details:**

- a) Any potential conflict between existing and proposed trees and vegetation,
- b) Internal dimensions and volume of the proposed rainwater storage,
- c) Plans, elevations and sections showing the rainwater tanks, finished surface level and adjacent structures,
- d) Details of access and maintenance facilities,
- e) Construction and structural details of all tanks and pits and/or manufacturer's specifications for proprietary first flush products,
- f) Details of the emergency overland flow-path (to an approved Council drainage point) in the event of a blockage to the rainwater tanks,

For the proposed stormwater drainage works within public road and on Council's property, separate approval under Section 138 of the *Roads Act 1993* must be obtained from Council for those works prior to the issue of any Construction Certificate.

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

**Note:** This Condition is imposed to ensure that site stormwater is disposed of in a controlled and sustainable manner.

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

### C.13 Checking Construction Certificate Plans – Protecting Assets Owned by Sydney Water

The approved plans must be submitted to Sydney Water Tap In™ online service to determine whether the development will affect any Sydney Water wastewater and water mains, stormwater drains and/or easement, and any requirements need to be met.

The Tap In™ service provides 24/7 access to a range of services, including:

- building plan approvals
- connection and disconnection approvals
- diagrams
- trade waste approvals
- pressure information
- water meter installations
- pressure boosting and pump approvals
- changes to an existing service or asset, e.g. relocating or moving an asset.

**Note:** For more information go to Sydney Water [www.sydneywater.com.au/tapin/index.htm](http://www.sydneywater.com.au/tapin/index.htm) and [www.sydneywater.com.au/SW/plumbing-building-developing/building/building-over-or-next-to-assets/index.htm](http://www.sydneywater.com.au/SW/plumbing-building-developing/building/building-over-or-next-to-assets/index.htm) or call 1300 082 746.

### C.14 Light & Ventilation

The *Construction Certificate* plans and specifications, required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation*, must detail all a lighting, mechanical ventilation or air-conditioning systems complying with Part F.4 of the *BCA* or clause 3.8.4 and 3.8.5 of the *BCA* Housing Provisions, inclusive of [AS 1668.1](#), [AS 1668.2](#) and [AS/NZS 3666.1](#). If an alternate solution is proposed then the *Construction Certificate* application must include a statement as to how the performance requirements of the *BCA* are to be complied with and support the performance based solution by expert *evidence of suitability*. This condition does not set aside the mandatory requirements of the *Public Health (Microbial Control) Regulation 2000* in relation to *regulated systems*. This condition does not set aside the effect of the *Protection of the Environment Operations Act 1997* in relation to offensive noise or odour.

**Note:** Clause 98 of the *Regulation* requires compliance with the *BCA*. Clause 145 of the *Regulation* prevents the issue of a *Construction Certificate* unless the *Accredited Certifier/Council* is satisfied that compliance has been achieved. Schedule 1, Part 3 of the *Regulation* details what information must be submitted with any *Construction Certificate*. It is the Applicant's responsibility to demonstrate compliance through the *Construction Certificate* application process. Applicants must also consider possible noise and odour nuisances that may arise. The provisions of the *Protection of the Environment Operations Act 1997* have overriding effect if offensive noise or odour arises from the use. Applicant's must pay attention to the location of air intakes and air exhausts relative to sources of potentially contaminated air and neighbouring windows and air intakes respectively, see section 2 and 3 of [AS 1668.2](#).

### C.15 Utility Services Generally

The Construction Certificate plans and specifications, required by clause 139 of the *Regulation*, must demonstrate that all utility services (telecommunications, electricity, gas, water and waste water) will be provided underground. All service ducts, pipes and conduits must be provided within the fabric of the building (excluding stormwater down pipes).

Where telecommunications and electricity are provided from existing poles in the road they must, in accordance with the relevant suppliers' requirements, be carried to the site underground directly to the main switch board within the fabric of the building.

**Note:** Where adequate provision has not been made for an electrical sub-station within the building, this may necessitate the lodgement of an application to amend this consent under section 4.55 of the *Act* to detail the location, landscape/streetscape impacts and compliance with AS2890 as applicable.

The location of service poles and substations required by the relevant suppliers must be shown upon the plans submitted with any Construction Certificate application together with a letter from each relevant supplier setting out their requirements.

Proposed water pipes, waste pipes, stack work, duct work, mechanical ventilation plant and the like must be located within the building unless expressly shown upon the approved DA plans. Details confirming compliance with this condition must be shown on the Construction Certificate plans and/or detailed within the Construction Certificate specifications. Required external vents or vent pipes on the roof or above the eaves must be shown on the Construction Certificate plans.

**Note:** The intent of this condition is that the design quality of the development must not be compromised by cables, pipes, conduits, ducts, plant, equipment, electricity substations or the like placed such that they are visible from any adjoining public place. They must be contained within the building unless shown otherwise by the approved development consent plans.

The Construction Certificate plans and specifications, required to be submitted to the Certifying Authority pursuant to clause 139 of the *Regulation*, must detail the replacement of all private sewer pipes between all sanitary fixtures and Sydney Water's sewer main where they are not found by inspection to be UPVC or copper with continuously welded joints.

**Note:** This condition has been imposed to ensure that where private sewer pipes are old, may leak or may be subject to root invasion (whether from existing or proposed private or public landscaping) that existing cast iron, concrete, earthenware or terracotta pipes be replaced with new UPVC or copper continuously welded pipes between all sanitary fixtures and Sydney Water's sewer main. Leaking sewer pipes are a potential source of water pollution, unsafe and unhealthy conditions which must be remedied in the public interest.

### C.16 Swimming and Spa Pools – Child Resistant Barriers

The Construction Certificate plans and specifications required by clause 139 of the *Regulation* must demonstrate compliance (by showing the proposed location of all child-resistant barriers and the resuscitation sign) with the provisions of the *Swimming Pools Act 1992* and the Building Code of Australia.

Approval is not granted for the modification of any boundary fencing beyond what is authorised by the stamped approved plans, as modified by any condition of consent or what is permitted to be carried out as 'exempt development' pursuant to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

**Note:** A statement to the effect that isolation swimming pool fencing complying with AS1926 will be installed does not satisfy this condition. The location of the required barriers and the sign must be detailed upon the *Construction Certificate* plans.

### C.17 Swimming and Spa Pools – Backwash

The Construction Certificate plans and specification required to be submitted pursuant to clause 139 of the *Regulation* must detail the connection of backwash to Sydney Waters sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

**Note:** The plans must show the location of Sydney Water's sewer, the yard gully or any new connection to the sewer system including a detailed cross section of the connection complying with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

**Note:** The discharge of backwash water to any stormwater system is water pollution and an offence under the *Protection of the Environment Operations Act 1997*. The connection of any backwash pipe to any stormwater system is an offence under the *Protection of the Environment Operations Act 1997*.

### C.18 Tree Management Plan

The *Construction Certificate* plans and specifications shall show the following information:

- a) Trees to be numbered in accordance with these conditions:
  - shaded green where required to be retained and protected
  - shaded red where authorised to be removed
  - shaded yellow where required to be transplanted
  - shaded blue where required to be pruned
- b) References to applicable tree management plan, arborists report or transplant method statement.

This plan shall be kept on site until the issue of the final occupation certificate.

### C.19 Electric vehicle circuitry and electric vehicle charging point requirements

An accurate electrical plan of all off-street car parking spaces must be prepared by a suitably qualified person and it must include details and specifications to illustrate how the off-street car parking spaces will be constructed with the capacity to install at a minimum, a 'Level 2' (single phase, 7Kw power) electric vehicle charger point. This plan must be submitted to the certifier, prior to the issue of the construction certificate.

Standard Condition: C58 (Autotext CC58)

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

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

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

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

This condition does not apply:

- a) to the extent to which an exemption is in force under the *Home Building Regulation 2004*,  
or

- b) to the erection of a temporary building.

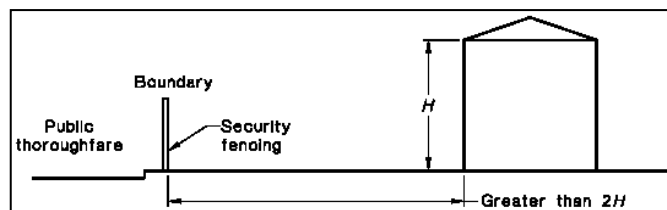
In this condition, a reference to the BCA is a reference to that code as in force on the date the application for the relevant Construction Certificate is made.

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

**Note:** All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.

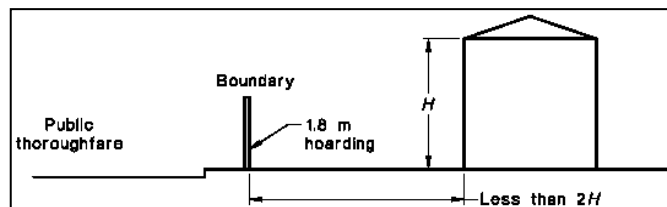
## D.2 Security Fencing, Hoarding (including 'Creative Hoardings') and Overhead Protection

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



### Type A Hoarding

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



### Type B Hoarding

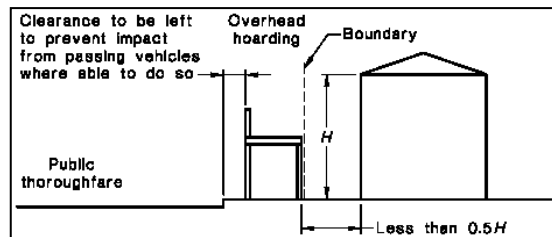
Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure and the facing facade protected by heavy-duty scaffolding, unless either:

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

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

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

- d) together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa.



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

### All Hoardings

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

### Hoardings on Public Land including ‘Creative Hoardings’

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

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

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

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

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

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

The Creative Hoardings Policy can be downloaded from [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or for more information contact Council's Cultural Development Team.

### D.3 Site Signs

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

Clause 98A of the *Regulation* provides:

#### **Erection of signs**

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

Clause 227A of the *Regulation* provides:

#### **Signs on development sites**

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

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

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

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

### D.4 Toilet Facilities

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

Each toilet provided:

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



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

In this condition:

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

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

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

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

**Note:** This condition does not set aside the requirement to comply with SafeWork NSW requirements.

#### **D.5 Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the Act)**

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

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

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

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

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

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

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

#### D.6 Notification of Home Building Act 1989 requirements

- a) For the purposes of section 4.17(11) of the *Act*, the requirements of this condition are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the Home Building Act 1989.
- b) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - In the case of work for which a Principal Contractor is required to be appointed:
    - the name and licence number of the Principal Contractor, and
    - the name of the insurer by which the work is insured under Part 6 of that Act,
  - In the case of work to be done by an Owner-builder:
    - the name of the Owner-builder, and
    - if the Owner-builder is required to hold an Owner-builder permit under that Act, the number of the Owner-builder permit.
- c) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- d) This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the *Act*, to comply with the Building Code of Australia.

#### D.7 Dilapidation Reports for Existing Buildings

Dilapidation surveys and dilapidation reports shall be conducted and prepared by a *professional engineer* (structural) for all buildings and/or structures that are located within the likely “zone of influence” of any excavation, dewatering and/or construction induced vibration as determined applicable by a Structural Engineer. This must include (but is not limited to) 29 Wentworth Road.

The dilapidation reports must be completed and submitted to the *Certifying Authority* for approval. A copy of the approved reports shall be submitted to Council with the *Notice of Commencement* prior to the commencement of any *development work*.

Where excavation of the site will extend below the level of any immediately adjoining building the *principal contractor* or *owner builder* must give the adjoining building owner(s) a copy of the dilapidation report for their building(s) and a copy of the *notice of commencement* required by S81A(2) of the *Act* not less than two (2) days prior to the commencement of any work.

**Note:** The reasons for this condition are:

- To provide a record of the condition of buildings prior to development being carried out
  - To encourage developers and its contractors to use construction techniques that will minimise the risk of damage to buildings on neighbouring land
- Also refer to the Dilapidation Report Advising for more information regarding this condition

#### D.8 Adjoining Buildings Founded on Loose Foundation Materials

The Principal Contractor must ensure that a professional engineer determines the possibility of any adjoining buildings founded on loose foundation materials being affected by piling, piers or excavation. The professional engineer (geotechnical consultant) must assess the requirements for underpinning any adjoining or adjacent buildings founded on such soil on a case by case basis and the Principal Contractor must comply with any reasonable direction of the professional engineer.

**Note:** A failure by contractors to adequately assess and seek professional engineering (geotechnical) advice to ensure that appropriate underpinning and support to adjoining land is maintained prior to commencement may result in damage to adjoining land and buildings. Such contractors are likely to be held responsible for any damages arising from the removal of any support to supported land as defined by section 177 of the *Conveyancing Act 1919*.

## D.9 Construction Management Plan

As a result of the site constraints, limited space and access a Construction Management Plan (CMP) is to be submitted to Council. Also, due to lack of on-street parking a Work Zone may be required during construction.

The Principal Contractor or Owner must submit an application for approval of the CMP by Council's Traffic Engineer and pay all fees associated with the application.

The CMP must be submitted as a self-contained document that outlines the nature of the construction project and as applicable, include the following information:

- a) Detail the scope of the works to be completed including details of the various stages, e.g. demolition, excavation, construction etc. and the duration of each stage.
- b) Identify local traffic routes to be used by construction vehicles.
- c) Identify ways to manage construction works to address impacts on local traffic routes.
- d) Identify other developments that may be occurring in the area and identify ways to minimise the cumulative traffic impact of these developments. Should other developments be occurring in close proximity (500m or in the same street) to the subject site, the developer/builder is to liaise fortnightly with the other developers/builders undertaking work in the area in order to minimise the cumulative traffic and parking impacts of the developments.
- e) Detail how construction workers will travel to and from the site and parking arrangements for those that drive.
- f) Identify any proposed road closures, temporary traffic routes, loss of pedestrian or cyclist access or reversing manoeuvres onto a public road and provide Traffic Control Plans (TCPs) prepared by an accredited RMS Red or Orange card holder to manage these temporary changes.
- g) Detail the size (including dimensions), numbers and frequency of arrival of the construction vehicles that will service the site for each stage of works.
- h) Provide for the standing of vehicles during construction.
- i) If construction vehicles are to be accommodated on the site, provide a scaled drawing showing where these vehicles will stand and the vehicle swept path to show that these vehicles can access and egress the site in a forward direction (including dimensions and all adjacent traffic control devices, such as parking restrictions, pedestrian facilities, kerb extensions, etc.).
- j) If trucks are to be accommodated on Council property, provide a scaled drawing showing the location of any proposed Works Zone (including dimensions and all adjacent traffic control devices, such as parking restrictions, pedestrian facilities, kerb extensions, etc.).
- k) Show the location of any site sheds and any anticipated use of cranes and concrete pumps and identify the relevant permits that will be required.
- l) If a crane/s are to be accommodated on site, detail how the crane/s will be erected and removed, including the location, number and size of vehicles involved in the erection/removal of the crane/s, the duration of the operation and the proposed day and times, any full or partial road closures required to erect or remove the crane/s and appropriate Traffic Control Plans (TCPs) prepared by an approved RMS Red or Orange Card holder.
- m) Make provision for all materials, plant, etc. to be stored within the development site at all times during construction.

- n) State that any oversized vehicles proposed to operate on Council property (including Council approved Works Zones) will attain a Permit to Stand Plant on each occasion (Note: oversized vehicles are vehicles longer than 7.5m or heavier than 4.5T.)
- o) Show the location of any proposed excavation and estimated volumes.
- p) When demolition, excavation and construction works are to be undertaken on school days, all vehicular movements associated with this work shall only be undertaken between the hours of 9.30am and 2.30pm, in order to minimise disruption to the traffic network during school pick up and drop off times.
- q) Show the location of all Tree Protection (Exclusion) zones (Note: storage of building materials or access through Reserve will not be permitted without prior approval by Council).

**Note:** A minimum of eight weeks will be required for assessment. Work must not commence until the Construction Management Plan is approved. Failure to comply with this condition may result in fines and proceedings to stop work.

#### D.10 Works (Construction) Zone – Approval and Implementation

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

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

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

**Note:** The enforcement of the works zone is at the discretion of Council's Rangers and the NSW Police Service. The Principal Contractor must report any breach of the works zone to either Council or the NSW Police Service.

#### D.11 Erosion and Sediment Controls – Installation

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

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

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

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

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

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

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

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

## **E. Conditions which must be satisfied during any development work**

### **E.1 Compliance with BCA and Insurance Requirements under the Home Building Act 1989**

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

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

This condition does not apply:

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

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

**Note:** All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.

### **E.2 Salvaging of building fabric**

Stone, bricks, joinery and decorative architectural elements to be demolished, which include windows and doors, chimney pieces, fireplaces, timber flooring, decorative ceilings and ceiling roses must be salvaged and where possible reused on the project.

Salvaged building materials surplus to the project must either be stored on site for future reuse, or transferred to an established second building material dealer for recycling.

### **E.3 Aboriginal Objects – Unexpected Findings**

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

- a) Not further disturb or move these objects or bones.
- b) Immediately cease all work at the particular location.
- c) In the case of suspected human remains, notify NSW Police.
- d) Notify the Heritage NSW Environment Line on 131 555 and the La Perouse LALC on (02) 9311 4282 as soon as practicable and provide available details of the objects or remains and their location.

- e) Not recommence any work at the particular location unless authorised in writing by Heritage NSW. Additional assessment and approval pursuant to the *National Parks and Wildlife Act 1974* may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

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

#### **E.4 Skeletal Remains**

If any skeletal remains suspected of being human are found during construction works, work must cease immediately and no further disturbance of the site must occur. The NSW Police and the Department of Premier and Cabinet, Community Engagement, Heritage must be notified and details of the bb12

#### **E.5 Aboriginal Heritage Due Diligence Responsibilities**

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

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

#### **E.6 Compliance with Construction Management Plan**

All development activities and traffic movements must be carried out in accordance with the approved Construction Management Plan (CMP). All controls in the CMP must be maintained at all times. A copy of the CMP must be kept on-site at all times and made available to the Principal Certifier or Council on request.

**Note:** Irrespective of the provisions of the Construction Management Plan the provisions of traffic and parking legislation prevails.

#### **E.7 Public Footpaths – Safety, Access and Maintenance**

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

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

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

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

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

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

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

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

- Part C Management of waste:
  - a. For fee or reward, transport waste over or under a public place
  - b. Place waste in a public place
  - c. Place a waste storage container in a public place.
- Part E Public roads:
  - a. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
  - b. Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.

## E.8 Maintenance of Environmental Controls

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

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

## E.9 Compliance with Geotechnical / Hydrogeological Monitoring Program

Excavation must be undertaken in accordance with the recommendations of the Geotechnical / Hydrogeological Monitoring Program and any oral or written direction of the supervising professional engineer.

The Principal Contractor and any sub-contractor must strictly follow the Geotechnical / Hydrogeological Monitoring Program for the development including, but not limited to:

- a) the location and type of monitoring systems to be utilised,
- b) recommended hold points to allow for inspection and certification of geotechnical and hydrogeological measures by the professional engineer, and
- c) the contingency plan.

**Note:** The consent authority cannot require that the author of the geotechnical/hydrogeological report submitted with the development application to be appointed as the professional engineer supervising the work however, it is the Council's recommendation that the author of the report be retained during the construction stage.

## E.10 Support of Adjoining Land and Buildings

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

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

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

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

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

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

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

## E.11 Vibration Monitoring

Vibration monitoring equipment must be installed and maintained, under the supervision of a professional engineer with expertise and experience in geotechnical engineering, between any potential source of vibration and any *building* identified by the professional engineer as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed.

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity an audible alarm must activate such that the Principal Contractor and any sub-contractor are easily alerted to the event.

Where any such alarm triggers all excavation works must cease immediately. Prior to the vibration monitoring equipment being reset by the professional engineer and any further work recommencing the event must be recorded and the cause of the event identified and documented by the professional engineer.



Where the event requires, in the opinion of the professional engineer, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the professional engineer to the Principal Contractor and any sub-contractor clearly setting out required work practice.

The Principal Contractor and any sub-contractor must comply with all work directions, verbal or written, given by the professional engineer.

A copy of any written direction required by this condition must be provided to the Principal Certifier within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining *building* or such that there is any removal of support to *supported land* the professional engineer, Principal Contractor and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that *supported land* and take immediate action under the direction of the professional engineer to prevent any further damage and restore support to the *supported land*.

**Note:** *professional engineer* has the same mean as in clause A1.1 of the BCA.

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

**Note:** *supported land* has the same meaning as in the *Conveyancing Act 1919*.

## E.12 Erosion and Sediment Controls – Maintenance

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

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

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



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

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

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

### E.13 Disposal of Site Water During Construction

The Principal Contractor or Owner-builder must ensure:

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

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

### E.14 Site Cranes

Site crane(s) and hoist(s) may be erected within the boundary of the land being developed subject to compliance with Australian Standards AS 1418, AS 2549 and AS 2550 and all relevant parts to these standards.

Cranes must not swing or hoist over any public place unless the Principal Contractor or Owner-builder have the relevant approval under the *Local Government Act 1993*, *Crown Lands Act 1989* or *Roads Act 1993*.

The crane must not be illuminated outside approved working hours other than in relation to safety beacons required by the Civil Aviation Safety Authority under the *Civil Aviation Act 1988 (Cth)*.

No illuminated sign(s) must be erected upon or displayed upon any site crane.

**Note:** Where it is proposed to swing a crane over a public place the Principal Contractor or Owner-builder must make a separate application to Council under section 68 of the *Local Government Act 1993* and obtain activity approval from Council prior to swinging or hoisting over the public place.

**Note:** Where it is proposed to swing a crane over private land the consent of the owner of that private land is required. Alternatively, the Principal Contractor or Owner-builder must obtain an access order under the *Access to Neighbouring Land Act 2000* or easement under section 88K of the *Conveyancing Act 1919* or section 40 of the *Land and Environment Court Act 1979* as appropriate. The encroachment of cranes or the like is a civil matter of trespass and encroachment. Council does not adjudicate or regulate such trespasses or encroachments.

### E.15 Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum

The Principal Contractor or Owner-builder must ensure that a registered surveyor carries out check surveys and provides survey certificates confirming the location of the building(s), ancillary works, flood protection works and the stormwater drainage system relative to the boundaries of the site and that the height of buildings, ancillary works, flood protection works and the stormwater drainage system relative to Australian Height Datum complies with this consent at the following critical stages.

The Principal Contractor or Owner-builder must ensure that work must not proceed beyond each of the following critical stages until compliance has been demonstrated to the Principal Certifier's satisfaction:

- a) Upon the completion of foundation walls prior to the laying of any floor or the pouring of any floor slab and generally at damp proof course level.
- b) Upon the completion of formwork for floor slabs prior to the laying of any floor or the pouring of any concrete and generally at each storey.
- c) Upon the completion of formwork or framework for the roof(s) prior to the laying of any roofing or the pouring of any concrete roof.
- d) Upon the completion of formwork and steel fixing prior to pouring of any concrete for any ancillary structure, flood protection work, swimming pool or spa pool or the like.
- e) Upon the completion of formwork and steel fixing prior to pouring of any concrete for driveways showing transitions and crest thresholds confirming that driveway levels match Council approved driveway crossing levels and minimum flood levels.
- f) Stormwater drainage Systems prior to back filling over pipes confirming location, height and capacity of works.
- g) Flood protection measures are in place confirming location, height and capacity.

**Note:** This condition has been imposed to ensure that development occurs in the location and at the height approved under this consent. This is critical to ensure that building are constructed to minimum heights for flood protection and maximum heights to protect views and the amenity of neighbours.

#### E.16 Hours of Work –Amenity of the Neighbourhood

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

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

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

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

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

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

**Note:** NSW EPA Noise Guide is available at [www.epa.nsw.gov.au/noise/nqlg.htm](http://www.epa.nsw.gov.au/noise/nqlg.htm)

### E.17 Dust Mitigation

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

This generally requires:

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

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

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

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

### E.18 Critical Stage Inspections

Critical stage inspections must be called for by the Principal Contractor or Owner-builder as required by the Principal Certifier, any PC service agreement, the *Act* and the *Regulation*. Work must not proceed beyond each critical stage until the Principal Certifier is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the *Act*.

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

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

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

### E.19 Placement and Use of Skip Bins

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

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

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

## **E.20 Prohibition of Burning**

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

All burning is prohibited in the Woollahra local government area.

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

## **E.21 Compliance with Australian Standard for Demolition**

Demolition of buildings and structures must comply with Australian Standard AS 2601—2001: *The Demolition of Structures*.

## **E.22 Site waste minimisation and management – Demolition**

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

- a) An area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements)
- b) Provide separate collection bins and/or areas for the storage of residual waste
- c) Clearly 'signpost' the purpose and content of the bins and/or storage areas
- d) Implement measures to prevent damage by the elements, odour, health risks and windborne litter
- e) Minimise site disturbance, limiting unnecessary excavation

The applicant must ensure:

- a) Footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval
- b) Any material moved offsite is transported in accordance with the requirements of the *Protection of the Environment Operations Act (1997)*
- c) Waste is only transported to a place that can lawfully be used as a waste facility
- d) Generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by Workcover NSW
- e) Evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained

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

## **E.23 Site waste minimisation and management – Construction**

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

- a) Arrange for the delivery of materials so that materials are delivered 'as needed' to prevent the degradation of materials through weathering and moisture damage
- b) Consider organising to return excess materials to the supplier or manufacturer
- c) Allocate an area for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation)
- d) Clearly 'signpost' the purpose and content of the storage areas
- e) Arrange contractors for the transport, processing and disposal of waste and recycling. Ensure that all contractors are aware of the legal requirements for disposing of waste.
- f) Promote separate collection bins or areas for the storage of residual waste
- g) implement measures to prevent damage by the elements, odour and health risks, and windborne litter
- h) Minimise site disturbance and limit unnecessary excavation
- i) Ensure that all waste is transported to a place that can lawfully be used as a waste facility
- j) Retain all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as council, Department of Environment and Climate Change (DECC) or WorkCover NSW.

#### **E.24 Classification of Hazardous Waste**

Prior to the exportation of hazardous waste (including hazardous fill or soil) from the site, the waste materials must be classified in accordance with the provision of the *Protection of the Environment Operations Act 1997* and the NSW EPA *Waste Classification Guidelines, Part1: Classifying Waste, 2014*.

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

#### **E.25 Disposal of Asbestos and Hazardous Waste**

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

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

#### **E.26 Asbestos Removal Signage**

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

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

#### **E.27 Notification of Asbestos Removal**

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

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

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

## **E.28 Swimming and Spa Pools – Temporary Child Resistant Barriers and other Matters**

Temporary child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and Building Code of Australia where any swimming pool or spa pool, as defined by the *Swimming Pools Act 1992*, contains more than 300mm in depth of water at any time.

Permanent child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and the Building Code of Australia as soon as practical.

Backwash and any temporary dewatering from any swimming pool or spa pool as defined by the *Swimming Pools Act 1992* must be discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

**Note:** This condition does not prevent Council from issuing an order pursuant to section 23 of the *Swimming Pool Act 1992* or taking such further action as necessary for a breach of this condition or the *Swimming Pools Act 1992*.

## **E.29 Tree Preservation**

All persons must comply with Chapter E.3 – Tree Management of Council's Development Control Plan (DCP) 2015, other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

### General Protection Requirements

- a) The TPZ must be maintained during all development work unless otherwise specified within these conditions of consent.
- b) Excavation must cease where tree roots with a diameter exceeding 50mm are exposed. The *principal contractor* must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- c) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

**Note:** Trees must be pruned in accordance with *Australian Standard AS 4373 "Pruning of Amenity Trees"* and *WorkCover NSW Code of Practice Amenity Tree Industry*.

## **E.30 Hand excavation within tree root zones**

Excavation undertaken within the specified radius from the trunks of the following trees shall be hand dug.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1	<i>Archontophoenix alexandrae</i>	Refer to the Arboricultural Impact Assessment prepared by Urban Arbor dated 8 December 2022 for tree locations and numbers.	2.0
2	<i>Murraya paniculata</i>		3.1
3	<i>Plumeria spp</i>		2.7
5	<i>Howea forsteriana</i>		2.0
6	<i>Howea forsteriana</i>		2.0
7	<i>Archontophoenix alexandrae</i>		2.5
8	<i>Angophora costata</i>		5.9
9	<i>Pittosporum undulatum</i>		5.7
10	<i>Brachychiton acerifolius</i>		2.6
11	<i>Macadamia spp</i>		2.0
12	<i>Castanospermum australe</i>		4.1
16	<i>Howea forsteriana</i>		3.0
19	<i>Howea forsteriana</i>		2.0
22	<i>Phoenix canariensis</i>		4.0
23	<i>Lophostemon confertus</i>		14.7
24	<i>Phoenix canariensis</i>		4.0
26	<i>Persea americana</i>		2.8
27	<i>Eucalyptus botryoides</i>		5.6
28	<i>Pittosporum undulatum</i>		8.8
29	<i>Glochidion ferdinandi</i>		3.0
30	<i>Pittosporum undulatum</i>		5.0

Small hand tools such as mattocks or using compressed air or water jetting only shall be used. Roots with a diameter equal to or in excess of 50mm shall not be severed or damaged unless approved in writing by the project arborist.

Mechanical excavation is permitted beyond this radius when root pruning by hand along the perimeter line is completed. Exposed roots to be retained shall be covered with mulch or a geotextile fabric and kept in a moist condition and prevented from drying out.

All root pruning must be undertaken in accordance with the Australian Standard 4373 "Pruning of Amenity Trees" and carried out by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent).

The project arborist shall document compliance with the above condition.

### E.31 Footings in the vicinity of trees

Footings for any structure within the specified radius from the trunks of the following trees shall be supported using an isolated pier and beam system.



Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1	<i>Archontophoenix alexandrae</i>	Refer to the Arboricultural Impact Assessment prepared by Urban Arbor dated 8 December 2022 for tree locations and numbers.	2.0
2	<i>Murraya paniculata</i>		3.1
3	<i>Plumeria spp</i>		2.7
5	<i>Howea forsteriana</i>		2.0
6	<i>Howea forsteriana</i>		2.0
7	<i>Archontophoenix alexandrae</i>		2.5
8	<i>Angophora costata</i>		5.9
9	<i>Pittosporum undulatum</i>		5.7
10	<i>Brachychiton acerifolius</i>		2.6
11	<i>Macadamia spp</i>		2.0
12	<i>Castanospermum australe</i>		4.1
16	<i>Howea forsteriana</i>		3.0
19	<i>Howea forsteriana</i>		2.0
22	<i>Phoenix canariensis</i>		4.0
23	<i>Lophostemon confertus</i>		14.7
24	<i>Phoenix canariensis</i>		4.0
26	<i>Persea americana</i>		2.8
27	<i>Eucalyptus botryoides</i>		5.6
28	<i>Pittosporum undulatum</i>		8.8
29	<i>Glochidion ferdinandi</i>		3.0
30	<i>Pittosporum undulatum</i>		5.0

Excavations for installation of piers shall be located so that no tree root with a diameter equal to or in excess of 50mm is severed or damaged. The smallest possible area shall be excavated which allows construction of the pier. The beam is to be placed a minimum of 100mm above ground level and is to be designed to bridge all tree roots with a diameter equal to or in excess of 50mm.

The project arborist shall document compliance with the above condition.

### E.32 Installation of stormwater pipes and pits in the vicinity of trees

Excavation for the installation of stormwater pipes and pits within the specified radius from the trunks of the following trees shall be hand dug.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1	<i>Archontophoenix alexandrae</i>	Refer to the Arboricultural Impact Assessment prepared by Urban Arbor dated 8 December 2022 for tree locations and numbers.	2.0
2	<i>Murraya paniculata</i>		3.1
3	<i>Plumeria spp</i>		2.7
5	<i>Howea forsteriana</i>		2.0
6	<i>Howea forsteriana</i>		2.0
7	<i>Archontophoenix alexandrae</i>		2.5
8	<i>Angophora costata</i>		5.9
9	<i>Pittosporum undulatum</i>		5.7
10	<i>Brachychiton acerifolius</i>		2.6
11	<i>Macadamia spp</i>		2.0
12	<i>Castanospermum australe</i>		4.1
16	<i>Howea forsteriana</i>		3.0
19	<i>Howea forsteriana</i>		2.0
22	<i>Phoenix canariensis</i>		4.0
23	<i>Lophostemon confertus</i>		14.7

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
24	<i>Phoenix canariensis</i>		4.0
26	<i>Persea americana</i>		2.8
27	<i>Eucalyptus botryoides</i>		5.6
28	<i>Pittosporum undulatum</i>		8.8
29	<i>Glochidion ferdinandi</i>		3.0
30	<i>Pittosporum undulatum</i>		5.0

Any roots greater than 40mm diameter uncovered for the installation of stormwater pipes and pits shall not be severed and remain in situ bridging across the excavated trench. Pipes shall be guided under any roots greater than 40mm bridging across excavated trenches. Stormwater pits shall be positioned so that no roots greater than 40mm diameter are severed.

The project arborist shall document compliance with the above condition.

### E.33 Threatened Species Protection

In the event of the presence of a threatened species on the development site, works must cease immediately and the developer must contact Council's Environment and Sustainability Team to determine if further assessment is required.

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

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

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

**Note:** New building includes an altered portion of, or an extension to, an existing building.

### F.2 Commissioning and Certification of Systems and Works

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

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

- Certification from the supervising professional engineer that the requirement of the Geotechnical/Hydrogeological conditions and report recommendations were implemented and satisfied during development work.
- All flood protection measures.
- All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1: *Off-Street car parking*.
- All stormwater drainage and storage systems.
- All mechanical ventilation systems.
- All hydraulic systems.
- All structural work.
- All acoustic attenuation work.
- All waterproofing.

- j) Such further matters as the Principal Certifier may require.

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

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

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

### F.3 Swimming and Spa Pools – Permanent Child Resistant Barriers and other Matters

Prior to filling any swimming pool, as defined by the *Swimming Pools Act 1992*:

- a) Permanent child-resistant barriers must be installed in compliance with the *Swimming Pools Act 1992* and the Building Code of Australia.
- b) The swimming pool must be registered in accordance with section 30B of the *Swimming Pools Act 1992* on the NSW Government Swimming Pool Register.
- c) The Principal Contractor or Owner must either obtain a certificate of compliance issued pursuant to section 22D of the *Swimming Pools Act 1992* or an appropriate Occupation Certificate authorising use of the swimming pool.
- d) Public pools must comply with the *NSW Health Public Swimming Pool and Spa Pool Guidelines* in force at that time and private pools are encouraged to comply with the same standards as applicable.
- e) Water recirculation and filtration systems must be installed in compliance with AS 1926.3-2010: *Swimming pool safety - Water recirculation systems*.

Backwash must be discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996.

Water recirculation and filtration systems must be connected to the electricity supply by a timer that limits the systems operation such that it does not operate before 8 am or after 8 pm on any Sunday or public holiday or before 7 am or after 8 pm on any other day.

**Note:** NSW Health guidelines and fact sheets are available at [www.health.nsw.gov.au/environment/publicpools/Pages/default.aspx](http://www.health.nsw.gov.au/environment/publicpools/Pages/default.aspx)

### F.4 Amenity Landscaping

The *owner* or *principal contractor* must install all approved amenity landscaping (screen planting, soil stabilisation planting, etc.) prior to any occupation or use of the site.

**Note:** This condition has been imposed to ensure that the environmental impacts of the development are mitigated by approved landscaping prior to any occupation of the development.

### F.5 Certification of Electric Vehicle Charging System

Prior to the issue of any Occupation Certificate or occupation or use of part of the building, the Principal Contractor or Owner-builder must submit to the satisfaction of the Principal Certifier, certification by a suitably qualified person that the electric vehicle charger points and/or electric vehicle circuitry, has been installed in accordance with the construction certificate plans and specifications as required in Part C.

Standard Condition: F22 (Autotext FF22)

**G. Conditions which must be satisfied prior to the issue of any subdivision certificate**

Nil.

**H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (S6.4(c))**

**H.1 Fulfillment of BASIX commitments – Clause 154B of the Regulation**

All BASIX commitments must be effected in accordance with the BASIX Certificate No. A486812.

**Note:** Clause 154B(2) of the *Environmental Planning and Assessment Regulation 2000* provides: "A certifying authority must not issue a final Occupation Certificate for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

**H.2 Removal of Ancillary Works and Structures**

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

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

**Note:** This condition has been imposed to ensure that all ancillary matter is removed prior to the issue of the Final Occupation Certificate.

**H.3 Landscaping**

The *principal contractor* or *owner* must provide to *PCA* a works-as-executed landscape plan and certification from a qualified landscape architect/designer, horticulturist and/or arborist as applicable to the effect that the works comply with this consent.

**Note:** This condition has been imposed to ensure that all Landscaping work is completed prior to the issue of the Final Occupation Certificate.

**H.4 Road Works (including footpaths)**

The following works must be completed to the satisfaction of Council, in compliance with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012) unless expressly provided otherwise by these conditions at the Principal Contractor's or Owner's expense:

- a) stormwater pipes, pits and connections to public stormwater systems within the *road*,
- b) driveways and vehicular crossings within the *road*,
- c) removal of redundant driveways and vehicular crossings,
- d) new footpaths within the *road*,
- e) relocation of existing power/light pole,
- f) relocation/provision of street signs,
- g) new or replacement street trees,
- h) new footway verges, where a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street,
- i) new or reinstated kerb and guttering within the *road*, and

- j) new or reinstated road surface pavement within the *road*.

**Note:** Security held by Council pursuant to section 4.17(6) of the *Act* will not be release by Council until compliance has been achieved with this condition. An application for refund of security must be submitted with the Final Occupation Certificate to Council. This form can be downloaded from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or obtained from Council's customer service centre.

## H.5 Works-As-Executed Certification of Stormwater System

Prior to issue of any Occupation Certificate, stormwater drainage works are to be certified by a professional engineer with works-as-executed drawings prepared by a registered surveyor and submitted, for approval by the Principal Certifying Authority, certifying:

- a) compliance with conditions of development consent relating to stormwater,
- b) the structural adequacy of the on-site retention and pump out systems,
- c) that a rainwater retention and reuse system with minimum storage of 68.06m<sup>3</sup> has been constructed in accordance with the approved stormwater plans,
- d) that a holding tank with minimum storage of 11.34m<sup>3</sup> has been constructed in accordance with the approved stormwater plans,
- e) that stormwater from rainwater tank/holding tank have been connected for non-potable use.
- f) that a pumpout system with minimum storage of 5.98m<sup>3</sup> has been constructed in accordance with the approved stormwater plans,
- g) that only one stormwater outlet pipe with maximum discharge rate of 20 l/s has been constructed in accordance with the approved stormwater plans,
- h) that subsoil drainage/seepage water is NOT collected and discharged into the kerb and gutter in accordance with the approved stormwater drawings,
- i) pipe invert levels and surface levels to Australian Height Datum, and
- j) contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

A positive covenant pursuant to section 88E of the *Conveyancing Act 1919* must be created on the title of the subject property, providing for the indemnification of Council from any claims or actions and for the on-going maintenance of the on-site retention system, pump out system and/or absorption trenches, including any pumps and sumps incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered with the NSW Land Registry Services.

**Note:** The required wording of the Instrument can be downloaded from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au). The PC must supply a copy of the WAE plans to Council together with the Occupation Certificate.

**Note:** Occupation Certificate must not be issued until this condition has been satisfied.

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

### I.1 Maintenance of BASIX Commitments

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. A486812.

**Note:** This condition affects successors in title with the intent that environmental sustainability measures must be maintained for the life of development under this consent.

## I.2 Noise from Mechanical Plant and Equipment

The noise level measured at any boundary of the site at any time while the mechanical plant and equipment is operating must not exceed the *background noise level*. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed *background noise level* at any time.

The *background noise level* is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the  $L_{A90, 15 \text{ minute}}$  level measured by a sound level meter.

**Note:** This condition has been imposed to protect the amenity of the neighbourhood.

**Note:** Words in this condition have the same meaning as in the *Noise Policy for Industry* (2017)

[www.epa.nsw.gov.au/your-environment/noise/industrial-noise/noise-policy-for-industry-\(2017\)](http://www.epa.nsw.gov.au/your-environment/noise/industrial-noise/noise-policy-for-industry-(2017))

and *Noise Guide for Local Government* (2013) [www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government](http://www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government)

## I.3 Outdoor Lighting – Residential

Outdoor lighting must comply with AS/NZS 4282:2019: *Control of the obtrusive effects of outdoor lighting*. The maximum luminous intensity from each luminaire and threshold limits must not exceed the level 1 control relevant under tables in AS/NZS 4282:2019.

**Note:** This condition has been imposed to protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting in public places.

**Note:** This condition has been imposed to control the obtrusive effects of outdoor lighting.

## I.4 Noise Control

The use of the premises must not give rise to the transmission of *offensive noise* to any place of different occupancy. *Offensive noise* is defined in the *Protection of the Environment Operations Act 1997*.

**Note:** This condition has been imposed to protect the amenity of the neighbourhood.

**Note:** Council will generally enforce this condition in accordance with the *Noise Guide for Local Government* ([www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government](http://www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government)) and the *NSW Industrial Noise Policy* ([www.epa.nsw.gov.au/your-environment/noise/industrial-noise](http://www.epa.nsw.gov.au/your-environment/noise/industrial-noise)) published by the NSW Environment Protection Authority. Other State Government authorities also regulate the *Protection of the Environment Operations Act 1997*.

### Useful links:

**Community Justice Centres**—free mediation service provided by the NSW Government

[www.cjc.nsw.gov.au](http://www.cjc.nsw.gov.au).

**NSW Environment Protection Authority**— see “noise” section

[www.environment.nsw.gov.au/noise](http://www.environment.nsw.gov.au/noise).

**NSW Government legislation**- access to all NSW legislation, including the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Noise Control Regulation 2000* is available at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

**Australian Acoustical Society**—professional society of noise related professionals

[www.acoustics.asn.au](http://www.acoustics.asn.au).

**Association of Australian Acoustical Consultants**—professional society of noise related professionals [www.aaac.org.au](http://www.aaac.org.au).

**Liquor and Gaming NSW**—[www.liquorandgaming.nsw.gov.au](http://www.liquorandgaming.nsw.gov.au).

## I.5 Swimming and Spa Pools – Maintenance

Swimming and spa pools must be maintained:

- a) in compliance with the *Swimming Pools Act 1992* and the Building Code of Australia with regard to the provision of child-resistant barriers and resuscitation signs,
- b) in compliance with the NSW Health “Public Swimming Pools and Spa Pools Advisory Document” in force at that time. Private pools are encouraged to comply with the same standards as applicable,
- c) in compliance with AS 1926.3-2010 *Swimming pool safety - Water recirculation and filtration systems*,
- d) with backwash being discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.2.2:1996, and
- e) with a timer that limits the recirculation and filtration systems operation such that it does not emit noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
  - before 8 am or after 8 pm on any Sunday or public holiday, or
  - before 7 am or after 8 pm on any other day.

**Note:** Child-resistant barriers, resuscitation signs, recirculation and filtration systems and controls systems require regular maintenance to ensure that life safety, health and amenity standards are maintained.

**Note:** The NSW Health public swimming pools and spa pools guidelines are available at [www.health.nsw.gov.au/environment/publicpools/Pages/default.aspx](http://www.health.nsw.gov.au/environment/publicpools/Pages/default.aspx)

## I.6 Ongoing Maintenance of the On-Site Retention System and Pump Out System

The owner(s) must in accordance with this condition and any positive covenant:

- a) permit stormwater to be retained, reused and pumped by the Systems;
- b) keep the system clean and free of silt rubbish and debris;
- c) maintain renew and repair as reasonably required from time to time the whole or part of the systems so that it functions in a safe and efficient manner;
- d) carry out the matters referred to in paragraphs (b) and (c) at the Owners expense;
- e) not make any alterations to the systems or elements thereof without prior consent in writing of the Council and not interfere with the systems or by its act or omission cause it to be interfered with so that it does not function or operate properly;
- f) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant;
- g) comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time stated in the notice; and
- h) where the Owner fails to comply with the Owner's obligations under this covenant, permit the Council or its agents at all times and on reasonable notice at the Owner's cost to enter the land with equipment, machinery or otherwise to carry out the works required by those obligations.

The Owner

- a) indemnifies the Council from and against all claims, demands, suits, proceedings or actions in respect of any injury, damage, loss, cost, or liability (**Claims**) that may be sustained, suffered, or made against the Council arising in connection with the performance of the Owner's obligations under this covenant except if, and to the extent that, the Claim arises because of the Council's negligence or default; and
- b) releases the Council from any Claim it may have against the Council arising in connection with the performance of the Owner's obligations under this covenant except if, and to the extent that, the Claim arises because of the Council's negligence or default.

**Note:** This condition has been imposed to ensure that owners are aware of require maintenance requirements for their stormwater systems.

**Note:** This condition is supplementary to the owner(s) obligations and Council's rights under any positive covenant.

## **J. Miscellaneous Conditions**

Nil

## **K. Advisings**

### **K.1 Criminal Offences – Breach of Development Consent & Environmental laws**

Failure to comply with this development consent and any condition of this consent is a **criminal offence**. Failure to comply with other environmental laws is also a criminal offence. Where there is any breach Council may without any further warning:

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

#### Warnings as to potential maximum penalties

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

#### Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council's policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order. This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

**Note:** The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of *the Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. You can obtain further information from the following web sites: <http://www.theshopfront.org/documents/ConvictionsCriminalRecords.pdf> and the Attorney General's [www.agd.nsw.gov.au](http://www.agd.nsw.gov.au).

### **K.2 Dial before you dig**

The *principal contractor, owner builder* or any person digging may be held financially responsible by the asset owner should they damage underground pipe or cable networks. Minimise your risk and Dial 1100 Before You Dig or visit [www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au). When you contact Dial Before You Dig, you will be sent details of all Dial Before You Dig members who have underground assets in the vicinity of your proposed excavation.



### K.3 Builders Licences and Owner Builders Permits

Section 81A of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an **owner-builder**, must appoint a *principal contractor* for residential building work who must be the holder of a contractor licence. Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder): <http://www.dft.nsw.gov.au/building.html>. The Owner(s) must appoint the PCA. The PCA must check that Home Building Act insurance is in place before the commencement of building work. The Principal Contractor (Builder) must provide the Owners with a certificate of insurance evidencing the contract of insurance under the Home Building Act 1989 for the residential building work.

### K.4 Building Standards - Guide to Standards and Tolerances

The PCA does not undertake detailed quality control inspections and the role of the PCA is primarily to ensure that the development proceeds in accordance with this consent, Construction Certificates and that the development is fit for occupation in accordance with its classification under the Building Code of Australia. Critical Stage Inspections do not provide the level of supervision required to ensure that the minimum standards and tolerances specified by the "Guide to Standards and Tolerances©" ISBN 0 7347 6010 8 are achieved. The quality of any development is a function of the quality of the *principal contractor's* or *owner builder's* supervision of individual contractors and trades on a daily basis during the development. The PCA does not undertake this role. The NSW Office of Fair Trading have published a "Guide to Standards and Tolerances©" ISBN 0 7347 6010 8. The guide can be obtained from the Office of Fair Trading by calling 13 32 20 or by Fax: 9619 8618 or by post to: Marketing Branch, PO Box 972, Parramatta NSW 2124. The Guide can be down loaded from: <http://www.fairtrading.nsw.gov.au/pdfs/corporate/publications/dft242.pdf> Council, as the PCA or otherwise, does not adjudicate building contract disputes between the *principal contractor*, contractors and the owner.

### K.5 Workcover requirements

The *Occupational Health and Safety Act 2000 No 40* and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

**Note:** Further information can be obtained from Workcover NSW's website:

<http://www.workcover.nsw.gov.au/Industry/Construction/default.htm> or through their head office:  
Location: Workcover NSW, 92-100 Donnison Street, GOSFORD 2250 Postal address:  
WorkCover NSW, Locked Bag 2906, LISAROW 2252, Phone (02) 4321 5000, Fax (02) 4325 4145.

## K.6 Lead Paint

It is beyond the scope of this consent to provide detailed information about dealing with lead paint. Painters working in an area containing lead-based paint should refer to Australian Standard AS 4361.1–1995, Guide to Lead Paint Management—Industrial Applications, or AS 4361.2–1998, Guide to Lead Paint Management—Residential and Commercial Buildings. Industrial paints, may contain lead. Lead is used in some specialised sign-writing and artist paints, and road marking paints, and anti-corrosive paints. Lead was a major ingredient in commercial and residential paints from the late 1800s to 1970. Most Australian commercial buildings and residential homes built before 1970 contain lead paint. These paints were used both inside and outside buildings. Lead hazards - Lead particles are released when old lead paint flakes and peels and collects as dust in ceiling, wall and floor voids. If dust is generated it must be contained. If runoff contains lead particles it must be contained. Lead is extremely hazardous, and stripping of lead-based paint and the disposal of contaminated waste must be carried out with all care. Lead is a cumulative poison and even small levels in the body can have severe effects.

## K.7 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 80A of the *Act*. The securities will not be released until a *Final Occupation Certificate* has lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council's requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council's requirements. Council will only release the security upon being satisfied that all damage or all works, the purpose for which the security has been held have been remedied or completed to Council's satisfaction as the case may be. Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed. Upon completion of each section of road, drainage and landscape work to Council's satisfaction, 90% of the Bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.

**Note:** The Application for Refund of Security form can be downloaded from  
<http://www.woollahra.nsw.gov.au/pdf/Forms/Planning/RefundofSecurity.pdf>

## K.8 Asbestos Removal, Repair or Disturbance

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW. Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence. All removal, repair or disturbance of or to asbestos material must comply with:

- a) The Occupational Health and Safety Act 2000;
- b) The Occupational Health and Safety Regulation 2001;
- c) The Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (1998)];
- d) The Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)] <http://www.nohsc.gov.au/> ;
- e) The Workcover NSW Guidelines for Licensed Asbestos Removal Contractors.

**Note:** The Code of Practice and Guide referred to above are known collectively as the Worksafe Code of Practice and Guidance Notes on Asbestos. They are specifically referenced in the Occupational Health and Safety Regulation 2001 under Clause 259. Under the Occupational Health and Safety Regulation 2001, the Worksafe Code of Practice and Guidance Notes on Asbestos are the minimum standards for asbestos removal work. Council does not control or regulate the Worksafe Code of Practice and Guidance Notes on Asbestos. You should make yourself aware of the requirements by visiting [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au) or one of Workcover NSW's offices for further advice.

## **K.9 Pruning or Removing a Tree Growing on Private Property**

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

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

## **K.10 Dilapidation Report**

Please note the following in relation to the condition for a dilapidation report:

- a) The dilapidation report will be made available to affected property owners on requested and may be used by them in the event of a dispute relating to damage allegedly due to the carrying out of the development.
- b) This condition cannot prevent neighbouring buildings being damaged by the carrying out of the development.
- c) Council will not be held responsible for any damage which may be caused to adjoining buildings as a consequence of the development being carried out.
- d) Council will not become directly involved in disputes between the developer, its contractors and the owners of neighbouring buildings.
- e) In the event that access for undertaking the dilapidation survey is denied the Applicant is to demonstrate in writing to the satisfaction of the Principal Certifier that all reasonable steps were taken to obtain access to the adjoining property. The dilapidation report will need to be based on a survey of what can be observed externally.

## **K.11 Roads Act 1993 Application**

Works or structures over, on or under public roads or footpaths are subject to sections 138, 139 and 218 of the *Roads Act 1993* and specifically:

- Construction of driveways and/or new or alterations to footpath paving
- Alteration and/or extension to Council drainage infrastructure
- Alteration and/or addition of retaining walls
- Pumping of water to Council's below ground stormwater system
- Installation of soil/rock anchors under the roadway
- Installation of Stormwater outlet pipes across the nature strip

An "Application to Carry Out Works in a Public Road" form must be completed and lodged, with the application fee, at Council's Customer Services. Detailed plans and specifications of all works (including but not limited to structures, road works, driveway crossings, footpaths and stormwater drainage etc) within existing roads, must be attached, submitted to and approved by Council under section 138 of the *Roads Act 1993*, before the issue of any Construction Certificate.

Detailed engineering plans and specifications of the works required by this condition must accompany the application form. The plans must clearly show the following:

- Engineering drawings (plan, sections and elevation views) and specifications of the footpath, driveways, kerb and gutter, new gully pit showing clearly the connection point of site outlet pipe(s). Note, the connection drainage lines must be as direct as possible and generally run perpendicular to the kerb alignment.
- Engineering drawings of the new drainage line to be constructed joining the new and existing drainage pits including services.

All driveways must include a design longitudinal surface profile for the proposed driveway for assessment. The driveway profile is to start from the road centreline and be along the worst case edge of the proposed driveway. Gradients and transitions must be in accordance with clause 2.5.3, 2.6 of AS 2890.1 – 2004, Part 1 – *Off-street car parking*. The driveway profile submitted to Council must be to (1:25) scale (for template checking purposes) and contain all relevant details: reduced levels, proposed grades and distances.

The existing footpath level and grade at the street alignment of the property must be maintained unless otherwise specified by Council. Your driveway levels are to comply with AS2890.1 and Council's Standard Drawings. There may be occasions where these requirements conflict with your development and you are required to carefully check the driveway/garage slab and footpath levels for any variations.

Note: Any adjustments required from the garage slab and the street levels are to be carried out internally on private property

Drainage design works must comply with the Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.

Temporary ground anchors may be permitted, in accordance with Council's "Rock Anchor Policy".

Services: Prior to any excavation works, the location and depth of all public utility services (telephone, cable TV, electricity, gas, water, sewer, drainage, etc.) must be ascertained. The Applicant shall be responsible for all public utility adjustment/relocation works, necessitated by the development work and as required by the various public utility authorities and/or their agents.

All public domain works must comply with the latest version of Council's "*Specification for Roadworks, Drainage and Miscellaneous Works*" unless expressly provided otherwise by these conditions. This specification and the application form can be downloaded from [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au).








**Note:** To ensure that this work is completed to Council's satisfaction, this consent by separate condition, may impose one or more Infrastructure Works Bonds.

**Note:** When an application under the *Roads Act* is required, then four (4) weeks is to be allowed for assessment.

**Note:** *road* has the same meaning as in the *Roads Act 1993*.

**Note:** The intent of this condition is that the design of the road, footpaths, driveway crossings and public stormwater drainage works must be detailed and approved prior to the issue of any Construction Certificate. Changes in levels may arise from the detailed design of buildings, road, footpath, driveway crossing grades and stormwater. Changes required under *Road Act 1993* approvals may necessitate design and levels changes under this consent. This may in turn require the Applicant to seek to amend this consent.

## Attachments

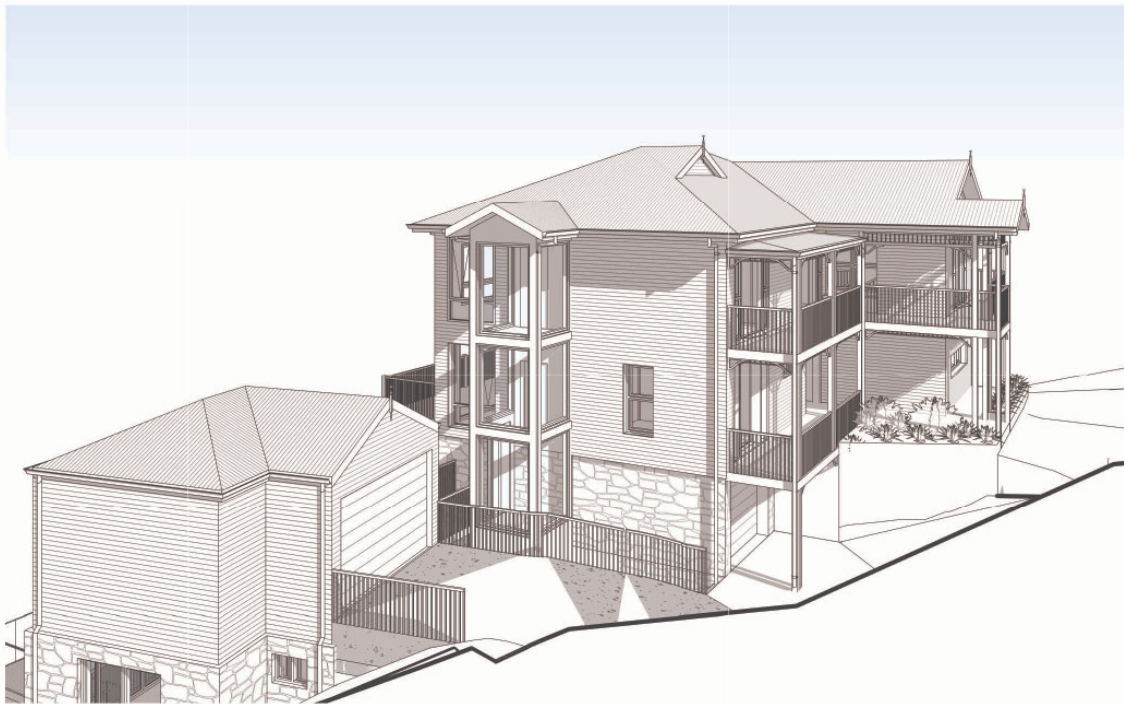
1. Architectural drawings, DCP control diagrams, landscape plan, shadow diagrams, perspectives and 9.5m height plane diagrams [↓](#) 
2. Survey Plan [↓](#) 
3. Consultant Development Engineer's referral response [↓](#) 
4. Consultant arborist's referral response [↓](#) 
5. Heritage Officer's referral response [↓](#) 
6. Senior Environment and Sustainability Officer's referral response [↓](#) 
7. Clause 4.6 written statement [↓](#) 



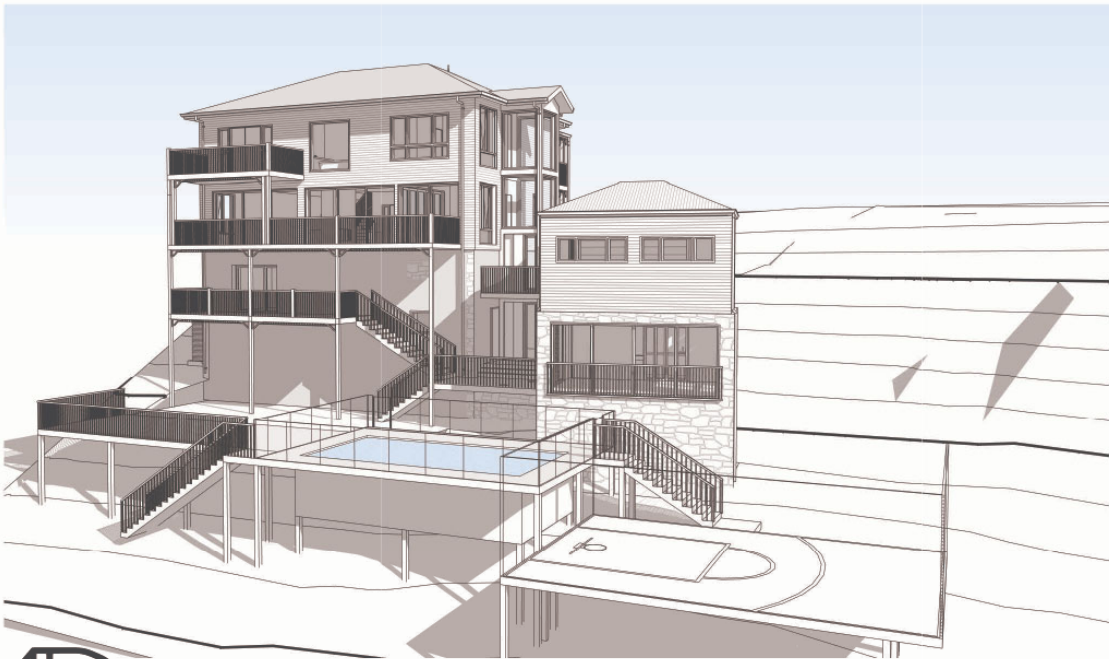


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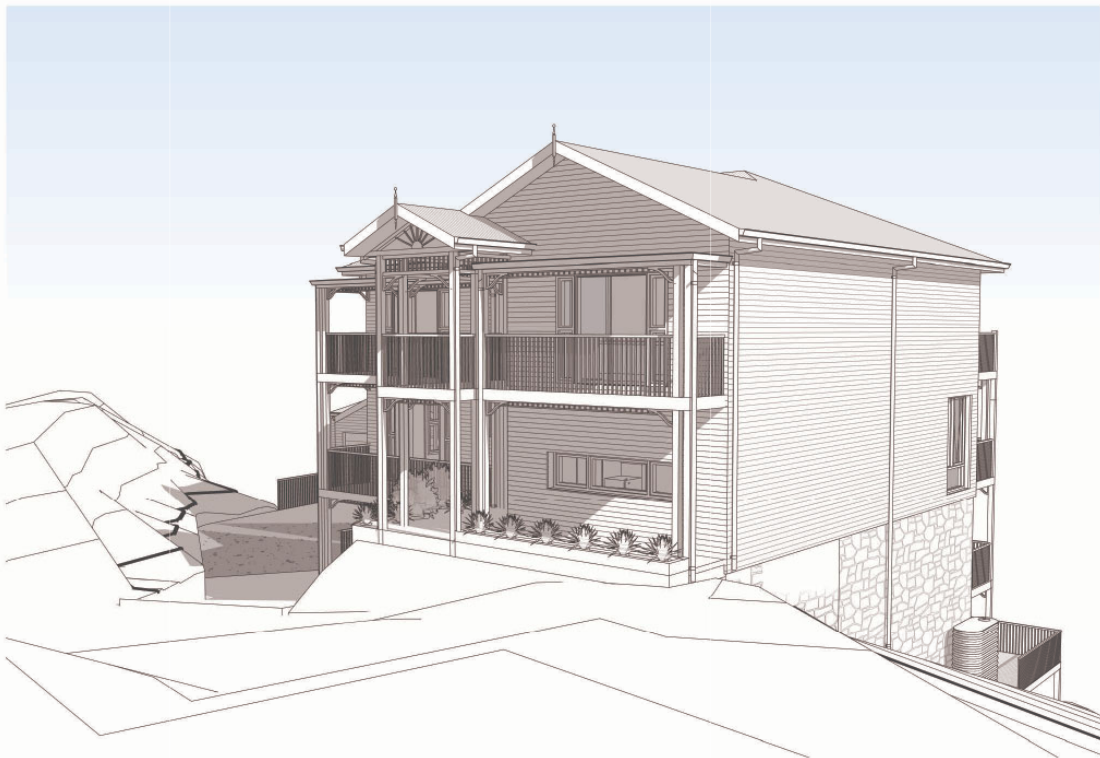
LOT 1, N°31 WENTWORTH ROAD, VAUCLUSE



STREET PERSPECTIVE



REAR PERSPECTIVE



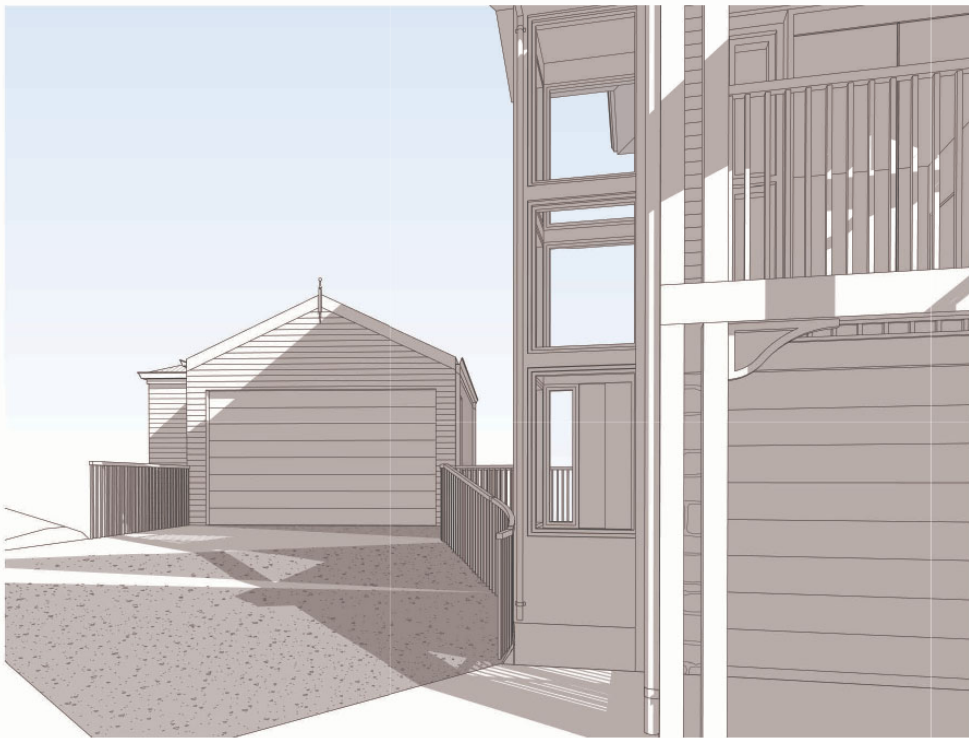
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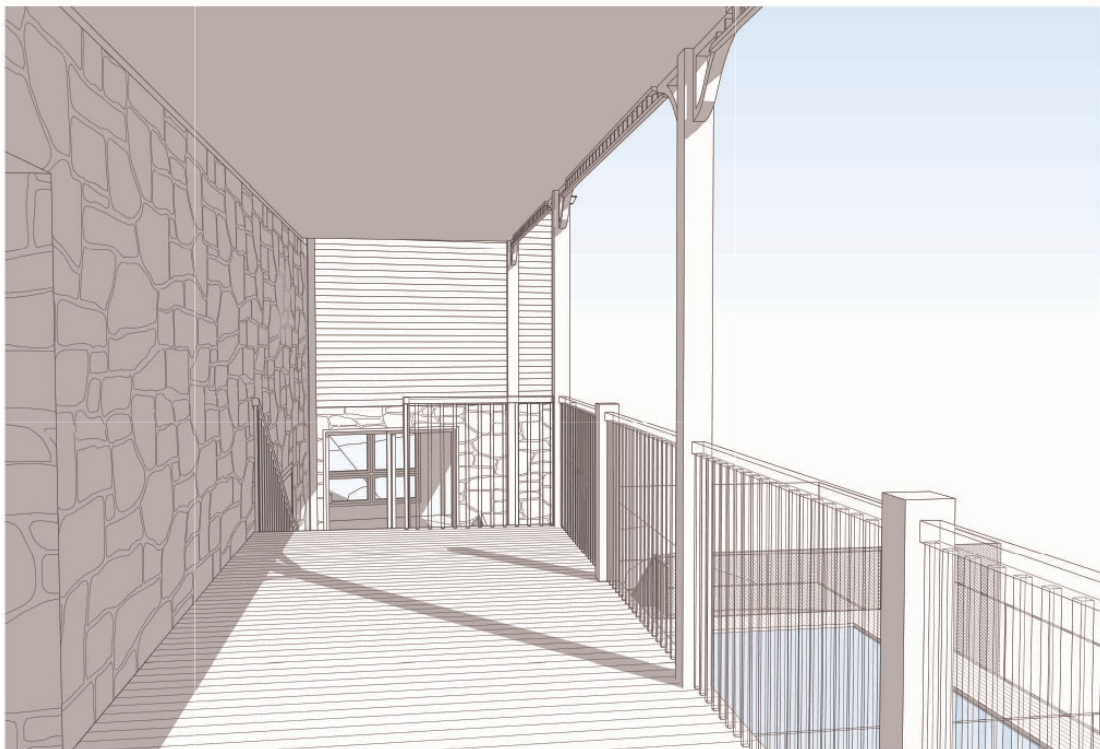
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STAIRS DOWN TO REAR YARD VIEW



LOWER LIVING BALCONY TO YARD



REAR VIEW FROM POOL



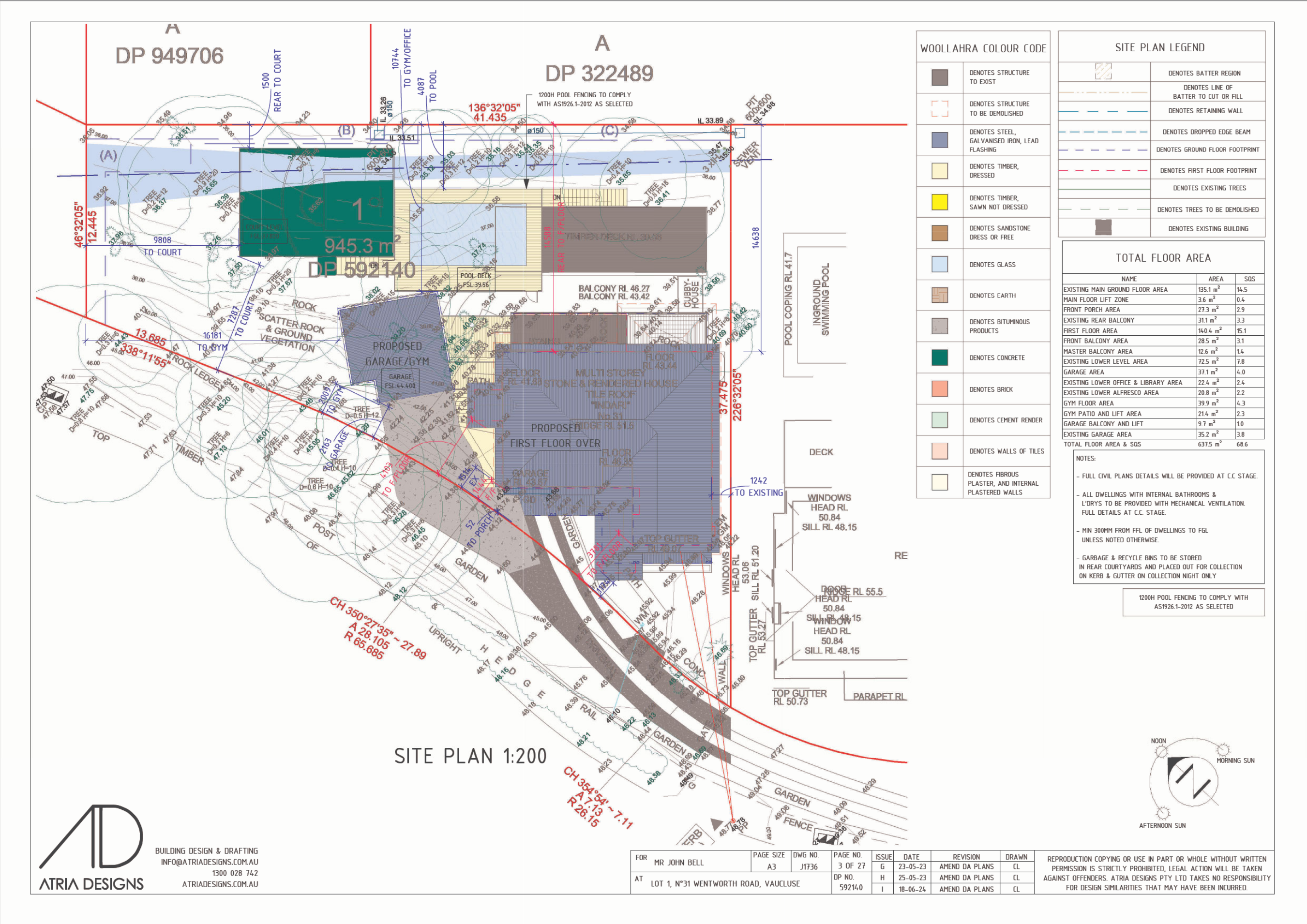
REAR VIEW FROM COURT



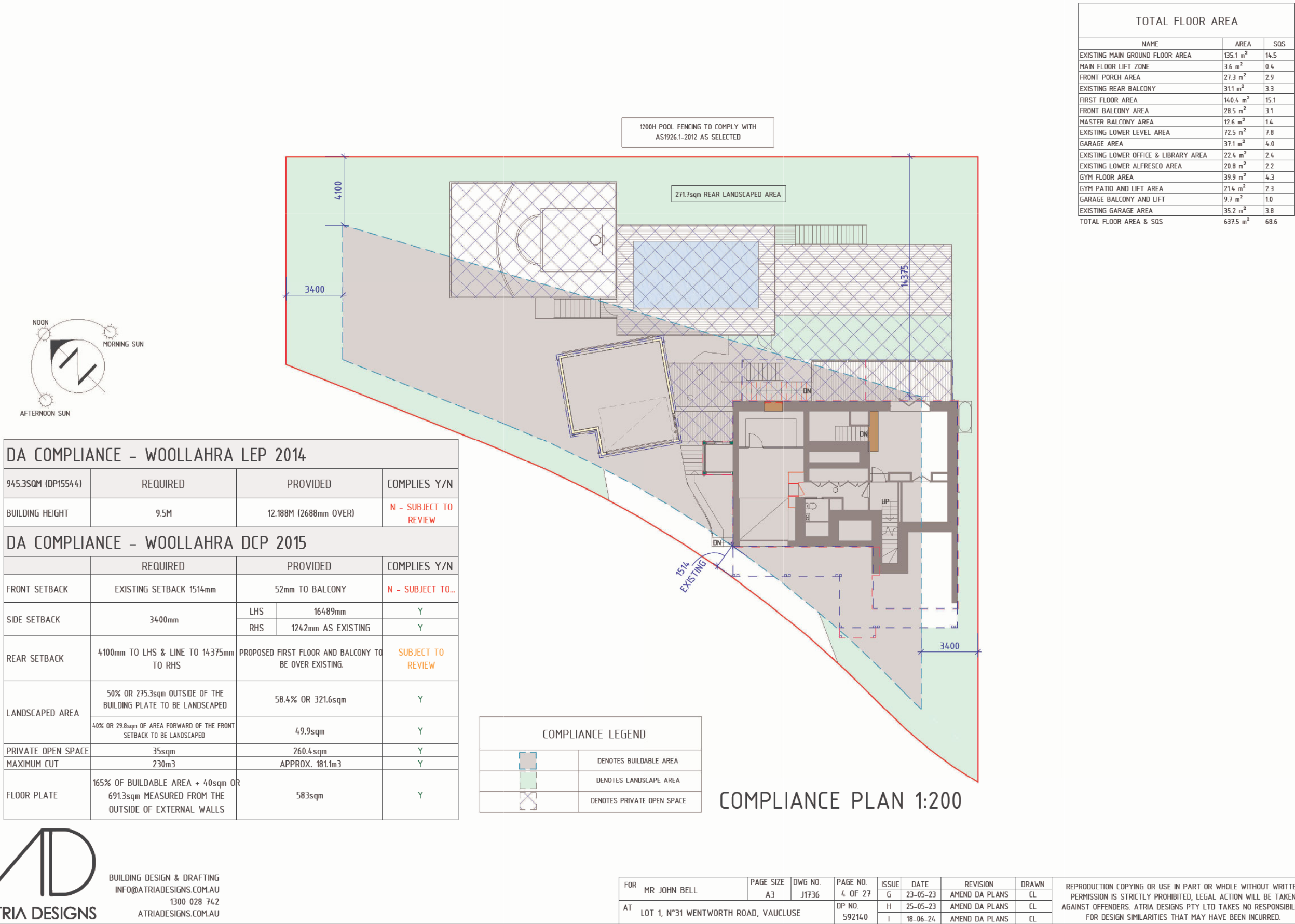
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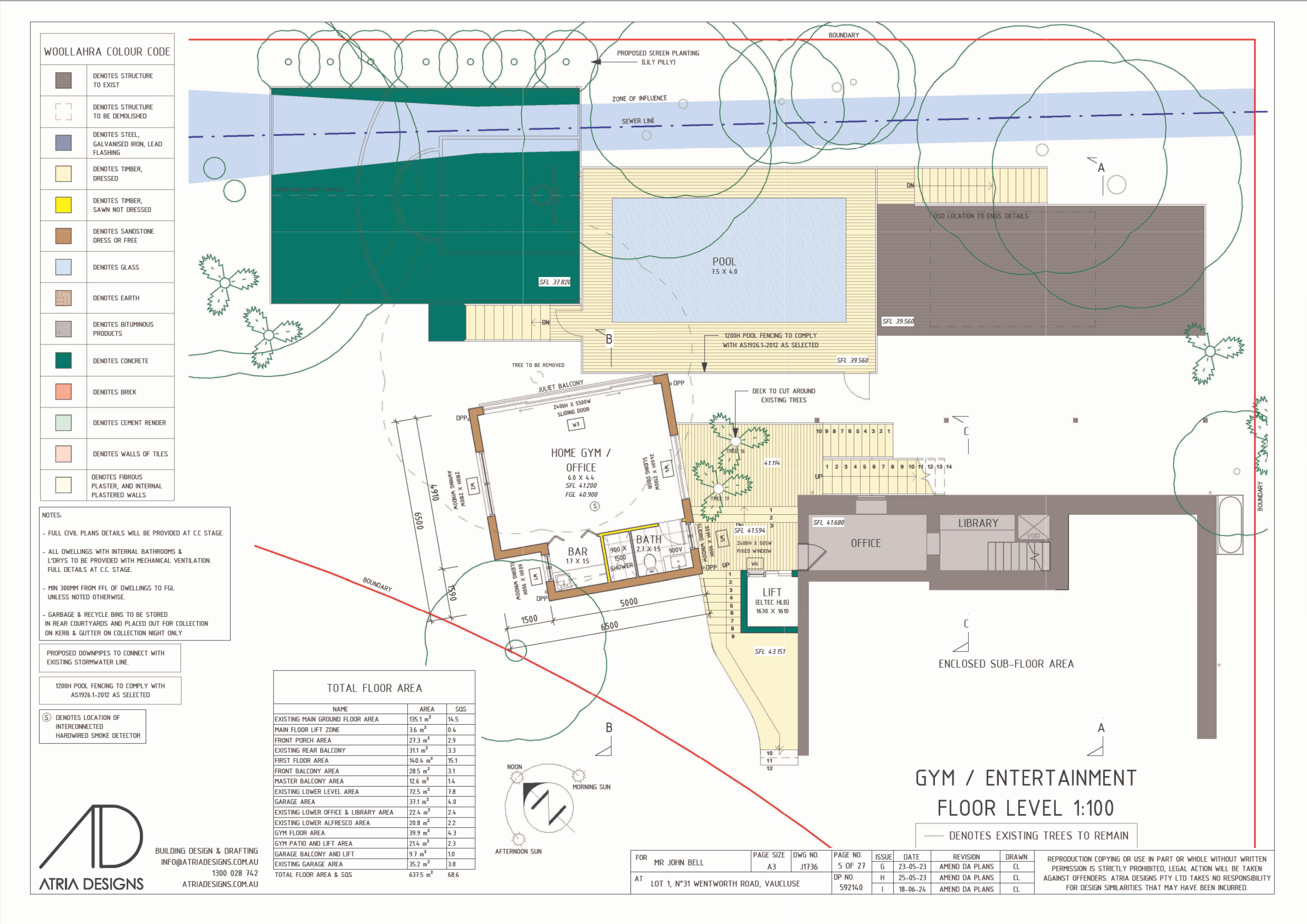
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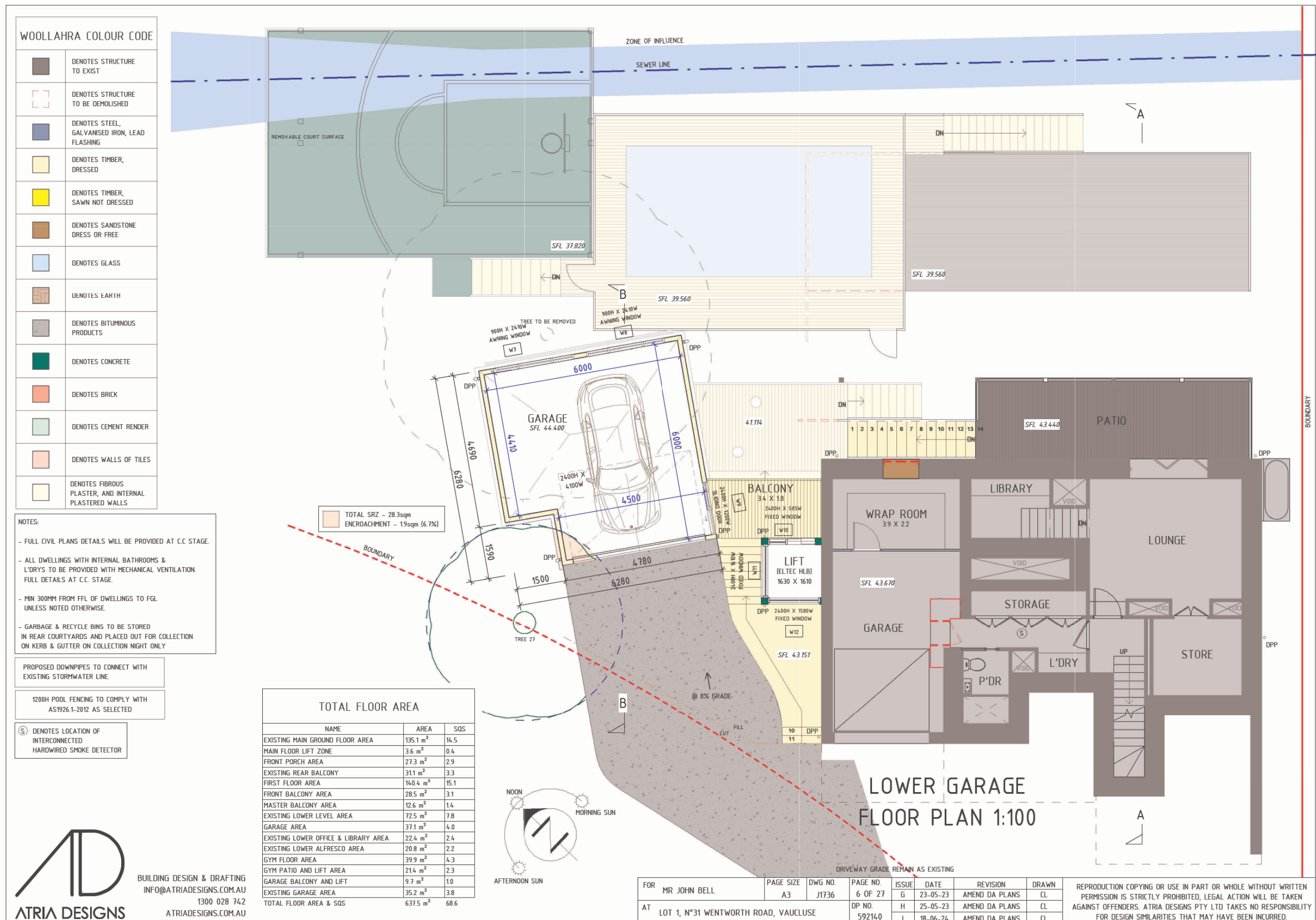


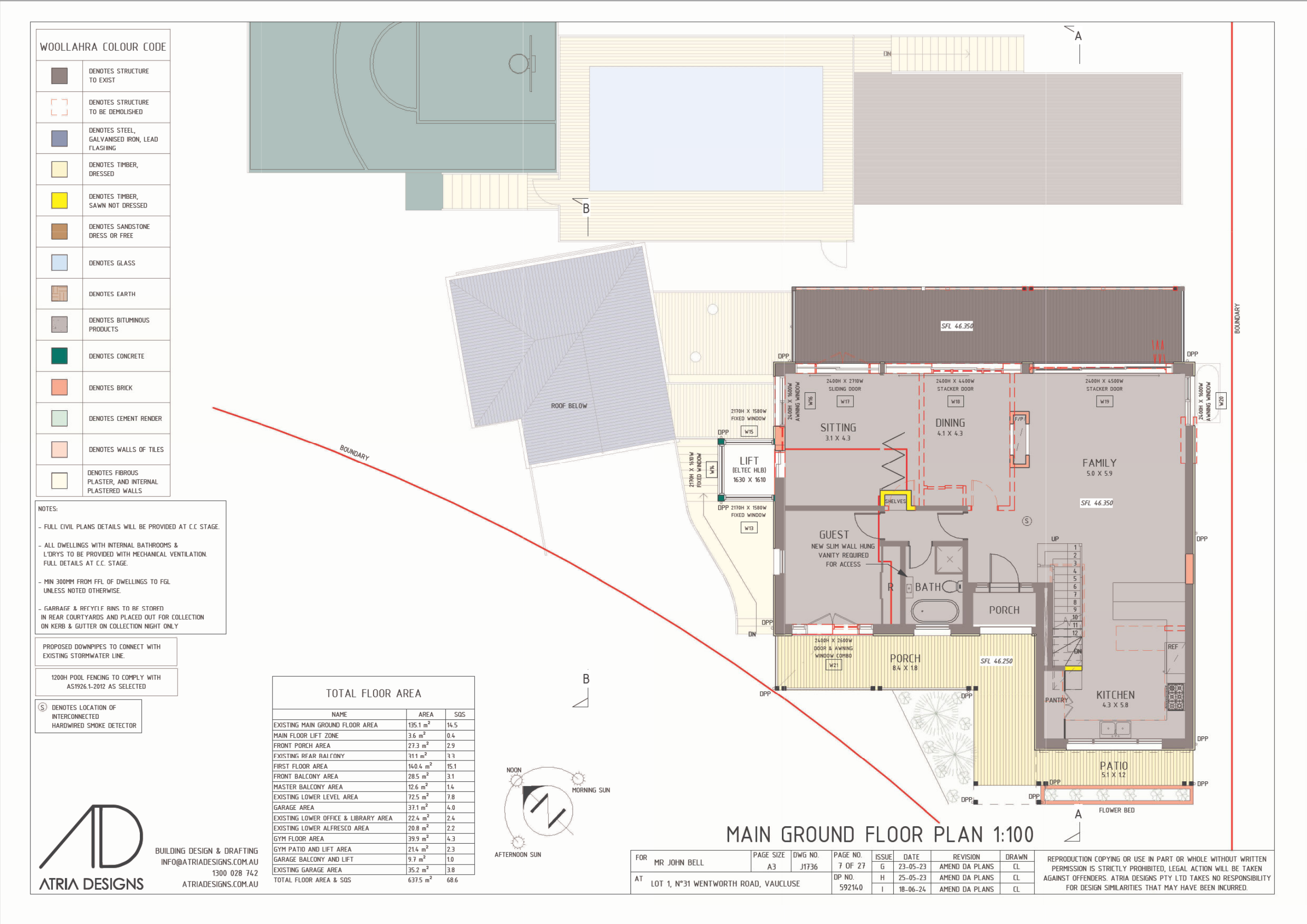












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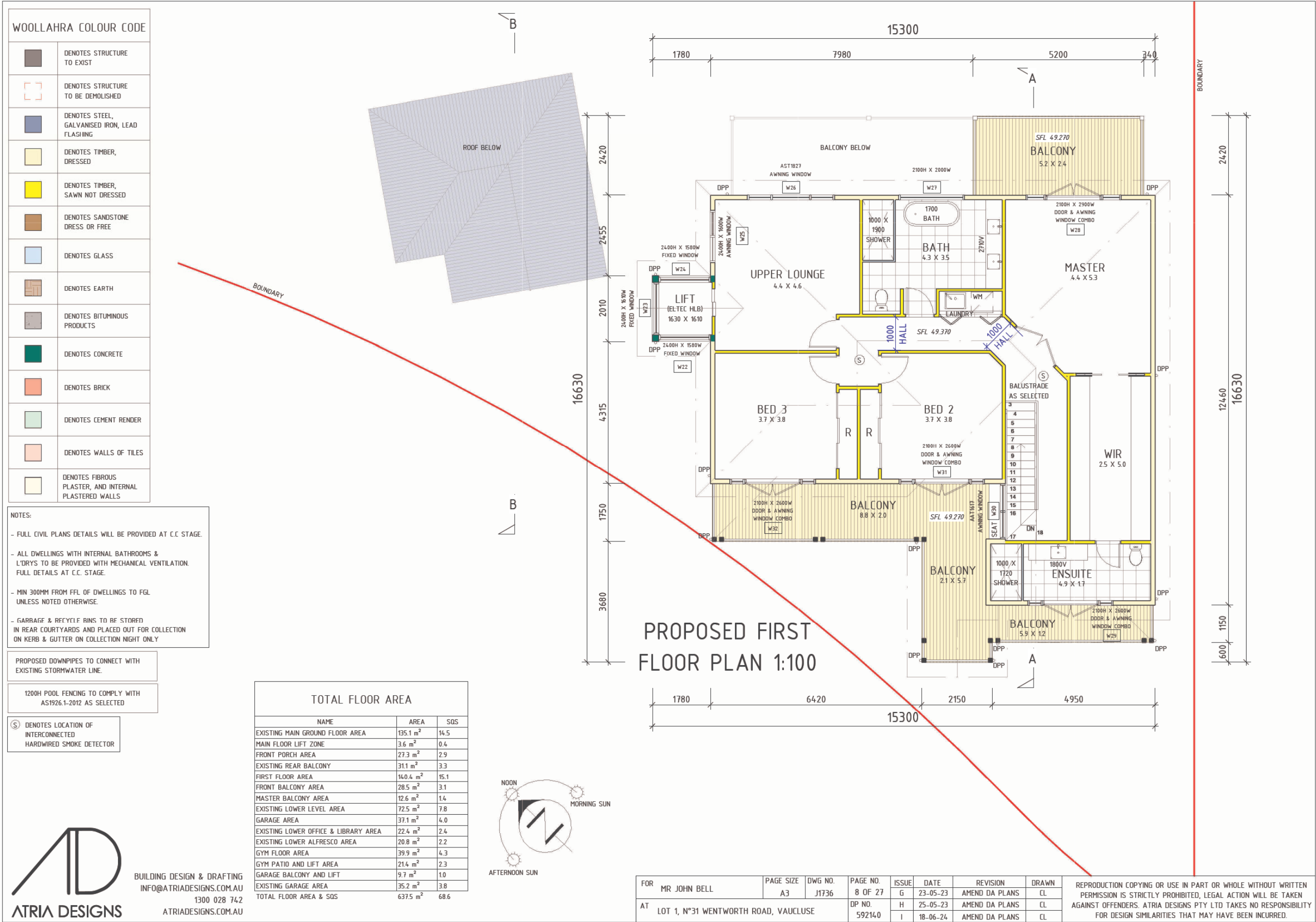
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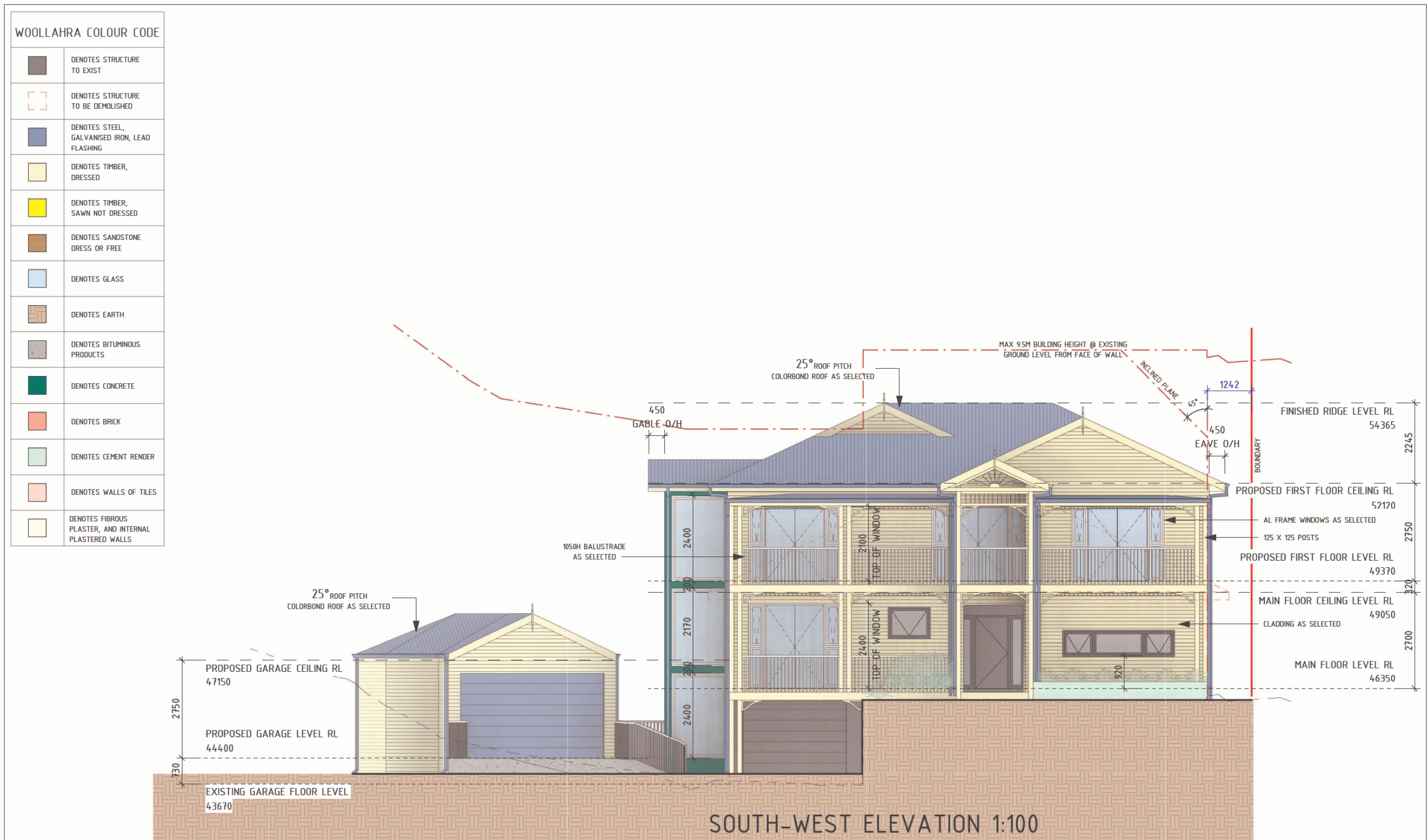
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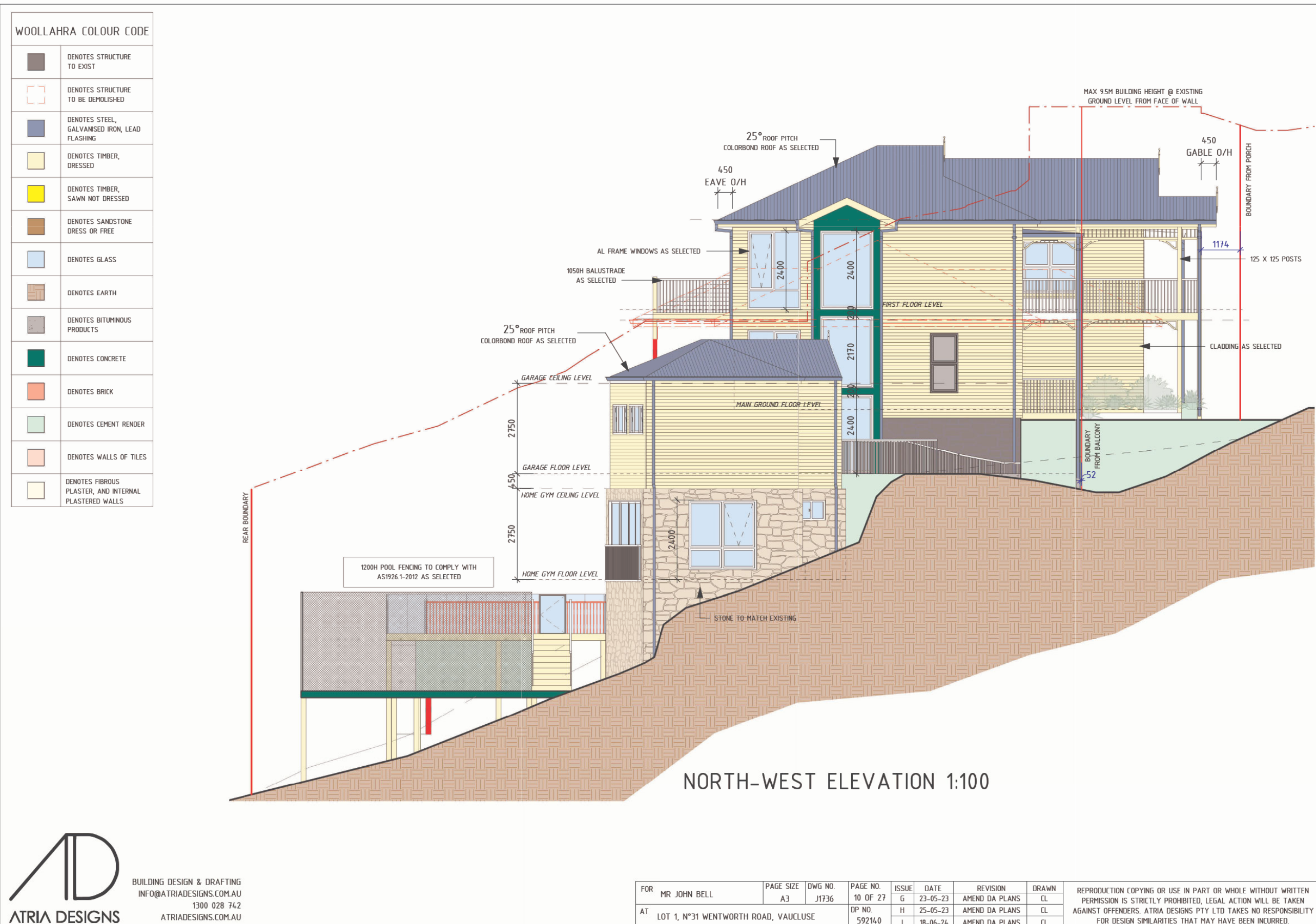




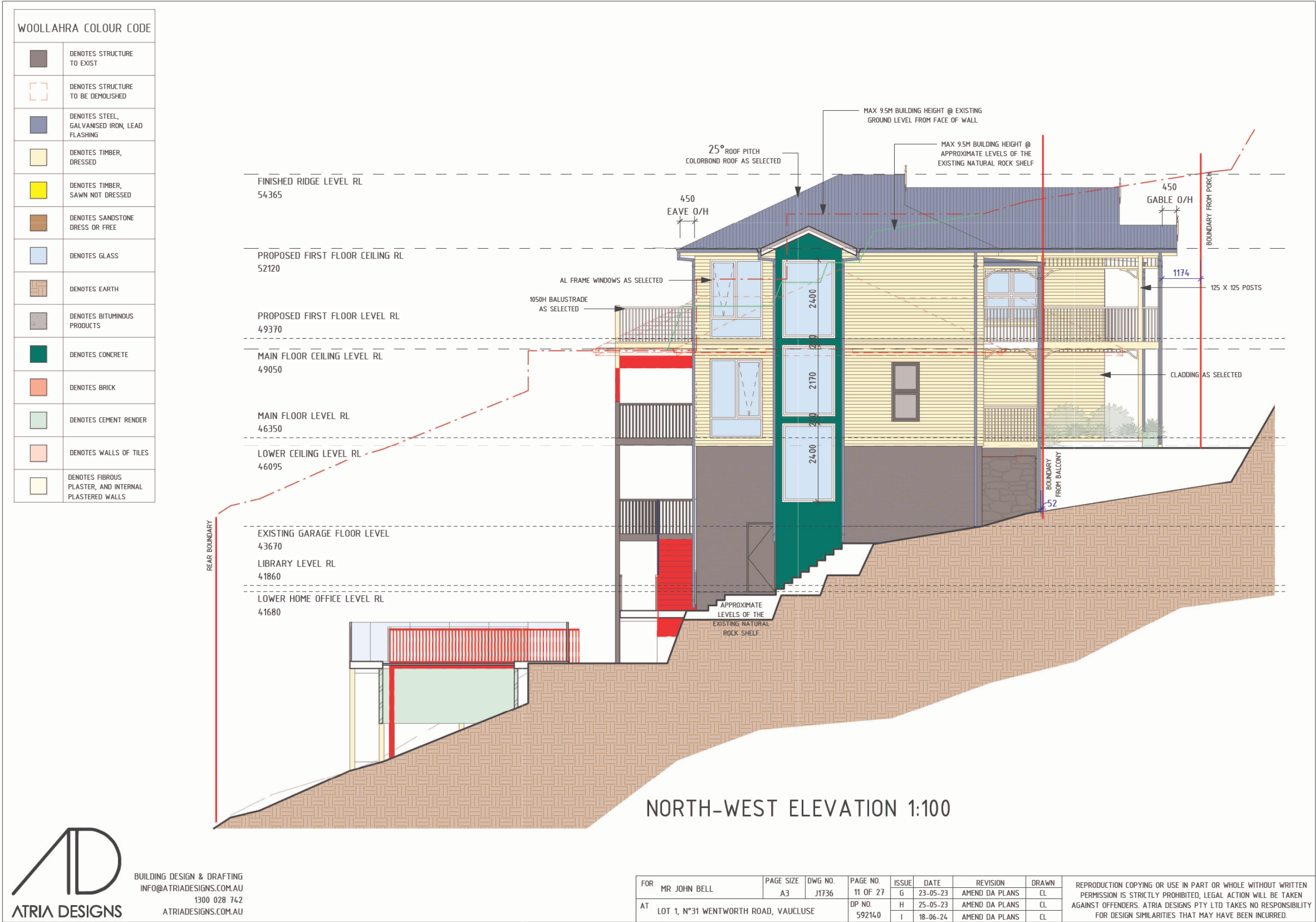


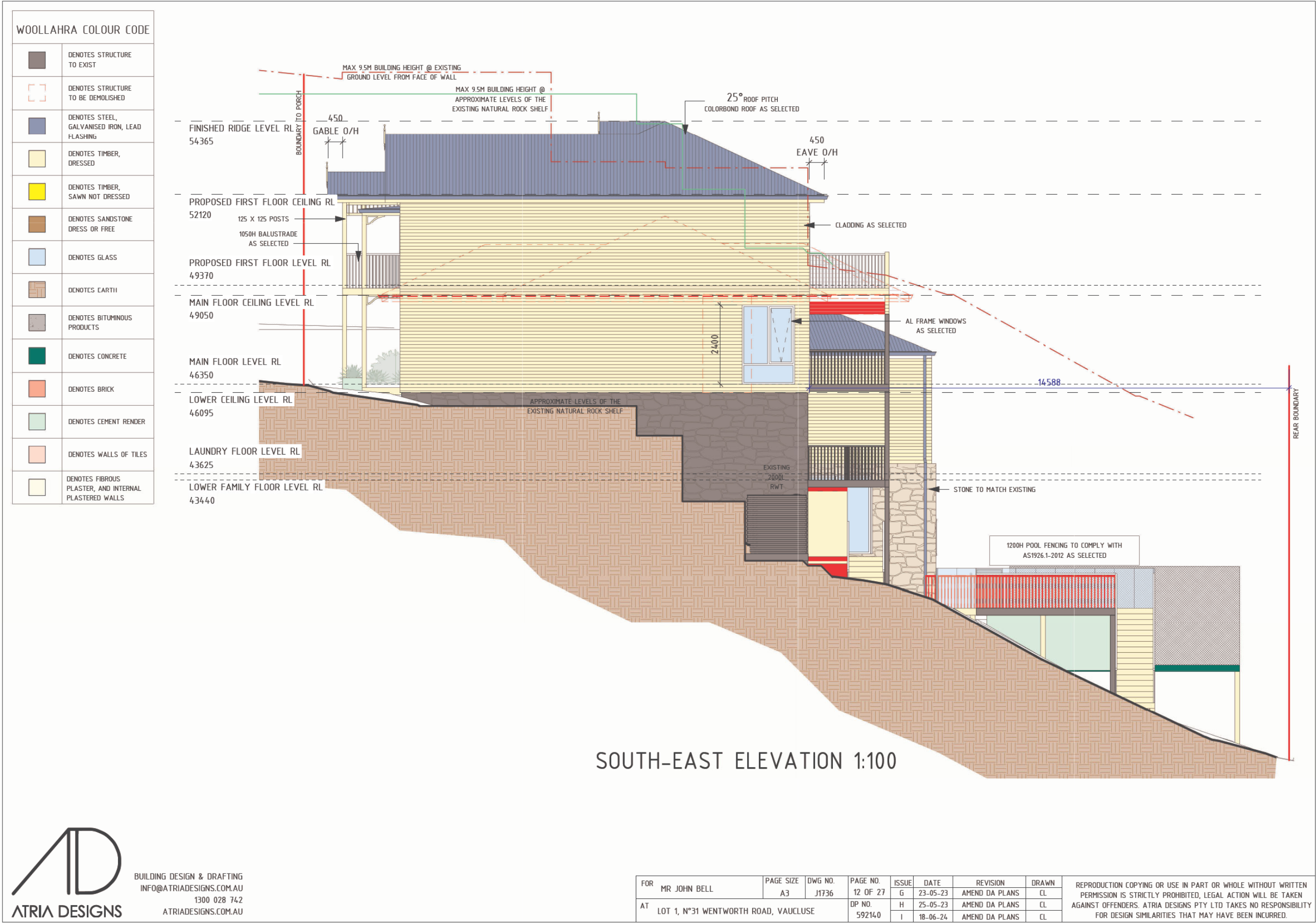
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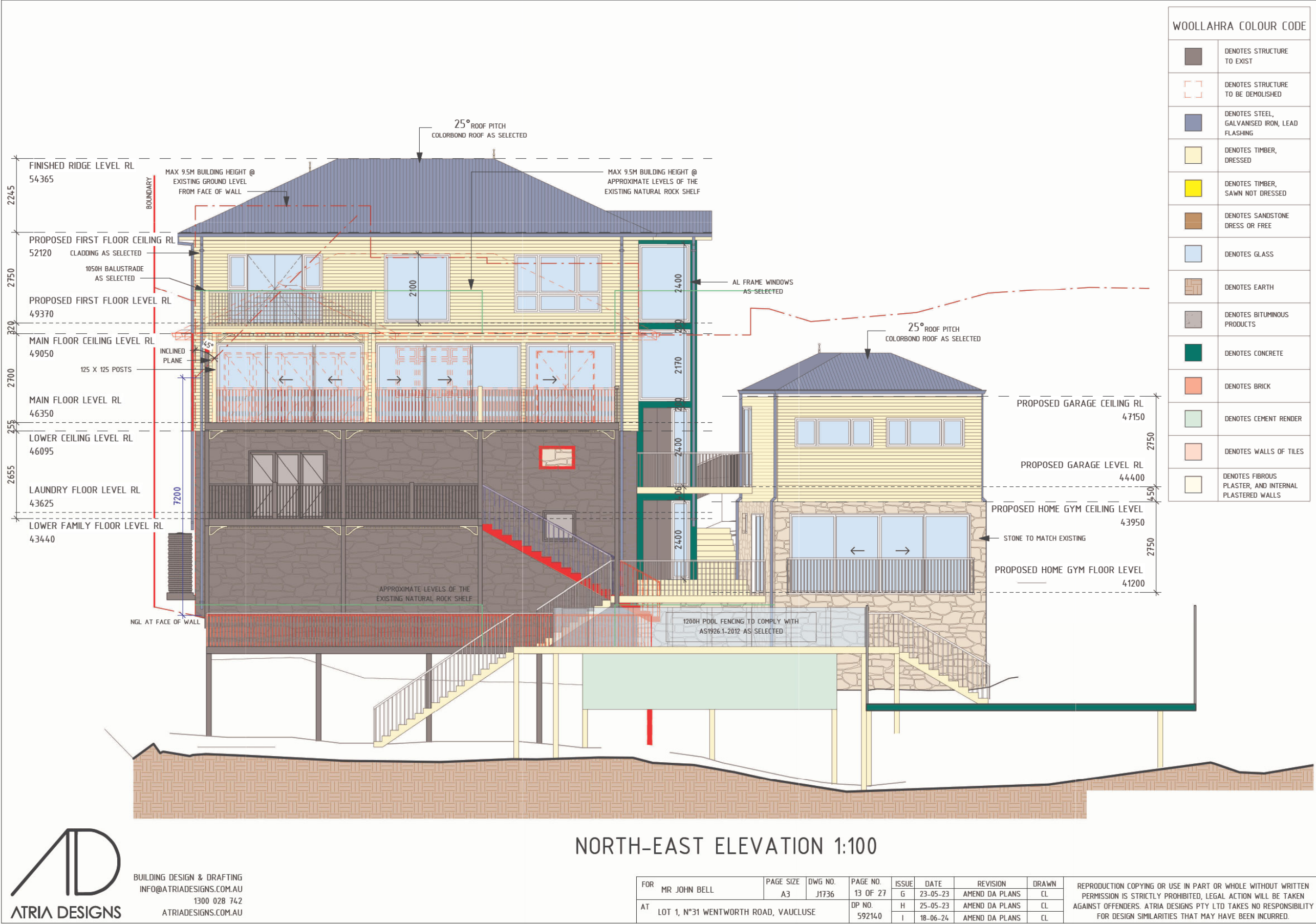


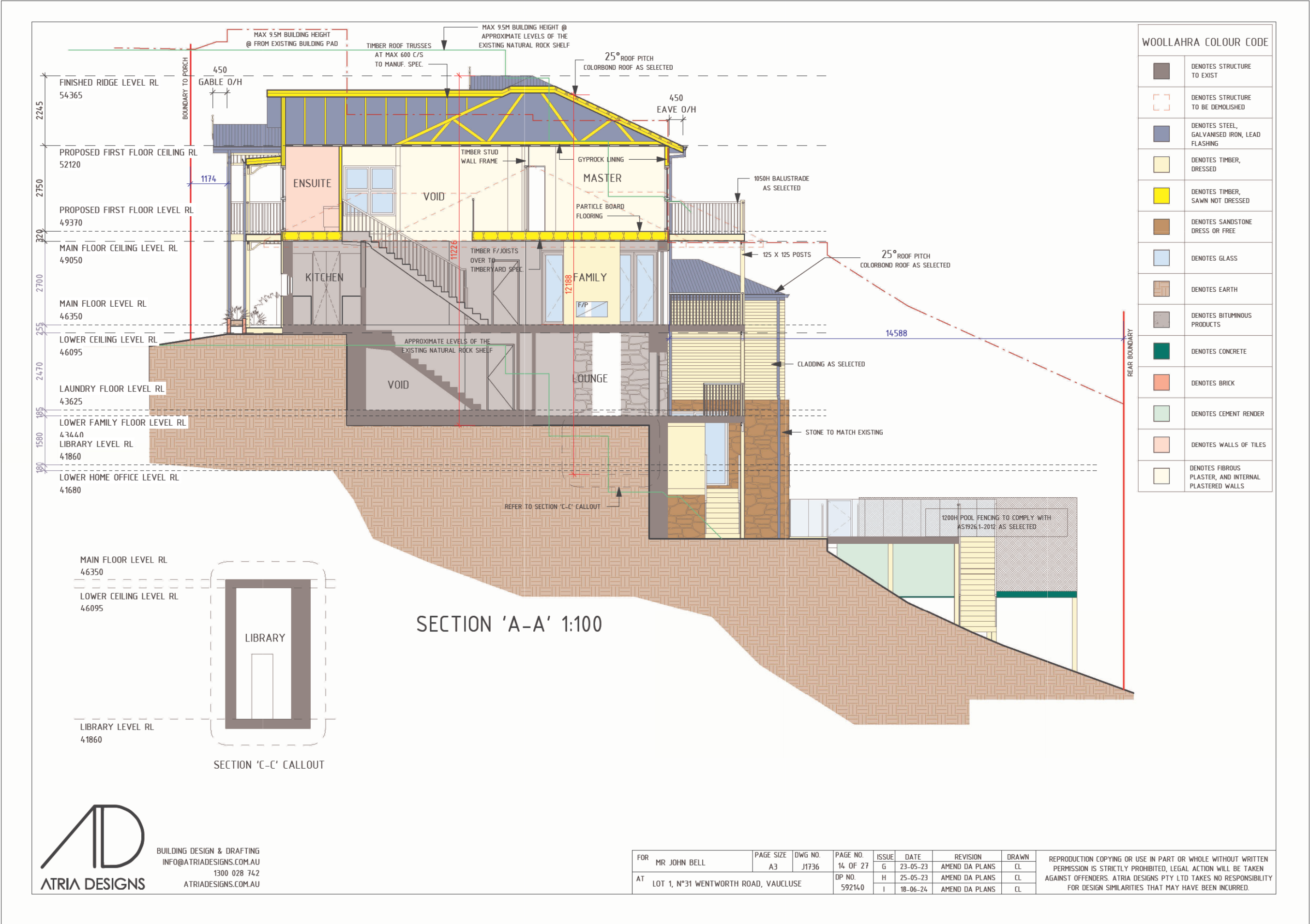




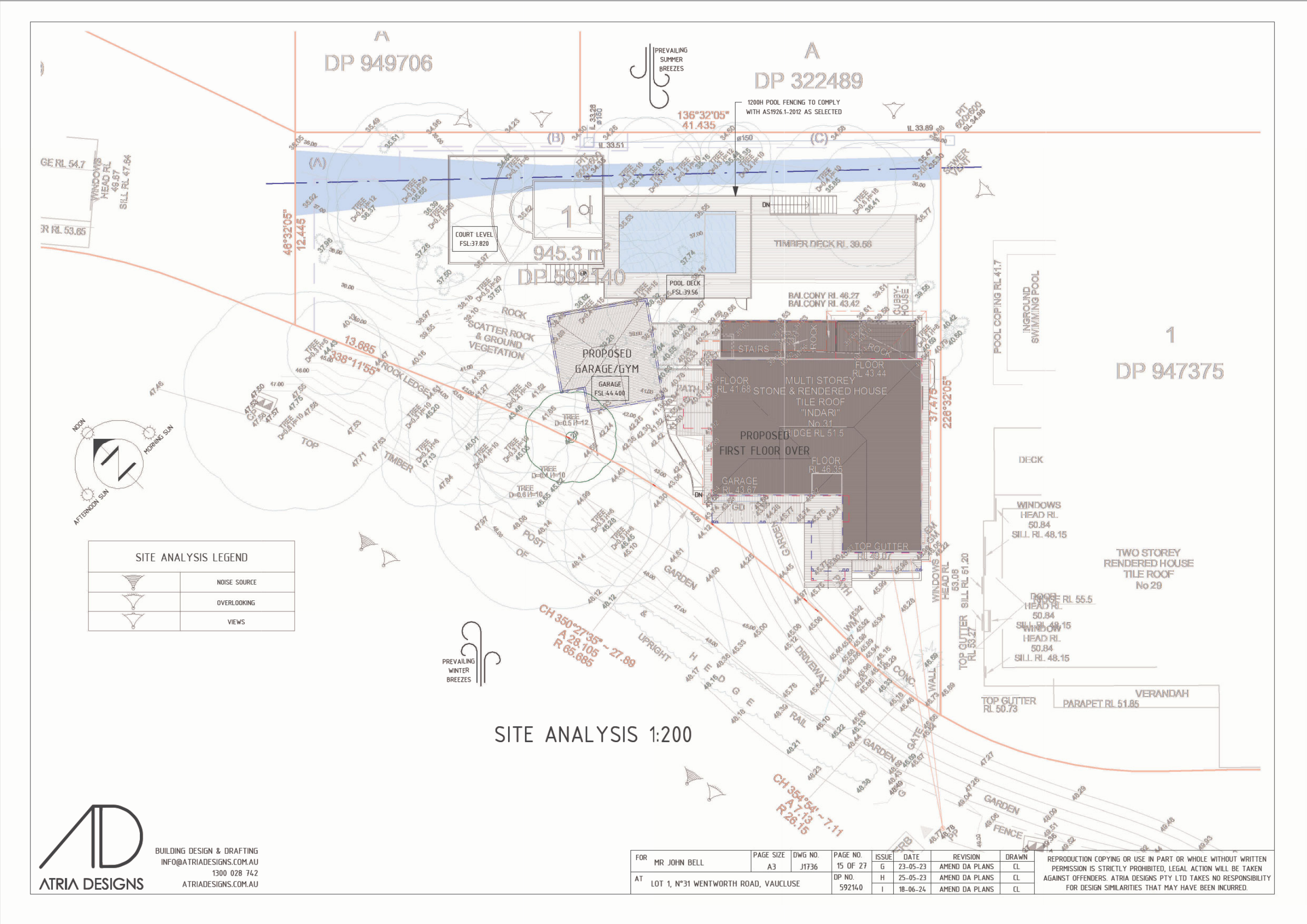




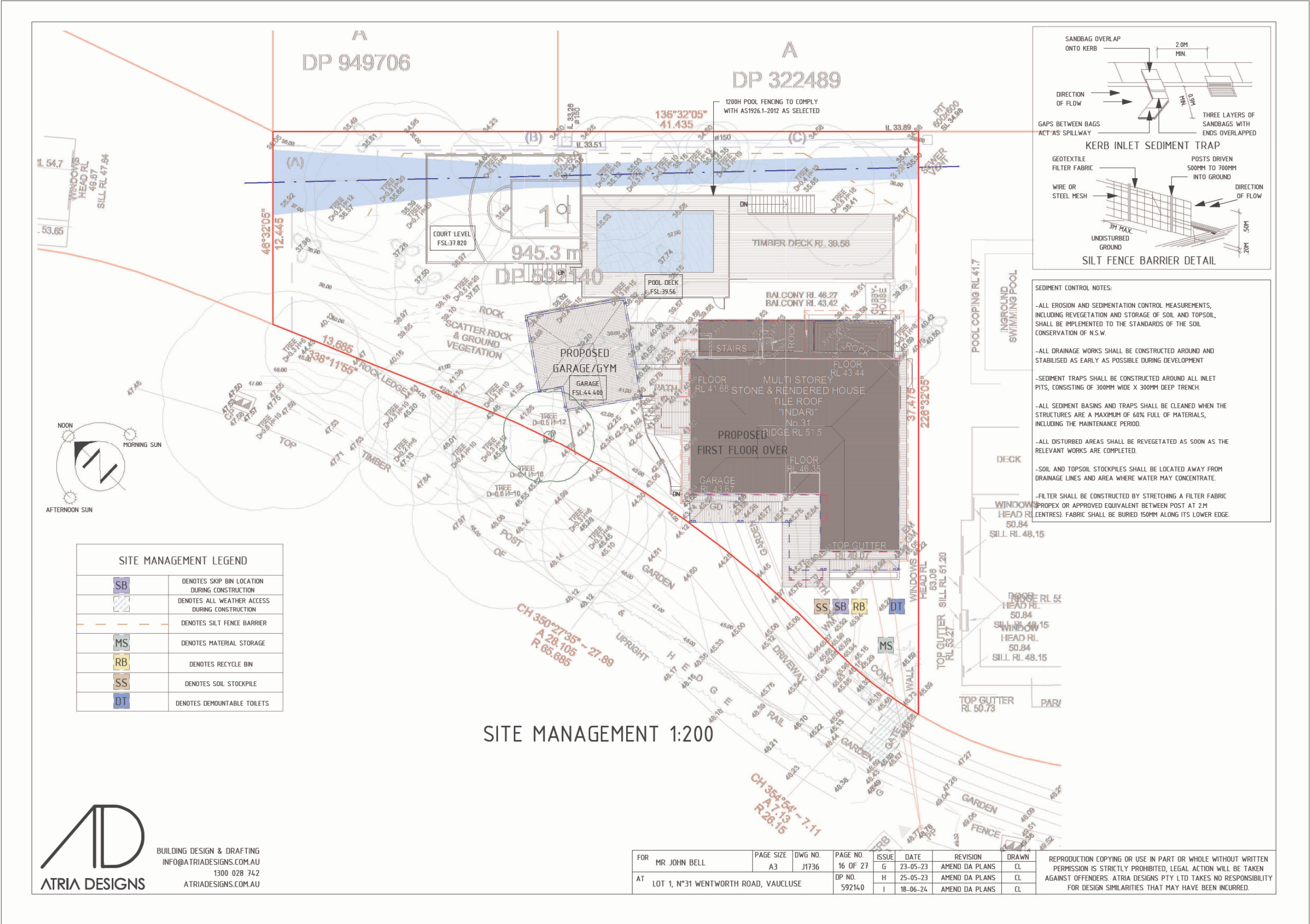




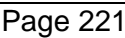




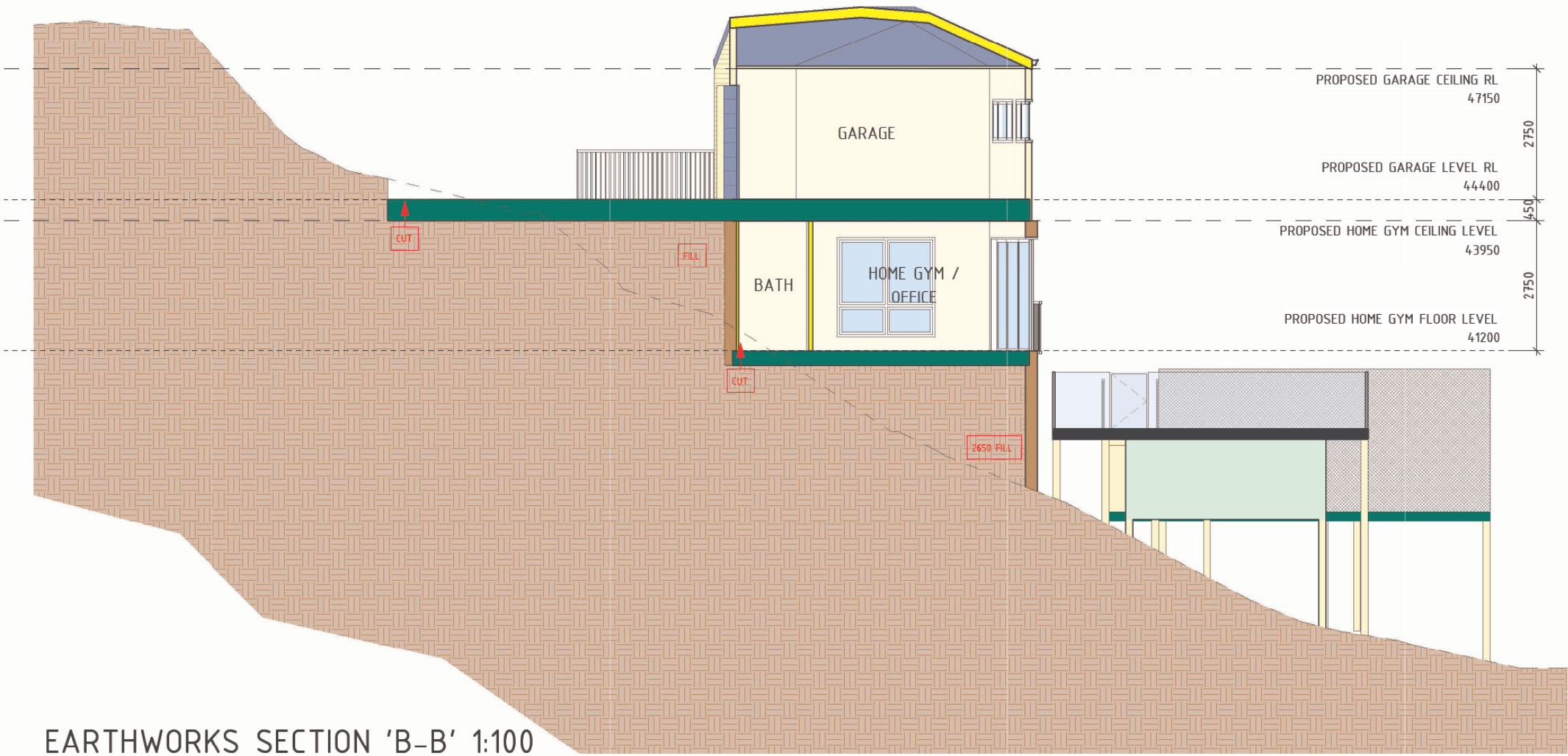










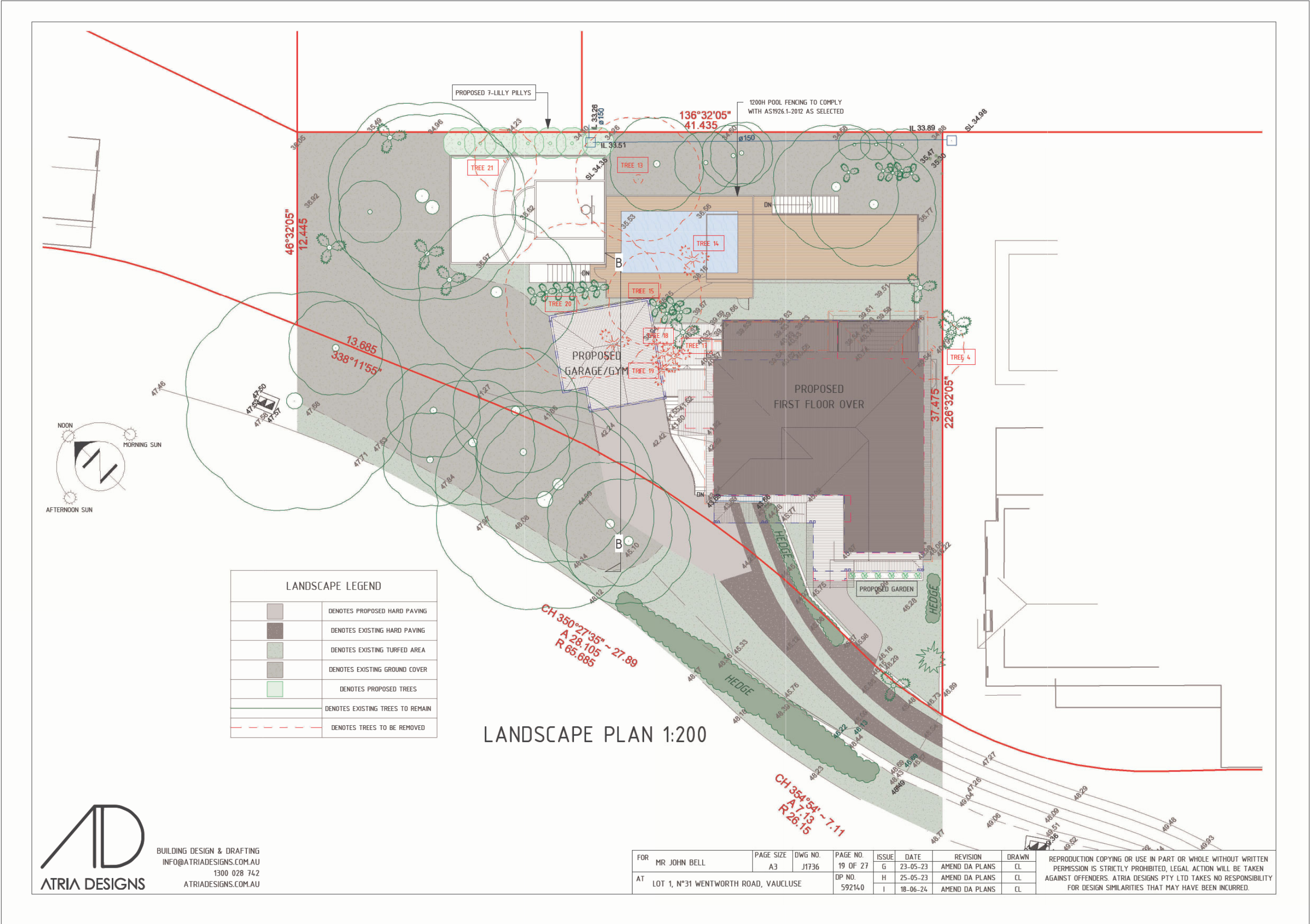


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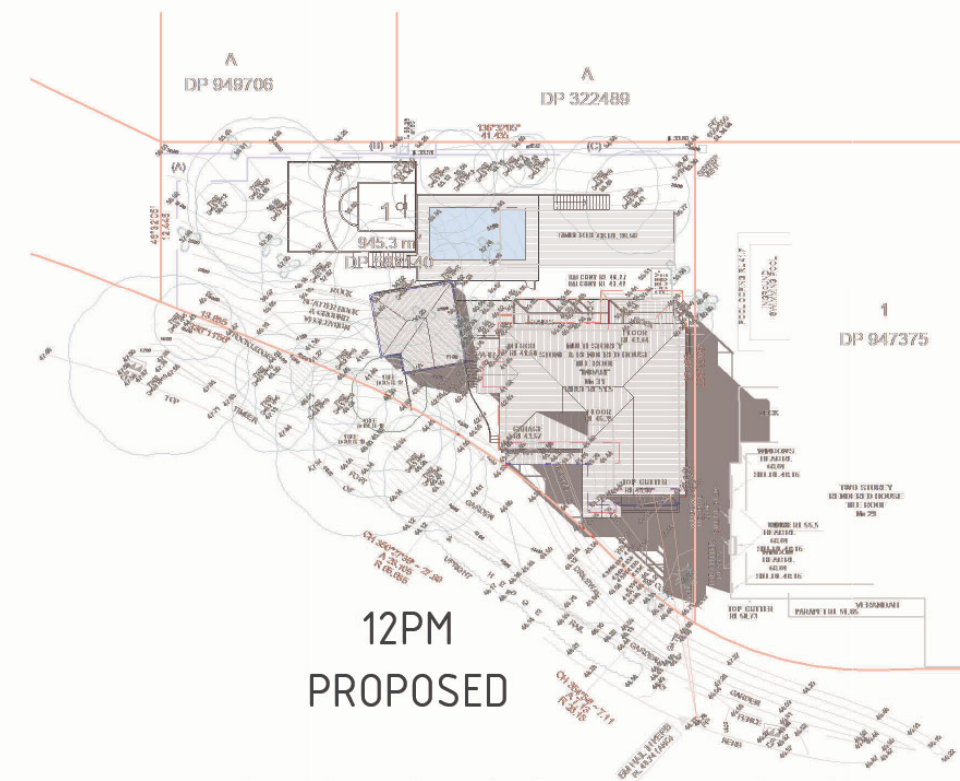
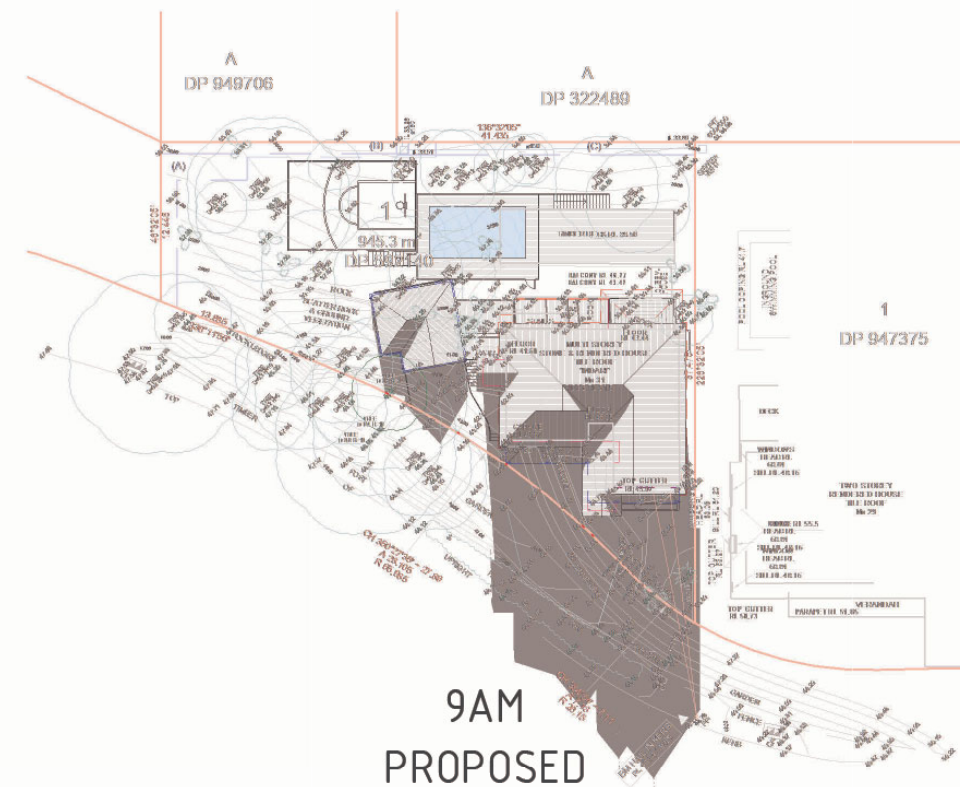
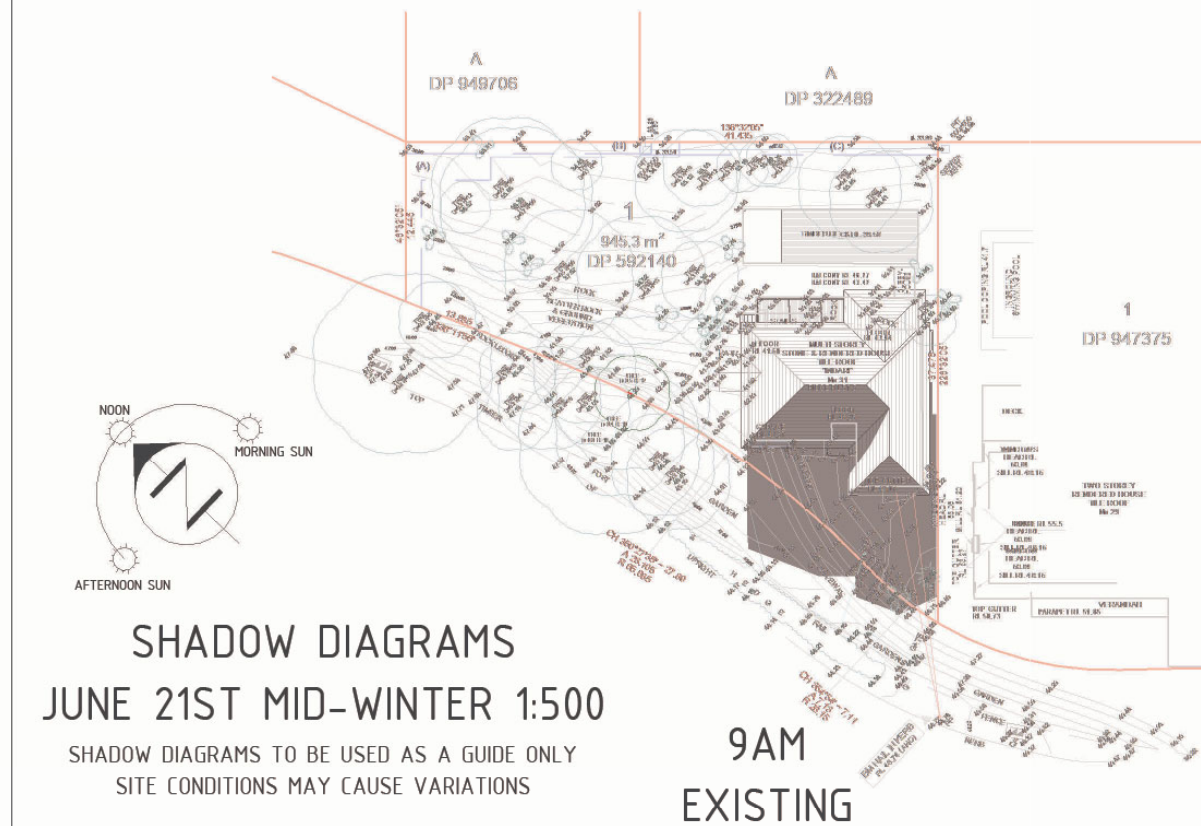
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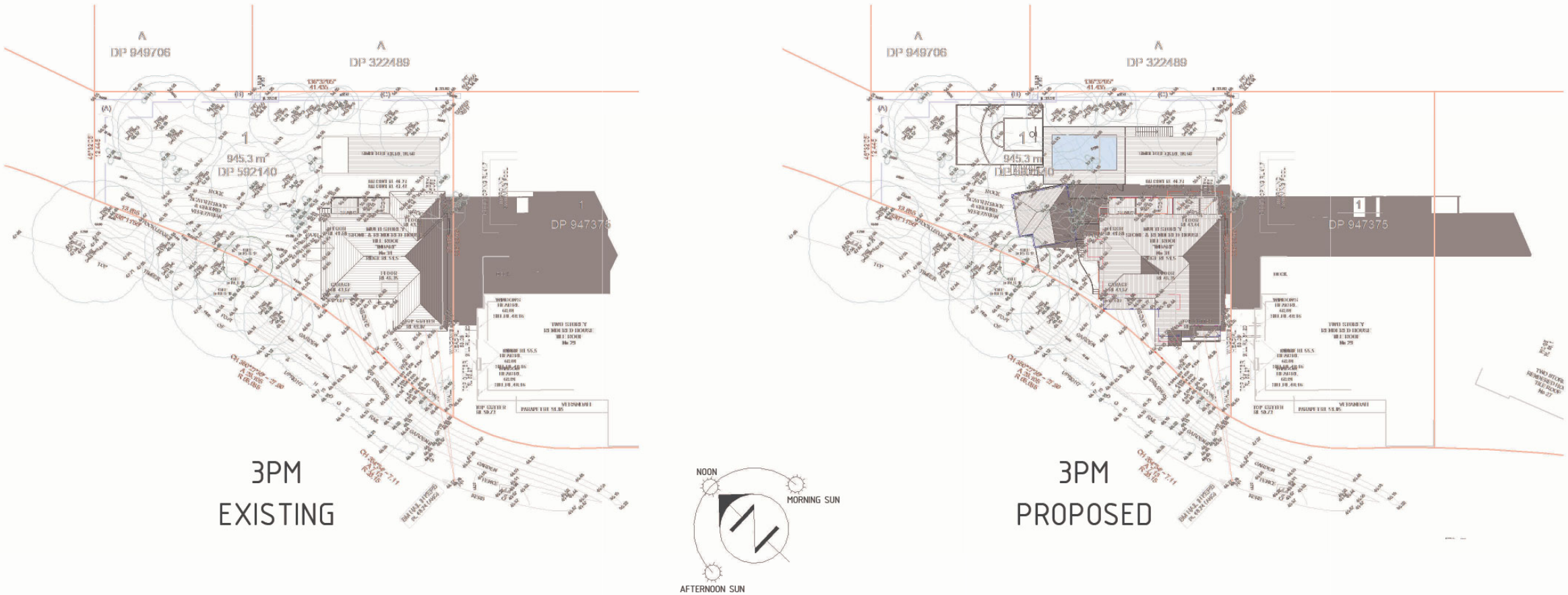








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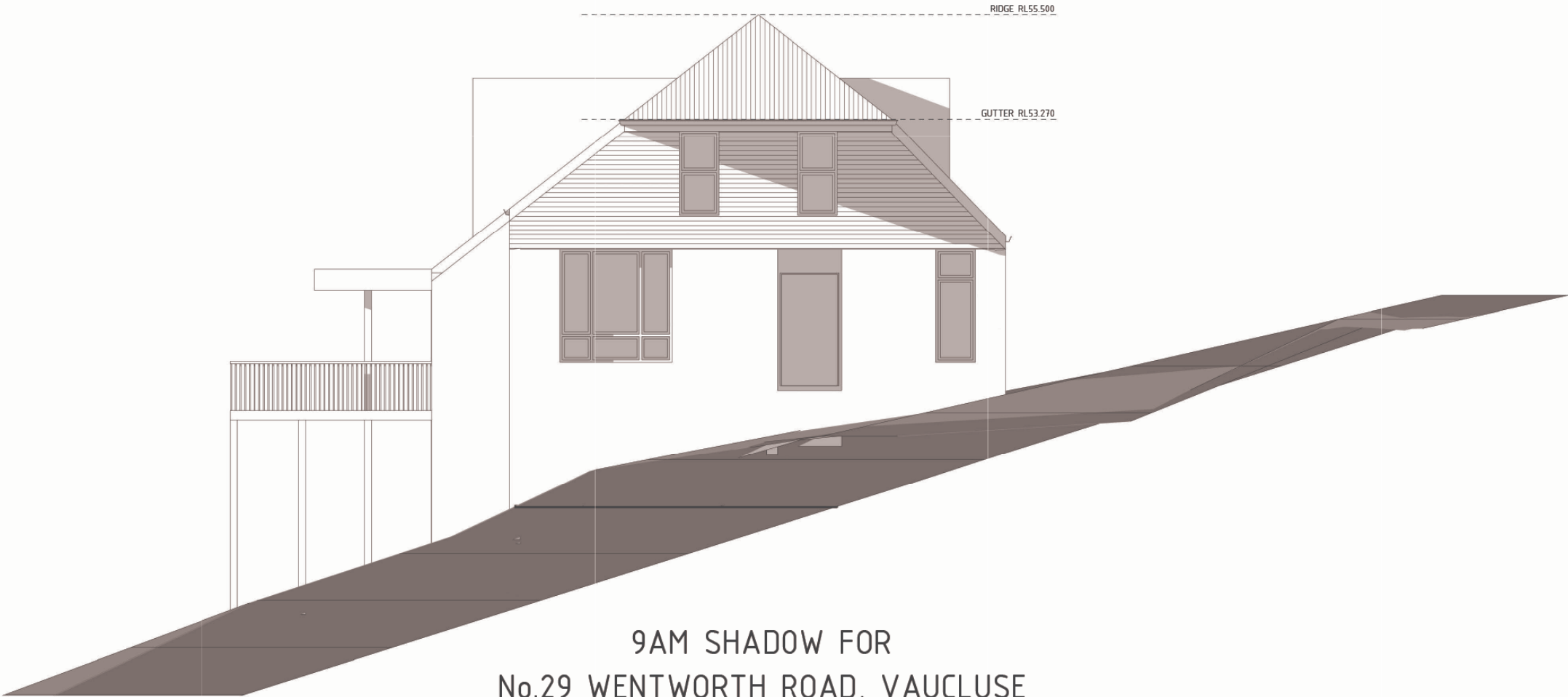
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JUNE 21ST MID-WINTER 1:500  
SHADOW DIAGRAMS TO BE USED AS A GUIDE ONLY  
SITE CONDITIONS MAY CAUSE VARIATIONS



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9AM SHADOW FOR  
No.29 WENTWORTH ROAD, VAUCLUSE

ELEVATIONAL SHADOW DIAGRAMS  
JUNE 21ST MID-WINTER 1:500

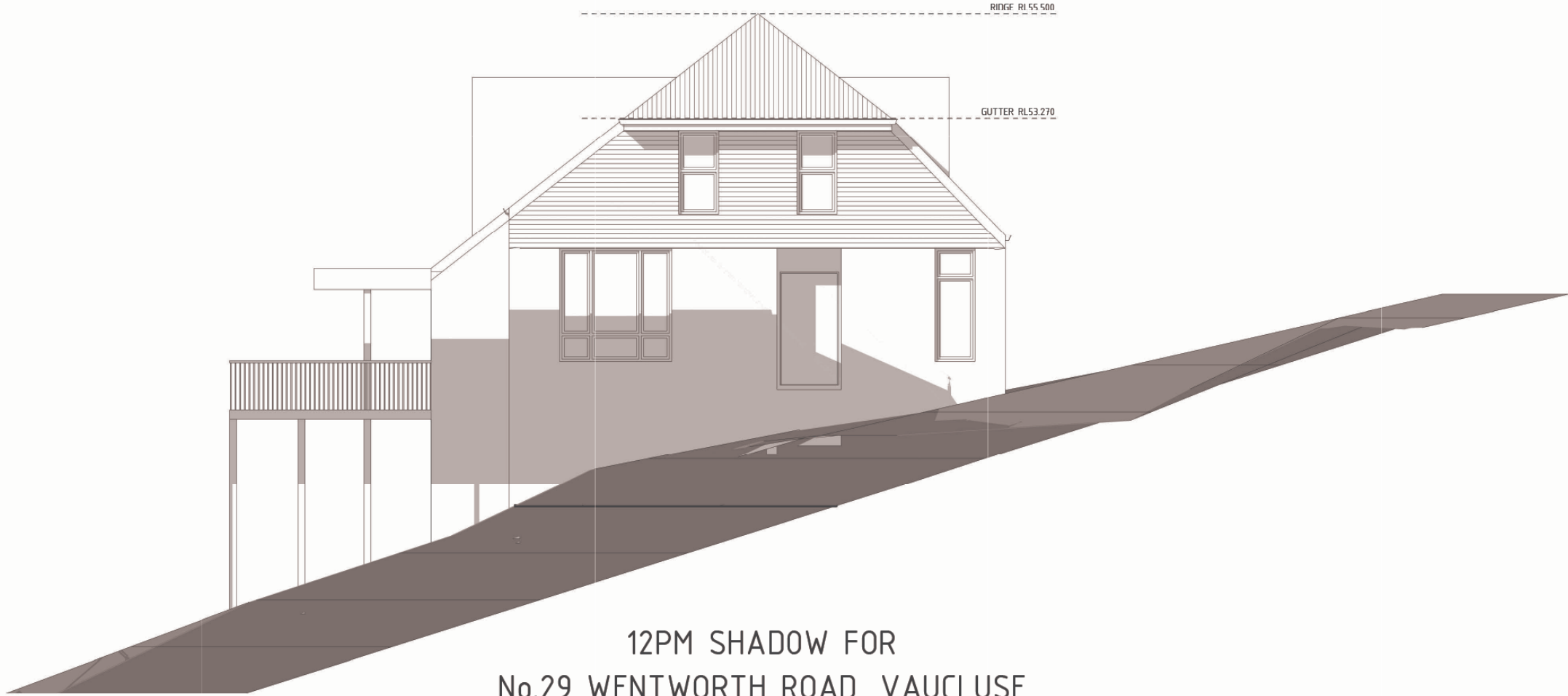
SOLAR ACCES TO UPPER LEVEL HABITABLE ROOMS TO NORTH FACING WINDOWS OF ADJACENT DWELLING

SHADOW DIAGRAMS TO BE USED AS A GUIDE ONLY  
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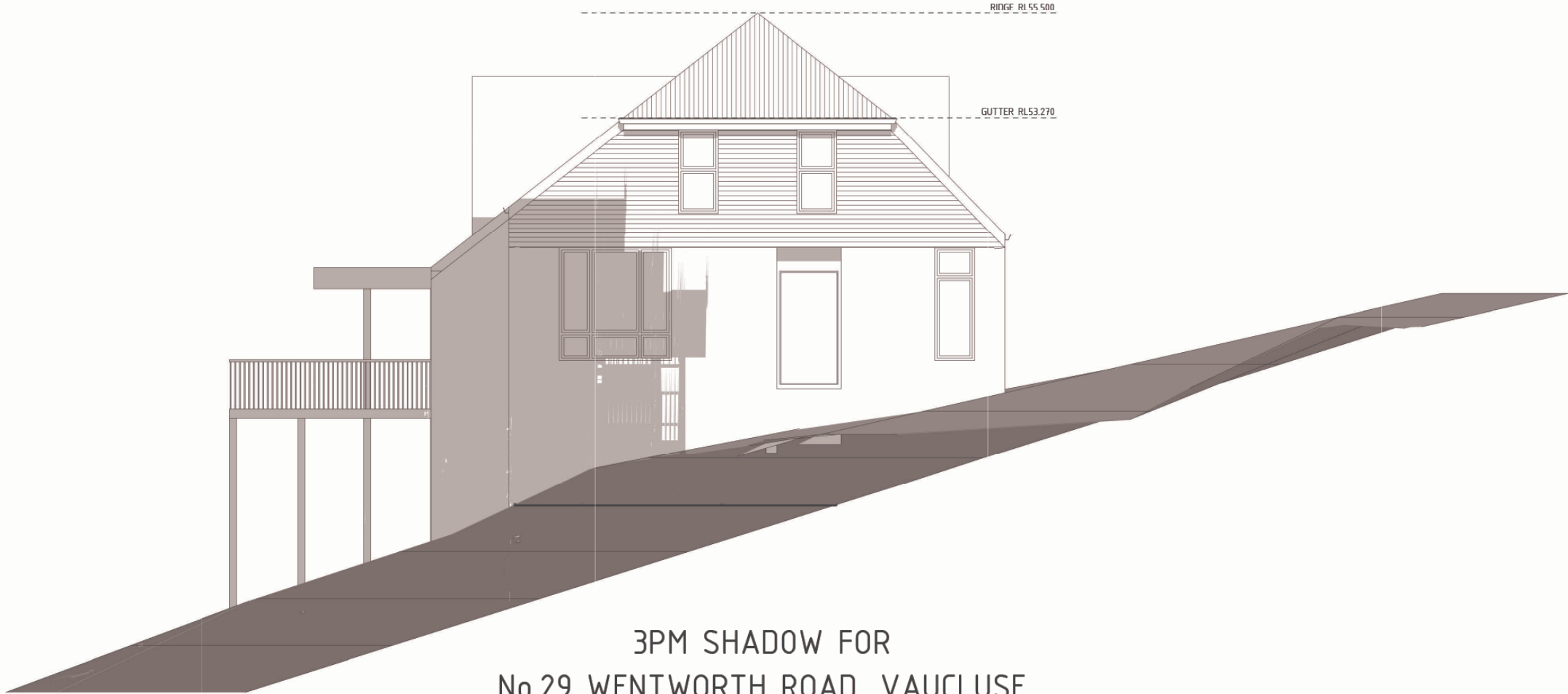


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No.29 WENTWORTH ROAD, VAUCLUSE

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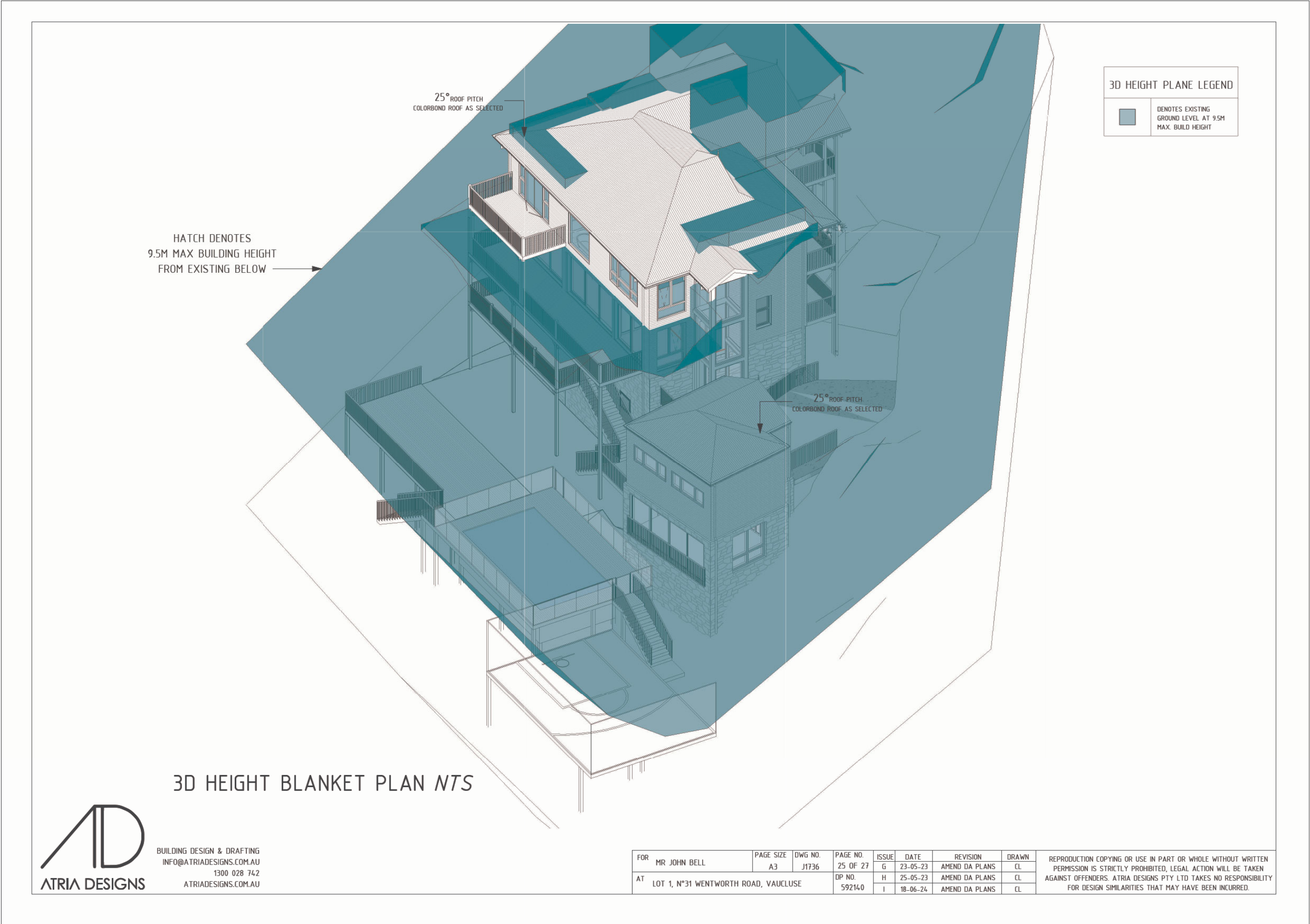
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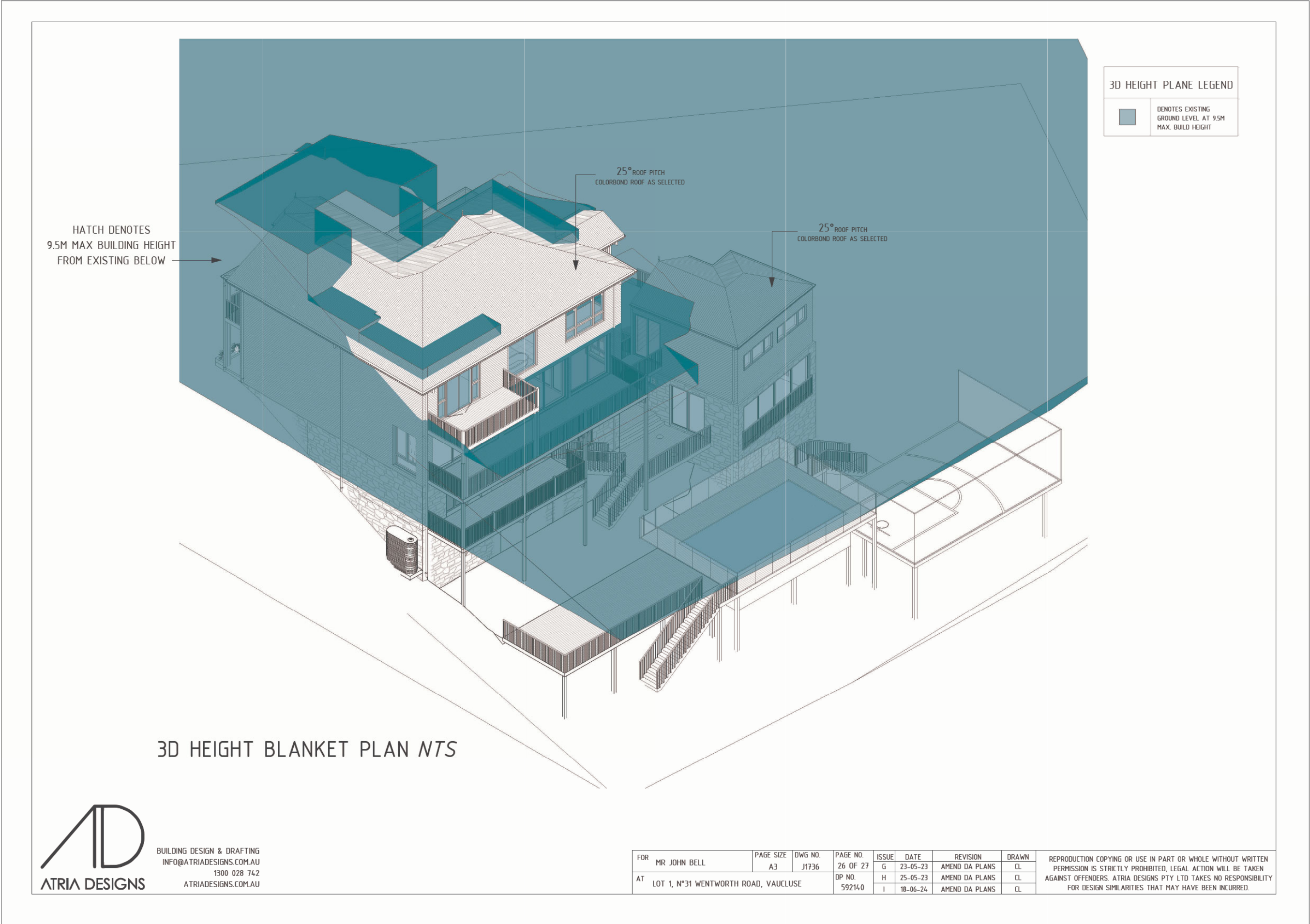


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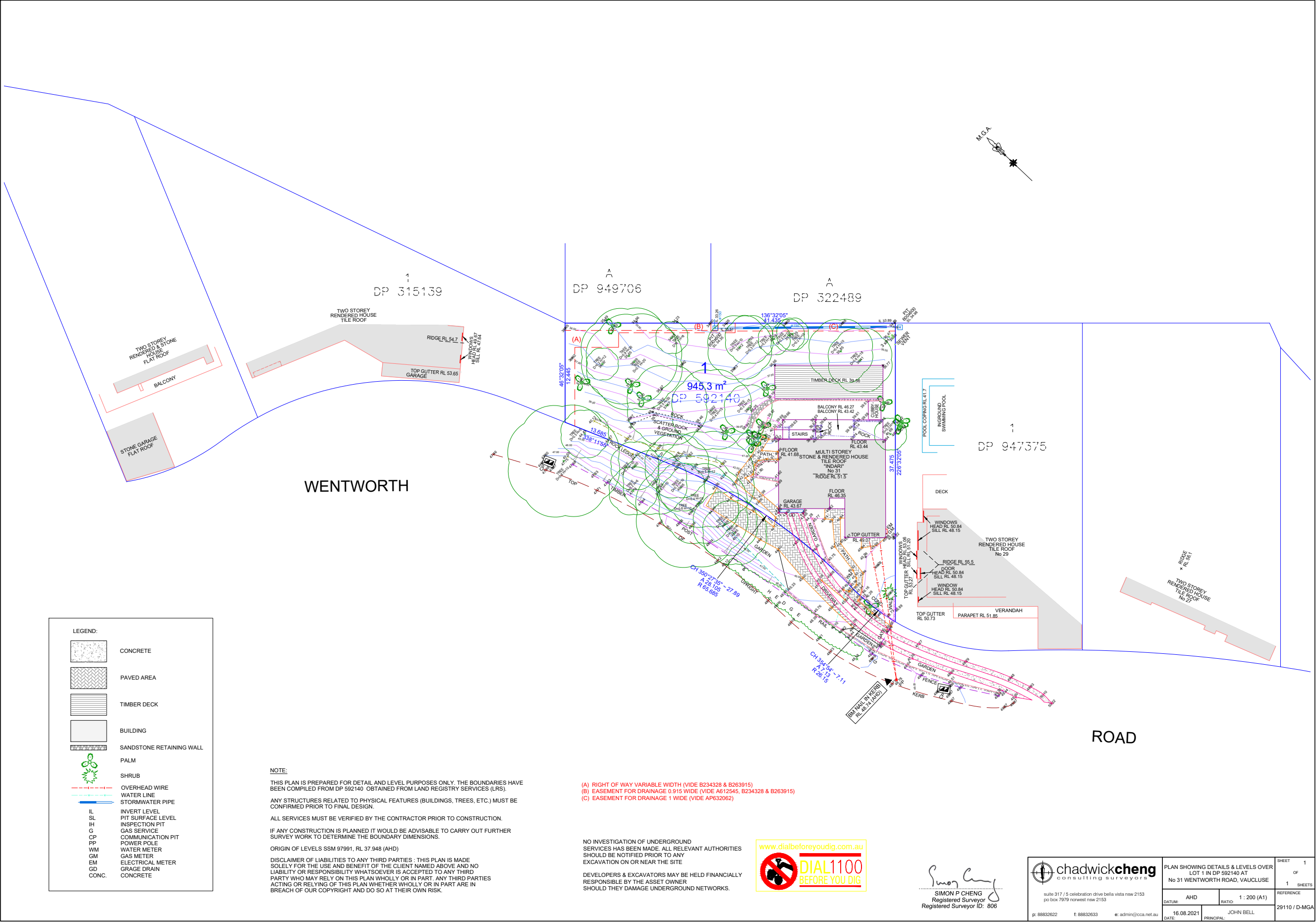
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					I	18-06-24	AMEND DA PLANS	CL	



Completion Date: 8 June 2024

## REFERRAL RESPONSE – DEVELOPMENT ENGINEERING

<b>FILE NO:</b>	<b>Development Applications:</b> 197/2023/1
<b>ADDRESS:</b>	31 Wentworth Road VAUCLUSE 2030
<b>PROPOSAL:</b>	Alterations and additions to the existing dwelling, including a first floor addition, new garage with office below, new swimming pool, decking, landscaping and siteworks, including mini basketball court.
<b>FROM:</b>	Ms S Lin
<b>TO:</b>	Mr D Booth

### 1. ISSUES

- None

### 2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environment Effects, referenced AP 1679, prepared by aSquare Planning, dated 31/05/2023.
- Architectural Plans, referenced J1736-Issue H, prepared by Atria Designs, dated 25/05/2023.
- Survey, referenced 29110, prepared by Chadwick Cheng Surveyors, dated 16/08/2021.
- Stormwater Management Plan, referenced 22149 Rev C, prepared by Elite Australian Engineering, dated 18/04/2024.
- Title documents for 10 Olola Avenue, unreferenced, dated 10/01/2020.
- Title documents for 31 Wentworth Road, unreferenced, dated 10/01/2020.
- Covering Letter, unreferenced, prepared by John Bell, dated 24/07/2023.
- Drainage easement Instrument, unreferenced, dated 03/10/2019.
- Easement Refusal Letter from No.10 Olola Avenue, Vaucluse

### 3. ASSESSMENT

Comments have been prepared on the following. **Where Approval is recommended, Conditions of Consent follow at the end of the comments.**

#### a. Site Drainage comments

*The submitted revised stormwater plans are considered satisfactory in principle subject to refinements at the CC stage. It is noted that the acquisition of an interallotment drainage easement was unsuccessful and the survey plan indicates bedrock in shallow depth. In this regard, the proposed pumpout system is considered acceptable as the easement alternative with the installation of rainwater tank. Stormwater will be discharged to the street kerb in Wentworth Road.*



*Council's Infrastructure and Sustainability Division is satisfied that adequate provision could be made for the disposal of stormwater from the land it is proposed to develop and complies with Chapter E2 "Stormwater and Flood Risk Management" DCP.*

**b. Flooding & Overland Flow comments**

*The subject property is not subject flood related development control.*

**c. Impacts on Council Infrastructure comments**

*The applicant seeks approval for a new single garage as part this proposal, it is noted that the existing vehicular crossing on Council's property needs to be modified to allow vehicular access to the new garage. Design and construction of the modified vehicular crossing will be subject a separate s138 application, conditions applied accordingly.*

*Also, given that there is other neighbouring property sharing the existing vehicular crossing from Wentworth Road, it is considered that the submission of a construction management plan for Council's approval is required in order to minimise the impacts of construction activities on neighbouring property and surrounding road network.*

**d. Traffic comments**

*Not relevant*

**e. Vehicle Access & Accommodation comments**

*The proposed vehicular access and carparking layout are considered satisfactory.*

**f. Geotechnical, Hydrogeological and/or Structural comments**

*It appears from the submitted revised architectural plans that cut and fill are required for the proposed development. Given with the scope of the excavation works, it is considered that the submission of a geotechnical report at the DA stage is not required. Conditions will be imposed for the submission of the Geotechnical Report at the CC stage.*

*Council's Infrastructure & Sustainability Services Division has no objections to the proposed excavation on technical grounds. Notwithstanding this, Council's Planning Officer is also to undertake an assessment of the proposed excavation against the relevant excavation objectives and controls prescribed under the LEP and DCP.*

**4. RECOMMENDATION**

Council's Development Engineer has determined that the proposal is satisfactory, subject to the following conditions:

**General Conditions**

**A.5 Approved Plans & Supporting documents**

Reference	Description	Author	Date
22149	Stormwater Management Plan	Elite Australian Engineering	18/04/2024
SW01 Rev C			18/04/2024
SW02 Rev C			18/04/2024
SW03 Rev C			18/04/2024

**A.8 Ancillary Aspect of the Development (Repair Damaged Infrastructure)**

**A.31 No Underpinning works**

This development consent does NOT give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties and Council's property.

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

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

**C. Conditions which must be satisfied prior to the issue of any construction certificate**

**C.5 Payment of Security, Levies and Fees**

Property Damage Security Deposit (S138)	\$44,137	No	T115
Public Road and Footpath Infrastructure Inspection Fee (S138 Fee)	\$645	No	T45

**C.13 Road and Public Domain Works**

A separate application under section 138 of the *Roads Act* 1993 is to be made to, and be approved by Council as the road authority, for the following infrastructure works prior to the issuing of any Construction Certificate. The following infrastructure works must be carried out at the Applicant's expense:

- The modification of the existing vehicular crossing to allow vehicular access to the proposed garage. The construction of the modified vehicular crossing should be in accordance with Council's Crossing Specification, Council's Standard Driveway Drawing RF2\_D and to the satisfaction of Council's Assets Engineers. Design longitudinal profiles along each edge/side of the proposed crossing, starting from the road centreline, to the parking slab, must be submitted for assessment,
- The installation of stormwater outlet pipe across the nature strip to Wentworth Road in accordance with Council's Specification for Roadworks, Drainage and Miscellaneous Works and to the satisfaction of Council's Assets Engineers,
- The reinstatement of all damaged footpath, kerb and gutter and road pavement to Council's Specification and to the satisfaction of Council's Assets Engineers,
- Where a grass verge exists, the balance of the area between the footpath and the kerb over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of Couch turf,

**Note:** To ensure that this work is completed to Council's satisfaction, this consent by separate condition, may impose one or more Infrastructure Works Bonds.

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

**Note:** The intent of this condition is that the design of the road, footpaths, driveway crossings and public stormwater drainage works must be detailed and approved prior to the issue of any Construction Certificate. Changes in levels may arise from the detailed design of buildings, road, footpath, driveway crossing grades and stormwater. Changes required under *Roads Act* 1993 approvals

may necessitate design and levels changes under this consent. This may in turn require the Applicant to seek to amend this consent.

**Note:** See *section K. Advising* of this consent titled *Roads Act Application*.  
Standard Condition: C13 (Autotext CC13)

**C.25 Soil and Water Management Plan – Submissions & Approval**

**C.35 Structural Adequacy of Existing Supporting Structures**

**C.36 Professional Engineering Details**

**C.37 Engineer Certification**

This development consent does NOT give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties and Council's property.

Any structural design is not to incorporate any temporary or permanent underpinning works or ground anchors, bolts, etc which encroach outside the boundaries of the subject property. Engineer certification to this effect shall be submitted to the Certifying Authority prior to issue of any Construction Certificate.

**C.40 Geotechnical and Hydrogeological Design, Certification & Monitoring**

Prior to the issue of the Construction Certificate, the applicant must submit, for approval by the Principal Certifier, a detailed geotechnical report prepared by a geotechnical engineer with National Engineering Register (NER) credentials in accordance with Council's DCP and Councils document "*Guidelines for Preparation of Geotechnical and Hydrogeological Reports*". In particular, minimum two cored boreholes drilling to the depth of excavation must be carried out. The report must also include a Geotechnical / Hydrogeological Monitoring Program together with civil and structural engineering details for foundation retaining walls, footings, basement tanking, and subsoil drainage systems, as applicable, prepared by a professional engineer, who is suitably qualified and experienced in geotechnical and hydrogeological engineering.

These details must be certified by the professional engineer to:

- a) Provide appropriate support and retention to ensure there will be no ground settlement or movement, during excavation or after construction, sufficient to cause an adverse impact on adjoining property or public infrastructure,
- b) Provide appropriate support and retention to ensure there will be no adverse impact on surrounding property or infrastructure as a result of changes in local hydrogeology (behaviour of groundwater),
- c) Provide details of cut-off walls or similar controls prior to excavation such that any temporary changes to the groundwater level, during construction, will be kept within the historical range of natural groundwater fluctuations. Where the historical range of natural groundwater fluctuations is unknown, the design must demonstrate that changes in the level of the natural water table, due to construction, will not exceed 0.3m at any time,
- d) Provide tanking of all below ground structures to prevent the entry of all ground water/seepage water such that they are fully tanked and no subsoil drainage/seepage water is discharged to the street kerb to comply with Council's DCP,
- e) Provide a Geotechnical and Hydrogeological Monitoring Program that:
  - will detect any settlement associated with temporary and permanent works and structures,

- will detect deflection or movement of temporary and permanent retaining structures (foundation walls, shoring bracing or the like),
- will detect vibration in accordance with AS 2187.2-1993 Appendix J including acceptable velocity of vibration (peak particle velocity),
- will detect groundwater changes calibrated against natural groundwater variations,
- details the location and type of monitoring systems to be utilised,
- details the pre-set acceptable limits for peak particle velocity and ground water fluctuations,
- details recommended hold points to allow for the inspection and certification of geotechnical and hydrogeological measures by the professional engineer, and
- details of the contingency plan.

Standard Condition: C40 (Autotext: CC40)

#### C.41 Ground Anchors

This development consent does NOT give approval to works or structures over, on or under adjoining properties, public roads and/or footpaths. Prior written consent must be obtained from all relevant adjoining property owner(s) for the use of any Ground Anchors extending beyond the boundaries of the subject property.

The use of permanent ground anchors under Council land is not permitted. Temporary ground anchors under Council's land may be permitted, in accordance with Council's "Rock Anchor Policy", where alternative methods of stabilisation would not be practicable or viable, and where there would be benefits in terms of reduced community impact due to a shorter construction period, reduced disruption to pedestrian and vehicular traffic on adjacent public roads, and a safer working environment.

If temporary ground anchors under Council land are proposed, a separate application, including payment of fees, must be made to Council under Section 138 of the *Roads Act 1993*. Application forms and Council's "Rock Anchor Policy" are available from Council's website. Approval may be granted subject to conditions of consent. Minimum Four weeks should be allowed for assessment.

**Note:** To ensure that this work is completed to Council's satisfaction, this consent by separate condition, may impose one or more Infrastructure Works Bonds.

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

**Note:** Section 17 of the Roads Regulation 2018 prohibits excavation in the vicinity of roads as follows: "**Excavations adjacent to road** - A person must not excavate land in the vicinity of a road if the excavation is capable of causing damage to the road (such as by way of subsidence) or to any work or structure on the road." Separate approval is required under the *Roads Act 1993* for any underpinning, shoring, soil anchoring (temporary) or the like within or under any road. Council will not give approval to permanent underpinning, shoring, soil anchoring within or under any road.

#### C.51 Stormwater Management Plan

Prior to issue of the Construction Certificate, the applicant must submit, for approval by the Certifying Authority, detailed stormwater management plans prepared and certified by a Chartered Professional Civil Engineer, which include the following:

- a) General design in accordance with stormwater management plans, referenced 22149 Rev C, prepared by Elite Australian Engineering, dated 18/04/2024, other than amended by this and other conditions,
- b) The discharge of stormwater from the site to the street kerb in Wentworth Road, the stormwater outlet pipe must be located within the frontage of the site. Only one stormwater outlet with a maximum discharge rate of 20 l/s in the 1% AEP storm

event will be permitted. Full supporting calculations must be included in the stormwater management plans.

- c) The installation of rainwater retention and reuse system (RWT) with a minimum storage volume of 68.06m<sup>3</sup> to comply with the Council's DCP. Runoff from all roof areas shall be directed to the proposed RWT for non-potable uses such as toilet flushing, laundry device, garden irrigations etc. Notation to this requirement must be clearly depicted on the drawings. Overflow from the RWT shall be directed to the proposed pumpout system,
- d) The installation of the holding tank with a minimum storage volume of 11.34m<sup>3</sup> to comply with the Council's DCP. Surface runoff shall be directed to the proposed holding tank for non-potable uses such as car washing and garden irrigations etc. Notation to this requirement must be clearly depicted on the drawings. Overflow from the holding tank shall be directed to the proposed pumpout system,
- e) The installation of a pumpout system with a minimum storage capacity of 5.98m<sup>3</sup> to comply with Section 8 of AS3500.3 and the Council's DCP,
- f) All below ground structures are to be fully tanked such that subsoil drainage/seepage water is NOT collected and discharged to the kerb and gutter to comply with Chapter E2.2.5 and E2.2.10 of the Council's DCP. Notation to this requirement shall be clearly depicted on the drawings,
- g) Dimensions of all drainage pits and access grates must comply with AS3500.3,
- h) Compliance the objectives and performance requirements of the BCA,
- i) General compliance with the Council's Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.

The *Stormwater Management Plan* must also include the following specific requirements:

#### **Layout plan**

A detailed drainage plan at a scale of 1:100 based on drainage calculations prepared in accordance with the Australian Government publication, *Australian Rainfall and Run-off*, 2019 edition or most current version thereof. It must include:

- a) All pipe layouts, dimensions, grades, lengths and material specification,
- b) Location of proposed rainwater tanks,
- c) All invert levels reduced to Australian Height Datum (AHD),
- d) Location and dimensions of all drainage pits,
- e) Point and method of connection to Councils drainage infrastructure, and
- f) Overland flow paths over impervious areas.

#### **Rainwater Reuse System details:**

- a) Any potential conflict between existing and proposed trees and vegetation,
- b) Internal dimensions and volume of the proposed rainwater storage,
- c) Plans, elevations and sections showing the rainwater tanks, finished surface level and adjacent structures,
- d) Details of access and maintenance facilities,
- e) Construction and structural details of all tanks and pits and/or manufacturer's specifications for proprietary first flush products,
- f) Details of the emergency overland flow-path (to an approved Council drainage point) in the event of a blockage to the rainwater tanks,

For the proposed stormwater drainage works within public road and on Council's property, separate approval under Section 138 of the *Roads Act 1993* must be obtained from Council for those works prior to the issue of any Construction Certificate.

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

**Note:** This Condition is imposed to ensure that site stormwater is disposed of in a controlled and sustainable manner.

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

Standard Condition: C.49 (Autotext CC49)

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

**D.4 Dilapidation Reports for Existing Buildings**

Dilapidation surveys and dilapidation reports shall be conducted and prepared by a *professional engineer* (structural) for all buildings and/or structures that are located within the likely "zone of influence" of any excavation, dewatering and/or construction induced vibration as determined applicable by a Structural Engineer.

These properties must include (but is not limited to):

No. 29 Wentworth Road

The dilapidation reports must be completed and submitted to the *Certifying Authority* for approval. A copy of the approved reports shall be submitted to Council with the *Notice of Commencement* prior to the commencement of any *development work*.

Where excavation of the site will extend below the level of any immediately adjoining building the *principal contractor* or *owner builder* must give the adjoining building owner(s) a copy of the dilapidation report for their building(s) and a copy of the *notice of commencement* required by S81A(2) of the *Act* not less than two (2) days prior to the commencement of any work.

**Note:** The reasons for this condition are:

- To provide a record of the condition of buildings prior to development being carried out
- To encourage developers and its contractors to use construction techniques that will minimise the risk of damage to buildings on neighbouring land

Also refer to the Dilapidation Report Advising for more information regarding this condition

Standard Condition: D4 (Autotext DD4)

**D.6 Adjoining buildings founded on loose foundation materials**

**D.9 Construction Management Plan**

**D.10 Works (Construction) Zone – Approval and Implementation**

**D.14 Erosion and Sediment Controls – Installation**

**E. Conditions which must be satisfied during any development work**

**E.3 Compliance with Construction Management Plan**

**E.7 Maintenance of Vehicular and Pedestrian Safety and Access**

**E.11 Maintenance of Environmental Controls**

**E.12 Compliance with Geotechnical/Hydrogeological Monitoring Program**



**E.13 Support of Adjoining Land Owners**

**E.14 Vibration Monitoring**

**E.15 Erosion and Sediment Controls – Maintenance**

**E.17 Disposal of Site Water during Construction**

**E.20 Check Surveys - boundary location, building location, building height, stormwater drainage system**

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

**F.7 Commissioning and Certification of Systems and Works**

**G. Conditions which must be satisfied prior to any occupation or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)**

**Nil**

**H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (S109C (1) (c))**

**H.13 Road Works (including footpaths)**

**H.20 Works-As-Executed Certification of Stormwater System**

Prior to issue of any Occupation Certificate, stormwater drainage works are to be certified by a professional engineer with works-as-executed drawings prepared by a registered surveyor and submitted, for approval by the Principal Certifying Authority, certifying:

- a) compliance with conditions of development consent relating to stormwater,
- b) the structural adequacy of the on-site retention and pump out systems,
- c) that a rainwater retention and reuse system with minimum storage of 68.06m<sup>3</sup> has been constructed in accordance with the approved stormwater plans,
- d) that a holding tank with minimum storage of 11.34m<sup>3</sup> has been constructed in accordance with the approved stormwater plans,
- e) that stormwater from rainwater tank/holding tank have been connected for non-potable use.
- f) that a pumpout system with minimum storage of 5.98m<sup>3</sup> has been constructed in accordance with the approved stormwater plans,
- g) that only one stormwater outlet pipe with maximum discharge rate of 20 l/s has been constructed in accordance with the approved stormwater plans,
- h) that subsoil drainage/seepage water is NOT collected and discharged into the kerb and gutter in accordance with the approved stormwater drawings,
- i) pipe invert levels and surface levels to Australian Height Datum, and
- j) contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

A positive covenant pursuant to section 88E of the *Conveyancing Act 1919* must be created on the title of the subject property, providing for the indemnification of Council from any claims or actions and for the on-going maintenance of the on-site retention system, pump out system and/or absorption trenches, including any pumps and sumps incorporated in the development. The wording of the Instrument must be in

accordance with Council's standard format and the Instrument must be registered with the NSW Land Registry Services.

**Note:** The required wording of the Instrument can be downloaded from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au). The PC must supply a copy of the WAE plans to Council together with the Occupation Certificate.

**Note:** Occupation Certificate must not be issued until this condition has been satisfied.  
Standard Condition: H20 (Autotext HH20)

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

### **I.29 Ongoing Maintenance of the On-Site Retention System and Pump Out System**

The owner(s) must in accordance with this condition and any positive covenant:

- a) permit stormwater to be retained, reused and pumped by the Systems;
- b) keep the system clean and free of silt rubbish and debris;
- c) maintain renew and repair as reasonably required from time to time the whole or part of the systems so that it functions in a safe and efficient manner;
- d) carry out the matters referred to in paragraphs (b) and (c) at the Owners expense;
- e) not make any alterations to the systems or elements thereof without prior consent in writing of the Council and not interfere with the systems or by its act or omission cause it to be interfered with so that it does not function or operate properly;
- f) permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant;
- g) comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time stated in the notice; and
- h) where the Owner fails to comply with the Owner's obligations under this covenant, permit the Council or its agents at all times and on reasonable notice at the Owner's cost to enter the land with equipment, machinery or otherwise to carry out the works required by those obligations.

The Owner

- a) indemnifies the Council from and against all claims, demands, suits, proceedings or actions in respect of any injury, damage, loss, cost, or liability (**Claims**) that may be sustained, suffered, or made against the Council arising in connection with the performance of the Owner's obligations under this covenant except if, and to the extent that, the Claim arises because of the Council's negligence or default; and
- b) releases the Council from any Claim it may have against the Council arising in connection with the performance of the Owner's obligations under this covenant except if, and to the extent that, the Claim arises because of the Council's negligence or default.

**Note:** This condition has been imposed to ensure that owners are aware of require maintenance requirements for their stormwater systems.

**Note:** This condition is supplementary to the owner(s) obligations and Council's rights under any positive covenant.

Standard Condition: I29

## **J. Miscellaneous Conditions**

**Nil**

**K. Advisings**

**K.23 Dilapidation Report**

**K.24 Roads Act Application**

28 August 2023

## REFERRAL RESPONSE – TREES & LANDSCAPING

**FILE NO:** Development Applications: 197/2023/1

**ADDRESS:** 31 Wentworth Road VAUCLUSE 2030

**PROPOSAL:** Alterations and additions to the existing dwelling, including a first floor addition, new garage with office below, new swimming pool, decking, landscaping and siteworks, including mini basketball court.

**FROM:** Sam Knight

**TO:** Mr D Booth

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**I refer to the following documents received for this report:**

- Survey Plan, drafted by Chadwick Cheng, dated 16 August 2021
- Architectural Drawings, drawn by Atria Design, dated 25 May 2023
- Arboricultural Impact Assessment Report, written by Urban Arbor, dated 8 December 2022

A site inspection was carried out on 21 August 2023.

**Relevant Control:**

- Woollahra Local Environment Plan 2014
- Woollahra Development Control Plan 2015
- Woollahra Street Tree Master Plan 2014 – Part 1, Part 2 (Precinct Plans), Part 3 (appendices)
- Significant Tree Register 1991 Volume 1 Significant Trees Under Private Ownership, Volume 2 Significant Trees Under Private Ownership, Volume 3 Significant Trees, Volume 4 Significant Trees in Public Parks
- The comments and recommendations within this Referral Response have taken into consideration the guidelines established within Australian Standard AS 4373 – Pruning of amenity trees and Australian Standard AS 4970 – Protection of trees on development sites
- Apartment Design Guide – Tools for improving the design of residential apartment development, Part 4, 4P – Planting on Structures, written by NSW Department of Planning, Industry and Environment, dated July 2015

**SUMMARY**

The proposal is for alterations and additions to the existing dwelling, including a first-floor addition, new garage with office below, new swimming pool, decking, landscaping and siteworks, including mini basketball court.

A total of 30 trees have been identified within and adjacent to the site that will be impacted by the proposal. This includes nine (9) trees proposed for removal and the remaining 21 trees to be retained and protected.

The Tree and Landscape team has determined that the development proposal is satisfactory in terms of tree preservation and landscaping, subject to compliance with the below conditions.

**COMMENTS**

Inspection of the site and a review of the plans and documentation has revealed 30 trees within and adjacent to the site that will be impacted by the proposal. The following tree numbering

has been adopted from the Arboricultural Impact Assessment prepared by Urban Arbor dated 8 December 2022.

Tree Removal – Exempt Species

The plans indicate trees 4, 13 and 15 are proposed for removal to facilitate the proposed works.

These trees have been identified as species that exempt from the provisions of the WMC DCP Chapter E.3 – Tree Management and can be removed without consent regardless of the proposed development.

Tree Removal – Low Retention Value

The plans indicate trees 19, 20 and 21 are proposed for removal to facilitate construction of the new building and landscape upgrade works.

The trees have been rated as having Low Landscape Significance and Low Retention Value and are not considered worthy of any design changes to allow for their retention.

Therefore, the Tree and Landscape team has no objections to their removal subject to replacement planting being undertaken at the completion of the works.

Tree Removal – Medium Retention Value

The plans indicate trees 14, 17 and 18 are proposed for removal as they are located within footprint of the new swimming pool and building extension works.

Although these trees have been rated as having Medium Landscape Significant and Medium Retention Value in the applicants Arborist Report, they have been identified as small Palm trees that provide minimal canopy cover to the immediate area. It is considered that their removal will not have any negative impacts on the amenity and canopy cover of the immediate areas.

Therefore, removal of these palms is supported.

Tree Retention

The plans indicate trees 1, 2, 3, 5, 6, 10, 11, 22, 25, 28 and 30 will not be the subject of any encroachments into their Tree Protection Zones from the proposed works. However, to ensure these trees are not damaged during the works, tree protection measures are to be installed and maintained in accordance with the below conditions.

The plans indicate works are proposed within the Tree Protection Zones of trees 7, 8, 9, 12, 16, 23, 24, 26, 27 and 29 of varying levels. However, majority of the works will be elevated structures supported on pier foundations and will only require localised excavations for footings. Provided the footing locations can be repositioned if any tree roots greater than 40mm are identified during the works, these trees are not expected to be adversely impacted by the proposed works.

To ensure these trees remain viable and are protected during the works, the below tree protection conditions are recommended for inclusion into the DA consent.

**RECOMMENDATIONS**

Council's Tree and Landscape Officer has determined that the development proposal is satisfactory in terms of tree preservation and landscaping, subject to compliance with the following Conditions of Consent.

## CONDITIONS OF CONSENT

Please note that the standard conditions of consent are generally modified by the Technical Services Department to suit a particular development application. Please ensure all Technical Services conditions of consent are cut and pasted from this document only, and not inserted as standard conditions using the automatically generated (F3) function.

### A. General Conditions

#### A.1 Tree Preservation & Approved Landscaping Works

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

a) The following trees shall be retained

- Trees on Private Land

Council Ref No.	Species	Location	Dimension (metres)
1	<i>Archontophoenix alexandrae</i>	Refer to the Arboricultural impact Assessment prepared by Urban Arbor for tree locations and numbers.	4 x 1
2	<i>Murraya paniculata</i>		4 x 2
3	<i>Plumeria spp</i>		4 x 2
5	<i>Howea forsteriana</i>		4 x 1
6	<i>Howea forsteriana</i>		9 x 1
7	<i>Archontophoenix alexandrae</i>		7 x 2
8	<i>Angophora costata</i>		14 x 5
9	<i>Pittosporum undulatum</i>		6 x 2
10	<i>Brachychiton acerifolius</i>		7 x 2
11	<i>Macadamia spp</i>		7 x 1
12	<i>Castanospermum australe</i>		7 x 2
16	<i>Howea forsteriana</i>		7 x 2
19	<i>Howea forsteriana</i>		3 x 2
22	<i>Phoenix canariensis</i>		6 x 3
23	<i>Lophostemon confertus</i>		18 x 6
24	<i>Phoenix canariensis</i>		8 x 3
26	<i>Persea americana</i>		12 x 3
27	<i>Eucalyptus botryoides</i>		17 x 6
28	<i>Pittosporum undulatum</i>		6 x 3
29	<i>Glochidion ferdinandi</i>		10 x 4
30	<i>Pittosporum undulatum</i>		4 x 2

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

b) The following trees may be removed:

Council Ref No.	Species	Location	Dimension (metres)
4	<i>Ligustrum lucidum</i>	Refer to the Arboricultural impact Assessment prepared by Urban Arbor for tree locations and numbers.	6 x 2
13	<i>Olea europaea subsp. cuspidata</i>		6 x 2
14	<i>Howea forsteriana</i>		8 x 2
15	<i>Ligustrum lucidum</i>		12 x 3
17	<i>Howea forsteriana</i>		7 x 1
18	<i>Howea forsteriana</i>		7 x 1
20	<i>Glochidion ferdinandi</i>		9 x 4
21	<i>Macadamia spp</i>		5 x 2

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

**Note:** The species marked (\*) is exempt from the WMC DCP 2015 and can be removed without requiring consent from Council.



- c) The following trees shall be pruned in accordance with *Australian Standard*

## A.2 Approved Plans and supporting documents

Reference	Description	Author/Drawn	Date(s)
221208-31	Arboricultural Impact Assessment Report	Urban Arbor	8/12/22

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

### B.1 Establishment of Tree Protection Zone (TPZ) Fence

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

- a) Tree Protection Zone areas

Council Ref No.	Species	Tree Location	Fence Radius from Centre of Trunk (Metres)
1	<i>Archontophoenix alexandrae</i>	Refer to the Arboricultural Impact Assessment prepared by Urban Arbor dated 8 December 2022 for tree locations and numbers.	Tree Protection Fencing shall be installed in the locations as shown on Appendix 1B: Proposed Site Plan in the AIA Report Assessment prepared by Urban Arbor dated 8 December 2022.
2	<i>Murraya paniculata</i>		
3	<i>Plumeria spp</i>		
5	<i>Howea forsteriana</i>		
6	<i>Howea forsteriana</i>		
7	<i>Archontophoenix alexandrae</i>		
8	<i>Angophora costata</i>		
9	<i>Pittosporum undulatum</i>		
10	<i>Brachychiton acerifolius</i>		
11	<i>Macadamia spp</i>		
12	<i>Castanospermum australe</i>		
16	<i>Howea forsteriana</i>		
19	<i>Howea forsteriana</i>		
22	<i>Phoenix canariensis</i>		
23	<i>Lophostemon confertus</i>		
24	<i>Phoenix canariensis</i>		
26	<i>Persea americana</i>		
27	<i>Eucalyptus botryoides</i>		
28	<i>Pittosporum undulatum</i>		
29	<i>Glochidion ferdinandi</i>		
30	<i>Pittosporum undulatum</i>		

**Note:** Where this condition relates to street trees and the fence cannot be placed at the specified radius, the fencing shall be positioned so that the entire verge (nature strip) area in front of the subject property, excluding existing driveways, footpaths and bus stops is protected.

**Note:** Where this condition relates to trees on private property the radial distance of fencing shall be positioned only within the subject property.

- b) Tree Protection Zones shall be fenced with a 1.8 metre high chainmesh or weldmesh fence and secured to restrict access. The fence shall be established prior to any materials being bought onto the site and before the commencement of works including demolition. The area within the fence shall be mulched and maintained to a depth of 75mm. The soil within the TPZ shall be kept in a moist condition for the duration of the construction works. Unless approved by the site arborist there shall be no access within the TPZ.

Trunk protection shall consist of a padding material such as hessian or thick carpet underlay wrapped around the trunk. Hardwood planks (50mm x100mm or similar) shall be placed over the padding and around the trunk of the tree at 150mm centres. The planks shall be secured with 8-gauge wire at 300mm spacing. Trunk protection shall extend a minimum height of 2 metres or to the maximum possible length permitted by the first branches.

- c) A sign identifying the Tree Protection Zone shall be erected on each side of the protection fence indicating the existence of a TPZ. Signage must be visible from within the development site.
- d) No excavation, construction activity, grade changes, storage of materials, stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is permitted within Tree Protection Zones, unless specified in this consent.
- g) Temporary access within the TPZ for pedestrian and machinery movements shall only be permitted with the approval of the site arborist or unless specified in this consent.
- h) The site supervisor must be made aware of all tree protection requirements associated with these conditions of consent by the project arborist. Any subsequent site personnel and contractors to the site must be made aware of all tree protection requirements by the site foreman.
- i) The project arborist shall provide written certification of compliance with the above condition.

## B.2 Permissible work within Tree Protection Zones

The following works are permissible within the Tree Protection Zone:

Council Ref No.	Species	Radius from Trunk (metres)	Approved works
7	<i>Archontophoenix alexandrae</i>	2.5m	Construction of new deck
8	<i>Angophora costata</i>	5.9m	Construction of new deck
9	<i>Pittosporum undulatum</i>	5.7m	Construction of new deck
12	<i>Castanospermum australe</i>	4.1m	Construction of new swimming pool
16	<i>Howea forsteriana</i>	3m	Construction of new deck and building extension works
19	<i>Howea forsteriana</i>	2m	Construction of new garage and gym and building extension works
23	<i>Lophostemon confertus</i>	14.7m	Construction of new basketball court
24	<i>Phoenix canariensis</i>	4m	Construction of new basketball court
26	<i>Persea americana</i>	5.6m	Construction of new basketball court
27	<i>Eucalyptus botryoides</i>	8.8m	Construction of new garage and gym and building extension

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

### **B.3 Demolition and Construction Management Plan**

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

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

### **B.4 Arborists Documentation and Compliance Checklist**

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

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

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

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

Stage of arboricultural inspection and supervision	Compliance documentation and photos shall be included
Prior to the demolition of any building or construction and prior to the commencement of any development work	<ul style="list-style-type: none"> <li>Project Arborist to hold pre construction site meeting with the principal contractor to discuss methods and importance of tree protection measures and resolve any issues in relation to feasibility of tree protection requirements that may arise. Project Arborist to mark all trees approved for removal under DA consent.</li> <li>The project arborist shall install or supervise the installation of tree protection fencing, trunk protection, ground protection and traffic height control beam.</li> </ul>
During any development work	<ul style="list-style-type: none"> <li>The project arborist shall supervise all demolition and excavation works within the Tree Protection Zones or specified distances of nominated trees listed in this consent.</li> <li>The project arborist shall supervise the construction of the new garage and gym within the TPZ of any tree listed for retention, documenting the condition of roots and soil.</li> <li>The project arborist shall ensure pier holes within the Tree Protection Zones or specified distances of nominated trees listed in this consent are positioned to avoid the severance of and damage to roots greater than 50mm diameter.</li> <li>The project arborist shall inspect the installed irrigation system to plants in garden beds. The arborist shall certify there is an appropriate distribution of water to planted and existing trees.</li> <li>Project Arborist to approve relocation of tree protection for landscaping. All landscaping works within the TPZ of trees to be retained are to be undertaken in consultation with the project Arborist to minimise the impact to trees.</li> </ul>
Prior to any occupation or use of the building	<ul style="list-style-type: none"> <li>Ensure all trees conditioned to be planted as part of this consent have been planted in accordance with the details prescribed in this consent.</li> </ul>
Prior to the issue of a Final Occupation Certificate	<ul style="list-style-type: none"> <li>The project arborist shall supervise the dismantling of tree protection measures</li> <li>After all demolition, construction and landscaping works are complete the project Arborist shall assess that the subject trees have been retained in the same condition and vigour. If changes to condition are identified the project Arborist should provide recommendations for remediation.</li> </ul>

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

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

**C. Conditions which must be satisfied prior to the issue of any construction certificate**

**C.1 Tree Management Plan**

The *Construction Certificate* plans and specifications shall show the following information:

- a) Trees to be numbered in accordance with these conditions:
  - shaded green where required to be retained and protected
  - shaded red where authorised to be removed
  - shaded yellow where required to be transplanted
  - shaded blue where required to be pruned
- b) References to applicable tree management plan, arborists report or transplant method statement.

This plan shall be kept on site until the issue of the final occupation certificate.

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

Nil

**E. Conditions which must be satisfied during any development work**

**E.1 Tree Preservation**

All persons must comply with Chapter E.3 – Tree Management of Council's Development Control Plan (DCP) 2015, other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

General Protection Requirements

- a) The TPZ must be maintained during all development work unless otherwise specified within these conditions of consent.
- b) Excavation must cease where tree roots with a diameter exceeding 50mm are exposed. The *principal contractor* must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- c) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

**Note:** Trees must be pruned in accordance with *Australian Standard AS 4373 "Pruning of Amenity Trees"* and *WorkCover NSW Code of Practice Amenity Tree Industry*.

**E.2 Hand excavation within tree root zones**

Excavation undertaken within the specified radius from the trunks of the following trees shall be hand dug.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1	<i>Archontophoenix alexandrae</i>	Refer to the Arboricultural Impact Assessment prepared by Urban Arbor dated 8 December 2022 for tree locations and numbers.	2.0
2	<i>Murraya paniculata</i>		3.1
3	<i>Plumeria spp</i>		2.7
5	<i>Howea forsteriana</i>		2.0
6	<i>Howea forsteriana</i>		2.0
7	<i>Archontophoenix alexandrae</i>		2.5
8	<i>Angophora costata</i>		5.9
9	<i>Pittosporum undulatum</i>		5.7
10	<i>Brachychiton acerifolius</i>		2.6
11	<i>Macadamia spp</i>		2.0
12	<i>Castanospermum australe</i>		4.1
16	<i>Howea forsteriana</i>		3.0
19	<i>Howea forsteriana</i>		2.0
22	<i>Phoenix canariensis</i>		4.0
23	<i>Lophostemon confertus</i>		14.7
24	<i>Phoenix canariensis</i>		4.0
26	<i>Persea americana</i>		2.8
27	<i>Eucalyptus botryoides</i>		5.6
28	<i>Pittosporum undulatum</i>		8.8
29	<i>Glochidion ferdinandi</i>		3.0
30	<i>Pittosporum undulatum</i>		5.0

Small hand tools such as mattocks or using compressed air or water jetting only shall be used. Roots with a diameter equal to or in excess of 50mm shall not be severed or damaged unless approved in writing by the project arborist.

Mechanical excavation is permitted beyond this radius when root pruning by hand along the perimeter line is completed. Exposed roots to be retained shall be covered with mulch or a geotextile fabric and kept in a moist condition and prevented from drying out.

All root pruning must be undertaken in accordance with the Australian Standard 4373 "Pruning of Amenity Trees" and carried out by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent).

The project arborist shall document compliance with the above condition.

### E.3 Footings in the vicinity of trees

Footings for any structure within the specified radius from the trunks of the following trees shall be supported using an isolated pier and beam system.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1	<i>Archontophoenix alexandrae</i>	Refer to the Arboricultural Impact Assessment prepared by Urban Arbor dated 8 December 2022 for tree locations and numbers.	2.0
2	<i>Murraya paniculata</i>		3.1
3	<i>Plumeria spp</i>		2.7
5	<i>Howea forsteriana</i>		2.0
6	<i>Howea forsteriana</i>		2.0
7	<i>Archontophoenix alexandrae</i>		2.5
8	<i>Angophora costata</i>		5.9
9	<i>Pittosporum undulatum</i>		5.7
10	<i>Brachychiton acerifolius</i>		2.6
11	<i>Macadamia spp</i>		2.0
12	<i>Castanospermum australe</i>		4.1
16	<i>Howea forsteriana</i>		3.0
19	<i>Howea forsteriana</i>		2.0
22	<i>Phoenix canariensis</i>		4.0



Council Ref No.	Species	Location	Radius from centre of trunk (metres)
23	<i>Lophostemon confertus</i>		14.7
24	<i>Phoenix canariensis</i>		4.0
26	<i>Persea americana</i>		2.8
27	<i>Eucalyptus botryoides</i>		5.6
28	<i>Pittosporum undulatum</i>		8.8
29	<i>Glochidion ferdinandi</i>		3.0
30	<i>Pittosporum undulatum</i>		5.0

Excavations for installation of piers shall be located so that no tree root with a diameter equal to or in excess of 50mm is severed or damaged. The smallest possible area shall be excavated which allows construction of the pier. The beam is to be placed a minimum of 100mm above ground level and is to be designed to bridge all tree roots with a diameter equal to or in excess of 50mm.

The project arborist shall document compliance with the above condition.

#### E.7 Installation of stormwater pipes and pits in the vicinity of trees

Excavation for the installation of stormwater pipes and pits within the specified radius from the trunks of the following trees shall be hand dug.

Council Ref No.	Species	Location	Radius from centre of trunk (metres)
1	<i>Archontophoenix alexandrae</i>	Refer to the Arboricultural Impact Assessment prepared by Urban Arbor dated 8 December 2022 for tree locations and numbers.	2.0
2	<i>Murraya paniculata</i>		3.1
3	<i>Plumeria spp</i>		2.7
5	<i>Howea forsteriana</i>		2.0
6	<i>Howea forsteriana</i>		2.0
7	<i>Archontophoenix alexandrae</i>		2.5
8	<i>Angophora costata</i>		5.9
9	<i>Pittosporum undulatum</i>		5.7
10	<i>Brachychiton acerifolius</i>		2.6
11	<i>Macadamia spp</i>		2.0
12	<i>Castanospermum australe</i>		4.1
16	<i>Howea forsteriana</i>		3.0
19	<i>Howea forsteriana</i>		2.0
22	<i>Phoenix canariensis</i>		4.0
23	<i>Lophostemon confertus</i>		14.7
24	<i>Phoenix canariensis</i>		4.0
26	<i>Persea americana</i>		2.8
27	<i>Eucalyptus botryoides</i>		5.6
28	<i>Pittosporum undulatum</i>		8.8
29	<i>Glochidion ferdinandi</i>		3.0
30	<i>Pittosporum undulatum</i>		5.0

Any roots greater than 40mm diameter uncovered for the installation of stormwater pipes and pits shall not be severed and remain in situ bridging across the excavated trench. Pipes shall be guided under any roots greater than 40mm bridging across excavated trenches. Stormwater pits shall be positioned so that no roots greater than 40mm diameter are severed.

The project arborist shall document compliance with the above condition.

**F. Conditions which must be satisfied prior to any occupation or use of the building  
(Part 4A of the Act and Part 8 Division 3 of the Regulation)**

**F.1 Amenity Landscaping**

The *owner* or *principal contractor* must install all approved amenity landscaping (screen planting, soil stabilisation planting, etc.) prior to any occupation or use of the site.

**Note:** This condition has been imposed to ensure that the environmental impacts of the development are mitigated by approved landscaping prior to any occupation of the development.

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

Nil

**H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (s109C(1)(c))**

**H.1 Landscaping**

The *principal contractor* or *owner* must provide to *PCA* a works-as-executed landscape plan and certification from a qualified landscape architect/designer, horticulturist and/or arborist as applicable to the effect that the works comply with this consent.

**Note:** This condition has been imposed to ensure that all Landscaping work is completed prior to the issue of the Final Occupation Certificate.

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

Nil

**J. Miscellaneous Conditions**

Nil

**K. Advisings**

**K.1 Pruning or Removing a Tree Growing on Private Property**

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

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



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24 April 2024

## REFERRAL RESPONSE - HERITAGE

**FILE NO:** Development Applications: 197/2023/1

**ADDRESS:** 31 Wentworth Road VAUCLUSE 2030

**PROPOSAL:** Alterations and additions to the existing dwelling, including a first floor addition, new garage with office below, new swimming pool, decking, landscaping and siteworks, including mini basketball court.

**FROM:** Vanessa Wood

**TO:** Mr D Booth

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### 1. DOCUMENTATION

The following documentation provided by the applicant has been examined for this referral response:

- Drawing set by ATRIA Designs, dated 25 May 2023
- Demolition Report by Heritage 21, dated April 2024
- Statement of Environmental Effects by aSquare Planning, May 2023
- Survey plan by Chadwick Cheng
- Aboriginal Heritage Impact Assessment by Christopher Carter, dated 25 September 2023

### 2. SITE INSPECTION / RESEARCH

The following research was undertaken in the preparation of this assessment:

Review of the following documents and photographic evidence:

- Council's property system, to establish dates of earlier building and development applications for the subject and surrounding properties.
- Council's photography files relevant to the immediate area
- Council's heritage inventory sheets
- Council's aerial photography and mapping database
- Google Maps – street view

### 3. STATUTORY AND POLICY DOCUMENTS

The following statutory and policy documents are relevant to the application:

- National Parks & Wildlife Act 1974
- Woollahra LEP 2014
- Woollahra DCP 2015

### 4. ASSESSMENT OF HERITAGE IMPACT

Compliance with the relevant legislative framework and planning controls

### 5. SIGNIFICANCE OF SUBJECT PROPERTY/TO THE CONSERVATION AREA

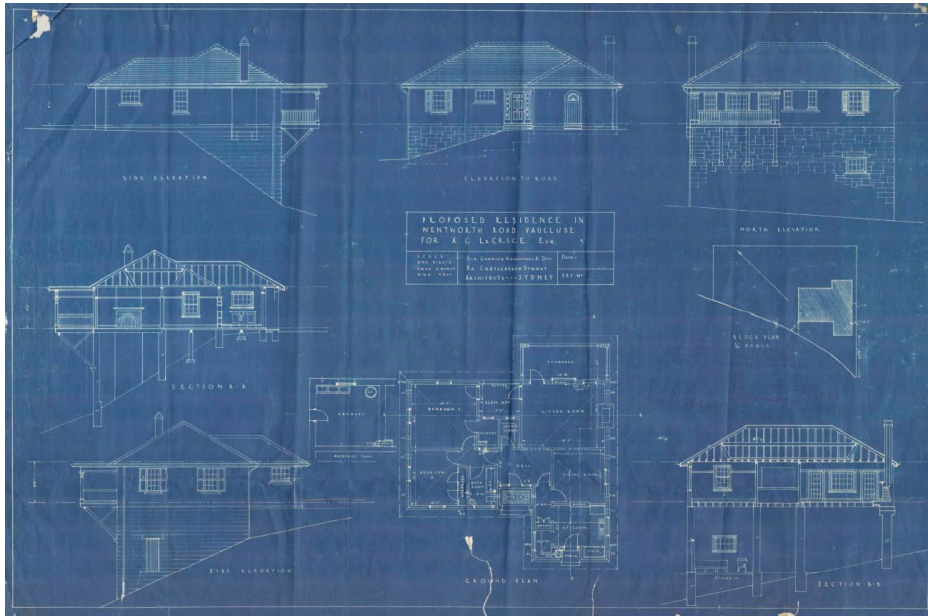
The property is not a listed heritage item and is not located within a Heritage Conservation Area.



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### Previous modifications

The original plans of the dwelling are held in Council records. The architect of the dwelling was Sir Charles Rosenthal & Day and it was constructed for A.C. LeGrice. (BA1925/9128)

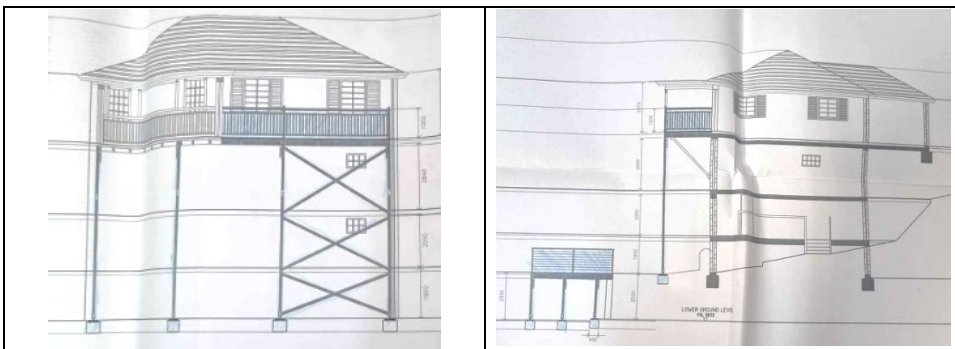


BA1962/318

- Dispute regarding survey plan and encroachment of constructed dwelling

DA2010/88/1

- Addition of lower deck and extension of rear deck

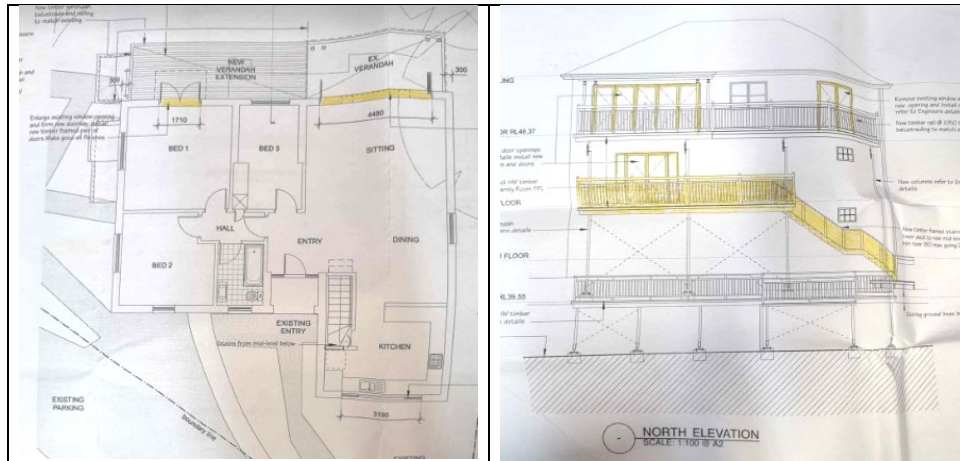


DA2010/88/2

- Addition of mid deck to rear

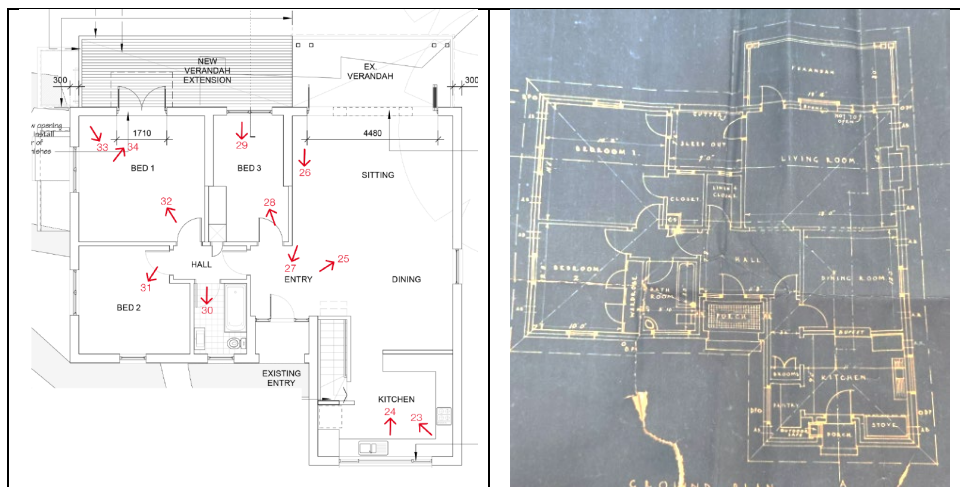


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### Summary

Comparison between the original and existing floorplans indicates that the dwelling generally retains its original floorplan



### Database search

The following databases were searched and did not result in significant information regarding ownership/ occupation, and the architect Sir Charles Rosenthal & Day, of the property;

- Trove
  - Sir Charles Rosenthal Obituary; (<http://nla.gov.au/nla.news-page24780804>)



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## Death of Sir Charles Rosenthal

### Prominent Soldier and Architect.

Major-General Sir Charles Rosenthal died yesterday at the age of 79.

Sir Charles had a distinguished record in the first World War, and was later a Member of the Legislative Assembly, an alderman of Sydney City Council and Administrator of Norfolk Island.

Born at Berrima, N.S.W., he began architectural studies at the age of 15, and later practised in Western Australia, Melbourne and Sydney.

At the outbreak of war he joined the First A.I.F. and during the war he was decorated with the C.B., C.M.G., and D.S.O., received a knighthood, and was awarded the Belgian Croix de Guerre and the French Croix de Guerre with palms. He was wounded four times and gassed once.

For many years he was selected by the Returned Servicemen's League to lead the Anzac Day march through Sydney.

Sir Charles represented Bathurst in the Legislative Assembly from 1922 to 1925, and for three years was an alderman of the Sydney City Council. Later, he was elected to the Legislative Council. In 1937 he was appointed Administrator of Norfolk Island and held that post until 1945.

He was a Fellow of the Royal Institute of British Architects, a Life Fellow of the Royal Australian Institute of Architects, a past president of the Federal Council of the R.A.I.A., and for four years president of the N.S.W. Institute of Architects.

- Woollahra Library
  - No records
- City of Sydney Archives
  - The below is extracted from the following record;  
(<https://archives.cityofsydney.nsw.gov.au/nodes/view/567073>)
    - "Charles Rosenthal (b 1875 - d 1954) Alderman for Bligh Ward, 1 December 1921 to 30 November 1924. He was an architect, soldier and musician. Rosenthal was elected Associate of the Royal Victorian Institute of Architects in 1895 and worked at the Architectural Division of the Department of Railways and Public Works in Perth. In 1904 he was elected Associate of the Royal Institute of British Architects. He was the architect for the Anglican diocese of Grafton and Armidale and is credited for designing St. Andrews Lismore, St. Laurences Barraba, and Holy Trinity Dulwich Hill, Sydney. Rosenthal was also a performer with the Philharmonic Society and the Sydney Liedertafel. In 1903, he was commissioned second lieutenant in the Militia Garrison Field Artillery. He was promoted major in 1908 and by 1914, he was the commanding officer of the 5th Field Artillery Brigade".
- State Library NSW
  - No records





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- State Archives NSW
  - Plan for Soldiers Memorial and Randwick by Sir Charles Rosenthal & Day.

Considering the multiple references to Sir Charles Rosenthal, the submitted demolition report was reviewed for possible associational significance. However, the absence of records pertaining to Rosenthal in the Woollahra records indicates that he is unlikely a notable architect to the Woollahra LGA.

#### **Heritage Demolition report**

The Heritage Demolition Report provides the following description of the dwelling:

The subject site is an irregular allotment located on the eastern side of Wentworth Road, and contains a c.1926, two storey cottage of sandstone masonry and timber construction. Timber balconies and a large timber deck is noted to the rear, eastern portion of the site. The built elements of the site are concentrated within the southern portions of the site with a large garden with mature trees and landscaping occupying the northern portions. A stone driveway extends from Wentworth Road to the dwelling, the lower ground level of which contains the garage. The boundary wall along Wentworth Road is a robust sandstone retaining wall with niches of semi-circular arches adding aesthetic values to the element. This wide boundary wall contains a garden bed at its top with thick, mature shrubs forming the fence along Wentworth Road. The road itself is located at a much higher ground level, making the roof of the subject building the only element visible from the street.

The Heritage Demolition Report provides the following comment in regards to integrity:

The subject site has undergone numerous alterations and additions since construction in c.1926 (refer to Section **Error! Reference source not found.** above). Generally, the condition of the dwelling is good, but some cracks are noted to the ceiling and walls within the living room area on the ground floor level.

The Heritage Demolition Report has provided some comparative analysis of similar property types within the vicinity.

- Sir Charles Rosenthal;

figure in the field. He produced commercial and domestic architecture, and also designed a number of churches including Holy Trinity at Dulwich Hill.<sup>10</sup> He was twice president of the Institute of Architects of N.S.W. 1926-30 and president of the federal council of the Australian Institutes of Architects 1925-28, a fellow of the Royal Institute of British Architects and a life fellow of the Royal Australian Institute of Architects. He was in partnership with Harry Cooper Day before Day's death in 1925. Examples of work during their partnership include 'Darnley Hall', 12 Onslow Avenue, Elizabeth Bay and Randwick War Memorial, High Cross Park.

- Harry Cooper Day;

Harry Cooper Day was a well-known Sydney architect, his work appearing in *The Home* and other architectural journals. He began his architectural career in the office of his father Mark Cooper Day. He was a partner with the firms Wilshire and Day and then Rosenthal (Sir Charles) and Day. Day was responsible for the design of a number of houses and alterations and additions in the Vaucluse and Woollahra municipalities including his own homes 'Virginia', 20 Wentworth Road (listed item on the Woollahra LEP, see BA93/1920) and 10 Fisher Avenue ('My Home' in *Building* 12 Nov 1915, p. 101-105), also 65 Wentworth Road (see BA67/1922) and 'Carmody', Kent Road, Rose Bay (*The Home* 1 Jan 1927 p.32/3). Secretary of the NSW Institute of Architects and Alderman on Vaucluse Council from 1917 until his death in 1925.



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o Conclusion;

**B. Associational Significance**

*An item has strong or special association with the life or works of a person, or group of persons, of importance in NSW's cultural or natural history (state significance); OR it has strong or special association with the life or works of a person, or group of persons, of importance in the cultural or natural history of the local area (local significance).*

The c.1926 dwelling, to our knowledge, is not known to be associated with any significant human occupation or event, person or group of importance, since its construction.

It is noted that the original building was design by Sir Charles Rosenthal and Day Architects, who were well known in NSW. However, the subject building is not deemed to be a significant example from their body of work. Additionally, the subject dwelling has been extensively modified, notably to the interiors where much of the original configuration and planning have now been lost. As such, the subject site does not meet the criterion for associational significance.

The Heritage Demolition Report provides the following conclusion and recommendation:

Based on the observations made and analysis carried out in this report, Heritage 21 concludes that the property known as 31 Wentworth Road, Vaucluse (and the buildings situated thereon) do not warrant the listing or complete retention of the building. The proposed large-scale demolition and alterations and additions of the building can be supported from a heritage perspective. We recommend that any original fabric, such as original doors and windows removed as part of the demolition works, should be donated to a salvage yard and heritage building materials merchant such as Chippendale Restorations, if not re-used on site as part of new works.

The Heritage Demolition Report submitted with the development application includes historical research on the development of the property over time. The construction of the dwelling is associated with a known architect however has no distinctive landmark qualities or other features that would make it potentially significant or rare. The report has assessed the potential heritage significance of the existing dwelling and has concluded that the property does not meet the criteria for identification as a place of local significance.

Considering the above, the findings of the Heritage Demolition Report are considered to be accurate.

National Parks and Wildlife Act 1974

The site is in an area of Potential Aboriginal Heritage Sensitivity. Therefore, an Aboriginal Heritage Impact Assessment was required as part of the DA to ascertain whether potential Aboriginal cultural heritage will be impacted by the proposal.

Anyone proposing to carry out an activity that may harm an Aboriginal object or a declared Aboriginal place must investigate, assess and report on the harm that may be caused by the activity they propose.

The 'Due Diligence Code of Practice for the protection of Aboriginal Objects in NSW' (2010) prescribes that an extensive search must be undertaken if AHIMS has shown that there are Aboriginal sites or places in the search area.

The Office of Environment & Heritage (OEH) disclosures for AHIMS searches are copied below:

- *You must do an extensive search if AHIMS has shown that there are Aboriginal sites or places recorded in the search area.*



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- *If you are checking AHIMS as a part of your due diligence, refer to the next steps of the Due Diligence Code of practice.*
- *The information derived from the AHIMS search is only to be used for the purpose for which it was requested.*
- *AHIMS records information about Aboriginal sites that have been provided to Office of Environment and Heritage and Aboriginal places that have been declared by the Minister;*
- *It is not be made available to the public.*
- *Information recorded on AHIMS may vary in its accuracy and may not be up to date.*
- *Location details are recorded as grid references and it is important to note that there may be errors or omissions in these recordings.*
- *Some parts of New South Wales have not been investigated in detail and there may be fewer records of Aboriginal sites in those areas. These areas may contain Aboriginal sites which are not recorded on AHIMS.*
- *Aboriginal objects are protected under the National Parks and Wildlife Act 1974 even if they are not recorded as a site on AHIMS.*

The Applicant has provided an Aboriginal Heritage Impact Assessment (the 'report') prepared in accordance with the 'Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW' published by the Department of Environment, Climate Change and Water and dated 13 September 2010 and in accordance with Attachment 10 of Council's DA guide available at: [https://www.woollahra.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0009/248238/DA-Guide-Attachment-10-Aboriginal-Heritage-Impact-Assessment.pdf](https://www.woollahra.nsw.gov.au/__data/assets/pdf_file/0009/248238/DA-Guide-Attachment-10-Aboriginal-Heritage-Impact-Assessment.pdf)

Christopher Carter is a qualified Aboriginal heritage consultant who has inspected the property on 17 August 2023 date on foot. Steven Ella of the La Perouse LALC also attended the inspection, evidencing consultation.

There has been consideration of relevant previous Aboriginal heritage investigations, as detailed in the 'register searches' section of the report.

The AHIMS of the OEH was consulted on 10 August 2023 and the extensive search is attached at page 32 and 33 of the report. 25 recorded sites are located within a 750m radius of the study area none were recorded within the study area.

The report identifies the following potential for unexpected findings within the area:

*The narrow floor area of the rock shelter would have been unsuitable for extended occupation. The steeply sloping area away from the shelter floor has no potential for having been used for habitation.*

*There are no areas of archaeological potential on undisturbed land within the study area.*

In terms of site's disturbance, the report states that:

*The entire allotment at 31 Wentworth Road, Vaucluse, has been disturbed via:*

- *the construction of the original dwelling;*
- *subsequent modifications to the dwelling;*
- *general landscaping to the open areas of the allotment.*

The report's recommendations conclude that:

1. *The project may PROCEED WITH CAUTION. An AHIP is not required.*



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2. The principal contractor and site supervisor must undergo an induction covering their responsibilities with regard to Aboriginal Heritage.
3. The proponent must take steps to ensure any person working on the project is made aware of the range of material that might be expected to occur in the project area to assist in the identification of ad hoc discoveries. This must include written instructions that must be read and signed by each contractor working on the site.
4. The proponent may wish to liaise directly with La Perouse LALC to discuss monitoring during the initial phases of construction, particularly during initial ground disturbance.
5. A physical barrier (such as temporary construction fencing) is to be placed between the area where the proposed works are to be carried out and the sandstone outcrop located in the north-western corner of the allotment. This is to be installed prior to works commencing and not removed until works have been completed.
6. If any Aboriginal object is discovered and/or harmed in or under the land while undertaking proposed development activities, the proponent must:
  - a. Not further harm the object;
  - b. Immediately cease work at that particular location;
  - c. Secure the area so as to avoid further harm to the Aboriginal object
  - d. Contact an archaeologist to inspect the find.
  - e. If the find is an Aboriginal Object notify Heritage NSW as soon as practical on 131555, providing any details of the Aboriginal object and its location, and
  - f. Not recommence any work at the particular location unless authorised in writing by Heritage NSW.
7. If any object is found suspected to be human remains the proponent must enact Recommendation 4, but in addition, in order:
  - a. Not further disturb the remains or surrounds within 50 metres;
  - b. Immediately cease work at that particular location;
  - c. Secure the area so as to avoid further harm to the suspected remains;
  - d. Contact the NSW Police;
  - e. Notify Heritage NSW immediately on 131555, providing any details of the remains and their location, and
  - f. Not recommence any work at the particular location, unless authorised in writing by Heritage NSW.
8. A copy of this document should be retained in the event it is required to produce evidence of having undertaken due diligence.

#### Woollahra Council Sensitivity Mapping

The report does not provide a recommendation regarding the Woollahra Council Sensitivity Mapping.

Given the above, it is concluded that an unexpected findings condition of consent will need to be imposed as part of the DA consent.



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#### Woollahra LEP 2014

The subject site is not a heritage item in Woollahra Local Environment Plan 2014 'the LEP' and is not within a heritage conservation area.

#### **CONSIDERATION**

The proposal is for extensive alterations and additions to the existing dwelling, including a first floor extension.

The dwelling has no heritage significance and does not make any contribution to the heritage significance of Vaucluse. The property is not heritage listed and is not located within a heritage conservation area.

A Demolition Heritage Impact Report has been submitted with the development application and includes historical research on the development of the property over time. The construction of the dwelling is associated with a known prominent architect however has no distinctive landmark qualities or other features that would make it potentially significant or rare. The report has assessed the potential heritage significance of the existing dwelling and has concluded that it does not meet the criteria for identification as a place of local significance. The findings of the report are considered to be accurate. Accordingly, the property is not of heritage value and therefore no objection is raised to the proposed alterations and additions to the existing building.

As the property is not listed as a heritage item and is not located within a heritage conservation area, the design of the proposed new development will not result in any adverse impacts on heritage items/areas of value. There are no heritage items located within the vicinity of the site that will be adversely impacted and the proposal will not affect any significant views. As such, there are no concerns raised on heritage grounds regarding the design of the proposed new development.

The submitted Demolition Heritage Impact Report meets the standard of archival recordings for buildings with little or no heritage significance.

#### *Significance of items in the vicinity*

There are no listed heritage items in close proximity that would be adversely affected by the proposal.

#### **6. CONCLUSION**

##### National Parks & Wildlife Service Act, 1979

Appropriate conditions of consent to manage Aboriginal heritage will be provided below.

##### Woollahra LEP 2014

- Clause 1.2 (2) (f) The development does conserve the built heritage of Woollahra.

#### **7. RECOMMENDATION**

The proposal is generally acceptable, subject to conditions, as it complies with the relevant statutory and policy documents and would have a satisfactory impact.

Consent, subject to conditions;



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#### A. GENERAL CONDITIONS

<b>A</b>	<b>1.</b>	<b>Salvage</b>
		Stone, bricks, joinery and decorative architectural elements to be demolished, which include windows and doors, chimney pieces, fireplaces, timber flooring, decorative ceilings and ceiling roses must be salvaged and where possible reused on the project.
		Salvaged building materials surplus to the project must either be stored on site for future reuse, or transferred to an established second building material dealer for recycling.
		<b>Condition Reason:</b> To ensure significant heritage fabric is recycled/salvaged.

#### B. BEFORE DEMOLITION WORK COMMENCES

<b>B.</b>	<b>1.</b>	<b>Skeletal Remains</b>
		While site work is being carried out, if any skeletal remains suspected of being human are found, work must cease immediately and no further disturbance of the site must occur. The following must be notified: a) NSW Police, and b) The person who is the authority for the protection of Aboriginal objects under the National Parks and Wildlife Act 1974, section 85.
		Details of the remains and their precise location are to be provided.  Site work may recommence at a time confirmed in writing by the NSW Police and the person who is the authority for the protection of Aboriginal objects under the National Parks and Wildlife Act 1974, section 85.
		<b>Condition Reason:</b> To ensure the appropriate management of skeletal remains.
<b>B.</b>	<b>2.</b>	<b>Aboriginal Objects – Unexpected Findings</b>
		While site work is being carried out, if unexpected Aboriginal objects or bones are found, you must: a) Not further disturb or move these objects or bones. b) Immediately cease all work at the particular location. c) In the case of suspected human remains, notify NSW Police. d) Notify the Heritage NSW Environment Line on 131 555 and the La Perouse Land Council (LALC) on (02) 9311 4282 as soon as practicable and provide available details of the objects or remains and their location. e) Notify the person who is the authority for the protection of Aboriginal objects under the National Parks and Wildlife Act 1974, section 85. f) Not recommence any work at the particular location unless authorised in writing by the police (in the case of human remains) and the person who is the authority for the protection of Aboriginal objects under the National Parks and Wildlife Act 1974, section 85. Additional assessment and approval under the National Parks and Wildlife Act 1974 may be required





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	<p>prior to works continuing in the affected area(s) based on the nature of the discovery.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>The Definition of Aboriginal object, as per the National Parks &amp; Wildlife Act 1974, is any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.</li> </ul> <p><b>Condition Reason:</b> To protect Aboriginal objects</p>
<b>B. 3.</b>	<p><b>Aboriginal Heritage Due Diligence Responsibilities</b></p> <p>While site work is being carried out, nothing in this approval allows to cause harm to an Aboriginal object as defined in the National Parks &amp; Wildlife Act 1974. Under the National Parks &amp; Wildlife Act 1974, it is an offence to harm Aboriginal 'objects' (consisting of any material evidence of the Aboriginal occupation of NSW) without a valid Aboriginal Heritage Impact Permit under Section 90 of the Act. This applies whether the harm occurs either knowingly [s86(1)] or unknowingly [s86(2)].</p> <p>It is a defence to the strict liability offence of harm to an Aboriginal object under s86(2) if a process of Due Diligence was followed which reasonably determined that the proposed activity would not harm an Aboriginal object.</p> <p><b>Condition Reason:</b> To protect Aboriginal heritage.</p>
<b>B. 4.</b>	<p><b>Aboriginal Heritage Induction</b></p> <p>Prior to any site works:</p> <ol style="list-style-type: none"> <li>All construction staff and contractors must be made aware of their statutory obligations for Aboriginal heritage under the National Parks and Wildlife Act 1974;</li> <li>An Aboriginal heritage induction is to be delivered by the La Perouse Local Aboriginal Land Council, or by a heritage consultant with Aboriginal heritage expertise (if a representative of the Local Land Council is not able to provide the induction), to explain what Aboriginal heritage may be found and outline the unexpected findings procedures; and</li> <li>Documentary evidence demonstrating compliance with a) and b) above must be submitted to Council and the Principal Certifier.</li> </ol> <p><b>Condition Reason:</b> To protect Aboriginal heritage.</p>
<b>B. 5.</b>	<p><b>Archaeological monitoring</b></p> <p>Prior to any site works, an appropriately qualified and experienced heritage consultant is to be appointed for the project. That person is to be approved by Council's Heritage Staff.</p> <p>The heritage consultant and a representative from the La Perouse LALC shall monitor the initial phases of construction, particularly during initial ground</p>



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	disturbance and bulk excavation to ensure no significant archaeological fabric is damaged or removed without approval.
	<b>Condition Reason:</b> To protect heritage within the Woollahra Municipality.
<b>B. 6.</b>	<b>Sandstone outcrop</b>
	A physical barrier (such as temporary construction fencing) is to be placed between the area where the proposed works are to be carried out and the sandstone outcrop located in the north-western corner of the allotment. This is to be installed prior to works commencing and not removed until works have been completed.
	<b>Condition Reason:</b> To protect heritage within the Woollahra Municipality.

- C. ON COMPLETION OF REMEDIATION WORK**
- D. BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE**
- E. BEFORE BUILDING WORK COMMENCES**
- F. DURING BUILDING WORK**
- G. BEFORE THE ISSUE OF AN OCCUPATION CERTIFICATE**
- H. OCCUPATION AND ONGOING USE**
- I. BEFORE THE ISSUE OF A SUBDIVISION WORKS CERTIFICATE**
- J. BEFORE SUBDIVISION WORK COMMENCES**
- K. BEFORE THE ISSUE OF A SUBDIVISION CERTIFICATE**
- L. BEFORE THE ISSUE OF A SUBDIVISION CERTIFICATE**
- M. BEFORE THE ISSUE OF A STRATA CERTIFICATE**

Completion Date: 1 August 2023

## REFERRAL RESPONSE – ENVIRONMENT & SUSTAINABILITY

FILE NO: DA2023/197/1  
ADDRESS: 31 Wentworth Road VAUCLUSE 2030  
PROPOSAL: Alterations and additions to existing dwelling, new garage, swimming pool and basketball court  
FROM: Rachel Anderson, Senior Environment and Sustainability Officer  
TO: David Booth, Senior Assessment Officer

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### ISSUES

The main concern associated with the proposed development is the removal of vegetation within a habitat corridor and the presence of native fauna including threatened species nearby.

### RESEARCH

The following research was undertaken in the preparation of this assessment:

- Documents submitted to Council for assessment for DA2023/197/1
- Desktop review of the property using Council's Geocortex Web Mapping
- Database search of NSW Bionet Threatened Species Database and Vegetation Classification System
- Review of legislative framework (Woollahra's Biodiversity Conservation Strategy, Woollahra's LEP and DCP, NSW *Biodiversity Conservation Act 2016*, Resilience and Hazards SEPP 2021, Biodiversity and Conservation SEPP 2021 and Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*)

### ASSESSMENT

The proposed development involves alterations and additions to an existing dwelling, including the construction of a new garage, swimming pool, basketball court and associated landscaping. Nine trees are proposed for removal.

The proposed development is located within a habitat corridor and in close proximity to the habitat areas of Vacluse House, Nielsen Park and Sydney Harbour. Various threatened species are known to occur in the locality, including Powerful Owls.

A hedge of seven lilly pillies will be planted, and most of the significant vegetation on the site is proposed for retention.

### RECOMMENDATION

The proposal is considered satisfactory, subject to the following conditions:

#### Tree Protection Measures

Prior to the commencement of works, tree protection measures must be installed on site for all vegetation to be retained, in accordance with *AS 4970 Protection of trees on development sites* and to the satisfaction of the certifier. Parking or storing of building supplies or equipment within the fenced areas around trees is prohibited. Tree protection measures must be maintained until construction is complete.

Attachment to report 24117131 (Title Senior Environment and Sustainability Officers referral response).DOCX

1 of 2

**Pre-Clearance Surveys**

Pre-clearance surveys must be undertaken by the project arborist or other suitably qualified person prior to any tree removal works. If any nesting fauna is identified, works must be postponed until the breeding cycle is complete.

**Threatened Species Protection**

In the event of the presence of a threatened species on the development site, works must cease immediately and the developer must contact Council's Environment and Sustainability Team to determine if further assessment is required.

Rachel Anderson  
**Senior Environment and Sustainability Officer**

**Date: 1 August 2023**



### **31 Wentworth Road, Vacluse**

#### **REQUEST FOR VARIATION TO BUILDING HEIGHT DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6(3) OF WOOLLAHRA LEP 2014**

This Clause 4.6 variation relates to a proposal for alterations and additions to the existing dwelling including a first floor addition, double garage with a gym below and a swimming pool at the subject site.

It is proposed to construct alterations and additions to the existing dwelling including the following:

- Reconfiguring the Ground Floor of the existing dwelling to accommodate an open plan kitchen, living, dining and sitting area, bathroom and bedroom
- Constructing a First Floor addition to accommodate a master bedroom with ensuite, walk-in-robe and rear balcony, Bedroom 2, Bedroom 3, bathroom, lounge room and front balcony
- Constructing a double garage with a gym below to the northwest of the existing dwelling
- Constructing a swimming pool and associated decking at the rear of the site

#### **Clause 4.3 – Building Height**

Clause 4.3 of Woollahra LEP 2014 and the associated map prescribe a building height of 9.5 metres for the subject site. The proposal seeks to construct alterations and additions to an existing dwelling including a first-floor addition. The proposed works have a maximum height of 12.188 metres, providing a non-compliance with this control. The percentage variation is 28.29% (2.688m).

Below are extracts of the Section and Height Blanket Plan demonstrating the height non-compliance.

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Suite 203 | 59 Great Buckingham Street | Redfern | NSW 2016  
telephone: 02 9360 0989 | [www.a2p.com.au](http://www.a2p.com.au)



The proposal therefore seeks to vary the building height development standard.



The objectives of Clause 4.3 are as follows:

- (a) *to establish building heights that are consistent with the desired future character of the neighbourhood,*
- (b) *to establish a transition in scale between zones to protect local amenity,*
- (c) *to minimise the loss of solar access to existing buildings and open space,*
- (d) *to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*
- (e) *to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.*

The zoning of the land is R2 Low Density Residential. The objectives of the R2 zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.*
- *To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.*

#### **Clause 4.6 – Exceptions to Development Standards**

Clause 4.6 of the Woollahra Local Environmental Plan 2014 allows for exceptions of Development Standards. The objectives of this Clause 4.6 are:

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

The clause goes on to state:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does*

*not apply to a development standard that is expressly excluded from the operation of this clause.*

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard*
- (4) *Consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Secretary has been obtained.*

This document constitutes the written request referred to in Clause 4.6(3) in relation to the proposal's breach of the height of building development standard.

The NSW Department of Planning, Industry and Environment (DPI&E) provides guidance on how to prepare Clause 4.6 variations; 'Varying development standards: A Guide' (August 2011). This written request to vary the standards is based on the Guide.

**Clause 4.6(3)(a)**

The proposal is considered against the four matters required to be established under Clause 4.6.

**1. Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:**

In order to assess whether strict compliance with the development standard is unreasonable or unnecessary, a proposal is considered against the following five ways<sup>1</sup>:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard; or
5. 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 the land.

These five ways were re-emphasised by the Court<sup>2</sup>. Each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in a particular circumstance<sup>3</sup>. All tests are separate and not all tests may not be applicable in each case. Therefore, not all tests need to be met.

This objection relies on the first method set out above, that compliance with a standard is unreasonable and unnecessary given that the objectives of the standard are met even though the standard is not complied with<sup>4</sup>. Compliance with the objectives of the height standard is addressed under **Point 4 below**.

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<sup>1</sup> see *Wehbe v Pittwater Council* [2007] NSWLEC 827

<sup>2</sup> *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386

<sup>3</sup> *Mecone Pty Limited v Waverley Council* [2015] NSWLEC 1312

<sup>4</sup> *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245

In addition, the following points are raised:

- Compliance with the development standard is unreasonable and unnecessary as the proposed building height and bulk is of an appropriate form and scale and is compatible with surrounding development and the desired future character for the locality.
- The component of the development above the height control is limited to the rear part of the First Floor and is a consequence of the land falling away. The remainder of the proposed works comply with the building height standard. Refer to the extracts of the Section and Height Blanket Plan above.
- The proposed first floor addition will not visually dominate the property or streetscape.
- The proposed height is compatible with existing surrounding dwellings. It is noted that the adjoining dwelling to the north at 37 Wentworth Road has a non-compliant building height.
- The site slopes steeply from the front (south) to the rear (north) by approximately 13 metres. The height breach is attributed to the steep topography of the site. It is site specific conditions that result in the numerical variation. The proposed works will not impact the existing topography and natural vegetation.
- Despite the height variation, the proposal will present as a 2-storey form to the streetscape, noting that the site sits below and the street and that the majority of the dwelling will be screened by the vegetation and topography.
- The height breach allows for an appropriate upgrade of an existing dwelling which will improve the amenity, visual appearance and functionality of the dwelling.
- Exceedance of the height control will not create additional unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in this height would not create additional benefit for adjoining properties or the locality.
- As demonstrated in the accompany shadow diagrams, the proposal results in minimal additional shadowing impacts beyond that existing.

- The siting and design of the proposed works minimises the obstruction of views from neighbouring dwellings and the public domain.
- The proposed scale and bulk are appropriate to its context and will not appear out of character when viewed in its context of other buildings in the vicinity.
- The proposal provides a high level of internal amenity as demonstrated by compliance with the key amenity criteria within the DCP, including deep soil landscaping and side and rear setbacks. The excess building height thereby does not compromise the ability to meet or outperform the above criteria. This demonstrates that the site can accommodate the additional building height on the site.
- The proposed development achieves compliance with the relevant underlying objectives of the standard and the objectives of the zone.

**Clause 4.6(3)(b)**

**2. There are sufficient environmental planning grounds to justify contravening the development standard:**

Given the consistency of the proposal against the zone objectives and building height objectives (see **Point 4 below regarding both**), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard<sup>5</sup>.

The components proposed above the height control are:

- The rear part of the proposed First Floor addition

Given the consistency of the proposal against the zone objectives and height objectives (see **Point 4 below regarding both**), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard.

There are sufficient environmental planning grounds that the proposed building height can be achieved without adverse impacts for the following reasons:

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<sup>5</sup> see *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [90]

- Overall, the proposed building height and bulk is of an appropriate form and scale and is compatible with surrounding development and the desired future character for the locality.
- Exceedance of the height control will not create additional building bulk that results in unreasonable environmental amenity impacts as follows:
  - The components above the height control will not result in the loss of views from surrounding development;
  - The components above the height control will not result in unreasonable overshadowing of adjoining properties;
  - The components above the height control will still provide a development which has been designed to ensure that the visual and acoustic privacy of adjoining properties is maintained; and
  - The proposal will still provide a development, which in its totality is consistent with the scale of the adjoining developments and is of an appropriate visual bulk for the locality.
- The proposed building height non-compliance relates to the rear part of the proposed First Floor addition as a consequence of the topography of the site and a sudden change in level. The remainder of the proposed works comply with the building height standard.
- The proposed first floor addition will not visually dominate the property or streetscape.

The proposal will provide a suitable design and of suitable amenity in terms of the built environment and represents the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979) and the building envelope and design of the proposal responds appropriately to the unique opportunities and constraints of the site.

The aspect of the development that breaches the building height control can be justified as the proposal provides a consistent scale with neighbouring development. This can be described as an environmental planning ground because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome<sup>6</sup>.

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

**3. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3):**

The written request adequately addresses the matters referred to above by Clause 4.6(3).

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<sup>6</sup> *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 1097 at [42]



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

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

**Objectives of the Standard**

The proposal will be in the public interest as it meets the objectives of the building height development standard as follows:

**Objective (a)** seeks to *establish building heights that are consistent with the desired future character of the neighbourhood.*

*Comment:* The proposed building height non-compliance relates to the rear part of the proposed First Floor addition and is a consequence of the topography of the site and a change in levels. The remainder of the development complies with the building height standard.

The proposed scale and bulk are appropriate to its context and will not appear out of character when viewed in its context of other buildings in the vicinity.

The proposed height is compatible with existing surrounding dwellings. It is noted that the adjoining dwelling to the north at 37 Wentworth Road has a non-compliant building height.

Despite the height variation, the proposal will present as a 2-storey form to the streetscape, noting that the site sits below the street and that the majority of the dwelling will be screened by the vegetation and topography.

The development provides an articulated building form that minimises perceived bulk and scale impacts when viewed from the surrounds of the site.

**Objective (b)** seeks to *establish a transition in scale between zones to protect local amenity.*

*Comment:* Exceedance of the building height control will not create additional building bulk that results in unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in this bulk would not create additional benefit for adjoining properties or the locality.

The siting and design of the proposed works minimises the obstruction of views from neighbouring dwellings and the public domain.

It is noted that the site does not adjoin a different zone.

**Objective (c)** seeks to *minimise the loss of solar access to existing buildings and open space.*

*Comment:* The proposed building height non-compliance does not contribute to adverse environmental or amenity impacts on adjoining developments in terms of overshadowing.

As demonstrated in the accompany shadow diagrams, the proposal results in minimal additional shadowing impacts beyond that existing.

**Objective (d)** seeks to *minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion.*

*Comment:* The components of the development that do not comply with the building height development standard do not contribute to unreasonable environmental or amenity impacts on adjoining developments in terms of overshadowing, privacy and view loss, beyond a compliant building height.

**Objective (e)** seeks to *protect the amenity of the public domain by providing public views of the harbour and surrounding areas.*

*Comment:* The proposed works do not contribute to adverse amenity impacts to the public domain in terms of view loss.

### **Objectives of the Zone**

The zoning of the land is R2 Low Density Residential. The objectives of the R2 zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.*
- *To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.*

The proposal is consistent with the objectives of the zoning as follows:

- The proposal will retain the existing residential use of the site and continue to provide for housing needs in the area.
- The proposed height, bulk and scale is consistent with the character of surrounding development.
- The proposal will not inhibit other land uses to be provided in the area that provide facilities or services to meet the day to day needs of residents.
- The proposal will not compromise the amenity of other residents in terms of privacy, solar access or views. The proposal has been designed to ensure that mutual privacy is maintained with neighbouring properties.
- The proposed development is of a height and scale that achieves the desired future character of the neighbourhood.

As demonstrated above, the proposed development will be in the public interest because it is consistent with the objectives of the building height development standard and the objectives of the R2 zone.

The above demonstrates that compliance with the control is unreasonable and unnecessary in the circumstances of this case.

#### **Clause 4.6(4)(b) and Clause 4.6(5)**

Concurrence of the Planning Secretary is taken to have been obtained as a result of written notice dated 5 May 2020 attached to the Planning Circular PS 20-002.

In the context of the requirements of Clause 4.6(5), it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

#### **Conclusion**

The consistency of the development with the zone objectives and the objectives of the height standard together with the absence of adverse impacts arising establish that there are sufficient grounds to support the variation from the development standard and confirm that it is unreasonable and unnecessary for the development to comply. This therefore demonstrates sufficient environmental planning grounds to justify contravening the standard.

In addition, the resultant development will be in the public interest as it complies with the objectives of the zone and the objectives of the development standard.

Despite the breach with the standard, the proposal is consistent with the objects of Section 1.3 of the EP&A Act, which are to encourage development that promotes the social and economic welfare of the community and a better environment, to promote and coordinate orderly and economic use and development of land, to promote good design and amenity of the built environment and to protect the heritage of the built environment.

The proposal is consistent with the objects of the EP&A Act, as it will provide a suitable addition of appropriate design.

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to support the variation.

Prepared by:



Clare Findlay  
Consultant Town Planner  
[aSquare Planning Pty Ltd](#)

Date: 3 March 2023

Updated by:



Jennie Askin  
Director  
[aSquare Planning Pty Ltd](#)

Date: 31 May 2023



## **LOCAL PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT**

<b>ITEM No.</b>	D4
<b>FILE No.</b>	DA444/2023/1
<b>ADDRESS</b>	79 Victoria Road BELLEVUE HILL
<b>COUNCIL WARD</b>	Bellevue Hill
<b>SITE AREA</b>	1,480m <sup>2</sup>
<b>ZONING</b>	R2 Low Density Residential
<b>PROPOSAL</b>	Extensive internal and external alterations and additions, including new swimming pool and landscaping works.
<b>TYPE OF CONSENT</b>	Local development
<b>COST OF WORKS</b>	\$2,310,145
<b>DATE LODGED</b>	01/12/2023
<b>APPLICANT</b>	M J Suttie Architects Pty Ltd
<b>OWNER</b>	Ms M J Freund & Mr J J Murphy
<b>AUTHOR</b>	Ms L Samuels
<b>TEAM LEADER</b>	Mr M Moratelli
<b>SUBMISSIONS</b>	4
<b>RECOMMENDATION</b>	Conditional Approval

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

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

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

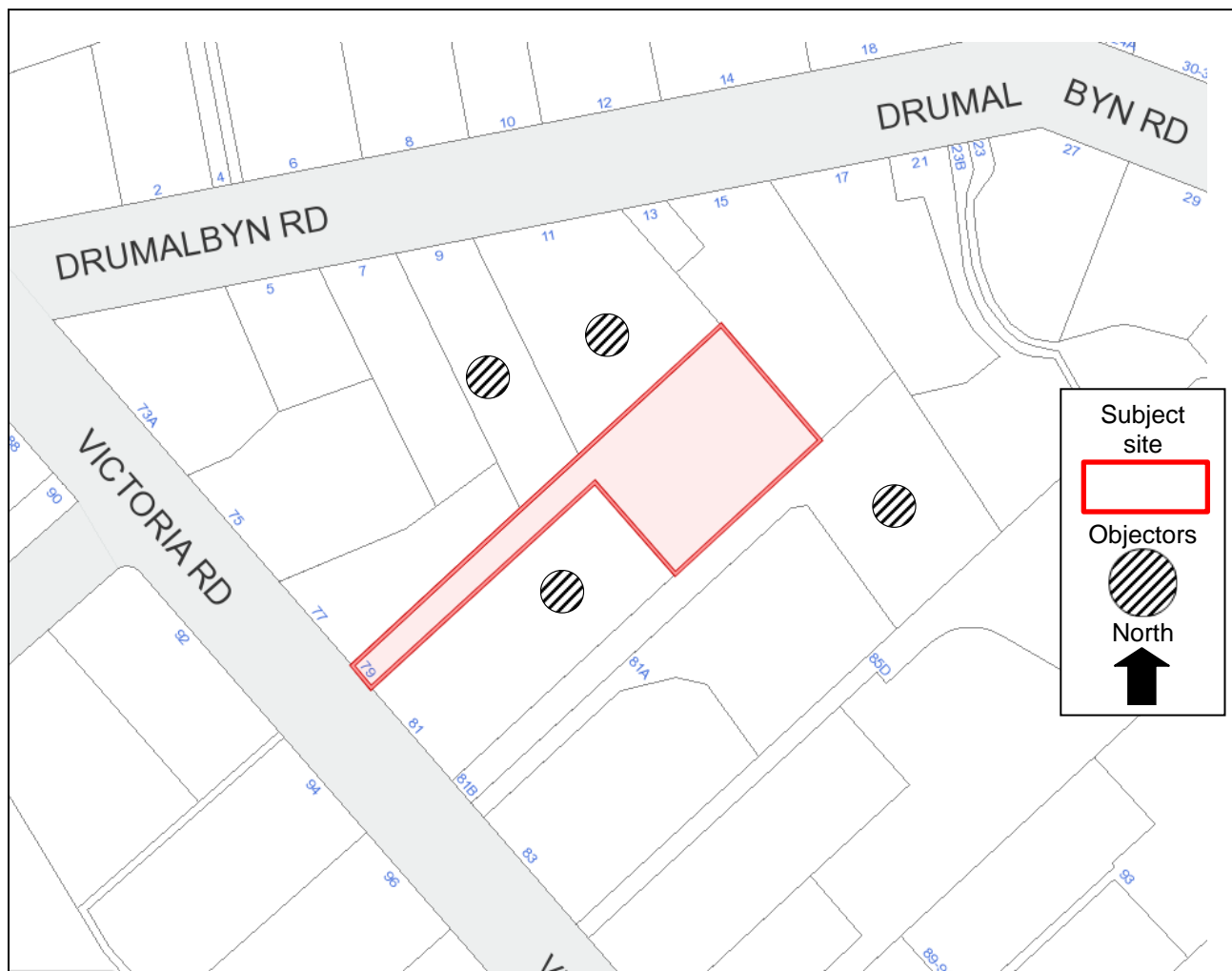
### **2. REASONS FOR RECOMMENDATION**

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

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



### 3. LOCALITY PLAN



### 4. PROPOSAL

The proposal was amended on 28/03/2024 as follows:

- Increase the northern boundary side setback of the garage from 0.9m to 1.2m, resulting in a 0.3m reduction to the width of the garage.
- A privacy screen has been provided along the northern side of the loggia terrace.
- The first floor level terrace (northern elevation) has been reduced in size and the northern side setback has been increased from 3.1m to 4.1m. A wider planter box has been provided along the northern side of the terrace.
- The attic level has been reduced in height by 150mm (from RL 83.09 to RL 82.94). This results in an attic which is 640mm lower than the ridge height of the existing roof.
- The existing hedge and retaining wall along the southern elevation are being retained.

As amended, the proposal involves the following works:

- Substantial alterations and additions to the existing dwelling.
- Demolition of the existing secondary dwelling, garage and swimming pool.
- Construction of a new garage integrated into the design of the dwelling.
- New swimming pool and landscaping works.

## 5. ISSUES

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

Clause	Development Standard	Departure from Control	Conclusion
Part 4.3	Height of Buildings	1.3m – 1.75m (lift overrun) or 18.4% departure from the 9.5m control	Satisfactory

### 5.2 Primary Issues

Issue	Conclusion	Section
Objector's concerns	The issues raised in the submissions are either addressed by conditions of consent or are insufficient to warrant refusal or modification of the application.	5.3

### 5.3 Summary of Submissions

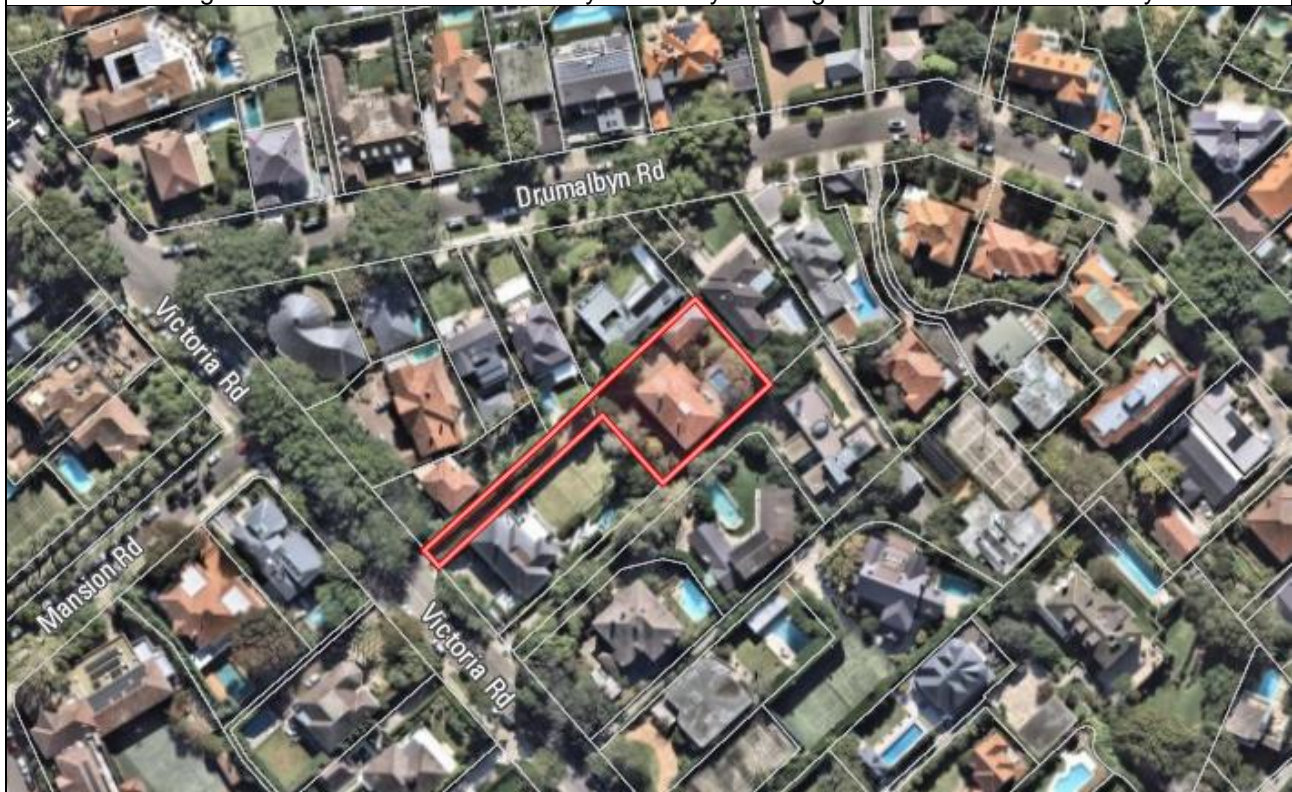
Issue	Conclusion	Section
Side setback of the garage/terrace structure	The plans have been amended to increase the northern side setback of the garage from 0.9m to 1.2m. The terraces above the garage have a setback of 2.2m to 4.1m. The garage is considered to provide adequate separation from the neighbouring single storey structure (with obscure glazed windows).	13
Inconsistent with the objectives of the R2 zone	The development is compatible with the character and amenity of the surrounding development, is a height and scale that is consistent with the desired future character and enhances canopy cover, in accordance with the objectives of the zone.	12
Privacy impacts	The proposal is not considered to result in any adverse amenity impacts upon the neighbouring properties	13
The hedge and retaining wall along the boundary with 81B Victoria Road should be retained	The plans have been amended to allow for the retention of the existing hedge and retaining wall along the southern boundary.	12
Trees 10,11,13,14 and 15 should be retained	The proposed plans include retention of trees 11 and 12. Trees 13, 14 and 15 have low landscape significance and low retention value and require removal for the construction of the garage. Council's Trees and Landscaping Officer has determined that the removal of these trees is acceptable, as discussed further under Section 13.4 below.	13.4
Impact on the Wild Plum at 15 Drumalbyn Road	The Wild Plum located in the rear yard of 15 Drumalbyn, is located approximately 5-7 metres away from the eastern corner of the site. There are three trees in the eastern corner of the subject site (trees 38, 39 and 40) that are being retained and protected as part of the proposal (subject to conditions). It is considered that the conditions that have been imposed for these trees will ensure any tree roots that might be growing in the subject site from the Wild Plum are also protected during construction. This is discussed further under Section 13.4 below.	13.4
The replacement planting should be trees that grow higher at maturity	Council's Trees and Landscaping Officer is satisfied that at least half of the proposed tree canopy area on the site is contributed to by canopy trees (i.e.: trees that attain a minimum of eight (8) metres mature height and canopy spread). This is discussed further under Section 13.4 below.	12.10 and 13.4
Stormwater impacts	Subject to the recommended deferred commencement condition, the proposal is considered to be acceptable with regard to stormwater management.	13.3
Geotechnical Report is inadequate	A revised Geotechnical Report was provided and reviewed by Council's Development Engineer.	13.3
Excavation impacts/Dilapidation reports should be prepared	Council's Development Engineer has determined that the excavation is acceptable, subject to conditions which include the requirement for dilapidation reports for 11 & 15 Drumalbyn Road and 81 & 81B Victoria Road.	13.3

Issue	Conclusion	Section
Noise from the swimming pool, air conditioning plant equipment and stormwater system	The proposed plant equipment is considered to be acceptable with regards to acoustic impacts, subject to conditions.	-

## PROPERTY DETAILS AND REFERRALS

### 6. SITE AND LOCALITY

Physical features
The subject is a battle-axe lot accessed via a driveway on the eastern side of Victoria Road. The site has an area of 1,480m <sup>2</sup> .
Topography
The land falls approximately 6m from the Victoria Road frontage to the rear boundary.
Existing buildings and structures
The site is occupied by a two storey dwelling with a detached garage (with a secondary dwelling below) and swimming pool.
Surrounding Environment
The surrounding environment is characterised by 2/3 storey dwellings of various architectural styles.



### 7. RELEVANT PROPERTY HISTORY

Current use
Detached dwelling.
Requests for Additional Information and Replacement Applications
<p>The following additional information was requested on 14 December 2023:</p> <ul style="list-style-type: none"> <li>- Acquisition of an inter-allotment drainage easement, revised Stormwater Management Plan, revised Geotechnical Report</li> <li>- Aboriginal Heritage Impact Assessment and Demolition Report</li> <li>- Fully coloured architectural drawings</li> <li>- Amended Aborigicultural Impact Assessment and Amended Landscape Plan</li> </ul> <p>The requested information has been provided and is satisfactory.</p>

## 8. REFERRALS

Referral	Summary of Referral Response	Attachment
Development Engineering	Acceptable, subject to a deferred commencement condition relating to stormwater management.	3
Trees and Landscaping	Acceptable, subject to conditions.	4
Heritage	Acceptable, subject to conditions.	5
Drainage	Acceptable, subject to conditions.	6

## ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

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

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

## 9. ADVERTISING AND NOTIFICATION

### 9.1 Submissions

The application was advertised and notified from 17/01/2024 to 01/02/2024 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. Submissions were received from:

1. Daintry Associates on behalf of Nerida Caesar and Craig Ross, 81 Victoria Road, Bellevue Hill
2. Robinson Urban Planning on behalf of Dr Judith Friedlander and Mr Anthony Kahn, 11 Drumalbyn Road, Bellevue Hill
3. Piper Alderman on behalf of Diana and David Ritchie, 81B Victoria Road, Bellevue Hill
4. Kate Key, 9 Drumalbyn Road, Bellevue Hill

The issues raised within the submissions are addressed in Section 5.3 above.

### 9.2 Replacement Application

The amended plans noted in Section 4 was not renotified to surrounding residents and previous objectors under Schedule 1 of the Woollahra Community Participation Plan 2019 because the proposal, as amended, will have no greater impacts than the previously advertised application.

### 9.3 Statutory Declaration

The applicant has completed the statutory declaration dated 06/02/2024 declaring that the site notice for DA444/2023/1 was erected and maintained during the notification period in accordance with Schedule 1 of the Woollahra Community Participation Plan 2019.

## **10. STATE ENVIRONMENTAL PLANNING POLICY (SUSTAINABLE BUILDINGS) 2022**

This policy generally applies to all residential developments (excluding alterations and additions less than \$50,000) and all non-residential developments, except those excluded in Chapter 3.1 of the policy.

### **Chapter 2 Standards for residential development—BASIX**

Chapter 2 applies to the proposed development. It relates to commitments within the proposed development in relation to thermal comfort, water conservation and energy efficiency sustainability measures.

The development application was accompanied by a BASIX Certificate demonstrating compliance with the SEPP. These requirements are imposed by standard condition.

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

The provisions of SEPP (Resilience and Hazards) 2021 that are relevant to the subject site and application involve managing development in terms of the following:

- Chapter 2 Coastal Management
- Chapter 4 Remediation of land

### **Chapter 2 Coastal Management**

The provisions of this chapter that are relevant to the subject application involve managing development in the coastal zone and protecting the environmental assets of the coast. It is considered that the proposal, as conditioned, will not have any significant adverse environmental impact upon the harbour coastal locality and it is therefore satisfactory with regard to the relevant provisions of the planning instrument.

### **Chapter 4 Remediation of land**

Clause 4.6(1)(a) of SEPP (Resilience and Hazards) 2021, requires consideration to be given as to whether the subject land is contaminated. The application maintains the existing residential land use of the subject land, the site is not within an investigation area.

The proposal is therefore acceptable with regard to SEPP (Resilience and Hazards) 2021.

## **12. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014**

### **12.1 Part 1.2: Aims of Plan**

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

### **12.2 Land Use Table**

The proposal is defined as a detached dwelling and is permitted and is consistent with the objectives of the R2 Low Density Residential zone.

### **12.3 Part 4.3: Height of Buildings**

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

	<b>Existing</b>	<b>Proposed</b>	<b>Control</b>	<b>Complies</b>
Maximum Building Height	11.27m	10.8m – 11.25m	9.5m	NO

- 1.3m (dwelling) – 1.75m (lift overrun) or 18.4% departure from the 9.5m control

Architectural elevation drawing of a two-story building. The drawing shows the existing building height (1270) and the proposed building height (9700). The roof is labeled "EXISTING RIDGE RL 83.62" and "PROPOSED METAL ROOF HEIGHT REDUCED BY 150MM". The building has a central entrance with a lobby and stairs. Rooms include Bedroom 4, Bedroom 5, Living, Kitchen, Dining, and Master. The drawing also shows the existing wall height (7870) and the proposed wall height (7700). The foundation space is indicated at the bottom.

Part 4.4E limits development to a maximum floor space ratio of 0.5:1 for dwelling houses, dual occupancies and semi-detached dwellings in the R2 and R3 zones.

Site Area: 1,480m <sup>2</sup>	Existing	Proposed	Control	Complies
Floor Space Ratio	0.36:1	0.41:1	0.5:1 (603.5m <sup>2</sup> )	YES

- i) To ensure the bulk and scale of new development is compatible with the desired future character of the area
- ii) To minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain
- iii) To ensure that development allows adequate provision on site for deep soil planting, tree canopy covering and areas of private open space

- The bulk and scale of the development is compatible with the existing and desired future character of the area.
- The proposed attic level and alterations and additions do not significantly increase the bulk and scale of the existing dwelling.



- The proposed additions do not have an adverse impact upon the amenity of the neighbouring properties. Given the battle-axe allotment, the development does not have an impact upon the public domain.
- The proposal complies with the deep soil landscaping controls, tree canopy cover controls and provides compliant areas of open space.

The proposal is acceptable with regard to the objectives under Part 4.4E(3) of the WLEP 2014.

## **12.5 Part 4.6: Exceptions to Development Standards**

### **Departure**

The proposal attains a height of 10.8m – 11.25m which involves a 1.3m (dwelling) – 1.75m (lift overrun) (18.4%) departure from the 9.5m height control under Clause 4.3 of Woollahra LEP 2014. The existing development has a ridge height of 11.27m and already exceeds the control.

### **Purpose**

Clause 4.6 allows for the contravention of a development standard (provided that the standard is not expressly excluded from the section), with the objectives of the clause being:

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

### **Applicant's Written Request**

Section 35B of the *Environmental Planning and Assessment Regulation 2021* requires a development application for development that proposes to contravene a development standard to be accompanied by a document [the written request] setting out the grounds on which the applicant seeks to demonstrate the matters in clause 4.6(3) paragraphs (a) and (b).

The applicant has provided a written request (Attachment 4) in accordance with Section 35B of the *Environmental Planning and Assessment Regulation 2021*.

### **Council's Assessment**

Clause 4.6(3) requires Council to be satisfied that the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention.

Council is required to undertake a critical review of the written request, and any other material that the Applicant has provided seeking to demonstrate the matters in clause 4.6(3). This is set out below.

#### **Step 1: Are the planning instrument, development standard and proposed variation identified in the written request accurate?**

In determining whether the information contained within the written request is accurate, the following questions have been considered:

- *Is the provision proposed to be varied a development standard?*
- *Is the development standard proposed to be varied one that can be varied, and not excluded from the operation of section 4.6 by section 4.6(8)?*
- *Is the correct LEP or SEPP section (and objectives if relevant) referenced?*
- *Is the extent of the variation correctly identified?*

Assessment:

Having regard to the definition of ‘development standards’ under the EP&A Act, Council is satisfied that the provision proposed to be varied is a development standard and is not excluded from the operation of Clause 4.6 by Clause 4.6(8).

The submitted written request titled *Clause 4.6 Variation Request Woollahra Local Environmental Plan 2014 Clause 4.3 Height of Buildings* has accurately referenced Clause 4.3 Height of Buildings and the associated objectives under WLEP 2014. The extent of variation with Clause 4.3 has been accurately identified in the submitted written request.

**Step 2: Section 4.6(3)(a): Is compliance unreasonable or unnecessary?**

In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (Wehbe), Preston CJ established five potential tests (the Wehbe test) for determining whether a development standard could be considered unreasonable or unnecessary:

- The first is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The second is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.
- The third is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.
- The fourth is 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.
- The fifth is 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.

However, the five tests set out in Wehbe above are not the only ways that an applicant can demonstrate that compliance with a development standard is unreasonable or unnecessary. In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (Initial Action), Preston CJ stated at paragraph 22:

*These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

Assessment:

The submitted Section 4.6 Written Request to Clause 4.3 Height of Buildings and the arguments provided are relevant to Test 1 – in that the objectives of the development standard are achieved notwithstanding non-compliance with the standard - are largely agreed with and supported.

The applicant’s written request principally adopts the first method of the *Wehbe* tests to demonstrate that compliance is unreasonable or unnecessary in the circumstances.

The applicant’s written request has adequately demonstrated that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. An assessment against the objectives of the subject development standard is included below.

Objectives underlying Clause 4.3 Height of Buildings are as follows:

- (a) *To establish building heights that are consistent with the desired future character of the neighbourhood*
- (b) *To establish a transition in scale between zones to protect local amenity*
- (c) *To minimise the loss of solar access to existing buildings and open space*
- (d) *To minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion*
- (e) *To protect the amenity of the public domain by providing public views of the harbour and surrounding areas*

The proposal is assessed against the objectives of Clause 4.3 as follows:

- The proposal involves removing the ridge of the existing pitched roof (RL 83.62) and replacing it with 680mm lower flat attic roof (RL 82.94).
- The height of the lift overrun is consistent with the ridge height of the existing dwelling.
- The proposal will maintain a built form and height that is consistent with the desired future character of the neighbourhood.
- Given the length of the battle-axe driveway, the height of the development is not visible from the streetscape or the public domain.
- The non-compliant height does not contribute to unreasonable solar access impacts. Furthermore, the proposal complies with the solar access controls of the WDCP 2015.
- As discussed further below, the non-compliant height does not have an adverse impact upon views, loss of privacy, overshadowing or visual intrusion and is acceptable with regard to the amenity of the neighbourhood.
- The non-compliant height will not have an adverse impact upon the amenity of the public domain and will not impact upon any public views of the harbour and surrounding areas.

**Step 3: Section 4.6(3)(b) Are there sufficient environmental planning grounds to justify the contravention?**

In *Initial Action* Preston CJ provided the following guidance (at paragraphs 23 and 24) concerning whether there will be sufficient environmental planning grounds to justify a contravention of the development standard:

- 23 *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be ‘environmental planning grounds’ by their nature: See Four2Five Pty Ltd. v Ashfield Council. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act including the objects in s1.3 of the EPA Act.*
- 24 *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. ... the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15].*

Section 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act*

*The objects of this Act are as follows:*

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

Assessment:

To determine whether the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of the development standard, the following questions have been considered:

- What environmental planning grounds have been put forward to justify the variation?
- Are the environmental planning grounds specific to the proposed variation?
- Are there sufficient environmental planning grounds to justify the proposed variation to the development standard?

The applicant has provided the following environmental planning grounds to justify the variation:

- *Height of the existing dwelling*
- *Reduction from Existing Non-Compliant Building Height*
- *Consistency with Surrounding Development & Desired Future Character*
- *Not visible from Victoria Road*
- *Other Matters for Consideration*

The Clause 4.6 request contains an explanation of the environmental planning grounds. The environmental planning grounds forwarded by the applicant are specific to the proposed variation against the Clause 4.3 Height of Buildings.

The written request provides explanation of how the proposed development and in particular, the breach of the height standard is reasonable and supportable in the circumstances. In doing so, the written request provides sufficient environmental planning grounds to justify contravention of the Clause 4.3 Height of Buildings development standard, as it demonstrates that the proposal achieves objects (c) and (g) of Section 1.3 of the Act.

There are sufficient environmental planning grounds to justify the proposed variation to the Clause 4.3 Height of Buildings development standard of the Woollahra LEP 2014.

## Conclusion

Council is satisfied that the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention.

### 12.6 Part 5.10: Heritage Conservation

The subject site is not a heritage item and is not located within a heritage conservation area.

Council's Heritage Officer has provided the following comment in this regard:

*"The Heritage Demolition Report submitted with the development application includes historical research on the development of the property over time. The construction of the dwelling is not associated with any known prominent architect and has no distinctive landmark qualities or other features that would make it potentially significant or rare. The report has assessed the potential heritage significance of the existing dwelling and has concluded that the property does not meet the criteria for identification as a place of local significance."*

The proposed development is acceptable with regard to the objectives in Parts 5.10 of the Woollahra LEP 2014.

### 12.7 Part 5.21: Flood Planning

The objectives of Part 5.21 are:

- a) *to minimise the flood risk to life and property associated with the use of land,*
- b) *to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,*
- c) *to avoid adverse or cumulative impacts on flood behaviour and the environment,*
- d) *to enable the safe occupation and efficient evacuation of people in the event of a flood.*

Subject to conditions, the proposal is acceptable with regard to Part 5.21 of Woollahra LEP 2014.

### 12.8 Part 6.1: Acid Sulfate Soils

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

### 12.9 Part 6.2: Earthworks

Council's Development Engineer has provided the following comments with regard to the proposed excavation:

*"A Geotechnical Report by JK Geotechnics, Ref: 36322A2rpt, dated 24/04/2024, has been submitted in support of the application. The proposal involves excavation with a maximum depth of about 3 metres from the existing ground surface levels.*

*The report identified that the subsurface conditions as:*

- a) *Fill comprising silty sand to a depth of 0.7m (BH1), 0.8m (BH1A), 0.4m (BH2), 0.3m (BH4) and 1m (BH5)*
- b) *Depth of natural sand with various density from a depth beneath the fill to a depth of 4m (BH1), 1m (BH1A), 4m (BH2), 1.3m (BH4) and 3.5m (BH5)*

- c) Sandstone bedrock was encountered beneath the natural sand.
- d) Groundwater was not encountered during the field investigation.

The report made comments and recommendations on the following:

- Shoring and support,
- Vibration Monitoring,
- Excavation method,
- Further Geotechnical input.

*Council's Infrastructure & Sustainability Services Division has no objections to the proposed excavation on technical grounds. Notwithstanding this, Council's Planning Officer is also to undertake an assessment of the proposed excavation against the relevant excavation objectives and controls prescribed under the LEP and DCP."*

Council's Development Engineer has determined that the proposal is acceptable. Subject to conditions, it is acceptable with regard to Part 6.2 of the Woollahra LEP 2014.

### **12.10 Part 6.9: Tree canopy cover in Zones R2 and R3**

Part 6.9 aims to conserve and enhance tree canopy cover in the R2 Low Density Residential zone and R3 Medium Density Residential zone.

Part 6.9(3) requires Council to consider whether the development incorporates planning and design measures to enable the retention and planting of trees to minimise the urban heat island effect, and will avoid, minimise or mitigate adverse impacts on the existing tree canopy.

Council's Trees and Landscaping Officer has provided the following comment in this regard:

*"The DCP outlines that at least half of the total tree canopy area on the site is to be contributed by canopy tree/s (ie: trees that attain a minimum of eight (8) metres mature height and canopy spread). Trees selected should be capable of achieving the applicable tree canopy area for the site within 5-10 years of completion of the development.*

*The proposed Landscape Plans indicate that the proposal will provide 522m<sup>2</sup> or 35.3% canopy cover within the site which complies with the DCP requirements."*

The proposal is acceptable with regard to Part 6.9 of Woollahra LEP 2014.

## **13. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015**

### **13.1 Chapter B1: Bellevue Hill North Residential Precinct**

The proposal meets the streetscape character and key elements of the precinct and desired future character objectives of the Bellevue Hill North precinct, as noted in Part B1 of the Woollahra DCP 2015.

### **13.2 Chapter B3: General Development Controls**

#### **Part B3.2: Building Envelope**

Site Area: 1,480m <sup>2</sup>	Proposed	Control	Complies
Side Elevation maximum unarticulated wall length	<12m	12m	YES
Maximum Wall Height	7.6m	7.2m	NO*
Inclined Plane From Wall Height	Predominantly within inclined plane	45°	NO *(partial)

\* Existing non-compliance



Part B3.2.2: Front Setback, Part 3.2.3: Side Setbacks, Part 3.2.4: Rear Setback

Given the site is a battle-axe allotment, the front, side and rear setback controls are assessed under Part 3.9 of the WDCP 2015.

Part B3.2.5: Wall Height and Inclined Plane

C1 specifies a maximum external wall height of 7.2m with an inclined plane of 45 degrees above this height. Roof eaves can protrude into the setback if they are below the inclined plane.

The small non-compliance with the wall height and incline plane relates to part of the existing dwelling which is being retained.

Conclusion

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

**Part B3.4: Excavation**

Site Area: 1,480m <sup>2</sup>	Proposed	Control	Complies
Maximum Volume of Excavation	210m <sup>3</sup>	345m <sup>3</sup>	YES

The proposed excavation relates to the levelling of the rear yard, the swimming pool and the rainwater tanks only.

The proposal is acceptable with regard to the excavation controls in Part B3.4 of the Woollahra DCP 2015.

**Part B3.5: Built Form and Context**

Site Area: 1,480m <sup>2</sup>	Proposed	Control	Complies
Solar Access to Open Space of Adjacent Properties	>50% for 2 hours	50% for 2 hours on 21 June	YES
Solar Access to Nth Facing Living Areas of Adjacent Properties	> 3 hours	3 hours on 21 June	YES

Part B3.5.1: Streetscape and Local Character

O1 requires that the built form is compatible with the streetscape and the desired future character of the area. O2 requires that development is of high visual quality and enhances the street. C3 requires that development steps down sloping sites and follows the topography of the land.

Given this is a battle-axe property, accessed via a long driveway, the dwelling is not visible from the streetscape.

Part B3.5.2: Overshadowing

C1(a) stipulates that sunlight is provided to at least 50% of the main ground level private open space to adjoining properties for a minimum of two hours between 9am and 3pm on June 21. C1(b) states that north facing windows to upper habitable rooms of neighbouring dwellings do not have sunlight reduced to less than 3 hours during the same period. C2 acknowledges that a departure from C1 may be unavoidable, subject to the proposed development complying with all setback controls.

The proposal involves relatively minor additional overshadowing. There is no significant additional overshadowing to the neighbouring windows between 9am – 3pm on 21 June. The neighbouring properties maintain more than 2 hours solar access between 9am – 3pm on 21 June. As such, the proposal complies with the control.

#### Part B3.5.3: Public and Private Views

No objections have been received with regard to view impacts and there are no known significant public views across the site. The proposal thereby satisfies the controls and objectives of this part.

#### Part B3.5.4: Acoustic and Visual Privacy

C3 states that electrical, mechanical, hydraulic and plant equipment are to be suitably housed so as to not create an 'offensive noise', either within or at the boundaries of any property at any time of the day. This is addressed by conditions.

C4 states that there should not be any sightlines from habitable room windows into habitable room windows or private open space in an adjoining property within 9.0m. This can be achieved via window location, layout and separation, screens or translucent glazing to 1.5m sill height. C7 requires that balconies, terraces, decks and roof terraces are suitably screened to prevent direct views into habitable rooms or private open space of adjoining and adjacent dwellings. C10 requires the trafficable area of terraces above the second storey to be setback so that there is no direct line of sight to neighbouring open space or windows of the habitable rooms of adjoining dwellings within a distance of 12m.

The proposal does not have an adverse impact upon privacy to the neighbouring properties as follows:

##### *81 Victoria Road*

- The front elevation windows and balconies are separated from the tennis court at 81 Victoria Road by 9m and separated from the dwelling at 81 Victoria Road by more than 30m.
- The proposal involves removing the existing first floor level windows within the southern elevation.

##### *81A Victoria Road*

- The proposal involves no new windows facing the property at 81A Victoria Road to the south-east. There is a replacement window at the ground level, which would not give rise to any adverse privacy impact.

##### *81B Victoria Road*

- The attic level balcony does not provide sightlines (within 12m) to the dwelling or private open space at 81B Victoria Road. The balcony includes blade walls along the northern and southern sides and is accessed from the master bedroom/ensuite only.
- There is a battle-axe driveway which runs along the length of the southern side of the site, thereby increasing separation from both 81A and 81B Victoria Road.



##### *11 Drumalbyn Road*

- The amended plans provide a privacy screen along the northern side of the loggia terrace. The first floor level terrace (northern elevation) has been reduced in size and the northern side setback has been increased from 3.1m to 4.1m. A wider planter box has been provided along the northern side of the terrace. It is noted that the proposed northern elevation terraces overlook the frosted glass windows and the roof of 11 Drumalbyn Road.
- The attic level balcony does not provide lines of sight into the private open space or windows at 11 Drumalbyn Road within 12m.

##### *15 Drumalbyn Road*

- The rear elevation windows are separated from the property to the rear by approximately 15m.
- The attic level balcony is separated from 15 Drumalbyn Road by approximately 15m.

The table below shows the outlook from the subject site towards adjoining properties.


<p><i>Figure 1 - Outlook towards the single storey dwelling and frosted glass windows at 11 Drumalbyn Road</i></p>

<p><i>Figure 2 - Outlook from the first floor level towards 11 Drumalbyn Road</i></p>

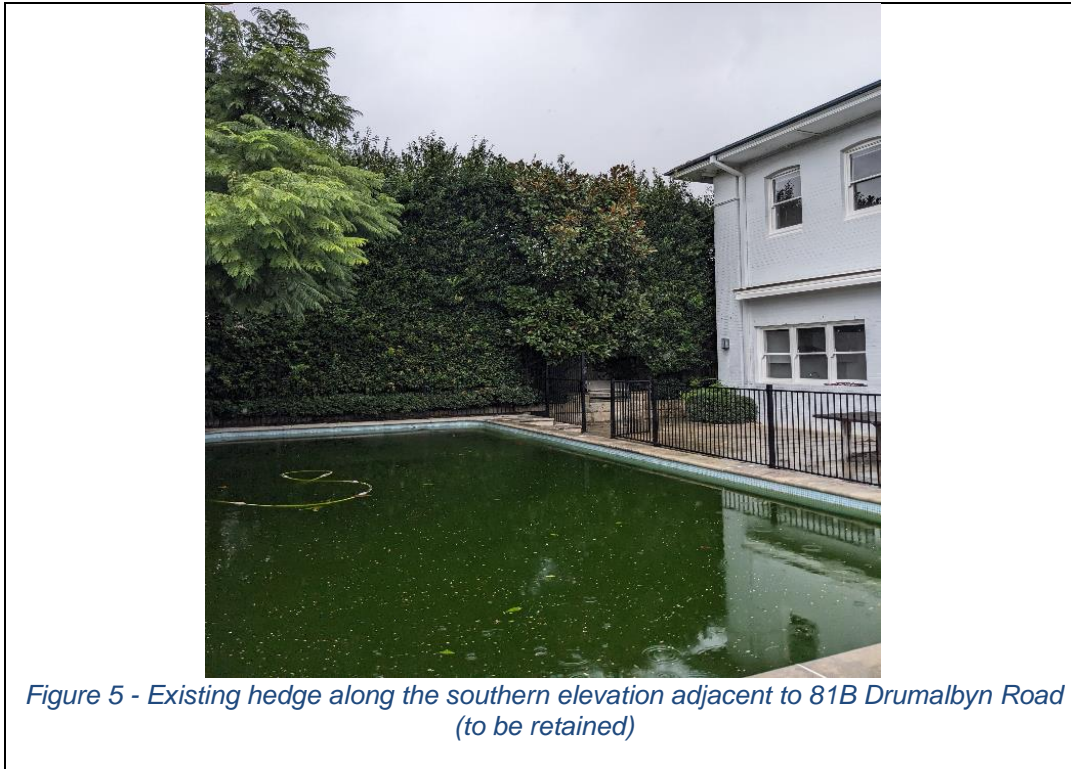


*Figure 3 - Outlook from the existing swimming pool towards the rear boundary and 15 Drumalbyn Road*



*Figure 4 - Outlook from the first floor level towards 15 Drumalbyn Road*





The proposal is acceptable with regard to the built form and context controls in Part B3.5 of the Woollahra DCP 2015.

### Part B3.6: On-Site Parking

Site Frontage: 6.1m (driveway entrance)	Existing	Proposed	Control	Complies
Location of Parking	Partly outside buildable area	Mostly within buildable area	Within the Buildable Area	NO (partial)
Width of Driveway	2.7m – 3m	2.7m – 3m	3.0m	NO*
Maximum Number of Driveways	One	One	One	YES

\*existing non-compliance

The proposal maintains the existing battle-axe driveway access to a double garage adjacent to the northern boundary. The proposal involves the demolition of the existing garage which is largely outside the building envelope and the construction of a new garage that is predominantly within the buildable area (a non-compliance of 0.3m adjacent to the northern elevation). Due to the length of the battle-axe driveway, the garage is not visible from the streetscape.

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

### Part B3.7: External Areas

Site Area: 1,480m <sup>2</sup>	Proposed	Control	Complies
Overall Landscaping	44% (653.5m <sup>2</sup> )	35% of the Site (518m <sup>2</sup> )	YES
Deep Soil Landscaping – Front Setback	47% (151m <sup>2</sup> )	40% (129m <sup>2</sup> )	YES
Minimum Area of Private Open Space at Ground Level	>35m <sup>2</sup>	35m <sup>2</sup>	YES

Site Area: 1,480m <sup>2</sup>	Proposed	Control	Complies
Maximum Height of Fencing	Existing sandstone entry posts retained	1.2m 1.5m and 50% open	N/A
Swimming Pool Excavation, Piling and Subsurface Wall Setback	2.1m – 3m	1.8m	YES
Level of Swimming Pool Above or Below Ground Level	Existing ground level	Maximum 1.2m Change	YES
Maximum Depth of Swimming Pool	1.8m	2.0m	YES

Subject to Condition C.1 (requiring that the permeable synthetic grass complies with the definition of deep soil landscaping), the proposal complies with the landscaping and swimming pool controls and is acceptable with regard to the external controls in Part B3.7 of the Woollahra DCP 2015.

### Part B3.9: Additional Controls for Development on a Battle-Axe Lot

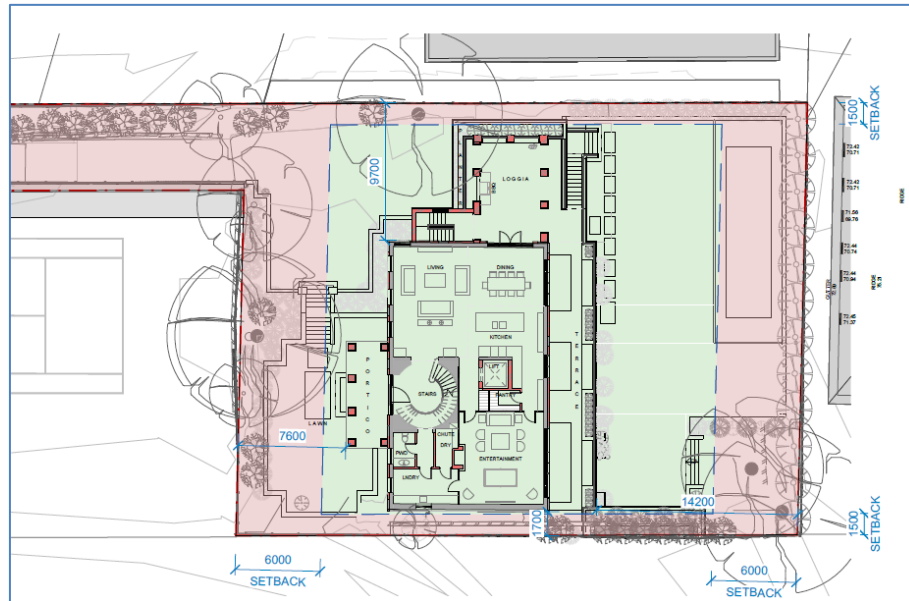
	Existing	Proposed	Control	Complies
Minimum Lot Size	1,480m <sup>2</sup>	1,480m <sup>2</sup>	950m <sup>2</sup>	YES
Setback to the Primary Frontage	10.5m	7.6m	6m	YES
Dwelling or Dual Occupancy Side setback (North)	0.3m	1.2m – 2.2m	1.5m	NO
Dwelling or Dual Occupancy Side setback (South)	1.8m	1.8m	1.5m	YES
Dwelling or Dual Occupancy Rear setback	17.6m	14.2m	6m	YES
Primary Living Areas	Ground floor	Ground floor	Ground Floor Only	YES

C1 requires, for development (other than a dwelling house, semi-detached dwelling or dual occupancy) in the R3 Medium Density Residential Zone, a minimum lot size of 950m<sup>2</sup>. C3 requires development in the R2 Low Density Residential Zone to have a 6m setback to the primary frontage, 1.5m side setbacks, and a 6m rear setback. C6 generally limits primary living areas to the ground floor only for privacy reasons. C8 allows balconies on upper levels where there is a satisfactory outcome on privacy grounds.

The proposal is acceptable in this regard for the following reasons:

- The site is an existing battle-axe, nevertheless it complies with the minimum lot size control.
- The proposal complies with the front, rear and southern side setback controls.
- The proposal involves a 0.3m non-compliance with the northern side setback, which relates to the ground floor level single storey garage. As discussed above, the garage is adjacent to a single storey structure with frosted glass windows and is not considered to result in any adverse amenity impacts.
- The primary living areas are maintained at ground floor level.
- As discussed above, the proposed balconies do not result in any adverse privacy impacts upon the neighbouring properties and are therefore considered to be acceptable.





The green area in the image above indicates the permissible buildable area for a battle-axe allotment. The dwelling is almost entirely within the permissible buildable area.

### Conclusion

The proposal is acceptable with regard to the additional controls in Part B3.9 of the Woollahra DCP 2015.

### **13.3 Chapter E2: Stormwater and Flood Risk Management**

Council's Development Engineer has provided the following comment in this regard:

*"The applicant has submitted documentary evidence showing that the acquisition of an interallotment drainage easement was unsuccessful. In this regard, Council's Engineers will consider the alternate stormwater disposal method (absorption trench system and/or pumpout system) in accordance with Chapter E2.2.9 of Council's DCP. However, following a review of the submitted geotechnical report, it is noted that the applicant has not provide sufficient information for Council's Engineers to assess the appropriate stormwater disposal method for the site. In this regard, the following information should be provided to Council for further assessment:*

- An on-site absorption system shall be explored as easement alternative in the first instance and the proposed absorption system must be located at least 3 metres from the footing of any structures and property boundaries. In this regard, minimum 2 cored boreholes must be carried out at the suitable locations at the rear of the site, on undisturbed "virgin" where the absorption system is proposed. The geotechnical engineer must demonstrate in the borehole coring that minimum soil depth of 1.5m is achieved between the base of the absorption system and the rock. In this regard, the required boreholes must extend at least 1.5m below the base of the proposed absorption system.*
- Infiltration testing must be carried out at the base of the target depth which should be at least the base level of the proposed absorption system. In this regard, an updated geotechnical report commenting on the absorption rate (litres/m2/s) of the soil must be provided. Note that approval will not be given where the nominal absorption rate is less than 0.1 litres/m2/s or strata of impermeable or low permeability are present, or where the water table is less than 2 metres from the base of the system.*

- *If the on-site absorption system is found to be suitable for the site, stormwater runoff from all paved, landscape areas and rainwater tank overflow is to be directed to the proposed on-site absorption system via a stormwater treatment system to minimise blockages. The size of the absorption trench system shall be determined for a 20 year ARI storm based on the absorption rate and the rainwater tank is to be assumed to be full and cannot be included as part of the absorption storage. Full calculations must be submitted with the revised stormwater plans. All trench system must be located at least 3 metres from the footing of any structures and property boundaries and be parallel to the contour.*
- *If the on-site absorption system is found to be unsuitable for the site, pump out system is then be installed instead of an absorption trench system, generally in accordance with stormwater management plans, referenced 23S263 Rev B, prepared by Heinz Consulting Engineering, dated 05/02/2024. The stormwater outlet pipe to the kerb and gutter is to be 150mmx75mm galvanised RHS in accordance with Council's Specification for Roadworks, Drainage and Miscellaneous Works.*

*The applicant is required to submit revised geotechnical report and stormwater plans to address the above issues. However, it is noted that Council's Planning Section seeks to determine the application in its current form. In this regard, Council's Engineers raise no objection for the above outstanding issues be addressed by the imposition of deferred commencement condition."*

The proposal is acceptable with regard to Chapter E2 of the Woollahra DCP 2015

#### **13.4 Chapter E3: Tree Management**

Council's Trees and Landscaping Officer has provided the following comment in this regard:

*"A review of the plans and documentation has revealed 41 trees within and adjacent to the property will be impacted by the proposal.*

*The following tree numbering is consistent with the Arboricultural Impact Assessment prepared by George Palmer dated February 2024 and the Landscape Plans prepared by Studio U.C dated 6 February 2024.*

##### *Tree Removal – Under 5m Height*

*The plans also indicate trees 31, 32, 33, 34 and 37 are proposed for removal. The trees have been noted as being less than 5 metres in height and are not a prescribed tree as defined by the WMC DCP Chapter E.3 - Tree Management. These trees can be removed without Council consent regardless of the proposed development.*

##### *Tree Removal – Exempt Species*

*The plans indicate trees 7, 16, 17, 21 and 29 are proposed for removal. These trees have been identified as species that are exempt from WMC DCP Chapter E.3 - Tree Management and can be removed without consent regardless of the proposed development.*

##### *Tree Removal – Low Retention Value*

*The plans indicate trees 13, 14, 15, 25 and 41 are proposed for removal due to unacceptable impacts expected from the development design. These trees have all been rated as having Low Landscape Significance and Low Retention Value for various reasons including underperforming in health, suppressed by more dominate trees or found to be providing minimal amenity value to the immediate area.*

*Trees rated as having Low Retention Value are generally considered as not being important for retention, nor require special works or design modification to be implemented for their retention.*

*These trees are supported for removal conditional of replacement planting being undertaken in accordance with the Landscape Plans.*

**Tree Removal – Medium Retention Value – Not Supported**

*The plans indicate tree 39 is proposed for removal. This tree has been identified as a Jacaranda mimosifolia (Jacaranda) located in the eastern corner of the rear yard. The tree has been noted in good health and condition. The tree is positioned between trees 38 and 40 that are shown for retention.*

*There is no reasoning in the applicants Arborist Report that justifies the removal of this tree. The proposed works around this tree are not expected to adversely impact on the tree such that it requires its removal.*

*Therefore, removal of this tree is not supported. The tree is listed for retention and protection in the below conditions.*

**Tree Retention**

*The remaining 25 trees are proposed for retention. Several of the trees have been excluded from the below conditions as they are less than 5 metres in height and are not a prescribed tree as defined by the WMC DCP Chapter E.3 - Tree Management .*

*However, the plans indicate works within the Tree Protection Zones of trees 12 and 23 are deemed as a Major Encroachment as defined by the Australian Standards AS4970 'Protection of trees on development sites. Where an encroachment of greater than 10% into the TPZ is proposed, the project arborist is to demonstrate that the tree will remain viable.*

*It is noted in the applicants updated Arborist Report that root investigation has been undertaken for trees 12 and 23 where excavation for the proposed development is proposed. The root investigation has confirmed that there are no major structural roots of greater than 50mm that will be impacted by the proposed works.*

*Therefore, the proposed works not expected to adversely impact on the tree provided tree sensitive construction methods and tree protection measures are implemented in accordance with the below conditions.*

**Canopy Cover – Dwellings etc.**

*Chapter B3.7 Landscape area and private open space of the WMC DCP outlines under Control 1 that 35% canopy cover is to be provided within sites for dwelling houses, dual occupancy, semi-detached development and attached dwellings.*

*The DCP outlines that at least half of the total tree canopy area on the site is to be contributed by canopy tree/s (ie: trees that attain a minimum of eight (8) metres mature height and canopy spread). Trees selected should be capable of achieving the applicable tree canopy area for the site within 5-10 years of completion of the development.*

*The proposed Landscape Plans indicate that the proposal will provide 522m<sup>2</sup> or 35.3% canopy cover within the site which complies with the DCP requirements.*

**Response to Submissions**

**Wild Plum – 15 Drumalbyn Road**

*It is noted that concerns have been raised about the protection of a Harpephyllum caffrum (Wild Plum) located in the rear yard of 15 Drumalbyn.*

*The subject tree is not shown on any of the submitted plans or documentation. However, based on a review of aerial photos, the tree appears to be around 5-7 metres from the eastern corner of the subject site. There are three (3) trees in the eastern corner of the subject site (trees 38,*

*39 and 40) that are being retained and protection as part of the proposal. The works around these trees are limited to landscape upgrades, including a new low retaining wall and new plantings. The levels in this corner remaining relatively similar to existing with minimal disturbance proposed within the TPZ of trees 38, 39 and 40.*

*The below conditions require tree sensitive construction works to be implemented when working around trees 38, 39 and 40 which ensures all tree roots greater than 50mm in diameter are retained. It is considered that the conditions that have been imposed for these trees will ensure any tree roots that might be growing in the subject site from the Wild Plum are also protected during construction.*

*Trees 11, 14 and 15 – Request for Retention*

*The proposed plans include retention of tree 11.*

*The proposed plans indicate trees 14 and 15 will require removal as they are directly adjacent to the proposed garage. Excavation for the garage will directly impact on important structural roots of the trees resulting in either tree failure or complete tree death if they were to be retained.*

*The trees are relatively small specimens that have been rated as having Low Landscape Significance and Low Retention Value. Trees rated as having Low Retention Value are generally considered as not being important for retention, nor require special works or design modification to be implemented for their retention.*

*The proposed Landscape Plans indicate new plantings within the same vicinity as these trees. This includes a new hedge along the northern boundary that will be advanced specimens (approximately 1.2 metres height) at the time of planting and another two specimen trees (approximately 1.7metres) at the time of planting. It is considered that these plantings will provide greater amenity, privacy screening and canopy cover along this boundary in the short term than what is currently being provided by trees 14 and 15.*

*Therefore, the removal of trees 14 and 15 is considered acceptable.”*

Subject to conditions, the proposal is acceptable with regard to Chapter E3 of the Woollahra DCP 2015.

### **13.5 Chapter E5: Waste Management**

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

## **14. CONTRIBUTIONS PLAN**

Contributions plans allow funds to be raised from approved development applications. The funds are used for the intended provision, extension or augmentation of public facilities, or towards recouping the cost of facilities that have been provided, extended or augmented. These contributions relate to sections 7.11 and 7.12 of the EP&A Act, formerly known as section 94 and section 94A.

### **14.1 Section 7.12 Contributions Plan**

A 1% levy applies with the monies being used for a variety of works as outlined in Schedule 1 of the Section 7.12 Contributions Plan 2022. Refer to Condition D.16.

## **15. APPLICABLE ACTS/REGULATIONS**

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

#### **Clause 61(1) Additional matters that consent authority must consider**

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

### **15.2 Swimming Pools Act 1992**

The Swimming Pools Act 1992, requires swimming pools to be surrounded by a child-resistant barrier, which separates the swimming pool from any residential building. The barrier must be designed, constructed, installed and maintained in accordance with the standards prescribed by the regulations.

Additional provisions relate to:

- a) Swimming pool registration in accordance with Section 30B of the Swimming Pools Act 1992
- b) A Certificate of Compliance pursuant to Section 22D of the Swimming Pools Act 1992
- c) Water recirculation and filtration systems
- d) Backwash discharge to the sewer

These requirements are imposed by standard condition.

## **16. THE LIKELY IMPACTS OF THE PROPOSAL**

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

## **17. THE SUITABILITY OF THE SITE**

The site is suitable for the proposed development.

## **18. THE PUBLIC INTEREST**

The proposal is considered to be in the public interest.

## **19. CONCLUSION**

The proposal is acceptable against the relevant considerations under s4.15.

## **20. DISCLOSURE STATEMENTS**

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

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

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, is satisfied that the written request from the applicant under Clause 4.6 of the Woollahra Local Environmental Plan 2014 to the height of buildings development standard under Clause 4.3 of Woollahra LEP 2014 has adequately addressed the relevant matters and the proposed development will be in the public interest because it is consistent with the relevant objectives of the particular standard and the zone. The Panel assumes the concurrence of the Secretary, Department of Planning, Industry and Environment.

**AND**

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, grant development consent to Development Application No. 444/2023/1 for extensive internal and external alterations and additions, including new swimming pool and landscaping works on land at 79 Victoria Road Bellevue Hill, subject to the following conditions:

**ALL DEVELOPMENT TYPES**

**A. GENERAL CONDITIONS**

A.	1.	<b>Deferred Commencement - (section 4.16(3) of the Act, clause 76 of the Regulation)</b>
		<p>Development consent is granted subject that this consent is not to operate until the Applicant satisfies the Council, in accordance with the Regulations, as to all matters specified in this condition:</p> <p>1) <u>Stormwater Management Design</u></p> <p>The following stormwater design shall be submitted to Council in accordance with Chapter E2.2.9 of Council's DCP:</p> <ul style="list-style-type: none"><li>a) An on-site absorption system shall be detailed with the proposed absorption system located at least 3 metres from the footing of any structures and property boundaries. In this regard, minimum 2 cored boreholes must be carried out at the suitable locations at the rear of the site, on undisturbed "virgin" ground where the absorption system is proposed. The geotechnical engineer must demonstrate in the borehole coring that a minimum soil depth of 1.5m is achieved between the base of the absorption system and the rock. In this regard, the required boreholes must extend at least 1.5m below the base of the proposed absorption system.</li><li>b) Infiltration testing must be carried out at the base of the target depth which should be at least the base level of the proposed absorption system. An updated geotechnical report that details the absorption rate (litres/m2/s) of the soil must be provided. The report must demonstrate that the nominal absorption rate is not less than 0.1 litres/m2/s, that strata of impermeable or low permeability are not present, and that the water table is not less than 2 metres from the base of the system.</li></ul>



	<p>c) If the on-site absorption system is found to be suitable for the site, stormwater runoff from all paved, landscape areas and rainwater tank overflow is to be directed to the proposed on-site absorption system via a stormwater treatment system to minimise blockages. The size of the absorption trench system shall be determined for a 20 year ARI storm based on the absorption rate and the rainwater tank is to be assumed to be full and cannot be included as part of the absorption storage. Full calculations must be submitted with the revised stormwater plans. All trench system must be located at least 3 metres from the footing of any structures and property boundaries and be parallel to the contour.</p> <p>d) If the on-site absorption system is found to be unsuitable for the site, a pump out system may be proposed, generally in accordance with stormwater management plans, referenced 23S263 Rev B, prepared by Heinz Consulting Engineering, dated 05/02/2024. The stormwater outlet pipe to the kerb and gutter is to be 150mmx75mm galvanised RHS in accordance with Council's Specification for Roadworks, Drainage and Miscellaneous Works.</p> <p>Revised geotechnical report and stormwater plans addressing the above issues shall be submitted to Council for assessment.</p> <p>The Applicant must produce evidence to Council sufficient enough to enable it to be satisfied as to those matters above within 365 days (1 year) of the date of determination.</p> <p>Clause 76(3) of the Regulation:</p> <p>"A consent authority may specify the period within which the applicant must produce sufficient evidence to the consent authority to enable it to be satisfied about the relevant matters".</p> <p>If the evidence is not produced with within 365 days (1 year) of the date of determination this deferred commencement consent is of no effect, the consent does not operate and no Construction Certificate can be issued. No development can lawfully occur under this consent unless it operates.</p> <p>This consent does not operate until Council has acknowledged compliance with this condition in writing.</p> <p><b>Notes:</b> Nothing in the Act prevents a person from doing such things as may be necessary to comply with this condition. (See section 4.16(3) of the Act). Implementing the development prior to written confirmation of compliance may result in legal proceedings. If such proceedings are required Council will seek all costs associated with such proceedings as well as any penalty or order that the Court may impose. No Construction Certificate can be issued until all conditions including this condition required to be satisfied prior to the issue of any Construction Certificate have been satisfied.</p> <p><b>Condition Reason:</b> To ensure all parties are aware this consent does not operate until the Council is satisfied all relevant matters specified in this condition are addressed.</p>
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<p><b>A. 2.</b></p>	<p><b>Conditions</b></p> <p>Consent is granted subject to the following conditions imposed under section 4.16 of the Environmental Planning and Assessment Act 1979 (“the Act”), and the provisions of the Environmental Planning and Assessment Regulation 2021 (“the Regulations”) and the provisions of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 (“the Development Certification and Fire Safety Regulations”), such conditions being reasonable and relevant to the development as assessed under section 4.15 of the Act.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• Failure to comply with this development consent and any condition of this consent is a criminal offence. Failure to comply with other environmental laws is also a criminal offence.</li> <li>• Where there is any breach Council may without any further warning: <ul style="list-style-type: none"> <li>a) Issue Penalty Infringement Notices (On-the-spot fines);</li> <li>b) Issue notices and orders;</li> <li>c) Prosecute any person breaching this consent; and/or</li> <li>d) Seek injunctions/orders before the courts to restrain and remedy any breach.</li> </ul> </li> <li>• Maximum penalties under NSW environmental laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.</li> <li>• Should Council have to take any action to enforced compliance with this consent or other environmental laws Council’s policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order.</li> <li>• This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.</li> <li>• The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of the Crimes (Sentencing Procedure) Act 1999, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious.</li> </ul> <p><b>Condition Reason:</b> To ensure all parties are aware of the relevant legislation that applies to the development.</p>
<p><b>A. 3.</b></p>	<p><b>Definitions</b></p> <p>Unless specified otherwise, words have the same meaning as defined by the <i>Act</i>, the <i>Regulations</i>, the <i>Development Certification and Fire Safety Regulations</i> and the <i>Interpretation Act 1987</i> as in force at the date of consent.</p> <p><b>Applicant</b> means the applicant for this consent.</p> <p><b>Approved Plans</b> mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.</p> <p><b>Local native plants</b> means species of native plant endemic to Sydney’s eastern suburbs.</p> <p><b>Owner-builder</b> has the same meaning as in the <i>Home Building Act 1989</i>.</p> <p><b>PC</b> means the Principal Certifier under the <i>Act</i>.</p> <p><b>Principal Contractor</b> has the same meaning as in the <i>Act</i>, or where a Principal Contractor has not been appointed by the Owner of the land being developed Principal Contractor means the Owner of the land being developed.</p> <p><b>Professional engineer</b> has the same meaning as in the BCA.</p>

	<p><b>Public place</b> has the same meaning as in the <i>Local Government Act 1993</i>.</p> <p><b>Road</b> has the same meaning as in the <i>Roads Act 1993</i>.</p> <p><b>SEE</b> means the final version of the Statement of Environmental Effects lodged by the Applicant.</p> <p><b>Site</b> means the land being developed subject to this consent.</p> <p><b>Site work</b> means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.</p> <p><b>Woollahra LEP</b> means <i>Woollahra Local Environmental Plan 2014</i></p> <p><b>Woollahra DCP</b> means <i>Woollahra Development Control Plan 2015</i></p> <p><b>Work</b> for the purposes of this consent means:</p> <ul style="list-style-type: none"> <li>• the use of land in connection with development,</li> <li>• the subdivision of land,</li> <li>• the erection of a building,</li> <li>• the carrying out of any work,</li> <li>• the use of any site crane, machine, article, material, or thing,</li> <li>• the storage of waste, materials, site crane, machine, article, material, or thing,</li> <li>• the demolition of a building,</li> <li>• the piling, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,</li> <li>• the delivery to or removal from the <i>site</i> of any machine, article, material, or thing, or</li> <li>• the occupation of the <i>site</i> by any person unless authorised by an occupation certificate.</li> </ul> <p><b>Condition Reason:</b> To ensure all parties are aware of the relevant definitions.</p>
<p><b>A. 4.</b></p>	<p><b>Approved Plans and Supporting Documents</b></p> <p>Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with both the architectural plans to which is affixed a Council stamp “Approved” and supporting documents listed below unless modified by any following condition.</p> <p>Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.</p>

		Reference	Description	Author	Date
		DA-001 (Rev 3) DA-002 (Rev 3) DA-100 (Rev 3) DA-101 (Rev 3) DA-102 (Rev 3) DA-103 (Rev 3) DA-104 (Rev 3) DA-105 (Rev 3) DA-106 (Rev 3) DA-107 (Rev 3) DA-108 (Rev 3) DA-109 (Rev 3) DA-200 (Rev 3) DA-201 (Rev 3) DA-202 (Rev 3)	Architectural Plans	M.J.Suttie Architects	08/03/2024
		A1377429	BASIX Certificate	NSW Department of Planning and Environment	25 Nov 2023
		DA01, DA02, DA03	Landscape Plans	Studio U.C	6/3/2024
			Flood Risk Management Report	Pittwater Data Services	16/11/2023
		36322A2rpt	Geotechnical Report	JK Geotechnic	24/04/2024
		As approved under the Deferred Commencement Condition	Stormwater Plans	As approved under the Deferred Commencement Condition	As approved under the Deferred Commencement Condition
		<b>Notes:</b> <ul style="list-style-type: none"> <li>Warning to Principal Certifier – You must always insist on sighting the original Council stamped approved plans. You must not rely solely upon the plan reference numbers in this condition. Should the Applicant not be able to provide you with the original copy Council will provide you with access to its files so you may review our original copy of the approved plans.</li> <li>These plans and supporting documentation may be subject to conditions imposed under section 4.17(1)(g) of the Act modifying or amending the development.</li> </ul>			
		<b>Condition Reason:</b> To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.			
A.	5.	<b>Salvage of Building Materials</b>			
		<p>Stone, bricks, joinery and decorative architectural elements to be demolished, which include windows and doors, chimney pieces, sandstone, fireplaces, timber flooring, decorative ceilings and ceiling roses must be salvaged and where possible reused on the project.</p> <p>Salvaged building materials surplus to the project must either be stored on site for future reuse, or transferred to an established second building material dealer for recycling.</p>			
		<b>Condition Reason:</b> To ensure significant heritage fabric is recycled/salvaged.			

## A. 6. Tree Preservation and Landscaping Works

While site work is being carried out, all landscape works must be undertaken in accordance with the approved landscape plan, arborist report, tree management plan and transplant method statement as applicable.

a) The following trees must be retained:

- Trees on private land:

Council Ref No	Species	Location	Dimension (metres)
4	<i>Cupressus leylandii</i> x24	Refer to the Landscape Plans prepared by Studio U.C dated 6 February 2024 for tree numbers and locations.	5 x 3
9	<i>Lophostemon confertus</i>		8 x 4
10	<i>Syzygium smithii</i>		5 x 3
11	<i>Elaeocarpus reticulatus</i>		8 x 3
12	<i>Lophostemon confertus</i>		12 x 8
20	<i>Camellia sasanqua</i>		5 x 4
23	<i>Melaleuca quinquenervia</i>		14 x 8
24	<i>Camellia sasanqua</i>		5 x 3
26	<i>Howea forsteriana</i>		10 x 2
35	<i>Xylosma senticosum</i>		5 x 2
38	<i>Corymbia citriodora</i>		12 x 8
39	<i>Jacaranda mimosifolia</i>		8 x 6
40	<i>Lophostemon confertus</i>		9 x 8

The tree/s required to be retained must appear coloured green on the Construction Certificate plans.

b) The following trees may be removed:

Council Ref No	Species	Location	Dimension (metres)
7	<i>Syagrus romanzoffianum</i>	Refer to the Landscape Plans prepared by Studio U.C dated 6 February 2024 for tree numbers and locations.	6 x 2
13	<i>Syzygium smithii</i>		5 x 2
14	<i>Elaeocarpus reticulatus</i>		6 x 2
15	<i>Elaeocarpus reticulatus</i>		6 x 2
16	<i>Celtis sinensis</i> *		8 x 6
17	<i>Cupressus leylandii</i> *		4 x 2
21	<i>Nerium oleander</i> *		3 x 3
25	<i>Chamaecyparis lawsoniana</i>		8 x 3
29	<i>Strelitzia nicholai</i> *		3 x 3
31	<i>Cyathia cooperi</i> *		4 x 2
32	<i>Callistemon viminalis</i>		4 x 2
34	<i>Pittosporum undulatum</i>		4 x 2
37	<i>Plumeria acutifolia</i>		4 x 2
41	<i>Plumeria acutifolia</i>		5 x 4

The tree/s that may be removed must appear coloured red on the Construction Certificate plans.

	<p>The species marked (*) is exempt from the WMC DCP 2015 and can be removed without requiring consent from Council.</p> <p><b>Condition Reason:</b> To ensure all landscape works are undertaken in accordance with the approved plans and documents. Standard Condition A22</p>
<b>A. 7.</b>	<p><b>Ancillary Aspects of Development (section 4.17(2) of the Act)</b></p> <p>The Owner must procure the repair, replacement or rebuilding of all road pavement, kerb, gutter, footway, footpaths adjoining the site or damaged as a result of work under this consent or as a consequence of work under this consent. Such work must be undertaken to Council's satisfaction in accordance with Council's Specification for Roadworks, Drainage and Miscellaneous Works (2012) unless expressly provided otherwise by these conditions at the Owner's expense.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>This condition does not affect the Principal Contractor's or any sub-contractors obligations to protect and preserve public infrastructure from damage or affect their liability for any damage that occurs.</li> </ul> <p><b>Condition Reason:</b> To ensure all parties are aware of works required to public infrastructure and to ensure payment for works.</p>
<b>A. 8.</b>	<p><b>No Underpinning works</b></p> <p>This development consent does NOT give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties.</p> <p><b>Condition Reason:</b> To ensure all works are located within the boundaries of the site and to confirm that no consent is granted for underpinning works to any structures on adjoining properties.</p>

## DEMOLITION WORK

### B. BEFORE DEMOLITION WORK COMMENCES

<b>B. 1.</b>	<p><b>Construction Certificate Required Prior to Any Demolition</b></p> <p>Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is "commencement of erection of building" under section 6.6 of the Act.</p> <p>In such circumstance all conditions included at the following development stages of this consent must be satisfied prior to any demolition work:</p> <ul style="list-style-type: none"> <li>Before issue of a construction certificate</li> <li>Before building work commences</li> </ul> <p>This includes, but is not limited to, the issue of a Construction Certificate, appointment of a Principal Certifier, and Notice of Commencement under the Act.</p> <p><b>Note:</b></p> <ul style="list-style-type: none"> <li>See Over our Dead Body Society Inc v Byron Bay Community Association Inc [2001] NSWLEC 125.</li> </ul>
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	<p><b>Condition Reason:</b> To ensure appropriate conditions are complied with for development for the alteration and extension of an existing building.</p>
<b>B. 2.</b>	<p><b>Erosion and Sediment Controls – Installation</b></p> <p>Before any site work commences, water pollution, erosion and sedimentation controls must be installed and maintained in accordance with:</p> <ol style="list-style-type: none"> <li>“Do it Right On Site, Soil and Water Management for the Construction Industry” and accompanying factsheets published by the Southern Sydney Regional Organisation of Councils, and</li> <li>“Managing Urban Stormwater - Soils and Construction” 2004 published by the NSW Government (The Blue Book).</li> </ol> <p>Where there is any conflict The Blue Book takes precedence.</p> <p><b>Notes:</b> The “Do it Right On Site, Soil and Water Management for the Construction Industry” publication and accompanying factsheets can be downloaded from <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a> and The Blue Book is available at <a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a> A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act 1997 without any further warning. It is a criminal offence to cause, permit or allow pollution. Section 257 of the Protection of the Environment Operations Act 1997 provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”. Warning: Irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of their occupation of the land being developed.</p> <p><b>Condition Reason:</b> To prevent potential water pollution and dust nuisance.</p>
<b>B. 3.</b>	<p><b>Identification of Hazardous Material</b></p> <p>Prior to any site works, and in accordance with Australian Standard AS2601: The Demolition of Structures, all hazardous substances located on the site must be identified, including asbestos, polychlorinated biphenyls (PCBs), lead paint, underground storage tanks, chemicals, etc.</p> <p>In this regard, prior to any site works, Council must be provided with a written report prepared by a suitably qualified competent person detailing:</p> <ul style="list-style-type: none"> <li>all hazardous materials identified on the site,</li> <li>the specific location of all hazardous materials identified,</li> <li>whether the hazardous materials are to be removed from the site as part of the works to be undertaken, and</li> <li>safety measures to be put in place.</li> </ul> <p><b>Condition Reason:</b> To protect the health and safety of all persons while works are being undertaken and to ensure all safety measures have been identified and are in place to protect all parties in the immediate vicinity of the site.</p>
<b>B. 4.</b>	<p><b>Public Road Assets Prior to Any Work/Demolition</b></p> <p>Prior to any site works, a full record of the condition of the public infrastructure on public land adjacent to the development site must be submitted to Council.</p>

The report must include photographs and/or CCTV footage showing the current condition and any existing damage fronting and adjoining the site to the:

- road pavement,
- street signage including street lights,
- kerb and gutter,
- footway including pedestrian crossings, footpath, and driveways,
- retaining walls, or other significant structures,
- Heritage Items, including street name inlays,
- utility service items including historical utility covers, and
- drainage structures/pits/pipes (CCTV footage).

The reports are to be supplied in electronic format in Word and if applicable accompanied by CCTV footage. Photographs are to be in colour, digital and date stamped.

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

**Condition Reason:** To clarify the condition of the existing public infrastructure prior to the commencement of any site works.

#### B. 5. Payment of Security and Fees

Prior to any site works, the following security and fees must be paid in full:

Description	Amount	Indexed	Council Fee Code
<b>SECURITY</b> under section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>			
<b>Property Damage Security Deposit -</b> making good any damage caused to any property of the Council	\$58,860	No	T115
<b>INSPECTION FEES</b> under section 608 of the <i>Local Government Act 1993</i>			
Security Deposit Administration Fee	\$225.00	No	T16
<b>TOTAL SECURITY AND FEES</b>	\$59,085		

#### How must the payments be made?

Payments must be made by:

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

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

- the guarantee is by an Australian bank for the amount of the total outstanding contribution,
- the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable],

- the bank agrees to pay the guaranteed sum without reference to the Applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent,
- the bank guarantee is lodged with the Council prior to any site works being undertaken, and
- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

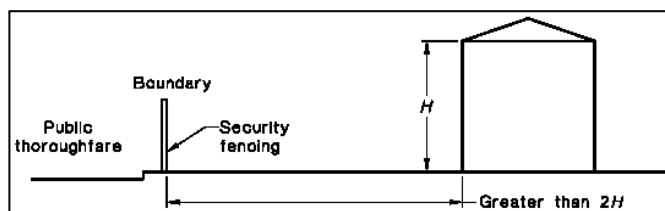
**Notes:**

- An application must be made to Council by the person who paid the security for release of the securities held under section 4.17 of the Act.
- The securities will not be released until the Occupation Certificate has been lodged with Council, Council has inspected the site and Council is satisfied that the public works have been carried out to Council's requirements. Council may use part or all of the security to complete the works to its satisfaction if the works do not meet Council's requirements.
- Council will only release the security upon being satisfied that all damage or all works, the purpose for which the security has been held have been remedied or completed to Council's satisfaction as the case may be.
- Council may retain a portion of the security to remedy any defects in any such public work that arise within 6 months after the work is completed.
- Upon completion of each section of road, drainage and landscape work to Council's satisfaction, 90% of the bond monies held by Council for these works will be released upon application. 10% may be retained by Council for a further 6 month period and may be used by Council to repair or rectify any defects or temporary works during the 6 month period.
- The Refund of Security Bond Application form can be downloaded from [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)

**Condition Reason:** To ensure any relevant security and fees are paid.

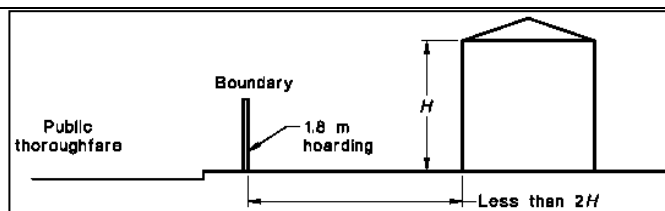
**B. 6. Security Fencing, Hoarding (including 'Creative Hoardings') and Overhead Protection**

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



**Type A Hoarding**

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



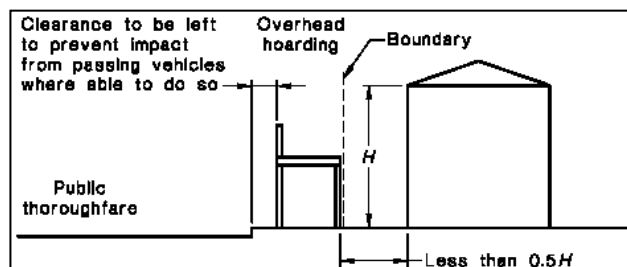
### Type B Hoarding

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

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

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

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



The overhead protective structures must be installed and maintained in accordance with the NSW "Code of Practice - Overhead Protective Structures 1995". This is code available at [www.safework.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0008/52883/Overhead-protective-structures-Code-of-practice.pdf](http://www.safework.nsw.gov.au/__data/assets/pdf_file/0008/52883/Overhead-protective-structures-Code-of-practice.pdf)

### All Hoardings

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

### Hoardings on Public Land including 'Creative Hoardings'

All fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection must be paid in full.

A creative hoarding (i.e. an approved artwork or historic image affixed to the hoarding) is required if the hoarding meets the criteria in Council's Creative Hoardings Policy (adopted March 2020). The cost of printing and affixing the creative hoarding is the responsibility of the person with the benefit of this consent. The Creative Hoardings Policy can be downloaded from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)

	<p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• A minimum of two (2) weeks from the date of making a hoarding application to determination must be allowed. Any approval for a hoarding or overhead protection under the Roads Act 1993 will be subject to its own conditions and fees.</li> <li>• Council seeks to increase public art in the public domain by requiring artwork or historic images on hoardings located on public land. Under the Creative Hoardings Policy an application for a hoarding proposed on public land will require an approved artwork or historic image affixed to the hoarding if the hoarding meets the criteria in section 3 of the Policy: <ul style="list-style-type: none"> <li>A. Hoardings proposed on land zoned E1 Local Centre, or MU1 Mixed Use, or SP2 Infrastructure under Woollahra Local Environmental Plan 2014 AND erected for 8 weeks or more OR</li> <li>B. Hoardings proposed on land located along a State classified road (regardless of the zone) AND erected for 8 weeks or more OR</li> <li>C. Hoardings proposed in any other location than that referred to in A. and B. above AND erected for 12 weeks or more, except where: <ol style="list-style-type: none"> <li>1. the capital investment value of the work to which the hoarding relates is less than \$1 million, or</li> <li>2. the land is zoned R2 Low Density Residential, or</li> <li>3. the land is zoned R3 Medium Density Residential and the hoarding is located in a lane or street that does not have through traffic (e.g. a cul-de-sac or no through road).</li> </ol> </li> </ul> </li> <li>• Artwork and historic images for the hoardings are assessed and approved in accordance with the Creative Hoardings Policy. Details of the artwork or images proposed to be affixed to the hoardings must be submitted with Council's form "Application for a permit to use a footpath for the erection of a hoarding/scaffolding". The Creative Hoardings Policy can be downloaded from <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a></li> </ul> <p><b>Condition Reason:</b> To ensure public safety.</p>
<p><b>B. 7.</b></p>	<p><b>Site Signs</b></p> <p>Before any site work commences, the sign/s required by clauses 70 of the Regulation and 75 of the Development Certification and Fire Safety Regulation must be erected and maintained at all times.</p> <p>Clause 70 of the Regulation provides:</p> <p><b>Erection of signs</b></p> <ul style="list-style-type: none"> <li>• For the purposes of section 4.17(11) of the Act, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.</li> <li>• A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out: <ol style="list-style-type: none"> <li>a) showing the name, address and telephone number of the principal certifier for the work, and</li> <li>b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and</li> <li>c) stating that unauthorised entry to the work site is prohibited.</li> </ol> </li> <li>• Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.</li> <li>• This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.</li> </ul>

	<ul style="list-style-type: none"> <li>This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the Act, to comply with the Building Code of Australia.</li> </ul> <p>Clause 75 of the Development Certification and Fire Safety Regulation provides:</p> <p><b>Signs on development sites</b></p> <p>If there is a person who is the Principal Certifier or the Principal Contractor for any building work, subdivision work or demolition work authorised to be carried out on a site by a development consent or complying development certificate:</p> <ul style="list-style-type: none"> <li>Each such person MUST ensure that a rigid and durable sign showing the person's identifying particulars so that they can be read easily by anyone in any public road or other public place adjacent to the site is erected in a prominent position on the site before the commencement of work, and is maintained on the site at all times while this clause applies until the work has been carried out.</li> </ul> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>Clause 75 of the Development Certification and Fire Safety Regulations imposes a maximum penalty of 55 penalty units if these requirements are not complied with.</li> <li>If Council is appointed as the Principal Certifier it will provide the sign to the Principal Contractor or Owner-builder who must ensure that the sign is erected and maintained as required by clause 70 of the Regulation and clause 75 of the Development Certification and Fire Safety Regulation.</li> </ul> <p><b>Condition Reason:</b> To ensure that contact details for the principal certifier and principal contractor are provided on a sign at the development site.</p>
<p><b>B. 8.</b></p>	<p><b>Toilet Facilities</b></p> <p>Before any site work commences, toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.</p> <p>Each toilet provided:</p> <ol style="list-style-type: none"> <li>must be a standard flushing toilet, and</li> <li>must be connected to a public sewer, or</li> <li>if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council, or</li> <li>if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.</li> </ol> <p>The provision of toilet facilities in accordance with this condition must be completed before any other work is commenced.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>In this condition 'sewage management facility' and 'public sewer' are as defined by clause 25 of the Local Government (Approvals) Regulation 1999.</li> <li>This condition does not set aside the requirement to comply with SafeWork NSW requirements.</li> </ul> <p><b>Condition Reason:</b> To ensure toilet facilities are provided for workers at the work site.</p>



<p><b>B. 9.</b></p>	<p><b>Establishment of Boundary Location, Building Location and Datum</b></p> <p>Before any site work commences, a surveyor registered under the Surveying and Spatial Information Act 2002 must:</p> <ol style="list-style-type: none"> <li>set out the boundaries of the site by permanent marks (including permanent recovery points),</li> <li>set out the location and level of foundation excavations, footings, walls and slabs by permanent marks, pegs or profiles relative to the boundaries of the land and relative to Australian Height Datum (AHD) in compliance with the approved plans,</li> <li>establish a permanent datum point (bench mark) within the boundaries of the site relative to AHD, and</li> <li>provide a copy of a survey report, prepared by the registered surveyor, detailing the title boundaries, pegs/profiles, recovery points and bench mark locations as established under this condition to the Principal Certifier.</li> </ol> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>Where there is any discrepancy between the approved development consent and the Construction Certificate, especially in relation to the height, location or external configuration of the building (but not limited to these issues) the site works must not proceed until the variations as shown are consistent with the consent. Failure to do so may result in a breach of development consent.</li> <li>On larger developments, or where boundary redefinition is required, the placement of new State Survey Marks as permanent marks must be considered by the registered surveyor.</li> </ul> <p><b>Condition Reason:</b> To ensure that the boundary locations, building location, and a datum point is established by a surveyor.</p>
<p><b>B. 10.</b></p>	<p><b>Compliance with Australian Standard for Demolition</b></p> <p>While site work is being carried out, the demolition of buildings and structures must comply with Australian Standard AS 2601—2001: The Demolition of Structures.</p> <p><b>Condition Reason</b> To control the risks of demolition work.</p>
<p><b>B. 11.</b></p>	<p><b>Skeletal Remains</b></p> <p>While site work is being carried out, if any skeletal remains suspected of being human are found, work must cease immediately and no further disturbance of the site must occur. The following must be notified:</p> <ol style="list-style-type: none"> <li>NSW Police, and</li> <li>The person who is the authority for the protection of Aboriginal objects under the National Parks and Wildlife Act 1974, section 85.</li> </ol> <p>Details of the remains and their precise location are to be provided.</p> <p>Site work may recommence at a time confirmed in writing by the NSW Police and the person who is the authority for the protection of Aboriginal objects under the National Parks and Wildlife Act 1974, section 85.</p> <p><b>Condition Reason:</b> To ensure the appropriate management of skeletal remains.</p>
<p><b>B. 12.</b></p>	<p><b>Aboriginal Objects – Unexpected Findings</b></p> <p>While site work is being carried out, if unexpected Aboriginal objects or bones are found, you must:</p>

		<p>a) Not further disturb or move these objects or bones.</p> <p>b) Immediately cease all work at the particular location.</p> <p>c) In the case of suspected human remains, notify NSW Police.</p> <p>d) Notify the Heritage NSW Environment Line on 131 555 and the La Perouse Land Council (LALC) on (02) 9311 4282 as soon as practicable and provide available details of the objects or remains and their location.</p> <p>e) Notify the person who is the authority for the protection of Aboriginal objects under the National Parks and Wildlife Act 1974, section 85.</p> <p>f) Not recommence any work at the particular location unless authorised in writing by the police (in the case of human remains) and the person who is the authority for the protection of Aboriginal objects under the National Parks and Wildlife Act 1974, section 85. Additional assessment and approval under the National Parks and Wildlife Act 1974 may be required prior to works continuing in the affected area(s) based on the nature of the discovery.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>The Definition of Aboriginal object, as per the National Parks &amp; Wildlife Act 1974, is any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.</li> </ul> <p><b>Condition Reason:</b> To protect Aboriginal objects</p>
<b>B.</b>	<b>13.</b>	<p><b>Aboriginal Heritage Due Diligence Responsibilities</b></p> <p>While site work is being carried out, nothing in this approval allows to cause harm to an Aboriginal object as defined in the National Parks &amp; Wildlife Act 1974. Under the National Parks &amp; Wildlife Act 1974, it is an offence to harm Aboriginal 'objects' (consisting of any material evidence of the Aboriginal occupation of NSW) without a valid Aboriginal Heritage Impact Permit under Section 90 of the Act. This applies whether the harm occurs either knowingly [s86(1)] or unknowingly [s86(2)].</p> <p>It is a defence to the strict liability offence of harm to an Aboriginal object under s86(2) if a process of Due Diligence was followed which reasonably determined that the proposed activity would not harm an Aboriginal object.</p> <p><b>Condition Reason:</b> To protect Aboriginal heritage.</p>
<b>B.</b>	<b>14.</b>	<p><b>Aboriginal Heritage Induction</b></p> <p>Prior to any site works:</p> <p>a) All construction staff and contractors must be made aware of their statutory obligations for Aboriginal heritage under the National Parks and Wildlife Act 1974;</p> <p>b) An Aboriginal heritage induction is to be delivered by the La Perouse Local Aboriginal Land Council, or by a heritage consultant with Aboriginal heritage expertise (if a representative of the Local Land Council is not able to provide the induction), to explain what Aboriginal heritage may be found and outline the unexpected findings procedures; and</p> <p>c) Documentary evidence demonstrating compliance with a) and b) above must be submitted to Council and the Principal Certifier.</p> <p><b>Condition Reason:</b> To protect Aboriginal heritage.</p>

B.	15.	<b>Aboriginal Objects – Undisturbed Sand</b>																																								
		<p>If a clean section of undisturbed sand is uncovered, the stop work method outlined in the 'unexpected finds' condition is to be followed.</p> <p>The La Perouse LALC is to then be provided the opportunity to inspect the property again, with a view to obtaining samples for OSL dating.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>The Definition of Aboriginal object, as per the National Parks &amp; Wildlife Act 1974, is any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.</li> </ul> <p><b>Condition Reason:</b> To protect Aboriginal objects</p>																																								
B.	16.	<b>Establishment Tree Protection Measures within the Tree Protection Zones (TPZ)</b>																																								
		<p>Prior to any site works, tree protection measures must be established around all trees to be retained in accordance with Section 4 of the Australian Standard Protection of Trees on Development Sites (AS 4970).</p> <p>The Tree Protection Zones must be calculated in accordance with Section 3 of the Australian Standard Protection of Trees on Development Sites (AS 4970).</p> <p>A Construction Site Management Plan, which clearly details the tree protection measures, must be prepared before the issue of a construction certificate. The tree protection measures must comply with the following requirements;</p> <p>a) Tree Protection Fencing:</p> <table border="1"> <thead> <tr> <th>Council Ref No</th><th>Species</th><th>Tree Location</th><th>Fence Radius from Centre of Trunk (Metres)*</th></tr> </thead> <tbody> <tr> <td>9</td><td><i>Lophostemon confertus</i></td><td rowspan="12">Refer to the Landscape Plans prepared by Studio U.C dated 6 February 2024 for tree numbers and locations.</td><td>5m</td></tr> <tr> <td>10</td><td><i>Syzygium smithii</i></td><td>4m</td></tr> <tr> <td>11</td><td><i>Elaeocarpus reticulatus</i></td><td>4m</td></tr> <tr> <td>12</td><td><i>Lophostemon confertus</i></td><td>8m</td></tr> <tr> <td>20</td><td><i>Camellia sasanqua</i></td><td>4m</td></tr> <tr> <td>23</td><td><i>Melaleuca quinquenervia</i></td><td>12m</td></tr> <tr> <td>24</td><td><i>Camellia sasanqua</i></td><td>5m</td></tr> <tr> <td>26</td><td><i>Howea forsteriana</i></td><td>2m</td></tr> <tr> <td>35</td><td><i>Xylosma senticosum</i></td><td>2m</td></tr> <tr> <td>38</td><td><i>Corymbia citriodora</i></td><td>7m</td></tr> <tr> <td>39</td><td><i>Jacaranda mimosifolia</i></td><td>5m</td></tr> <tr> <td>40</td><td><i>Lophostemon confertus</i></td><td>6m</td></tr> </tbody> </table> <p>Where this condition relates to street trees, and the fence cannot be placed at the specified radius, the fencing is to be positioned so that the entire verge (nature strip) area in front of the subject property, excluding existing driveways and footpaths, and bus stops is protected.</p> <p>Where this condition relates to trees on private property, the radial distance of fencing must be positioned only within the subject property relating to the development consent.</p>		Council Ref No	Species	Tree Location	Fence Radius from Centre of Trunk (Metres)*	9	<i>Lophostemon confertus</i>	Refer to the Landscape Plans prepared by Studio U.C dated 6 February 2024 for tree numbers and locations.	5m	10	<i>Syzygium smithii</i>	4m	11	<i>Elaeocarpus reticulatus</i>	4m	12	<i>Lophostemon confertus</i>	8m	20	<i>Camellia sasanqua</i>	4m	23	<i>Melaleuca quinquenervia</i>	12m	24	<i>Camellia sasanqua</i>	5m	26	<i>Howea forsteriana</i>	2m	35	<i>Xylosma senticosum</i>	2m	38	<i>Corymbia citriodora</i>	7m	39	<i>Jacaranda mimosifolia</i>	5m	40
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		<p>b) Tree Protection Zones must be fenced with a 1.8 metre high chainmesh or weldmesh fence and secured to restrict access. The fence must be established prior to any materials being brought onto the site and before the commencement of works including demolition. The area within the fence must be mulched and the mulch layer maintained to a depth of 75mm. The soil within the TPZ area must be kept in a moist condition for the duration of the construction works. Unless approved by the site arborist there must be no access within the TPZ area.</p> <p>c) Signs identifying the Tree Protection Zone area must be erected on each side of the protection fence indicating the existence of a TPZ area. Signage must be visible from within the development site.</p> <p>d) No excavation, construction activity, grade changes, storage of materials, stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is permitted within Tree Protection Zones, unless specified in this consent.</p> <p>e) Temporary access within the TPZ area for pedestrian and machinery movements must only be permitted with the approval of the site arborist or unless specified in this consent.</p> <p>f) The site supervisor must be made aware of all tree protection requirements associated with these conditions of consent by the project arborist. Any subsequent site personnel and contractors to the site must be made aware of all tree protection requirements by the site foreman.</p> <p>g) The project arborist must provide written certification of compliance to the Principal Certifier with the above conditions.</p>
		<p><b>Condition Reason:</b> To ensure the protection of existing trees</p> <p>Standard Condition B.5</p>
<b>B.</b>	<b>17.</b>	<p><b>Construction Management Plan Arborist Review</b></p> <p>Prior to any site works, the Construction Management Plan must be reviewed and certified by the Project Arborist confirming that appropriate tree protection measures are implemented. The Construction Management Plan must be prepared in accordance with all tree protection measures specified within this consent.</p> <p>The plan must address:</p> <p>a) Drawings and method statement showing details and the location of hoarding and scaffold and any pruning required to accommodate the hoarding and scaffolding;</p> <p>b) The movement and positioning of heavy machinery, lifting cranes, pier drilling gantry etc.;</p> <p>c) Site construction access, temporary crossings and movement corridors on the site defined;</p> <p>d) Contractors car parking;</p> <p>e) Phasing of construction works;</p> <p>f) The space needed for all foundation excavations and construction works;</p> <p>g) All changes in ground level;</p> <p>h) Space for site sheds and other temporary structures such as toilets;</p> <p>i) Space for sorting and storing materials (short or long term), spoil and fuel and the mixing of cement and concrete; and</p> <p>j) The effects of slope on the movement of potentially harmful liquid spillages towards or into tree protection areas.</p>

		<p><b>Condition Reason</b> To ensure the Construction Management Plan incorporates measures for the protection of existing trees.</p> <p>Standard Condition B.28</p>				
B.	18.	<p><b>Arborists Documentation and Compliance Checklist</b></p> <p>Prior to any site works, the project arborist must provide written certification that all tree protection measures and construction techniques relevant to this consent are implemented. Documentation for each site visit must include:</p> <ul style="list-style-type: none"><li>• A record of the condition of trees to be retained prior to and throughout development.</li><li>• Recommended actions to improve site conditions and rectification of non-compliance.</li><li>• Recommendations for future works which may impact the trees.</li></ul> <p>All compliance certification documents must be kept on site.</p> <p>As a minimum the following intervals of site inspections must be made:</p> <table><tr><th>Stage of arboricultural inspection and supervision</th><th>Compliance documentation and photos must include</th></tr><tr><td>Prior to any site works</td><td><ul style="list-style-type: none"><li>• Project Arborist to hold pre construction site meeting with the principal contractor to discuss methods and importance of tree protection measures and resolve any issues in relation to feasibility of tree protection requirements that may arise. Project Arborist to mark all trees approved for removal under DA consent.</li><li>• The project arborist must install or supervise the installation of tree protection fencing, trunk protection, ground protection and traffic height control beam.</li></ul></td></tr></table> <p>Inspections and compliance documentation must be made by an arborist with AQF Level 5 qualifications.</p> <p>Additional site visits must be made when required by the site arborist and/or site foreman for ongoing monitoring/supervisory work.</p> <p><b>Condition Reason</b> To ensure that written certification that all tree protection measures and construction techniques relevant to this consent have been implemented.</p> <p>Standard Condition B.29 (Autotext 29B)</p>	Stage of arboricultural inspection and supervision	Compliance documentation and photos must include	Prior to any site works	<ul style="list-style-type: none"><li>• Project Arborist to hold pre construction site meeting with the principal contractor to discuss methods and importance of tree protection measures and resolve any issues in relation to feasibility of tree protection requirements that may arise. Project Arborist to mark all trees approved for removal under DA consent.</li><li>• The project arborist must install or supervise the installation of tree protection fencing, trunk protection, ground protection and traffic height control beam.</li></ul>
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B.	19.	<p><b>Permissible work within Tree Protection Zones</b></p> <p>Prior to any site works, the following works are permissible within the Tree Protection Zone:</p>				

		Council Ref No	Species	Radius from Centre of Trunk (Metres)	Approved works
		9	<i>Lophostemon confertus</i>	5m	Landscape upgrade works and realignment of driveway
		10	<i>Syzygium smithii</i>	4m	Landscape upgrade works and realignment of driveway
		11	<i>Elaeocarpus reticulatus</i>	4m	Landscape upgrade works and realignment of driveway
		12	<i>Lophostemon confertus</i>	8m	Construction of new garage, landscape upgrade works and realignment of driveway
		20	<i>Camellia sasanqua</i>	4m	Landscape upgrade works and realignment of driveway
		23	<i>Melaleuca quinquenervia</i>	12m	Landscape upgrade works and realignment of driveway
		24	<i>Camellia sasanqua</i>	5m	Landscape upgrade works
		26	<i>Howea forsteriana</i>	2m	Landscape upgrade works
		35	<i>Xylosma senticosum</i>	2m	Landscape upgrade works
		38	<i>Corymbia citriodora</i>	7m	Landscape upgrade works
		39	<i>Jacaranda mimosifolia</i>	5m	Landscape upgrade works
		40	<i>Lophostemon confertus</i>	6m	Landscape upgrade works
		The project arborist must provide written certification of compliance to the Principal Certifier with the above condition.			
		<b>Condition Reason</b> To establish the works which are permissible within the Tree Protection Zones. Standard Condition B.30			
<b>B.</b>	<b>20.</b>	<b>Dilapidation Reports for Existing Buildings</b>			
		Before any site work commences, dilapidation surveys and dilapidation reports must be conducted and prepared by a professional structural engineer for all buildings and/or structures that are located within the likely “zone of influence” of any excavation, dewatering and/or construction induced vibration as determined applicable by the structural engineer.			
		These properties must include (but is not limited to): a) 11 Drumalbyn Road b) 15 Drumalbyn Road c) 81 Victoria Road d) 81B Victoria Road			
		Where access is not granted to any adjoining properties to prepare the dilapidation report, the report must be based on a survey of what can be observed externally and it must be demonstrated, in writing, to the satisfaction of the Principal Certifier, that all reasonable steps were taken to obtain access.			
		The completed dilapidation reports must be submitted to the Principal Certifier for approval, and an approved copy of the reports must be submitted to Council with the Notice of Commencement prior to the commencement of any development work.			
		No less than two (2) days before any site work commences, neighbouring building owner(s) must be provided with a copy of the dilapidation report for their property(ies).			



	<p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• The dilapidation report will be made available to affected property owners on request and may be used by them in the event of a dispute relating to damage allegedly caused by the carrying out of the development.</li> <li>• This condition cannot prevent neighbouring buildings being damaged by the carrying out of the development.</li> <li>• Council will not be held responsible for any damage which may be caused to adjoining buildings as a consequence of the development being carried out.</li> <li>• Council will not become directly involved in disputes between the developer, its contractors and the owners of neighbouring buildings.</li> </ul> <p><b>Condition Reason:</b> To establish and document the structural condition of adjoining properties for comparison as site work progresses and is completed and ensure neighbours and Council are provided with the dilapidation report.</p>
B. 21.	<p><b>Adjoining Buildings Founded on Loose Foundation Materials</b></p> <p>Before any site work commences, a professional engineer must determine the possibility of any adjoining buildings founded on loose foundation materials being affected by piling, piers or excavation. The professional engineer (geotechnical consultant) must assess the requirements for underpinning any adjoining or adjacent buildings founded on such soil on a case by case basis, and any reasonable direction of the professional engineer must be complied with.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• A failure to adequately assess and seek professional engineering (geotechnical) advice to ensure that appropriate underpinning and support to adjoining land is maintained prior to commencement may result in damage to adjoining land and buildings.</li> <li>• The person with the benefit of this consent is likely to be held responsible for any damages arising from the removal of any support to supported land as defined by section 177 of the Conveyancing Act 1919.</li> </ul> <p><b>Condition Reason:</b> To ensure professional engineering advice is obtained to confirm that appropriate underpinning and support to adjoining land is maintained.</p>

## REMEDIATION WORK

### C. ON COMPLETION OF REMEDIATION WORK

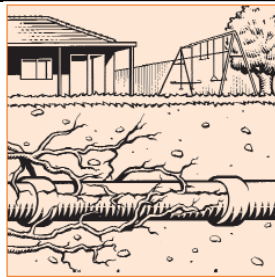
Nil

## BUILDING WORK

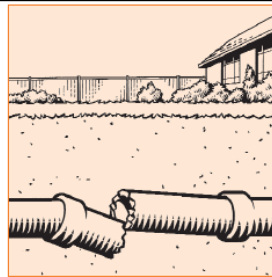
### D. BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

D. 1.	<p><b>Modification of Details of the Development (section 4.17(1)(g) of the Act</b></p> <p>Before the issue of any construction certificate, the approved plans and the construction certificate plans and specification, required to be submitted to the Principal Certifier under clause 7 of the Development Certification and Fire Safety Regulations, must detail the following amendments:</p> <p>a) All areas within the rear yard shown as deep soil landscaped area (including the synthetic grass) must be consistent with the definition of deep soil landscaping as defined in the WLEP 2014 and WDCP 2015, i.e. used for growing plants, grass or trees with no above or below ground structures.</p>
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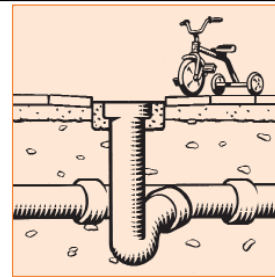
	<p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• Clause 20 of the Development Certification and Fire Safety Regulations prohibits <b>the</b> issue of any construction certificate subject to this condition unless the Principal Certifier is satisfied that the condition has been complied with.</li> <li>• Clause 19 of the Development Certification and Fire Safety Regulations prohibits the issue of any construction certificate that is inconsistent with this consent.</li> </ul> <p><b>Condition Reason:</b> To require design changes and/or further information to be provided to address specific issues identified during the assessment under section 4.15 of the Act.</p>
<b>D. 2.</b>	<p><b>BASIX Commitments</b></p> <p>Before the issue of any construction certificate, BASIX Certificate No.A1377429 must be submitted to the Principal Certifier with any application for a construction certificate.</p> <p>All commitments in the BASIX Certificate must be shown on the construction certificate plans and specifications prior to the issue of any construction certificate.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• Where there is any proposed change in the BASIX commitments the Applicant must submit a new BASIX Certificate to the Principal Certifier and Council. If any proposed change in the BASIX commitments are inconsistent with development consent (see: clauses 19 and 20 of the Development Certification and Fire Safety Regulation) the Applicant will be required to submit an amended development application to Council under section 4.55 of the Act.</li> <li>• Clause 19(1)(a) of the Development Certification and Fire Safety Regulation 2021 provides: a certifier must not issue a construction certificate for building work unless: the relevant building work plans and specifications include the matters required by a relevant BASIX certificate, if any.</li> </ul> <p><b>Condition Reason:</b> To ensure all commitments in the BASIX Certificate are incorporated into the development.</p>
<b>D. 3.</b>	<p><b>Water and Waste Water - section 73 Developers Certificate and Upgrading of Existing System</b></p> <p>Prior to the issue of any construction certificate, a Compliance Certificate must be obtained from Sydney Water under section 73 of the Sydney Water Act 1994. Sydney Water's assessment will determine the availability of water and sewer services, which may require extension, adjustment or connection to their mains.</p> <p>The construction certificate plans and specifications, required to be submitted to the Principal Certifier under clause 7 of the Development Certification and Fire Safety Regulation, must detail the replacement of all private sewer pipes between all sanitary fixtures and Sydney Water's sewer main where they are not found by inspection to be sewer grade UPVC or copper with continuously welded joints.</p>



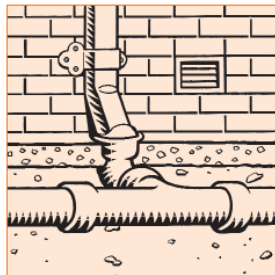
*Cracked pipes*



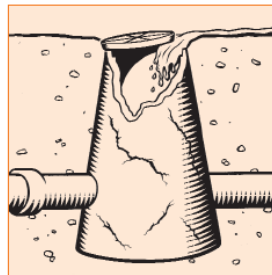
*Broken pipes*



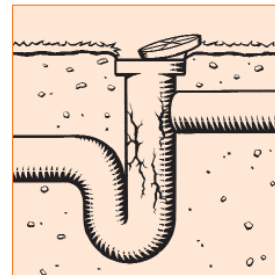
*Damaged or low-lying gullies*



*Direct stormwater connections*



*Hidden or damaged maintenance holes*



*Hidden or damaged inspection points*

**Notes:**

- Sydney Water will assess the development and if required will issue a 'Notice of Requirements' letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator (WSC). Please make early contact with Sydney Water or a WSC, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.
- For more information go to [www.sydneywater.com.au/section73](http://www.sydneywater.com.au/section73) or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.
- Where private sewer pipes are old, may leak or may be subject to root invasion (whether from existing or proposed private or public landscaping) that existing cast iron, concrete, earthenware or terracotta systems are replaced with new UPVC or copper continuously welded pipes between all sanitary fixtures and Sydney Waters sewer main as part of the development. Leaking sewer pipes are a potential source of water pollution, unsafe and unhealthy conditions which must be remedied in the public interest.

**Condition Reason:** To ensure that private sewer pipes are upgraded where required to prevent water pollution, and unsafe and unhealthy conditions.

**D. 4. Erosion and Sediment Control Plan – Submission and Approval**

Before the issue of any construction certificate, an erosion and sediment control plan, prepared by a suitably qualified person in accordance with the following documents, must be submitted to the Principal Certifier. The erosion and sediment control plan must comply with:

- a) "Do it Right On Site, Soil and Water Management for the Construction Industry" and the accompanying factsheets published by the Southern Sydney Regional Organisation of Councils; and
- b) "Managing Urban Stormwater - Soils and Construction" 2004 published by the NSW Government (The Blue Book).

Where there is any conflict The Blue Book takes precedence.

	<p>The Principal Certifier must be satisfied that the erosion and sediment control plan complies with the publications above prior to issuing any construction certificate.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• The International Erosion Control Association – Australasia <a href="http://www.austieca.com.au">www.austieca.com.au</a> lists consultant experts who can assist in ensuring compliance with this condition. Where erosion and sedimentation plans are required for larger projects it is recommended that expert consultants produce these plans.</li> <li>• The “Do it Right On Site, Soil and Water Management for the Construction Industry” publication and accompanying factsheets can be downloaded from <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a>, and The Blue Book is available at <a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a></li> <li>• Under clause 73(2)(a)(v) of the Development Certification and Fire Safety Regulation an Accredited Certifier may be satisfied as to this matter.</li> </ul> <p><b>Condition Reason:</b> To prevent potential water pollution and dust nuisance.</p>
D. 5.	<p><b>Structural Adequacy of Existing Supporting Structures</b></p> <p>Before the issue of any construction certificate, a certificate from a professional structural engineer, certifying the adequacy of the existing supporting structure to support the additional loads proposed to be imposed by the development, must be provided to the Principal Certifier and submitted with the construction certificate application.</p> <p><b>Condition Reason:</b> To ensure that the existing structure is able to support the additional loads proposed.</p>
D. 6.	<p><b>Professional Engineering Details</b></p> <p>Before the issue of any construction certificate, the construction certificate plans and specifications, required under clause 7 of the Development Certification and Fire Safety Regulation, must include detailed professional engineering plans and/or specifications for all structural, electrical, hydraulic, hydrogeological, geotechnical, mechanical and civil work complying with this consent, approved plans, and supporting documentation.</p> <p>Detailed professional engineering plans and/or specifications must be submitted to the Principal Certifier with the application for any construction certificate.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• This does not affect the right of the developer to seek staged construction certificates.</li> </ul> <p><b>Condition Reason:</b> To ensure professional engineering details and technical specifications are provided.</p>
D. 7.	<p><b>Tree Protection Plan and Specification</b></p> <p>Before the issue of any construction certificate, the Principal Certifier must ensure the measures for tree protection detailed in this consent are in place. The construction certificate plans and specifications must show the following information:</p> <p>a) Trees to be numbered and coloured in accordance with these conditions:</p> <ul style="list-style-type: none"> <li>• shaded green where required to be retained and protected</li> <li>• shaded red where authorised to be removed</li> <li>• shaded yellow where required to be transplanted</li> <li>• shaded blue where required to be pruned</li> </ul>

	<p>b) Tree Protection Plan and Specification prepared by an arborist with a minimum qualification of AQF 5 including the following:</p> <ul style="list-style-type: none"> <li>• Tree Location Plan (to scale) based on/overlaid with the approved plans, indicating trees to be retained, removed or transplanted, and the location of tree protection zones (TPZ) and structural root zones (SRZ) of trees to be retained and protected.</li> <li>• The plan must also include site specific tree protection recommendations such as fencing, ground and trunk protection and other protection devices.</li> <li>• Tree Protection Specification (written document) with tree protection requirements included from this consent and in accordance with sections 4 &amp; 5 of AS4970, providing guidance for the implementation of tree protection methods.</li> <li>• To minimise construction damage, the plan must show specific areas requiring works to be done under direct supervision of the project arborist.</li> </ul> <p>c) References to applicable tree management plan, arborists report or transplant method statement.</p> <p>This plan must be kept on site until the issue of the occupation certificate for the whole building.</p> <p><b>Condition Reason:</b> To ensure the construction certificate includes the approved tree management details, and all measures are implemented. Standard Condition D.30 (Autotext 30D)</p>
<b>D. 8.</b>	<p><b>Engineer Certification</b></p> <p>Before the issue of any construction certificate, engineer certification must be submitted to the Principal Certifier confirming that the structural design does not incorporate any temporary or permanent underpinning works or ground anchors, bolts, etc. which encroach outside the boundaries of the subject property.</p> <p>This development consent does NOT give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties and Council's property.</p> <p><b>Condition Reason:</b> To ensure certification is provided that demonstrates all structural works are located within the boundaries of the site and do not include underpinning works to any structures on adjoining properties.</p>
<b>D. 9.</b>	<p><b>Geotechnical and Hydrogeological Design, Certification and Monitoring</b></p> <p>Before the issue of the construction certificate, the applicant must submit, for approval by the Principal Certifier, a detailed geotechnical report prepared by a Geotechnical Engineer with National Engineering Register (NER) credentials in accordance with Chapter E2.2.10 of Council's DCP and Council's document "Guidelines for Preparation of Geotechnical and Hydrogeological Reports". The report must include a Geotechnical / Hydrogeological Monitoring Program together with civil and structural engineering details for foundation retaining walls, footings, basement tanking, and subsoil drainage systems, as applicable, prepared by a professional engineer, who is suitably qualified and experienced in geotechnical and hydrogeological engineering.</p> <p>These details must be certified by the professional engineer to:</p>

		<p>a) Provide appropriate support and retention to ensure there will be no ground settlement or movement, during excavation or after construction, sufficient to cause an adverse impact on adjoining property or public infrastructure.</p> <p>b) Provide appropriate support and retention to ensure there will be no adverse impact on surrounding property or infrastructure as a result of changes in local hydrogeology (behaviour of groundwater).</p> <p>c) Provide details of cut-off walls or similar controls prior to excavation such that any temporary changes to the groundwater level, during construction, will be kept within the historical range of natural groundwater fluctuations. Where the historical range of natural groundwater fluctuations is unknown, the design must demonstrate that changes in the level of the natural water table, due to construction, will not exceed 0.3m at any time.</p> <p>d) Provide tanking to below ground structures to prevent the entry of seepage water such that subsoil drainage/ seepage water is NOT collected and discharged to the kerb and gutter.</p> <p>e) Provide a Geotechnical and Hydrogeological Monitoring Program that:</p> <ul style="list-style-type: none"> <li>• will detect any settlement associated with temporary and permanent works and structures,</li> <li>• will detect deflection or movement of temporary and permanent retaining structures (foundation walls, shoring bracing or the like),</li> <li>• will detect vibration in accordance with AS 2187.2 Appendix J including acceptable velocity of vibration (peak particle velocity),</li> <li>• will detect groundwater changes calibrated against natural groundwater variations,</li> <li>• details the location and type of monitoring systems to be utilised,</li> <li>• details the pre-set acceptable limits for peak particle velocity and ground water fluctuations,</li> <li>• details recommended hold points to allow for the inspection and certification of geotechnical and hydrogeological measures by the professional engineer, and</li> <li>• details a contingency plan.</li> </ul>
		<p><b>Condition Reason:</b> To ensure that geotechnical and hydrogeological impacts are appropriately managed.</p>
D.	10.	<p><b>Parking Facilities</b></p> <p>Prior to issue of any Construction Certificate, The <i>Construction Certificate</i> plans and specifications required by clause 139 of the Regulation, must include detailed plans and specifications for all bicycle and car vehicle parking in compliance with AS2890.3:2015 <i>Parking Facilities - Bicycle Parking Facilities</i> and AS/NZS 2890.1:2004 : <i>Parking Facilities - Off-Street Car Parking</i> which includes the following requirement:</p> <p>a) The proposed double garage must have minimum dimensions of 5.4m x 5.4m, clear of any obstructions, to comply with AS2890.1.</p> <p>Access levels and grades must comply with access levels and grades required by Council under the Roads Act 1993.</p> <p>The Principal Certifier has no discretion to reduce or increase the number or area of car parking or commercial parking spaces required to be provided and maintained by this consent.</p>
		<p><b>Condition Reason:</b> To ensure parking facilities are designed in accordance with the Australian Standard.</p>

D.	<p><b>11. Stormwater Management Plan</b></p> <p>Before the issue of any construction certificate, the applicant must submit, for approval by the Principal Certifier, detailed stormwater management plans prepared and certified by a chartered professional civil engineer, which detail the following:</p> <ul style="list-style-type: none"> <li>a) General design in accordance with stormwater management plans, approved under the Deferred Commencement Condition A.1,</li> <li>b) The installation of rainwater retention and reuse system (RWT) with minimum storage volume to comply with Chapter E2.2.9 of Council's DCP. Runoff from all roof areas shall be directed to the proposed RWT for non-potable uses such as toilet flushing, laundry device, pool top-up, car washing and garden irrigations etc. Details including notation to this requirement must be clearly depicted on the drawings.</li> <li>c) Subsoil drainage/seepage water is <u>NOT</u> to be collected and discharged to the kerb and gutter to comply with Chapter E2.2.5 of Council's DCP. Notation to this requirement shall be clearly depicted on the drawings,</li> <li>d) Dimensions of all drainage pits and access grates must comply with AS3500.3,</li> <li>e) Compliance with the objectives and performance requirements of the BCA,</li> <li>f) General compliance with the Council's Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.</li> </ul> <p>The Stormwater Management Plan must also include the following specific requirements:</p> <p><u>Layout plan</u></p> <p>A detailed drainage plan at a scale of 1:100 based on drainage calculations prepared in accordance with the Australian Government publication, Australian Rainfall and Run-off, 2019 edition or most current version thereof. It must include:</p> <ul style="list-style-type: none"> <li>a) All pipe layouts, dimensions, grades, lengths and material specification.</li> <li>b) Location of proposed rainwater tanks.</li> <li>c) All invert levels reduced to Australian Height Datum (AHD).</li> <li>d) Location and dimensions of all drainage pits.</li> <li>e) Point and method of connection to Councils drainage infrastructure.</li> <li>f) Overland flow paths over impervious areas.</li> </ul> <p><u>Rainwater Reuse System details:</u></p> <ul style="list-style-type: none"> <li>a) Any potential conflict between existing and proposed trees and vegetation.</li> <li>b) Internal dimensions and volume of the proposed rainwater storage.</li> <li>c) Plans, elevations and sections showing the rainwater tanks, finished surface level and adjacent structures.</li> <li>d) Details of access and maintenance facilities.</li> <li>e) Construction and structural details of all tanks and pits and/or manufacturer's specifications for proprietary products.</li> <li>f) Details of the emergency overland flow-path (to an approved Council drainage point) in the event of a blockage to the rainwater tanks</li> </ul> <p>For Stormwater Drainage works on Council's property, separate approval under Section 138 of the Roads Act 1993 must be obtained from Council for those works before the issue of any construction certificate.</p> <p>All Stormwater Drainage System work within any road or public place must comply with Woollahra Municipal Council's Specification for Roadworks, Drainage and Miscellaneous Works (2012).</p>
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		<p><b>Notes:</b> The collection, storage and use of rainwater is to be in accordance with Standards Australia HB230 "Rainwater Tank Design and Installation Handbook".</p> <p><b>Condition Reason:</b> To ensure that site stormwater is disposed of in a controlled and sustainable manner.</p>
D. 12.	<b>Non-Gravity Drainage Systems</b>	<p>Before the issue of any construction certificate, the construction certificate plans and specifications required under clause 7 of the Development Certification and Fire Safety Regulation, must include a Stormwater Management Plan for the site.</p> <p>The Stormwater Management Plan must detail the non-gravity drainage systems (charged, siphon, pump/sump systems) being designed in accordance with Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.</p> <p><b>Notes:</b> The Woollahra DCP is available from Council's website <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a></p> <p><b>Condition Reason:</b> To ensure that site stormwater is disposed of in a controlled and sustainable manner.</p>
D. 13.	<b>Flood Protection</b>	<p>Before the issue of any construction certificate, the construction certificate plans and specifications required under clause 7 of the Development Certification and Fire Safety Regulation, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL).</p> <p><u>Flood Warning:</u> a) A permanent flood risk management plan shall be installed in a prominent area of the garage,</p> <p><u>Flood Proof Material</u> a) Flood compatible materials shall be used for all flood exposed construction,</p> <p><u>Electricals</u> a) All flood exposed electrical wiring and equipment shall be waterproofed,</p> <p><u>Overland Flow Paths</u> a) A permanent informative sign shall be mounted on the driveway bridge indicating that the area is an overland flow path and must be kept clear and unobstructed at all times,</p> <p><u>Certification</u> a) All flood protection measures shall be inspected and certified as fit for purpose after construction is complete by an engineer experienced in flood mitigation,</p> <p>Flood protection is to comply with Woollahra DCP 2015, Part E General Controls for All Development, Chapter E2 –Stormwater and Flood Risk Management.</p>

	<p><b>Notes:</b></p> <ul style="list-style-type: none"><li>The revised driveway profile, gradients and transitions must be in accordance with Australian Standard 2890.1, Part 1: Off-street car parking. The driveway profile submitted to Council must contain all relevant details: reduced levels, proposed grades and distances. Council will not allow alteration to existing reduced levels within the road or any other public place to achieve flood protection.</li></ul>												
	<p><b>Condition Reason:</b> To ensure the development incorporates flood inundation protection measures.</p>												
D. 14.	<p><b>Electric vehicle circuitry and electric vehicle charging point requirements</b></p> <p>Before the issue of any construction certificate, the construction certificate plans and specifications required under clause 7 of the Development Certification and Fire Safety Regulation, must include an accurate electrical plan of all off-street car parking spaces, prepared by a suitably qualified person, which includes details and specifications to illustrate how the off-street car parking spaces will be constructed with the capacity to install at a minimum, a 'Level 2' (single phase, 7Kw power) electric vehicle charger point.</p> <p><b>Condition Reason:</b> To ensure the provision of electric vehicle circuitry to enable the future installation of electric vehicle charging point(s).</p>												
D. 15.	<p><b>Payment of Long Service Levy</b></p> <p>Before the issue of any construction certificate, the original receipt(s) for the payment of the following levy must be provided to the Principal Certifier:</p> <table><tr><th>Description</th><th>Amount</th><th>Indexed</th><th>Council Fee Code</th></tr><tr><td colspan="4"><b>LONG SERVICE LEVY</b> under <i>Building and Construction Industry Long Service Payments Act 1986</i></td></tr><tr><td><b>Long Service Levy</b> <a href="http://www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator">www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator</a></td><td>Contact LSL Corporation or use online calculator</td><td>No</td><td></td></tr></table> <p><b>Building and Construction Industry Long Service Payment</b> The long service levy under section 34 of the Building and Construction Industry Long Service Payment Act 1986, must be paid and proof of payment provided to the Principal Certifier prior to the issue of any construction certificate. The levy can be paid directly to the Long Service Corporation or to Council. Further information can be obtained from the Long Service Corporation website <a href="http://www.longservice.nsw.gov.au">www.longservice.nsw.gov.au</a> or the Long Service Corporation on 131 441.</p> <p><b>How must the payments be made?</b> Payments must be made by:</p> <ul style="list-style-type: none"><li>cash deposit with Council,</li><li>credit card payment with Council, or</li><li>bank cheque made payable to Woollahra Municipal Council.</li></ul> <p><b>Condition Reason:</b> To ensure any relevant levy is paid.</p>	Description	Amount	Indexed	Council Fee Code	<b>LONG SERVICE LEVY</b> under <i>Building and Construction Industry Long Service Payments Act 1986</i>				<b>Long Service Levy</b> <a href="http://www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator">www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator</a>	Contact LSL Corporation or use online calculator	No	
Description	Amount	Indexed	Council Fee Code										
<b>LONG SERVICE LEVY</b> under <i>Building and Construction Industry Long Service Payments Act 1986</i>													
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**D. 16. Payment of S7.12 Contributions Levy**

A payment of a levy authorised by section 7.12 of the Environmental Planning and Assessment Act 1979 must be paid prior to the issue of any Construction Certificate or Subdivision Works Certificate. The Principal Certifier is to be provided with the original receipt for payment under the Woollahra Section 7.12 Development Contributions Plan 2022.

A cost estimate report, no more than 3 months old, demonstrating the proposed cost of carrying out the development must be completed and submitted to Council for determination of the costs of work. This report must incorporate all approved modification applications. The costs and expenses of the proposed cost of development must be established in accordance with clause 208 of the Environmental Planning and Assessment Regulation 2021.

The cost estimate report must be in the form of:

- A cost summary report, prepared by the applicant or a suitably qualified person for a development up to \$749,999; or
- A quantity surveyor's report, for development over \$750,000.

The applicable levy rate is to be calculated using the summary schedule below.

<b>Summary Schedule</b>	
<b>Development Cost</b>	<b>Levy Rate</b>
• Up to and including \$100,000	Nil
• More than \$100,000 and up to and including \$200,000	0.5% of the cost
• More than \$200,000	1% of the cost

**How must the payments be made?**

Payments must be made by:

- Cash deposit with Council,
- Credit card payment with Council, or
- Bank cheque made payable to Woollahra Municipal Council.

**Deferred or periodic payment of section 7.12 levy**

Where the Applicant makes a written request supported by reasons for payment of the section 7.12 levy other than as required by clause 2.9, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:

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

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

- the guarantee is by an Australian bank for the amount of the total outstanding contribution,
- the bank unconditionally and irrevocably agrees to pay the guaranteed sum to the Council on written request by Council prior to the issue of an occupation certificate,
- a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable,

- the bank agrees to pay the guaranteed sum without recourse to the applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent, and
- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

Any deferred or periodic payment of the section 7.12 levy will be adjusted in accordance with clause 2.12 of the Plan. The Applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.

**Do you need HELP indexing the levy?**

Please contact Council's Customer Service Team on 02 9391 7000. Failure to correctly calculate the adjusted development levy will delay the issue of any certificate issued under section 6.4 of the Act and could void any such certificate (e.g. construction certificate, subdivision certificate, or occupation certificate).

**Condition Reason:** To ensure any relevant contributions are paid.

## E. BEFORE BUILDING WORK COMMENCES

### E. 1. Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

Before any building work commences, and under section 4.17(11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:

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

This condition does not apply:

- a) to the extent to which an exemption is in force under the Home Building Regulation 2014, or
- b) to the erection of a temporary building.

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

**Notes:**

- This condition must be satisfied prior to commencement of any work in relation to the contract of insurance under the Home Building Act 1989. This condition also has effect during the carrying out of all building work with respect to compliance with the Building Code of Australia.
- All new guttering is to comply with the provisions of AS3500.

**Condition Reason:** To ensure that works are carried out in accordance with the Building Code of Australia and any required contract of insurance is in force.

<p><b>E. 2.</b></p>	<p><b>Erosion and Sediment Controls – Installation</b></p> <p>Before any building work commences, water pollution, erosion and sedimentation controls must be installed and maintained in accordance with:</p> <ol style="list-style-type: none"> <li>The Soil and Water Management Plan if required under this consent;</li> <li>“Do it Right On Site, Soil and Water Management for the Construction Industry” and accompanying factsheets published by the Southern Sydney Regional Organisation of Councils, and</li> <li>“Managing Urban Stormwater - Soils and Construction” 2004 published by the NSW Government (The Blue Book).</li> </ol> <p>Where there is any conflict The Blue Book takes precedence.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>The International Erosion Control Association – Australasia (<a href="http://www.austieca.com.au/">www.austieca.com.au/</a>) lists consultant experts who can assist in ensuring compliance with this condition.</li> <li>Where Soil and Water Management Plan is required for larger projects it is recommended that this be produced by a member of the International Erosion Control Association – Australasia.</li> <li>The “Do it Right On Site, Soil and Water Management for the Construction Industry” publication and the accompanying factsheets can be downloaded from <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a> and The Blue Book is available at <a href="http://www.environment.nsw.gov.au">www.environment.nsw.gov.au</a></li> <li>A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act 1997 without any further warning. It is a criminal offence to cause, permit or allow pollution.</li> <li>Section 257 of the Protection of the Environment Operations Act 1997 provides inter alia that “the occupier of premises at or from which any pollution occurs is taken to have caused the pollution”.</li> <li>Warning: Irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of their occupation of the land being.</li> </ul> <p><b>Condition Reason:</b> To prevent potential water pollution and dust nuisance.</p>
<p><b>E. 3.</b></p>	<p><b>Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the Act)</b></p> <p>Building work must not commence, until:</p> <ol style="list-style-type: none"> <li>A construction certificate for the building work has been issued by the consent authority, the Council (if the Council is not the consent authority) or an accredited Certifier, and</li> <li>The person having the benefit of the development consent has: <ul style="list-style-type: none"> <li>appointed a Principal Certifier for the building work, and</li> <li>notified the Principal Certifier that the person will carry out the building work as an Owner-builder, if that is the case, and</li> </ul> </li> <li>The Principal Certifier has, no later than 2 days before the building work commences: <ul style="list-style-type: none"> <li>notified the consent authority and the Council (if the Council is not the consent authority) of his or her appointment, and</li> <li>notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and</li> </ul> </li> <li>The person having the benefit of the development consent, if not carrying out the work as an Owner-builder, has:</li> </ol>

<ul style="list-style-type: none"> <li>• appointed a Principal Contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and</li> <li>• notified the Principal Certifier of any such appointment, and</li> <li>• unless that person is the Principal Contractor, notified the Principal Contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and</li> <li>• given at least 2 days' notice to the Council of the person's intention to commence the erection of the building.</li> </ul> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• <b>Building</b> has the same meaning as in section 1.4 of the Act and includes part of a building and any structure or part of a structure.</li> <li>• <b>New building</b> has the same meaning as in section 6.1 of the Act and includes an altered portion of, or an extension to, an existing building.</li> <li>• The commencement of demolition works associated with an altered portion of, or an extension to, an existing building is considered to be the commencement of building work requiring compliance with section 6.6(2) of the Act (including the need for a Construction Certificate) prior to any demolition work. See: <i>Over our Dead Body Society Inc v Byron Bay Community Association Inc</i> [2001] NSWLEC 125.</li> <li>• Construction Certificate Application, PC Service Agreement and Notice of Commencement forms can be downloaded from Council's website <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a></li> <li>• It is an offence for any person to carry out the erection of a building in breach of this condition and in breach of section 6.6(2) of the Act.</li> <li>• Under the Home Building Act 1989 any property owner who intends undertaking construction work to a dwelling house or dual occupancy to the value of \$12,000 or over must complete an approved education course and obtain an owner-builder permit from NSW Fair Trading.</li> </ul> <p><b>Condition Reason:</b> To ensure a construction certificate has been issued, a Principal Certifier is appointed, a Principal Contractor (if applicable) is appointed, and a notice of commencement has been submitted.</p>
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## F. DURING BUILDING WORK

<b>F. 1.</b>	<p><b>Compliance with BCA and Insurance Requirements under the Home Building Act 1989</b></p> <p>While site work is being carried out:</p> <ul style="list-style-type: none"> <li>a) work must be carried out in accordance with the requirements of the Building Code of Australia (BCA),</li> <li>b) in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.</li> </ul> <p>This condition does not apply:</p> <ul style="list-style-type: none"> <li>a) to the extent to which an exemption is in force under the Development Certification and Fire Safety Regulations, or</li> <li>b) to the erection of a temporary building.</li> </ul> <p>In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant construction certificate is made.</p> <p>For the purposes of section 4.17(11) of the Act, the above condition is prescribed in relation to a development consent for development that involves any building work.</p>
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	<p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>All new guttering is to comply with the provisions of AS 3500.</li> </ul> <p><b>Condition Reason:</b> To ensure compliance with the BCA and Home building Act 1989.</p>
<b>F. 2.</b>	<p><b>Requirement to Notify about New Evidence</b></p> <p>While site work is being carried out, any new information that comes to light, which has the potential to alter previous conclusions about site contamination, heritage significance, threatened species or other relevant matters must be immediately notified to Council and the Principal Certifier.</p> <p><b>Condition Reason:</b> To ensure Council and the Principal Certifier are made aware of new information.</p>
<b>F. 3.</b>	<p><b>Critical Stage Inspections</b></p> <p>While site work is being carried out, critical stage inspections must be called for by the Principal Contractor or Owner-builder as required by the Principal Certifier, any PC service agreement, the Act, the Development Certification and Fire Safety Regulation, and the Regulation.</p> <p>Work must not proceed beyond each critical stage until the Principal Certifier is satisfied that work is proceeding in accordance with this consent, the construction certificate(s) and the Act.</p> <p>Critical stage inspections means the inspections prescribed by the Development Certification and Fire Safety Regulations, and Regulations for the purposes of section 6.5 of the Act or as required by the Principal Certifier and any PC Service Agreement.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>The Principal Certifier may require inspections beyond mandatory critical stage inspections in order that the Principal Certifier be satisfied that work is proceeding in accordance with this consent.</li> <li>The Principal Certifier may, in addition to inspections, require the submission of Compliance Certificates, survey reports or evidence of suitability in accordance with Part A2G2 of the BCA in relation to any matter relevant to the development.</li> </ul> <p><b>Condition Reason:</b> To ensure that building work progresses in accordance with the approved plans, conditions of consent, and requirements of the act.</p>
<b>F. 4.</b>	<p><b>Hours of Work –Amenity of the Neighbourhood</b></p> <p>While site work is being carried out:</p> <ol style="list-style-type: none"> <li>No work must take place on any Sunday or public holiday.</li> <li>No work must take place before 7am or after 5pm any weekday.</li> <li>No work must take place before 7am or after 1pm any Saturday.</li> <li>The following work must not take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday: <ol style="list-style-type: none"> <li>piling,</li> <li>piering,</li> <li>rock or concrete cutting, boring or drilling,</li> <li>rock breaking,</li> <li>rock sawing,</li> <li>jack hammering, or</li> </ol> </li> </ol>



	<p>vii. machine excavation.</p> <p>e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.</p> <p>f) No operation of any equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.</p> <p>g) No rock excavation being cutting, boring, drilling, breaking, sawing , jack hammering or bulk excavation of rock, must occur without a 15 minute interval break within every hour.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• The use of noise and vibration generating plant and equipment and vehicular traffic, including trucks in particular, significantly degrade the amenity of neighbourhoods and more onerous restrictions apply to these activities. This more invasive work generally occurs during the foundation and bulk excavation stages of development. If you are in doubt as to whether or not a particular activity is considered to be subject to the more onerous requirement (9am to 4pm weekdays and 9am to 1pm Saturdays) please consult with Council.</li> <li>• Each and every breach of this condition by any person may be subject to a separate penalty infringement notice or prosecution.</li> <li>• The delivery and removal of plant, equipment and machinery associated with wide loads subject to Transport for NSW and NSW Police restrictions on their movement outside the approved hours of work will be considered on a case by case basis.</li> <li>• Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the Protection of the Environment Operations Act 1997, the Protection of the Environment Operations (Noise Control) Regulation 2017.</li> <li>• NSW EPA Noise Guide is available at <a href="http://www.epa.nsw.gov.au/noise/nlg.htm">www.epa.nsw.gov.au/noise/nlg.htm</a></li> </ul>
	<p><b>Condition Reason:</b> To mitigate the impact of work upon the amenity of the neighbourhood.</p>
<p><b>F. 5.</b></p>	<p><b>Public Footpaths – Safety, Access and Maintenance</b></p> <p>While site work is being carried out, any person acting with the benefit of this consent must:</p> <ol style="list-style-type: none"> <li>Not erect or maintain any gate or fence that swings out, or encroaches upon the road or the footway.</li> <li>Not use the road or footway for the storage of any article, material, matter, waste or thing.</li> <li>Not use the road or footway for any work.</li> <li>Keep the road and footway in good repair free of any trip hazard or obstruction.</li> <li>Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be immediately made safe and then repaired, to the satisfaction of Council.</li> <li>Not stand any plant and equipment upon the road or footway.</li> <li>If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or operate a crane, hoist or concrete pump on or over Council land, an application must be submitted to and approved by Council beforehand.</li> <li>Provide a clear safe pedestrian route a minimum of 1.5m wide.</li> <li>Protect heritage listed street name inlays located in the footpath, kerb and gutter, and any other structure, to ensure they are not removed or damaged during development.</li> </ol>

	<p>This condition does not apply to the extent that a permit or approval exists under the section 148B of the Road Transport Act 2013, section 138 of the Roads Act 1993 or section 68 of the Local Government Act 1993 except that at all time compliance is required with:</p> <ul style="list-style-type: none"> <li>a) Australian Standard AS 1742 (Set): Manual of uniform traffic control devices and all relevant parts of this set of standards.</li> <li>b) Australian Road Rules.</li> </ul> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• Section 148B of the Road Transport Act 2013 allows the NSW Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose.</li> <li>• Section 138 of the Roads Act 1993 provides that a person must not: <ul style="list-style-type: none"> <li>- erect a structure or carry out a work in, on or over a public road, or</li> <li>- dig up or disturb the surface of a public road, or</li> <li>- remove or interfere with a structure, work or tree on a public road, or</li> <li>- pump water into a public road from any land adjoining the road, or</li> <li>- connect a road (whether public or private) to a classified road,</li> <li>- otherwise than with the consent of the appropriate roads authority.</li> </ul> </li> <li>• Section 68 of the Local Government Act 1993 provides that a person may carry out certain activities only with the prior approval of the Council including: <ul style="list-style-type: none"> <li>- Part C Management of waste: <ul style="list-style-type: none"> <li>a) For fee or reward, transport waste over or under a public place</li> <li>b) Place waste in a public place</li> <li>c) Place a waste storage container in a public place.</li> </ul> </li> <li>- Part E Public roads: <ul style="list-style-type: none"> <li>a) Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway</li> <li>b) Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.</li> </ul> </li> </ul> </li> </ul>
	<p><b>Condition Reason:</b> To ensure safe access is maintained to footpaths and roads during building works.</p>
<b>F. 6.</b>	<p><b>Maintenance of Environmental Controls</b></p> <p>While site work is being carried out, the following monitoring, measures and controls must be maintained:</p> <ul style="list-style-type: none"> <li>a) erosion and sediment controls,</li> <li>b) dust controls,</li> <li>c) dewatering discharges,</li> <li>d) noise controls,</li> <li>e) vibration monitoring and controls, and</li> <li>f) ablutions.</li> </ul> <p><b>Condition Reason:</b> To ensure that environmental controls are maintained during building works to protect the public and surrounding environment.</p>
<b>F. 7.</b>	<p><b>Support of Adjoining Land and Buildings</b></p> <p>While site work is being carried out, a person must not to do anything on or in relation to the site (the supporting land) that removes the support provided by the supporting land to any other land (the supported land) or building (the supported building).</p>

	<p>For the purposes of this condition, supporting land includes the natural surface of the site, the subsoil of the site, any water beneath the site, and any part of the site that has been reclaimed.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>This condition does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is considered necessary upon any adjoining or supported land by any person the Principal Contractor or Owner-builder must obtain: <ul style="list-style-type: none"> <li>the consent of the owners of such adjoining or supported land to trespass or encroach, or</li> <li>an access order under the Access to Neighbouring Land Act 2000, or</li> <li>an easement under section 88K of the Conveyancing Act 1919, or</li> <li>an easement under section 40 of the Land and Environment Court Act 1979 as appropriate.</li> </ul> </li> <li>Section 177 of the Conveyancing Act 1919 creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).</li> <li>Clause 17 of the Roads Regulation 2018 prohibits excavation in the vicinity of roads as follows: "Excavations adjacent to road - A person must not excavate land in the vicinity of a road if the excavation is capable of causing damage to the road (such as by way of subsidence) or to any work or structure on the road." Separate approval is required under the Roads Act 1993 for any underpinning, shoring, soil anchoring (temporary) or the like within or under any road. Council will not give approval to permanent underpinning, shoring, soil anchoring within or under any road.</li> <li>The encroachment of work or the like is a civil matter of trespass or encroachment and Council does not adjudicate or regulate such trespasses or encroachments except in relation to encroachments upon any road, public place, Crown land under Council's care control or management, or any community or operational land as defined by the Local Government Act 1993.</li> </ul> <p><b>Condition Reason:</b> To ensure that the support of adjoining land is not removed.</p>
<p><b>F. 8.</b></p>	<p><b>Erosion and Sediment Controls – Maintenance</b></p> <p>While site work is being carried out, water pollution, erosion, and sedimentation controls must be maintained in accordance with:</p> <ol style="list-style-type: none"> <li>the Soil and Water Management Plan required under this consent,</li> <li>"Do it Right On Site, Soil and Water Management for the Construction Industry" and the accompanying factsheets published by the Southern Sydney Regional Organisation of Councils, and</li> <li>"Managing Urban Stormwater - Soils and Construction" 2004 published by the NSW Government (The Blue Book).</li> </ol> <p>Where there is any conflict The Blue Book takes precedence.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>A failure to comply with this condition may result in penalty infringement notices, prosecution, notices and orders under the Act and/or the Protection of the Environment Operations Act 1997 without any further warning. It is a criminal offence to cause, permit or allow pollution.</li> <li>Section 257 of the Protection of the Environment Operations Act 1997 provides that "the occupier of premises at or from which any pollution occurs is taken to have caused the pollution".</li> <li>Warning: Irrespective of this condition any person occupying the site may be subject to proceedings under the Protection of the Environment Operations Act 1997 where pollution is caused, permitted or allowed as the result of the occupation of the land being developed whether or not they actually cause the pollution.</li> </ul>

	<b>Condition Reason:</b> To prevent potential water pollution and dust nuisance.
<b>F. 9.</b>	<p><b>Disposal of Site Water During Construction</b></p> <p>While site work is being carried out:</p> <ul style="list-style-type: none"> <li>a) Prior to pumping any water into the road or public stormwater system, approval must be obtained from Council under section 138(1)(d) of the Roads Act 1993.</li> <li>b) Water pollution, as defined by the Protection of the Environment Operations Act 1997, must not occur as the result of the discharge to the road, public stormwater system or other place of any site water.</li> <li>c) That stormwater from any roof or other impervious areas is linked, via temporary downpipes and stormwater pipes, to a Council approved stormwater disposal system immediately upon completion of the roof installation or work creating other impervious areas.</li> </ul> <p><b>Condition Reason:</b> To ensure that adjoining and neighbouring land is not adversely affected by unreasonable overland flows of stormwater and that site water does not cause erosion and water pollution.</p>
<b>F. 10.</b>	<p><b>Check Surveys - boundary location, building location, building height, stormwater drainage system and flood protection measures relative to Australian Height Datum</b></p> <p>While site work is being carried out, a registered surveyor must carry out check surveys and provide survey certificates confirming the location of the building(s), ancillary works, flood protection works and the stormwater drainage system relative to the boundaries of the site and that the height of buildings, ancillary works, flood protection works and the stormwater drainage system relative to Australian Height Datum complies with this consent at the following critical stages.</p> <p>Work must not proceed beyond each of the following critical stages until compliance has been demonstrated to the Principal Certifier's satisfaction:</p> <ul style="list-style-type: none"> <li>a) Upon the completion of foundation walls prior to the laying of any floor or the pouring of any floor slab and generally at damp proof course level.</li> <li>b) Upon the completion of formwork for floor slabs prior to the laying of any floor or the pouring of any concrete and generally at each storey.</li> <li>c) Upon the completion of formwork or framework for the roof(s) prior to the laying of any roofing or the pouring of any concrete roof.</li> <li>d) Upon the completion of formwork and steel fixing prior to pouring of any concrete for any ancillary structure, flood protection work, swimming pool or spa pool or the like.</li> <li>e) Upon the completion of formwork and steel fixing prior to pouring of any concrete for driveways showing transitions and crest thresholds confirming that driveway levels match Council approved driveway crossing levels and minimum flood levels.</li> <li>f) Stormwater drainage Systems are in place prior to back filling over pipes confirming location, height and capacity of works.</li> <li>g) Flood protection measures are in place confirming location, height and capacity.</li> </ul> <p><b>Condition Reason:</b> To ensure that development occurs in the location and at the height approved under this consent, which is critical to ensure that buildings are constructed to minimum heights for flood protection and maximum heights to protect views and the amenity of neighbours.</p>

F. 11.	<p><b>Placement and Use of Skip Bins</b></p> <p>While site work is being carried out, all waste storage containers, including but not limited to skip bins, must be stored within the site unless:</p> <ol style="list-style-type: none"> <li>Activity Approval has been issued by Council under section 68 of the Local Government Act 1993 to place the waste storage container in a public place; and</li> <li>where located on the road it is located only in a positions where a vehicle may lawfully park in accordance with the Australian Road Rules.</li> </ol> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>Waste storage containers must not be located on the footpath without a site specific activity approval. Where such site specific activity approval is granted a 1.5m wide clear path of travel is maintained free of any trip hazards.</li> </ul> <p><b>Condition Reason:</b> To ensure waste storage containers are appropriately located.</p>
F. 12.	<p><b>Prohibition of Burning</b></p> <p>While site work is being carried out, there must be no burning of any waste or other materials. The burning of copper chrome arsenate (CCA) or pentachlorophenol (PCP) treated timber is prohibited in all parts of NSW. All burning is prohibited in the Woollahra local government area.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>Under the Protection of the Environment Operations (Clean Air) Regulation 2021 all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.</li> </ul> <p><b>Condition Reason:</b> To ensure no burning of waste occurs.</p>
F. 13.	<p><b>Dust Mitigation</b></p> <p>While site work is being carried out, dust mitigation must be implemented in accordance with “Dust Control - Do it right on site” and the accompanying facts sheets published by the Southern Sydney Regional Organisation of Councils.</p> <p>This generally requires:</p> <ol style="list-style-type: none"> <li>Dust screens to all hoardings and site fences.</li> <li>All stockpiles or loose materials to be covered when not being used.</li> <li>All equipment, where capable, being fitted with dust catchers.</li> <li>All loose materials being placed bags before placing into waste or skip bins.</li> <li>All waste and skip bins being kept covered when not being filled or emptied.</li> <li>The surface of excavation work being kept wet to minimise dust.</li> <li>Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.</li> </ol> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>“Dust Control - Do it right on site” and the accompanying factsheets can be downloaded from Council’s website <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a></li> <li>Special precautions must be taken when removing asbestos or lead materials from development sites. Additional information can be obtained from <a href="http://www.safework.nsw.gov.au">www.safework.nsw.gov.au</a> and <a href="http://www.epa.nsw.gov.au">www.epa.nsw.gov.au</a>. Other specific conditions and advice may apply.</li> <li>Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution.</li> </ul>

	<p><b>Condition Reason:</b> To mitigate the impact of dust upon the amenity of the neighbourhood and prevent water pollution.</p>
<b>F. 14.</b>	<p><b>Site Waste Minimisation and Management – Demolition</b></p> <p>While site work is being carried out, in order to maximise resource recovery and minimise residual waste from demolition activities:</p> <ol style="list-style-type: none"> <li>the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,</li> <li>an area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements),</li> <li>separate collection bins and/or areas for the storage of residual waste are to be provided,</li> <li>the purpose and content of the bins and/or storage areas are to be clearly 'signposted',</li> <li>measures to prevent damage by the elements, odour, health risks and windborne litter are to be implemented, and</li> <li>site disturbance must be minimised, and unnecessary excavation limited.</li> </ol> <p>When implementing the SWMMP the Applicant must ensure:</p> <ol style="list-style-type: none"> <li>footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval,</li> <li>any material moved offsite is transported in accordance with the requirements of the Protection of the Environment Operations Act 1997,</li> <li>waste is only transported to a place that can lawfully be used as a waste facility,</li> <li>generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the NSW Environment Protection Authority, and relevant occupational health and safety legislation administered by SafeWork NSW, and</li> <li>evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained.</li> </ol> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>Materials that have an existing reuse or recycling market must not be disposed of in a land fill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.</li> </ul> <p><b>Condition Reason:</b> To maximise resource recovery and minimise residual waste from demolition activities.</p>
<b>F. 15.</b>	<p><b>Site Waste Minimisation and Management – Construction</b></p> <p>While site work is being carried out, in order to maximise resource recovery and minimise residual waste from construction activities:</p> <ol style="list-style-type: none"> <li>the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,</li> <li>deliveries of materials must be arranged so that materials are delivered 'as needed' to prevent the degradation of materials through weathering and moisture damage,</li> <li>consideration must be given to returning excess materials to the supplier or manufacturer,</li> <li>an area must be allocated for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation),</li> </ol>

	<p>e) the purpose and content of the storage areas must be clearly ‘signposted’,  f) contractors must be arranged for the transport, processing and disposal of waste and recycling and all contractors must be aware of the legal requirements for disposing of waste,  g) separate collection bins or areas for the storage of residual waste must be promoted,  h) measures to prevent damage by the elements, odour and health risks, and windborne litter must be implemented,  i) site disturbance must be minimised and unnecessary excavation limited,  j) all waste must be transported to a place that can lawfully be used as a waste facility, and  k) records demonstrating lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as Council, the NSW EPA or SafeWork NSW.</p> <p><b>Condition Reason:</b> To maximise resource recovery and minimise residual waste from construction activities.</p>
<p><b>F. 16.</b></p>	<p><b>Asbestos Removal</b></p> <p>While site work is being carried out, all asbestos removal work must be carried out safely according to NSW work health and safety legislation.</p> <p>Where hazardous material, including bonded or friable asbestos has been identified in accordance with the conditions in Section B above, and such material must be demolished, disturbed and subsequently removed, all such works must comply with the following criteria:</p> <ul style="list-style-type: none"> <li>a) Be undertaken by contractors who hold a current SafeWork NSW “demolition licence” and a current SafeWork NSW “Class A licence” for friable asbestos removal.</li> <li>b) Be carried out in accordance with the relevant SafeWork NSW codes of practice.</li> <li>c) No asbestos products may be reused on the site.</li> <li>d) No asbestos laden skip or bins must be left in any public place.</li> </ul> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• Before starting work, a work site-specific permit approving each asbestos project must be obtained from SafeWork NSW. A permit will not be granted without a current SafeWork licence.</li> <li>• All removal, repair or disturbance of or to asbestos material must comply with: <ul style="list-style-type: none"> <li>- Work Health and Safety Act 2011,</li> <li>- Work Health and Safety Regulation 2017,</li> <li>- SafeWork NSW “Code of Practice: How to Safely Remove Asbestos” (2016), and</li> <li>- SafeWork NSW “Code of Practice: How to Manage and Control Asbestos in the Workplace” (2016).</li> <li>- For more information go to the SafeWork NSW website on asbestos <a href="http://www.safework.nsw.gov.au/health-and-safety/safety-topics-a-z/asbestos">www.safework.nsw.gov.au/health-and-safety/safety-topics-a-z/asbestos</a>, and <a href="http://www.safework.nsw.gov.au/law-and-policy/legislation-and-codes/codes-of-practice">www.safework.nsw.gov.au/law-and-policy/legislation-and-codes/codes-of-practice</a> or call 131 050</li> </ul> </li> </ul> <p><b>Condition Reason:</b> To ensure the safe removal of asbestos and protect the health and safety of persons working on the site and the public.</p>



<b>F. 17.</b>	<b>Classification of Hazardous Waste</b>
	While site work is being carried out, and prior to the exportation of hazardous waste (including hazardous fill or soil) from the site, the waste materials must be classified in accordance with the provision of the Protection of the Environment Operations Act 1997 and the NSW EPA Waste Classification Guidelines, Part1: Classifying Waste, 2014.
	<b>Condition Reason:</b> To ensure that where hazardous waste will be removed from a site an asbestos licensed contractor can definitively determine where the waste may be legally taken for disposal.
<b>F. 18.</b>	<b>Disposal of Asbestos and Hazardous Waste</b>
	While site work is being carried out, asbestos and hazardous waste, once classified in accordance with the hazardous waste classification condition must only be transported to waste facilities licensed to accept asbestos and appropriate classifications of hazardous waste.
	<b>Condition Reason:</b> To ensure that asbestos and other hazardous waste is disposed of lawfully under the Protection of the Environment Operations Act 1997 and relevant NSW EPA requirements.
<b>F. 19.</b>	<b>Asbestos Removal Signage</b>
	While site work is being carried out and when asbestos is being removed, standard commercially manufactured signs containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm are to be erected in prominent visible positions on the site.
	<b>Condition Reason:</b> To ensure awareness of any hazard to the health and safety of persons working on the site and public.
<b>F. 20.</b>	<b>Notification of Asbestos Removal</b>
	While site work is being carried out, in addition to the requirements for licensed asbestos removalists to give written notice to SafeWork NSW, all adjoining properties and those opposite the development site must be notified in writing of the dates and times when asbestos removal is to be conducted.
	The notification is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone and facsimile numbers and email addresses.
	<b>Condition Reason:</b> To ensure that local residents are informed and have adequate contact details for incidents of asbestos removal.
<b>F. 21.</b>	<b>Tree Preservation</b>
	While site work is being carried out, all persons must comply with Chapter E.3 – <i>Tree Management</i> of Council's Development Control Plan (DCP) 2015, other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

		<p>General Protection Requirements:</p> <p>a) The tree protection measures must be maintained during all development work unless otherwise specified within these conditions of consent.</p> <p>b) Excavation must cease where tree roots with a diameter exceeding 50mm are exposed. The principal contractor must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.</p> <p>c) Where there is damage to any part of a tree the principal contractor must procure an inspection of the tree by a qualified arborist immediately. The principal contractor must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.</p> <p>Trees must be pruned in accordance with Australian Standard AS 4373 “Pruning of Amenity Trees” and WorkCover NSW Code of Practice Amenity Tree Industry.</p> <p><b>Condition Reason:</b> To protect trees during the carrying out of sitework.</p> <p>Standard Condition F.8</p>				
F.	22.	<p><b>Arborists Documentation and Compliance Checklist</b></p> <p>While site work is being carried out, the project arborist must provide written certification that all tree protection measures and construction techniques relevant to this consent have been implemented. Documentation for each site visit must include:</p> <p>a) a record of the condition of trees to be retained prior to and throughout development,</p> <p>b) recommended actions to improve site conditions and rectification of non-compliance, and</p> <p>c) recommendations for future works which may impact the trees.</p> <p>All compliance certification documents must be kept on site by the site Supervisor.</p> <p>As a minimum the following intervals of site inspections must be made:</p> <table><tr><th>Stage of arboricultural inspection and supervision</th><th>Compliance documentation and photos must include</th></tr><tr><td>While site work is carried out</td><td><ul style="list-style-type: none"><li>The project arborist must supervise all demolition and excavation works within the Tree Protection Zones or specified distances of nominated trees listed in this consent.</li><li>The project arborist must ensure pier holes within the Tree Protection Zones or specified distances of nominated trees listed in this consent are positioned to avoid the severance of and damage to roots greater than 50mm diameter.</li><li>The project arborist must inspect the installed irrigation system to plants in garden beds. The arborist must certify there is an appropriate distribution of water to planted and existing trees.</li><li>Project Arborist to approve relocation of tree protection for landscaping. All landscaping works within the TPZ of trees to be retained are to be undertaken in consultation with the project Arborist to minimise the impact to trees.</li><li>Regular inspections as indicated in the Tree Management Plan.</li></ul></td></tr></table> <p>Inspections and compliance documentation must be made by an arborist with AQF Level 5 qualifications.</p>	Stage of arboricultural inspection and supervision	Compliance documentation and photos must include	While site work is carried out	<ul style="list-style-type: none"><li>The project arborist must supervise all demolition and excavation works within the Tree Protection Zones or specified distances of nominated trees listed in this consent.</li><li>The project arborist must ensure pier holes within the Tree Protection Zones or specified distances of nominated trees listed in this consent are positioned to avoid the severance of and damage to roots greater than 50mm diameter.</li><li>The project arborist must inspect the installed irrigation system to plants in garden beds. The arborist must certify there is an appropriate distribution of water to planted and existing trees.</li><li>Project Arborist to approve relocation of tree protection for landscaping. All landscaping works within the TPZ of trees to be retained are to be undertaken in consultation with the project Arborist to minimise the impact to trees.</li><li>Regular inspections as indicated in the Tree Management Plan.</li></ul>
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		Additional site visits must be made when required by site arborist and/or site foreman for ongoing monitoring/supervisory work.																																									
		<b>Condition Reason:</b> To ensure that all tree protection measures and construction techniques relevant to this consent have been implemented. Standard Condition F.45																																									
F.	23.	<b>Replacement/Supplementary trees which must be planted</b>  While site work is being carried out, any replacement or supplementary tree must be grown in accordance with Tree stock for landscape use (AS 2303). The replacement tree/s must be planted in deep soil landscaped area and maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it becomes a prescribed tree in accordance with Chapter E.3 of Council's Development Control Plan, it must be replaced with another of the same species, which complies with the approved Landcape Plans.  The project arborist must document compliance with the above condition.  <b>Condition Reason:</b> To ensure the provision of appropriate replacement planting. Standard Condition F.46																																									
F.	24.	<b>Hand excavation within tree root zones</b>  While site work is being carried out, demolition of underground structures such as existing footings and approved excavation undertaken within the specified radius from the trunks of the following trees must be carried out by hand. <table><tr><th>Council Ref No</th><th>Species</th><th>Location</th><th>Radius from centre of trunk (metres)</th></tr><tr><td>9</td><td><i>Lophostemon confertus</i></td><td rowspan="12">Refer to the Landscape Plans prepared by Studio U.C dated 6 February 2024 for tree numbers and locations.</td><td>5m</td></tr><tr><td>10</td><td><i>Syzygium smithii</i></td><td>4m</td></tr><tr><td>11</td><td><i>Elaeocarpus reticulatus</i></td><td>4m</td></tr><tr><td>12</td><td><i>Lophostemon confertus</i></td><td>8m</td></tr><tr><td>20</td><td><i>Camellia sasanqua</i></td><td>4m</td></tr><tr><td>23</td><td><i>Melaleuca quinquenervia</i></td><td>12m</td></tr><tr><td>24</td><td><i>Camellia sasanqua</i></td><td>5m</td></tr><tr><td>26</td><td><i>Howea forsteriana</i></td><td>2m</td></tr><tr><td>35</td><td><i>Xylosma senticosum</i></td><td>2m</td></tr><tr><td>38</td><td><i>Corymbia citriodora</i></td><td>7m</td></tr><tr><td>39</td><td><i>Jacaranda mimosifolia</i></td><td>5m</td></tr><tr><td>40</td><td><i>Lophostemon confertus</i></td><td>6m</td></tr></table>  Small hand tools such as mattocks or using compressed air or water jetting only must be used. Roots with a diameter equal to or in excess of 50mm must not be severed or damaged unless approved in writing and documented by the project arborist.	Council Ref No	Species	Location	Radius from centre of trunk (metres)	9	<i>Lophostemon confertus</i>	Refer to the Landscape Plans prepared by Studio U.C dated 6 February 2024 for tree numbers and locations.	5m	10	<i>Syzygium smithii</i>	4m	11	<i>Elaeocarpus reticulatus</i>	4m	12	<i>Lophostemon confertus</i>	8m	20	<i>Camellia sasanqua</i>	4m	23	<i>Melaleuca quinquenervia</i>	12m	24	<i>Camellia sasanqua</i>	5m	26	<i>Howea forsteriana</i>	2m	35	<i>Xylosma senticosum</i>	2m	38	<i>Corymbia citriodora</i>	7m	39	<i>Jacaranda mimosifolia</i>	5m	40	<i>Lophostemon confertus</i>	6m
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		<p>Mechanical excavation is permitted beyond this radius when root pruning by hand along the hand excavated perimeter line is completed. Exposed roots to be retained must be covered with mulch or a geotextile fabric and kept in a moist condition and prevented from drying out.</p> <p>All root pruning must be undertaken in accordance with the Australian Standard 4373 “Pruning of Amenity Trees” and carried out by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent).</p> <p>The project arborist must document compliance with the above condition.</p> <p><b>Condition Reason:</b> To ensure demolition and excavation works would not adversely impact upon the health of existing trees.</p> <p>Standard Condition F.50</p>																																									
F.	25.	<p><b>Footings in the vicinity of trees</b></p> <p>While site work is being carried out, footings for any structure within the specified radius from the trunks of the following trees must be supported using an isolated pier and beam system.</p> <table><tr><th>Council Ref No</th><th>Species</th><th>Location</th><th>Radius from centre of trunk (metres)</th></tr><tr><td>9</td><td><i>Lophostemon confertus</i></td><td rowspan="12">Refer to the Landscape Plans prepared by Studio U.C dated 6 February 2024 for tree numbers and locations.</td><td>5m</td></tr><tr><td>10</td><td><i>Syzygium smithii</i></td><td>4m</td></tr><tr><td>11</td><td><i>Elaeocarpus reticulatus</i></td><td>4m</td></tr><tr><td>12</td><td><i>Lophostemon confertus</i></td><td>8m</td></tr><tr><td>20</td><td><i>Camellia sasanqua</i></td><td>4m</td></tr><tr><td>23</td><td><i>Melaleuca quinquenervia</i></td><td>12m</td></tr><tr><td>24</td><td><i>Camellia sasanqua</i></td><td>5m</td></tr><tr><td>26</td><td><i>Howea forsteriana</i></td><td>2m</td></tr><tr><td>35</td><td><i>Xylosma senticosum</i></td><td>2m</td></tr><tr><td>38</td><td><i>Corymbia citriodora</i></td><td>7m</td></tr><tr><td>39</td><td><i>Jacaranda mimosifolia</i></td><td>5m</td></tr><tr><td>40</td><td><i>Lophostemon confertus</i></td><td>6m</td></tr></table> <p>Excavations for the installation of piers must be located so that no tree root with a diameter equal to or in excess of 50mm is severed or damaged. The smallest possible area must be excavated which allows construction of the pier. In consultation with the project engineer the piers must be offset a minimum 100mm from any root equal to or in excess of 50mm to accommodate future growth. The beam is to be placed a minimum of 100mm above ground level and is to be designed to bridge all tree roots with a diameter equal to or in excess of 50mm.</p> <p>The project arborist must document compliance with the above condition.</p> <p><b>Condition Reason:</b> To ensure the proposed footings would not adversely impact upon the health of existing trees.</p> <p>Standard Condition F.51</p>	Council Ref No	Species	Location	Radius from centre of trunk (metres)	9	<i>Lophostemon confertus</i>	Refer to the Landscape Plans prepared by Studio U.C dated 6 February 2024 for tree numbers and locations.	5m	10	<i>Syzygium smithii</i>	4m	11	<i>Elaeocarpus reticulatus</i>	4m	12	<i>Lophostemon confertus</i>	8m	20	<i>Camellia sasanqua</i>	4m	23	<i>Melaleuca quinquenervia</i>	12m	24	<i>Camellia sasanqua</i>	5m	26	<i>Howea forsteriana</i>	2m	35	<i>Xylosma senticosum</i>	2m	38	<i>Corymbia citriodora</i>	7m	39	<i>Jacaranda mimosifolia</i>	5m	40	<i>Lophostemon confertus</i>	6m
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F.	26.	<b>Installation of stormwater pipes and pits in the vicinity of trees</b>																																								
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Any roots equal to or greater than 50mm diameter uncovered for the installation of stormwater pipes and pits must not be severed and remain in situ bridging across the excavated trench. Pipes must be guided under any roots equal to or greater than 50mm bridging across excavated trenches. Stormwater pits must be positioned so that no roots equal to or greater then 50mm diameter are severed. The project arborist must document compliance with the above condition.																																										
<b>Condition Reason:</b> To ensure the installation of the stormwater works would not adversely impact upon the health of existing trees. Standard Condition F.52																																										

F.	27.	<b>Compliance with Geotechnical / Hydrogeological Monitoring Program</b>
	While site work is being carried out, excavation must be undertaken in accordance with the recommendations of the Geotechnical / Hydrogeological Monitoring Program and any oral or written direction of the supervising professional engineer.	
	The Principal Contractor and any sub-contractor must strictly follow the Geotechnical / Hydrogeological Monitoring Program for the development including, but not limited to: a) the location and type of monitoring systems to be utilised, b) recommended hold points to allow for inspection and certification of geotechnical and hydrogeological measures by the professional engineer, and c) the contingency plan.	
	<b>Notes:</b> <ul style="list-style-type: none"><li>The consent authority cannot require that the author of the geotechnical/hydrogeological report submitted with the development application to be appointed as the professional engineer supervising the work however, it is the Council's recommendation that the author of the report be retained during the construction stage.</li></ul>	
	<b>Condition Reason:</b> To ensure the geotechnical and/or hydrogeological impacts of the development are appropriately managed.	

F. 28.	<p><b>Vibration Monitoring</b></p> <p>While site work is being carried out, vibration monitoring equipment must be installed and maintained, under the supervision of a professional engineer with expertise and experience in geotechnical engineering, between any potential source of vibration and any building identified by the professional engineer as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed.</p> <p>If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity an audible alarm must activate such that the Principal Contractor and any sub-contractor are easily alerted to the event.</p> <p>Where any such alarm triggers all excavation works must cease immediately. Prior to the vibration monitoring equipment being reset by the professional engineer and any further work recommencing the event must be recorded and the cause of the event identified and documented by the professional engineer.</p> <p>Where the event requires, in the opinion of the professional engineer, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the professional engineer as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the professional engineer to the Principal Contractor and any sub-contractor clearly setting out required work practice.</p> <p>The Principal Contractor and any sub-contractor must comply with all work directions, verbal or written, given by the professional engineer.</p> <p>A copy of any written direction required by this condition must be provided to the Principal Certifier within 24 hours of any event.</p> <p>Where there is any movement in foundations such that damaged is occasioned to any adjoining building or such that there is any removal of support to supported land the professional engineer, Principal Contractor and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that supported land and take immediate action under the direction of the professional engineer to prevent any further damage and restore support to the supported land.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• <b>Professional engineer</b> has the same mean as in Schedule 1 of the BCA.</li> <li>• <b>Building</b> has the same meaning as in section 1.4 of the Act i.e. “building includes part of a building and any structure or part of a structure....”</li> <li>• <b>Supported land</b> has the same meaning as in the Conveyancing Act 1919.</li> </ul> <p><b>Condition Reason:</b> To monitor and manage vibration impacts from development.</p>
F. 29.	<p><b>Shoring and Adequacy of Adjoining Property</b></p> <p>While site work is being carried out, the person having the benefit of the development consent must, at the person’s own expense:</p> <p>a) protect and support the adjoining premises from possible damage from the excavation.</p>

	<p>For the purposes of section 4.17(11) of the Act, the following condition is prescribed in relation to a development consent for development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.</li> </ul> <p><b>Condition Reason:</b> To protect and support the adjoining premises from possible damage from the excavation.</p>
<b>F. 30.</b>	<p><b>Swimming and Spa Pools – Temporary Child Resistant Barriers and other Matters</b></p> <p>While site work is being carried out, temporary child-resistant barriers must be installed in compliance with the Swimming Pools Act 1992 and Building Code of Australia where any swimming pool or spa pool, as defined by the Swimming Pools Act 1992, contains more than 300mm in depth of water at any time.</p> <p>Permanent child-resistant barriers must be installed in compliance with the Swimming Pools Act 1992 and the Building Code of Australia as soon as practical.</p> <p>Backwash and any temporary dewatering from any swimming pool or spa pool as defined by the Swimming Pools Act 1992 must be discharged to the sewer in compliance with clause 10.9 (Figure 10.2) of AS/NZS 3500.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>This condition does not prevent Council from issuing an order under section 23 of the Swimming Pool Act 1992 or taking such further action as necessary for a breach of this condition or the Swimming Pools Act 1992.</li> </ul> <p><b>Condition Reason:</b> To ensure access to swimming pools is effectively restricted to maintain child safety.</p>

## G. BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

<b>G. 1.</b>	<p><b>Occupation Certificate (section 6.9 of the Act)</b></p> <p>A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 6.10 of the Act) unless an occupation certificate has been issued in relation to the building or part.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>New building includes an altered portion of, or an extension to, an existing building.</li> </ul> <p><b>Condition Reason:</b> To ensure the building is suitable to occupy.</p>
<b>G. 2.</b>	<p><b>Removal of Ancillary Works and Structures</b></p> <p>Before the issue of any occupation certificate for the whole of the building, The following articles must be removed from the land and any adjoining public place:</p> <ol style="list-style-type: none"> <li>the site sign,</li> <li>ablutions,</li> <li>hoarding,</li> </ol>



		<div>d) scaffolding, and</div> <div>e) waste materials, matter, article or thing.</div> <div>Condition Reason: To ensure that all ancillary matter is removed prior to occupation.</div>				
G.	3.	<div>Amenity Landscaping</div> <div>Before the issue of any occupation certificate, all approved amenity landscaping (screen planting, soil stabilisation planting, etc.) and replacement/supplementary tree planting must be installed in accordance with the approved plans and documents and any relevant conditions of consent.</div> <div>Condition Reason: To ensure that the environmental impacts of the development are mitigated by approved landscaping prior to the occupation of the development.</div> <div>Standard Condition G.6</div>				
G.	4.	<div>Landscaping</div> <div>Before the issue of any occupation certificate, the Principal Certifier and Council must be provided with a works-as-executed landscape plan and certification from a qualified landscape architect/designer, horticulturist and/or arborist as applicable to the effect that the landscaping and replacement/supplementary tree planting works comply with this consent.</div> <div>Condition Reason: To ensure that all landscaping work is completed prior to occupation.</div> <div>Standard Condition G.26</div>				
G.	5.	<div>Arborists Documentation and Compliance Checklist – Prior to any occupation certificate</div> <div>Before the issue of any occupation certificate, the project arborist must provide written certification that all tree protection measures and construction techniques relevant to this consent have been implemented. Documentation for each site visit must include:<div>a) A record of the condition of trees to be retained prior to and throughout development.</div><div>b) Recommended actions to improve site conditions and rectification of non-compliance.</div><div>c) Recommendations for future works which may impact the trees.</div></div> <div>All compliance certification documents must be kept on site by the site Supervisor.</div> <div>As a minimum the following intervals of site inspections must be made:</div> <table><tr><th>Stage of arboricultural inspection and supervision</th><th>Compliance documentation and photos must include</th></tr><tr><td>Prior to the issue of any occupation certificate</td><td>Ensure all trees conditioned to be planted as part of this consent have been planted in accordance with the details prescribed in this consent.</td></tr></table> <div>Inspections and compliance documentation must be made by an arborist with AQF Level 5 qualifications.</div> <div>Additional site visits must be made when required by site arborist and/or site foreman for ongoing monitoring/supervisory work.</div>	Stage of arboricultural inspection and supervision	Compliance documentation and photos must include	Prior to the issue of any occupation certificate	Ensure all trees conditioned to be planted as part of this consent have been planted in accordance with the details prescribed in this consent.
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		<p><b>Condition Reason:</b> To ensure that all tree protection measures and construction techniques relevant to this consent are implemented.</p> <p>Standard Condition G.34</p>				
G.	6.	<p><b>Arborists Documentation and Compliance Checklist – Prior to an occupation certificate for the whole building</b></p> <p>Before the issue of any occupation certificate for the whole of the building, the project arborist must provide written certification that all tree protection measures and construction techniques relevant to this consent have been implemented.</p> <p>Documentation for each site visit must include:</p> <ul style="list-style-type: none"><li>a) A record of the condition of trees to be retained prior to and throughout development.</li><li>b) Recommended actions to improve site conditions and rectification of non-compliance.</li><li>c) Recommendations for future works which may impact the trees.</li></ul> <p>All compliance certification documents must be kept on site.</p> <p>As a minimum the following intervals of site inspections must be made:</p> <table><tr><th>Stage of arboricultural inspection and supervision</th><th>Compliance documentation and photos must include</th></tr><tr><td>Before the issue of any occupation certificate for the whole of the building</td><td><ul style="list-style-type: none"><li>• The project arborist must supervise the dismantling of tree protection measures</li><li>• After all demolition, construction and landscaping works are complete the project Arborist must assess that the subject trees have been retained in the same condition and vigour. If changes to condition are identified the project Arborist must provide recommendations for remediation.</li></ul></td></tr></table> <p>Inspections and compliance documentation must be made by an arborist with AQF Level 5 qualifications.</p> <p>Additional site visits must be made when required by site arborist and/or site foreman for ongoing monitoring/supervisory work.</p> <p><b>Condition Reason:</b> To ensure that all tree protection measures and construction techniques relevant to this consent are implemented.</p> <p>Standard Condition G.35</p>	Stage of arboricultural inspection and supervision	Compliance documentation and photos must include	Before the issue of any occupation certificate for the whole of the building	<ul style="list-style-type: none"><li>• The project arborist must supervise the dismantling of tree protection measures</li><li>• After all demolition, construction and landscaping works are complete the project Arborist must assess that the subject trees have been retained in the same condition and vigour. If changes to condition are identified the project Arborist must provide recommendations for remediation.</li></ul>
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G.	7.	<p><b>Positive Covenant and Works-As-Executed Certification of Stormwater Systems</b></p> <p>Before the issue of an occupation certificate for the whole of the building, and on the completion of construction work, stormwater drainage works are to be certified by a professional engineer with works-as-executed drawings supplied to the Principal Certifier detailing:</p> <ul style="list-style-type: none"><li>a) compliance with conditions of development consent relating to stormwater,</li><li>b) the structural adequacy of the on-site retention system,</li><li>c) that a rainwater retention and reuse system with required storage has been constructed in accordance with the approved stormwater plans,</li><li>d) that stormwater from rainwater tank has been connected for non-potable use such as toilet flushing, laundry device, pool top-up, car washing and garden irrigations etc.</li></ul>				

	<p>e) that subsoil drainage/seepage water is NOT collected and discharged into the kerb and gutter in accordance with the approved stormwater drawings,</p> <p>f) pipe invert levels and surface levels to Australian Height Datum, and</p> <p>g) contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.</p> <p>A positive covenant under section 88E of the Conveyancing Act 1919 must be created on the title of the subject property, providing for the on-going maintenance of the on-site-retention system and/or absorption trenches, including any pumps and sumps incorporated in the development. The wording of the Instrument must be in accordance with Council's standard format and the Instrument must be registered with the NSW Land Registry Services.</p> <p><b>Notes:</b> The required wording of the Instrument can be downloaded from Council's website <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a>. The PC must supply a copy of the Works As Executed plans to Council together with the occupation certificate. The occupation certificate for the whole of the building must not be issued until this condition has been satisfied.</p> <p><b>Condition Reason:</b> To ensure the certification and ongoing maintenance of the stormwater system prior to the occupation of the whole building.</p>
<b>G. 8.</b>	<p><b>Certification of Electric Vehicle Charging System</b></p> <p>Before the issue of any occupation certificate, certification by a suitably qualified person that the electric vehicle charger points and/or electric vehicle circuitry, has been installed in accordance with the construction certificate plans and specifications, must be submitted to the satisfaction of the Principal Certifier.</p> <p><b>Condition Reason:</b> To ensure the certification of the electric vehicle charging system.</p>
<b>G. 9.</b>	<p><b>Swimming and Spa Pools – Permanent Child Resistant Barriers and other Matters</b></p> <p>Before the issue of any occupation certificate, and prior to filling any swimming pool, as defined by the Swimming Pools Act 1992:</p> <ol style="list-style-type: none"> <li>Permanent child-resistant barriers must be installed in compliance with the Swimming Pools Act 1992 and the Building Code of Australia.</li> <li>The swimming pool must be registered in accordance with section 30B of the Swimming Pools Act 1992 on the NSW Government Swimming Pool Register.</li> <li>The Principal Contractor or Owner must either obtain a certificate of compliance issued under section 22D of the Swimming Pools Act 1992 or an appropriate occupation certificate authorising use of the swimming pool.</li> <li>Public pools must comply with the NSW Health Public Swimming Pool and Spa Pool Guidelines in force at that time and private pools are encouraged to comply with the same standards as applicable.</li> <li>Water recirculation and filtration systems must be installed in compliance with AS 1926.3: Swimming pool safety - Water recirculation systems.</li> </ol> <p>Backwash must be discharged to the sewer in compliance with AS/NZS 3500.</p> <p>Water recirculation and filtration systems must be connected to the electricity supply by a timer that limits the systems operation such that it does not operate before 8 am or after 8 pm on any Sunday or public holiday, or before 7 am or after 8 pm on any other day.</p>

<b>G. 10.</b>	<b>Notes:</b> <ul style="list-style-type: none"> <li>NSW Health guidelines and fact sheets are available at <a href="http://www.health.nsw.gov.au">www.health.nsw.gov.au</a></li> </ul>
	<b>Condition Reason:</b> To ensure that the swimming pool maintains public safety and to manage the amenity impacts of swimming pools.
	<b>Swimming Pool Fencing</b>
	Before the issue of any occupation certificate, swimming pool fencing is to be constructed in accordance with AS1926: Australian Standard Swimming Pool Safety Part 1 – Safety Barriers for Swimming Pools.  <b>Notes:</b> <ul style="list-style-type: none"> <li>Pools commenced or completed after May 2013 must meet the BCA and AS1926.</li> </ul> <b>Condition Reason:</b> To ensure swimming pool safety.

## H. OCCUPATION AND ONGOING USE

<b>H. 1.</b>	<b>Maintenance of BASIX Commitments</b>
	During the occupation and ongoing use, all BASIX commitments must be maintained in accordance with the BASIX Certificate No.A1377429.  This condition affects successors in title with the intent that environmental sustainability measures must be maintained for the life of development under this consent.
	<b>Condition Reason:</b> To ensure the approved environmental sustainability measures are maintained for the life of development.
<b>H. 2.</b>	<b>Maintenance of Landscaping</b>
	During the occupation and ongoing use, all landscaping must be maintained in general accordance with this consent.  This condition does not prohibit the planting of additional trees or shrubs subject that they are native species endemic to the immediate locality.  <b>Notes:</b> <ul style="list-style-type: none"> <li>This condition also acknowledges that development consent is not required to plant vegetation and that over time additional vegetation may be planted to replace vegetation or enhance the amenity of the locality.</li> <li>Owners must have regard to the amenity impact of trees upon the site and neighbouring land. Further, drought proof vegetation being native species endemic to the immediate locality is encouraged. Suggested native species endemic to the immediate locality are listed in the brochure “Local Native Plants for Sydney’s Eastern Suburbs” published by Woollahra, Waverley, Randwick and Botany Bay Councils.</li> </ul>
	<b>Condition Reason:</b> To ensure that the landscaping design intent is not eroded over time by the removal of landscaping or inappropriate exotic planting.

H. 3.	<p><b>Noise from Mechanical Plant and Equipment</b></p> <p>During the occupation and ongoing use, the noise level measured at any boundary of the site at any time while the mechanical plant and equipment is operating must not exceed the background noise level. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed background noise level at any time.</p> <p>The background noise level is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the LA90, 15 minute level measured by a sound level meter.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>Words in this condition have the same meaning as in the Noise Policy for Industry (2017) <a href="http://www.epa.nsw.gov.au/your-environment/noise/industrial-noise/noise-policy-for-industry-(2017)">www.epa.nsw.gov.au/your-environment/noise/industrial-noise/noise-policy-for-industry-(2017)</a> and Noise Guide for Local Government (2013) <a href="http://www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government">www.epa.nsw.gov.au/your-environment/noise/regulating-noise/noise-guide-local-government</a></li> </ul> <p><b>Condition Reason:</b> To protect the amenity of the neighbourhood.</p>
H. 4.	<p><b>Maintenance of Landscaping</b></p> <p>During the occupation and ongoing use, all landscaping must be maintained in general accordance with this consent.</p> <p>This condition does not prohibit the planting of additional trees or shrubs subject that they are native species endemic to the immediate locality.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>This condition also acknowledges that development consent is not required to plant vegetation and that over time additional vegetation may be planted to replace vegetation or enhance the amenity of the locality.</li> <li>Owners must have regard to the amenity impact of trees upon the site and neighbouring land.</li> </ul> <p><b>Condition Reason:</b> To ensure that the landscaping design intent is not eroded over time by the removal of landscaping or inappropriate exotic planting. Standard Condition H.25</p>
H. 5.	<p><b>Ongoing Maintenance of the On-Site Retention System</b></p> <p>During the occupation and ongoing use, in accordance with this condition and any positive covenant, the person with the benefit of this consent must:</p> <ol style="list-style-type: none"> <li>Permit stormwater to be retained and reused by the system;</li> <li>Keep the system clean and free of silt rubbish and debris,</li> <li>Maintain renew and repair as reasonably required from time to time the whole or part of the system so that it functions in a safe and efficient manner.</li> <li>Carry out the matters referred to in paragraphs (b) and (c) at the Owners expense.</li> <li>Not make any alterations to the system or elements thereof without prior consent in writing of the Council and not interfere with the system or by its act or omission cause it to be interfered with so that it does not function or operate properly.</li> </ol>

	<p>f) Permit the Council or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant.</p> <p>g) Comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time stated in the notice.</p> <p>h) Where the Owner fails to comply with the Owner's obligations under this covenant, permit the Council or its agents at all times and on reasonable notice at the Owner's cost to enter the land with equipment, machinery or otherwise to carry out the works required by those obligations.</p> <p>The owner:</p> <p>a) Indemnifies the Council from and against all claims, demands, suits, proceedings or actions in respect of any injury, damage, loss, cost, or liability (Claims) that may be sustained, suffered, or made against the Council arising in connection with the performance of the Owner's obligations under this covenant except if, and to the extent that, the Claim arises because of the Council's negligence or default; and</p> <p>b) releases the Council from any Claim it may have against the Council arising in connection with the performance of the Owner's obligations under this covenant except if, and to the extent that, the Claim arises because of the Council's negligence or default.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>This condition is supplementary to the owner(s) obligations and Council's rights under any positive covenant.</li> </ul> <p><b>Condition Reason:</b> To ensure that owners are aware of maintenance requirements for their stormwater systems.</p>
<p><b>H. 6.</b></p>	<p><b>Swimming and Spa Pools – Maintenance</b></p> <p>During the occupation and ongoing use, swimming and spa pools must be maintained:</p> <p>a) in compliance with the Swimming Pools Act 1992 and the Building Code of Australia with regard to the provision of child-resistant barriers and resuscitation signs,</p> <p>b) in compliance with the NSW Health "Public Swimming Pools and Spa Pools Advisory Document" in force at that time. Private pools are encouraged to comply with the same standards as applicable,</p> <p>c) in compliance with AS 1926 Swimming pool safety - Water recirculation and filtration systems,</p> <p>d) with backwash being discharged to the sewer in compliance with AS/NZS 3500, and</p> <p>e) with a timer that limits the recirculation and filtration systems operation such that it does not emit noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):</p> <ul style="list-style-type: none"> <li>before 8 am or after 8 pm on any Sunday or public holiday, or</li> <li>before 7 am or after 8 pm on any other day.</li> </ul> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>Child-resistant barriers, resuscitation signs, recirculation and filtration systems and controls systems require regular maintenance to ensure that life safety, health and amenity standards are maintained.</li> <li>The NSW Health public swimming pools and spa pools guidelines are available at <a href="http://www.health.nsw.gov.au">www.health.nsw.gov.au</a></li> </ul>

	<b>Condition Reason:</b> To ensure public health and safety.
<b>H. 7.</b>	<b>Outdoor Lighting – Residential</b>
	During the occupation and ongoing use, outdoor lighting must comply with AS/NZS 4282: Control of the obtrusive effects of outdoor lighting. The maximum luminous intensity from each luminare and threshold limits must not exceed the level 1 control relevant under tables in AS/NZS 4282.
	<b>Condition Reason:</b> To protect the amenity of neighbours and limit the obtrusive effects of outdoor lighting.

## SUBDIVISION WORK

### I. BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

Nil.

### J. BEFORE SUBDIVISION WORK COMMENCES

Nil.

### K. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

Nil.

## LAND SUBDIVISION

### L. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE







Nil.

## STRATA SUBDIVISION

### M. BEFORE ISSUE OF A STRATA CERTIFICATE

Nil.

## Attachments

1. Architectural Plans, Landscape Plan and Survey Plan [↓](#) 
2. Clause 4.6 Written Request - Height [↓](#) 
3. Development Engineering Referral [↓](#) 
4. Trees and Landscaping Referral [↓](#) 
5. Heritage Referral [↓](#) 
6. Drainage Referral [↓](#) 





DA SUBMISSION -  
ALTERATIONS AND ADDITIONS TO  
"79 VICTORIA ROAD"

79 VICTORIA ROAD,  
BELLEVUE HILL, NSW, 2023

RESIDENCE FOR MR. JAMES MURPHY AND MS. MARISSA FREUND

DATE - 29/08/2023  
(Revised - 28/02/2024)

DRAWING REGISTER			
Sheet Number	Description	Drawn By	Scale
DA-001	COVER SHEET	AP	NTS
DA-002	FINISHES SCHEDULE	AP	NTS
DA-100	EXISTING SURVEY	AS INDICATED	AS INDICATED
DA-101	LOCALITY & CONTEXT PLAN	AP	NTS
DA-102	NEIGHBOUR NOTIFICATION PLAN	AP	NTS
DA-103	PROPOSED SITE PLAN	AP	1:200 @ A1
DA-104	PROPOSED ROOF PLAN	AP	1:100 @ A1
DA-105	SITE ANALYSIS PLAN	AP	1:100 @ A1
DA-106	PROPOSED LOWER GROUND LEVEL	AP	1:100 @ A1
DA-107	PROPOSED GROUND FLOOR PLAN	AP	1:100 @ A1
DA-108	PROPOSED FIRST FLOOR	AP	1:100 @ A1
DA-109	PROPOSED ATTIC LEVEL	AP	1:100 @ A1
DA-200	WEST & EAST ELEVATIONS	AP	1:100 @ A1
DA-201	NORTH & SOUTH ELEVATIONS	AP	1:100 @ A1
DA-202	SECTIONS AA AND BB	AP	1:100 @ A1
DA-300	PHOTOMONTAGE	AP	NTS
DA-500	AREA CALCULATIONS	AP	AS INDICATED
DA-600	SHADOW DIAGRAMS - 9 AM	AP	1:250 @ A1
DA-601	SHADOW DIAGRAMS - 12 PM	AP	1:250 @ A1
DA-602	SHADOW DIAGRAMS - 3 PM	AP	1:250 @ A1

M. J. S. A  
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IN ASSOCIATION WITH

MS  
MICHAEL SUTTOR  
ARCHITECTS

252 BRONTE ROAD  
WAVERLEY 2024 NSW AUSTRALIA

DA SUBMISSION

AMENDMENTS			North Point and Scale	<div>Architects</div> <div><p><i>Suite 205, 24 Raywater Road, Potts Point Sydney, NSW 2011</i></p><p>ph: +61 422 742 373</p><p>www.mj.suttie-architects.com.au</p><p>Registered Architect: Michael J. Suttie</p><p>NSW Architect's Registration No. 9936</p></div> <div>In association with</div> <div><p><b>MICHAEL SUTTIE ARCHITECTS</b></p><p>252 BRONTE ROAD</p><p>WAVERLEY 2024 NSW AUSTRALIA</p></div>	Notes	Project				Drawing Title
How	Date	Description				RESIDENCE FOR JAMES MURPHY AND MARISSA FREUND		COVER SHEET		
01	25/11/23	DA SUBMISSION								
02	06/03/24	ADDITIONAL INFORMATION AS PER STOP THE CLOCK LETTER								
03	06/03/24	ISSUED AS PER THE COUNCIL'S FEEDBACK								
			</							



EXTERNAL MATERIAL FINISHES SCHEDULE



BLACK STEEL-FRAMED WINDOWS



BEIGE RENDER FINISH TO EXTERNAL GROUND AND FIRST FLOOR WALLS



EXTERNAL STONE PAVERS



WROUGHT IRON (BLACK PAINT FINISH) BALUSTRADES



SANDSTONE ASHLAR BLOCKS TO EXTERNAL LOWER GROUND FLOOR FACADE



CANVAS AWNINGS



ZINC METAL ROOF

DA SUBMISSION

AMENDMENTS			North Point and Scale	Architects <div><p>Suite 205, 24 Baywater Road, Point Point Sydney, NSW 2011</p><p>ph: +61 422 742 373 e: www.mjsuttiearchitects.com.au</p><p>Registered Architect - Michael J. Suttie NSW Architect's Registration No. 9936</p></div>	Notes	Project  RESIDENCE FOR JAMES MURPHY AND MARISSA FREUND	Drawing Title			
Rev	Date	Description					FINISHES SCHEDULE			
01	25/11/23	DA SUBMISSION								
02	06/03/24	ADDITIONAL INFORMATION AS PER STOP THE CLOCK LETTER								
03	06/03/24	ISSUED AS PER THE COUNCIL'S FEEDBACK								
				<div><p>252 BRONTE ROAD WAVERLEY 2024 NSW AUSTRALIA</p></div>	Address 79 VICTORIA ROAD BELLEVUE HILL		Date 29/08/2023	Scale @ A1	Drawn By AP	
			Drawing Stage DA SUBMISSION		Drawing No. DA-002		Rev 03			

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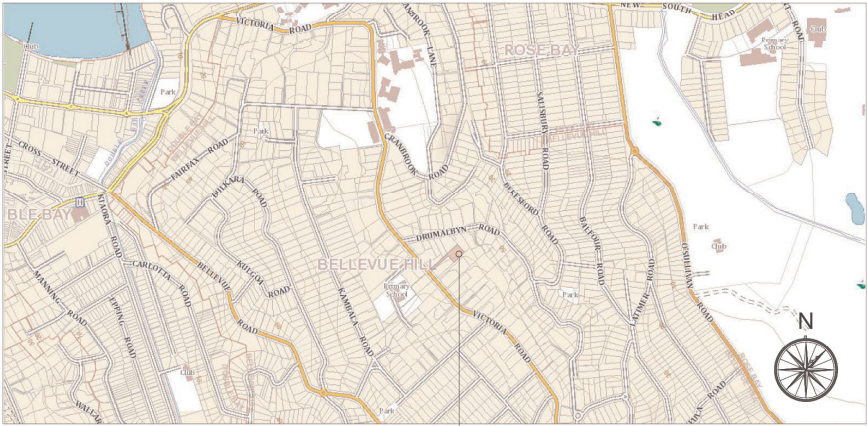
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1 LOCALITY PLAN  
- N.T.S.

PROPOSED SITE  
79 VICTORIA ROAD  
BELLEVUE HILL




2 CONTEXT PLAN  
- N.T.S.


PROPOSED SITE  
79 VICTORIA ROAD  
BELLEVUE HILL

DA SUBMISSION

AMENDMENTS		
Rev	Date	Description
01	25/11/23	DA SUBMISSION
02	06/03/24	ADDITIONAL INFORMATION AS PER STOP THE CLOCK LETTER
03	06/03/24	ISSUED AS PER THE COUNCIL'S FEEDBACK

North Point and Scale

  
North for Drawings

  
VISUAL SCALE 1:100 @ A1

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NSW Architect's Registration No. 9936

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ARCHITECTS  
252 BRONTE ROAD  
WAVERLEY 2024 NSW AUSTRALIA

Notes	

Project RESIDENCE FOR JAMES MURPHY AND MARISSA FREUND		Drawing Title LOCALITY & CONTEXT PLAN	
Address 79 VICTORIA ROAD BELLEVUE HILL		Date 29/08/2023	Scale @ A1 NTS
Drawing Stage DA SUBMISSION		Drawing No. DA-101	Drawn By AP
		Rev 03	

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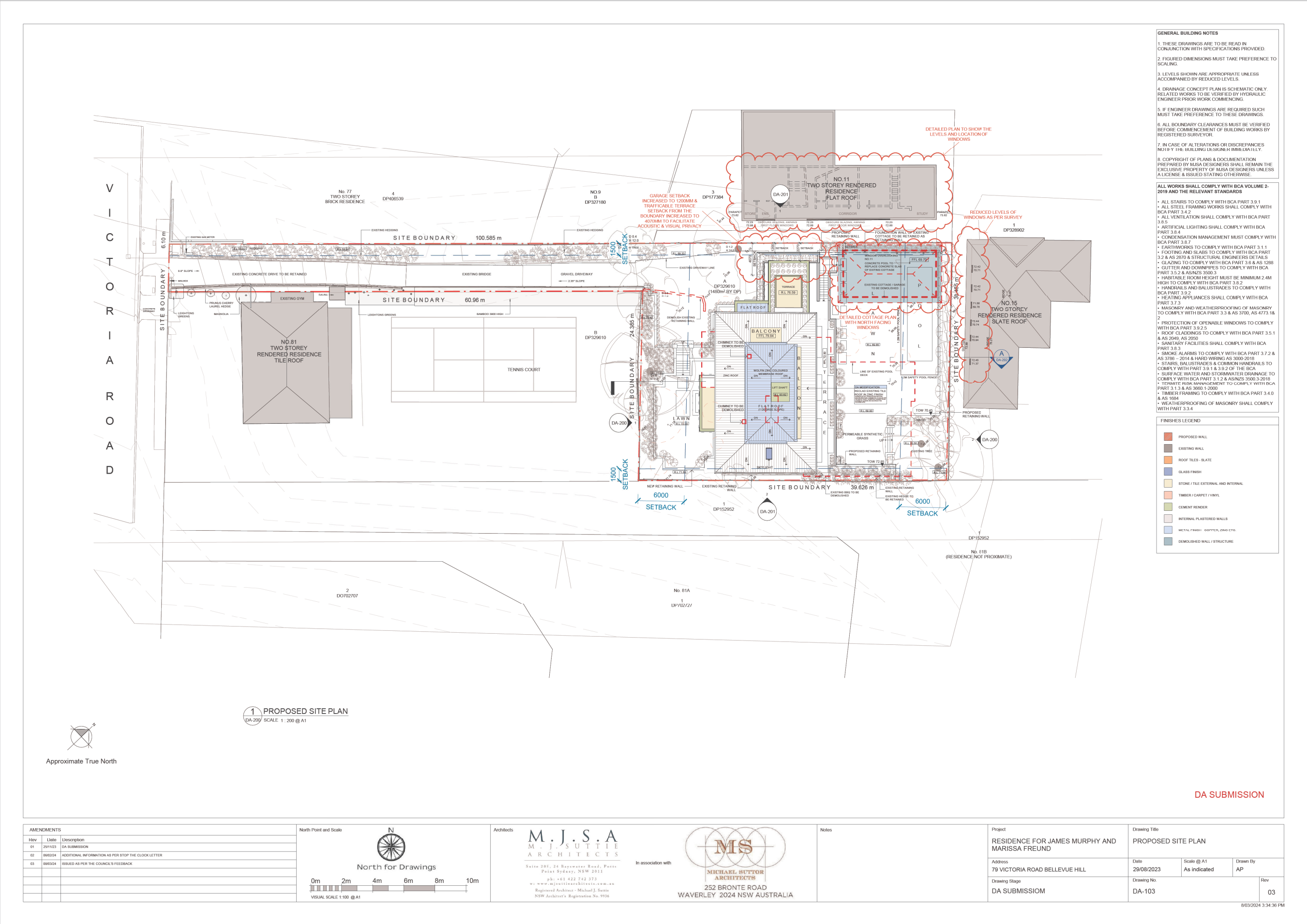
1 NEIGHBOUR NOTIFICATION PLAN  
DA-200 SCALE NTS @ A1

PROPOSED SITE  
79 VICTORIA ROAD  
BELLEVUE HILL

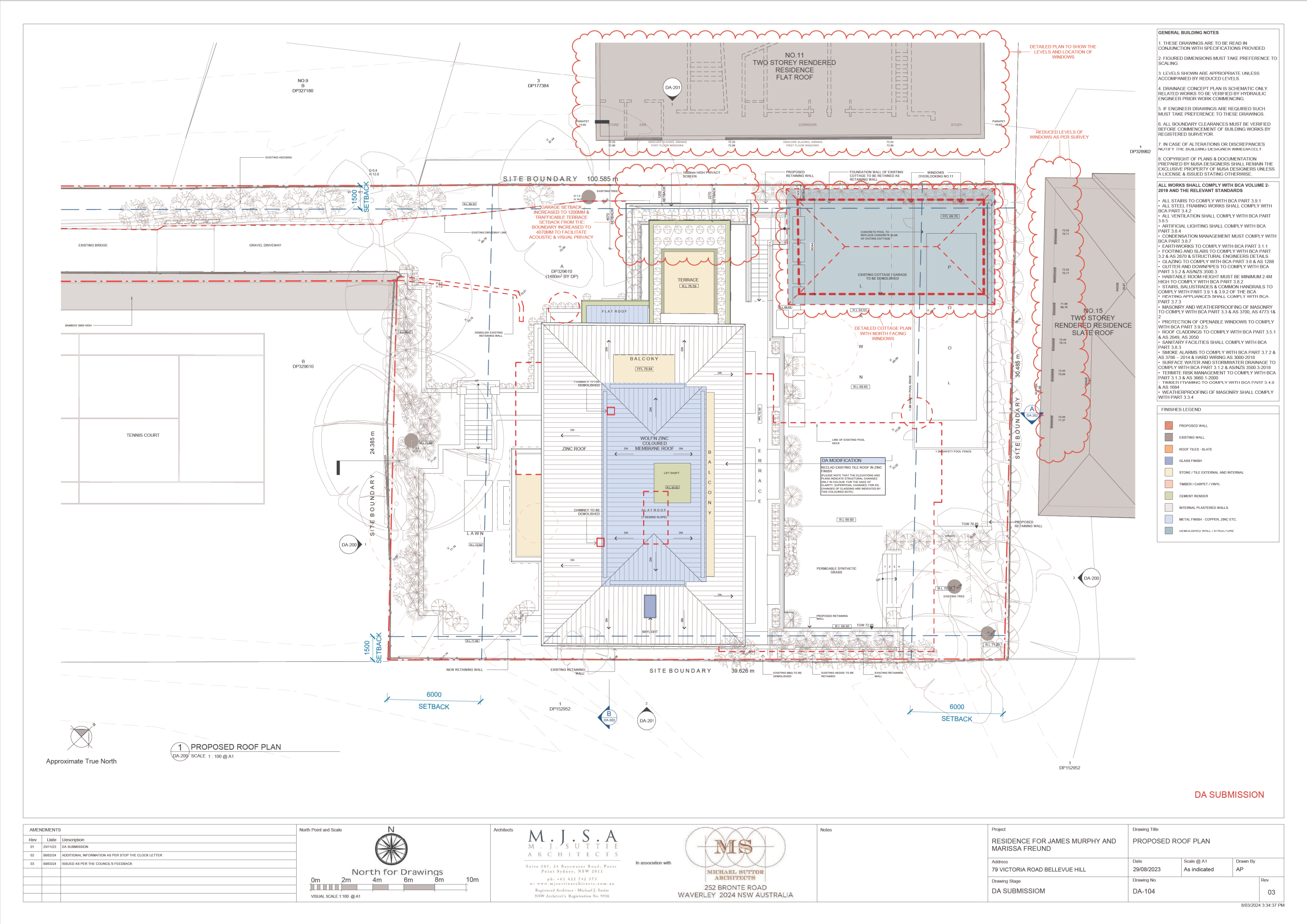
DA SUBMISSION

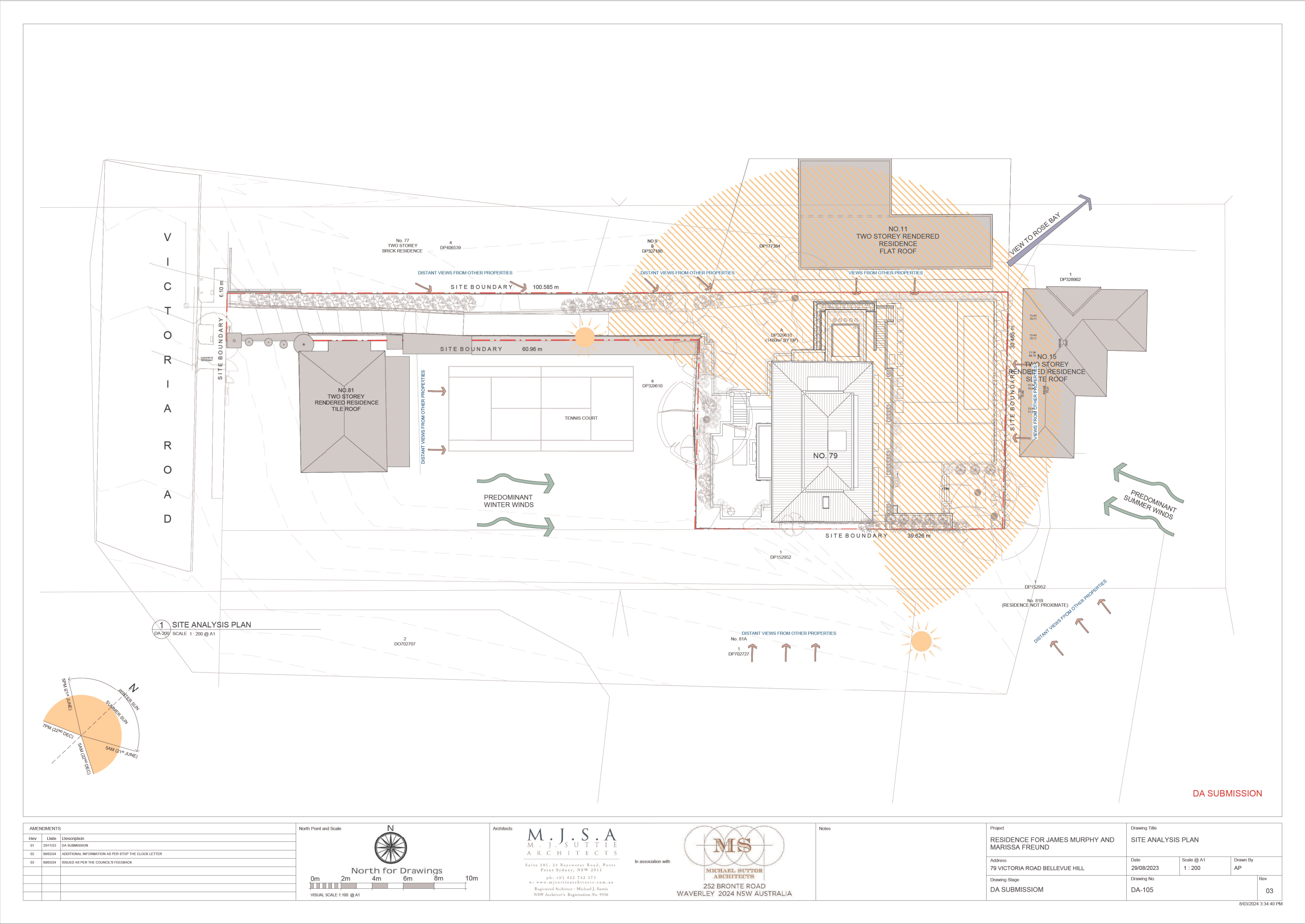
AMENDMENTS			North Point and Scale		Architects		In association with		Notes		Project		Drawing Title		
How	Date	Description									RESIDENCE FOR JAMES MURPHY AND MARISSA FREUND		NEIGHBOUR NOTIFICATION PLAN		
01	25/11/23	DA SUBMISSION			Suite 205, 24 Baywater Road, Point Point Sydney, NSW 2011						Address 79 VICTORIA ROAD BELLEVUE HILL		Date 29/08/2023	Scale @ A1 NTS	Drawn By AP
02	06/03/24	ADDITIONAL INFORMATION AS PER STOP THE CLOCK LETTER			ph: +61 422 742 373 www.mjsuttiearchitects.com.au						Drawing Stage DA SUBMISSION		Drawing No. DA-102		Rev 03
03	06/03/24	ISSUED AS PER THE COUNCIL'S FEEDBACK			Registered Architect - Michael J. Suttie NSW Architect's Registration No. 9936										
			VISUAL SCALE 1:100 @ A1												

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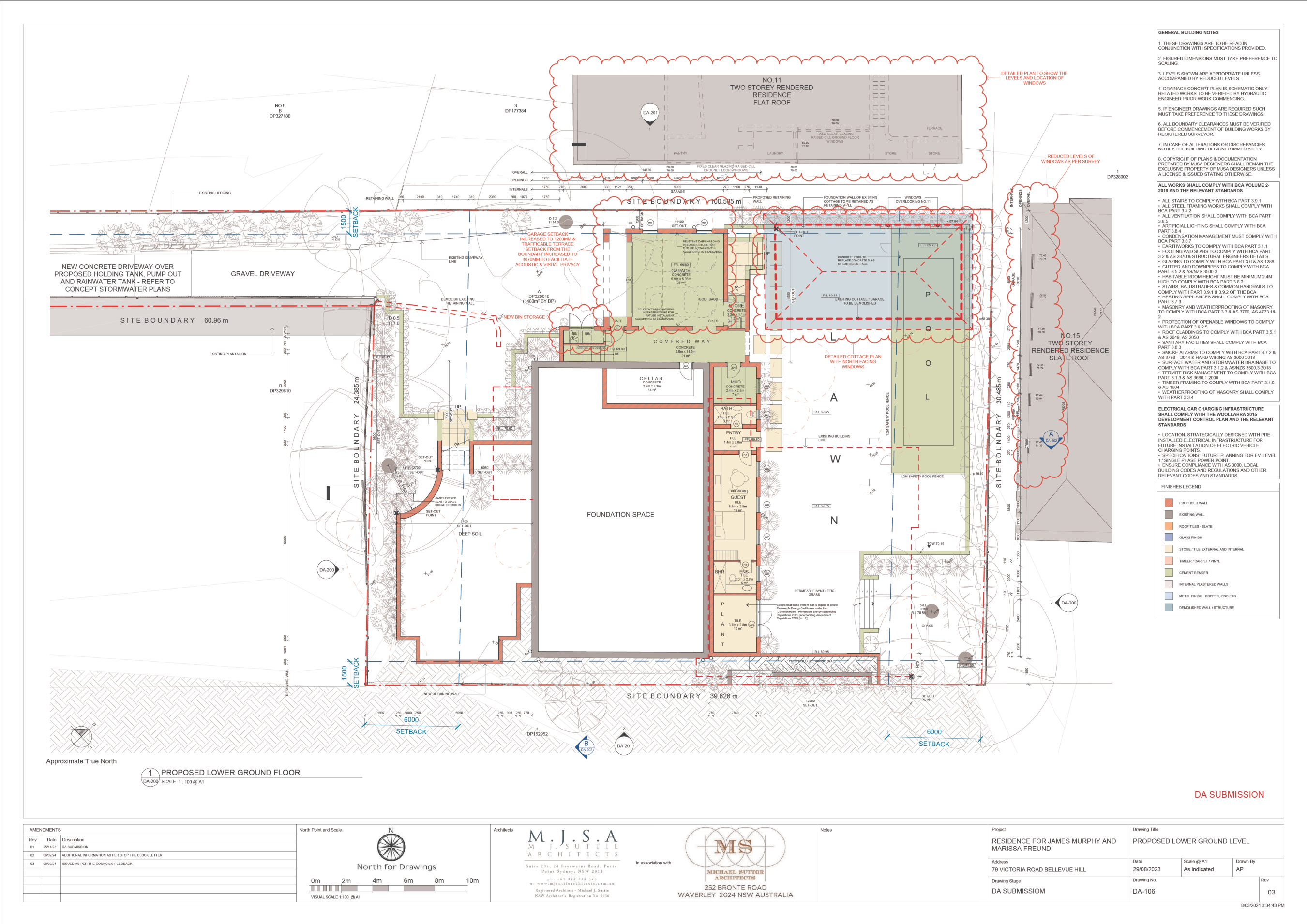


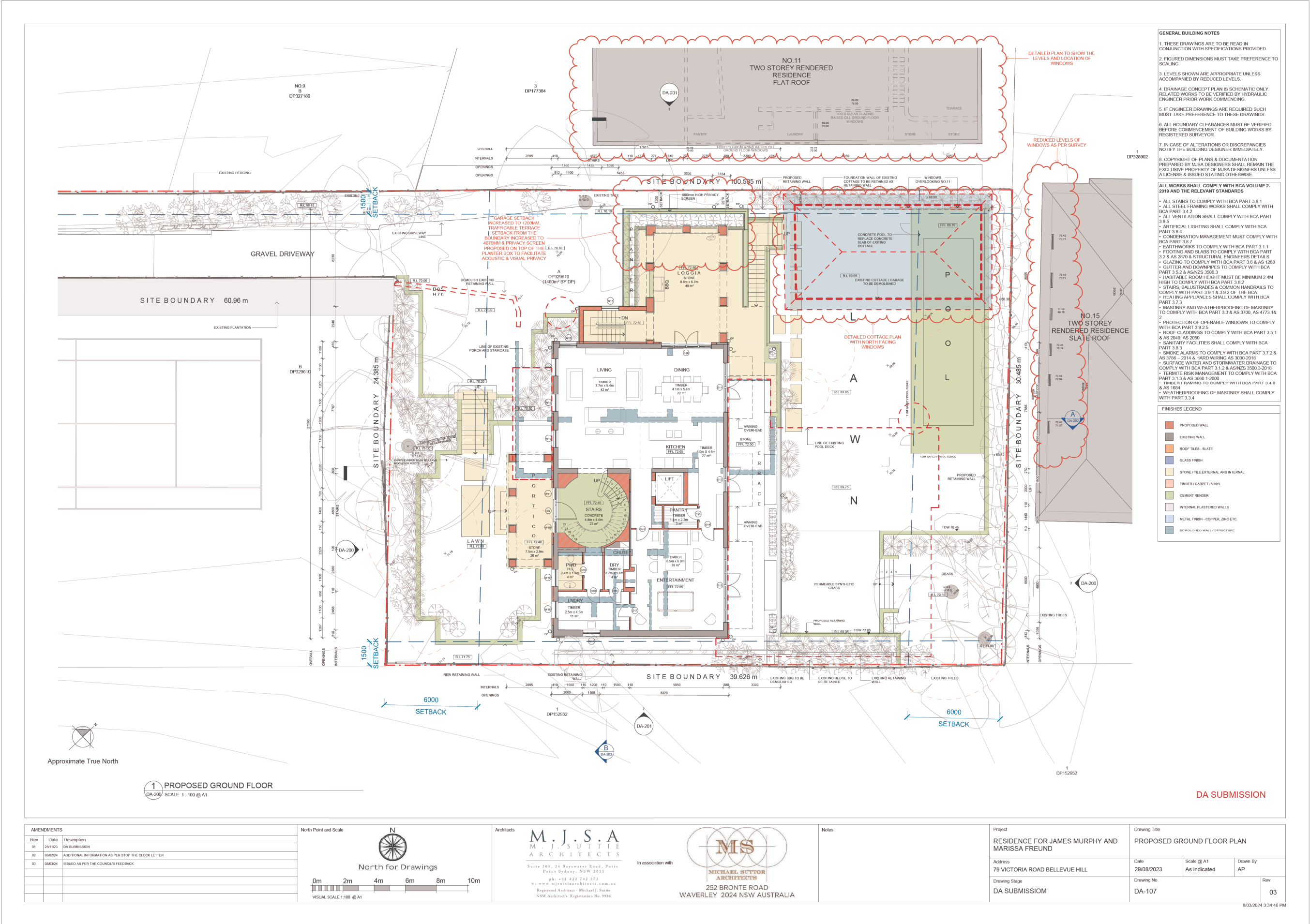




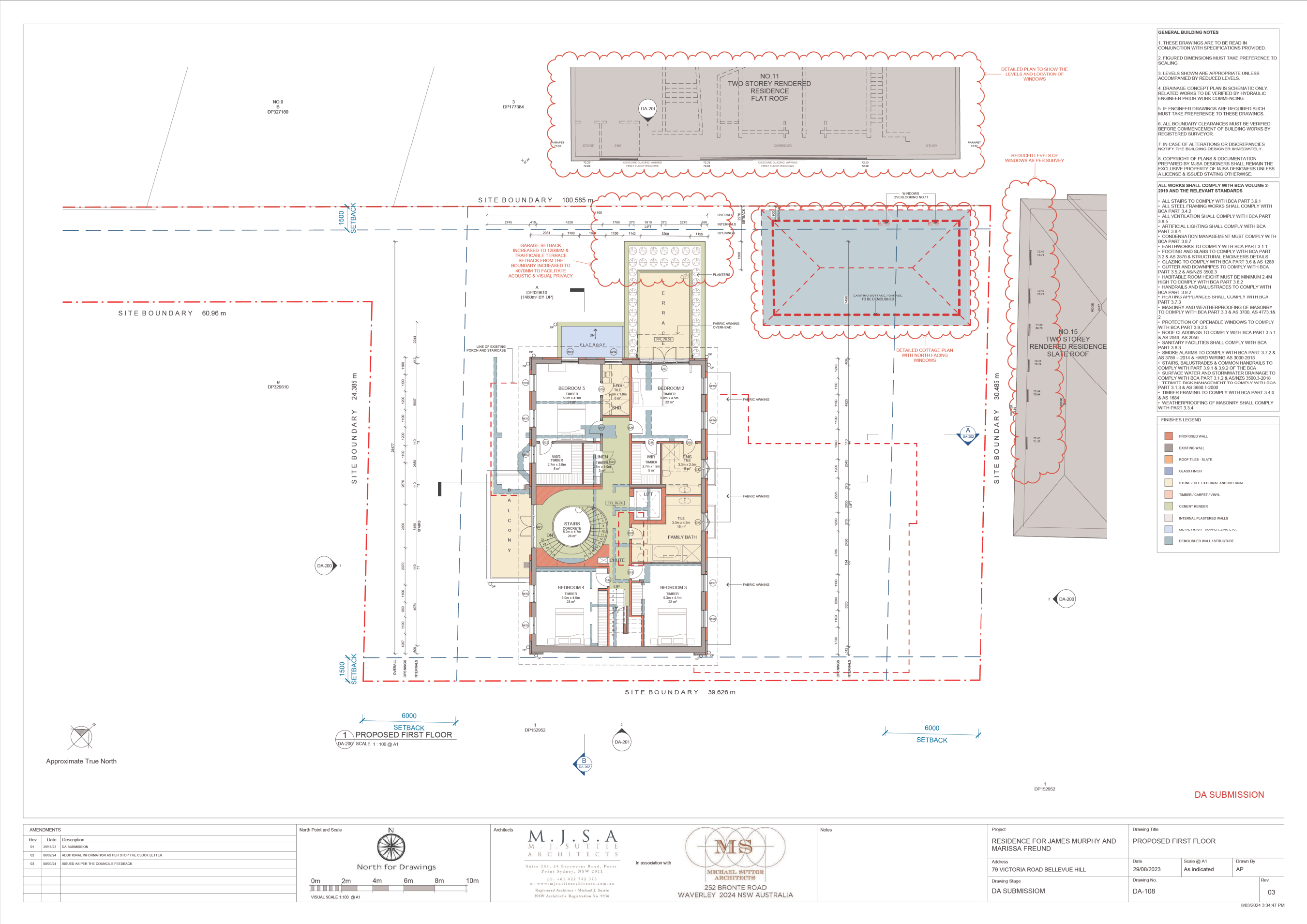


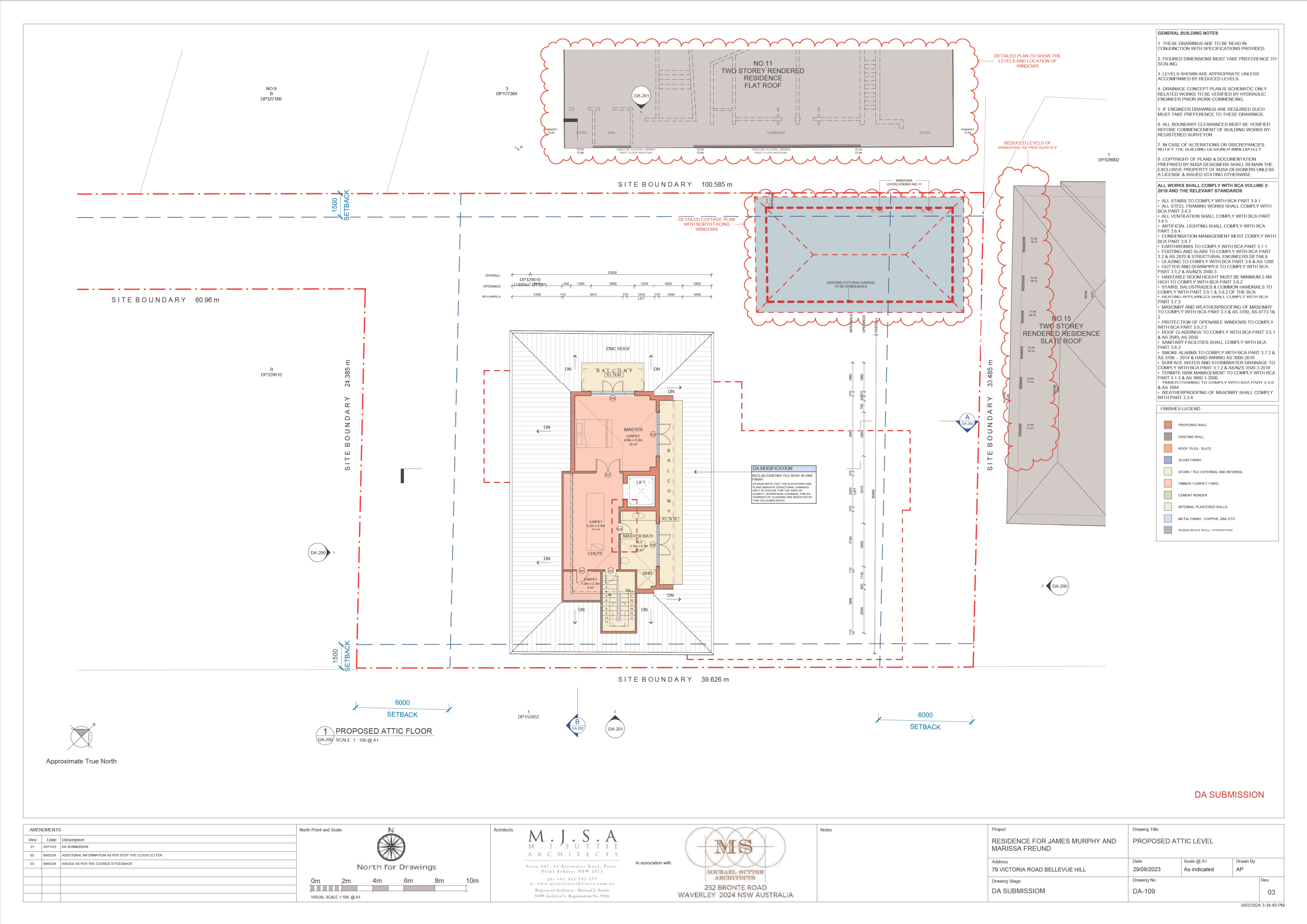










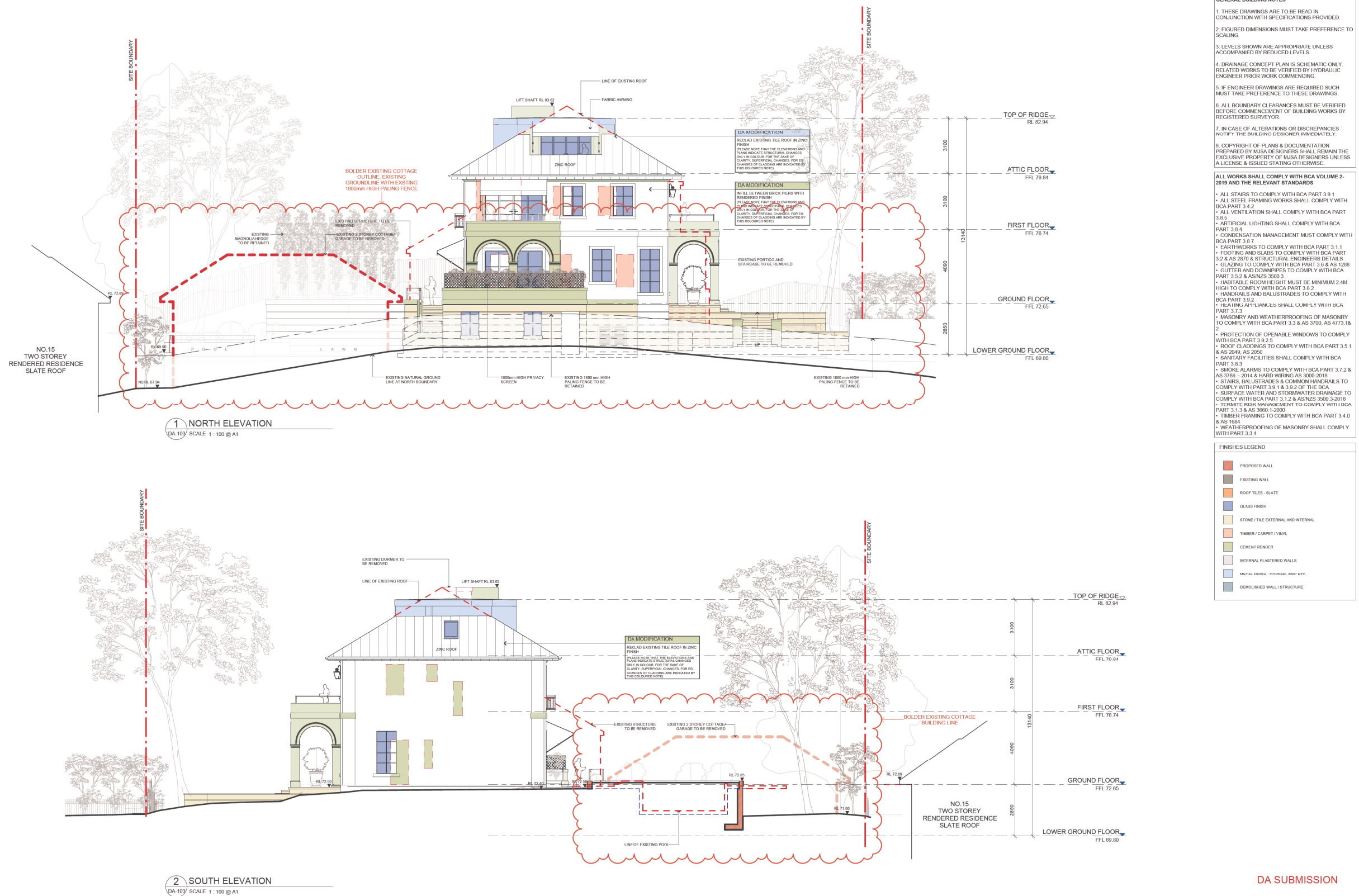




AMENDMENTS			North Point and Scale	Architects	Notes	Project	Drawing Title			
Rev	Date	Description					WEST & EAST ELEVATIONS			
01	25/11/23	DA SUBMISSION		 Suite 205, 24 Baywater Road, Point Point Sydney, NSW 2011 ph: +61 422 742 372 e: www.mjsaarchitects.com.au Registered Architect - Michael J. Suttie NSW Architect's Registration No. 9936	 252 BRONTE ROAD WAVERLEY 2024 NSW AUSTRALIA	Residence for JAMES MURPHY and MARISSA FREUND	Address 79 VICTORIA ROAD BELLEVUE HILL	Date 29/08/2023	Scale @ A1 As indicated	Drawn By AP
02	08/03/24	ADDITIONAL INFORMATION AS PER STOP THE CLOCK LETTER								
03	08/03/24	ISSUED AS PER THE COUNCIL'S FEEDBACK								
						Drawing Stage DA SUBMISSION	Drawing No. DA-200			Rev 03

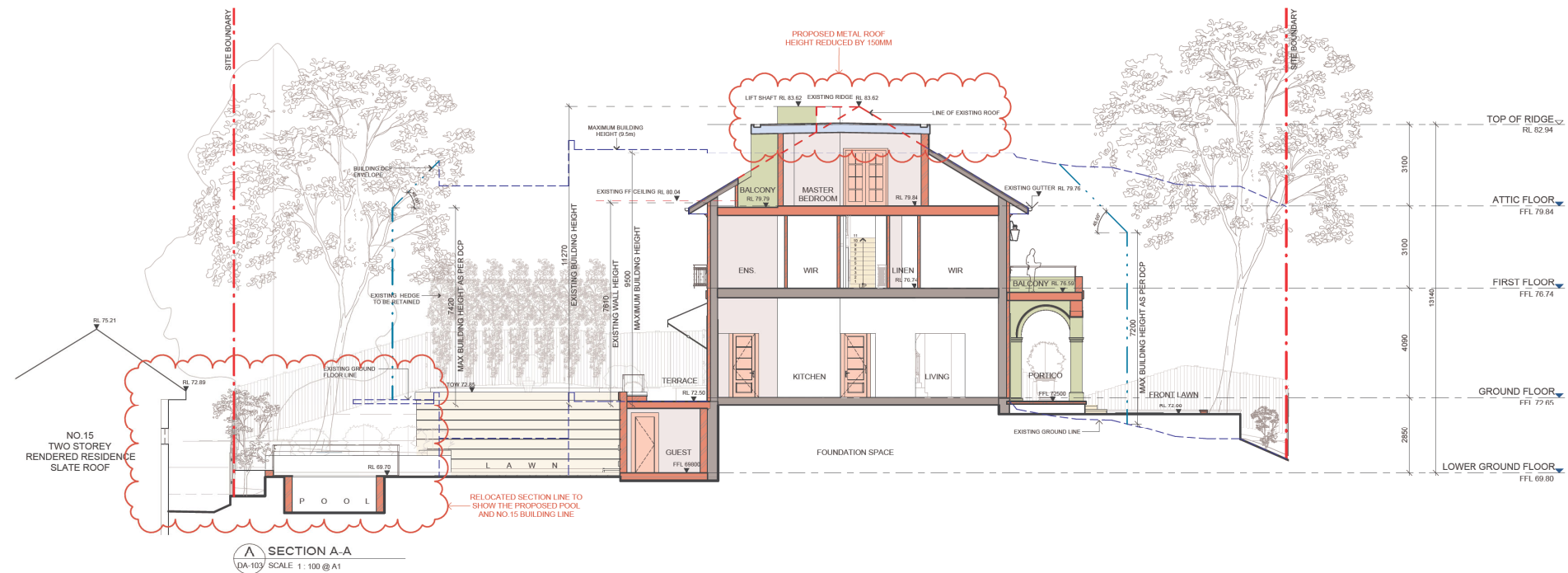
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AMENDMENTS			North Point and Scale		Architects		Notes		Project		Drawing Title	
Rev	Date	Description	 <p>North for Drawings</p>		 <p>In association with</p> 		<p>RESIDENCE FOR JAMES MURPHY AND MARISSA FREUND</p> <p>Address</p> <p>79 VICTORIA ROAD BELLEVUE HILL</p> <p>Drawing Stage</p> <p>DA SUBMISSION</p>		<p>Date</p> <p>29/08/2023</p> <p>Scale @ A1</p> <p>As indicated</p> <p>Drawing No</p> <p>DA-201</p> <p>Rev</p> <p>03</p>			
01	25/11/23	DA SUBMISSION										
02	06/02/24	ADDITIONAL INFORMATION AS PER STOP THE CLOCK LETTER										
03	06/03/24	ISSUED AS PER THE COUNCIL'S FEEDBACK										

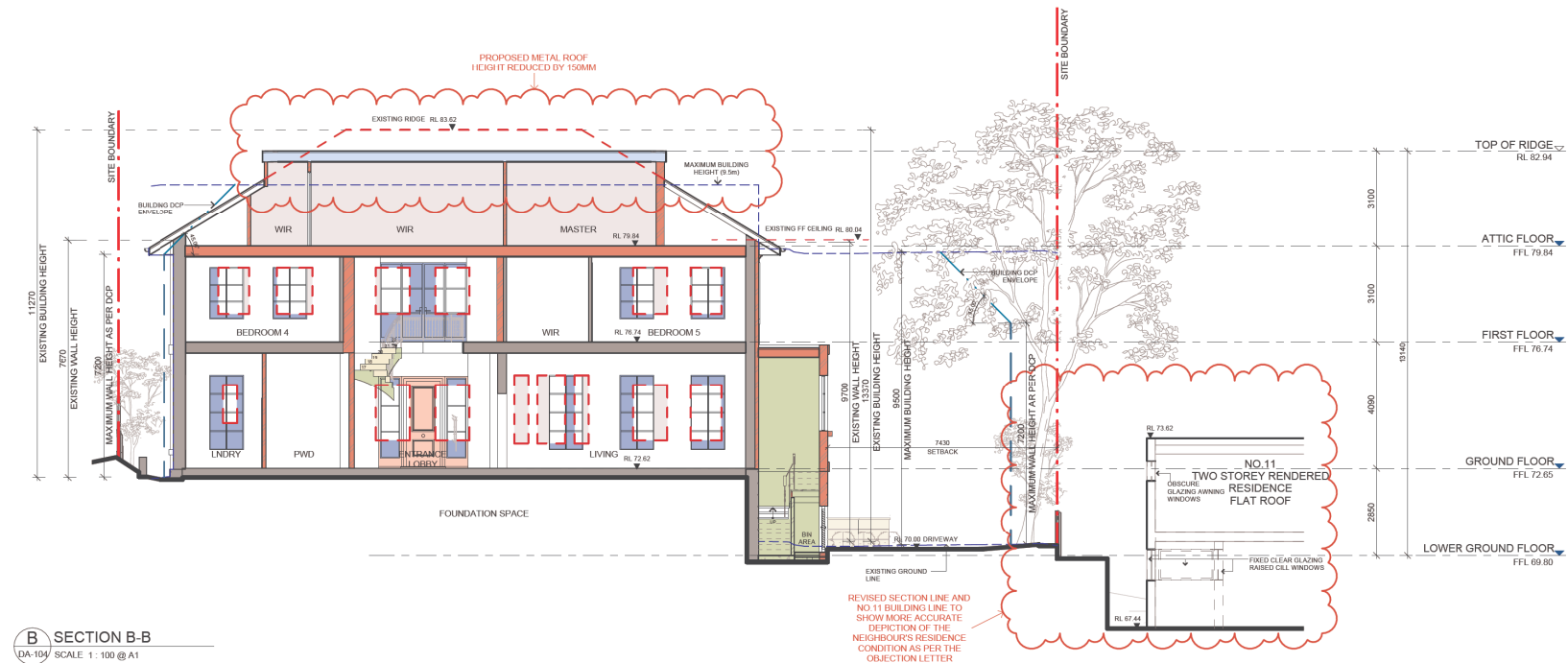




1. THESE DRAWINGS ARE TO BE READ IN CONJUNCTION WITH SPECIFICATIONS PROVIDED.
2. FIGURED DIMENSIONS SHALL TAKE PREFERENCE TO SCALING.
3. LEVELS SHOWN ARE APPROPRIATE UNLESS ACCOMPANIED BY REDUCED LEVELS.
4. DRAINAGE CONCEPT PLAN IS SCHEMATIC ONLY. RELATED WORKS TO BE VERIFIED BY HYDRAULIC ENGINEER PRIOR TO WORK COMMENCING.
5. IF ENGINEER DRAWINGS ARE REQUIRED SUCH BEFORE THE COMMENCEMENT OF THESE DRAWINGS.
6. ALL BOUNDARY CLEARANCES MUST BE VERIFIED BEFORE THE COMMENCEMENT OF BUILDING WORK BY REGISTERED SURVEYOR.
7. IN CASE OF ALTERATIONS OR DISCREPANCIES NOTIFY THE BUILDING DESIGNER IMMEDIATELY.
8. COPYRIGHT OF PLANS AND DOCUMENTATION PREPARED BY ALMA DESIGNERS SHALL REMAIN THE EXCLUSIVE PROPERTY OF ALMA DESIGNERS UNLESS A LICENSE IS ISSUED STATING OTHERWISE.

- ALL STAIRS TO COMPLY WITH BCA PART 3.9.1
- ALL STEEL FRAMING WORKS SHALL COMPLY WITH BCA PART 3.8.1
- ALL VENTILATION SHALL COMPLY WITH BCA PART 3.8.2
- ALL ARTIFICIAL LIGHTING SHALL COMPLY WITH BCA PART 3.8.4
- CONSERVATION MANAGEMENT MUST COMPLY WITH BCA PART 3.8.7
- EARTHWORKS TO COMPLY WITH BCA PART 3.1.1
- PROTECTED ROOFS TO COMPLY WITH BCA PART 3.1.2
- S.E. 26 & 2070 & STRUCTURAL ENGINEERS DETAILS S. 2070
- GUTTER AND DOWNPIPES TO COMPLY WITH BCA PART 3.5.2 & AS/NZS 3000
- MINIMUM ROOF HEIGHT MUST BE MINIMUM 2.4M HIGH TO COMPLY WITH BCA PART 3.8.2
- HANDRAILS AND BALUSTRADES TO COMPLY WITH BCA PART 3.9.2
- HEATING APPLIANCES SHALL COMPLY WITH BCA PART 3.1
- MASONRY AND WEATHERPROOFING OF MASONRY TO COMPLY WITH BCA PART 3.3 & AS 3700, AS 4773-1.8
- PROTECTION OF OPERABLE WINDOWS TO COMPLY WITH BCA PART 3.2.5
- ROOF CLADDINGS TO COMPLY WITH BCA PART 3.5.1 & AS 2040, AS 2045
- SANITARY FITTINGS SHALL COMPLY WITH BCA PART 3.8.3
- STAIRS TO COMPLY WITH BCA PART 3.7.2 & AS 3786 - 2.1 & 4 HARD WIRING AS 3000-2018
- STAIRS, BALUSTRADES & COMMON HANDRAILS TO COMPLY WITH BCA PART 3.9.1 & AS 3786-2.1
- SURFACE WATER AND STORMWATER DRAINAGE TO COMPLY WITH BCA PART 3.5.1 & AS 2040
- THERMAL MANAGEMENT TO COMPLY WITH BCA PART 3.1.3 & AS 3060-1:2000
- TIMBER FRAMING TO COMPLY WITH BCA PART 3.4.0 & AS 1654
- WEATHERPROOFING OF MASONRY SHALL COMPLY WITH PART 3.3.4

-  PROPOSED WALL
-  EXISTING WALL
-  ROOF TILES / SLATE
-  GLASS FINISH
-  STONE / TILE EXTERNAL AND INTERNAL
-  TIMBER / CARPET / VINYL
-  CEMENT RENDER
-  INTERNAL PLASTERED WALLS
-  METAL FINISH - COPPER, ZINC ETC.
-  DEMOLISHED WALL / STRUCTURE



DA SUBMISSION

AMENDMENTS		
Item	Date	Description
01	25/1/23	DA SUBMISSION
02	08/03/24	ADDITIONAL INFORMATION AS PER STOP THE CLOCK LETTER
03	08/03/24	ISSUED AS PER THE COUNCIL'S FEEDBACK

North Point and Scale

0m 2m 4m 6m 8m 10m

VISUAL SCALE 1:100 @ A1

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In association with



**MICHAEL SUTTIE**  
ARCHITECTS

252 BRONTE ROAD  
WAVERTLEY 2024 NSW AUSTRALIA

Notes	
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Project	RESIDENCE FOR JAMES MURPHY AND MARISSA FREUND
Address	79 VICTORIA ROAD BELLEVUE HILL
Drawing Stage	DA SUBMISSION

Drawing Title			
SECTIONS AA AND BB			
Date	Scale @ A1	Drawn By	
29/08/2023	As indicated	AP	
Drawing No.			Rev
DA-202			03



VICTORIA ROAD SITE FRONTAGE - EXISTING

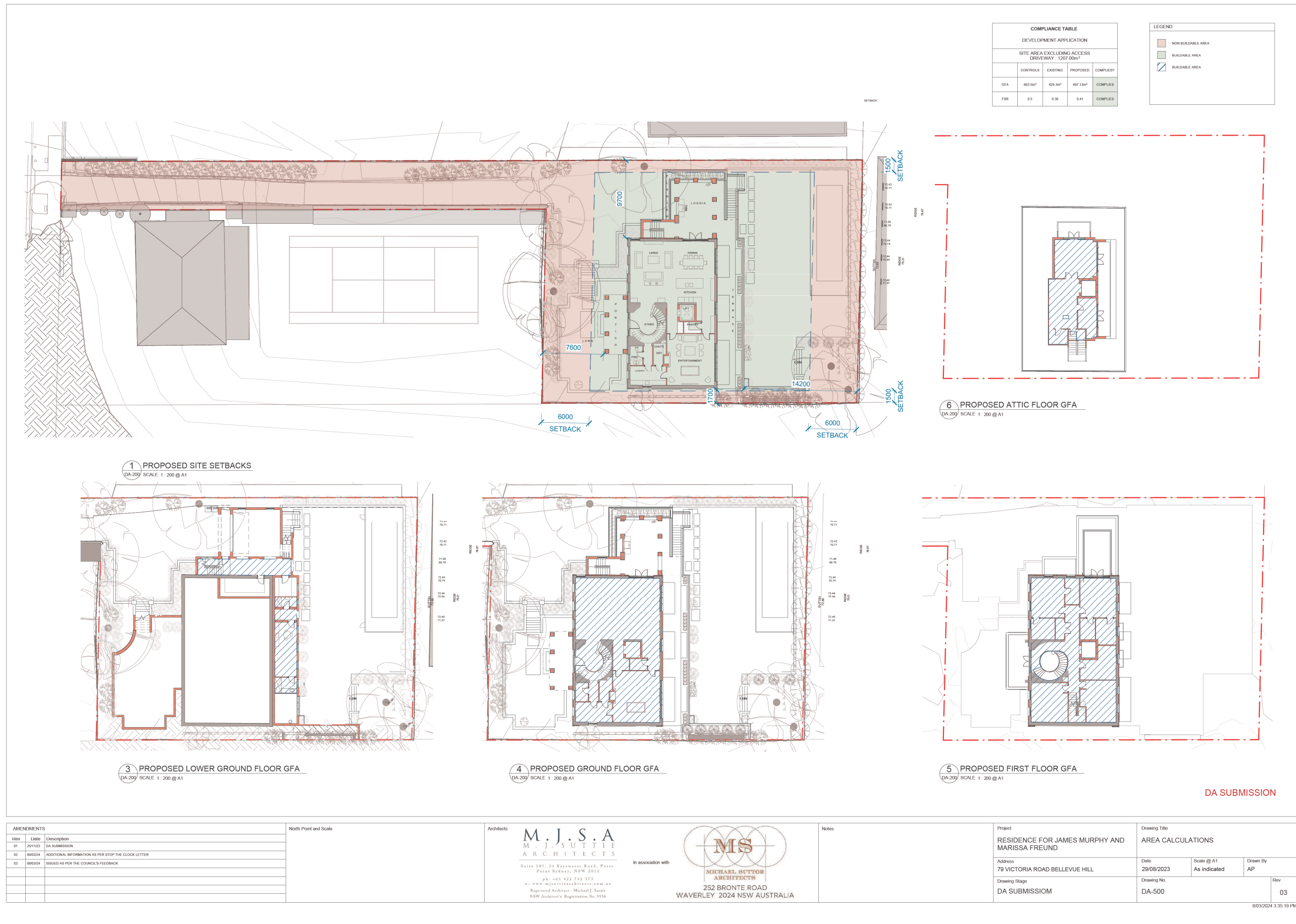


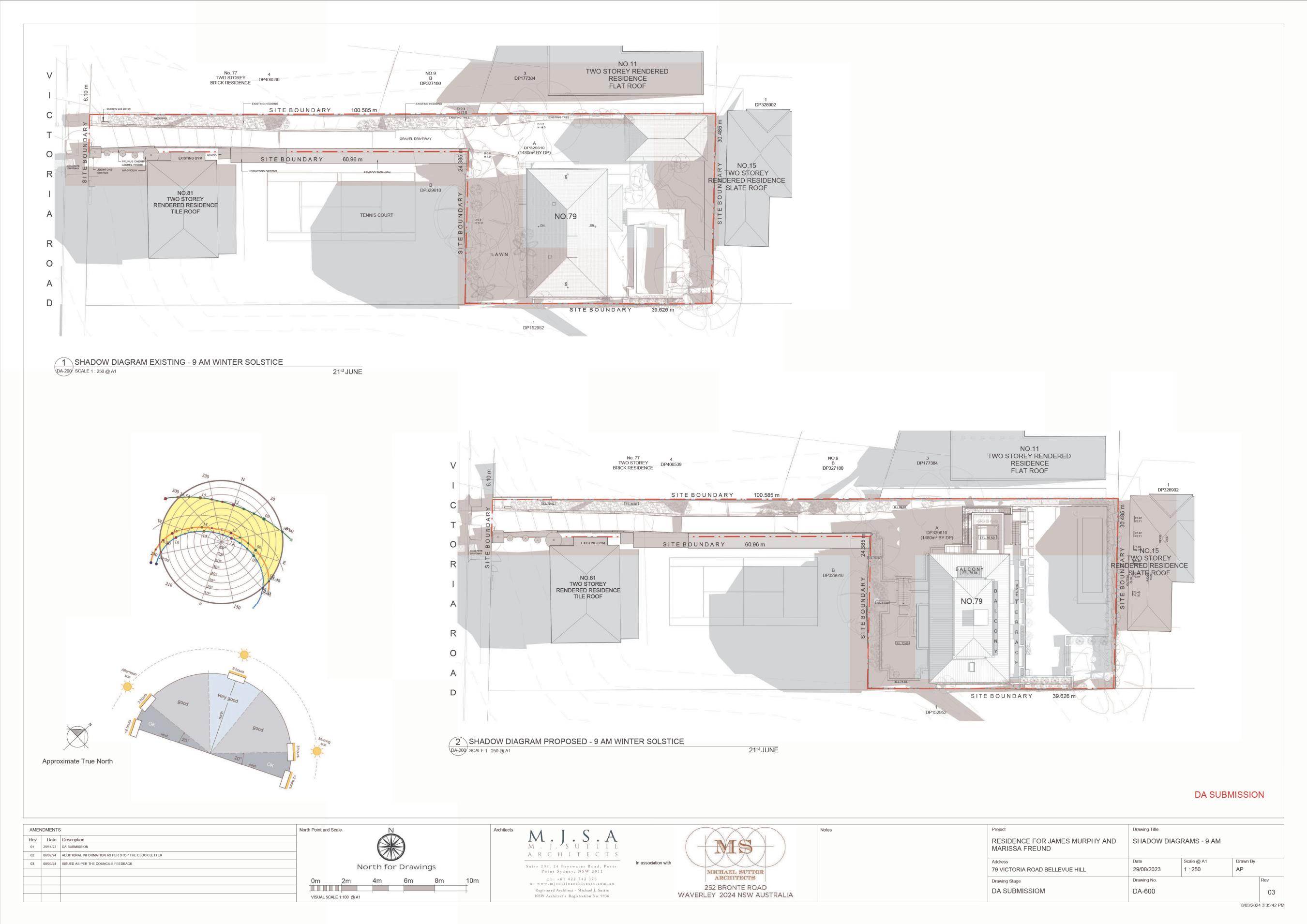
VICTORIA ROAD SITE FRONTAGE - PROPOSED

DA SUBMISSION

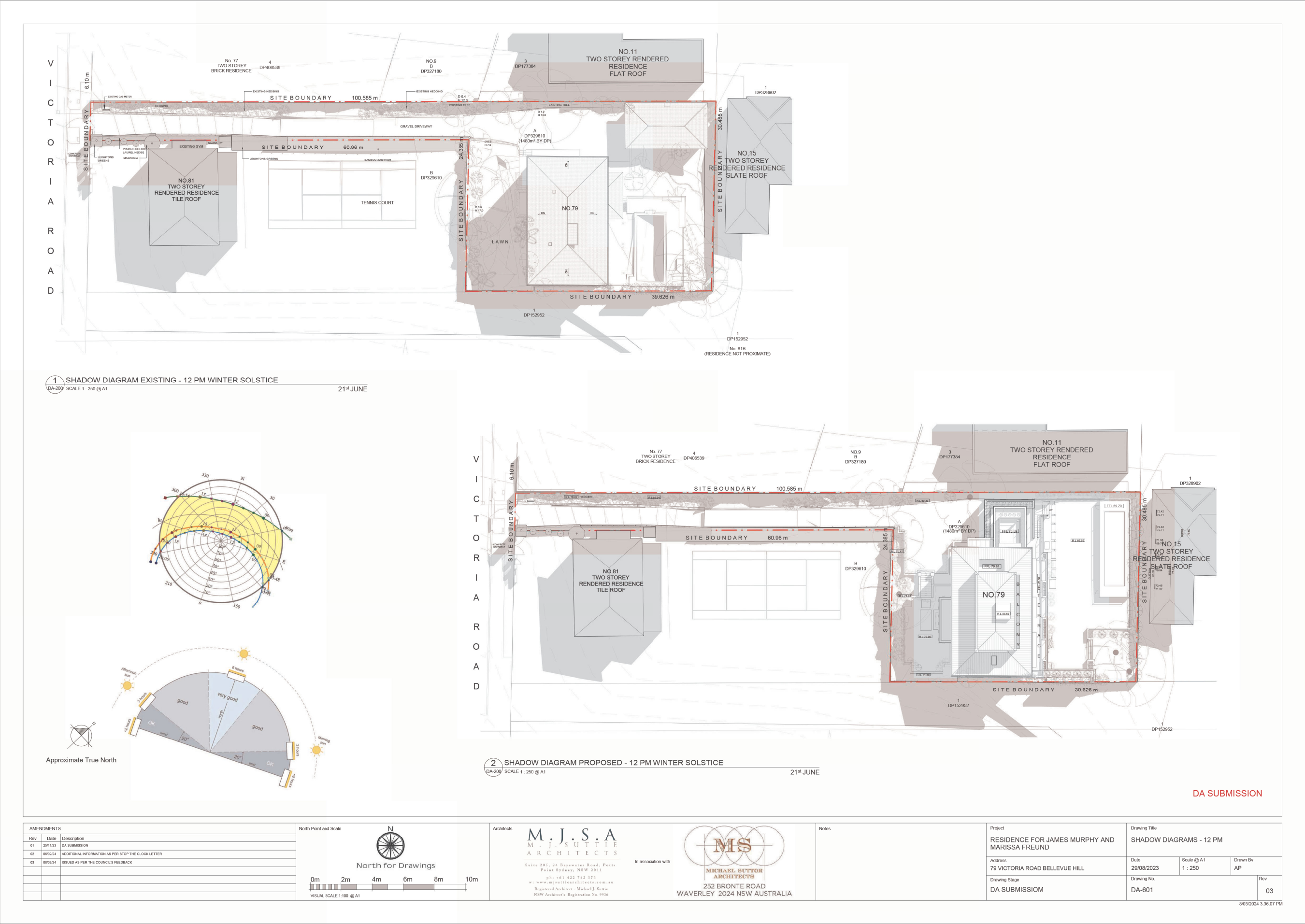
AMENDMENTS			North Point and Scale	<div>Architects</div> <div><div><div><div>M. J. S. A</div><div>M. J. SUTTIE</div><div>ARCHITECTS</div></div><div><div>Suite 205, 24 Baywater Road, Point Point Sydney, NSW 2011</div><div>ph: +61 422 742 373</div><div>w: www.mjsuttiearchitects.com.au</div></div></div><div>In association with</div><div><div><div><div>MS</div><div>MICHAEL SUTTOR</div><div>ARCHITECTS</div></div><div><div>252 BRONTE ROAD</div><div>WAVERLEY 2024 NSW AUSTRALIA</div></div></div></div></div>	Notes	Project		Drawing Title		
Rev	Date	Description				RESIDENCE FOR JAMES MURPHY AND MARISSA FREUND		PHOTOMONTAGE		
01	25/11/23	DA SUBMISSION								
02	06/03/24	ADDITIONAL INFORMATION AS PER STOP THE CLOCK LETTER								
03	06/03/24	ISSUED AS PER THE COUNCIL'S FEEDBACK								
				Address		Date	Scale @ A1	Drawn By		
				79 VICTORIA ROAD BELLEVUE HILL		29/08/2023		AP		
				Drawing Stage		Drawing No.		Rev		
				DA SUBMISSION		DA-300		03		
									8/03/2024 3:35:14 PM	

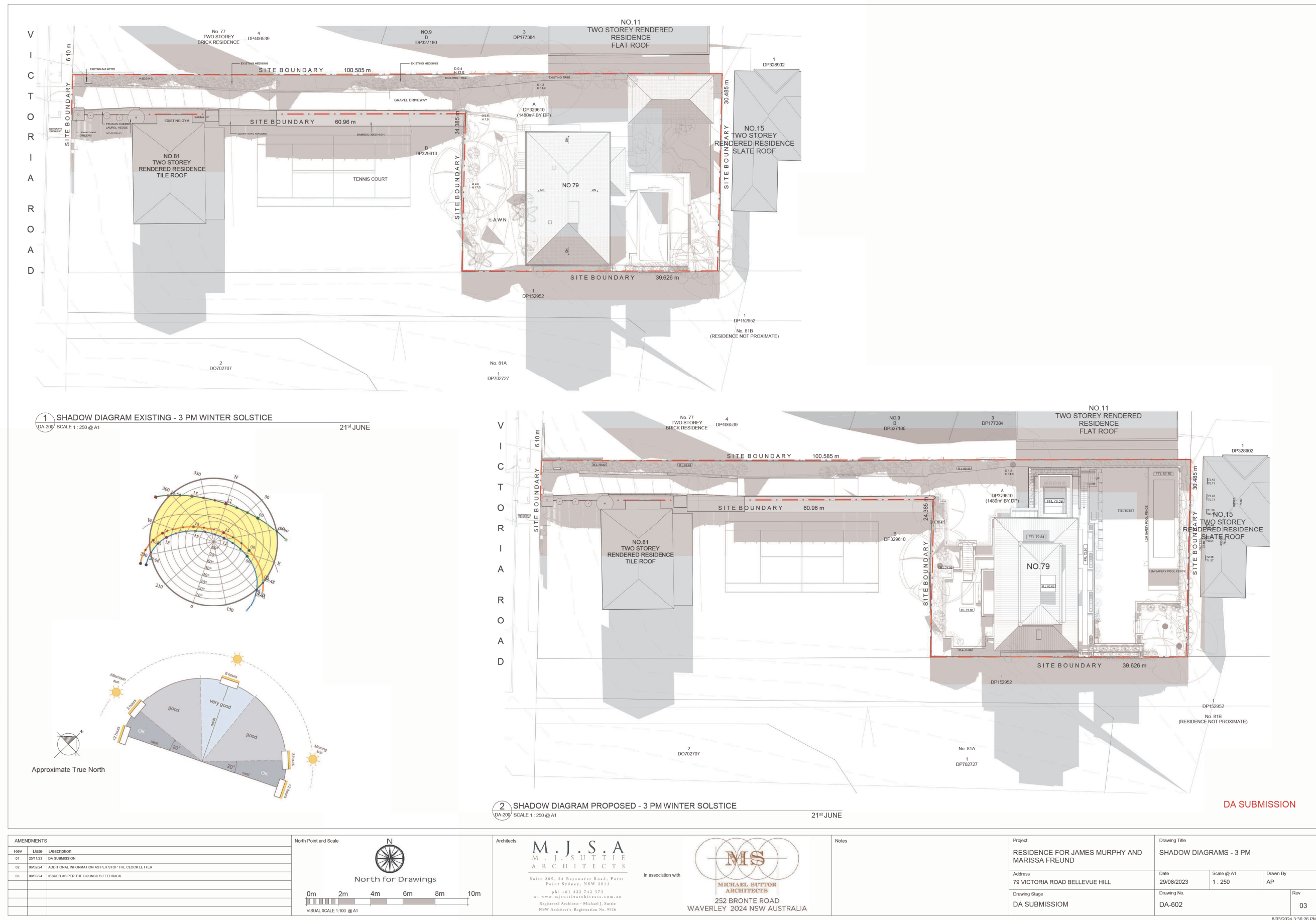




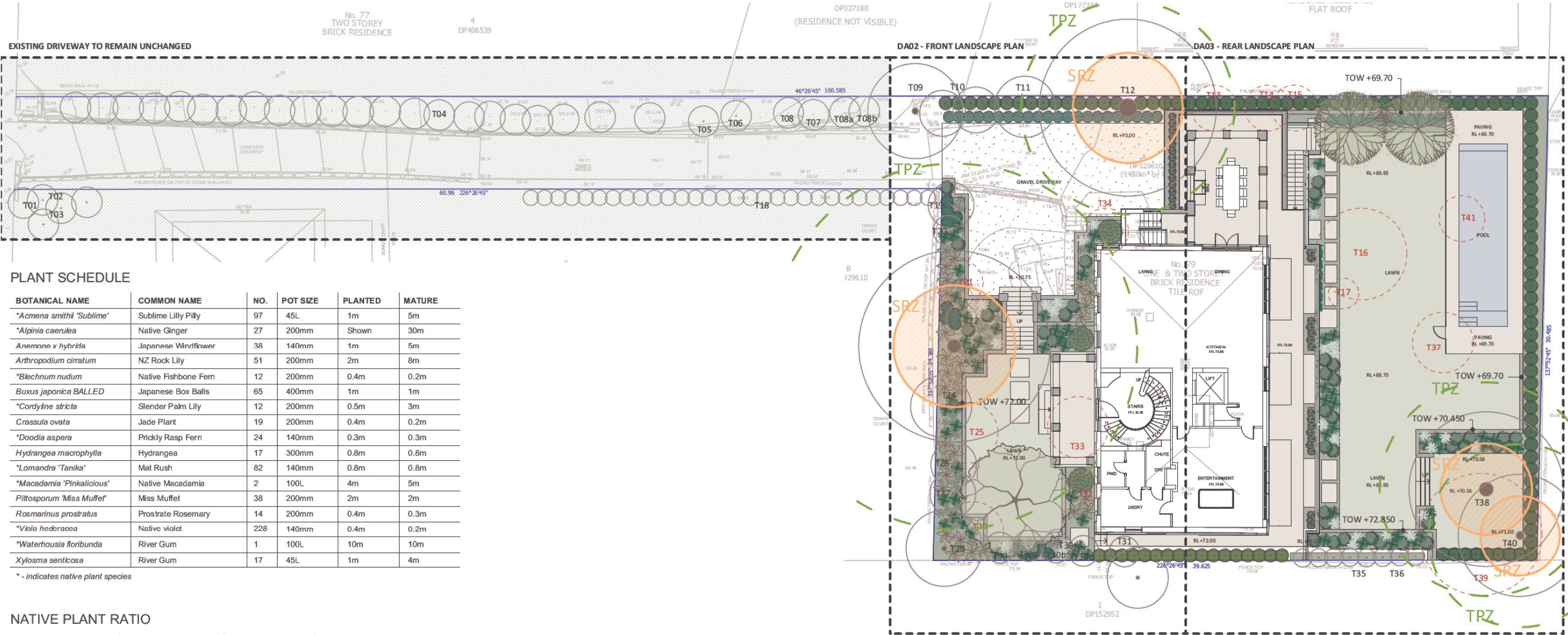













LANDSCAPE AREA CALCULATIONS

CONTROL.	PROPOSED.
<b>OVERALL LANDSCAPE AREA:</b> TOTAL SITE AREA = 1480 SQM MINIMUM 35% OF SITE = 518 SQM	<b>OVERALL DEEP SOIL LANDSCAPE AREA</b> = 653.50M² 44% COMPLIES
<b>FRONT LANDSCAPE AREA:</b> FRONT SETBACK AREA = 327.70 SQM MINIMUM 40% DEEP SOIL ZONE FORWARD OF THE BUILDING LINE = 131 SQM	<b>FRONT DEEP SOIL LANDSCAPE AREA</b> = 302.20M² 92% COMPLIES
<b>TREE CANOPY:</b> MINIMUM 35% OF SITE = 518 SQM	<b>TREE CANOPY</b> = 522.00M² 35.30% COMPLIES





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Australia  
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T: 02 9517 3633

DWG  
DA01

REV  
C

JOB NO.  
23-032

DATE  
6/02/2024

PROJECT  
79 Victoria Road, Bellevue Hill

CLIENT  
MURPHY + FREUND

DWG  
LANDSCAPE OVERVIEW

SCALE  
1:250

DRAWN  
BC

CHECKED  
BC

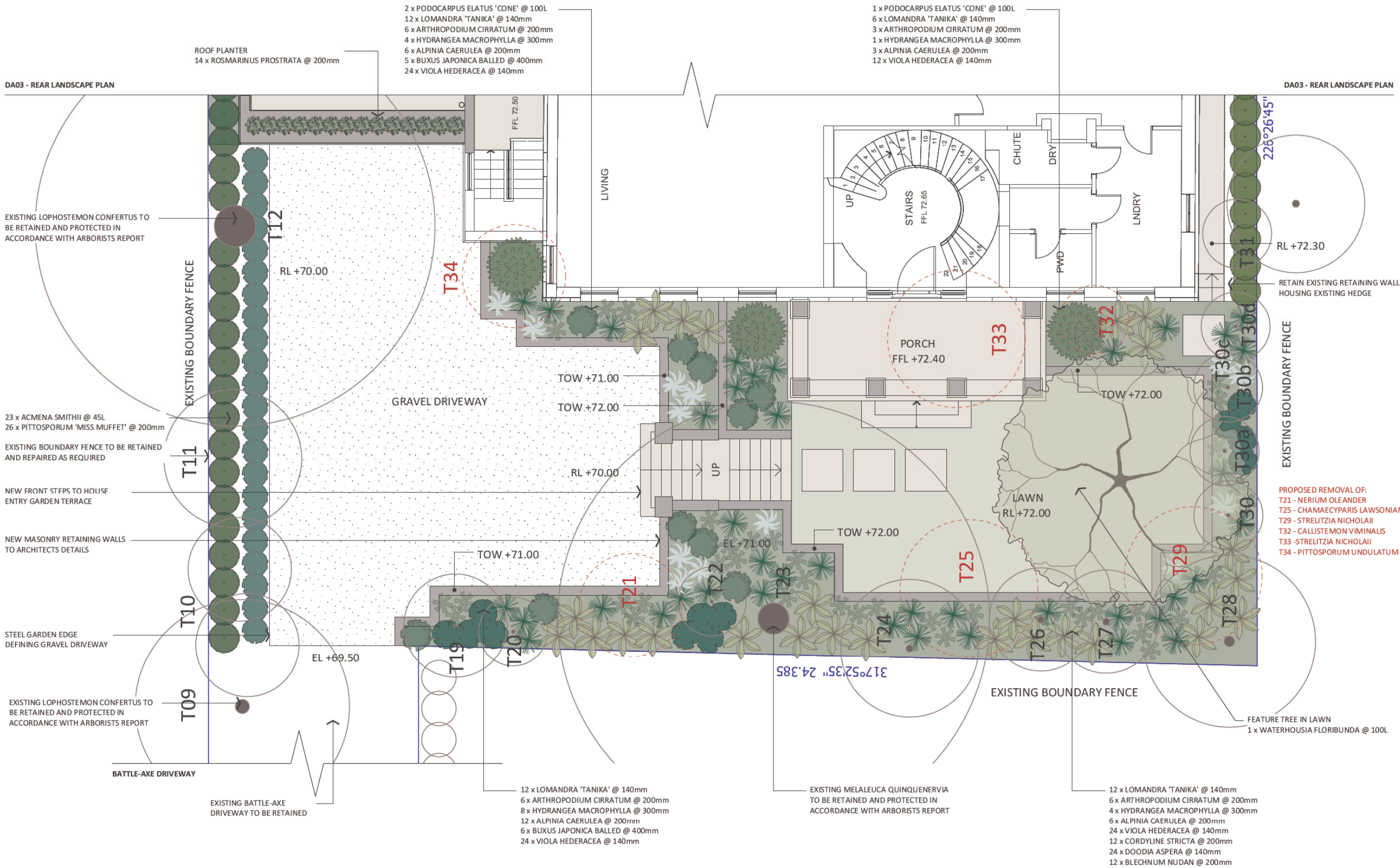
- GENERAL NOTES**
- CONCEPT PLANS ARE NOT INTENDED FOR CONSTRUCTION
  - FIGURED DIMENSIONS SHALL BE TAKEN IN PREFERENCE TO SCALING
  - ALL DIMENSIONS IN MILLIMETERS (MM) UNLESS OTHERWISE STATED
  - THE CONTRACTOR SHALL CHECK ALL DIMENSIONS ON SITE BEFORE COMMENCING
  - THIS DRAWING SHALL BE READ IN CONJUNCTION WITH ALL ARCHITECTURAL AND ENGINEERING DRAWINGS
  - ALL WORK TO BE FURTHER DETAILED BY ENGINEER
  - REFER TO ARCHITECTURAL / ENGINEERING DRAWING SET FOR DETAILS OF EXISTING AND PROPOSED LEVELS, AND PROPOSED GRADIENTS, AND RETAINING WALLS
  - REFER TO HYDRAULIC ENGINEERING DRAWING FOR STORMWATER RETENTION
  - THE LANDSCAPE CONTRACTOR SHALL ENSURE ALL LANDSCAPE WORKS COMPLY WITH LOCAL COUNCIL BY-LAWS, AND RELEVANT STANDARD CODES AND AUSTRALIAN STANDARDS
  - THE LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE TO LOCATE ALL SERVICES AND UTILITIES PRIOR TO COMMENCEMENT OF LANDSCAPE WORKS

**DRAWING ISSUE:**

A	23/11/2023	Landscape Plan for DA submission
B	21/12/2023	Revised Landscape Plan for DA resubmission
C	6/02/2024	Revised Landscape Plan to retain existing hedge







DWG DA02  
REV C  
JOB NO. 23-032  
DATE 6/02/2024

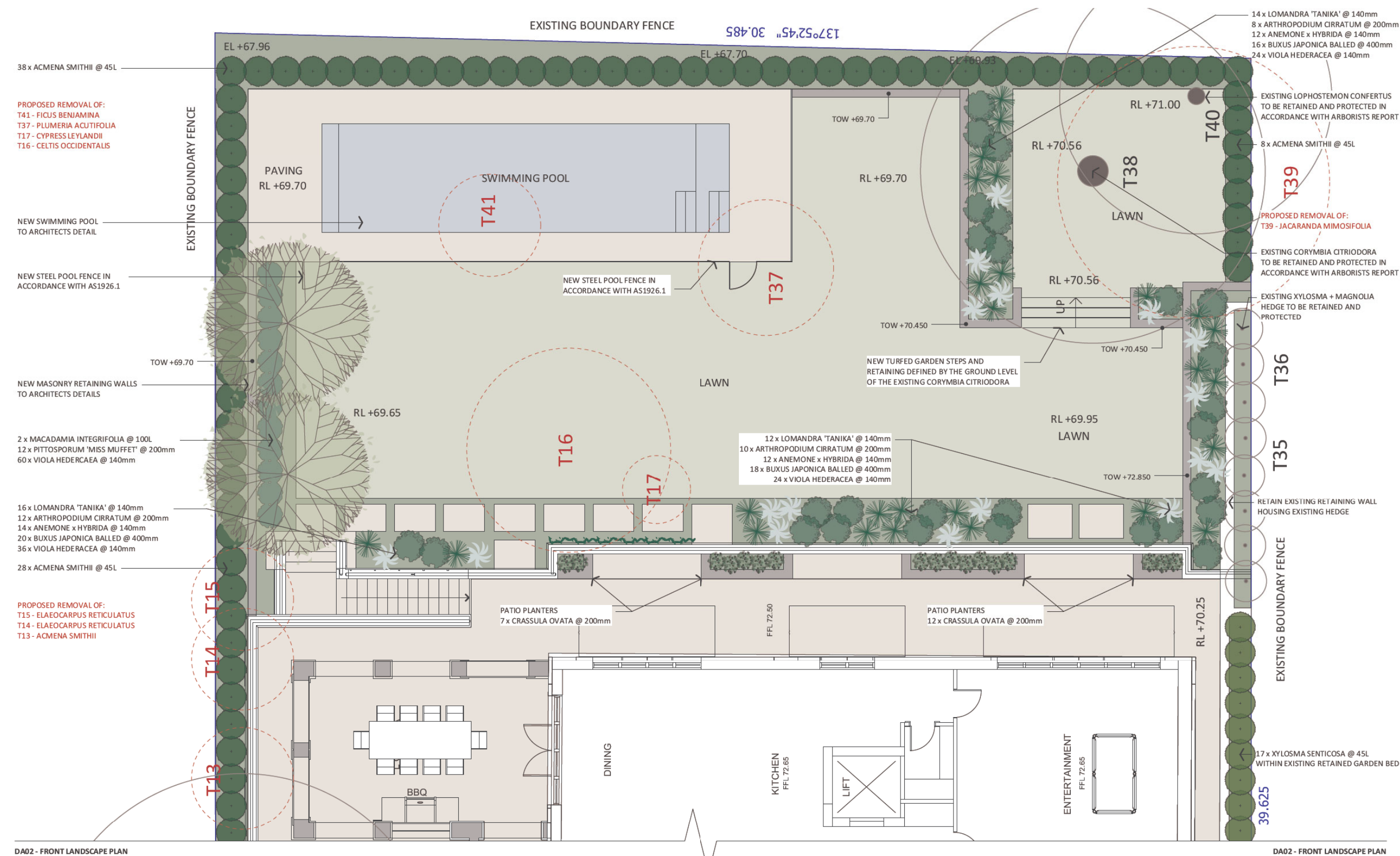
PROJECT 79 Victoria Road, Bellevue Hill  
CLIENT MURPHY + FREUND  
DWG FRONT LANDSCAPE PLAN  
SCALE 1:100  
DRAWN BC  
CHECKED BC

GENERAL NOTES  
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DRAWING ISSUE:  
A 23/11/2023 Landscape Plan for DA submission  
B 21/12/2023 Revised Landscape Plan for DA resubmission  
C 6/02/2024 Revised Landscape Plan to retain existing hedge







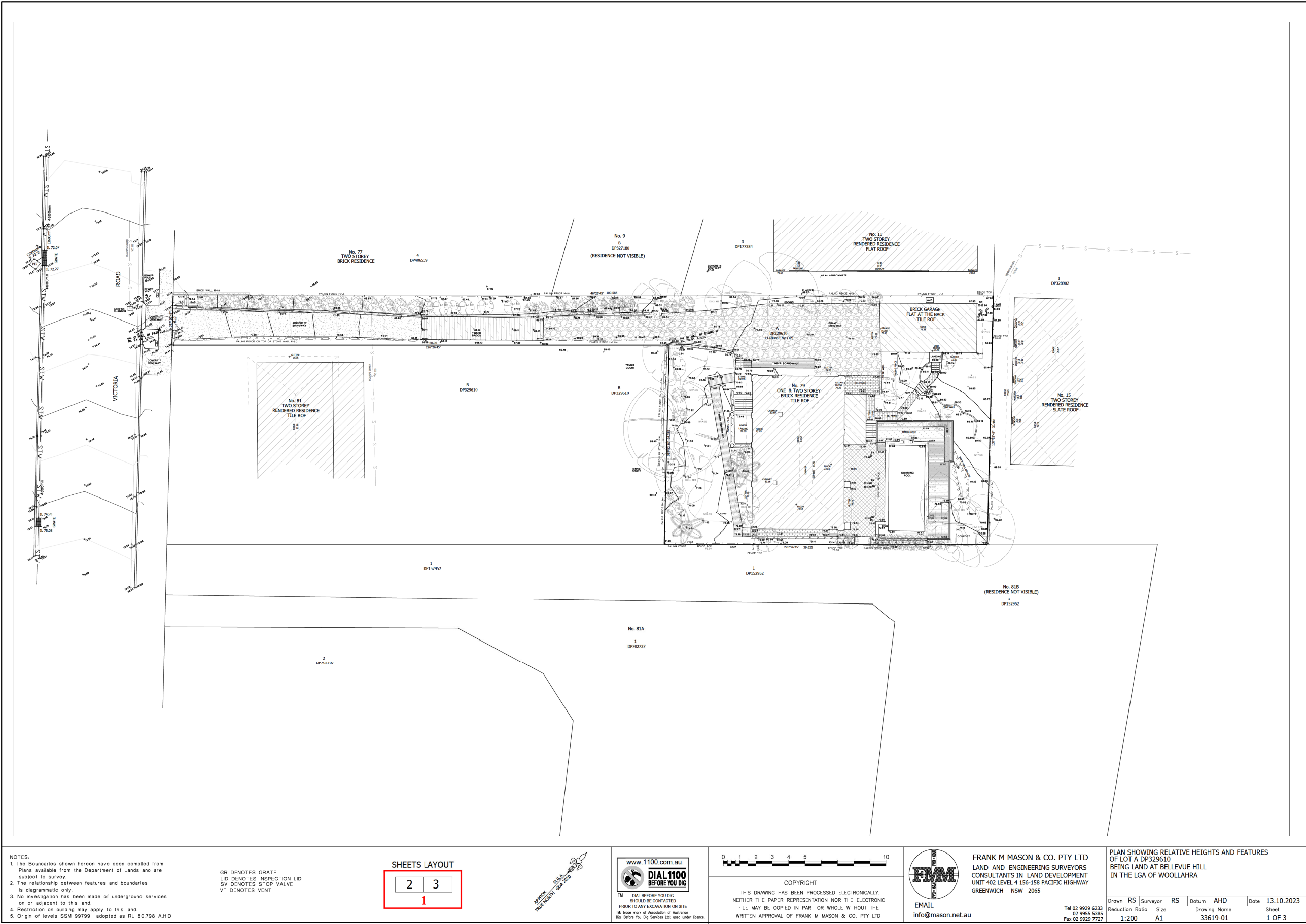
DWG **DA03**  
REV **C**  
JOB NO. 23-032  
DATE 6/02/2024

PROJECT 79 Victoria Road, Bellevue Hill  
CLIENT MURPHY + FREUND  
DWG REAR LANDSCAPE PLAN  
SCALE 1:100  
DRAWN BC  
CHECKED BC

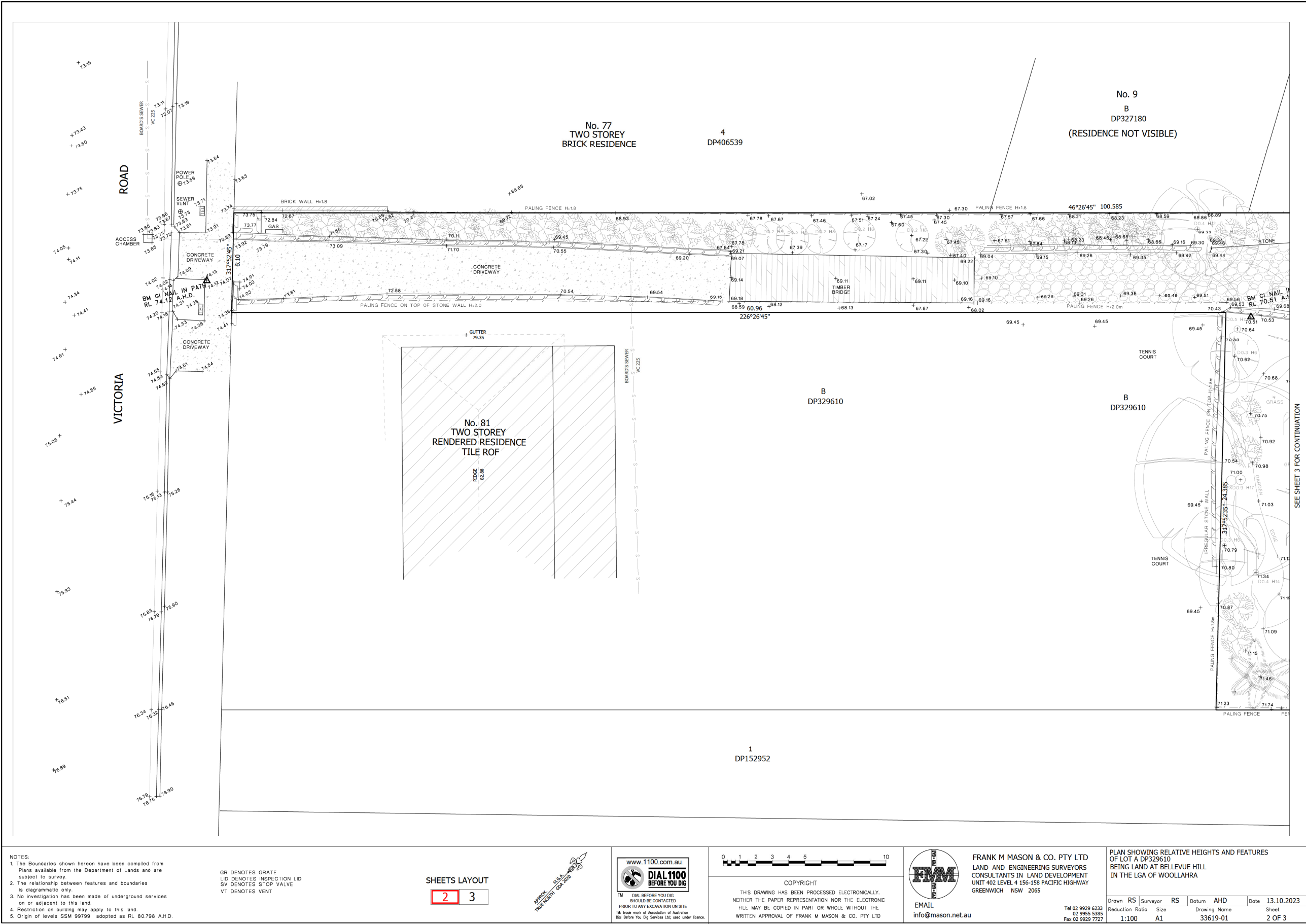
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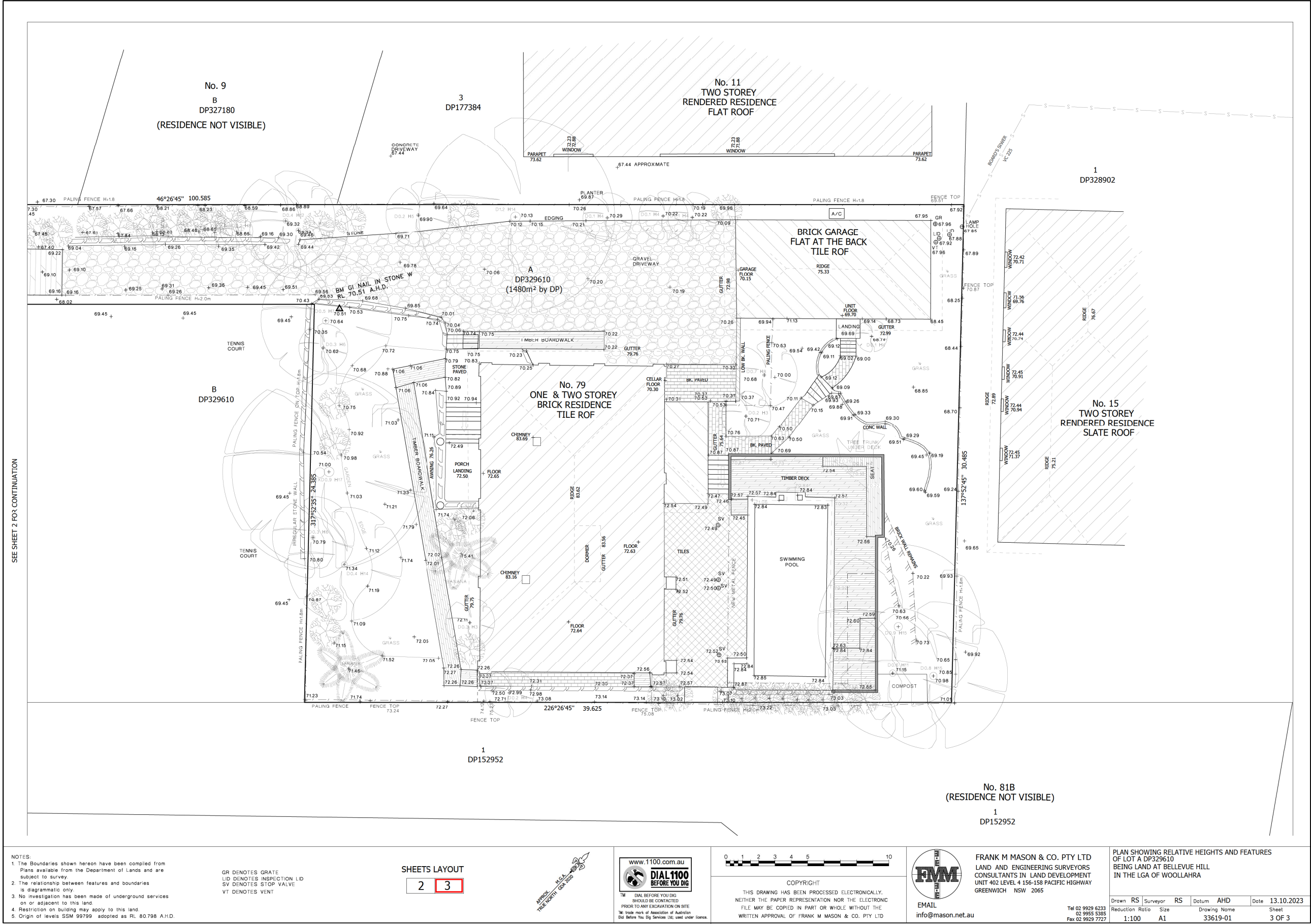
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C 6/02/2024 Revised Landscape Plan to retain existing hedge















## **Woollahra LEP 2014 Clause 4.6 Exceptions to Development Standards – Height of Buildings**

Alterations and additions to an existing dwelling at

**No. 79 Victoria Road,  
Bellevue Hill**

Prepared for:

**Marissa Freund**

c/o Michael J Suttie Architects,  
Suite 205, 24 Bayswater Rd,  
Potts Point, NSW 2011

Prepared by:

**GSA PLANNING**

Urban Design, Environmental & Traffic Planners  
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JOB NO. 24055

June 2024

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**WOOLLAHRA LOCAL ENVIRONMENTAL PLAN (LEP) 2014  
CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS**

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**APPLICANT'S NAME:** Michael J Suttie Architects Pty Ltd

**SITE ADDRESS:** No. 79 Victoria Road, Bellevue Hill

**PROPOSAL:** Alterations and Additions to Existing Dwelling

**1. (i) Name of the applicable planning instrument which specifies the development standard:**

Woollahra Local Environmental Plan (LEP) 2014

**(ii) The land is zoned:**

R2 Low Density Residential Zone. The objectives of the R2 Zone are as stated:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.
- To ensure development conserves and enhances tree canopy cover.

**(iii) The number of the relevant clause therein:**

Clause 4.3 – Height of Buildings which is stated as follows:

- (1) The objectives of this clause are as follows—
- (a) to establish building heights that are consistent with the desired future character of the neighbourhood,
  - (b) to establish a transition in scale between zones to protect local amenity,
  - (c) to minimise the loss of solar access to existing buildings and open space,
  - (d) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,
  - (e) to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).
- (2A) Despite subclause (2) and clause 4.3A, the maximum height of a dwelling house, dual occupancy or semi-detached dwelling on land in Zone R3 Medium Density Residential is 9.5 metres.
- (2B) Despite subclause (2) and clause 4.3A, the maximum height of a building on a battle-axe lot on land in Zone R3 Medium Density Residential is 9.5 metres.

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

## 2. Overview

This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law. In our opinion, the variation achieves the objectives of the zone and development standard and has demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

## 3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.3 of the LEP – Height of Buildings. This Clause operates in conjunction with the height of buildings Map which indicates a maximum 9.5m applies to the subject site. Clause 4.3 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

### The Existing Dwelling

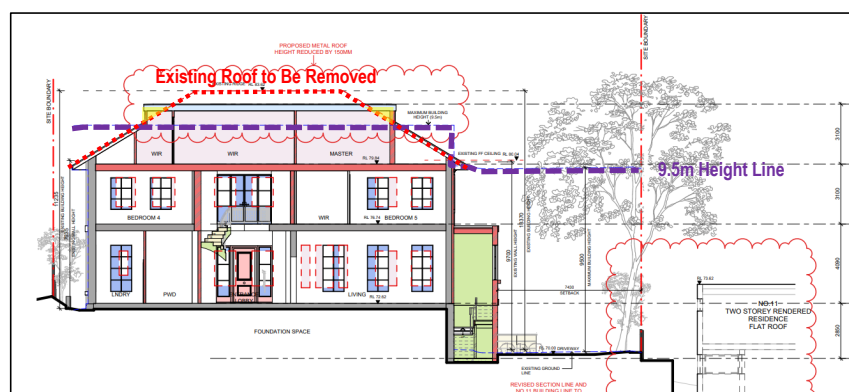
The existing dwelling is located on a battle-axe lot and presents as a two storey rendered dwelling with an attic level. The existing two storey rendered dwelling currently exceeds the 9.5 metres building height control by 1.75m or an 18.42% variation, with a maximum building height of 11.25 metres, measured from the existing roof ridge at RL 83.62 AHD to the existing ground level immediately below.

The existing non-compliance relates to the Attic Level and pitched roof form. Due to the existing height breach, it is inevitable that any works to the existing Attic Level or roof form would require a Clause 4.6 Variation.

### The Proposal

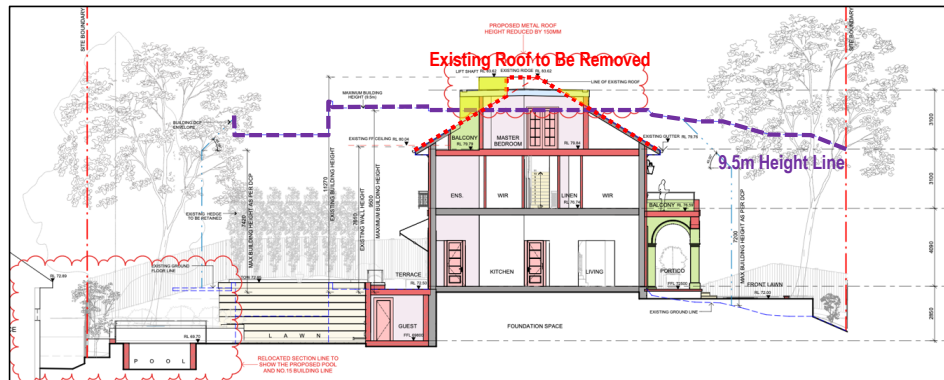
As indicated, the proposal is for alterations and additions to the existing dwelling. The extent of works beyond the 9.5m building height provision is limited to the top of the internal reconfiguration of the attic level, replacement roof associated with the attic, and lift overrun.

The proposed alterations and additions are not visible from the street given the battle-axe lot location. Nonetheless, the proposal will retain its appearance as two storeys to the front and three storeys (including the attic) to the rear. It will reduce the maximum height of most of the roof. In other words, while the lift overrun is proposed to be built to the existing maximum building height at RL 83.62 AHD (11.25m with an 18.42% variation), the remainder of the proposal's roof line will be reduced to RL 82.94, at a height of 10.8m, well under the existing (see **Figures 1 & 2**). The remaining building works are compliant or substantially below the 9.5m height standard.



Source: MJS Architects & Michael Suttor Architects

**Figure 1: Amended Section BB (Additional Height Variations in Yellow)**



Source: MJS Architects & Michael Suttor Architects

**Figure 2: Amended Section AA (Additional Height Variations in Yellow)**

#### 4. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

*Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.*

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

Flexibility is sought in the application of the height development standard to the proposed development in the circumstance of this particular case. Achieving strict compliance would not be possible for alterations and additions at the existing level, as the existing dwelling presents a departure from the current building height development standard set out in Woollahra LEP 2014.

The extent of proposed works will provide high-quality enhancements to update the existing aging dwelling, which will be more consistent with the surrounding locality in terms of design, bulk and scale. Internal reconfiguration and the new attic level will facilitate improved habitable space with better access to natural lighting and ventilation. The alterations and additions reduce the ridgeline from the existing dwelling. While the lift overrun technically retains the existing building height, the proposal will appear to have a significantly reduced height, and the extent of building works will remain lower than and subordinate to the original building. Further any changes will not be visible from the streetscape as the site is located on a battle-axe lot. Accordingly, flexibility will achieve a better planning outcome for and from the development.

## 5. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

- (3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
- (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
  - (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

### 5.1 Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

*These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

It is our opinion that the proposal satisfies Test 1 established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant test will be considered below.

#### **Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;**

Despite the proposed development's non-compliance with the applicable height development standard, the proposal achieves the desired low density character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. Reasons why the proposed development achieves the objectives of the height standard are explained below.

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

'Desired future character' is not defined in the LEP. In *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 [63] ('*SJD*'), Preston CJ states, inter alia:

*...the desired future character of the neighbourhood or area can be shaped not only by the provisions of WLEP, including the development standards themselves, but also other factors, including approved development that contravenes the development standard.*

Accordingly, the desired future character is shaped by the text and context of the LEP and recent approvals in the vicinity. Each of these will now be discussed. The relevant clauses in the LEP which relate to urban character and built form are:

- a. *The zoning of the land (Clause 2.2 and the Land Zoning Map);*
- b. *The zone objectives (Clause 2.3);*
- c. *The land use table (at the end of Part 2); and*
- d. *The development standards in Part 4:*
  - i. *Clause 4.3 Height of Buildings and Height of Buildings Map which prescribes a maximum height of 9.5m.*
  - ii. *Clause 4.4E FSR which prescribes a maximum FSR of 0.5:1.*

The R2 Low Density Residential zoning permits dwelling houses with development consent. The existing use as a single dwelling will be retained in the proposal. The proposed alterations and additions will significantly upgrade the residential amenity of the existing dwelling and enhance its appearance. The proposal is consistent with the R2 Zone Low Density Residential zone objects, as detailed in section 6 of this report.

The proposal will retain the existing dwelling as a two storey dwelling with attic and basement level, all proposed modifications will not exceed the existing ridge line, and in fact will reduce most of the existing roof line height by 680mm with the new attic roof form. As the site is situated on a battle-axe lot, far recessed from the street, the proposed variation will not be discernible from the public domain. The proposal will retain the existing streetscape appearance and be consistent with the desired future character of the neighbourhood.

As stated, the extent of LEP height variation is largely a result of the existing dwelling's deviation. While the proposed new roof form and lift overrun exceeds the 9.5m height plane, most of the new roof is notably at a lower height than the existing. As such, when viewed from the surrounding area (noting it is not visible from the public domain), the proposal will largely retain its existing bulk, scale and achieve consistency with the surrounding context in terms of height.

As indicated, the existing building does comply with the LEP height provision, and the proposal does not increase the existing height. The variation at the top of the roof form facilitates an enhanced habitable attic level with a master bedroom, ensuite bathroom, lobby area and lift for improved accessibility, which will upgrade the internal amenity of the dwelling and allow residents to age in place. Importantly, the proposal remains compliant with the FSR. The new works above the height plane will be compatible with the height, bulk and scale of the existing built form and the surrounding context and will maintain the amenity of surrounding properties. Therefore, the height, bulk and scale are consistent with the desired future character of the area, as per Court Judgement of *SJD DB2 Pty v Woollahra Council* [2020] NSWLEC 1112. The proposal thus achieves objective (d) of the standard.

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

The subject site is located within close vicinity to a R3 Medium Density Residential zoned land to the north-east, where a 13.5m height standard applies. By remaining under the existing, the variation from the LEP height standards will allow for the dwelling to continue to provide an appropriate transition between the low density character seen on Victoria Road and the medium density character of the R3 pocket of Drumalbyn Road. This generally maintains the dwelling's existing transition in scale between zones to protect local amenity, which achieves objective (b).



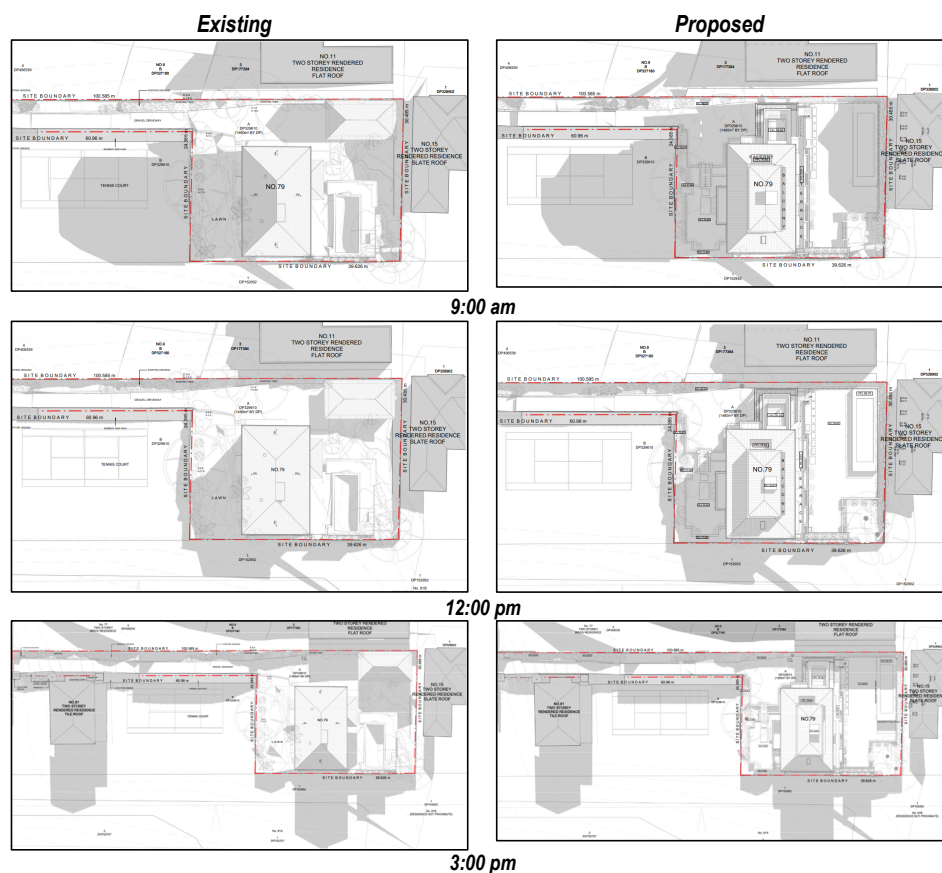
(c) To minimise the loss of solar access to existing buildings and open space,

To assess the effect of the proposed development in terms of solar access, shadow diagrams have been prepared from 9:00am, 12pm (noon) and 3:00pm for the winter solstice (June 21). These diagrams indicated that the proposed height variation will maintain greater than compliant solar access to existing buildings and open space, similar to the existing situation (see **Figure 3**).

At 9:00 am, the only additional shadowing is over two corners of the rear tennis court of No. 81 Victoria Road. The extent of overshadowing is minor when compared to the existing, given that a large portion of the tennis court remains unaffected.

At 12:00 pm, the extent of overshadowing on adjoining properties does not have a noticeable change.

At 3:00 pm, the proposal has only two corners of additional overshadowing onto the landscaped area of No. 81A Victoria Road. The vast majority of this open space remains unaffected.



Source: Michael J Suttie Architects & Michael Suttor Architects  
**Figure 3: Existing and Proposed Solar Access Diagrams**

As indicated, As indicated in the shadow diagrams, the difference in height only results in two corners of additional shadow onto the tennis court at No. 81 Victoria Road at 9am, with no effect on this

neighbour at other times of the day. At 12pm, the height variation overshadows the subject dwelling's roof itself. At 3pm, the additional shadow is again limited to two corners of the garden at No. 81A Victoria Road, with no effect on this neighbour at other times of the day. Importantly, no windows are affected from 9am to 3pm. The neighbours will continue to enjoy a higher than compliant level of solar access, better than the minimum controls in the DCP.

Therefore, the loss of solar access has been minimised, which achieves objective (c).

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

The proposal has been carefully designed to minimise the impacts of the new development on adjoining and nearby properties in respect to views, privacy, overshadowing and visual impact. This is detailed below:

Views:

No significant public views or vistas are identified across the subject site in Woollahra DCP 2015 maps. Regardless, the proposed alterations and additions include a decrease in building height for a considerable portion of the roof, with only a small lift overrun to retain the original height. Therefore, there is not expected to be any negative impact on the views across the subject site as a result of the height departure. The additional areas of variation are limited to corners of the attic's flat roof, which remains well recessed from the principal roof. This is expected to maintain view sharing.

Privacy:

The variation has been designed to maintain aural and visual privacy for residents of neighbouring sites. Given the continuing single dwelling use of the site, there would not be significant additional noise generation associated with the proposal. All elevated POS are situated below the 9.5m building line and the extent of variation is limited to the top part of the attic level, which is beyond the eye level, and the flat roof form above.

The windows at the attic level partially deviate from the height control. However, given the area of non-compliance is situated significantly higher than the eye level, there are no additional sightlines as a result of the height variation.

Therefore, the proposal maintains the privacy of adjoining and nearby properties.

Overshadowing:

Solar access has been addressed in response to objective (c) above. The proposed variation has no significant overshadowing impact on private open space and no impact at all on windows.

Visual Intrusion:

The proposed alterations to the dwelling house will provide a skilfully designed development, which reduces the existing maximum building height for a considerable portion of the roof. As the majority of the proposal is well within the LEP height provision, and given the further reduction to the ridge line, the proposal will result in a development which is visually compatible. Adjoining developments will be presented with a sensitively designed development with a highly articulated roof form, remaining within the existing height. The area of variation remains centrally located to reduce visibility from adjoining properties.

Accordingly, although the top portion of the proposal will exceed the height control, this is no worse than the existing situation and the variation has been demonstrated to have no significant adverse impacts. The design is generally contained within a compliant building envelope.

## **5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard**

The proposal is permissible in the R2 Zone, is consistent with the relevant zone objectives and satisfies an 'unreasonable and unnecessary' test established by the Court in *Wehbe*. There are sufficient environmental planning grounds to justify the height variation, including an existing non-compliance, contextual compatibility and consistency with the desired future character, enhanced internal amenity, and achievement of the height objectives.

### **Existing Non-Compliance**

The extent of area which is non-compliant with the height provision is limited to parts of the attic level and roof form above, due to the existing variation. As the proposal is for alterations and additions it is inevitable that any works to this part of the attic level would require a Clause 4.6 Variation. The proposal significantly reduces the ridge line of the building and with only the lift overrun maintaining the existing height. The development will provide a well-articulated appearance to all facades, including the area of variation, and remain compatible with the existing and desired future character of the area as there will be no change to the existing maximum building height.

Strict compliance with the standard would require substantial demolition due to the existing height variation. This would not be an acceptable planning outcome given the proposal is for sensible alterations and additions that positively contribute to the longevity of the existing house.

### **Contextual Compatibility and Consistency with Desired Future Character**

The proposal includes a partial reduction of the development's maximum building height when measured from the existing ridge line. As the extent of non-compliance is resultant from the existing dwelling's roof form, the proposed alterations and additions will generally maintain the existing bulk and scale. This maintains the existing contextual compatibility.

The surrounding locality shows an existing and emerging trend of two storey developments plus roof attics within a hipped roof form or a third storey. As the proposal will retain its two storey appearance towards the front of site and present to the rear as three storeys including the attic, the proposal is considered contextually compatible to the surrounding developments. The proposal will include appropriate contemporary alterations to an older-style building which is consistent with the largely varied architectural styles seen in the Bellevue Hill North Precinct (see **Figure 4**). Further all proposed materials and finishes used within the area of height variation will be similar in appearance to the immediate locality.

As indicated, the proposed height is consistent with the surrounding development and previous approved properties. Consistency in the context was recognised as an environmental planning ground in *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097 where Commissioner O'Neil states at [42] that:

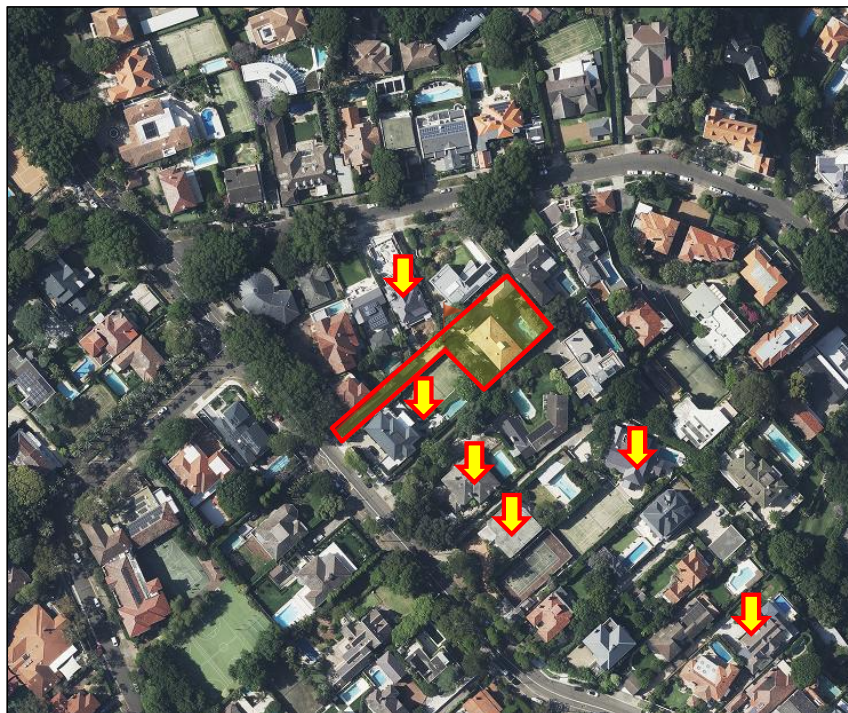
*I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).*



Source: Michael J Suttie Architects and Michael Suttor Architects

**Figure 4: Photomontage of Site, as Viewed from Rear of Site**

There are a number of recent new developments which have been approved with height breaches on its own merits and each site has different characteristics. However, it is relevant consideration to understand if Council or the Land and Environment Court (LEC) has accepted breaches to the height standard in the past, under what circumstances these were supported and if indeed there are any comparable principles to the subject DA. Based on Council's DA Tracker and Clause 4.6 Register, these approved variations within R2 zone in the locality are shown in **Figure 5** and **Table 1**.



Source: SIX Maps

**Figure 4: Relevant Height Non-Compliant Approvals in Locality**



**Table 1: Recent Non-Compliant Approvals in Locality (Height of Buildings)**

Address	DA No.	Lodgement Date	Approval Date	Height	Control	% Variation
2 Drumalbyn Road	DA136/2020	02/04/2020	19/08/2020	10.97m	9.5m	14.47
9 Drumalbyn Road	DA389/2016	12/09/2016	11/01/2017	10.25m	9.5m	7.89
83 Victoria Road	DA199/2021	20/05/2021	27/01/2022	12.50m	9.5m	31.58
85A Victoria Road	DA517/2022	22/11/2022	30/05/2023	9.9m	9.5m	4.21
85 Victoria Road	DA459/2018	23/10/2018	06/06/2019	11.65m	9.5m	22.63
101 Victoria Road	DA408/2022	26/09/2022	01/06/2023	9.99m	9.5m	5.15

#### Internal Amenity

The proposed height variation is considered to have a better amenity outcome for the residents. The proposed height variation will accommodate a well designed attic level with floor to ceiling heights compliant with the 2.7m standard, that will facilitate the master bedroom. While the top of the roof form and small portion of the lift overrun is not compliant with the height standard, this is required for internal amenity up to contemporary standards, and the majority of the space is within a compliant envelope. If strict compliance with the height control were to be achieved, a significant part of the existing attic level would be removed, resulting in compromised internal amenity, which defeats the purpose of the renovation. The variation would enable the provision of a high quality bedroom with high levels of natural light, largely utilising the existing roof space.

#### Other Matters for Consideration

It should also be noted that the proposal improves the amenity of the subject site while maintaining the amenity of neighbouring development; achieves the objectives of the R2 Low Density Residential Zone and the FSR standard and relevant DCP built form and amenity provisions; and results in an improved streetscape outcome for the site. While these factors may not strictly constitute environmental planning grounds, they should be considered in the assessment of the height breach.

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

#### 6. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 2** on the following pages).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it achieves the objectives of the standard and the development objectives of the R2 Low Density Residential Zone pursuant to the LEP. On that basis, the request to vary Clause 4.3 should be upheld.

Table 1: Compliance Matrix				
Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Clause 4.3: Height of Buildings	
12	What is the control	1 & 2	9.5m	
14	<b>Precondition to Enlivening the Power –</b> Consent authority must form the positive opinion:		The positive opinion can be formed as detailed below.	YES
15, 25	<b>Positive Opinion –</b> That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	<b>First Aspect is Clause 4.6(3)(a) –</b> That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	5.1	The proposal satisfies Test 1: <ul style="list-style-type: none"> <li>The objectives of the standard are achieved notwithstanding the non-compliance with the standard.</li> </ul>	YES
23-24	<b>Second Aspect is Clause 4.6(3)(b) –</b> The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: a) The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. b) The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.	5.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> <li>The proposed height non-compliance is a result of a pre-existing variation;</li> <li>The proposal does not increase the existing maximum building height;</li> <li>The variation is contextually compatible with the surrounding area;</li> <li>The variation achieves the desired future character;</li> <li>The height variation will improve the internal amenity of the Attic Level;</li> <li>The height variation will improve the site's amenity will maintaining the neighbour amenity; and</li> <li>The proposed height facilitates a low density development that achieves the planning objectives of the area.</li> </ul>	YES

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14 March 2024

## REFERRAL RESPONSE – DEVELOPMENT ENGINEERING

**FILE NO:** Development Applications: 444/2023/1

**ADDRESS:** 79 Victoria Road BELLEVUE HILL 2023

**PROPOSAL:** Extensive internal and external alterations and additions, including new swimming pool and landscaping works.

**FROM:** Ms S Lin

**TO:** Ms L Samuels

---

### 1. ISSUES

- Geotechnical Report

### 2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environment Effects, Unreferenced, prepared by MJ Suttie Architects and Michael Suttor Architects, dated November 2023.
- Architectural Plans, unreferenced Rev 02, prepared by MJ Suttie Architects and Michael Suttor Architects, dated 06/02/2024.
- Survey, referenced 33619-01, prepared by Frank M Mason & Co. P/L, dated 13/10/2023.
- Stormwater Management Plan, referenced 23S263 Rev B, prepared by Heinz Consulting Engineering, dated 05/02/2024.
- Underground Services Analysis, referenced 23S263-X01, prepared by Heinz Consulting Engineering, dated 23/11/2023.
- Flood Risk Management Report, unreferenced, prepared by Pittwater Data Services, dated 16/11/2023.
- Geotechnical Report, referenced 36322Alet, prepared by JK Geotechnic, dated 24/11/2023.
- Easement Refusal Confirmation from No.11 Drumalbyn Road, Bellevue Hill, dated 10/10/2023.
- Easement Refusal Confirmation from No.9 Drumalbyn Road, Bellevue Hill, dated 11/10/2023.
- Statutory Declaration for easement request, dated 06/02/2024.

### 3. ASSESSMENT

Comments have been prepared on the following.

#### a. Site Drainage comments

*The submitted geotechnical report has not properly assessed the suitability of the on-site absorption system. For Council to consider the pump out system, the geotechnical report must carry out necessary investigations to confirm the bedrock level and infiltration rate on site. Note that the site is not considered suitable for absorption system if the nominal absorption rate is less*



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*than 0.1 litres/m<sup>2</sup>/s strata of impermeable or where the soil depth to rock is less than 1.5 metres, or where the water table is less than 2 metres from the base of the system.*

*In the event that the site is found to be suitable for absorption system, the stormwater plans must be amended accordingly. The size of the absorption trench system shall be determined for a 20 year ARI storm based on the absorption rate and the rainwater tank is to be assumed to be full and cannot be included as part of the absorption storage. Full calculations must be submitted. All trench system must be located at least 3 metres from the footing of any structures and property boundaries and be parallel to the contour.*

**b. Geotechnical, Hydrogeological and/or Structural comments**

*A preliminary assessment of the submitted geotechnical report has identified the following issues which shall be addressed by the applicant prior to further assessment:*

- a) The submission of a desktop study is not supported. The geotechnical and hydrogeological report must be based on site investigation. The report must be prepared in accordance with the requirements stipulated in Councils document "Guidelines for Preparation of Geotechnical and Hydrogeological Reports" and Chapter E2.2.10 of Council's DCP. In particular, at least two (2) boreholes extended to the likely depth excavation must be carried out.*
- b) The geotechnical report must be updated with reference to the latest architectural plans and stormwater plans. The report must include, but not limited to, site specific comments regarding support and retention, hydrogeology and vibration controls for the proposed development and associated excavation works.*

**4. RECOMMENDATION**

Council's Development Engineer has determined that insufficient information has been submitted to enable an assessment of the proposal. The following information is required before any further assessment of the application can be undertaken:

- The submission of revised geotechnical report



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24 April 2024

## RE-REFERRAL RESPONSE – TREES AND LANDSCAPING

**FILE NO:** Development Applications: 444/2023/1

**ADDRESS:** 79 Victoria Road BELLEVUE HILL 2023

**PROPOSAL:** Extensive internal and external alterations and additions, including new swimming pool and landscaping works.

**FROM:** Sam Knight

**TO:** Ms L Samuels

---

### 1. ISSUES

None.

### 2. DOCUMENTATION

I refer to the following documents received for this report:

- Survey Plan, drafted by Frank M Mason & Co Pty Ltd, dated 13 October 2023
- Architectural Drawings, drawn by MJSA, dated 8 March 2024
- Arboricultural Impact Assessment Report, written by George Palmer, dated February 2024
- Landscape Plans, designed by Studio UC, dated 6 February 2024

A site inspection was carried out on 9 February 2024 (limited inspection).

### 3. RELEVANT CONTROLS

- Woollahra Local Environment Plan 2014
- Woollahra Development Control Plan 2015
- Woollahra Street Tree Master Plan 2014 – Part 1, Part 2 (Precinct Plans), Part 3 (appendices)
- Significant Tree Register 1991 Volume 1 Significant Trees Under Private Ownership, Volume 2 Significant Trees Under Private Ownership, Volume 3 Significant Trees, Volume 4 Significant Trees in Public Parks
- The comments and recommendations within this Referral Response have taken into consideration the guidelines established within Australian Standard AS 4373 – Pruning of amenity trees and Australian Standard AS 4970 – Protection of trees on development sites



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#### 4. SUMMARY

The proposal is acceptable subject to the below conditions being included into the DA consent.

#### 5. COMMENTS

A review of the plans and documentation has revealed 41 trees within and adjacent to the property will be impacted by the proposal.

The following tree numbering is consistent with the Arboricultural Impact Assessment prepared by George Palmer dated February 2024 and the Landscape Plans prepared by Studio U.C dated 6 February 2024.

##### Tree Removal – Under 5m Height

The plans also indicate trees 31, 32, 33, 34 and 37 are proposed for removal. The trees have been noted as being less than 5 metres in height and are not a prescribed tree as defined by the WMC DCP Chapter E.3 - Tree Management. These trees can be removed without Council consent regardless of the proposed development.

##### Tree Removal – Exempt Species

The plans indicate trees 7, 16, 17, 21 and 29 are proposed for removal. These trees have been identified as species that are exempt from WMC DCP Chapter E.3 - Tree Management and can be removed without consent regardless of the proposed development.

##### Tree Removal – Low Retention Value

The plans indicate trees 13, 14, 15, 25 and 41 are proposed for removal due to unacceptable impacts expected from the development design. These trees have all been rated as having Low Landscape Significance and Low Retention Value for various reasons including underperforming in health, suppressed by more dominate trees or found to be providing minimal amenity value to the immediate area.

Trees rated as having Low Retention Value are generally considered as not being important for retention, nor require special works or design modification to be implemented for their retention.

These trees are supported for removal conditional of replacement planting being undertaken in accordance with the Landscape Plans.

##### Tree Removal – Medium Retention Value – Not Supported

The plans indicate tree 39 is proposed for removal. This tree has been identified as a *Jacaranda mimosifolia* (Jacaranda) located in the eastern corner of the rear yard. The tree has been noted in good health and condition. The tree is positioned between trees 38 and 40 that are shown for retention.

There is no reasoning in the applicants Arborist Report that justifies the removal of this tree. The proposed works around this tree are not expected to adversely impact on the tree such that it requires its removal.

Therefore, removal of this tree is not supported. The tree is listed for retention and protection in the below conditions.



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#### Tree Retention

The remaining 25 trees are proposed for retention. Several of the trees have been excluded from the below conditions as they are less than 5 metres in height and are not a prescribed tree as defined by the WMC DCP Chapter E.3 - Tree Management .

However, the plans indicate works within the Tree Protection Zones of trees 12 and 23 are deemed as a Major Encroachment as defined by the Australian Standards AS4970 'Protection of trees on development sites. Where an encroachment of greater than 10% into the TPZ is proposed, the project arborist is to demonstrate that the tree will remain viable.

It is noted in the applicants updated Arborist Report that root investigation has been undertaken for trees 12 and 23 where excavation for the proposed development is proposed. The root investigation has confirmed that there are no major structural roots of greater than 50mm that will be impacted by the proposed works.

Therefore, the proposed works not expected to adversely impact on the tree provided tree sensitive construction methods and tree protection measures are implemented in accordance with the below conditions.

#### Canopy Cover – Dwellings etc.

Chapter B3.7 Landscape area and private open space of the WMC DCP outlines under Control 1 that 35% canopy cover is to be provided within sites for dwelling houses, dual occupancy, semi-detached development and attached dwellings.

The DCP outlines that at least half of the total tree canopy area on the site is to be contributed by canopy tree/s (ie: trees that attain a minimum of eight (8) metres mature height and canopy spread). Trees selected should be capable of achieving the applicable tree canopy area for the site within 5-10 years of completion of the development.

The proposed Landscape Plans indicate that the proposal will provide 522m<sup>2</sup> or 35.3% canopy cover within the site which complies with the DCP requirements.

#### **Response to Submissions**

##### Wild Plum – 15 Drumalbyn Road

It is noted that concerns have been raised about the protection of a *Harpephyllum caffrum* (Wild Plum) located in the rear yard of 15 Drumalbyn.

The subject tree is not shown on any of the submitted plans or documentation. However, based on a review of aerial photos, the tree appears to be around 5-7 metres from the eastern corner of the subject site. There are three (3) trees in the eastern corner of the subject site (trees 38, 39 and 40) that are being retained and protection as part of the proposal. The works around these trees are limited to landscape upgrades, including a new low retaining wall and new plantings. The levels in this corner remaining relatively similar to existing with minimal disturbance proposed within the TPZ of trees 38, 39 and 40.

The below conditions require tree sensitive construction works to be implemented when working around trees 38, 39 and 40 which ensures all tree roots greater than 50mm in diameter are retained. It is considered that the conditions that have been imposed for these trees will ensure any tree roots that might be growing in the subject site from the Wild Plum are also protected during construction.



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#### Trees 11, 14 and 15 – Request for Retention

The proposed plans include retention of tree 11.

The proposed plans indicate trees 14 and 15 will require removal as they are directly adjacent to the proposed garage. Excavation for the garage will directly impact on important structural roots of the trees resulting in either tree failure or complete tree death if they were to be retained.

The trees are relatively small specimens that have been rated as having Low Landscape Significance and Low Retention Value. Trees rated as having Low Retention Value are generally considered as not being important for retention, nor require special works or design modification to be implemented for their retention.

The proposed Landscape Plans indicate new plantings within the same vicinity as these trees. This includes a new hedge along the northern boundary that will be advanced specimens (approximately 1.2 metres height) at the time of planting and another two specimen trees (approximately 1.7metres) at the time of planting. It is considered that these plantings will provide greater amenity, privacy screening and canopy cover along this boundary in the short term than what is currently being provided by trees 14 and 15.

Therefore, the removal of trees 14 and 15 is considered acceptable.

## **6. RECOMMENDATIONS**

Council's Tree and Landscape Officer has determined that the development proposal is satisfactory in terms of tree preservation and landscaping, subject to compliance with the following Conditions of Consent.

### **A. GENERAL CONDITIONS**

A. 1.

Approved Plans and Supporting Documents

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

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

Reference	Description	Author	Date
DA01, DA02, DA03	Landscape Plans	Studio U.C	6/3/2024

**Notes:**

- Warning to Principal Certifier – You must always insist on sighting the original Council stamped approved plans. You must not rely solely upon the plan reference numbers in this condition. Should the Applicant not be able to provide you with the original copy Council will provide you with access to its files so you may review our original copy of the approved plans.
- These plans and supporting documentation may be subject to conditions imposed under section 4.17(1)(g) of the Act modifying or amending the development.

**Condition Reason:** To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.





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Standard Condition A.2 (Autotext 2A)

**A. 2.**

**Tree Preservation and Landscaping Works**

While site work is being carried out, all landscape works must be undertaken in accordance with the approved landscape plan, arborist report, tree management plan and transplant method statement as applicable.

a) The following trees must be retained:

- Trees on private land:

Council Ref No	Species	Location	Dimension (metres)
4	<i>Cupressus leylandii</i> x24	Refer to the Landscape Plans prepared by Studio U.C dated 6 February 2024 for tree numbers and locations.	5 x 3
9	<i>Lophostemon confertus</i>		8 x 4
10	<i>Syzygium smithii</i>		5 x 3
11	<i>Elaeocarpus reticulatus</i>		8 x 3
12	<i>Lophostemon confertus</i>		12 x 8
20	<i>Camellia sasanqua</i>		5 x 4
23	<i>Melaleuca quinquenervia</i>		14 x 8
24	<i>Camellia sasanqua</i>		5 x 3
26	<i>Howea forsteriana</i>		10 x 2
35	<i>Xylosma senticosum</i>		5 x 2
38	<i>Corymbia citriodora</i>		12 x 8
39	<i>Jacaranda mimosifolia</i>		8 x 6
40	<i>Lophostemon confertus</i>		9 x 8

The tree/s required to be retained must appear coloured green on the Construction Certificate plans.

b) The following trees may be removed:

Council Ref No	Species	Location	Dimension (metres)
7	<i>Syagrus romanzoffianum</i>	Refer to the Landscape Plans prepared by Studio U.C dated 6 February 2024 for tree numbers and locations.	6 x 2
13	<i>Syzygium smithii</i>		5 x 2
14	<i>Elaeocarpus reticulatus</i>		6 x 2
15	<i>Elaeocarpus reticulatus</i>		6 x 2
16	<i>Celtis sinensis</i> *		8 x 6
17	<i>Cupressus leylandii</i> *		4 x 2
21	<i>Nerium oleander</i> *		3 x 3
25	<i>Chamaecyparis lawsoniana</i>		8 x 3
29	<i>Strelitzia nicholai</i> *		3 x 3
31	<i>Cyathia cooperi</i> *		4 x 2
32	<i>Callistemon viminalis</i>		4 x 2
34	<i>Pittosporum undulatum</i>		4 x 2
37	<i>Plumeria acutifolia</i>		4 x 2
41	<i>Plumeria acutifolia</i>		5 x 4



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The tree/s that may be removed must appear coloured red on the Construction Certificate plans.

The species marked (\*) is exempt from the WMC DCP 2015 and can be removed without requiring consent from Council.

**Condition Reason:** To ensure all landscape works are undertaken in accordance with the approved plans and documents.

Standard Condition A.22 (Autotext 22A)

## B. BEFORE DEMOLITION WORK COMMENCES

B. 1.

Establishment Tree Protection Measures within the Tree Protection Zones (TPZ)

Prior to any site works, tree protection measures must be established around all trees to be retained in accordance with Section 4 of the Australian Standard Protection of Trees on Development Sites (AS 4970).

The Tree Protection Zones must be calculated in accordance with Section 3 of the Australian Standard Protection of Trees on Development Sites (AS 4970).

A Construction Site Management Plan, which clearly details the tree protection measures, must be prepared before the issue of a construction certificate. The tree protection measures must comply with the following requirements;

a) Tree Protection Fencing:

Council Ref No	Species	Tree Location	Fence Radius from Centre of Trunk (Metres)*
9	<i>Lophostemon confertus</i>	Refer to the Landscape Plans prepared by Studio U.C dated 6 February 2024 for tree numbers and locations.	5m
10	<i>Syzygium smithii</i>		4m
11	<i>Elaeocarpus reticulatus</i>		4m
12	<i>Lophostemon confertus</i>		8m
20	<i>Camellia sasanqua</i>		4m
23	<i>Melaleuca quinquenervia</i>		12m
24	<i>Camellia sasanqua</i>		5m
26	<i>Howea forsteriana</i>		2m
35	<i>Xylosma senticosum</i>		2m
38	<i>Corymbia citriodora</i>		7m
39	<i>Jacaranda mimosifolia</i>		5m
40	<i>Lophostemon confertus</i>		6m

Where this condition relates to street trees, and the fence cannot be placed at the specified radius, the fencing is to be positioned so that the entire verge (nature strip) area in front of the subject property, excluding existing driveways and footpaths, and bus stops is protected.

Where this condition relates to trees on private property, the radial distance of fencing must be positioned only within the subject property relating to the development consent.



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	<p>b) Tree Protection Zones must be fenced with a 1.8 metre high chainmesh or weldmesh fence and secured to restrict access. The fence must be established prior to any materials being brought onto the site and before the commencement of works including demolition. The area within the fence must be mulched and the mulch layer maintained to a depth of 75mm. The soil within the TPZ area must be kept in a moist condition for the duration of the construction works. Unless approved by the site arborist there must be no access within the TPZ area.</p> <p>c) Signs identifying the Tree Protection Zone area must be erected on each side of the protection fence indicating the existence of a TPZ area. Signage must be visible from within the development site.</p> <p>d) No excavation, construction activity, grade changes, storage of materials, stockpiling, siting of works sheds, preparation of mixes or cleaning of tools is permitted within Tree Protection Zones, unless specified in this consent.</p> <p>e) Temporary access within the TPZ area for pedestrian and machinery movements must only be permitted with the approval of the site arborist or unless specified in this consent.</p> <p>f) The site supervisor must be made aware of all tree protection requirements associated with these conditions of consent by the project arborist. Any subsequent site personnel and contractors to the site must be made aware of all tree protection requirements by the site foreman.</p> <p>g) The project arborist must provide written certification of compliance to the Principal Certifier with the above conditions.</p> <p><b>Condition Reason:</b> To ensure the protection of existing trees</p> <p>Standard Condition B.5 (Autotext 5B)</p>
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<p><b>B. 2.</b></p>	<p><b>Construction Management Plan Arborist Review</b></p> <p>Prior to any site works, the Construction Management Plan must be reviewed and certified by the Project Arborist confirming that appropriate tree protection measures are implemented. The Construction Management Plan must be prepared in accordance with all tree protection measures specified within this consent.</p> <p>The plan must address:</p> <p>a) Drawings and method statement showing details and the location of hoarding and scaffold and any pruning required to accommodate the hoarding and scaffolding;</p> <p>b) The movement and positioning of heavy machinery, lifting cranes, pier drilling gantry etc.;</p> <p>c) Site construction access, temporary crossings and movement corridors on the site defined;</p> <p>d) Contractors car parking;</p>
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- e) Phasing of construction works;
- f) The space needed for all foundation excavations and construction works;
- g) All changes in ground level;
- h) Space for site sheds and other temporary structures such as toilets;
- i) Space for sorting and storing materials (short or long term), spoil and fuel and the mixing of cement and concrete; and
- j) The effects of slope on the movement of potentially harmful liquid spillages towards or into tree protection areas.

**Condition Reason** To ensure the Construction Management Plan incorporates measures for the protection of existing trees.

Standard Condition B.28 (Autotext 28B)

**B. 3. Arborists Documentation and Compliance Checklist**

Prior to any site works, the project arborist must provide written certification that all tree protection measures and construction techniques relevant to this consent are implemented. Documentation for each site visit must include:

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

All compliance certification documents must be kept on site.

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

Stage of arboricultural inspection and supervision	Compliance documentation and photos must include
Prior to any site works	<ul style="list-style-type: none"> <li>• Project Arborist to hold pre construction site meeting with the principal contractor to discuss methods and importance of tree protection measures and resolve any issues in relation to feasibility of tree protection requirements that may arise. Project Arborist to mark all trees approved for removal under DA consent.</li> <li>• The project arborist must install or supervise the installation of tree protection fencing, trunk protection, ground protection and traffic height control beam.</li> </ul>

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

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



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**Condition Reason** To ensure that written certification that all tree protection measures and construction techniques relevant to this consent have been implemented.

Standard Condition B.29 (Autotext 29B)

**B. 4.**

**Permissible work within Tree Protection Zones**

Prior to any site works, the following works are permissible within the Tree Protection Zone:

Council Ref No	Species	Radius from Centre of Trunk (Metres)	Approved works
9	<i>Lophostemon confertus</i>	5m	Landscape upgrade works and realignment of driveway
10	<i>Syzygium smithii</i>	4m	Landscape upgrade works and realignment of driveway
11	<i>Elaeocarpus reticulatus</i>	4m	Landscape upgrade works and realignment of driveway
12	<i>Lophostemon confertus</i>	8m	Construction of new garage, landscape upgrade works and realignment of driveway
20	<i>Camellia sasanqua</i>	4m	Landscape upgrade works and realignment of driveway
23	<i>Melaleuca quinquenervia</i>	12m	Landscape upgrade works and realignment of driveway
24	<i>Camellia sasanqua</i>	5m	Landscape upgrade works
26	<i>Howea forsteriana</i>	2m	Landscape upgrade works
35	<i>Xylosma senticosum</i>	2m	Landscape upgrade works
38	<i>Corymbia citriodora</i>	7m	Landscape upgrade works
39	<i>Jacaranda mimosifolia</i>	5m	Landscape upgrade works
40	<i>Lophostemon confertus</i>	6m	Landscape upgrade works

The project arborist must provide written certification of compliance to the Principal Certifier with the above condition.

**Condition Reason** To establish the works which are permissible within the Tree Protection Zones.



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Standard Condition B.30 (Autotext 30B)

**C. ON COMPLETION OF REMEDIATION WORK**

Nil.

**D. BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

<p><b>D 1.</b></p>	<p><b>Tree Protection Plan and Specification</b></p> <p>Before the issue of any construction certificate, the Principal Certifier must ensure the measures for tree protection detailed in this consent are in place. The construction certificate plans and specifications must show the following information:</p> <p>a) Trees to be numbered and coloured in accordance with these conditions:</p> <ul style="list-style-type: none"> <li>shaded green where required to be retained and protected</li> <li>shaded red where authorised to be removed</li> <li>shaded yellow where required to be transplanted</li> <li>shaded blue where required to be pruned</li> </ul> <p>b) Tree Protection Plan and Specification prepared by an arborist with a minimum qualification of AQF 5 including the following:</p> <ul style="list-style-type: none"> <li>Tree Location Plan (to scale) based on/overlaid with the approved plans, indicating trees to be retained, removed or transplanted, and the location of tree protection zones (TPZ) and structural root zones (SRZ) of trees to be retained and protected.</li> <li>The plan must also include site specific tree protection recommendations such as fencing, ground and trunk protection and other protection devices.</li> <li>Tree Protection Specification (written document) with tree protection requirements included from this consent and in accordance with sections 4 &amp; 5 of AS4970, providing guidance for the implementation of tree protection methods.</li> <li>To minimise construction damage, the plan must show specific areas requiring works to be done under direct supervision of the project arborist.</li> </ul> <p>c) References to applicable tree management plan, arborists report or transplant method statement.</p> <p>This plan must be kept on site until the issue of the occupation certificate for the whole building.</p> <p><b>Condition Reason:</b> To ensure the construction certificate includes the approved tree management details, and all measures are implemented.</p> <p>Standard Condition D.30 (Autotext 30D)</p>
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**E. BEFORE BUILDING WORK COMMENCES**





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Nil.

**F. DURING BUILDING WORK**

<b>F 1.</b>	<b>Tree Preservation</b>	
	<p>While site work is being carried out, all persons must comply with Chapter E.3 – <i>Tree Management</i> of Council's Development Control Plan (DCP) 2015, other than where varied by this consent. The DCP applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.</p> <p>General Protection Requirements:</p> <ul style="list-style-type: none"> <li>a) The tree protection measures must be maintained during all development work unless otherwise specified within these conditions of consent.</li> <li>b) Excavation must cease where tree roots with a diameter exceeding 50mm are exposed. The principal contractor must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.</li> <li>c) Where there is damage to any part of a tree the principal contractor must procure an inspection of the tree by a qualified arborist immediately. The principal contractor must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.</li> </ul> <p>Trees must be pruned in accordance with Australian Standard AS 4373 "Pruning of Amenity Trees" and WorkCover NSW Code of Practice Amenity Tree Industry.</p> <p><b>Condition Reason:</b> To protect trees during the carrying out of sitework.</p> <p>Standard Condition F.8 (Autotext 8F)</p>	
<b>F 2.</b>	<b>Arborists Documentation and Compliance Checklist</b>	
	<p>While site work is being carried out, the project arborist must provide written certification that all tree protection measures and construction techniques relevant to this consent have been implemented. Documentation for each site visit must include:</p> <ul style="list-style-type: none"> <li>a) a record of the condition of trees to be retained prior to and throughout development,</li> <li>b) recommended actions to improve site conditions and rectification of non-compliance, and</li> <li>c) recommendations for future works which may impact the trees.</li> </ul> <p>All compliance certification documents must be kept on site by the site Supervisor.</p> <p>As a minimum the following intervals of site inspections must be made:</p> <table border="1"> <tr> <td><b>Stage of arboricultural inspection</b></td><td><b>Compliance documentation and photos must include</b></td></tr> </table>	<b>Stage of arboricultural inspection</b>
<b>Stage of arboricultural inspection</b>	<b>Compliance documentation and photos must include</b>	



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	<table border="1"> <tr> <th data-bbox="414 403 574 459">and supervision</th><th data-bbox="574 403 1260 459"></th></tr> <tr> <td data-bbox="414 459 574 884">While site work is carried out</td><td data-bbox="574 459 1260 884"> <ul style="list-style-type: none"> <li>The project arborist must supervise all demolition and excavation works within the Tree Protection Zones or specified distances of nominated trees listed in this consent.</li> <li>The project arborist must ensure pier holes within the Tree Protection Zones or specified distances of nominated trees listed in this consent are positioned to avoid the severance of and damage to roots greater than 50mm diameter.</li> <li>The project arborist must inspect the installed irrigation system to plants in garden beds. The arborist must certify there is an appropriate distribution of water to planted and existing trees.</li> <li>Project Arborist to approve relocation of tree protection for landscaping. All landscaping works within the TPZ of trees to be retained are to be undertaken in consultation with the project Arborist to minimise the impact to trees.</li> <li>Regular inspections as indicated in the Tree Management Plan.</li> </ul> </td></tr> </table> <p>Inspections and compliance documentation must be made by an arborist with AQF Level 5 qualifications.</p> <p>Additional site visits must be made when required by site arborist and/or site foreman for ongoing monitoring/supervisory work.</p> <p><b>Condition Reason:</b> To ensure that all tree protection measures and construction techniques relevant to this consent have been implemented.</p> <p>Standard Condition F.45 (Autotext 45F)</p>	and supervision		While site work is carried out	<ul style="list-style-type: none"> <li>The project arborist must supervise all demolition and excavation works within the Tree Protection Zones or specified distances of nominated trees listed in this consent.</li> <li>The project arborist must ensure pier holes within the Tree Protection Zones or specified distances of nominated trees listed in this consent are positioned to avoid the severance of and damage to roots greater than 50mm diameter.</li> <li>The project arborist must inspect the installed irrigation system to plants in garden beds. The arborist must certify there is an appropriate distribution of water to planted and existing trees.</li> <li>Project Arborist to approve relocation of tree protection for landscaping. All landscaping works within the TPZ of trees to be retained are to be undertaken in consultation with the project Arborist to minimise the impact to trees.</li> <li>Regular inspections as indicated in the Tree Management Plan.</li> </ul>
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F 3.	<p><b>Replacement/Supplementary trees which must be planted</b></p> <p>While site work is being carried out, any replacement or supplementary tree must be grown in accordance with Tree stock for landscape use (AS 2303). The replacement tree/s must be planted in deep soil landscaped area and maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it becomes a prescribed tree in accordance with Chapter E.3 of Council's Development Control Plan, it must be replaced with another of the same species, which complies with the approved Landscape Plans.</p> <p>The project arborist must document compliance with the above condition.</p> <p><b>Condition Reason:</b> To ensure the provision of appropriate replacement planting.</p> <p>Standard Condition F.46 (Autotext 46F)</p>
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F 4.	<p><b>Hand excavation within tree root zones</b></p>
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While site work is being carried out, demolition of underground structures such as existing footings and approved excavation undertaken within the specified radius from the trunks of the following trees must be carried out by hand.

Council Ref No	Species	Location	Radius from centre of trunk (metres)
9	<i>Lophostemon confertus</i>	Refer to the Landscape Plans prepared by Studio U.C dated 6 February 2024 for tree numbers and locations.	5m
10	<i>Syzygium smithii</i>		4m
11	<i>Elaeocarpus reticulatus</i>		4m
12	<i>Lophostemon confertus</i>		8m
20	<i>Camellia sasanqua</i>		4m
23	<i>Melaleuca quinquenervia</i>		12m
24	<i>Camellia sasanqua</i>		5m
26	<i>Howea forsteriana</i>		2m
35	<i>Xylosma senticosum</i>		2m
38	<i>Corymbia citriodora</i>		7m
39	<i>Jacaranda mimosifolia</i>		5m
40	<i>Lophostemon confertus</i>		6m

Small hand tools such as mattocks or using compressed air or water jetting only must be used. Roots with a diameter equal to or in excess of 50mm must not be severed or damaged unless approved in writing and documented by the project arborist.

Mechanical excavation is permitted beyond this radius when root pruning by hand along the hand excavated perimeter line is completed. Exposed roots to be retained must be covered with mulch or a geotextile fabric and kept in a moist condition and prevented from drying out.

All root pruning must be undertaken in accordance with the Australian Standard 4373 "Pruning of Amenity Trees" and carried out by a qualified Arborist (minimum qualification of Australian Qualification Framework Level 5 or recognised equivalent).

The project arborist must document compliance with the above condition.

**Condition Reason:** To ensure demolition and excavation works would not adversely impact upon the health of existing trees.

Standard Condition F.50 (Autotext 50F)

F 5.	<b>Footings in the vicinity of trees</b>												
	While site work is being carried out, footings for any structure within the specified radius from the trunks of the following trees must be supported using an isolated pier and beam system.												
	<table> <tr> <th>Council Ref No</th><th>Species</th><th>Location</th><th>Radius from centre of trunk (metres)</th></tr> <tr> <td>9</td><td><i>Lophostemon confertus</i></td><td rowspan="2"></td><td>5m</td></tr> <tr> <td>10</td><td><i>Syzygium smithii</i></td><td>4m</td></tr> </table>	Council Ref No	Species	Location	Radius from centre of trunk (metres)	9	<i>Lophostemon confertus</i>		5m	10	<i>Syzygium smithii</i>	4m	
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9	<i>Lophostemon confertus</i>		5m										
10	<i>Syzygium smithii</i>		4m										



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11	<i>Elaeocarpus reticulatus</i>	Refer to the Landscape Plans prepared by Studio U.C dated 6 February 2024 for tree numbers and locations.	4m
12	<i>Lophostemon confertus</i>		8m
20	<i>Camellia sasanqua</i>		4m
23	<i>Melaleuca quinquenervia</i>		12m
24	<i>Camellia sasanqua</i>		5m
26	<i>Howea forsteriana</i>		2m
35	<i>Xylosma senticosum</i>		2m
38	<i>Corymbia citriodora</i>		7m
39	<i>Jacaranda mimosifolia</i>		5m
40	<i>Lophostemon confertus</i>		6m

Excavations for the installation of piers must be located so that no tree root with a diameter equal to or in excess of 50mm is severed or damaged. The smallest possible area must be excavated which allows construction of the pier. In consultation with the project engineer the piers must be offset a minimum 100mm from any root equal to or in excess of 50mm to accommodate future growth. The beam is to be placed a minimum of 100mm above ground level and is to be designed to bridge all tree roots with a diameter equal to or in excess of 50mm.

The project arborist must document compliance with the above condition.

**Condition Reason:** To ensure the proposed footings would not adversely impact upon the health of existing trees.

Standard Condition F.51 (Autotext 51F)

F6.

Installation of stormwater pipes and pits in the vicinity of trees

While site work is being carried out, excavation for the installation of stormwater pipes and pits within the specified radius from the trunks of the following trees must be carried out by hand.

Council Ref No	Species	Location	Radius from centre of trunk (metres)
9	<i>Lophostemon confertus</i>	Refer to the Landscape Plans prepared by Studio U.C dated 6 February 2024 for tree numbers and locations.	5m
10	<i>Syzygium smithii</i>		4m
11	<i>Elaeocarpus reticulatus</i>		4m
12	<i>Lophostemon confertus</i>		8m
20	<i>Camellia sasanqua</i>		4m
23	<i>Melaleuca quinquenervia</i>		12m
24	<i>Camellia sasanqua</i>		5m
26	<i>Howea forsteriana</i>		2m
35	<i>Xylosma senticosum</i>		2m
38	<i>Corymbia citriodora</i>		7m
39	<i>Jacaranda mimosifolia</i>		5m
40	<i>Lophostemon confertus</i>		6m

Any roots equal to or greater than 50mm diameter uncovered for the installation of stormwater pipes and pits must not be severed and remain in situ bridging across the excavated trench. Pipes must be guided under any roots



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	<p>equal to or greater than 50mm bridging across excavated trenches. Stormwater pits must be positioned so that no roots equal to or greater than 50mm diameter are severed.</p> <p>The project arborist must document compliance with the above condition.</p>
	<p><b>Condition Reason:</b> To ensure the installation of the stormwater works would not adversely impact upon the health of existing trees.</p>
	<p>Standard Condition F.52 (Autotext 52F)</p>

#### G. BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

<b>G</b>	<b>1.</b>	<b>Amenity Landscaping</b>
		<p>Before the issue of any occupation certificate, all approved amenity landscaping (screen planting, soil stabilisation planting, etc.) and replacement/supplementary tree planting must be installed in accordance with the approved plans and documents and any relevant conditions of consent.</p>
		<p><b>Condition Reason:</b> To ensure that the environmental impacts of the development are mitigated by approved landscaping prior to the occupation of the development.</p> <p>Standard Condition G.6 (Autotext 6G)</p>
<b>G</b>	<b>2.</b>	<b>Landscaping</b>
		<p>Before the issue of any occupation certificate, the Principal Certifier and Council must be provided with a works-as-executed landscape plan and certification from a qualified landscape architect/designer, horticulturist and/or arborist as applicable to the effect that the landscaping and replacement/supplementary tree planting works comply with this consent.</p>
		<p><b>Condition Reason:</b> To ensure that all landscaping work is completed prior to occupation.</p> <p>Standard Condition G.26 (Autotext 26G)</p>
<b>G</b>	<b>3.</b>	<b>Arborists Documentation and Compliance Checklist – Prior to any occupation certificate</b>
		<p>Before the issue of any occupation certificate, the project arborist must provide written certification that all tree protection measures and construction techniques relevant to this consent have been implemented. Documentation for each site visit must include:</p> <ul style="list-style-type: none"> <li>a) A record of the condition of trees to be retained prior to and throughout development.</li> <li>b) Recommended actions to improve site conditions and rectification of non-compliance.</li> <li>c) Recommendations for future works which may impact the trees.</li> </ul>



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All compliance certification documents must be kept on site by the site Supervisor.

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

Stage of arboricultural inspection and supervision	Compliance documentation and photos must include
Prior to the issue of any occupation certificate	Ensure all trees conditioned to be planted as part of this consent have been planted in accordance with the details prescribed in this consent.

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

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

**Condition Reason:** To ensure that all tree protection measures and construction techniques relevant to this consent are implemented.

Standard Condition G.34 (Autotext 34G)

<b>G 4.</b>	<b>Arborists Documentation and Compliance Checklist – Prior to an occupation certificate for the whole building</b>			
	<p>Before the issue of any occupation certificate for the whole of the building, the project arborist must provide written certification that all tree protection measures and construction techniques relevant to this consent have been implemented. Documentation for each site visit must include:</p> <ul style="list-style-type: none"> <li>a) A record of the condition of trees to be retained prior to and throughout development.</li> <li>b) Recommended actions to improve site conditions and rectification of non-compliance.</li> <li>c) Recommendations for future works which may impact the trees.</li> </ul> <p>All compliance certification documents must be kept on site.</p> <p>As a minimum the following intervals of site inspections must be made:</p>			
	<table> <tr> <th>Stage of arboricultural inspection and supervision</th><th>Compliance documentation and photos must include</th></tr> <tr> <td>Before the issue of any occupation certificate for the whole of the building</td><td> <ul style="list-style-type: none"> <li>The project arborist must supervise the dismantling of tree protection measures</li> <li>After all demolition, construction and landscaping works are complete the project Arborist must assess that the subject trees have been retained in the same condition and vigour. If changes to condition are identified the project Arborist must provide recommendations for remediation.</li> </ul> </td></tr> </table> <p>Inspections and compliance documentation must be made by an arborist with AQF Level 5 qualifications.</p>	Stage of arboricultural inspection and supervision	Compliance documentation and photos must include	Before the issue of any occupation certificate for the whole of the building
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Before the issue of any occupation certificate for the whole of the building	<ul style="list-style-type: none"> <li>The project arborist must supervise the dismantling of tree protection measures</li> <li>After all demolition, construction and landscaping works are complete the project Arborist must assess that the subject trees have been retained in the same condition and vigour. If changes to condition are identified the project Arborist must provide recommendations for remediation.</li> </ul>			





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	Additional site visits must be made when required by site arborist and/or site foreman for ongoing monitoring/supervisory work.
	<b>Condition Reason:</b> To ensure that all tree protection measures and construction techniques relevant to this consent are implemented.
	Standard Condition G.35 (Autotext 34G)

#### H. OCCUPATION AND ONGOING USE

H	1.	<b>Maintenance of Landscaping</b>
		During the occupation and ongoing use, all landscaping must be maintained in general accordance with this consent.
		This condition does not prohibit the planting of additional trees or shrubs subject that they are native species endemic to the immediate locality.
		<b>Notes:</b> <ul style="list-style-type: none"><li>• This condition also acknowledges that development consent is not required to plant vegetation and that over time additional vegetation may be planted to replace vegetation or enhance the amenity of the locality.</li><li>• Owners must have regard to the amenity impact of trees upon the site and neighbouring land.</li></ul>
		<b>Condition Reason:</b> To ensure that the landscaping design intent is not eroded over time by the removal of landscaping or inappropriate exotic planting.
		Standard Condition H.25 (Autotext 25H)

#### I. BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

Nil.

#### J. BEFORE SUBDIVISION WORK COMMENCES

Nil.

#### K. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE (subdivision works)

Nil.

#### L. BEFORE ISSUE OF A SUBDIVISION CERTIFICATE (no subdivision works)

Nil.

#### M. BEFORE ISSUE OF A STRATA CERTIFICATE

Nil.

Sam Knight  
Tree Officer

29 April 2024  
Completion Date



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9 April 2024

## REFERRAL RESPONSE - HERITAGE

**FILE NO:** Development Applications: 444/2023/1

**ADDRESS:** 79 Victoria Road BELLEVUE HILL 2023

**PROPOSAL:** Extensive internal and external alterations and additions, including new swimming pool and landscaping works.

**FROM:** Vanessa Wood

**TO:** Ms L Samuels

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### 1. DOCUMENTATION

The following documentation provided by the applicant has been examined for this referral response:

- Drawing set by MJ Suttie Architects, amended 8 March 2024, DA-001 to DA-602
- Demolition Report by MJ Suttie Architects, dated 29 February 2024
- Statement of Environmental Effects by MJ Suttie Architects, dated November 2023
- Survey plan by Frank M Mason
- Aboriginal Heritage Impact Assessment by Associates Archaeology and Heritage, dated February 2024

### 2. SITE INSPECTION / RESEARCH

The following research was undertaken in the preparation of this assessment:

- The site was inspected on 4 April 2024, including the interior and the general locality.

Review of the following documents and photographic evidence:

- Council's property system, to establish dates of earlier building and development applications for the subject and surrounding properties.
- Council's photography files relevant to the immediate area
- Council's heritage inventory sheets
- Council's aerial photography and mapping database
- Google Maps – street view

### 3. STATUTORY AND POLICY DOCUMENTS

The following statutory and policy documents are relevant to the application:

- National Parks & Wildlife Act 1974
- Woollahra LEP 2014
- Woollahra DCP 2015

### 4. ASSESSMENT OF HERITAGE IMPACT

Compliance with the relevant legislative framework and planning controls

### 5. SIGNIFICANCE OF SUBJECT PROPERTY/TO THE CONSERVATION AREA

The property is not a listed heritage item and is not located within a Heritage Conservation
--



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Area.

The Heritage Demolition Report provides the following description of the subject property:

*The exact construction date of the current dwelling is unknown. Nevertheless, it appears that the dwelling predates the subdivision of the property, which took place in 1930. Therefore, it is reasonable to assume that the dwelling was built sometime before 1930. Following the subdivision from 81 Victoria Road in 1930, numerous alterations and additions were made to the current property.*

*The original building is a regular rectangular block with double hung windows and a portico resting upon a sandstone base. The original building has double height cavity brick piers and an attached doric portico. The numerous additions to the original structure are in a variety of non-descript styles. Limited original detailing is existent or unaffected.*

The Heritage Demolition Report provides the following conclusion:

*As evidenced in this report, which encompasses an examination of the property history, assessment of surrounding sites, evaluation of heritage significance, and detailed property description, it has been determined that the subject dwelling does not hold any potential heritage significance. Therefore, preservation for heritage purposes is deemed unnecessary.*

*The general bulk and scale of the structure, typical of its time, and of the general character of the neighbourhood is to be retained as part of the proposed alterations and additions.*

*There are no impediments to proceeding with the proposed alterations and additions to the property.*

The Heritage Demolition Report submitted with the development application includes historical research on the development of the property over time. The construction of the dwelling is not associated with any known prominent architect and has no distinctive landmark qualities or other features that would make it potentially significant or rare. The report has assessed the potential heritage significance of the existing dwelling and has concluded that the property does not meet the criteria for identification as a place of local significance.

#### Historic files

The earliest plans for the subject property in Council records date to c1965.



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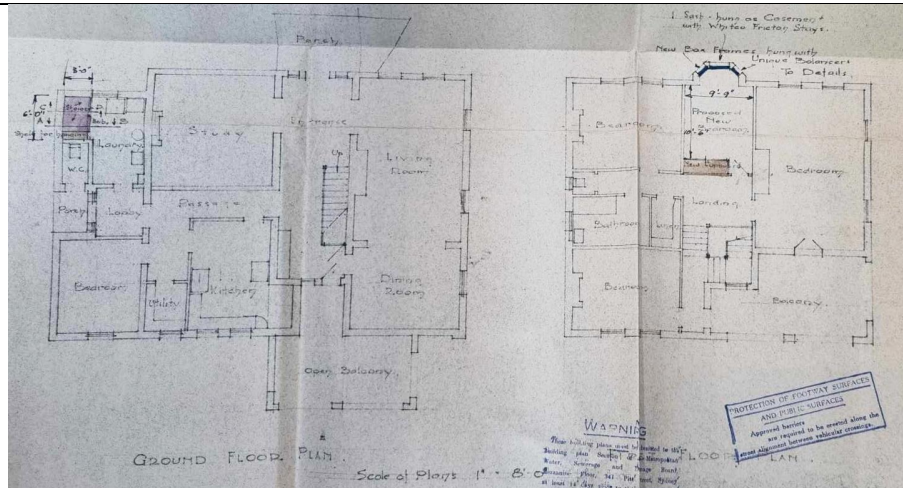


Figure 1. BA1965/1063

- BA1965/1063 – New bedroom to first floor level
- BA1968/615 – Enclosure of back porch, works to garage
- BA1968/1318 – Swimming pool
- BA1989/294 – Proposed Maid Quarters to existing garage
- BA1990/368 – Alts and ads to Maids Quarters (external garage)
- DA1998/134 – Extensive alts and ads to ground floor rear and some internal modification to first floor level

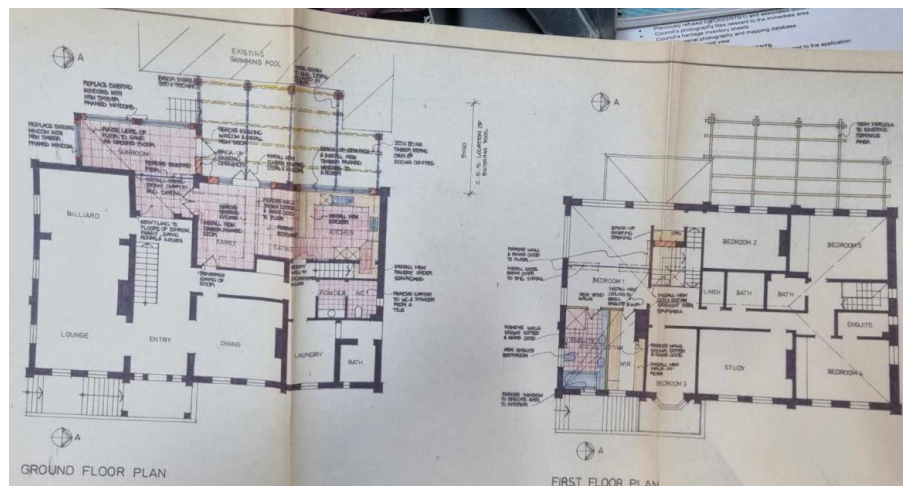


Figure 2. DA1998/134

As indicated by the above, there has been some rearrangement of the internal layout of the dwelling. Furthermore, the site visit reinforced that there is little significant internal fabric to the dwelling. Fireplaces have been boarded up and there are no significant ceilings, cornices or other architectural detailing. Some original joinery remains in-situ.



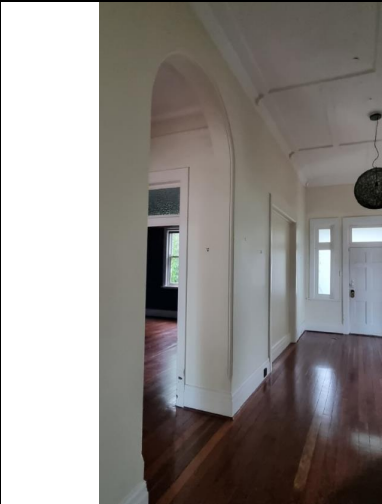
Inspection of the exterior of the building reinforced that the dwelling is generally in a good condition and retains significant features such as sandstone foundations, timber joinery and brickwork.



Exterior of dwelling



Exterior of dwelling



Ground floor interior



Detached garage



Ground floor interior, fireplace boarded up



First floor interior, new fabric

The c1965 drawings indicate that, at that time, the property was referred to as ‘The Manse’ and was owned and/ or managed by The Church of England Trust for the Diocese of Sydney. The following databases were searched and did not result in further information regarding Church or other ownership/ occupation of the property;

- Trove
- Woollahra Library
- City of Sydney Archives





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- State Library NSW
- State Archives NSW

Analysis of previous historical records associated with the dwelling indicate that various alteration and additions to the dwelling have diminished its integrity. This includes enclosure of original balconies, reconfiguration of the interior and an addition of an unsympathetic dormer

Considering the above, the findings of the Heritage Demolition Report are considered to be accurate.

#### National Parks and Wildlife Act 1974

The site is in an area of Potential Aboriginal Heritage Sensitivity. Therefore, an Aboriginal Heritage Impact Assessment was required as part of the DA to ascertain whether potential Aboriginal cultural heritage will be impacted by the proposal.

Anyone proposing to carry out an activity that may harm an Aboriginal object or a declared Aboriginal place must investigate, assess and report on the harm that may be caused by the activity they propose.

The 'Due Diligence Code of Practice for the protection of Aboriginal Objects in NSW' (2010) prescribes that an extensive search must be undertaken if AHIMS has shown that there are Aboriginal sites or places in the search area.

The Office of Environment & Heritage (OEH) disclosures for AHIMS searches are copied below:

- *You must do an extensive search if AHIMS has shown that there are Aboriginal sites or places recorded in the search area.*
- *If you are checking AHIMS as a part of your due diligence, refer to the next steps of the Due Diligence Code of practice.*
- *The information derived from the AHIMS search is only to be used for the purpose for which it was requested.*
- *AHIMS records information about Aboriginal sites that have been provided to Office of Environment and Heritage and Aboriginal places that have been declared by the Minister;*
- *It is not be made available to the public.*
- *Information recorded on AHIMS may vary in its accuracy and may not be up to date.*
- *Location details are recorded as grid references and it is important to note that there may be errors or omissions in these recordings.*
- *Some parts of New South Wales have not been investigated in detail and there may be fewer records of Aboriginal sites in those areas. These areas may contain Aboriginal sites which are not recorded on AHIMS.*
- *Aboriginal objects are protected under the National Parks and Wildlife Act 1974 even if they are not recorded as a site on AHIMS.*

The Applicant has provided an Aboriginal Heritage Impact Assessment (the 'report') prepared in accordance with the 'Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW' published by the Department of Environment, Climate Change and Water and dated 13 September 2010 and in accordance with Attachment 10 of Council's DA guide available at: [https://www.woollahra.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0009/248238/DA-Guide-Attachment-10-Aboriginal-Heritage-Impact-Assessment.pdf](https://www.woollahra.nsw.gov.au/__data/assets/pdf_file/0009/248238/DA-Guide-Attachment-10-Aboriginal-Heritage-Impact-Assessment.pdf)





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Associates Archaeology and Heritage is a qualified Aboriginal heritage consultant who has inspected the property on 19 December 2023 on foot.

Dr Shane Ingrey also attended the inspection, evidencing consultation with the La Perouse Local Aboriginal Land Council.

There has been consideration of relevant previous Aboriginal heritage investigations, as detailed in Section 3.2 of the report.

The AHIMS of the OEH was consulted on 11 October 2023 and the extensive search is attached at Section 3.1 and Appendix 2 of the report. None of these sites are within the study area. 75 sites were recorded in a 6km x 5km area of the subject property.

The report identifies the following potential for unexpected findings within the area:

- *There does, however remain some potential for undisturbed deposits in some areas, including under the house.*

In terms of site's disturbance, the report states that:

- *The property is entirely on natural sandy soil that has been partly disturbed, levelled and improved in some garden beds.*

The report's recommendations conclude that:

1. *'Harm' to an 'Aboriginal object' (as defined in the NPW Act) is considered unlikely to occur as a result of the proposed work;*
2. *However, it is noted that parts of the property are on a relatively level spur of land, sloping gently away in three directions, that may be of geomorphological interest in an ongoing search for Pleistocene archaeology in the area. In the event of uncovering a clean section of undisturbed sand, La Perouse LALC should be provided an opportunity to inspect the property again, with a view to obtaining samples for OSL dating, for which funding is available. This should result in relatively very minor project inconvenience and cost. Some provisional stop-work measures are also included in recommendations below.*
3. *An unexpected finds protocol should be in place. If any flaked stone, bone, charcoal rich deposit or shell is found during excavation, work should stop immediately and an archaeologist or representative of LPLALC invited to expect the find;*
4. *In the event that any bones are observed that may be human, there is also a legal requirement under the Coroner's Act to notify the Police. The involvement of Heritage NSW would be recommended to help expedite the required management response.*
5. *Contractors should be advised that failing to stop work in the event of uncovering any material that is defined as an 'Aboriginal object' is an offence under the National Parks and Wildlife Act). Any slight, initial, unanticipated harm may be considered to have been done 'unknowingly' and subject to a due diligence defence based on the advice in this report, but any harm after failing to stop work would be a 'knowing offence' that may lead to prosecution and harsh penalties. The maximum penalty for knowingly harming an Aboriginal object is \$275,000 (1yr imprisonment) for individuals, \$1,100,000 for Corporations.*
6. *Council is advised to remove the lot from the Potential Aboriginal Heritage Sensitivity map*



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(this would be reversed in the event of any unanticipated finds).

7. A copy of this report should be forwarded to LPLALC ([Admin@laperouse.org.au](mailto:Admin@laperouse.org.au));
8. A copy of the final report should be submitted to AHIMS ([ahims@environment.nsw.gov.au](mailto:ahims@environment.nsw.gov.au))

#### Woollahra Council Sensitivity Mapping

The report recommends that the lot be removed from the Woollahra Council Sensitivity Mapping.

#### La Perouse LALC Referral Response

On 1 February 2024, the La Perouse LALC provided the following recommendations in response to the application:

##### Recommendation 1:

- o *The La Perouse LALC agrees with recommendations as set out on page 19 of the assessment.*

##### Recommendation 2:

- o *The La Perouse LALC advises that if any Aboriginal objects (such as human or animal bone, shell material or stone artifacts) are impacted or unearthed during any activity on the property, the activity must cease, and the NSW Heritage and La Perouse LALC be contacted immediately.*

Given the above, it is concluded that an unexpected findings condition of consent will need to be imposed as part of the DA consent.

#### Woollahra LEP 2014

The subject site is not a heritage item in Woollahra Local Environment Plan 2014 'the LEP' and is not within a heritage conservation area.

##### *Clause 1.2 Aims of Plan*

##### *Subclause 1.2. (2) (f) – to conserve built and natural environmental heritage*

The dwelling has no heritage significance and does not make any contribution to the heritage significance of Bellevue Hill. The property is not heritage listed and is not located within a heritage conservation area.

A Demolition Heritage Impact Report has been submitted with the development application and includes historical research on the development of the property over time. The construction of the dwelling is not associated with any known prominent architect and has no distinctive landmark qualities or other features that would make it potentially significant or rare. The report has assessed the potential heritage significance of the existing dwelling and has concluded that it does not meet the criteria for identification as a place of local significance. The findings of the report are considered to be accurate. Accordingly, the property is not of heritage value and therefore no objection is raised to the proposed alterations and additions to the existing building.

As the property is not listed as a heritage item and is not located within a heritage conservation area, the design of the proposed new development will not result in any adverse impacts on



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heritage items/areas of value. There are no heritage items located within the vicinity of the site that will be adversely impacted and the proposal will not affect any significant views. As such, there are no concerns raised on heritage grounds regarding the design of the proposed new development.

The submitted Demolition Heritage Impact Report meets the standard of archival recordings for buildings with little or no heritage significance.

*Significance of items in the vicinity*

There are no listed heritage items in close proximity that would be adversely affected by the proposal.

**6. CONCLUSION**

National Parks & Wildlife Service Act, 1979

Appropriate conditions of consent to manage Aboriginal heritage will be provided below.

Woollahra LEP 2014

- Clause 1.2 (2) (f) The development does conserve the built heritage of Woollahra.

**7. RECOMMENDATION**

The proposal is generally acceptable, subject to conditions, as it complies with the relevant statutory and policy documents and would have a satisfactory impact.

Consent, subject to conditions;

**A. GENERAL CONDITIONS**

Condition	
<b>A 1.</b>	<b>Salvage</b>
	Stone, bricks, joinery and decorative architectural elements to be demolished, which include windows and doors, chimney pieces, sandstone, fireplaces, timber flooring, decorative ceilings and ceiling roses must be salvaged and where possible reused on the project.
	Salvaged building materials surplus to the project must either be stored on site for future reuse, or transferred to an established second building material dealer for recycling.
<b>Condition Reason:</b> To ensure significant heritage fabric is recycled/salvaged.	

**B. BEFORE DEMOLITION WORK COMMENCES**



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Condition

<p><b>B. 1.</b></p>	<p><b>Skeletal Remains</b></p> <p>While site work is being carried out, if any skeletal remains suspected of being human are found, work must cease immediately and no further disturbance of the site must occur. The following must be notified:</p> <ul style="list-style-type: none"> <li>a) NSW Police, and</li> <li>b) The person who is the authority for the protection of Aboriginal objects under the National Parks and Wildlife Act 1974, section 85.</li> </ul> <p>Details of the remains and their precise location are to be provided.</p> <p>Site work may recommence at a time confirmed in writing by the NSW Police and the person who is the authority for the protection of Aboriginal objects under the National Parks and Wildlife Act 1974, section 85.</p> <p><b>Condition Reason:</b> To ensure the appropriate management of skeletal remains.</p>
<p><b>B. 2.</b></p>	<p><b>Aboriginal Objects – Unexpected Findings</b></p> <p>While site work is being carried out, if unexpected Aboriginal objects or bones are found, you must:</p> <ul style="list-style-type: none"> <li>a) Not further disturb or move these objects or bones.</li> <li>b) Immediately cease all work at the particular location.</li> <li>c) In the case of suspected human remains, notify NSW Police.</li> <li>d) Notify the Heritage NSW Environment Line on 131 555 and the La Perouse Land Council (LALC) on (02) 9311 4282 as soon as practicable and provide available details of the objects or remains and their location.</li> <li>e) Notify the person who is the authority for the protection of Aboriginal objects under the National Parks and Wildlife Act 1974, section 85.</li> <li>f) Not recommence any work at the particular location unless authorised in writing by the police (in the case of human remains) and the person who is the authority for the protection of Aboriginal objects under the National Parks and Wildlife Act 1974, section 85. Additional assessment and approval under the National Parks and Wildlife Act 1974 may be required prior to works continuing in the affected area(s) based on the nature of the discovery.</li> </ul> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• The Definition of Aboriginal object, as per the National Parks &amp; Wildlife Act 1974, is any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.</li> </ul> <p><b>Condition Reason:</b> To protect Aboriginal objects</p>



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<b>B. 3.</b>	<p><b>Aboriginal Heritage Due Diligence Responsibilities</b></p> <p>While site work is being carried out, nothing in this approval allows to cause harm to an Aboriginal object as defined in the National Parks &amp; Wildlife Act 1974. Under the National Parks &amp; Wildlife Act 1974, it is an offence to harm Aboriginal 'objects' (consisting of any material evidence of the Aboriginal occupation of NSW) without a valid Aboriginal Heritage Impact Permit under Section 90 of the Act. This applies whether the harm occurs either knowingly [s86(1)] or unknowingly [s86(2)].</p> <p>It is a defence to the strict liability offence of harm to an Aboriginal object under s86(2) if a process of Due Diligence was followed which reasonably determined that the proposed activity would not harm an Aboriginal object.</p> <p><b>Condition Reason:</b> To protect Aboriginal heritage.</p>
<b>B. 4.</b>	<p><b>Aboriginal Heritage Induction</b></p> <p>Prior to any site works:</p> <ul style="list-style-type: none"> <li>a) All construction staff and contractors must be made aware of their statutory obligations for Aboriginal heritage under the National Parks and Wildlife Act 1974;</li> <li>b) An Aboriginal heritage induction is to be delivered by the La Perouse Local Aboriginal Land Council, or by a heritage consultant with Aboriginal heritage expertise (if a representative of the Local Land Council is not able to provide the induction), to explain what Aboriginal heritage may be found and outline the unexpected findings procedures; and</li> <li>c) Documentary evidence demonstrating compliance with a) and b) above must be submitted to Council and the Principal Certifier.</li> </ul> <p><b>Condition Reason:</b> To protect Aboriginal heritage.</p>
<b>B. 5.</b>	<p><b>Aboriginal Objects – Undisturbed Sand</b></p> <p>If a clean section of undisturbed sand is uncovered, the stop work method outlined in the 'unexpected finds' condition is to be followed.</p> <p>The La Perouse LALC is to then be provided the opportunity to inspect the property again, with a view to obtaining samples for OSL dating.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• The Definition of Aboriginal object, as per the National Parks &amp; Wildlife Act 1974, is any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.</li> </ul> <p><b>Condition Reason:</b> To protect Aboriginal objects</p>



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<b>C.</b>	<b>ON COMPLETION OF REMEDIATION WORK</b>
	Condition
#	
<b>D.</b>	<b>BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE</b>
	Condition
<b>E.</b>	<b>BEFORE BUILDING WORK COMMENCES</b>
	Condition
#	
<b>F.</b>	<b>DURING BUILDING WORK</b>
	Condition
<b>G.</b>	<b>BEFORE THE ISSUE OF AN OCCUPATION CERTIFICATE</b>
	Condition
#	
<b>H.</b>	<b>OCCUPATION AND ONGOING USE</b>
	Condition
#	
<b>I.</b>	<b>BEFORE THE ISSUE OF A SUBDIVISION WORKS CERTIFICATE</b>
	Condition
#	
<b>J.</b>	<b>BEFORE SUBDIVISION WORK COMMENCES</b>
	Condition
#	
<b>K.</b>	<b>BEFORE THE ISSUE OF A SUBDIVISION CERTIFICATE</b>
	Condition
#	
<b>L.</b>	<b>BEFORE THE ISSUE OF A SUBDIVISION CERTIFICATE</b>
	Condition
#	
<b>M.</b>	<b>BEFORE THE ISSUE OF A STRATA CERTIFICATE</b>
	Condition
#	

Vanessa Wood  
Heritage Officer

9.4.2024  
Completion Date





19 December 2023

REFERRAL RESPONSE – DRAINAGE

**FILE NO:** Development Applications: 444/2023/1

**ADDRESS:** 79 Victoria Road BELLEVUE HILL 2023

**PROPOSAL:** Extensive internal and external alterations and additions, including new swimming pool and landscaping works.

**FROM:** Michael Casteleyn

**TO:** Ms L Samuels

1. ISSUES

None.

2. DOCUMENTATION

I refer to the following documents received for this report:

- 23/223773 Document - FLOOD STUDY - DA2023-444-1 - 79 Victoria Road BELLEVUE HILL,
- 23/223779 Plan - Architectural Drawings - DA2023-444-1 - 79 Victoria Road BELLEVUE HILL

3. ASSESSMENT

The DA submission has been reviewed.

4. RECOMMENDATION

Council's Drainage Engineer has determined that the proposal is satisfactory, subject to the following conditions:

D	1.	<b>Flood Protection</b>
		<p>Before the issue of any construction certificate, the construction certificate plans and specifications required under clause 7 of the Development Certification and Fire Safety Regulation, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL).</p> <p><u>Flood Warning:</u></p> <p>a) A permanent flood risk management plan shall be installed in a prominent area of the garage,</p>



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Flood Proof Material

- a) Flood compatible materials shall be used for all flood exposed construction,

Electricals

- a) All flood exposed electrical wiring and equipment shall be waterproofed,

Overland Flow Paths

- a) A permanent informative sign shall be mounted on the driveway bridge indicating that the area is an overland flow path and must be kept clear and unobstructed at all times,

Certification

- a) All flood protection measures shall be inspected and certified as fit for purpose after construction is complete by an engineer experienced in flood mitigation,

Flood protection is to comply with Woollahra DCP 2015, Part E General Controls for All Development, Chapter E2 –Stormwater and Flood Risk Management.

**Notes:**

- The revised driveway profile, gradients and transitions must be in accordance with Australian Standard 2890.1, Part 1: Off-street car parking. The driveway profile submitted to Council must contain all relevant details: reduced levels, proposed grades and distances. Council will not allow alteration to existing reduced levels within the road or any other public place to achieve flood protection.

**Condition Reason:** To ensure the development incorporates flood inundation protection measures.

Michael Casteleyn  
Drainage Engineer

19 December 2023  
**Completion Date**

## **LOCAL PLANNING PANEL**

### **SECTION 4.55 APPLICATION ASSESSMENT REPORT**

<b>ITEM No.</b>	D5
<b>FILE No.</b>	DA446/2013/4
<b>ADDRESS</b>	11 Davies Avenue VAUCLUSE
<b>COUNCIL WARD</b>	Vaucluse
<b>SITE AREA</b>	344.9m <sup>2</sup>
<b>ZONING</b>	R2 Low Density Residential
<b>EXISTING CONSENT</b>	Alterations and additions to an existing semi-detached dwelling house; a single garage to the site frontage; landscape works.
<b>DATE OF CONSENT</b>	21 February 2014
<b>TYPE OF CONSENT</b>	Local development
<b>CONSENT AUTHORITY</b>	Woollahra Council
<b>PROPOSED MODIFICATION</b>	The reinstatement of the extension to Bedroom 3 required to be deleted by Condition C.1f of the development consent
<b>TYPE OF MODIFICATION</b>	Section 4.55(1a)
<b>DATE S4.55 LODGED</b>	02/04/2024
<b>APPLICANT</b>	The Trustee for AYS family Trust
<b>OWNER</b>	A J Pitsis & A N Pitsis
<b>AUTHOR</b>	Mr K Qi
<b>TEAM LEADER</b>	Mr M Moratelli
<b>SUBMISSIONS</b>	Three (3)
<b>RECOMMENDATION</b>	Approval

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

The application is to be determined by the Woollahra Local Planning Panel (WLPP) as it relates to modification to Condition C.1(f) which was imposed by the WLPP.

#### **2. REASONS FOR RECOMMENDATION**

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

- The development consent as proposed to be modified, is considered to be substantially the same as the originally approved development;
- The proposal satisfies section 4.55 of the Environmental Planning and Assessment Act 1979;
- It is considered to be satisfactory with all relevant planning policies including the objectives of WLEP 2014 and WDCP 2015;
- It will not have adverse effects on the local built and natural environment nor any adverse social and economic impacts in the locality;
- All likely impacts to adjoining properties including any submissions made have been addressed in the report, or are considered to be satisfactory;
- The site is suitable for the proposed development; and
- The proposal is in the public interest

### 3. LOCALITY PLAN



### 4. SUMMARY OF APPROVED DEVELOPMENT

The approved development involves the following works:

- Alterations and additions to the existing ground floor and associated fenestration changes;
- The addition of a first floor level with gable and skillion roof forms;
- The addition of a single garage at the site frontage and partially underground storage area to the east;
- Re-configured external access from the site frontage to the relocated front entry on the southern elevation; and
- Additional stairs within the southern setback to provide side access.

It was approved subject to the following modifying condition in Condition C1:

- a) To adequately mitigate visual privacy impacts upon 9 Davies Avenue, a privacy screen to a minimum height of 1.5m above first floor level, shall be constructed on the southern side of the first floor level front balcony.
- b) To adequately mitigate visual privacy impacts upon 9 Davies Avenue, all proposed ground floor level south-facing habitable room windows (W11, 15, 16, 17) are to either contain fixed translucent glazing or privacy louvers to a height of 1.5m above floor level. Louvers are to be fixed at an angle so as not to allow direct lines of sight to the habitable rooms of 9 Davies Avenue.

- c) *To maintain symmetry with 13 Davies Avenue, the proposed first floor level shall be set back a further 1.6m from the western (front) boundary. The western wall of the first floor level shall be in-line with the first floor level western wall of 13 Davies Avenue. The internal configuration of the proposed first floor level may be altered to accommodate this change.*

## **5. SUMMARY OF PREVIOUS SECTION 4.55 MODIFICATIONS**

The application DA446/2013/2 was approved on 04 April 2018 and involved the modification of Condition C.8.

The application DA446/2013/3 was approved on 21 December 2023 by the Local Planning Panel for the following modifications:

- *Lower ground floor*
  - *Demolition of existing garage and external stair to upper floor.*
  - *Proposed carport structure and vehicle crossing to the northern side of front site boundary.*
  - *Reconfiguration of the front entry path and proposed external landscaped area.*
  - *Proposed storage opening and internal stair to upper level.*
- *Ground floor*
  - *Proposed stairs from the entrance path to ground floor entry.*
  - *Extension of laundry and kitchen towards the south.*
  - *Proposed steps to the outside of kitchen and guest room from existing south external courtyard.*
  - *Proposed balcony to the west of family room facing Davies Avenue.*
  - *Reconfiguration of internal walls and proposed stair to the upper floor.*
  - *Fenestration works throughout.*
- *First floor*
  - *Extension of proposed master bedroom and adjacent balcony towards south and west.*
  - *Extension of proposed bedroom 3 towards the south and proposed balcony to the south of bedroom 2.*
  - *Removal of balcony to the east of proposed bedroom 2 facing the rear.*
  - *Alterations of approved roofs above.*
  - *Reconfiguration of approved internal walls.*
  - *Fenestration works throughout.*

*Also, the amended proposal aims to remove part a), b) and c) of Condition C.1.*

It was approved subject to the modification of Condition C.1 as follows:

- a) *Deleted.*
- b) *To adequately mitigate visual privacy impacts upon 9 Davies Avenue, the proposed south-facing windows (W15, W16, and W17 of the approved application DA446/2013/1 and GW-02, GW-05, FW-02 and FW-07 of application DA446/2013/3) are to either contain fixed translucent glazing or privacy louvers to a height of 1.5m above floor level. Louvers are to be fixed at an angle so as not to allow direct lines of site to the habitable rooms of 9 Davies Avenue.*
- c) *Deleted.*
- d) *In order to ensure the privacy of adjoining properties, the southern side of the proposed ground floor balcony facing Davies Avenue is to incorporate a horizontal batten privacy screen of 1.8m from finish floor level that matches the proposed privacy screens on the first floor.*
- e) *In order to ensure the suitable location of site facilities, the proposal is to incorporate a lockable mail box that is well integrated with the front building entry.*

- f) ***The proposed extension to bedroom 3, including the adjoining balcony is to be deleted. The south elevation to the approved bedroom 3 is to revert back to the south elevation approved under DA446/2013/1. Details are to be submitted to, and approved by, the Manager of Development Assessment prior to the issue of a Construction Certificate.***

**Condition C.1(f)** was imposed by the Local Planning Panel in their determination of the application. The minutes of the WLPP meeting of 21/12/2023 stated:

*The Panel considered that C.1(f) was warranted to ensure a reasonable scale and bulk presented to the adjoining property and improve physical separation.*

## 6. SUMMARY OF PROPOSED MODIFICATION

The Section 4.55 application involves the following works:

- Proposed first floor bedroom 3 extension towards the south, and Condition C.1(f) which was imposed on 21 December 2023 by the Woollahra Local Planning Panel is to be deleted;
- Proposed side windows to bedroom 3;
- Modification of first floor window FW-07 to convert it from a sliding door to highlight window;
- Deletion of trafficable balcony off bedroom 3;
- Pitched roof above bedroom 3 to be converted to a flat roof;
- Proposed 1.8m high privacy screen to the southern side of the ground floor front balcony and eastern side of the first floor bedroom 3 extension along the south elevation; and
- Proposed fenestration works of the ground floor.

Additionally, the applicant has requested to modify the date of determination of the development consent DA446/2013/3. This date has been modified in the modification summary table in **Section 22**.

## 7. ISSUES

### 7.1. Primary Issues

Issue	Conclusion	Section
Objector concerns	The issues raised in the submissions are either addressed by conditions of consent or are insufficient to warrant refusal or modification of the application.	7.2

### 7.2. Summary of Submissions

Issue	Conclusion	Section
The applicant has disregarded the condition that was imposed by the WLPP of the previous approved modification DA446/2013/3 which required the removal of the bedroom 3 extension and adjoining balcony, and it is not worthy of any further consideration by Council.	This proposal is a new modification application and it seeks to delete a condition of consent which was previously imposed by the LPP, and it is to be assessed on its merit.  Council is obliged to assess and determine Section 4.55 applications if properly made.	N/A
Bulk and scale of the bedroom 3 extension and its location in relation to the site boundary.	The proposed bedroom 3 extension is not readily visible from Davies Avenue. The bulk and scale of the proposal is not considered unreasonable when viewed from the neighbouring property.	17.1, 17.2.1 and 17.2.2



Issue	Conclusion	Section
The proposal would have an adverse visual impact viewed from the neighbouring property at 9 Davies Avenue.	<p>Also, the proposal is compliant with the southern side setback and Section 4.15(3A) of the Environmental Planning &amp; Assessment Act 1979 states that:</p> <p><i>If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority—</i></p> <p><i>(a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and</i></p>	

## PROPERTY DETAILS AND REFERRALS

### 8. SITE AND LOCALITY

<b>Physical features</b>
<p>The subject site is also known as Lot 11 DP 601024.</p> <p>The site is approximately rectangular in shape comprising the following boundary lengths:</p> <ul style="list-style-type: none"> <li>• 7.675m western street frontage to Davies Avenue</li> <li>• 45.335m southern side boundary adjoining 9 Davies Avenue Vacluse</li> <li>• 7.655m eastern rear boundary adjoining drainage reserve</li> <li>• A total of 45.335m northern side boundary adjoining 13 Davies Avenue Vacluse</li> </ul> <p>The site has an area of 344.9m<sup>2</sup></p>
<b>Topography</b>
<p>The site slopes down approximately 3.9m from the rear south east corner of the site RL 45.05 towards the front north west corner of the site RL 41.16.</p>
<b>Existing buildings and structures</b>
<p>The site contains a 2 storey semi-detached dwelling with a garage structure to Davies Avenue frontage.</p>
<b>Surrounding Environment</b>
<p>The site is located in the Vacluse East Residential Precinct. The surrounding locality comprises one to three storey single and semi-detached dwellings.</p> <p>B1.11.1 of the Woollahra DCP provides the following precinct character statement:</p> <ul style="list-style-type: none"> <li>• <i>The Vacluse East Precinct comprises an elevated plateau which provides an extensive backdrop and significant scenic presentation to Sydney Harbour along its eastern foreshore.</i></li> <li>• <i>A spectacular feature of the precinct is the public foreshore land on the eastern side of Old South Head Road which contains the Macquarie Lighthouse, a prominent harbour landmark and parkland. The highest parts of the precinct afford 360° views of both the harbour and ocean. Vantage points include Johnsons Lookout, Samuel Park, Gap Park, Christison Park and Lighthouse Reserve.</i></li> <li>• <i>The precinct contains a wide range of housing types and styles reflecting important stages in its development. Large areas are characterised by Federation and Inter-War bungalows. Inter-War residential flat buildings are also important contributors to the local character. However, the dominant development type is the dwelling house, located within a garden setting and highlighted by consistent street setbacks and side setbacks that allow for views between buildings.</i></li> <li>• <i>The precinct's exposed location at the plateau of the peninsula has resulted in a sparser foliage and tree canopy compared with the more protected streets of the Vacluse West precinct.</i></li> </ul>



Fig. Surrounding development – extract from WMC 3D Mapping

## 9. RELEVANT PROPERTY HISTORY

Current use
Residential development
Relevant Application History
<ul style="list-style-type: none"> <li> <b>DA446/2013/1</b> – The proposal involves alterations and additions to an existing semi-detached dwelling house; a single garage to the site frontage; landscape works. <p>This application was approved on 21 February 2014, subject to the following modifying condition in Condition C1:</p> <ol style="list-style-type: none"> <li>To adequately mitigate visual privacy impacts upon 9 Davies Avenue, a privacy screen to a minimum height of 1.5m above first floor level, shall be constructed on the southern side of the first floor level front balcony.</li> <li>To adequately mitigate visual privacy impacts upon 9 Davies Avenue, all proposed ground floor level south-facing habitable room windows (W11, 15, 16, 17) are to either contain fixed translucent glazing or privacy louvers to a height of 1.5m above floor level. Louvers are to be fixed at an angle so as not to allow direct lines of site to the habitable rooms of 9 Davies Avenue.</li> <li>To maintain symmetry with 13 Davies Avenue, the proposed first floor level shall be set back a further 1.6m from the western (front) boundary. The western wall of the first floor level shall be in-line with the first floor level western wall of 13 Davies Avenue. The internal configuration of the proposed first floor level may be altered to accommodate this change.</li> </ol> </li> <li> <b>DA446/2013/2</b> – The modification of Condition C.8 <p>This application was approved on 04 April 2018.</p> </li> <li> <b>DA446/2013/3</b> – The modifications to the approved alterations and additions to a semi-detached dwelling. <p>This application was approved on 21 December 2023 by the Local Planning Panel, subject to the following modifying condition in Condition C1:</p> <ol style="list-style-type: none"> <li>Deleted.</li> </ol> </li> </ul>

- b) To adequately mitigate visual privacy impacts upon 9 Davies Avenue, the proposed south-facing windows (W15, W16, and W17 of the approved application DA446/2013/1 and GW-02, GW-05, FW-02 and FW-07 of application DA446/2013/3) are to either contain fixed translucent glazing or privacy louvers to a height of 1.5m above floor level. Louvers are to be fixed at an angle so as not to allow direct lines of site to the habitable rooms of 9 Davies Avenue.
- c) Deleted.
- d) In order to ensure the privacy of adjoining properties, the southern side of the proposed ground floor balcony facing Davies Avenue is to incorporate a horizontal batten privacy screen of 1.8m from finish floor level that matches the proposed privacy screens on the first floor.
- e) In order to ensure the suitable location of site facilities, the proposal is to incorporate a lockable mail box that is well integrated with the front building entry.
- f) The proposed extension to bedroom 3, including the adjoining balcony is to be deleted. The south elevation to the approved bedroom 3 is to revert back to the south elevation approved under DA446/2013/1. Details are to be submitted to, and approved by, the Manager of Development Assessment prior to the issue of a Construction Certificate.

### Relevant Compliance History

- Complying Development 128/2015

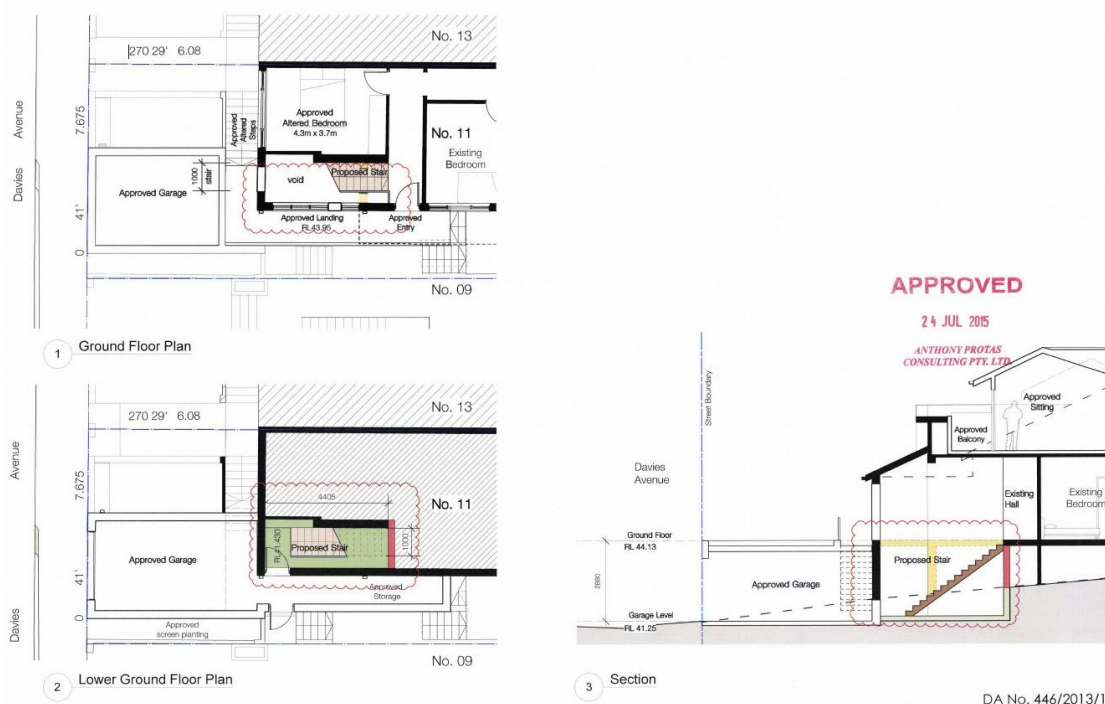


Fig. Architectural plans - extract from approved plans 128/2015

- Construction Certificate CC13/0446

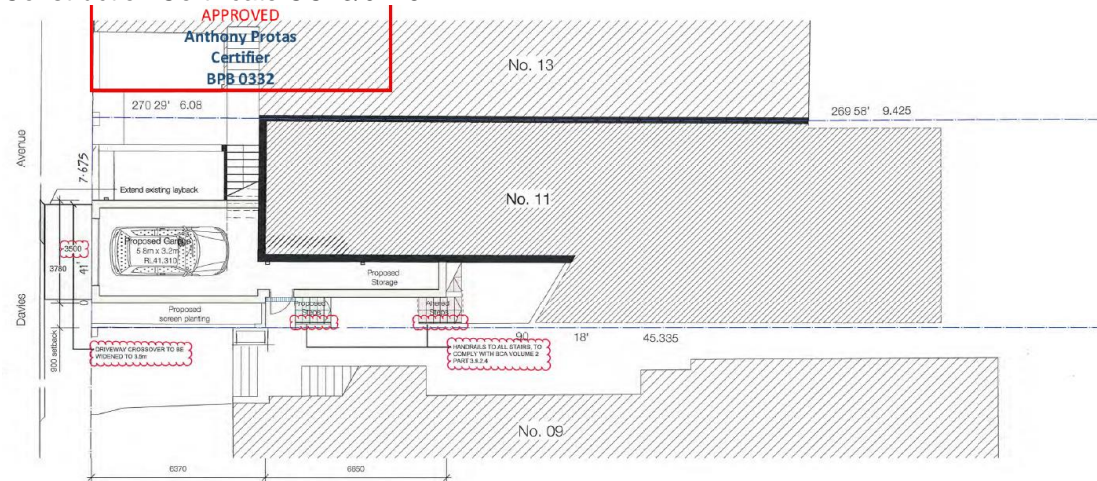


Fig. Lower ground floor plan - extract from approved plans CC13/0446



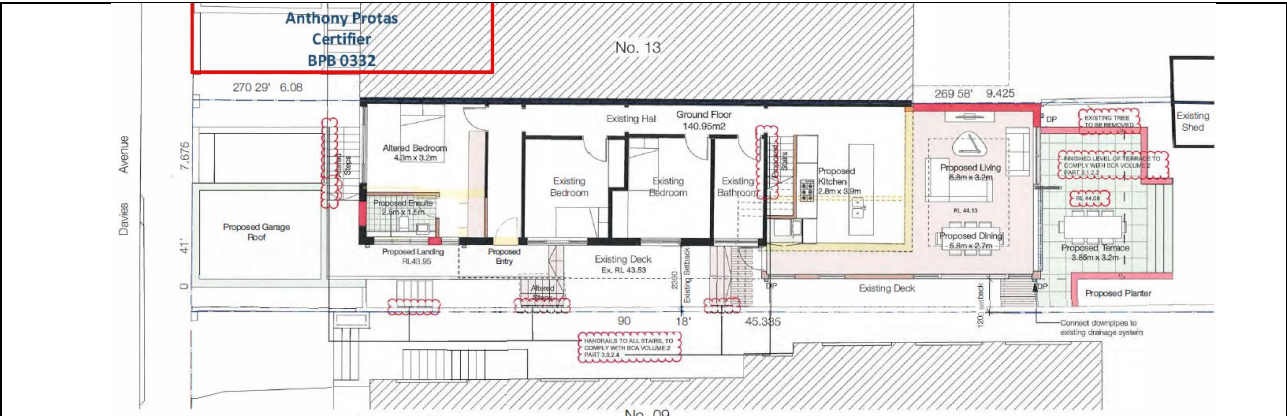


Fig. Ground floor plan - extract from approved plans CC13/0446

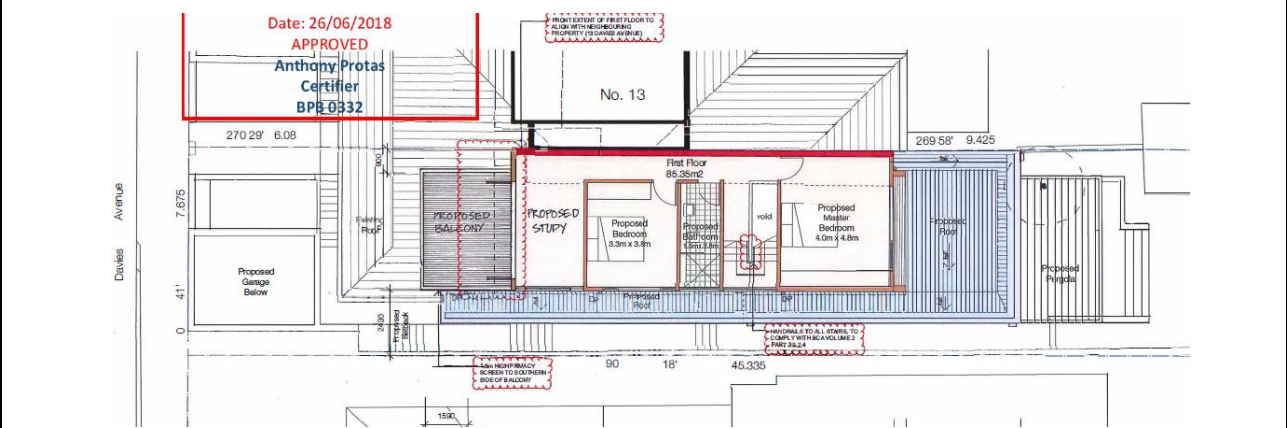


Fig. First floor plan - extract from approved plans CC13/0446

Pre-DA
N/A
Requests for Additional Information and Replacement Applications
BASIX Certificate, revised SEE and amended architectural drawings which address the correction of errors were requested on 16 May 2024. Revised SEE and BASIX Certificate were received on 21 May 2024, and revised architectural drawings were received on 22 May 2024.
Land and Environment Court Appeal(s)
N/A

10. REFERRALS

No formal referrals required.

ASSESSMENT UNDER SECTION 4.55

The application is assessed under Section 4.55 of the Environmental Planning and Assessment Act 1979.

11. SECTION 4.55(1A): MODIFICATION INVOLVING MINIMAL ENVIRONMENTAL IMPACT

Section 4.55(1A) allows the modification of a development consent where Council is satisfied that the proposed modification is of minimal environmental impact. The application involves the reinstatement of the extension to Bedroom 3 required to be deleted by Condition C.1f of the development consent.

The considerations in Section 4.55(1A) require Council to address the following:

- a) It is satisfied that the proposed modification is of minimal environmental impact

- b) *It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)*
- c) *It has notified the application in accordance with:*
  - i) *The regulations, if the regulations so require*
  - ii) *A development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent*
- d) *It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

In response to the above, the proposal involves fairly minor modifications, relative to the approved development. The proposal is considered to be of a minimal environmental impact, thereby satisfying sub-clause (a). The proposal is within the scope of the original consent, and as such, is considered to be substantially the same, thereby satisfying sub-clause (b).

The application has been notified in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019 and any objections/submissions have been considered. Therefore, achieving consistency with sub-clauses (c) and (d) in Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

## **ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15**

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

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

## **12. ADVERTISING AND NOTIFICATION**

### **12.1. Submissions**

The application was advertised and notified from 24 April 2024 to 09 May 2024 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. Submissions were received from:

1. Warren Pantzer – 27 Russell Street, Vaucluse;
2. Diana Pantzer – 29 Russell Street, Vaucluse; and
3. Rada Pantzer – 9 Davies Avenue, Vaucluse.

## **12.2. Replacement Application**

The amended drawings noted under Section 9 were not formally re-notified/re-advertised as they involved the correction of errors and provision of additional details and did not involve design changes that would impact adjoining properties.

## **12.3. Statutory Declaration**

The applicant has completed the statutory declaration dated 11 June 2024 declaring that the site notice for DA446/2013/4 was erected and maintained during the notification period in accordance with Schedule 1 of the Woollahra Community Participation Plan 2019.

## **13. STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004**

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

The Section 4.55 application was accompanied by a BASIX Certificate demonstrating compliance with the SEPP. These requirements are imposed by standard condition.

## **14. STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021**

### **14.1. Chapter 6 – Water Catchments**

Chapter 6 (Water Catchments) of the SEPP applies to the subject land which is located within a regulated catchment being the Sydney Harbour Catchment.

The land is within the Sydney Harbour Catchment but is outside the Foreshores and Waterways Area and therefore only the provisions in Part 6.2 of the SEPP applies.

In deciding whether to grant development consent to development on land in a regulated catchment, matters relating to water quality and quantity, aquatic ecology, flooding, recreation and public access and total catchment management must be considered.

The proposed modification will have no significantly adverse impacts on the Sydney Harbour Catchment, subject to standard conditions including erosion and sedimentation, stormwater and flood risk management control of the original consent.

## **15. STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021**

### **Chapter 2 Coastal Management**

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

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



## Chapter 4 Remediation of Land

Under Clause 4.6(1)(a) of SEPP (Resilience and Hazards) 2021, consideration has been given as to whether the subject site on which the development is occurring is contaminated.

As the site has a long history of residential use, it is considered that the land does not require further consideration under Clause 4.6(1) (b) and (c) of SEPP (Resilience and Hazards) 2021. The proposal is therefore acceptable with regard to SEPP (Resilience and Hazards) 2021 subject to the original conditions of consent.

## 16. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

### 16.1. Part 1.2: Aims of Plan

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

### 16.2. Land Use Table

The proposal is defined as alterations and additions to a semi-detached dwelling and is permitted and is consistent with the objectives of the R2 Low Density Residential zone.

### 16.3. Part 4.3: Height of Buildings

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

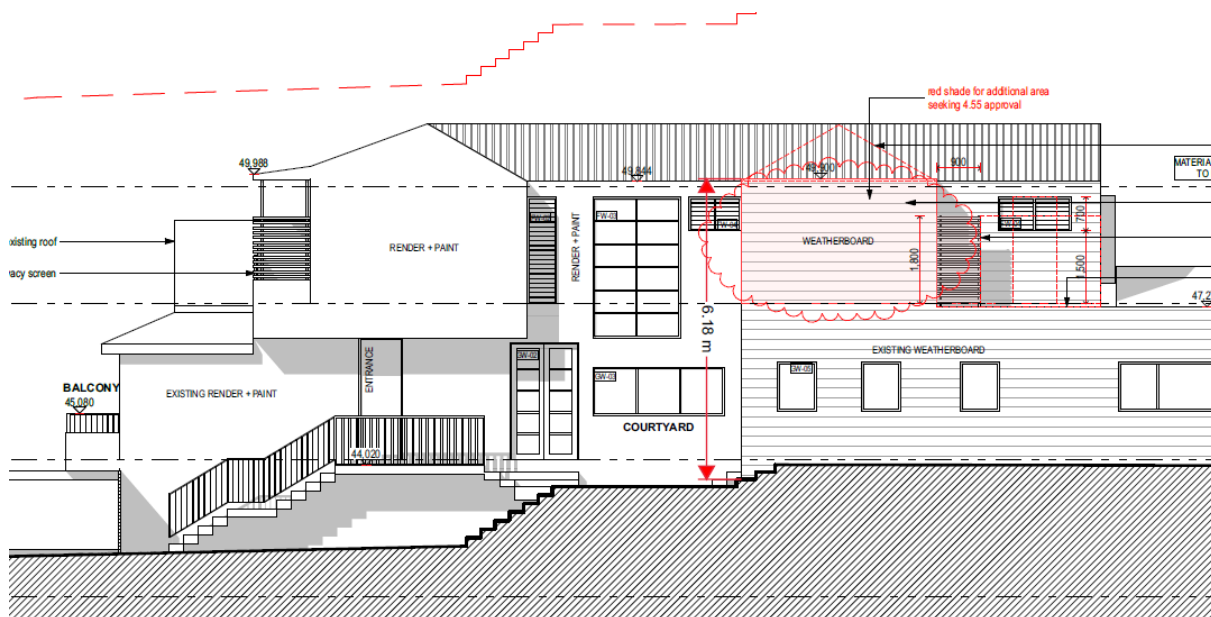


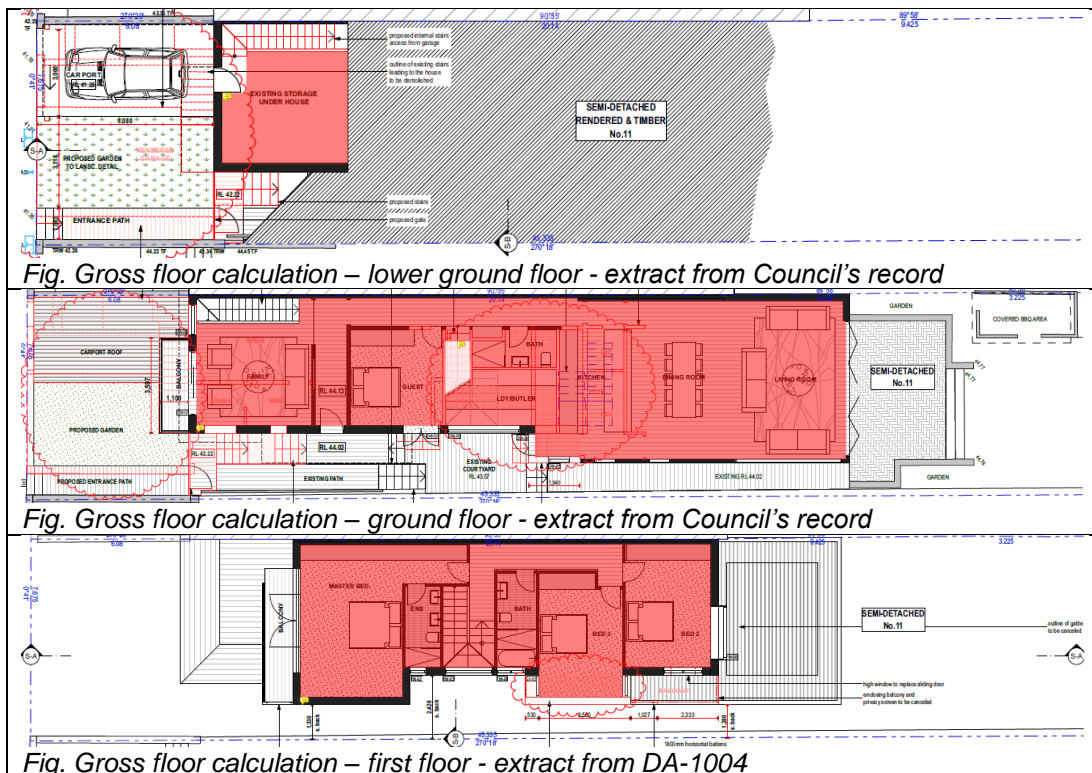
Fig. Maximum building height analysis – extract from Drawing DA-2002

The proposed modification would not alter the approved maximum building height of the subject semi-detached dwelling, which complies with the 9.5m height limit. The proposed modification therefore complies with the maximum building height prescribed by Part 4.3 of Woollahra LEP 2014 and is acceptable with regard to the relevant objectives under Part 4.3(1) of Woollahra LEP 2014.

### 16.4. Part 4.4E: Exceptions to floor space ratio—dwelling houses, dual occupancies and semi-detached dwellings in Zones R2 and R3

Part 4.4E limits development of a site area of 344.9m<sup>2</sup> to a maximum floor space ratio of 0.65:1 for a semi-detached dwelling in the R2 zone.

Site Area: 344.9m <sup>2</sup>	Approved	Proposed	Control	Complies
Floor Space Ratio	0.63:1 (217.27m <sup>2</sup> )	0.642:1 (221.33m <sup>2</sup> )	0.65:1 (224.19m <sup>2</sup> )	Yes



The total gross floor area of the modification is calculated as 221.33m<sup>2</sup> and has a floor space ratio of 0.642:1 to the site area. Therefore, the proposal complies with the maximum floor space ratio prescribed by Part 4.4E(3) of Woollahra LEP 2014.

### 16.5. Part 5.10: Heritage Conservation

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

The subject site is not located within the Woollahra Heritage Conservation Area and is not identified as a heritage item under the Woollahra Local Environment Plan 2014. Council's Heritage Officer reviewed this application at the Development Application Review Committee (DARC) Stage and raised no objections subject to the original conditions of consent.

Therefore, subject to conditions, the proposal is acceptable with regard to the Part 5.10 of the Woollahra LEP 2014.

### 16.6. Part 5.21: Flood Planning

The objectives of Part 5.21 are:

- to minimise the flood risk to life and property associated with the use of land,
- to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,
- to avoid adverse or cumulative impacts on flood behaviour and the environment,
- to enable the safe occupation and efficient evacuation of people in the event of a flood.

Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:

- a) *is compatible with the flood function and behaviour on the land, and*
- b) *will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- c) *will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- d) *incorporates appropriate measures to manage risk to life in the event of a flood, and*
- e) *will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

In deciding whether to grant development consent on land to which Part 5.21 applies, the consent authority must consider the following matters:

- a) *the impact of the development on projected changes to flood behaviour as a result of climate change,*
- b) *the intended design and scale of buildings resulting from the development,*
- c) *whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- d) *the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion*

The subject site is not identified as a flood affected lot and the proposal is considered acceptable with regard to Part 5.21 of Woollahra LEP 2014.

#### **16.7. Part 6.1: Acid Sulfate Soils**

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

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

#### **16.8. Part 6.2: Earthworks**

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

No additional earthworks are involved with the proposed modification beyond that assessed as part of the previous applications. The proposed modification is considered to be satisfactory in terms of the matters for consideration stipulated under Clause 6.2 of Woollahra LEP 2014.

### **17. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015**

#### **17.1. Chapter B1: Vaucluse East Residential Precinct**

The proposal satisfies the precinct objectives outlined in Part B1.1.3 of the Woollahra DCP 2015.

The following extract from the Desired Future Character of Part B1.11.2 of the Woollahra DCP 2015 states:

*The Vaucluse East precinct is to maintain the evolution of low density residential development, generally through the introduction of well-designed contemporary dwelling houses.*

*Development may be three storeys, but should establish a two storey presentation to the street with a reduced scale on the third floor, which will help reduce building bulk and scale.*

*On sloping sites, development should step down the site to maintain views, protect the privacy and solar access of adjoining and adjacent properties, and minimise cut and fill.*

*The built form should not detract from the unique features of the natural landscape, or be of such a scale that it dominates adjoining development, or is visually intrusive when viewed from the streetscape or the harbour.*

*In particular development is to retain views of the harbour from public spaces and provide for view sharing from private properties; these can be achieved by providing suitable side boundary setbacks and fencing, roof forms and thoughtful distribution of building form across the site.*

The relevant streetscape character and key elements of the precinct are:

- a) the relationship of the precinct to the coastal parklands;*
- b) the rich mixture of architectural styles, and their emphasis on their connection to the landform;*
- c) buildings set within highly visible gardens;*
- d) buildings addressing the street;*
- e) the iconic and harbour views available from the streets of the precinct, including view corridors between buildings;*

The relevant desired future character objectives are:

- O1 To respect and enhance the streetscape character and key elements of the precinct.*
- O2 To retain the scenic qualities provided by the dramatic topography and natural vegetation within the precinct.*
- O3 To maintain the evolution of low rise residential building styles through the introduction of good contemporary buildings incorporating modulation and a varied palette of materials.*
- O4 To minimise building bulk and scale of three storey development by designing development to generally present as a two storey form to the street.*
- O5 To design and site buildings to respond to the topography and minimise cut and fill.*
- O6 To protect important views from the public spaces of the precinct to the harbour and the city skyline, including view corridors between buildings.*
- O7 To reinforce the landscape setting and maintain the existing tree canopy.*
- O8 To retain and reinforce the green setting of mature street trees, private trees and garden plantings.*
- O9 To retain Inter-War flat buildings, particularly significant and traditional building elements visible from the street.*

The proposed modification meets the streetscape character and key elements of the precinct and desired future character objectives of the Vaucluse East precinct, as noted in Part B1.11.2 of the Woollahra DCP 2015.

## **17.2. Chapter B3: General Development Controls**

### **17.2.1. Part B3.2: Building Envelope**

The proposed modification maintains the established front and rear setbacks of the subject dwelling. With a lot width of 7.675m, C1 of Part B3.2.3 of the Woollahra DCP 2015 requires a minimum side setback of 0.9m. The proposed first floor bedroom 3 extension towards the south measures 1.28m from the southern site boundary and complies with C1.

The proposed modifications would achieve an acceptable bulk and scale of the overall development and maintain adequate physical separation from adjoining properties. Therefore, it is recommended that **Condition C.1(f)** is to be deleted.

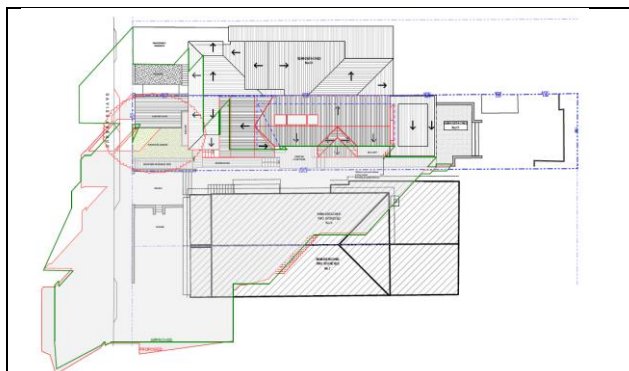
Therefore, the proposal is acceptable with regard to the building envelope controls in Part B3.2 of the Woollahra DCP 2015.

### 17.2.2. Part B3.5: Built Form and Context

#### Part B3.5.1: Streetscape and Local Character

The proposed modification would not be readily discernible from the street, given that the extension to bedroom 3 will align with the southern side setback of the master bedroom at the front of the dwelling. As such, it would not alter the approved streetscape outcome which was considered acceptable per the original and previous approved assessment reports and satisfied the controls and objectives under B3.5.1.

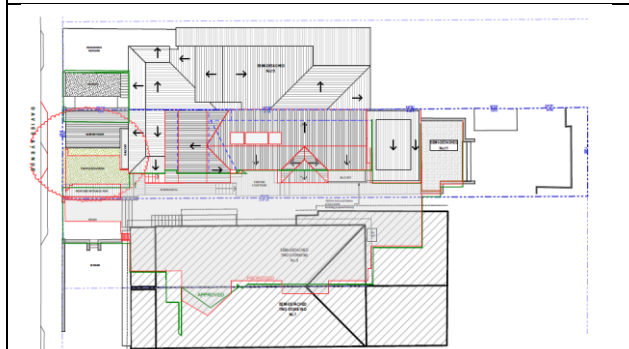
#### Part B3.5.2: Overshadowing



*Fig. 9am proposed shadow analysis – DA446/2013/3 shadow diagrams - extract from Council's records\**



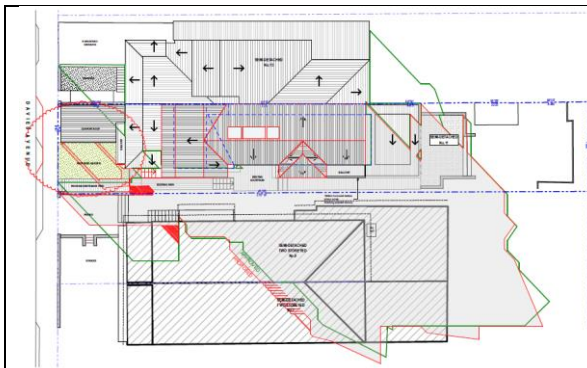
*Fig. 9am proposed shadow analysis DA446/2013/3 shadow diagrams - extract from Council's records\**



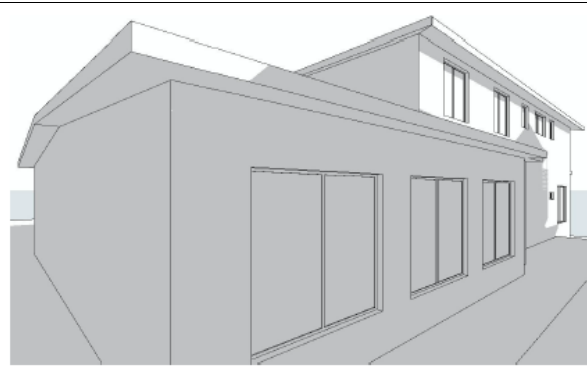
*Fig. 12pm proposed shadow analysis – DA446/2013/3 shadow diagrams - extract from Council's records\**



*Fig. 12pm proposed shadow analysis - DA446/2013/3 shadow diagrams - extract from Council's records\**



*Fig. 3pm proposed shadow analysis –  
DA446/2013/3 shadow diagrams - extract from  
Council's records\**



*Fig. 3pm proposed shadow analysis - DA446/2013/3  
shadow diagrams - extract from Council's records\**

**\*Note:** The shadow diagrams are extracted from documents submitted along the previous modification application DA446/2013/3. As the above shadow diagrams indicate the overshadowing impact upon 9 Davies Avenue of the previous modification which originally included the first floor bedroom 3 extension, these drawings are sufficient for Council to assess the overshadowing impact of this modification application.

C1(a) stipulates that sunlight is provided to at least 50% (or 35m<sup>2</sup> with a minimum dimension of 2.5m, whichever is the lesser) of the main ground level private open space to adjoining properties for a minimum of two hours between 9am and 3pm on June 21. Also, C1(b) states that north facing windows to upper level habitable rooms of adjacent dwellings receive at least 3 hours of sun during the same period.

As detailed in the shadow diagrams above, the proposed bedroom 3 extension would not result in any additional shadows to private open spaces or north facing windows of upper level habitable rooms of neighbouring properties for more than 3 hours between 9am and 3pm on June 21, and it is considered acceptable having regard to C1(a) and (b).

The proposed modification is considered to be satisfactory with regard to the solar access requirements in Part B3.5.2 of Woollahra DCP 2015.

#### Part B3.5.3: Public and private views

No public and private views were identified during this assessment that would be significantly impacted by the proposed modification.

#### Part B3.5.4: Acoustic and Visual Privacy

*C4 New windows in habitable rooms are designed to prevent a direct sightline to the habitable room windows or private open space of an adjacent dwelling within 9m.*

*This may be achieved by options including, but not limited to (in order of preference):*

- a) Window location—primary windows to habitable rooms are located and designed to provide an outlook to the front and rear setbacks, not the side boundaries.*
- b) Layout and separation—offsetting windows from the windows/private open spaces of the adjoining dwelling to limit views between the windows/private open space.*
- c) Architectural design solutions and devices—redirecting and limiting sightlines using deep sills with planter boxes, fixed horizontal or vertical louvres, or other screening devices set off the windows internally or externally.*
- d) Glazed opening windows—using windows with translucent glazing to a height of 1.5m above floor level and fitted with a winder mechanism to control the maximum angle of the opening to limit views.*
- e) Glazed fixed windows or high sills—using fixed windows with translucent glazing in any part of the window below 1.5m above floor level, or window sill heights of 1.5m above floor level.*



The proposed side windows of the first floor bedroom 3 are orientated towards the front and rear of the subject site, and they are not considered to result in any significant adverse or unreasonable visual privacy impacts due to their respective orientations and outlooks. Also, the proposal involves 1.8m high privacy screen to the eastern side of the bedroom 3 extension along the southern side elevation, and it further mitigates any potential overlooking impact upon 9 Davies Avenue Vaucluse. Additionally, the previously proposed balcony off bedroom 3 has also been deleted and replaced with a non-trafficable area of roof. Therefore, the proposed modification would not alter the approved privacy relationships with the neighbouring properties which were considered acceptable.

### Conclusion

The proposed modification is acceptable with regard to the built form and context controls in Part B3.5 of the Woollahra DCP 2015.

### **17.2.3. Part B3.7: External Areas**

The proposed modification would not alter the approved external area outcome and is considered to be acceptable with regard to the controls in Part B3.7 of the Woollahra DCP 2015.

### **17.2.4. Part B3.8: Additional Controls for Development Other Than Dwelling Houses**

#### Part 3.8.3: Semi-detached dwellings

The proposed modification would not alter the approved semi-detached dwelling outcome and is considered to be acceptable with regard to the controls in Part B3.8.3 of the Woollahra DCP 2015.

### **17.3. Chapter E2: Stormwater and Flood Risk Management**

Council's Development Engineer and Drainage Engineer reviewed this application at the Development Application Review Committee (DARC) Stage and raised no objections subject to the original conditions of consent.

Therefore, the proposed modification is acceptable with regard to the objectives and controls in Chapter E2 of the Woollahra DCP 2015 as enforced by conditions imposed on the original consent.

### **17.4. Chapter E5: Waste Management**

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

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

The proposal is acceptable with regard to the objectives and controls in Chapter E5 of the Woollahra DCP 2015 as enforced by conditions imposed on the original consent.

## **18. APPLICABLE ACTS/REGULATIONS**

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

#### **Clause 61: Additional matters that consent authority must consider**

Clause 61 of the Environmental Planning and Assessment Regulation 2021 requires Council to consider Australian Standard AS 2601-2001: The Demolition of Structures. The proposal is considered to be acceptable, subject to the conditions of consent.

## **19. THE LIKELY IMPACTS OF THE PROPOSAL**

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

## **20. THE PUBLIC INTEREST**

The proposal is considered to be in the public interest.

## **21. DISCLOSURE STATEMENTS**

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

## **22. RECOMMENDATION PURSUANT TO SECTION 4.55 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

### **Approval**

THAT the Woollahra Local Planning Panel, exercising the functions of Council, as the consent authority, modify development consent to Development Application No. 446/2013/1 for alterations and additions to an existing semi-detached dwelling house, a single garage to the site frontage and landscape works on land at 11 Davies Avenue Vaucluse, subject to the following:

### **Modification Summary**

<b>DA Application Number (PAN Number)</b>	<b>Determination Date</b>	<b>Modification Description</b>
DA446/2013/2	04 April 2018	Modification of Condition C.8
DA446/2013/3 (PAN-345545)	21 December 2023	Additions of Condition A.6, A.7, C.14, D.9, D.10, E.25 and H.4. Amendments of Condition C.1, C.2, C.3, C.11, C.13, H.1 and I.1. Deletion of Condition C.10.
DA446/2013/4 (PAN-420024)	25 July 2024	Addition of Condition A.6A. Amendments of Condition C.1, C.3, H.1 and I.1.

## A. General Conditions

### A.1 Conditions

Consent is granted subject to the following conditions imposed pursuant to section 80 of the Environmental Planning & Assessment Act 1979 ("the *Act*") and the provisions of the Environmental Planning and Assessment Regulation 2000 ("the *Regulation*") such conditions being reasonable and relevant to the development as assessed pursuant to section 79C of the Act.

Standard Condition: A1

### A.2 Definitions

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

**Applicant** means the applicant for this Consent.

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

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

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

**Council** means Woollahra Municipal Council

**Court** means the Land and Environment Court

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

**Stormwater Drainage System** means all works, facilities and documentation relating to:

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

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

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

**PCA** means the *Principal Certifying Authority* under the *Act*.

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

**Professional Engineer** has the same meaning as in the *BCA*.

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

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

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

**Site** means the land being developed subject to this consent.

**WLEP 1995** means *Woollahra Local Environmental Plan* 1995

**Work** for the purposes of this consent means:

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

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

### A.3 Approved Plans and supporting documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with the plans and supporting documents listed below as submitted by the Applicant and to which is affixed a Council stamp "Approved DA Plans" unless modified by any following condition. Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
DA 02 – DA 08	Architectural Plans	Bentley Design	12.09.13 21.10.13
DA13 and DA14	Stormwater disposal concept plan	Bentley Design	12.09.13

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

**Note:** These plans and supporting documentation may be subject to conditions imposed under section 80A(1)(g) of the *Act* modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)  
Standard Condition: A5

### A.4 Ancillary Aspect of the Development (s80A(2) of the Act)

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

**Note:** This condition does not affect the *principal contractor's* or any sub-contractors obligations to protect and preserve public infrastructure from damage or affect their liability for any damage that occurs.  
Standard Condition: A8

## A.5 Tree Preservation & Approved Landscaping Works

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

The following trees may be removed:

Council Ref No	Species	Location	Dimension (metres)
1	<i>Camellia</i> sp. Camellia	Rear yard northern side	3.5 x 2.5

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

## A.6 Approved Amended (section 4.55) Plans and Supporting Documents

Those acting upon or under this amended consent must carry out all work and maintain the use and works in accordance with the approved plans and supporting documents listed in the original consent, as amended by the amended architectural approved plans to which is affixed a Council stamp "Approved" and supporting documents as submitted by the Applicant listed below otherwise than modified by further condition(s). Only those works shown in colour or are otherwise highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
DA-1001 (Rev C)	Roof and site analysis	Uri T Design	21 Sep 2023
DA-1002 (Rev C)	Lower ground floor		20 Sep 2023
DA-1003 (Rev C)	Ground floor plan		21 Sep 2023
DA-1004 (Rev C)	First floor plan		22 Sep 2023
DA-2001 (Rev C)	West elevation		20 Sep 2023
DA-2002 (Rev C)	South elevation		
DA-2003 (Rev C)	East elevation		21 Sep 2023
DA-2004 (Rev C)	North elevation		20 Sep 2023
DA-3001 (Rev C)	Section AA		
DA-3002 (Rev C)	Section BB		
A499633	BASIX Certificate	NSW Department of Planning, Industry and Environment	13 Jun 2023

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

*Added on 21 December 2023 under DA446/2013/3 (PAN-345545)*

## A.6A Approved Amended (section 4.55) Plans and Supporting Documents

Those acting upon or under this amended consent must carry out all work and maintain the use and works in accordance with the approved plans and supporting documents listed in the original consent, as amended by the amended architectural approved plans to which is affixed a Council stamp "Approved" and supporting documents as submitted by the Applicant listed below otherwise than modified by further condition(s). Only those works shown in colour or are otherwise highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
DA-1001 (Rev C)	Roof and Site Analysis	Uri T Design	22 May 2024
DA-1004 (Rev C)	First Floor Plan		
DA-2002 (Rev C)	South Elevations		
DA-2003 (Rev C)	East Elevation		
A499633_02	BASIX Certificate	NSW Department of Planning, Industry and Environment	20 May 2024

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

*Added on 25 July 2024 under DA446/2013/4 (PAN-420024)*

## A.7 No Underpinning works

This development consent does NOT give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties.

*Added on 21 December 2023 under DA446/2013/3 (PAN-345545)*

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

### B.1 Construction Certificate required prior to any demolition

Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is "commencement of erection of building" pursuant to section 81A(2) of the *Act*. In such circumstance all conditions in Part C and Part D of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the issue of a Construction Certificate, appointment of a PCA and Notice of Commencement under the *Act*.

**Note:** See *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.

### B.2 Identification of Hazardous Material

In accordance with Australian Standard AS2601- 'The Demolition of Structures' the owner shall identify all hazardous substances located on the site including asbestos, Polychlorinated biphenyls (PCBs), lead paint, underground storage tanks, chemicals, etc. per Clause 1.6.1 of the Standard. In this regard, **prior to the commencement of any work**, Council shall be provided with a written report prepared by a suitably qualified competent person detailing;

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

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



## C. Conditions which must be satisfied prior to the issue of any construction certificate

### C.1 Modification of details of the development (s80A(1)(g) of the Act)

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

- a) Deleted.
- b) To adequately mitigate visual privacy impacts upon 9 Davies Avenue, the proposed south-facing windows (W15, W16, and W17 of the approved application DA446/2013/1 and GW-02, GW-05 and FW-02 of application DA446/2013/3) are to either contain fixed translucent glazing or privacy louvers to a height of 1.5m above floor level. Louvers are to be fixed at an angle so as not to allow direct lines of site to the habitable rooms of 9 Davies Avenue.
- c) Deleted.
- d) Deleted.
- e) In order to ensure the suitable location of site facilities, the proposal is to incorporate a lockable mail box that is well integrated with the front building entry.
- f) Deleted.

**Note:** The effect of this condition is that it requires design changes and/or further information to be provided with the *Construction Certificate* drawings and specifications to address specific issues identified during assessment under section 79C of the *Act*.

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

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

*Amended on 25 July 2024 under DA446/2013/4 (PAN-420024)*

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

The certifying authority must not issue any *Part 4A Certificate* until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees prior to the issue of a *construction certificate*, *subdivision certificate* or *occupation certificate*, as will apply.

Description	Amount	Indexed	Council Fee Code
<b>LONG SERVICE LEVY</b> under Building and Construction Industry Long Service Payments Act 1986			
<b>Long Service Levy</b> <a href="http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm">http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm</a>	Contact LSL Corporation or use online calculator	No	
<b>SECURITY</b> under section 80A (6) of the Environmental Planning and Assessment Act 1979			
<b>Property Damage Security Deposit</b> -making good any damage caused to any property of the <i>Council</i>	\$8,757	No	T115
<b>DEVELOPMENT LEVY</b> under Woollahra Section 94A Development Contributions Plan 2011 This plan may be inspected at Woollahra Council or downloaded at <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a>			
<b>Development Levy</b> (Section 94A)	\$3,080 + Index Amount	Yes, quarterly	T96

<b>INSPECTION FEES</b> under Section 608 of the Local Government Act 1993			
Public Road/Footpath Infrastructure Inspection Fee	\$645	No	T45
Security Administration Fee	\$185	No	T16
<b>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</b>	\$12,667 plus any relevant indexed amounts and long service levy		

### **Building and Construction Industry Long Service Payment**

The long service levy under section 34 of the *Building and Construction Industry Long Service Payment Act 1986*, must be paid and proof of payment provided to the Certifying Authority prior to the issue of any *Construction Certificate*. The levy can be paid directly to the Long Service Corporation or to Council. Further information can be obtained from the Long Service Corporation website [www.longservice.nsw.gov.au](http://www.longservice.nsw.gov.au) or the Long Service Corporation on 13 14 41.

### **How must the payments be made?**

Payments must be made by:

- Cash deposit with Council,
- Credit card payment with Council, or
- Bank cheque made payable to Woollahra Municipal Council.

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

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

### **How will the section 94A levy be indexed?**

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

### **Do you need HELP indexing the levy?**

Please contact our customer service officers. Failure to correctly calculate the adjusted development levy will delay the issue of any Part 4A Certificate and could void any Part 4A Certificate (Construction Certificate, Subdivision Certificate, or Occupation Certificate).

### **Deferred or periodic payment of section 94A levy under the Woollahra Section 94A Development Contributions Plan 2011**

Where the Applicant makes a written request supported by reasons for payment of the section 94A levy other than as required by clause 3.9, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:

- The reasons given,
- Whether any prejudice will be caused to the community deriving benefit from the public facilities,
- Whether any prejudice will be caused to the efficacy and operation of the Plan, and

- Whether the provision of public facilities in accordance with the adopted works schedule will be adversely affected.

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

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

Any deferred or periodic payment of the section 94A levy will be adjusted in accordance with clause 3.13 of the Plan. The Applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.

*Amended on 21 December 2023 under DA446/2013/3 (PAN-345545)*

### **C.3 BASIX commitments**

The Applicant must submit to the Certifying Authority BASIX Certificate A499633\_02 with any application for a Construction Certificate.

**Note:** Where there is any proposed change in the BASIX commitments the Applicant must submit of a new BASIX Certificate to the Certifying Authority and Council. If any proposed change in the BASIX commitments are inconsistent with development consent (see: clauses 145 and 146 of the *Regulation*) the Applicant will be required to submit an amended development application to Council pursuant to section 4.55 of the *Act*.

All commitments in the BASIX Certificate must be shown on the Construction Certificate plans and specifications prior to the issue of any Construction Certificate.

**Note:** Clause 145(1)(a1) of the *Environmental Planning and Assessment Regulation* 2000 provides:  
"A certifying authority must not issue a Construction Certificate for building work unless it is satisfied of the following matters: (a1) that the plans and specifications for the building include such matters as each relevant BASIX certificate requires".  
Standard Condition: C7

*Amended on 25 July 2024 under DA446/2013/4 (PAN-420024)*

### **C.4 Checking Construction Certificate plans & protecting assets owned by the Sydney Water Corporation**

The approved plans must be submitted to a Sydney Water Quick Check agent to determine whether the development will affect any Sydney Water wastewater and water mains, stormwater drains and/or easement, and any requirements need to be met. Plans will be appropriately stamped.

Please refer to the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- Quick Check agents details – see Building and Development then Quick Check and
- Guidelines for Building Over/Adjacent to Sydney Water Assets – see Building and Development then Building and Renovating

**Note:** Further information can be obtained from the Sydney Water Corporation by visiting their web site: <http://www.sydneywater.com.au> or telephone 13 20 92.

### C.5 Soil and Water Management Plan – Submission & Approval

The *principal contractor* or *owner builder* must submit to the *Certifying Authority* a soil and water management plan complying with:

- a) “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and
- b) “*Managing Urban Stormwater - Soils and Construction*” published by the NSW Department of Housing 4th Edition” (*The Blue Book*).

Where there is any conflict *The Blue Book* takes precedence. The *Certifying Authority* must be satisfied that the soil and water management plan complies with the publications above prior to issuing any *Construction Certificate*.

**Note:** This condition has been imposed to eliminate potential water pollution and dust nuisance.

**Note:** The International Erosion Control Association – Australasia <http://www.austieca.com.au/> lists consultant experts who can assist in ensuring compliance with this condition. Where erosion and sedimentation plans are required for larger projects it is recommended that expert consultants produce these plans.

**Note:** The “*Do it Right On Site, Soil and Water Management for the Construction Industry*” publications can be down loaded free of charge from <http://www.woollahra.nsw.gov.au/>.

**Note:** Pursuant to clause 161(1)(a)(5) of the *Regulation* an *Accredited Certifier* may be satisfied as to this matter.

### C.6 Structural Adequacy of Existing Supporting Structures

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

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

### C.7 Professional Engineering Details

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

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

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

## C.8 Geotechnical and Hydrogeological Design, Certification & Monitoring

The *Construction Certificate* plans and specification required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation* must be accompanied by a *Geotechnical / Hydrogeological Monitoring Program* together with civil and structural engineering details for foundation retaining walls, footings, basement tanking, and subsoil drainage systems, as applicable, prepared by a *professional engineer*, who is suitably qualified and experienced in geotechnical and hydrogeological engineering. These details must be certified by a *professional engineer* to:

- a) Provide appropriate support and retention to ensure there will be no ground settlement or movement, during excavation or after construction, sufficient to cause an adverse impact on adjoining property or public infrastructure.
- b) Provide appropriate support and retention to ensure there will be no adverse impact on surrounding property or infrastructure as a result of changes in local hydrogeology (behaviour of groundwater).
- c) Provide foundation tanking, if deemed necessary by a geotechnical engineer upon completion of geotechnical investigations, prior to excavation such that any temporary changes to the groundwater level, during construction, will be kept within the historical range of natural groundwater fluctuations. Where the historical range of natural groundwater fluctuations is unknown, the design must demonstrate that changes in the level of the natural water table, due to construction, will not exceed 0.3m at any time.
- d) Provide tanking to all new below ground structures, if deemed necessary by a geotechnical engineer, to prevent the entry of all groundwater such that they are fully tanked and no on-going dewatering of the site is required.
- e) Provide a Geotechnical and Hydrogeological Monitoring Program as determined by a geotechnical engineer, as applicable, that:
  - Will detect any settlement associated with temporary and permanent works and structures;
  - Will detect deflection or movement of temporary and permanent retaining structures (foundation walls, shoring bracing or the like);
  - Will detect vibration in accordance with AS 2187.2-1993 Appendix J including acceptable velocity of vibration (peak particle velocity);
  - Will detect groundwater changes calibrated against natural groundwater variations;
  - Details the location and type of monitoring systems to be utilised;
  - Details the preset acceptable limits for peak particle velocity and ground water fluctuations;
  - Details recommended hold points to allow for the inspection and certification of geotechnical and hydro-geological measures by the professional engineer; and;
  - Details a contingency plan.

*Amended on 04 April 2018 under DA446/2013/2*

## C.9 Car and Commercial Parking Details

The *Construction Certificate* plans and specifications required by clause 139 of the *Regulation*, must include detailed plans and specifications for all bicycle, car and commercial vehicle parking in compliance with AS2890.3:1993 *Parking Facilities - Bicycle Parking Facilities*, AS/NZS 2890.1:2004 : *Parking Facilities - Off-Street Car Parking* and AS 2890.2:2002 – *Off-Street Parking: Commercial Vehicle Facilities* respectively. The driveway levels on Davies Avenue are to be amended as follows:

- The existing footpath level and grade at the street alignment of the property must be maintained.
- The internal garage floor slab is to be adjusted on private property to match the existing street alignment levels.

- Any adjustments required between the garage slab and the street levels are to be carried out internally on private property. The driveway levels are to comply with AS2890.1 and Council's Standard Drawing RF2.
- In order to assist access the garage the entrance is to be widened to a minimum of 3.5m

Access levels and grades must comply with access levels and grade required by Council under the *Roads Act* 1993.

The *Certifying Authority* has no discretion to reduce or increase the number or area of car parking or commercial parking spaces required to be provided and maintained by this consent.

#### **C.10 Deleted**

*Deleted on 21 December 2023 under DA446/2013/3 (PAN-345545)*

#### **C.11 Stormwater management plan (Clause 25(2) WLEP 1995)**

Prior to issue of the amended Construction Certificate, the applicant must submit, for approval by the Principal Certifier, detailed stormwater management plans prepared by a suitably qualified and experienced civil engineer, which include the following:

- a) The discharge of stormwater from the site, by direct connection to the street kerb. The kerb discharge must be located within the frontage of the site. Only one stormwater outlet will be permitted. A minimum 450mm x 450mm boundary junction pit must be provided prior to discharging stormwater from the site to the street drainage system. The stormwater outlet pipe across the Council's property must have a minimum grade of 1% to comply with Council's DCP and AS3500.3,
- b) All below ground structures are to be fully tanked or appropriately designed such that subsoil drainage/seepage water is NOT discharged to the kerb and gutter to comply with Chapter E2.2.5 of Council's DCP. Notation to this requirement shall be clearly depicted on the drawings,
- c) The stormwater management plans must specify any components of the existing drainage system to be retained and certified to be in good condition and of adequate capacity to convey additional runoff and be replaced or upgraded if required,
- d) Internal stormwater drainage including but not limited to gutters and downpipes, pipes and pits are to be designed for rainfall intensities up to and including the 1% AEP event if an unimpeded overland flow path to the street drainage system is not available. Design details and calculations must be included in the stormwater management plans,
- e) Detail the location of the existing stormwater drainage system including all pipes, inspection openings, surface drains, pits and their discharge location as well as any new stormwater drainage system,
- f) Detail any remedial works required to upgrade the existing stormwater drainage system,
- g) Dimensions of all drainage pit and access grates must comply with AS3500 and Council's DCP,
- h) Compliance with the objectives and performance requirements of the BCA, and
- i) General compliance with the Council's Woollahra DCP 2015 Chapter E2 – Stormwater and Flood Risk Management.

The *Stormwater Management Plan* must also include the following specific requirements:



### **Layout plan**

A detailed drainage plan at a scale of 1:100 based on drainage calculations prepared in accordance with the Australian Government publication, *Australian Rainfall and Run-off, 2019* edition or most current version thereof. It must include:

- a) All pipe layouts, dimensions, grades, lengths and material specification,
- b) Location of proposed rainwater tanks,
- c) All invert levels reduced to Australian Height Datum (AHD),
- d) Location and dimensions of all drainage pits,
- e) Point and method of connection to Councils drainage infrastructure, and
- f) Overland flow paths over impervious areas.

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

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

**Note:** This Condition is imposed to ensure that site stormwater is disposed of in a controlled and sustainable manner.

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

*Amended on 21 December 2023 under DA446/2013/3 (PAN-345545)*

### **C.12 Tree Management Plan**

The *Construction Certificate* plans and specifications required by clause 139 of the *Regulation* must show the following information:

- a) Trees to be numbered in accordance with these conditions:
  - shaded green where required to be retained and protected
  - shaded red where authorised to be removed
  - shaded yellow where required to be transplanted
  - shaded blue where required to be pruned
- b) References to applicable tree management plan, arborists report, transplant method statement or bush regeneration management plan.

This plan shall be kept on site until the issue of the final occupation certificate.

### **C.13 Road and Public Domain Works**

A separate application under Section 138 of the *Roads Act 1993* is to be made to, and be approved by Council as the road authority, for the following infrastructure works prior to issue of any amended Construction Certificate. The infrastructure works must be carried out at the applicant's expense:

- a) The removal of the existing vehicular crossing including layback and gutter and reinstated into Council's standard kerb and gutter and nature strip in accordance with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* and to the satisfaction of Council's Assets Engineers,

- b) The construction of a new 3 metres wide vehicular crossing including the replacement of the existing gutter in accordance with Council's Crossing Specification and standard driveway drawing RF2\_D and to the satisfaction of Council's Assets Engineers. The new vehicular crossing must be constructed at right angle to the street kerb in plain concrete where the centreline of the new crossing must align with the centreline of the carport. Design longitudinal surface profiles along each side/edge for the proposed driveway, starting from the road centreline to the parking slab must be submitted for assessment,
- c) The installation of stormwater outlet pipe across the nature strip must be made by using 150mm x 75mm galvanised RHS in accordance with Council's Specification for Roadworks, Drainage and Miscellaneous Works and to the satisfaction of Council's Assets Engineers. The kerb discharge must be located within the frontage of the site. Details showing the reinstatement of the nature strip due to the installation of the stormwater outlet pipe must be provided to the satisfaction of Council's Assets Engineers. Design longitudinal profile of the proposed stormwater outlet pipe, starting from the boundary junction pit to the street kerb must also be submitted for assessment,  
**Note:** All below ground structures are to be fully tanked or appropriately designed such that subsoil drainage/seepage water is NOT discharged to the kerb and gutter to comply with Chapter E2.2.5 of Council's DCP.
- d) The reinstatement of all damaged footpath, kerb and gutter and road pavement to the Council's specification and to the satisfaction of Council's Engineers, and
- e) Where a grass verge exists, the balance of the area between the footpath and the kerb over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of Couch turf.

**Note:** To ensure that this work is completed to Council's satisfaction, this consent by separate condition, may impose one or more Infrastructure Works Bonds.

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

**Note:** The intent of this condition is that the design of the road, footpaths, driveway crossings and public stormwater drainage works must be detailed and approved prior to the issue of any *Construction Certificate*. Changes in levels may arise from the detailed design of buildings, road, footpath, driveway crossing grades and stormwater. Changes required under *Roads Act* 1993 approvals may necessitate design and levels changes under this consent. This may in turn require the applicant to seek to amend this consent.

**Note:** See condition K24 in *Section K. Advisings* of this Consent titled *Roads Act Application*.

*Amended on 21 December 2023 under DA446/2013/3 (PAN-345545)*

#### C.14 Engineer Certification

This development consent does NOT give approval to any works outside the boundaries of the subject property including any underpinning works to any structures on adjoining properties and Council's property.

Any structural design is not to incorporate any temporary or permanent underpinning works or ground anchors, bolts, etc which encroach outside the boundaries of the subject property. Engineer certification to this effect shall be submitted to the Certifying Authority prior to issue of any Construction Certificate.

*Added on 21 December 2023 under DA446/2013/3 (PAN-345545)*

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

**D.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989**

For the purposes of section 80A (11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:

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

This condition does not apply:

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

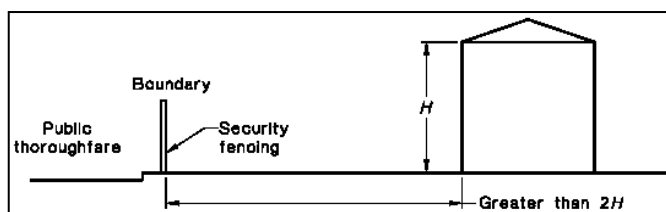
In this condition, a reference to the *BCA* is a reference to that code as in force on the date the application for the relevant construction certificate is made.

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

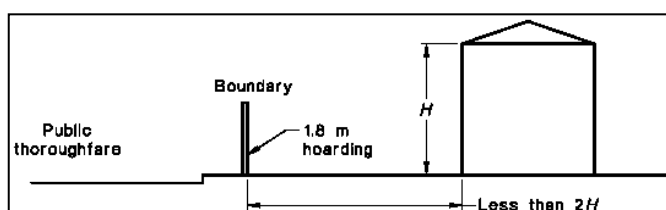
**Note:** All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.

**D.2 Security Fencing, Hoarding and Overhead Protection**

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



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

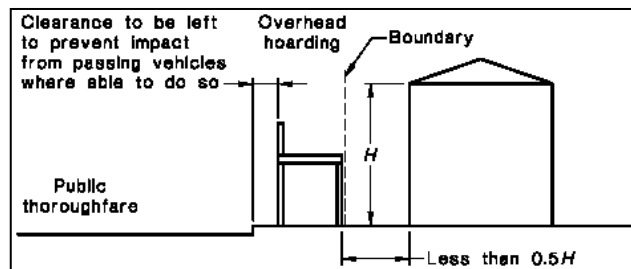


Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an *overhead protective structure* and the facing facade protected by heavy-duty scaffolding, unless either:

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

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

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



The *principal contractor* or *owner builder* must pay all fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

The *principal contractor* or *owner builder* must ensure that Overhead Protective Structures are installed and maintained in accordance with WorkCover NSW Code of Practice - Overhead Protective Structures, gazetted 16 December 1994, as commenced 20 March 1995. This can be downloaded from:  
<http://www.workcover.nsw.gov.au/Publications/LawAndPolicy/CodesofPractice/oheadprotstru>  
[cts.htm](http://www.workcover.nsw.gov.au/Publications/LawAndPolicy/CodesofPractice/oheadprotstru).

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

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

### D.3 Site Signs

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

Clause 98A of the Regulation provides:

**Erection of signs**

- For the purposes of section 80A (11) of the *Act*, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - a. showing the name, address and telephone number of the principal certifying authority for the work, and
  - b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - c. stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the *Act*, to comply with the technical provisions of the State's building laws."

Clause 227A of the Regulation provides:

**Signs on development sites**

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

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

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

**Note:** If *Council* is appointed as the *PCA* it will provide the sign to the *principal contractor* or *owner builder* who must ensure that the sign is erected and maintained as required by Clause 98A and Clause 227A of the *Regulation*.

#### D.4 Toilet Facilities

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

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

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

In this condition:

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

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

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

**Note:** This condition does not set aside the requirement to comply with Workcover NSW requirements.  
Standard Condition: D13

## D.5 Erosion and Sediment Controls – Installation

The *principal contractor* or *owner builder* must install and maintain water pollution, erosion and sedimentation controls in accordance with:

- a) The *Soil and Water Management Plan* if required under this consent;
- b) “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and
- c) “*Managing Urban Stormwater - Soils and Construction*” published by the NSW Department of Housing 4th Edition” (‘The Blue Book’).

Where there is any conflict The Blue Book takes precedence.

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

**Note:** The “Do it Right On Site, Soil and Water Management for the Construction Industry” publications can be down loaded free of charge from [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au).

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

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

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

Standard Condition: D14

## D.6 Building - Construction Certificate, Appointment of Principal Certifying Authority, Appointment of Principal Contractor and Notice of Commencement (s81A(2) of the Act)

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

- a) A construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited Certifier, and
- b) The person having the benefit of the development consent has:
  - Appointed a principal certifying authority for the building work, and
  - Notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and



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

**Note:** *building* has the same meaning as in section 4 of the *Act* and includes part of a building and any structure or part of a structure.

**Note:** *new building* has the same meaning as in section 109H of the *Act* and includes an altered portion of, or an extension to, an existing building.

**Note:** The commencement of demolition works associated with an altered portion of, or an extension to, an existing building is considered to be the commencement of building work requiring compliance with section 82A(2) of the *Act* (including the need for a *Construction Certificate*) prior to any demolition work. See: *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.

**Note:** *Construction Certificate* Application, *PCA Service Agreement* and *Notice of Commencement* forms can be downloaded from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au).

**Note:** It is an offence for any person to carry out the erection of a *building* in breach of this condition and in breach of section 81A(2) of the *Act*.  
Standard Condition: D15

#### D.7 Notification of Home Building Act 1989 requirements

- a) For the purposes of section 80A (11) of the *Act*, the requirements of this condition are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the Home Building Act 1989.
- b) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
  - In the case of work for which a *principal contractor* is required to be appointed:
    - the name and licence number of the principal contractor, and
    - the name of the insurer by which the work is insured under Part 6 of that *Act*,
  - In the case of work to be done by an owner-builder:
    - the name of the owner-builder, and
    - if the owner-builder is required to hold an owner-builder permit under that *Act*, the number of the owner-builder permit.
- c) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

- d) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.  
Standard Condition: D17

## D.8 Dilapidation Reports for existing buildings

Dilapidation surveys must be conducted and dilapidation reports prepared by a *professional engineer* (structural) of all buildings on land whose title boundary abuts the site and of such further buildings located within the likely "zone of influence" of any excavation, dewatering and/or construction induced vibration.

These properties must include (but is not limited to):

- (A) 9 Davies Avenue,
- (B) 13 Davies Avenue,

The dilapidation reports must be completed and submitted to *Council* with the *Notice of Commencement* prior to the commencement of any *development work*.

Where excavation of the site will extend below the level of any immediately adjoining building the *principal contractor* or *owner builder* must give the adjoining building owner(s) a copy of the dilapidation report for their building(s) and a copy of the *notice of commencement* required by s81A(2) of the *Act* not less than two (2) days prior to the commencement of any work.

**Note:** The reasons for this condition are:

- To provide a record of the condition of buildings prior to development being carried out
  - To encourage developers and its contractors to use construction techniques that will minimise the risk of damage to buildings on neighbouring land
- Also refer to the Dilapidation Report Advising for more information regarding this condition  
Standard Condition: D4

## D.9 Construction Management Plan

As a result of the site constraints, limited space and access a Construction Management Plan (CMP) is to be developed.

The CMP must be a self-contained document that outlines the nature of the construction project and as applicable, include the following information:

- a) Detail the scope of the works to be completed including details of the various stages, e.g. demolition, excavation, construction etc. and the duration of each stage.
- b) Detail the estimated size, numbers and frequency of arrival of the construction vehicles that will service the site for each stage of works.
- c) Provide for the standing of vehicles during construction contained fully within the site.
- d) If construction vehicles are to be accommodated on the site, provide a scaled drawing showing where these vehicles will stand.
- e) Make provision for all materials, plant, etc. to be stored within the development site at all times during construction.
- f) Detail measures to maintain access to the adjoining property at 13 Davies Avenue Vauclose during construction.

Standard Condition: D9

*Added on 21 December 2023 under DA446/2013/3 (PAN-345545)*

## **D.10 Works (Construction) Zone – Approval and Implementation**

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

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

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

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

*Added on 21 December 2023 under DA446/2013/3 (PAN-345545)*

## **E. Conditions which must be satisfied during any development work**

### **E.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989**

For the purposes of section 80A (11) of the Act, the following condition is prescribed in relation to a development consent for development that involves any building work:

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

This condition does not apply:

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

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

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

### **E.2 Compliance with Australian Standard for Demolition**

Demolition of buildings and structures must comply with Australian Standard AS 2601—2001: The Demolition of Structures, published by Standards Australia, and as in force at 13 September 2001.  
Standard Condition: E2

### E.3 Requirement to notify about new evidence

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, heritage significance, threatened species or other relevant matters must be immediately notified to Council and the Principal Certifying Authority..

Standard Condition: E4

### E.4 Critical Stage Inspections

Critical stage inspections must be called for by the *principal contractor* or *owner builder* as required by the PCA, any PCA service agreement, the *Act* and the *Regulation*.

Work must not proceed beyond each critical stage until the PCA is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the *Act*. *critical stage inspections* means the inspections prescribed by the *Regulations* for the purposes of section 109E(3)(d) of the *Act* or as required by the PCA and any PCA Service Agreement.

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

**Note:** The PCA may, in addition to inspections, require the submission of *Compliance Certificates*, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.

Standard Condition: E5

### E.5 Hours of Work –Amenity of the neighbourhood

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

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

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

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

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

**Note:** Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the *Protection of the Environment Operations Act 1997*, the *Protection of the Environment Operations (Noise Control) Regulation 2000*.

**Note:** EPA Guidelines can be downloaded from <http://www.epa.nsw.gov.au/noise/nqlg.htm>.

**Note:** see [http://www.epa.nsw.gov.au/resources/ci\\_build\\_sheet7.pdf](http://www.epa.nsw.gov.au/resources/ci_build_sheet7.pdf)  
Standard Condition: E6

## E.6 Public Footpaths – Safety, Access and Maintenance

The *principal contractor* or *owner builder* and any other person acting with the benefit of this consent must:

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

This condition does not apply to the extent that a permit or approval exists under the section 73 of the *Road Transport (Safety and Traffic Management) Act 1999*, section 138 of the *Roads Act 1993* or section 94 of the *Local Government Act 1993* except that at all time compliance is required with:

- a) Australian Standard AS 1742 (Set) Manual of uniform traffic control devices and all relevant parts of this set of standards.
- b) Australian Road Rules to the extent they are adopted under the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*.

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

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

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

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

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

- c. Place a waste storage container in a public place.”
  - Part E Public roads:
    - a. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
    - b. Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.”
    - c. Any work in, on or over the Road or Footway requires *Council* Approval and in the case of classified roads the NSW Roads and Traffic Authority. Road includes that portion of the road uses as a footway.
- Standard Condition: E7

## E.7 Maintenance of Environmental Controls

The *principal contractor* or *owner builder* must ensure that the following monitoring, measures and controls are maintained:

- a) Erosion and sediment controls,
- b) Dust controls,
- c) Dewatering discharges,
- d) Noise controls;
- e) Vibration monitoring and controls;
- f) Ablutions;

**Note:** See [http://www.epa.nsw.gov.au/small\\_business/builders.htm](http://www.epa.nsw.gov.au/small_business/builders.htm) for additional information.  
Standard Condition: E11

## E.8 Compliance with Geotechnical/Hydrogeological Monitoring Program

Excavation must be undertaken in accordance with the recommendations of the *Geotechnical / Hydrogeological Monitoring Program* and any oral or written direction of the supervising *professional engineer*.

The *principal contractor* and any sub-contractor must strictly follow the *Geotechnical / Hydrogeological Monitoring Program* for the development including, but not limited to;

- a) the location and type of monitoring systems to be utilised;
- b) recommended hold points to allow for inspection and certification of geotechnical and hydrogeological measures by the *professional engineer*; and
- c) the contingency plan.

**Note:** The consent authority cannot require that the author of the geotechnical/hydrogeological report submitted with the Development Application to be appointed as the *professional engineer* supervising the work however, it is the Council's recommendation that the author of the report be retained during the construction stage.  
Standard Condition: E12

## E.9 Support of adjoining land and buildings

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

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



- Note:** This condition does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is considered necessary upon any adjoining or supported land by any person the *principal contractor* or *owner builder* must obtain:
- the consent of the owners of such adjoining or supported land to trespass or encroach, or
  - an access order under the Access to Neighbouring Land Act 2000, or
  - an easement under section 88K of the *Conveyancing Act 1919*, or
  - an easement under section 40 of the *Land & Environment Court Act 1979* as appropriate.
- Note:** Section 177 of the *Conveyancing Act 1919* creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).
- Note:** Clause 20 of the *Roads (General) Regulation 2000* prohibits excavation in the vicinity of roads as follows: “**Excavations adjacent to road** - A person must not excavate land in the vicinity of a road if the excavation is capable of causing damage to the road (such as by way of subsidence) or to any work or structure on the road.” Separate approval is required under the Roads Act 1993 for any underpinning, shoring, soil anchoring (temporary) or the like within or under any road. Council will not give approval to permanent underpinning, shoring, soil anchoring within or under any road.
- Note:** The encroachment of work or the like is a civil matter of trespass or encroachment and Council does not adjudicate or regulate such trespasses or encroachments except in relation to encroachments upon any road, public place, crown land under Council's care control or management, or any community or operational land as defined by the *Local Government Act 1993*.
- Standard Condition: E13

## E.10 Vibration Monitoring

Vibration monitoring equipment must be installed and maintained, under the supervision of a *professional engineer* with expertise and experience in geotechnical engineering, between any potential source of vibration and any *building* identified by the *professional engineer* as being potentially at risk of movement or damage from settlement and/or vibration during the excavation and during the removal of any excavated material from the land being developed.

If vibration monitoring equipment detects any vibration at the level of the footings of any adjacent building exceeding the peak particle velocity adopted by the *professional engineer* as the maximum acceptable peak particle velocity an audible alarm must activate such that the *principal contractor* and any sub-contractor are easily alerted to the event.

Where any such alarm triggers all excavation works must cease immediately.

Prior to the vibration monitoring equipment being reset by the *professional engineer* and any further work recommencing the event must be recorded and the cause of the event identified and documented by the *professional engineer*.

Where the event requires, in the opinion of the *professional engineer*, any change in work practices to ensure that vibration at the level of the footings of any adjacent building does not exceed the peak particle velocity adopted by the *professional engineer* as the maximum acceptable peak particle velocity these changes in work practices must be documented and a written direction given by the *professional engineer* to the *principal contractor* and any sub-contractor clearly setting out required work practice.

The *principal contractor* and any sub-contractor must comply with all work directions, verbal or written, given by the *professional engineer*.

A copy of any written direction required by this condition must be provided to the *Principal Certifying Authority* within 24 hours of any event.

Where there is any movement in foundations such that damaged is occasioned to any adjoining *building* or such that there is any removal of support to *supported land* the *professional engineer*, *principal contractor* and any sub-contractor responsible for such work must immediately cease all work, inform the owner of that *supported land* and take immediate action under the direction of the *professional engineer* to prevent any further damage and restore support to the *supported land*.

**Note:** *Professional engineer* has the same mean as in Clause A1.1 of the BCA.

**Note:** *Building* has the same meaning as in section 4 of the Act i.e. “*building* includes part of a building and any structure or part of a structure”.

**Note:** *Supported land* has the same meaning as in section 88K of the Conveyancing Act 1919.  
Standard Condition: E14

### E.11 Erosion and Sediment Controls – Maintenance

The *principal contractor* or *owner builder* must maintain water pollution, erosion and sedimentation controls in accordance with:

- a) The Soil and Water Management Plan required under this consent;
- b) “*Do it Right On Site, Soil and Water Management for the Construction Industry*” published by the Southern Sydney Regional Organisation of Councils, 2001; and
- c) “*Managing Urban Stormwater - Soils and Construction*” published by the NSW Department of Housing 4th Edition (“*The Blue Book*”).

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



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

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

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

Standard Condition: E15

### E.12 Disposal of site water during construction

The principal contractor or owner builder must ensure:

- a) Prior to pumping any water into the road or public stormwater system that approval is obtained from *Council* under section 138(1)(d) of the *Roads Act* 1993;
- b) That *water pollution*, as defined by the *Protection of the Environment Operations Act* 1997, does not occur as the result of the discharge to the road, public stormwater system or other place or any site water;

- c) That stormwater from any roof or other impervious areas is linked, via temporary downpipes and stormwater pipes, to a Council approved stormwater disposal system immediately upon completion of the roof installation or work creating other impervious areas.

**Note:** This condition has been imposed to ensure that adjoining and neighbouring land is not adversely affected by unreasonable overland flows of stormwater and that site water does not concentrate water such that they cause erosion and water pollution.  
Standard Condition: E17

### E.13 Placement and use of Skip Bins

The *principal contractor* or *owner builder* must ensure that all waste storage containers, including but not limited to skip bins, must be stored within the site unless:

- a) Activity Approval has been issued by Council under section 94 of the *Local Government Act 1993* to place the waste storage container in a public place, and
- b) Where located on the road it is located only in a positions where a vehicle may lawfully park in accordance with the Australian Road Rules to the extent they are adopted under the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*.

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

### E.14 Prohibition of burning

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

**Note:** Pursuant to the *Protection of the Environment Operations (Control of Burning) Regulation 2000* all burning (including burning of vegetation and domestic waste) is prohibited except with approval. No approval is granted under this consent for any burning.  
Standard Condition: E22

### E.15 Dust Mitigation

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

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

**Note:** “*Dust Control - Do it right on site*” can be down loaded free of charge from Council’s web site [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or obtained from Council’s office.

**Note:** Special precautions must be taken when removing asbestos or lead materials from development sites. Additional information can be obtained from [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au) and [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au) . Other specific condition and advice may apply.

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

#### **E.16 Compliance with Council's Specification for Roadworks, Drainage and Miscellaneous Works Road works and work within the Road and Footway**

All work carried out on assets which are under Council ownership or will revert to the ownership, care, control or management of Council in connection with the *development* to which this consent relates must comply with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* dated February 2012.

The *owner, principal contractor or owner builder* must meet all costs associated with such works.

This condition does not set aside the need to obtain relevant approvals under the *Roads Act 1993* or *Local Government Act 1993* for works within Roads and other public places.

**Note:** A copy of Council's "*Specification for Roadworks, Drainage and Miscellaneous Works*" can be down loaded free of charge from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)  
Standard Condition: E24

#### **E.17 Site waste minimisation and management – Demolition**

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

- a) The provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work
- b) An area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements)
- c) Provide separate collection bins and/or areas for the storage of residual waste
- d) Clearly 'signpost' the purpose and content of the bins and/or storage areas
- e) Implement measures to prevent damage by the elements, odour, health risks and windborne litter
- f) Minimise site disturbance, limiting unnecessary excavation

When implementing the SWMMP the applicant must ensure:

- a) Footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval
- b) Any material moved offsite is transported in accordance with the requirements of the *Protection of the Environment Operations Act (1997)*
- c) Waste is only transported to a place that can lawfully be used as a waste facility
- d) Generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by Workcover NSW
- e) Evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained

**Note:** Materials that have an existing reuse or recycling market should not be disposed of in a landfill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.  
Standard Condition: E31

## E.18 Site waste minimisation and management – Construction

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

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

Standard Condition: E32

## E.19 Tree Preservation

All persons must comply with Council's Tree Preservation Order (TPO) other than where varied by this consent. The order applies to any tree with a height greater than 5 metres or a diameter spread of branches greater than 3 metres.

### General Protection Requirements

- b) Excavation must cease where tree roots with a diameter exceeding 30mm are exposed. The *principal contractor* must procure an inspection of the exposed tree roots by an arborist with a minimum AQF Level 5 qualification. Excavation must only recommence with the implementation of the recommendations of the arborist.
- c) Where there is damage to any part of a tree the *principal contractor* must procure an inspection of the tree by a qualified arborist immediately. The *principal contractor* must immediately implement treatment as directed by the arborist. The arborist is to supply a detailed report to the appointed certifier.

**Note:** Trees must be pruned in accordance with *Australian Standard AS 4373 "Pruning of Amenity Trees"* and *WorkCover NSW Code of Practice Amenity Tree Industry*.

Standard Condition: E8

- d) Replacement/Supplementary trees which must be planted  
Any replacement or supplementary tree shall be grown in accordance with NATSPEC Specifying Trees. The replacement tree shall be maintained in a healthy and vigorous condition. If the replacement tree is found to be faulty, damaged, dying or dead before it attains a size whereby it is protected by Council's Tree Preservation Order, it must be replaced with another of the same species which complies with the criteria outlined below.

Species/Type	Planting Location	Container Size/ Size of Tree (when planting)	Minimum Dimensions at Maturity
1 x <i>Camellia</i> sp. Camellia	Rear yard	75 litre	5 metres high x 3 metres canopy spread

## E.20 Asbestos Removal

Where hazardous material, including bonded or friable asbestos has been identified in accordance with condition B2 above, and such material must be demolished, disturbed and subsequently removed, all such works must comply with the following criteria:

- be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (restricted) Asbestos License,
- carried out in accordance with National Occupational Health and Safety Commission (NOHSC): "*Code of Practice for the Safe Removal of Asbestos*",
- No asbestos products may be reused on the site
- No asbestos laden skip or bins shall be left in any public place

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

Standard Condition: E39

## E.21 Classification of Hazardous Waste

Prior to the exportation of hazardous waste (including hazardous fill or soil) from the site, the waste materials must be classified in accordance with the provision of the *Protection of the Environment Operations Act 1997* and the NSW DECC *Waste Classification Guidelines, Part 1: Classifying Waste* (April 2008).

**Note:** This condition is imposed to ensure that where hazardous waste will be removed from a site an Asbestos Licensed contractor can definitively determine where the waste may be legally taken for disposal.

Standard Condition: E40

## E.22 Disposal of Asbestos and Hazardous Waste

Asbestos and hazardous waste, once classified in accordance with condition E 21 above must only be transported to waste facilities licensed to accept asbestos and appropriate classifications of hazardous waste.

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

Standard Condition: E41

## E.23 Asbestos Removal Signage

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

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

Standard Condition: E42



## E.24 Notification of Asbestos Removal

All adjoining properties and those opposite the development site must be notified in writing of the dates and times when asbestos removal is to be conducted. The notification is to identify the licensed asbestos removal contractor and include a contact person for the site together with telephone and facsimile numbers and email addresses.

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

## E.25 Compliance with Construction Management Plan

All development activities and traffic movements must be carried out in accordance with the approved Construction Management Plan (CMP). All controls in the CMP must be maintained at all times. A copy of the CMP must be kept on-site at all times and made available to the Principal Certifier or Council on request.

**Note:** Irrespective of the provisions of the Construction Management Plan the provisions of traffic and parking legislation prevails.  
Standard Condition: E3

*Added on 21 December 2023 under DA446/2013/3 (PAN-345545)*

## F. Conditions which must be satisfied prior to any occupation or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)

### F.1 Occupation Certificate (section 109M of the Act)

A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 109H (4) of the *Act*) unless an occupation certificate has been issued in relation to the building or part.

**Note:** New building includes an altered portion of, or an extension to, an existing building.  
Standard Condition: F1

### F.2 Commissioning and Certification of Systems and Works

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

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

- a) Certification from the supervising professional engineer that the requirement of the Geotechnical / Hydrogeological conditions and report recommendations were implemented and satisfied during development work.
- b) All flood protection measures.
- c) All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1 – "Off-Street car parking."
- d) All stormwater drainage and storage systems.
- e) All mechanical ventilation systems.
- f) All hydraulic systems.
- g) All structural work.
- h) All acoustic attenuation work.

- i) All waterproofing.
- j) Such further matters as the Principal Certifying Authority may require.

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

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

**Note:** The *PCA* must submit to Council, with any *Occupation Certificate*, copies of works-as-executed ("WAE") plans, *Compliance Certificates* and evidence of suitability in accordance with Part A2.2 of the *BCA* upon which the *PCA* has relied in issuing any *Occupation Certificate*.

Standard Condition: F7

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

Nil.

## **H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (s109C(1)(c))**

### **H.1 Fulfillment of BASIX commitments – Clause 154B of the Regulation**

All BASIX commitments must be effected in accordance with the BASIX Certificate No. A499633\_02.

**Note:** Clause 154B(2) of the *Environmental Planning and Assessment Regulation 2000* provides: "A *certifying authority* must not issue the *Occupation Certificate* for a BASIX affected building to which this clause applies unless it is satisfied that each of the commitments whose fulfilment it is required to monitor has been fulfilled."

Standard Condition: H7 (Autotext HH7)

*Amended on 25 July 2024 under DA446/2013/4 (PAN-420024)*

### **H.2 Removal of Ancillary Works and Structures**

The *principal contractor* or *owner* must remove from the land and any adjoining public place:

- a) The site sign;
- b) Ablutions;
- c) Hoarding;
- d) Scaffolding; and
- e) Waste materials, matter, article or thing.

**Note:** This condition has been imposed to ensure that all ancillary matter is removed prior to the issue of the *Final Occupation Certificate*.

Standard Condition: H12

### **H.3 Road Works (including footpaths)**

The following works must be completed to the satisfaction of Council, in accordance with the *Roads Act 1993* approvals and comply with Council's "*Specification for Roadworks, Drainage and Miscellaneous Works*" dated February 2012 unless expressly provided otherwise by these conditions at the *principal contractor's* or *owner's* expense:

- a) Stormwater pipes, pits and connections to public stormwater systems within the *road*;
- b) Driveways and vehicular crossings within the *road*;

- c) Removal of redundant driveways and vehicular crossings;
- d) New footpaths within the *road*;
- e) Relocation of existing power/light pole
- f) relocation/provision of street signs
- g) New or replacement street trees;
- h) New footway verges, where a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street.
- i) New or reinstated kerb and guttering within the *road*; and
- j) New or reinstated road surface pavement within the *road*.

**Note:** Security held by Council pursuant to section 80A(6) of the Act will not be release by Council until compliance has been achieved with this condition. An application for refund of security must be submitted with the *Final Occupation Certificate* to Council. This form can be downloaded from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or obtained from Council's customer service centre.

Standard Condition: H13

#### **H.4 Works-As-Executed Certification of Stormwater Systems**

Prior to issue of any Occupation Certificate, stormwater drainage works are to be certified by a professional engineer with works-as-executed drawings prepared by a registered surveyor and submitted, for approval by the Principal Certifying Authority, certifying:

- a) compliance with conditions of development consent relating to stormwater,
- b) that subsoil drainage/seepage water is NOT collected and discharged into the kerb and gutter,
- c) that only one stormwater outlet pipe to kerb has been constructed within the frontage of the site,
- d) that the stormwater works have been constructed in accordance with the approved construction stormwater plans,
- e) pipe invert levels and surface levels to Australian Height Datum, and
- f) contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

*Added on 21 December 2023 under DA446/2013/3 (PAN-345545)*

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

##### **I.1 Maintenance of BASIX commitments**

All BASIX commitments must be maintained in accordance with the BASIX Certificate No. A499633\_02.

**Note:** This condition affects successors in title with the intent that environmental sustainability measures must be maintained for the life of development under this consent.

Standard Condition: I24

*Amended on 25 July 2024 under DA446/2013/4 (PAN-420024)*

#### **J. Miscellaneous Conditions**

Nil.

## K. Advising

### K.1 Criminal Offences – Breach of Development Consent & Environmental laws

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

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

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

#### Warnings as to potential maximum penalties

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

#### Warning as to enforcement and legal costs

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

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

**Note:** The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of *the Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious. You can obtain further information from the following web sites: <http://www.theshopfront.org/documents/ConvictionsCriminalRecords.pdf> and the Attorney General's [www.agd.nsw.gov.au](http://www.agd.nsw.gov.au).  
Standard Advising: K1

### K.2 Dial before you dig



The *principal contractor, owner builder* or any person digging may be held financially responsible by the asset owner should they damage underground pipe or cable networks. Minimise your risk and Dial 1100 Before You Dig or visit [www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au).

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

Standard Advising: K2

### K.3 Commonwealth Disability Discrimination Act 1992 (“DDA”)

The Disability Discrimination Act 1992 (DDA) makes it against the law for public places to be inaccessible to people with a disability. Compliance with this development consent, Council's Access DCP and the BCA does not necessarily satisfy compliance with the DDA.

The DDA applies to existing places as well as places under construction. Existing places must be modified and be accessible (except where this would involve "unjustifiable hardship").

Further detailed advice can be obtained from the Human Rights and Equal Opportunity Commission ("HEROC"):

- a) <http://www.hreoc.gov.au/index.html>
- b) [http://www.hreoc.gov.au/disability\\_rights/dda\\_guide/ins/ins.html](http://www.hreoc.gov.au/disability_rights/dda_guide/ins/ins.html)

If you have any further questions relating to the application of the DDA you can send an email to HEROC at [disabdis@humanrights.gov.au](mailto:disabdis@humanrights.gov.au).

Standard Advising: K3

#### K.4 Builders Licences and Owner Builders Permits

Section 81A of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an **owner-builder**, must appoint a *principal contractor* for residential building work who must be the holder of a contractor licence.

Further information can be obtained from the NSW Office of Fair Trading website about how you obtain an owner builders permit or find a principal contractor (builder):  
<http://www.dft.nsw.gov.au/building.html> .

The Owner(s) must appoint the PCA. The PCA must check that Home Building Act insurance is in place before the commencement of building work. The Principal Contractor (Builder) must provide the Owners with a certificate of insurance evidencing the contract of insurance under the Home Building Act 1989 for the residential building work.

Standard Condition: K5

#### K.5 Workcover requirements

The *Occupational Health and Safety Act 2000 No 40* and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

**Note:** Further information can be obtained from Workcover NSW's website:

<http://www.workcover.nsw.gov.au/Industry/Construction/default.htm> or through their head office:

Location: Workcover NSW, 92-100 Donnison Street, GOSFORD 2250 Postal address:

WorkCover NSW, Locked Bag 2906, LISAROW 2252, Phone (02) 4321 5000, Fax (02) 4325

4145. Standard Condition: K7

#### K.6 Lead Paint

It is beyond the scope of this consent to provide detailed information about dealing with lead paint. Painters working in an area containing lead-based paint should refer to Australian Standard AS 4361.1–1995, Guide to Lead Paint Management—Industrial Applications, or AS 4361.2–1998, Guide to Lead Paint Management—Residential and Commercial Buildings.

Industrial paints, may contain lead. Lead is used in some specialised sign-writing and artist paints, and road marking paints, and anti-corrosive paints. Lead was a major ingredient in commercial and residential paints from the late 1800s to 1970. Most Australian commercial buildings and residential homes built before 1970 contain lead paint. These paints were used both inside and outside buildings.

Lead hazards - Lead particles are released when old lead paint flakes and peels and collects as dust in ceiling, wall and floor voids. If dust is generated it must be contained. If runoff contains lead particles it must be contained. Lead is extremely hazardous, and stripping of lead-based paint and the disposal of contaminated waste must be carried out with all care. Lead is a cumulative poison and even small levels in the body can have severe effects.  
Standard Advising: K9

## K.7 Dividing Fences

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

**Note:** Further information can be obtained from the NSW Department of Lands - <http://www.lands.nsw.gov.au/LandManagement/Dividing+Fences.htm>. Community Justice Centres provide a free mediation service to the community to help people resolve a wide range of disputes, including dividing fences matters. Their service is free, confidential, voluntary, timely and easy to use. Mediation sessions are conducted by two impartial, trained mediators who help people work together to reach an agreement. Over 85% of mediations result in an agreement being reached. Mediation sessions can be arranged at convenient times during the day, evening or weekends. Contact the Community Justice Centre either by phone on 1800 671 964 or at <http://www.cjc.nsw.gov.au/>.  
Standard Advising: K10

## K.8 Release of Security

An application must be made to Council by the person who paid the security for release of the securities held under section 80A of the *Act*.

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

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

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

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

**Note:** The Application for Refund of Security form can be downloaded from <http://www.woollahra.nsw.gov.au/pdf/Forms/Planning/RefundofSecurity.pdf>  
Standard Condition: K15

## K.9 Pruning or Removing a Tree Growing on Private Property

Woollahra Municipal Council's *Tree Preservation Order* 2006 (TPO) may require that an application be made to Council prior to pruning or removing any tree. The aim is to secure the amenity of trees and preserve the existing landscape within our urban environment.

Before you prune or remove a tree, make sure you read all relevant conditions. You can obtain a copy of the TPO from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or you may contact Council on 9391-7000 for further advice. Standard Condition: K19



## K.10 Dilapidation Report Condition

Please note the following in relation to the condition for a dilapidation report:

- a) The dilapidation report will be made available to affected property owners on requested and may be used by them in the event of a dispute relating to damage allegedly due to the carrying out of the development.
- b) This condition cannot prevent neighbouring buildings being damaged by the carrying out of the development.
- c) Council will not be held responsible for any damage which may be caused to adjoining buildings as a consequence of the development being carried out.
- d) Council will not become directly involved in disputes between the Developer, its contractors and the owners of neighbouring buildings.
- e) In the event that access for undertaking the dilapidation survey is denied the applicant is to demonstrate in writing to the satisfaction of the Council that all reasonable steps were taken to obtain access to the adjoining property. The dilapidation report will need to be based on a survey of what can be observed externally.

Standard Advising: K23

## K.11 Roads Act Application

Works or structures over, on or under public roads or footpaths are subject to Sections 138, 139 and 218 of the *Roads Act* 1993 and specifically:

- Construction of driveways and/or new or alterations to footpath paving
- Alteration and/or extension to Council drainage infrastructure
- Alteration and/or addition of retaining walls
- Pumping of water to Council's roadway
- Installation of soil/rock anchors under the roadway

An "Application to carry out works in a Public Road" form must be completed and lodged, with the Application fee, at Council's Customer Services counter. Detailed plans and specifications of all works (including but not limited to structures, road works, driveway crossings, footpaths and stormwater drainage etc) within existing roads, must be attached, submitted to and approved by *Council* under Section 138 of the *Roads Act* 1993, before the issue of any *Construction Certificate*.

Detailed engineering plans and specifications of the works required by this Condition must accompany the Application form. The plans must clearly show the following:

- Engineering drawings (plan, sections and elevation views) and specifications of the footpath, driveways, kerb & gutter, new gully pit showing clearly the connection point of site outlet pipe(s). Note, the connection drainage lines must be as direct as possible and generally run perpendicular to the kerb alignment.
- Engineering drawings of the new drainage line to be constructed joining the new and existing drainage pits including services.

All driveways must include a design longitudinal surface profile for the proposed driveway for assessment. The driveway profile is to start from the road centreline and be along the worst case edge of the proposed driveway. Gradients and transitions must be in accordance with Clause 2.5.3, 2.6 of AS 2890.1 – 2004, Part 1 – Off-street car parking. The driveway profile submitted to Council must be to (1:25) scale (for template checking purposes) and contain all relevant details: reduced levels, proposed grades and distances.

The existing footpath level and grade at the street alignment of the property must be maintained unless otherwise specified by *Council*. Your driveway levels are to comply with AS2890.1 and Council's Standard Drawings. There may be occasions where these requirements conflict with your development and you are required to carefully check the driveway/garage slab and footpath levels for any variations.

Note: any adjustments required from the garage slab and the street levels are to be carried out internally on private property

Drainage design works must comply with the Council's draft Development Control Plan Stormwater Drainage Management (Draft Version 1.1, Public Exhibition Copy dated 14 December 2006), and

Temporary ground anchors may be permitted, in accordance with Council's "*Rock Anchor Policy*".

Services Prior to any excavation works, the location and depth of all public utility services (telephone, cable TV, electricity, gas, water, sewer, drainage, etc.) must be ascertained. The applicant shall be responsible for all public utility adjustment/relocation works, necessitated by the development work and as required by the various public utility authorities and/or their agents.

All public domain works must comply with the latest version of Council's "*Specification for Roadworks, Drainage and Miscellaneous Works*" unless expressly provided otherwise by these conditions. This specification and the application form can be downloaded from [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au).

**Note:** To ensure that this work is completed to Council's satisfaction, this consent by separate condition, may impose one or more Infrastructure Works Bonds.

**Note:** When a large *Roads Act* is required, then four (4) weeks is to be allowed for assessment.

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

**Note:** The intent of this condition is that the design of the road, footpaths, driveway crossings and public stormwater drainage works must be detailed and approved prior to the issue of any *Construction Certificate*. Changes in levels may arise from the detailed design of buildings, road, footpath, driveway crossing grades and stormwater. Changes required under *Road Act* 1993 approvals may necessitate design and levels changes under this consent. This may in turn require the applicant to seek to amend this consent.

Standard Advising: K24

## K.12 Appeal

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

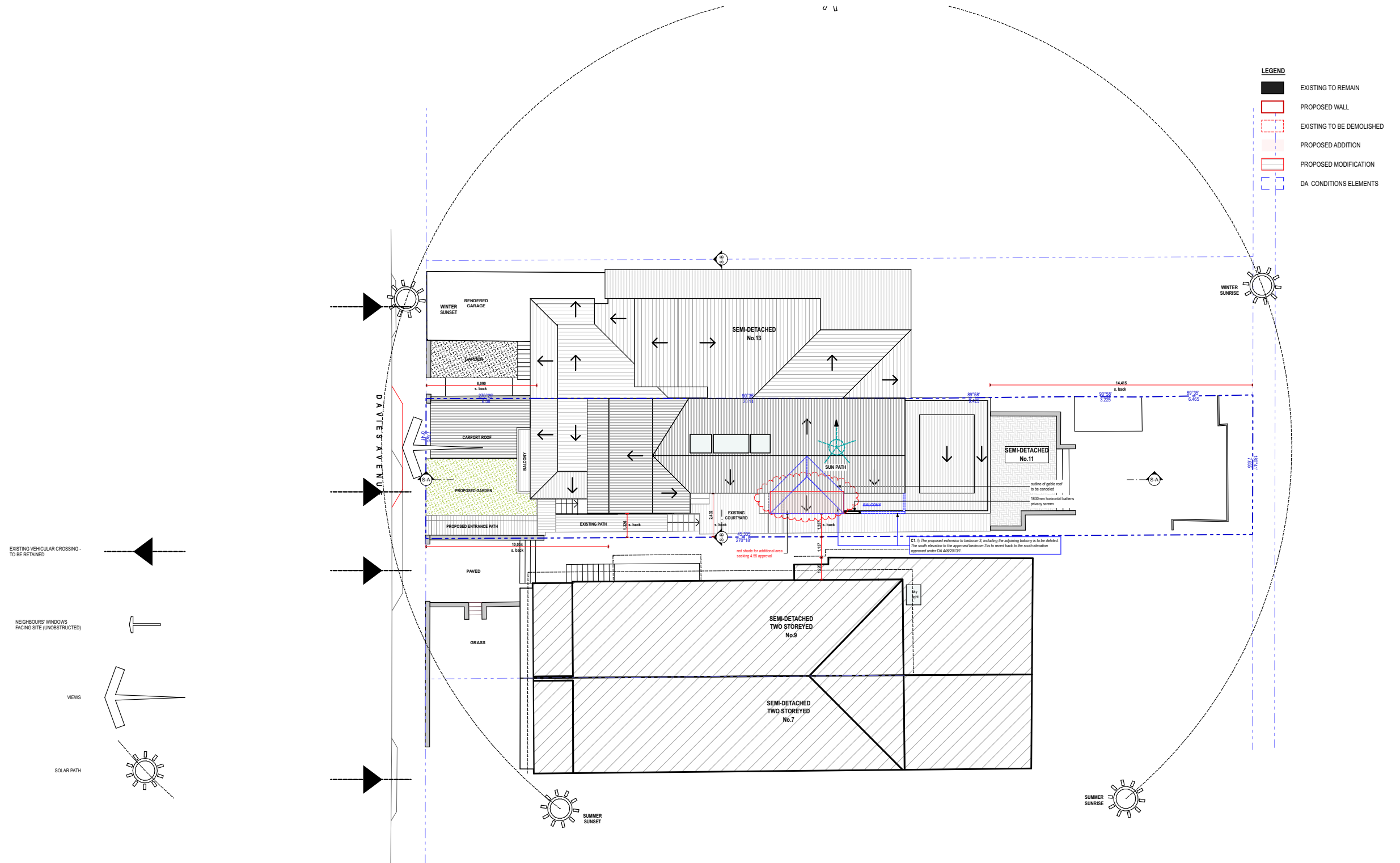
However, if you wish to pursue your rights of appeal in the Land & Environment Court you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, site hearings and the use of Court Appointed Experts, instead of a full Court hearing.

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

Standard Condition: K14

## Attachments

1. Architectural Plans and Elevations [!\[\]\(0551a83d441798e532995956b603f604\_img.jpg\)](#) 



U R I T D E S I G N

PO BOX 7368 BOND BEACH, NSW 2026  
PH: 0416 321 982

uri@uritdesign.com

Contractor to verify all dimensions on site prior to commencing work. Uri T Design is to be notified of any discrepancies in the dimension and setting out of the work. Copyright of designs shown hereon is retained by Uri T Design. Authority is required for any reproduction.

**REVISIONS**  
REV A

DRAWING  
PROJECT

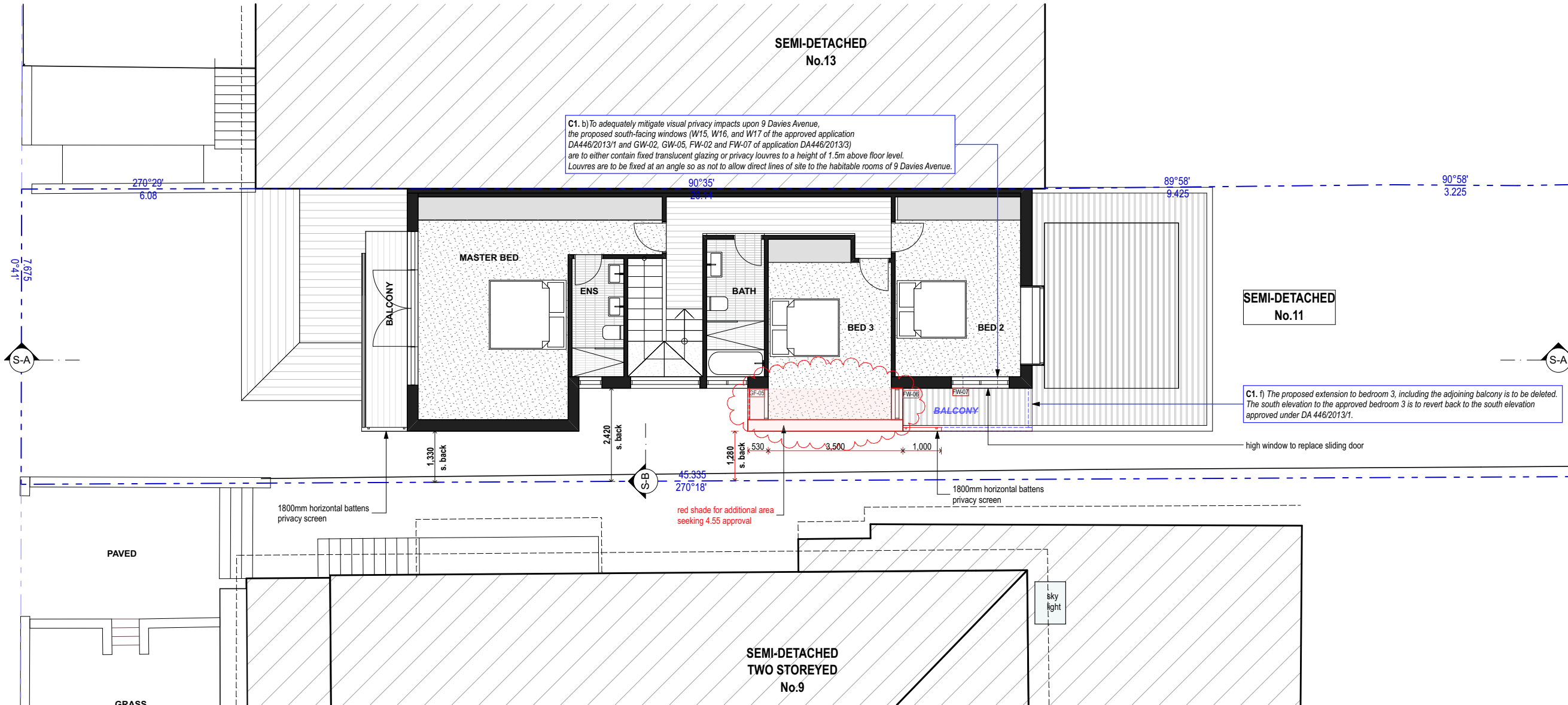
ROOF AND SITE ANALYSIS  
ALTERATIONS AND ADDITIONS  
11 DAVIES AVENUE  
VAUCLUSE NSW 2030

DRAWN BY UT  
JOB NO DA-D11  
DRAWING NO DA-1001  
REVISION REV C

SCALE: 1:200 @ A3      PLOTTED:      22/5/24

LEGEND

- EXISTING TO REMAIN
- PROPOSED WALL
- EXISTING TO BE DEMOLISHED
- PROPOSED ADDITION
- PROPOSED MODIFICATION
- DA CONDITIONS ELEMENTS



URI T DESIGN  
PO BOX 7368 BOND BEACH, NSW 2026  
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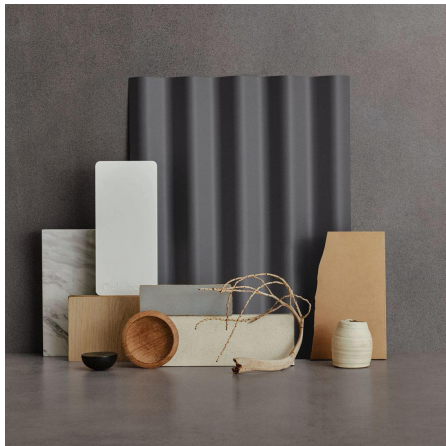
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REV A

DRAWING  
PROJECT

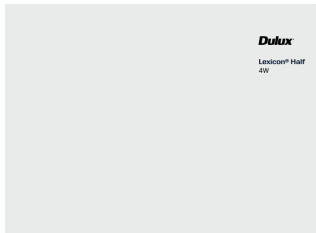
FIRST FLOOR PLAN  
ALTERATIONS AND ADDITIONS  
11 DAVIES AVENUE  
VAUCLUSE NSW 2030

DRAWN BY UT  
JOB NO DA-D11  
DRAWING NO DA-1004  
REVISION REV C

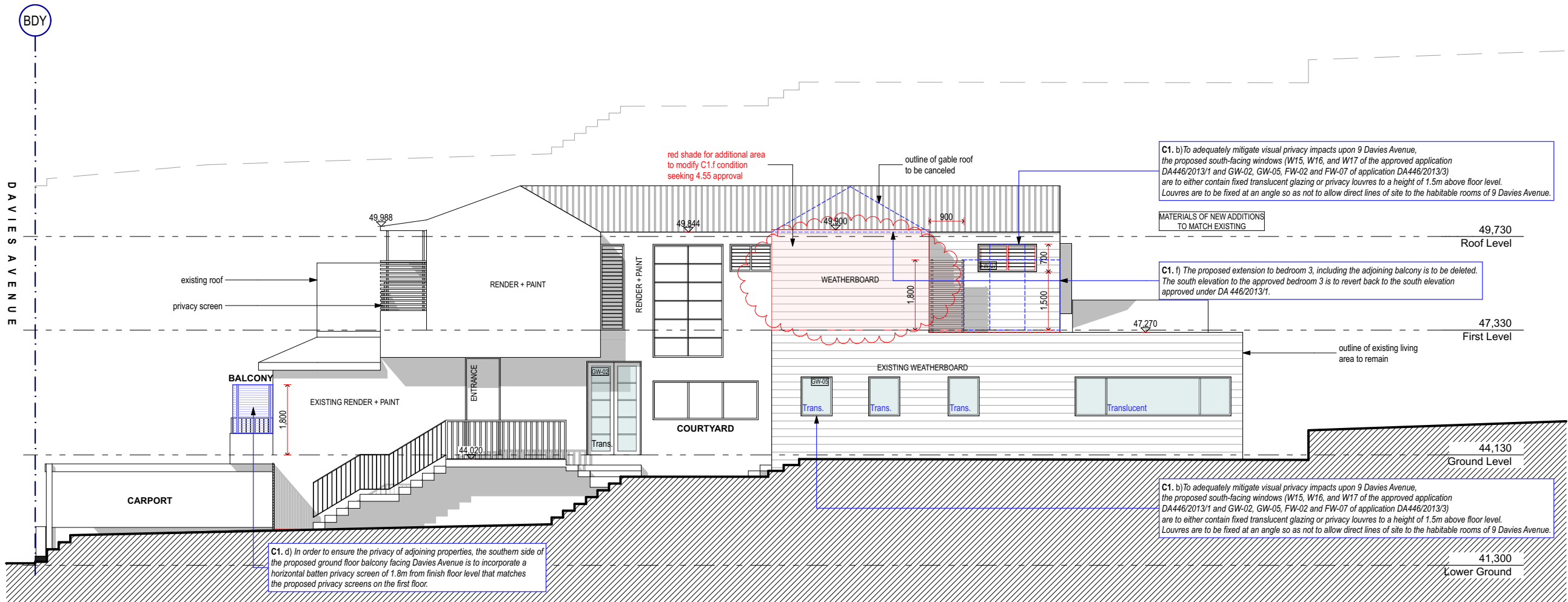
SCALE: 1:100 @ A3  
PLOTTED: 22/5/24



Roof - Colorbond Basalt



Walls Colour - Dulux Lexicon Half



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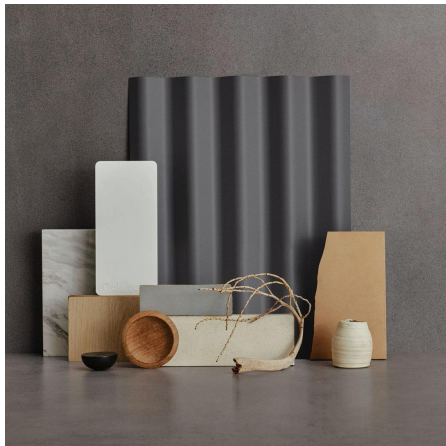
REVISIONS  
REV A

DRAWING SOUTH ELEVATIONS  
PROJECT ALTERATIONS AND ADDITIONS  
11 DAVIES AVENUE  
VAUCLOSE NSW 2030

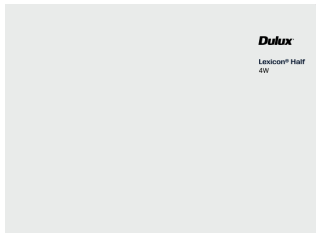
DRAWN BY UT  
JOB NO DA-D11  
DRAWING NO DA-2002  
REVISION REV C

SCALE: 1:100, 1:4.17 @ A3 PLOTTED: 22/5/24

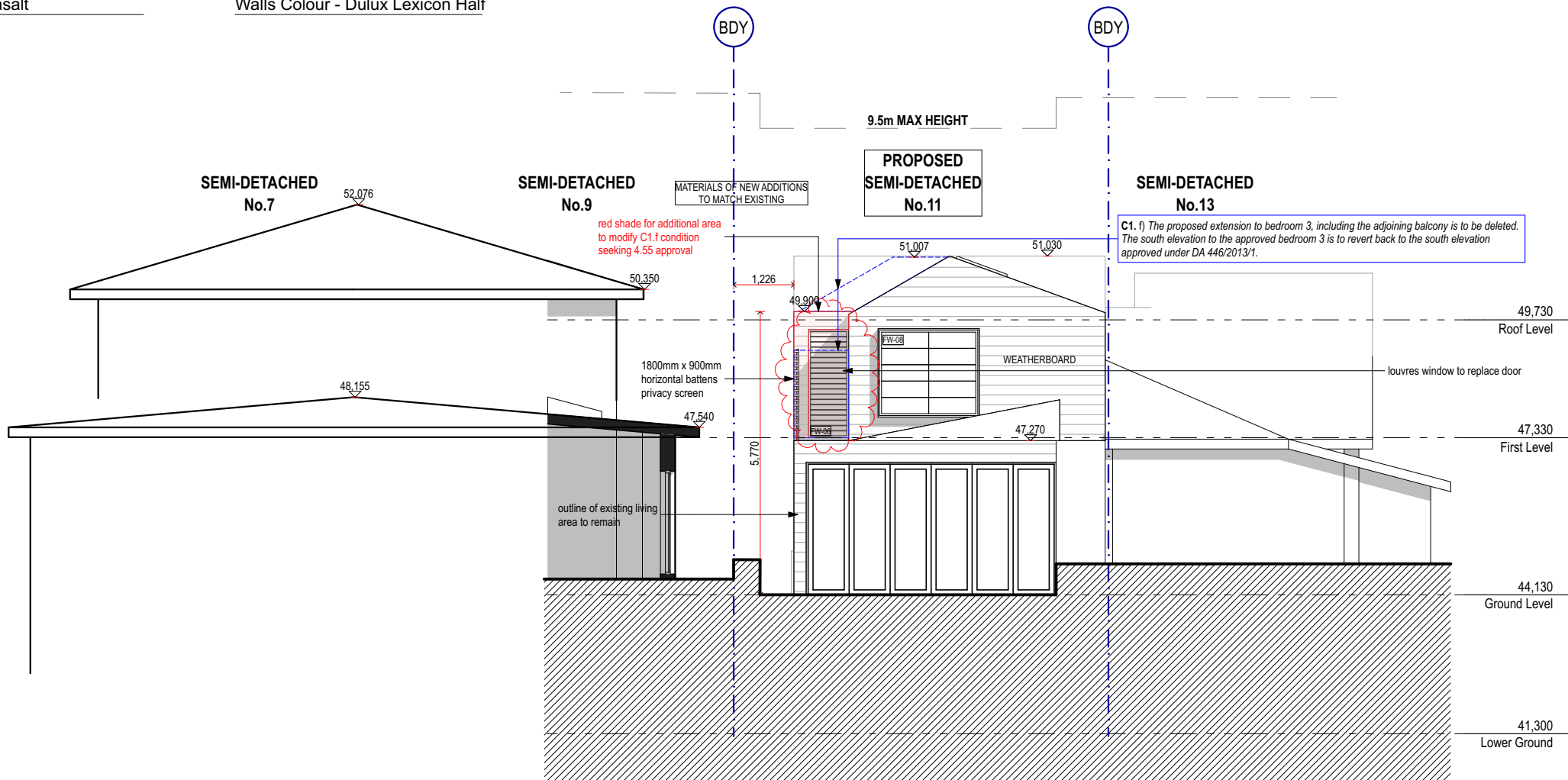




Roof - Colorbond Basalt



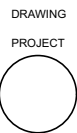
Walls Colour - Dulux Lexicon Half



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REVISIONS	DRAWN BY	UT
REV A	JOB NO	DA-D11
	DRAWING NO	DA-2003
	REVISION	REV C



EAST ELEVATION  
ALTERATIONS AND ADDITIONS  
11 DAVIES AVENUE  
VAUCLUSE NSW 2030

SCALE: 1:100, 1:4.17 @ A3 PLOTTED: 22/5/24