

Wollongong Local Planning Panel Assessment Report | 21 May 2020

WLPP No.	Item No.3
DA No.	DA-2019/1081
Proposal	Demolition of existing dwelling and construction of multi dwelling housing comprising four (4) units
Property	Lot 12 DP 548409 3 George Street BERKELEY
Applicant	Planzone Consulting
Responsible Team	Development Assessment and Certification - City Centre Team (BH)

ASSESSMENT REPORT AND RECOMMENDATION

Executive Summary

Reason for consideration by Wollongong local Planning Panel - Determination

The proposal has been referred to Local Planning Panel for determination pursuant to clause 2.19(1)(a) of the Environmental Planning and Assessment Act 1979. The proposal is captured by Schedule 3 of the Local Planning Panels Direction of 1 March 2018. The proposal involves a departure from the minimum site width required by clause 7.14 of WLEP 2009.

Proposal

The proposal is for demolition of an existing dwelling and construction of multi dwelling housing comprising 4 x 2 storey units.

Permissibility

The site is zoned R2 Low Density Residential pursuant to Wollongong Local Environmental Plan 2009. The proposal is categorised as multi dwelling housing and is permissible in the zone with development consent.

Consultation

The proposal was notified in accordance with Council's Notification Policy and there was one (1) submission received by way of objection, the contents of which are discussed at Section 2.9 of this report.

Main Issues

The main issue is non compliance with minimum lot width requirements under WLEP 2009. A Variation Request has been submitted in accordance with Clause 4.4.6 of EP&A Act 1979 and is considered acceptable.

RECOMMENDATION

It is recommended that the application be approved subject to conditions contained in Attachment 7.

APPLICATION OVERVIEW

PLANNING CONTROLS

The following planning controls apply to the proposal:

State Environmental Planning Policies:

- SEPP No. 55 – Remediation of Land
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Coastal Management) 2018

Local Environmental Planning Policies:

- Wollongong Local Environmental Plan (WLEP) 2009

Development Control Plans:

- Wollongong Development Control Plan 2009

Other policies

- Wollongong Section 94A Development Contributions Plan

DETAILED DESCRIPTION OF PROPOSAL

The proposal is for the demolition of existing dwelling and construction of multi dwelling housing comprising 4 townhouses.

Each townhouse contains living and dining areas including kitchens and laundries at ground level and direct access to private open space courtyards is provided from living areas. Unit A contains 4 bedrooms at the upper level whilst Units B,C and D each contain 3 bedrooms. Units A, B and D have double garages and Unit C has a single garage. One visitor parking space is provided. The townhouses are accessed off a single driveway located on the southern side of the lot.

BACKGROUND

Development History

- BA-1957/1605, 57/1605 - Addition to Garage

Pre-lodgement Meetings

A pre-lodgement meeting was held for the proposal on 10 August 2019.

Customer service actions

There are no outstanding customer service requests of relevance to the development.

SITE DESCRIPTION

The site is located at 3 George Street Berkeley and the title reference is Lot 12 DP 548409. The site has a frontage of 21.255m and a rear boundary of 14.833m. The northern boundary is 72.685m and the southern side boundary is 71.250m. The site area is 1,264.6m².

The locality is characterised by low density housing with a single dwelling located on the southern side and a single storey group home located on the northern side. To the rear of the site is a tributary of Budjong Creek and opposite the site on the western side of George Street is Budjong Creek and beyond that Illawarra Sports High School. A childcare centre is located opposite the site and Berkeley Public school is to the north on the corner of George Street and Flagstaff Road.

Property constraints

Council records identify the land as being impacted by class 5 acid sulphate soils, uncategorised flood risk precinct and being within the Coastal zone (Coastal Environment Area).

There are no restrictions on the title that would preclude the development.

SUBMISSIONS

The application was notified in accordance with WDCP 2009 Appendix 1: Public Notification and Advertising. This included a notification letter to the properties identified in the below map.



One (1) submission was received and the issues identified are discussed below.

Concern	Comment
<p>1 <u>Drainage</u></p> <p>The objector notes that his property is flood affected and states that there is insufficient drainage on the southern side of the subject property. There should be more drainage pits and a 100mm hob wall along the length of the driveway to prevent water entering the neighbouring property.</p>	<p>The applicant has provided a concept stormwater plan which has been assessed as satisfactory by Council's Land Development Engineer and standard conditions of consent require kerbing along driveway edges to contain stormwater runoff and direct it to drainage pits and into the piped drainage system.</p>
<p>2 <u>Fencing</u></p> <p>The objector has requested that colourbond fencing to a height of 2.4m be provided along the entire length of the southern side boundary to reduce the impact of car headlights.</p>	<p>The provision of side boundary fencing is a matter covered by the Dividing Fences Act and whilst it is unlikely that significant impacts would result from the development, it should be noted that the Landscape Plan indicates the applicant's intention to erect a 1.8m high colourbond fence along the southern boundary. This is considered sufficient to address the potential impacts of car headlights.</p>

CONSULTATION

INTERNAL CONSULTATION

Council's Stormwater Engineer, Landscape Architect, Development Engineering Officer, Officers have reviewed the application and provided satisfactory referrals. Conditions of consent have been recommended and are included in the draft conditions at attachment 7

EXTERNAL CONSULTATION

Natural Resource Access Regulator (NRAR)

The application is integrated development, requiring a Controlled Activity Approval under the NSW Water Management Act 2000 from the Natural Resource Access Regulator (NRAR). The application is proposing to drain to George Street and not into the riparian land. The NRAR has provided General Terms of Approval which are included in the draft conditions which form attachment 4 and 7 of this report.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 – 79C EVALUATION

SECTION 79C 1(A)(I) ANY ENVIRONMENTAL PLANNING INSTRUMENT

STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND

A desktop audit of previous land uses does not indicate any historic use that would contribute to the contamination of the site. There are no significant earthworks proposed and the proposal does not comprise a change of use. No concerns are raised in regard to contamination as relates to the intended use of the land and the requirements of clause 7. The site

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

The proposal is BASIX affected development to which this policy applies. In accordance with Schedule 1, Part 1, 2A of the Environmental Planning and Assessment Regulation 2000, a BASIX Certificate has been submitted in support of the application demonstrating that the proposed scheme achieves the BASIX targets.

The BASIX certificate was issued no earlier than 3 months before the date on which the development application was lodged.

SEPP (COASTAL MANAGEMENT) 2018

The site is identified as being within the coastal environment and coastal use areas under this policy.

Division 3 Coastal environment area

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

The proposal is approximately 400m to the north of the lake foreshore and not considered to have adverse impacts in this regard.

(b) coastal environmental values and natural coastal processes,

The proposal is sufficiently distant from the lake foreshore so-as to not directly impact on these processes.

(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

The proposal is approximately 400m to the north of the lake foreshore and drainage has been directed to street, post development conditions match the pre-conditions.

(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

The proposal is approximately 400m to the north of the lake foreshore.

(f) Aboriginal cultural heritage, practices and places,

The site is not affected.

(g) the use of the surf zone.

N/A

(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—

(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or

As discussed above

(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

As discussed above

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

As discussed above

Division 4 Coastal use area

14 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

(a) has considered whether the proposed development is likely to cause an adverse impact on the following:

(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

N/A

(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,

The proposal does not overshadow the foreshore. No significant wind funnelling impacts are expected. Views from public places to the foreshore are not considered to be significantly impacted.

(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,

The proposal is not considered to have adverse impacts in this regard.

(iv) Aboriginal cultural heritage, practices and places,

The site is not impacted by Aboriginal and cultural heritage matters.

(v) cultural and built environment heritage, and

The proposal has been reviewed by Council's Heritage Officer who has raised issues.

(b) is satisfied that:

(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or

Discussed above.

(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

Discussed above

(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

Discussed above

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

These matters are addressed elsewhere in this report.

(2) 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.

Division 5 General

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Satisfactory.

16 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

The site is not impacted by coastal hazards nor is the site located on the foreshore.

17 Other development controls not affected

Subject to clause 7, for the avoidance of doubt, nothing in this Part:

(a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or

(b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.

N/A

18 Hierarchy of development controls if overlapping

If a single parcel of land is identified by this Policy as being within more than one coastal management area and the development controls of those coastal management areas are inconsistent, the development controls of the highest of the following coastal management areas (set out highest to lowest) prevail to the extent of the inconsistency:

- (a) the coastal wetlands and littoral rainforests area,
- (b) the coastal vulnerability area,
- (c) the coastal environment area,
- (d) the coastal use area.

WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Part 2 Permitted or prohibited development

Clause 2.2 – zoning of land to which Plan applies

The zoning map identifies the land as being zoned R2 Low Density Residential.

Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

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

The proposal is satisfactory with regard to the above objectives.

The land use table permits the following uses in the zone.

*Attached dwellings; Bed and breakfast accommodation; Boarding houses; Boat launching ramps; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Environmental facilities; Exhibition homes; Exhibition villages; Group homes; Health consulting rooms; Home-based child care; Hospitals; Hostels; Information and education facilities; Jetties; **Multi dwelling housing**; Neighbourhood shops; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Shop top housing; Signage; Tank-based aquaculture; Veterinary hospitals*

The proposal is categorised as **Multi dwelling housing** as described below and is permissible in the zone with development consent.

Clause 1.4 Definitions

Multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

Part 4 Principal development standards

Clause 4.1 Minimum subdivision lot size

The minimum lot size is 449m². No subdivision is proposed.

Clause 4.3 Height of buildings

The proposed maximum building height of 7.8m does not exceed the maximum of 9m permitted for the site.

Clause 4.4 Floor space ratio

Maximum FSR permitted for the zone: 0.5:1

FSR proposed: $1,264.60\text{m}^2 / 502.1\text{m}^2 = 0.397:1$

Clause 4.6 Exceptions to development standards

The application seeks a variation to Clause 7.14(1) of WLEP 2009 which requires a minimum lot width of 18m for multi dwelling housing. The following table provides an assessment of the proposed variation:

WLEP 2009 clause 4.6 proposed development departure assessment	
Development departure	Clause 7.14 minimum site width. Requires that development consent must not be granted for development for the purposes of a multi dwelling housing unless the site area on which the development is to be carried out has a dimension of at least 18 metres.
Is the planning control in question a development standard	Yes
4.6 (3) Written request submitted by applicant contains a justification:	
that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	A satisfactory clause 4.6 variation has been submitted at attachment 5
that there are sufficient environmental planning grounds to justify contravening the development standard.	Yes
4.6 (4) (a) Consent authority is satisfied that:	
the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	<p>The applicant's written request seeks to justify that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case based on the following rationale:</p> <ul style="list-style-type: none"> • The site ranges in width between 14.9 metres to 21 metres. • The site has a 21 metre wide frontage to George Street however the site's rear half does not achieve a minimum width of 18 metres, being 14.9 metres wide at the rear boundary. • The rear part of the site is unlikely to be developed upon as it is mapped as an uncategorised flood zone. • The proposed multi dwelling housing development complies with the requirement of minimum setbacks, landscaping, car parking spaces and private open space requirements. <p>The written request has adequately addressed the matters required to be addressed under subclause (3).</p>
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	<p>There is no objective for clause 7.14 minimum site width control in WLEP 2009. However, WDCP 2009 does provide some guidance. Clause 6.2.2 of chapter B1 also requires for a minimum site width of 24m and states that variations may be considered where in the opinion of Council, the proposed development will not cause any significant adverse overshadowing, privacy or amenity impact upon any adjoining development.</p> <p>The objectives of DCP 2009 clause 6.2.2 include:</p> <ul style="list-style-type: none"> • <i>allow for development of sites, which are of sufficient width to accommodate the required building envelope, car</i>

	<p><i>parking and landscaping requirements</i></p> <ul style="list-style-type: none"> • <i>To promote the efficient utilisation of land.</i> • <i>To encourage amalgamation of allotments to provide for improved design outcomes including greater solar access and amenity.</i> <p>The proposed variation to the standard is considered to be consistent with these objectives. The building provides a suitable building envelope and satisfies all WDCP2009 requirements and is not considered to unreasonable impacts on adjoining development.</p> <p>The objectives of the zone are:</p> <ul style="list-style-type: none"> • <i>To provide for the housing needs of the community within a low-density residential environment.</i> • <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> <p>The proposed development has regard to the objectives of the R2 zone, and despite the constraints on the site, the proposed development is significantly less than the FSR and Height controls.</p> <p>The non-compliance with the development standard is minor as it only occurs at the rear portion of the site where it narrows to less than 18.5m. Notwithstanding the non-compliance, the submitted plans demonstrate a design that enables compliance with the primary development controls being setbacks, private open space, deep soil planting, car parking and manoeuvring.</p> <p>In this regard the proposal is consistent with the aims of the policy the non-compliance with the development standard is not considered to hinder the attainment of the objectives specified in section 5(a)(i) and (ii) of the EP&A Act.</p> <p>It is considered that in this instance there are sufficient environmental planning grounds specific to the site to justify contravening the development standard</p>
(b) the concurrence of the Secretary has been obtained.	Concurrence is not required as the LPP is the determining authority

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

The development is already serviced by electricity, water and sewage services.

A condition is proposed that the development consent requiring approval from the relevant authorities for the connection of electricity, water and sewage to service the site.

Clause 7.2 Natural resource sensitivity – biodiversity

The site is not identified as being affected by “Natural Resource Sensitivity – Biodiversity” on the Natural Resource Sensitivity – Biodiversity Map.

Clause 7.3 Flood planning area

The site is flood affected and part of the land is below the “flood planning level”, being the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metres freeboard. The floor levels of the development are above the flood planning level.

Council’s Stormwater Engineer has assessed the application in this regard and has not raised any objections subject to appropriate conditions of consent.

Clause 7.4 Riparian lands

The watercourse to the rear of the site is identified as being riparian land on the Riparian Land Map. WDCP2009 identifies the watercourse as Category 3 – Bank Stability and Water Quality – This category aims to minimise sedimentation and nutrient transfer to provide bank stability, improve water quality and protect native vegetation.

The NRAR has provided General Terms of Approval. The application is proposing to drain to George Street and not into the riparian land and Council’s Stormwater Engineer has assessed the application in this regard and has not raised any objections subject to appropriate conditions of consent.

Further assessment can be found in attachment 6

7.5 Acid Sulfate Soils

The proposal is identified as being affected by class 5 acid sulphate soils. An acid sulphate soils management plan is not required as minimal earthworks are proposed.

Clause 7.6 Earthworks

The earthworks associated with the proposal are not expected to have a detrimental impact on environmental functions and processes, neighbouring uses or heritage items and features surrounding land.

Clause 7.7 Foreshore building line

The proposal is not located within the “foreshore building line”.

Clause 7.8 Illawarra Escarpment area conservation

The site is not located within the “Illawarra Escarpment Area”.

Clause 7.9 Airspace operations

The proposal is not identified as being located on land within the flight path of the Illawarra Regional Airport.

Clause 7.10 Development in areas subject to airport noise

The proposal is not located on land which exceeds the ANEF contour 20 or is development which does not involve regular human habitation.

Clause 7.14 Minimum site width

This clause states:

(1) Development consent must not be granted for development for the purposes of multi dwelling housing unless the site area on which the development is to be carried out has a dimension of at least 18 metres.

The subject lot meets the minimum requirement at its frontage (21.255m) however the lot width reduces to the rear boundary of 14.833m. The applicant has provided a Variation Request to address this non-compliance. This matter is addressed at clause 4.6 above.

SECTION 79C 1(A)(II) ANY PROPOSED INSTRUMENT

Not applicable.

SECTION 79C 1(A)(III) ANY DEVELOPMENT CONTROL PLAN

WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

Attachment 6 contains compliance tables for the DCP, the proposal does not involve variations to controls.

WOLLONGONG SECTION 94A DEVELOPMENT CONTRIBUTIONS PLAN

The estimated cost of works is >\$100,000 (\$246,2300) and a levy of 1% is applicable under this plan.

SECTION 79C 1(A)(IIIA) ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 93F, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 93F

There are no planning agreements entered into or any draft agreement offered to enter into under S93F which affect the development.

SECTION 79C 1(A)(IV) THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)

92 What additional matters must a consent authority take into consideration in determining a development application?

Not applicable.

93 Fire safety and other considerations

Not applicable.

94 Consent authority may require buildings to be upgraded

Not applicable.

115 What are the requirements for an application for modification of a development consent?

Not applicable

SECTION 79C 1(A)(V) ANY COASTAL ZONE MANAGEMENT PLAN (WITHIN THE MEANING OF THE COASTAL PROTECTION ACT

There is no Coastal Zone Management Plan currently applicable to the land. Whilst being in the coastal zone, the land is not identified as being impacted by coastal hazards and there are not expected to be any adverse impacts on the coastal environment arising from the development.

SECTION 79C 1(B) THE LIKELY IMPACTS OF DEVELOPMENT

There are not expected to be adverse environmental impacts on either the natural or built environments. There are also not expected to be any adverse social or economic impacts in the locality.

This is demonstrated through the following:

- The proposal is satisfactory with regard to the applicable planning controls as detailed in the body of this report.
- The submission received following notification would not preclude the development.

Internal and external referrals are satisfactory subject to appropriate conditions of consent

Context and Setting:

The proposal has been assessed with regard to the amenity impacts from the development, the zoning, permissible height and FSR for the land, and existing and future character of the area, and is considered to be compatible with the local area.

SECTION 79C 1(C) THE SUITABILITY OF THE SITE FOR DEVELOPMENT

Does the proposal fit in the locality?

The proposal is considered appropriate with regard to the zoning of the site and is not expected to have any negative impacts on the amenity of the locality or adjoining developments.

Are the site attributes conducive to development?

There are no site constraints that would prevent the proposal.

SECTION 79C 1(D) ANY SUBMISSIONS MADE IN ACCORDANCE WITH THIS ACT OR THE REGULATIONS

One submission received which has been addressed in this report.

SECTION 79C 1(E) THE PUBLIC INTEREST

The application is not expected to have any unreasonable impacts on the environment or the amenity of the locality. It is considered appropriate with consideration to the zoning and the character of the area and is therefore considered to be in the public interest.

CONCLUSION

This application has been assessed having regard to the Heads of Consideration under Section S4.15(1) of the Environmental Planning and Assessment Act 1979. The proposed development is permissible with consent and has regard to the objectives of the zone and is consistent with the applicable provisions of the relevant planning instruments including Wollongong LEP 2009, relevant state policies, Council DCPs, Codes and Policies. The design of the development is appropriate regarding the controls outlined in these instruments.

The lot width in part is less than that specified in WLEP 2009 for multi dwelling housing. The applicant has followed the process set out in clause 4.6 of WLEP 2009 and adequately justified the development standard departure. The proposal does not involve variations to WDCP2009. Internal referrals are satisfactory, and submissions have been considered in the assessment.

It is considered that the proposed development has otherwise been designed appropriately given the nature and characteristics of the site and is unlikely to result in significant adverse impacts on the character or amenity of the surrounding area.

RECOMMENDATION

It is recommended that development application DA-2019/1081 be approved subject to the conditions contained in Attachment 7.

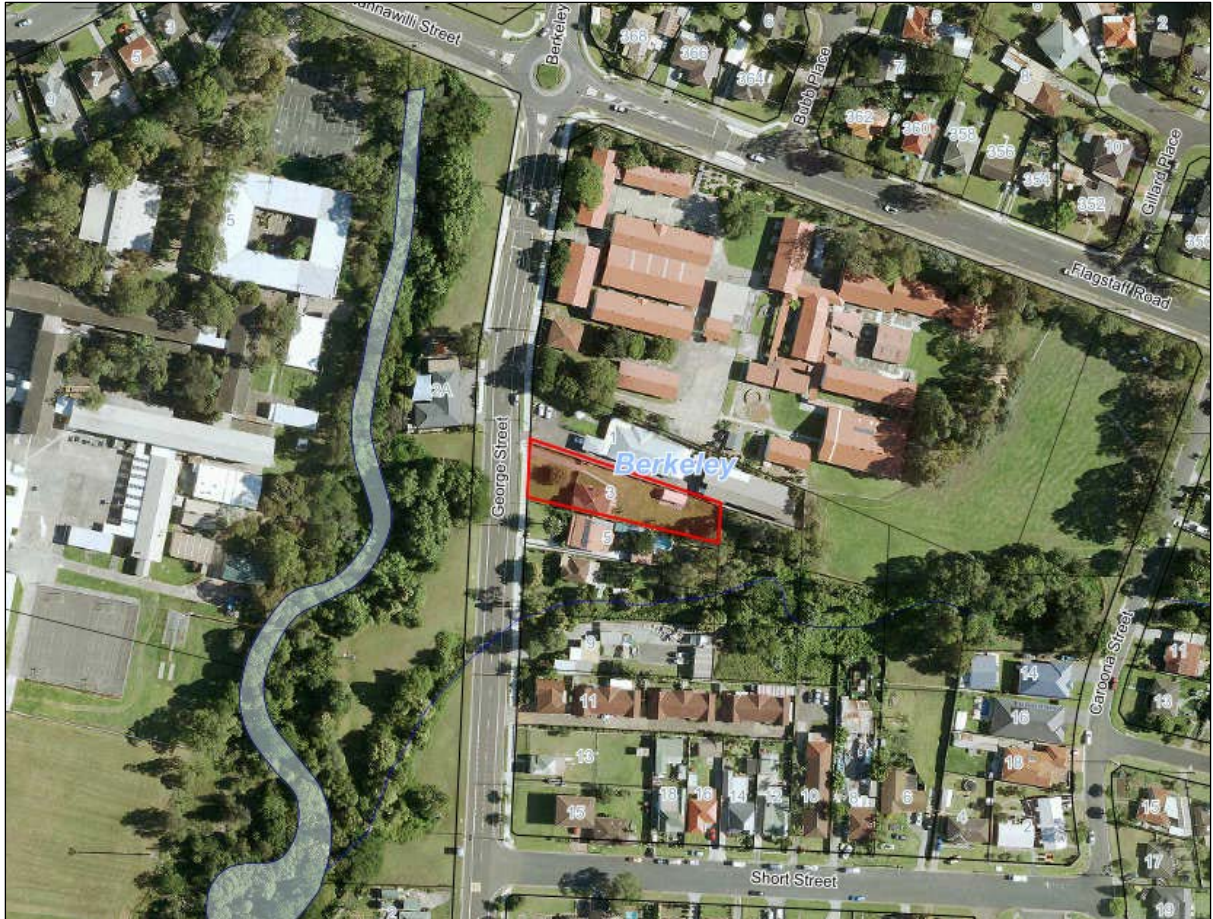
ATTACHMENTS

- 1 Aerial photograph
- 2 WLEP zoning map
- 3 Plans
- 4 NRAR GTAs

- 5 Clause 4.6 variation request
- 6 WDCP 2009 compliance table
- 7 Draft conditions of consent

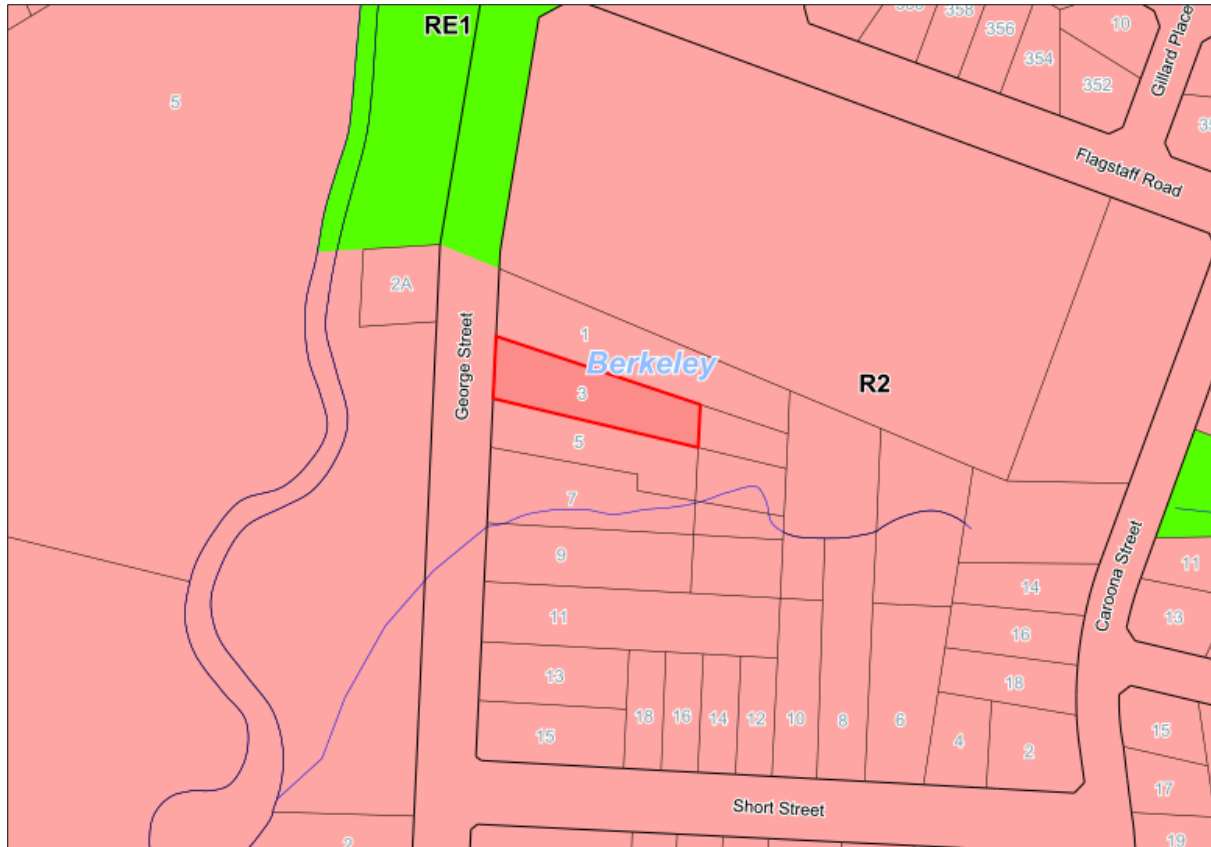
DA-2019/1081 3 George Street BERKELEY

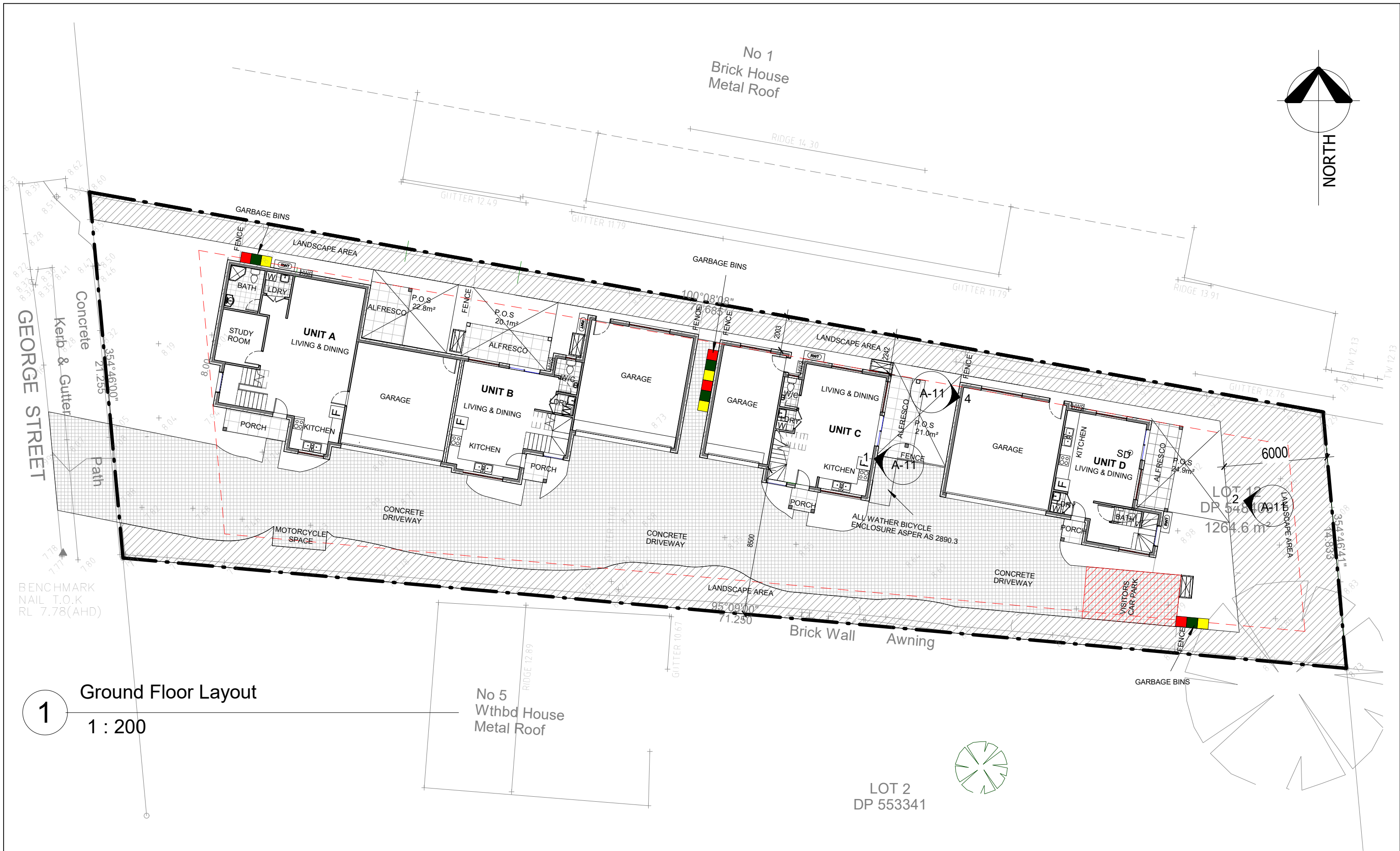
ATTACHMENT 1: Aerial Photograph



DA-2019/1081 3 George Street BERKELEY

ATTACHMENT 2: WLEP 2009 zoning map





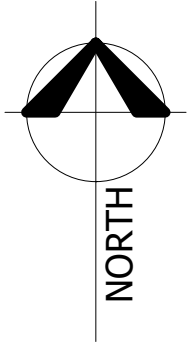
Ground Floor Layout

1 : 200

Rev.	Description.	By.	Date.	Legend & Notes.	Client :	Drawing Title : Ground Layout Master Plan
A	ISSUED FOR DEVELOPMENT APPLICATION	S.D	23.04.2019	MEASUREMENTS TO BE CONFIRMED ON SITE. NO MEASUREMENTS TO BE SCALED OFF DRAWINGS.	Mustapha Beri	Designed : MJ
B	REVISED AS PER COUNCIL LETTER DATED 21/11/19	L.Z	25.02.2020		Project : 3 GEORGE STREET, BERKELEY, NSW 2506	Scale : 1 : 200
C	REVISED AS PER COUNCIL EMAIL DATED 08/04/20	T.D	22.04.2020			Drawn : LZ
						Date : 25/02/20
						Checked : SD
						Rev. : C
						Drawing No. : A-02
						Job : A-18010

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A-10
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A-11
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2

First Level Layout

2
1 : 200

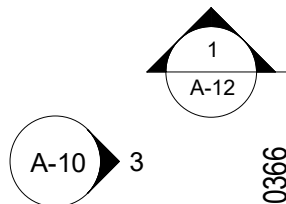
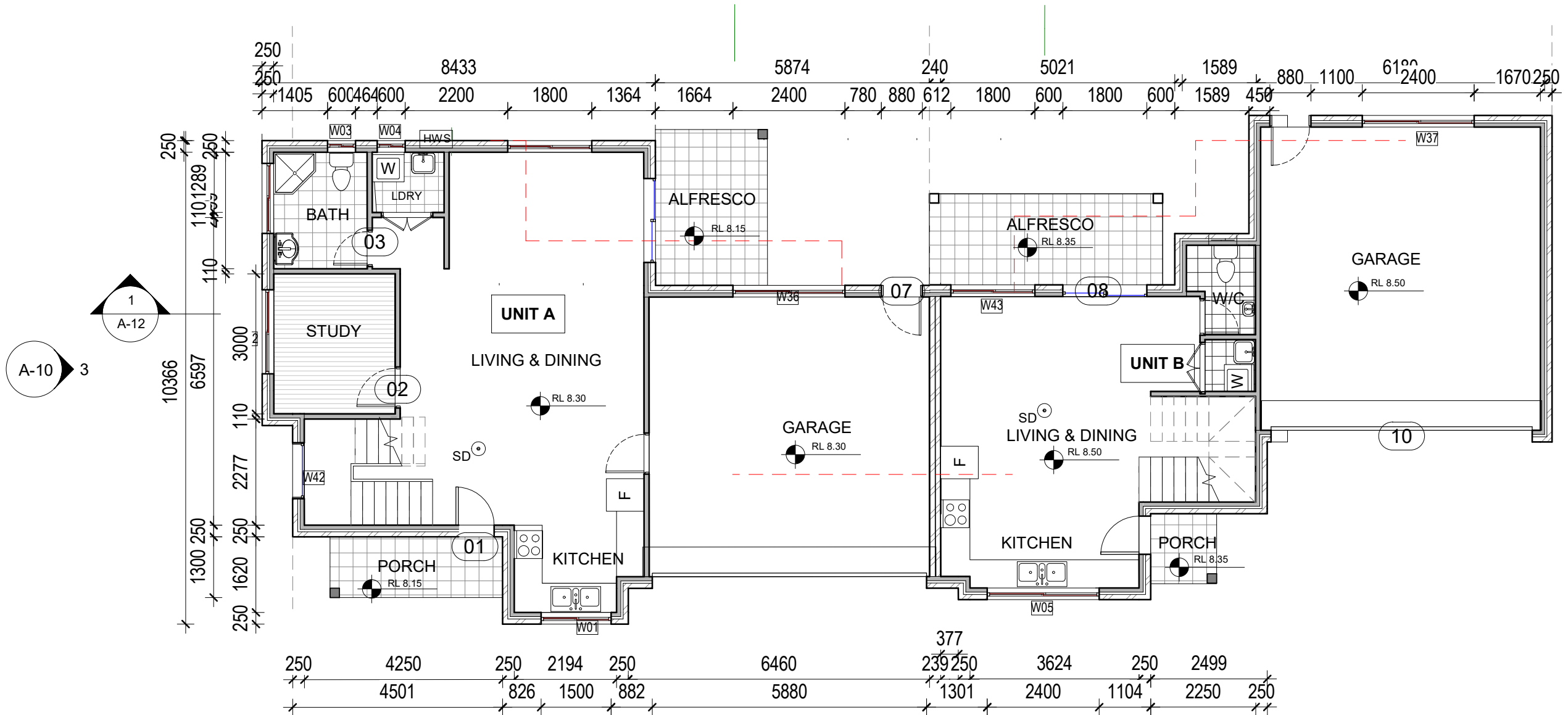
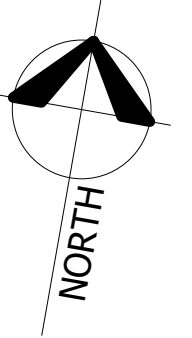
Rev.	Description.	By.	Date.	Legend & Notes.	Client :	Drawing Title : First Layout Mater Plan
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C	REVISED AS PER COUNCIL EMAIL DATED 08/04/20	T.D.	22.04.2020			Date : 25/02/20
						Checked : SD
						Rev. : C
						Drawing No. : A-03
						Job : A-18010

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1 Unit A & B Ground Level
1 : 100

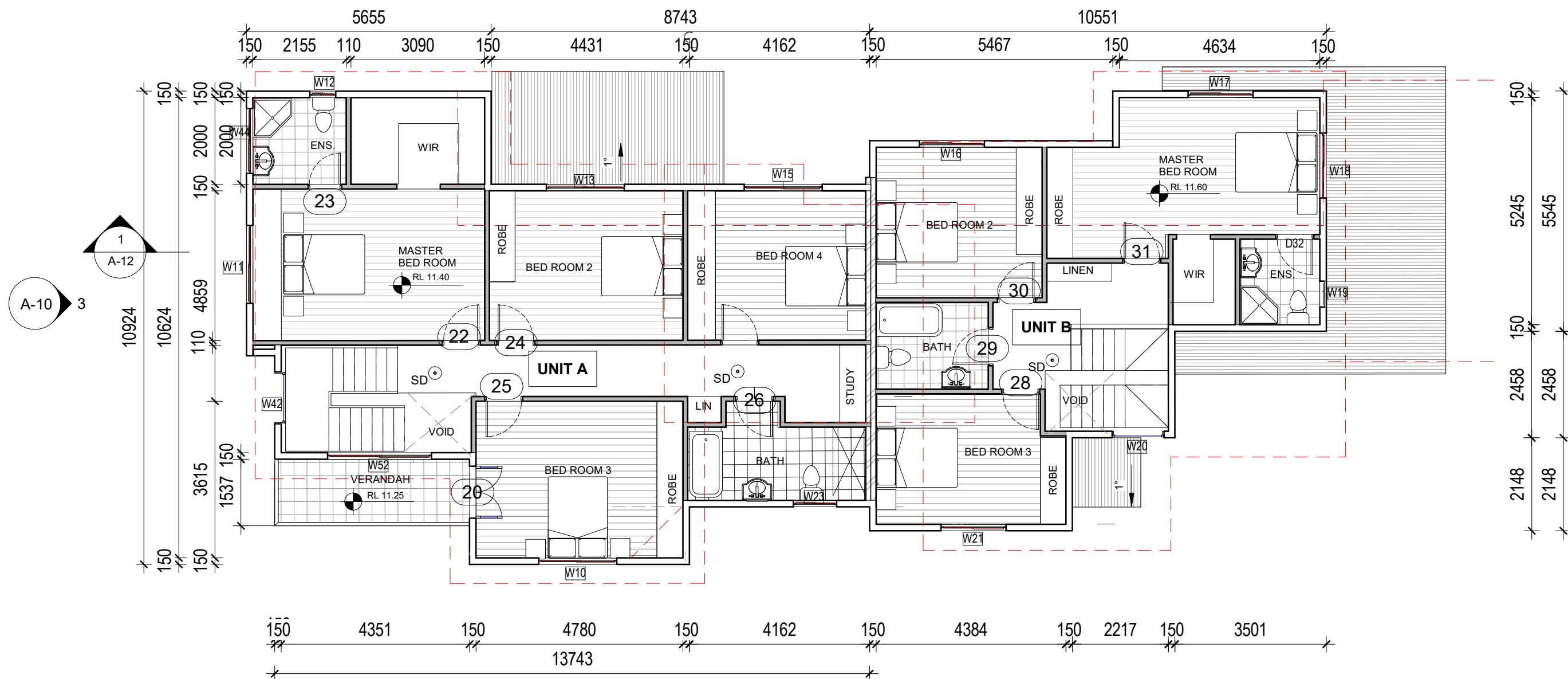
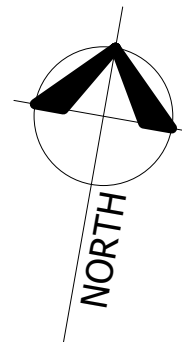
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					Project : 3 GEORGE STREET, BERKELEY, NSW 2506	Date : 25/02/20
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						Rev. : C
						Drawing No. : A-04
						Job : A-18010

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2 Unit A & B First Level
1 : 100

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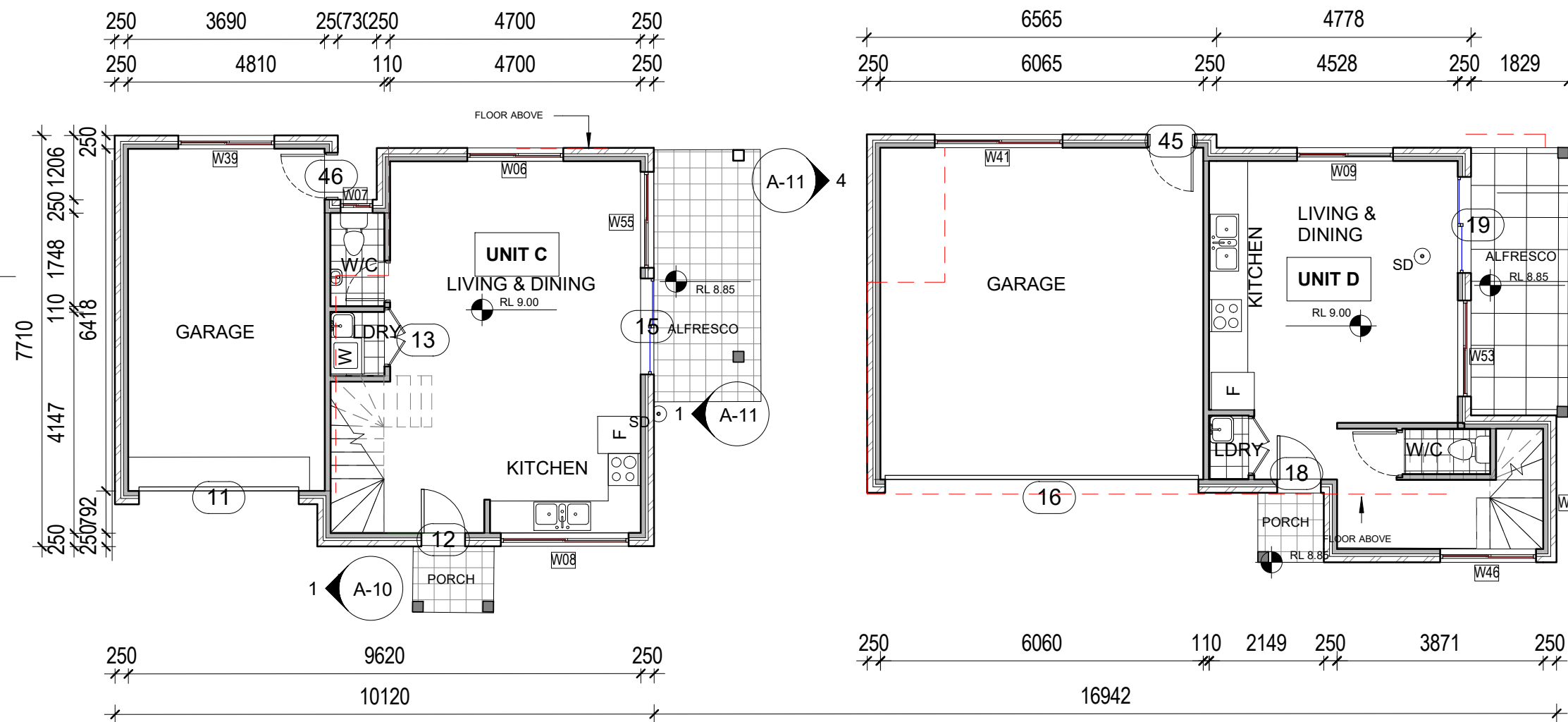
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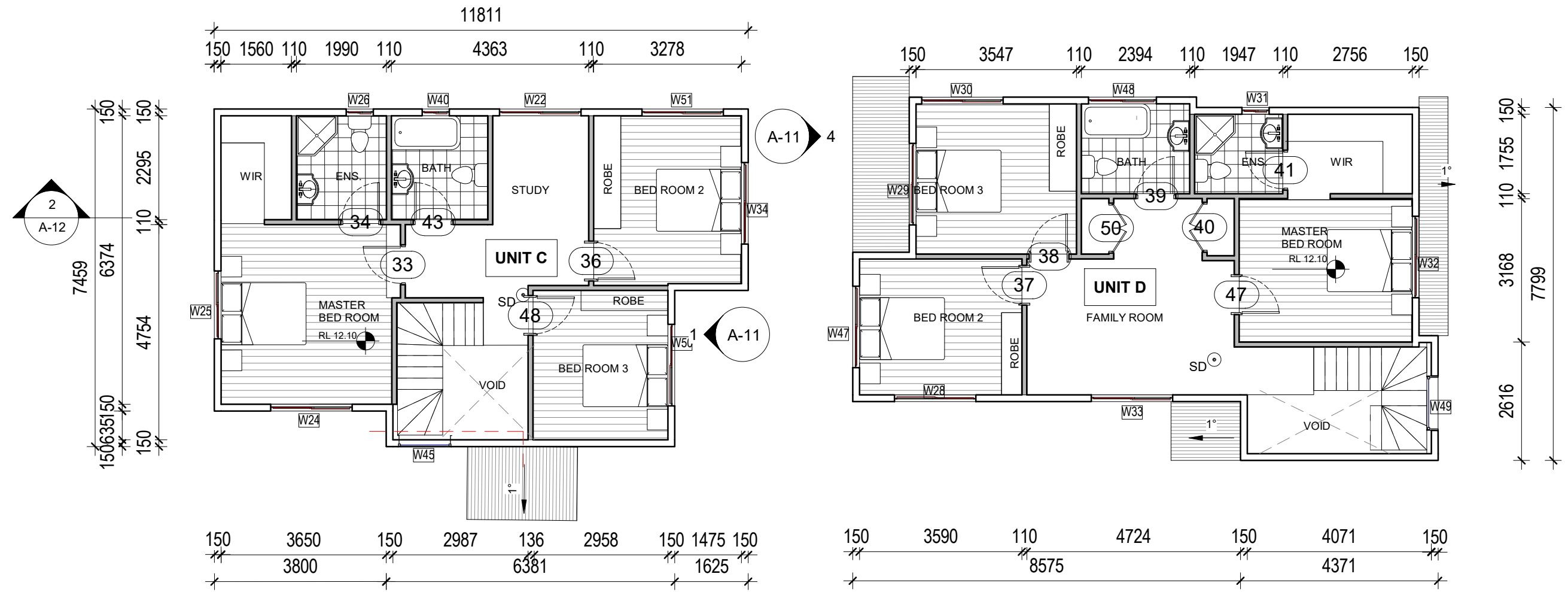
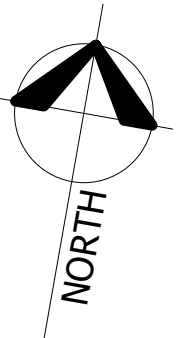


1 Unit C & D Ground Level
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1 Unit C & D First Level
1 : 100

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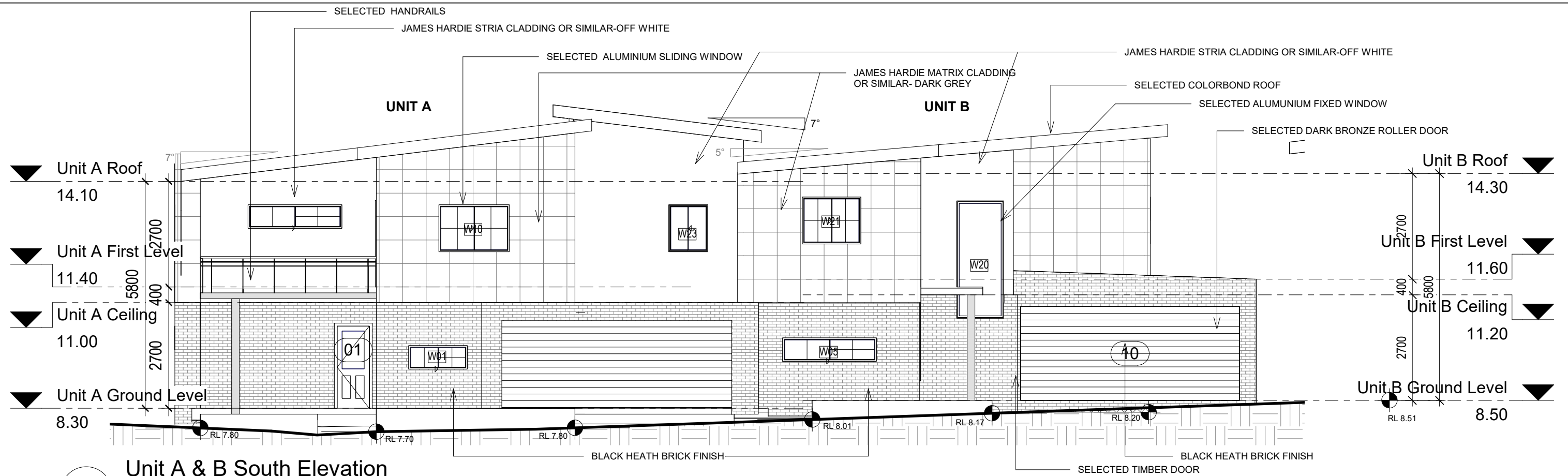
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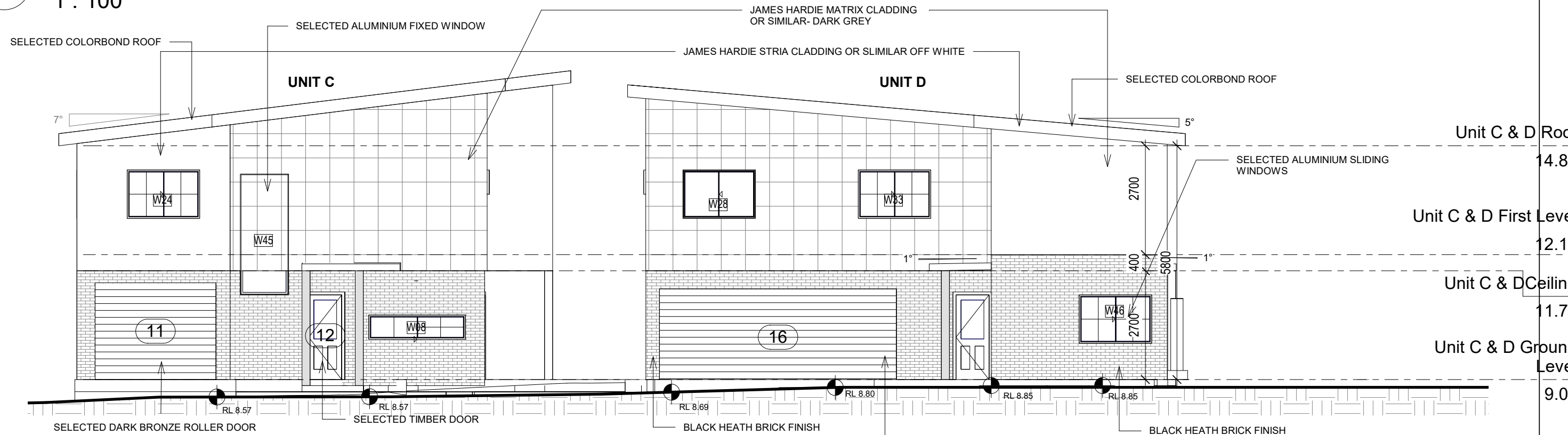
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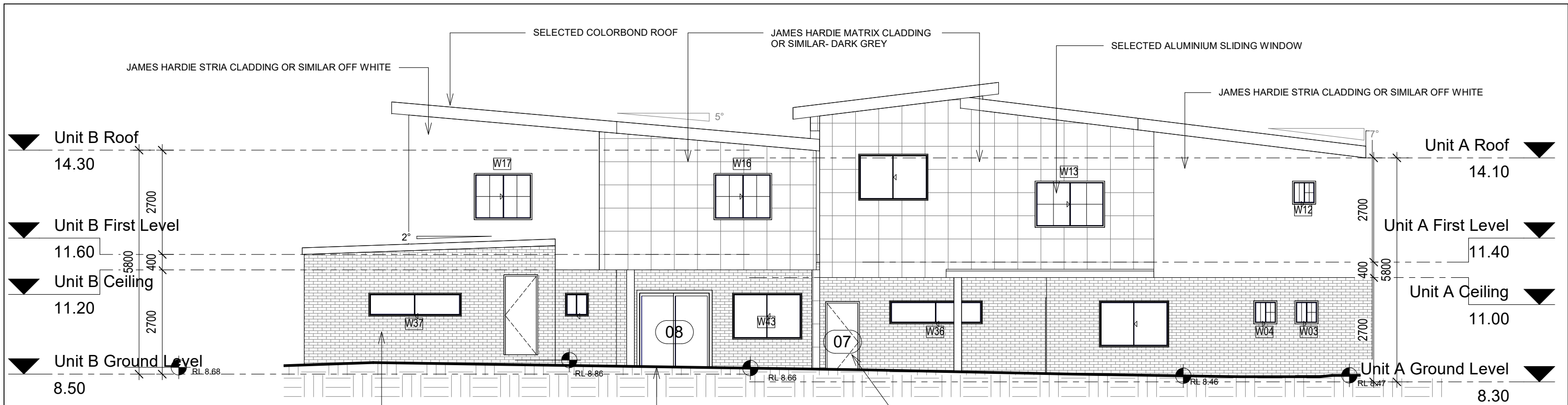


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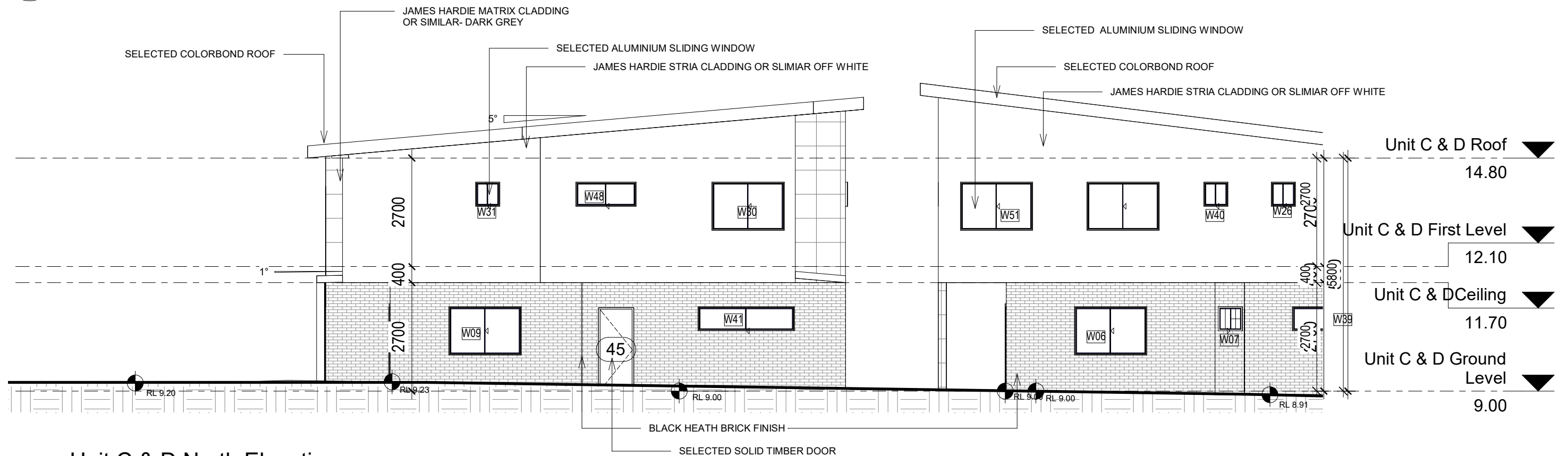
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Unit A & B North Elevation

1

1 : 100

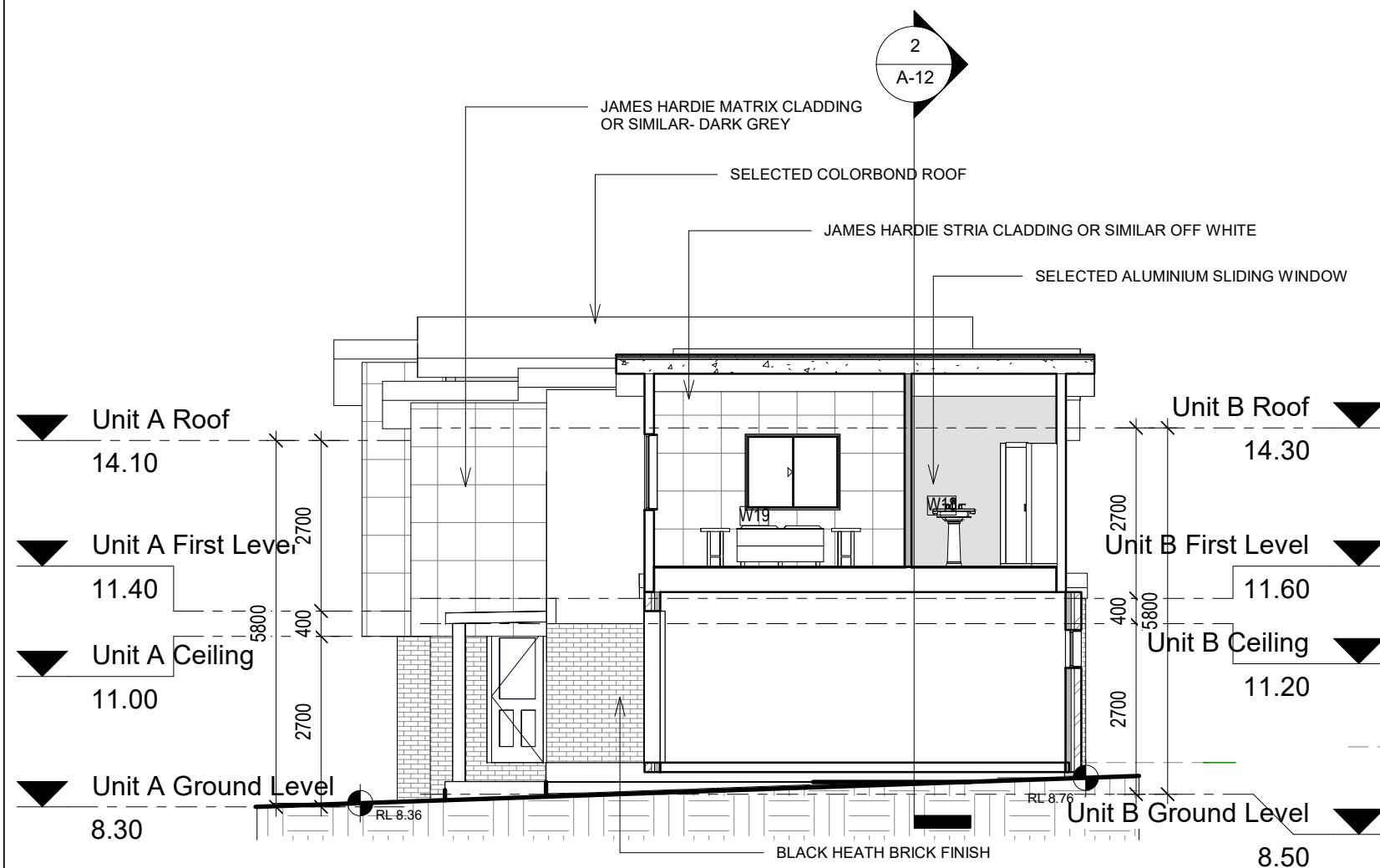


Unit C & D North Elevation

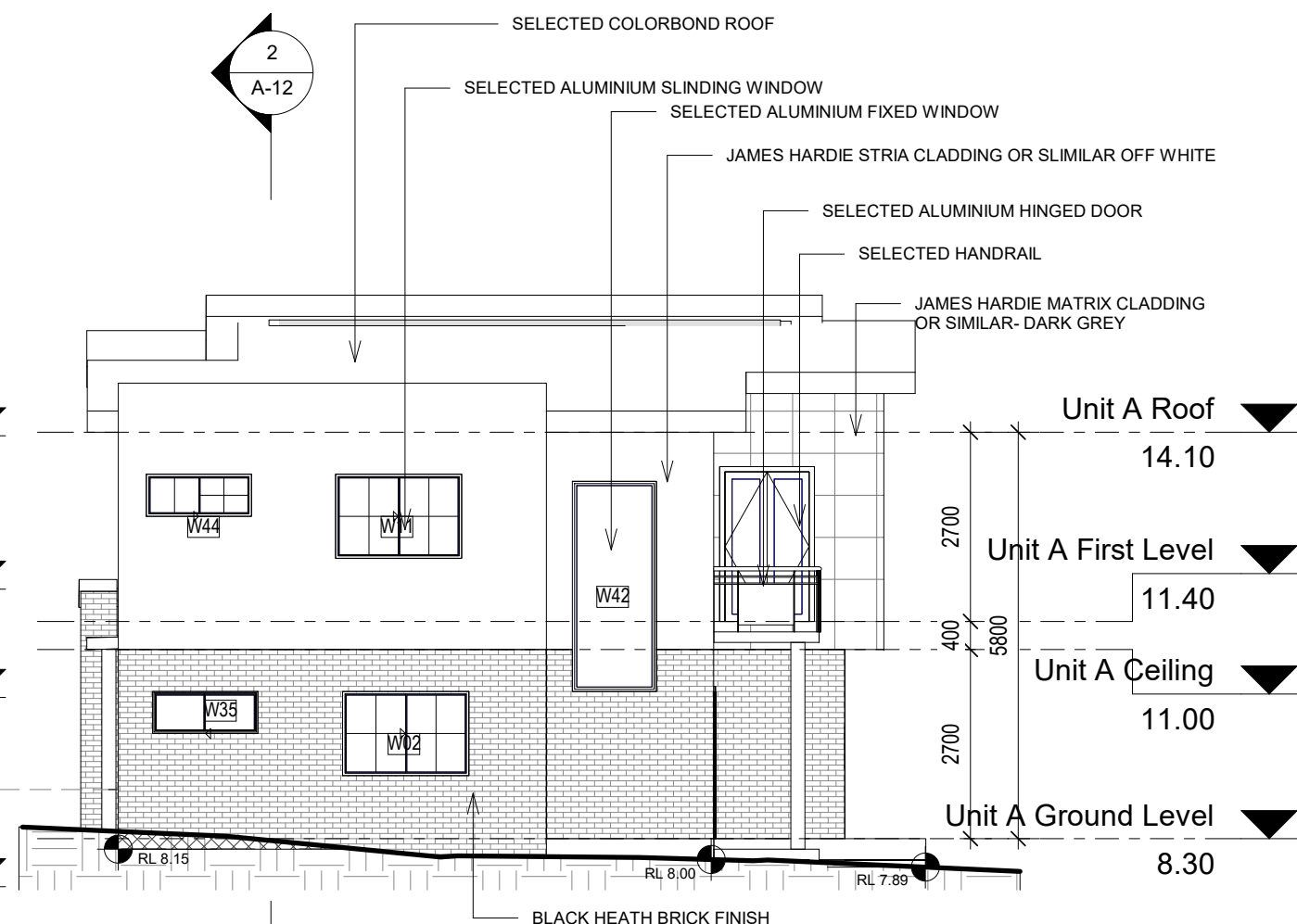
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						Checked : SD
						Rev. : C
						Drawing No. : A-09
						Job : A-18010



1 Unit A & B East Elevation
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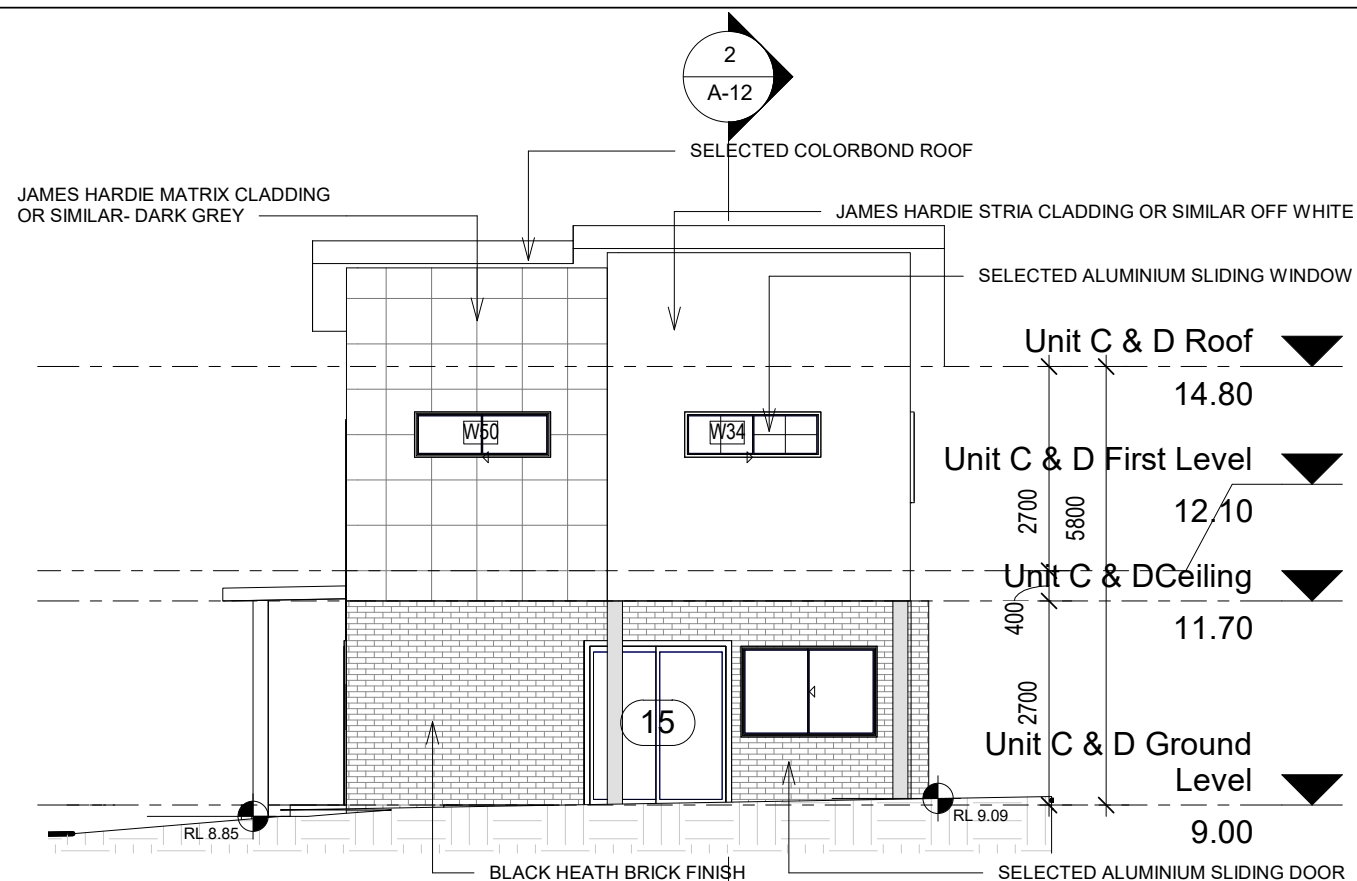


3 Unit A & B West Elevation
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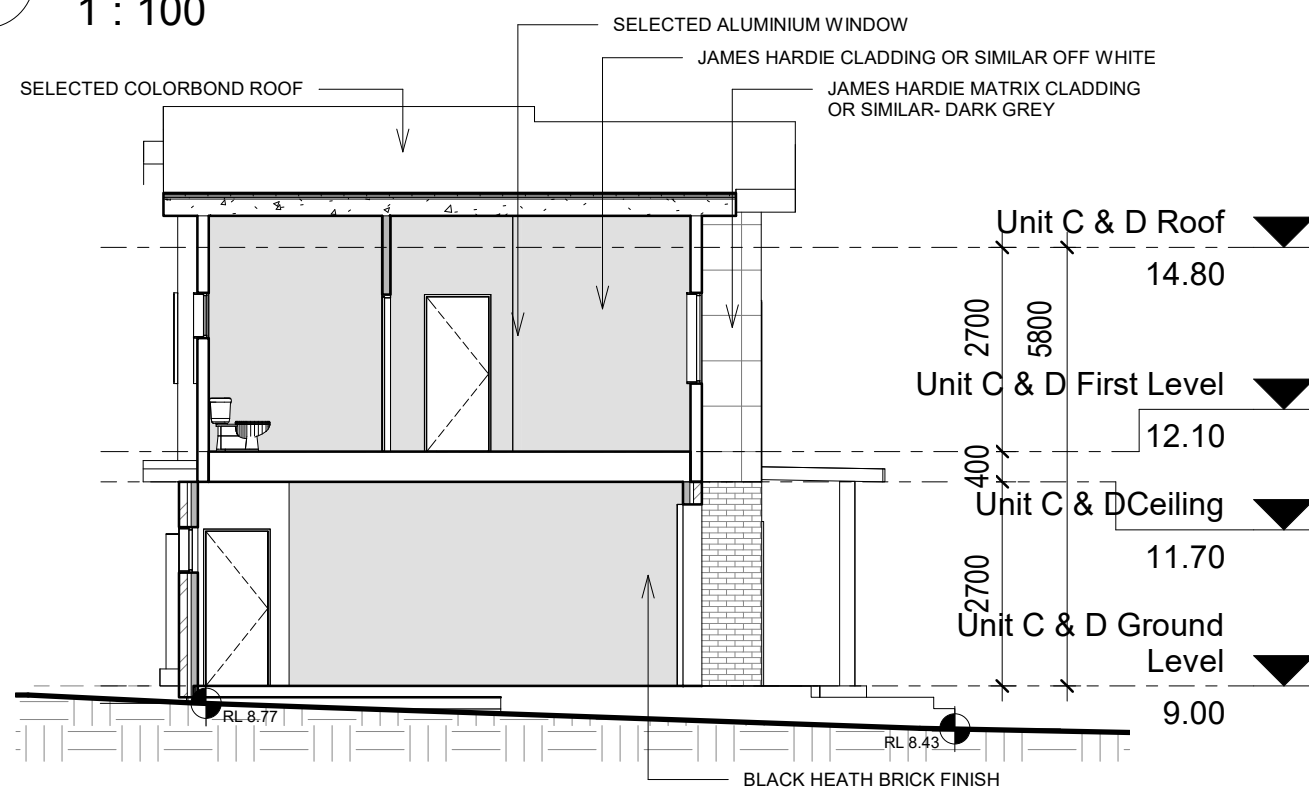
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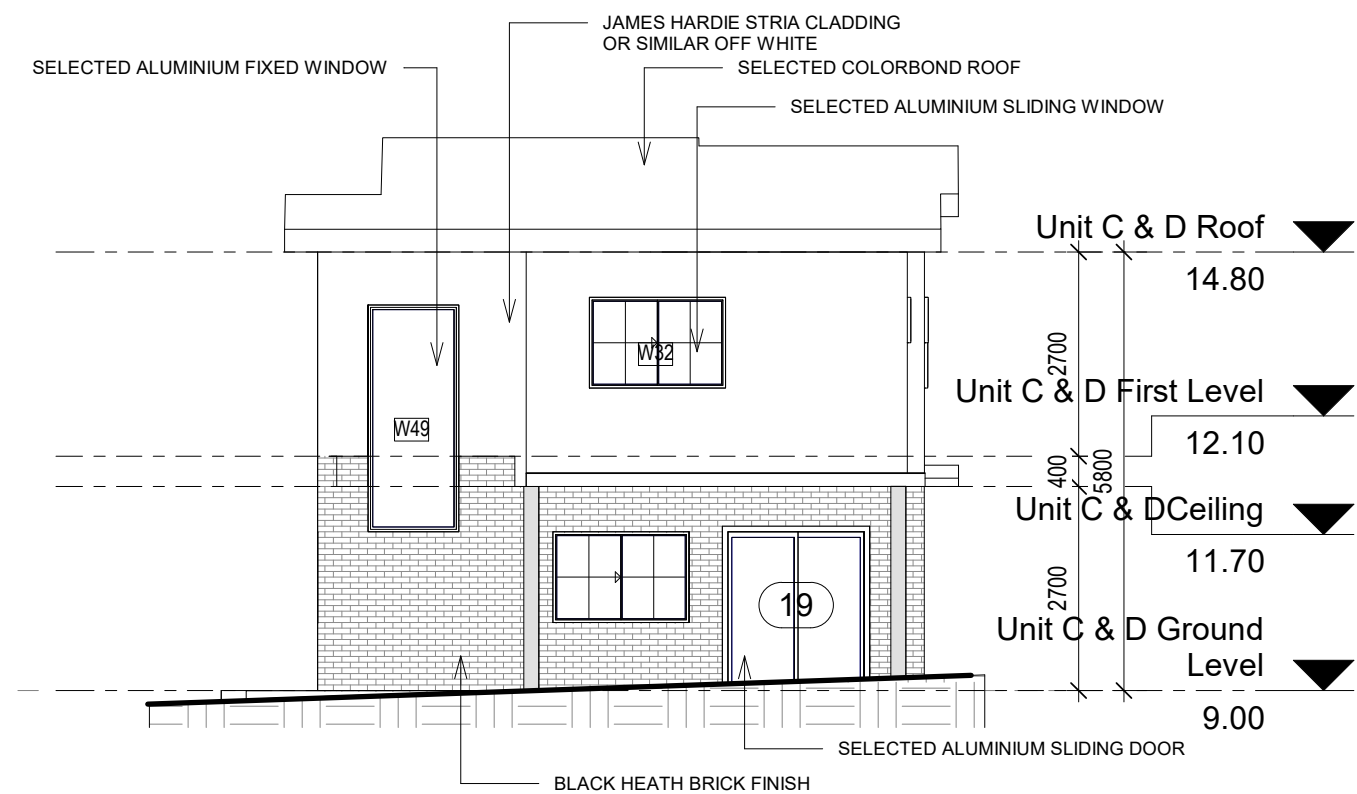
Unit C East Elevation

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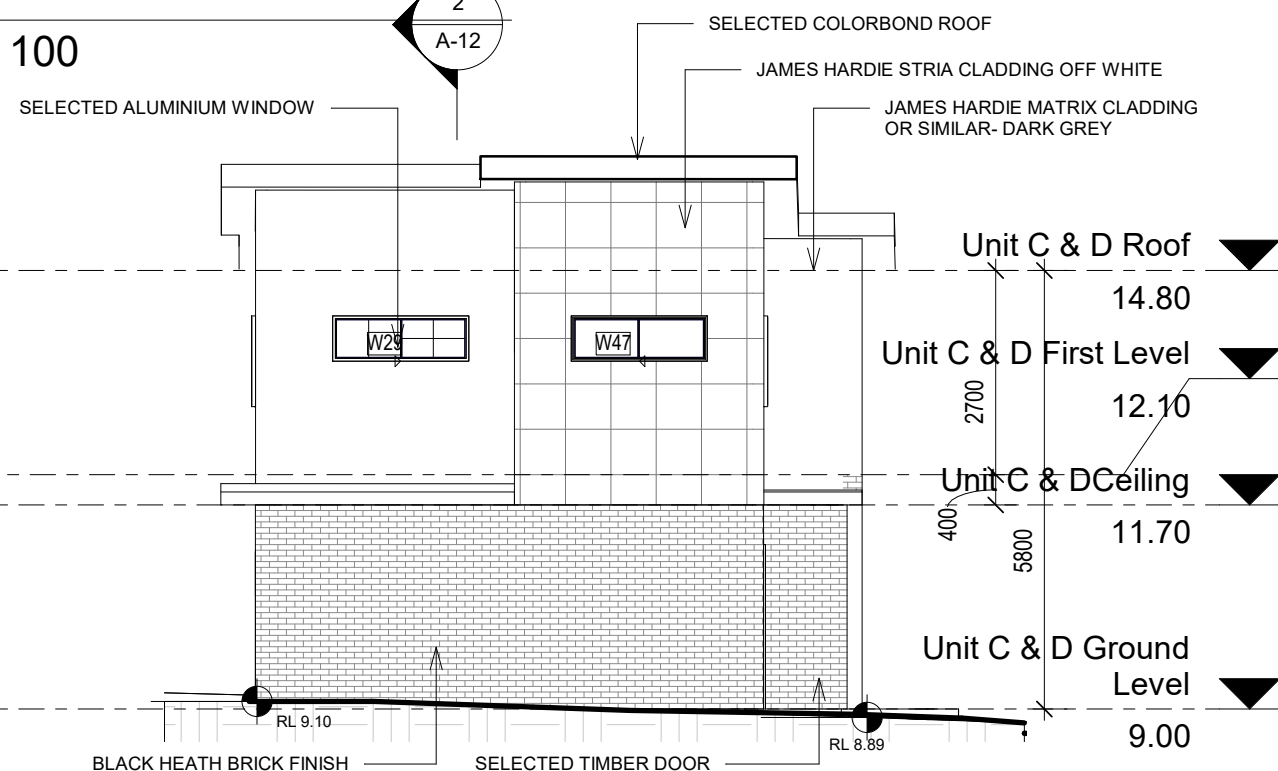
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Unit D East Elevation

1 : 100



Unit D West Elevation

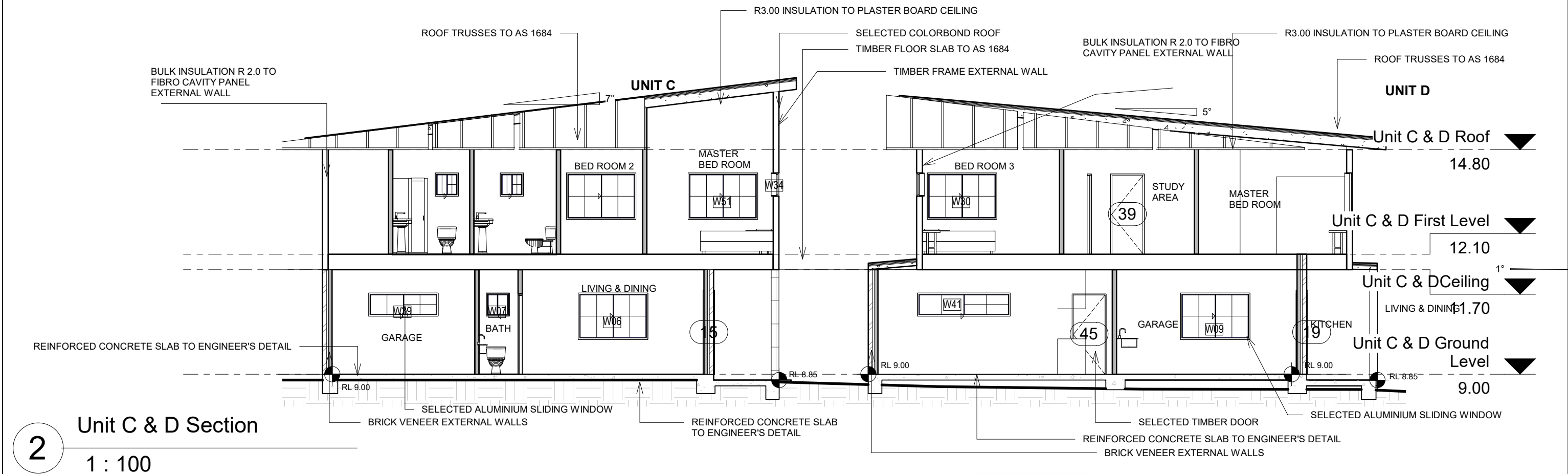
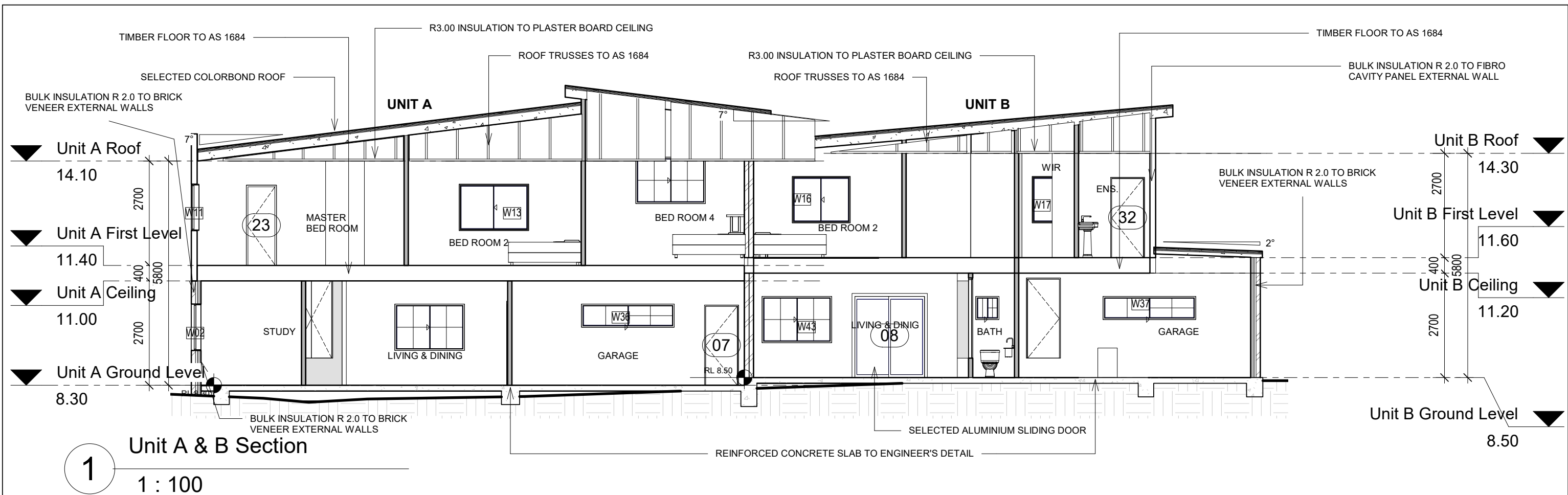
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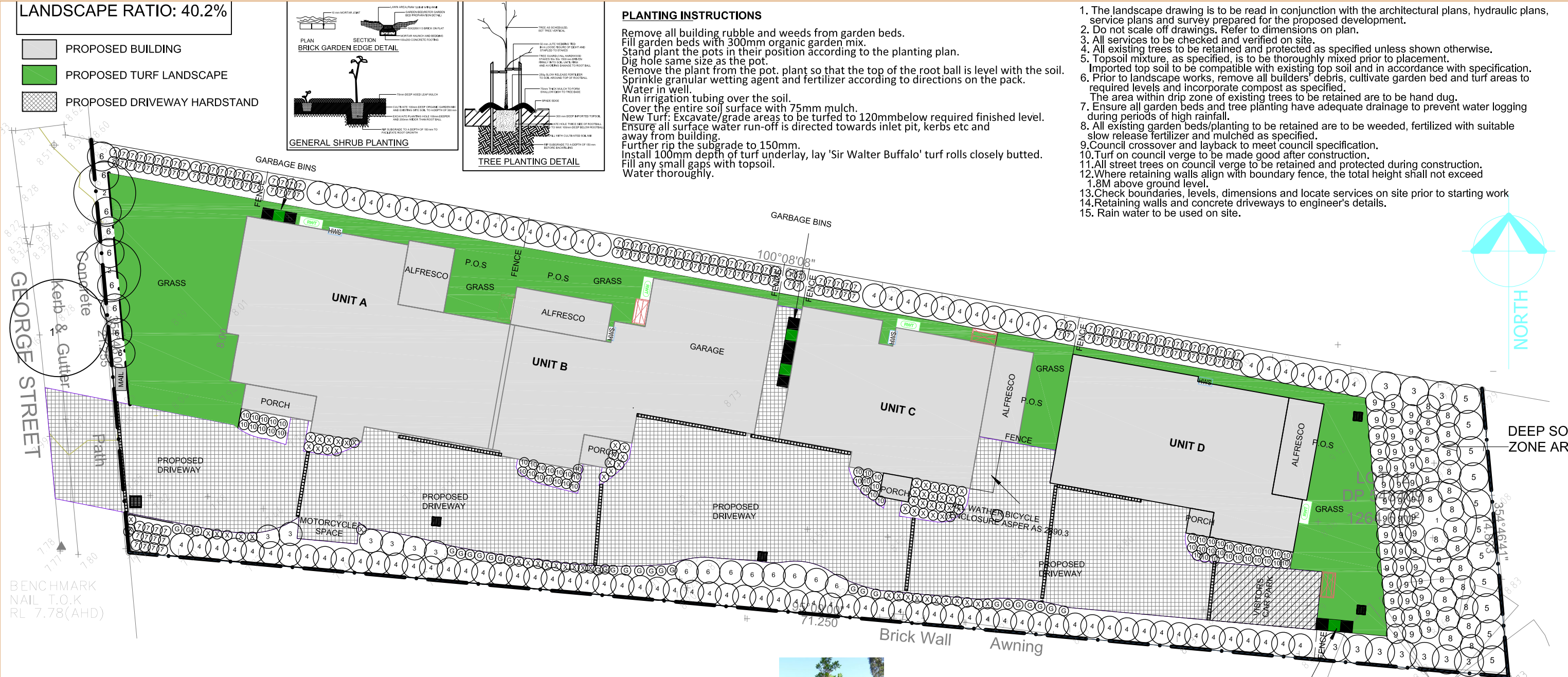
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Client :	Mustapha Beri	Drawing Title : Unit C & D East & West Elevations
Project :	3 GEORGE STREET, BERKELEY, NSW 2506	Designed : MJ
		Scale : 1 : 100
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		Date : 25/02/20
		Checked : SD
		Rev. : C
		Drawing No. : A-11
		Job : A-18010



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						Drawing No. : A-12
						Job : A-18010



ATTACHMENT 4

General Terms of Approval – Natural Resources Regulator



Natural Resources
Access Regulator

General Terms of Approval

for proposed development requiring approval
under s89, 90 or 91 of the Water Management Act 2000

Reference Number: IDAS1120480
Issue date of GTA: 05 December 2019
Type of Approval: Controlled Activity
Description: Demolition of all existing structures and construction of multi dwelling housing
Location of work/activity: 3 George Street BERKELEY NSW 2508
DA Number: DA2019/1081
LGA: Wollongong City Council
Water Sharing Plan Area: Greater Metropolitan Region Unregulated River Water Sources

The GTA issued by NRAR do not constitute an approval under the *Water Management Act 2000*. The development consent holder must apply to NRAR for the relevant approval **after** development consent has been issued by Council and **before** the commencement of any work or activity.

Condition Number	Details
------------------	---------

SCHEDULE 1

The plans and associated documentation listed in this schedule are referred to in general terms of approval (GTA) issued by NRAR for integrated development associated with DA2019/1081 as provided by Council:

- N/A

CLAUSE 4.6

WRITTEN REQUEST

VARIATION TO MINIMUM LOT WIDTH
3 GEORGE STREET, BERKELEY





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QA RECORD:

DOC ID: CL4.6.181005.SS.AH
VERSION: 1.0
ISSUE DATE: 27 August 2019

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1 INTRODUCTION

This Clause 4.6 Written Request has been prepared to accompany the Development Application (DA) to Wollongong City Council seeking consent for demolition of all existing structures on the site and construction of 4 x 2 storeys multi dwelling housing includes a variation to the minimum lot width requirement prescribed under Clause 7.14 of the *Wollongong Local Environment Plan 2009* (the LEP) at 3 George Street, Berkeley.

The subject application proposes 4 x 2 storey multi dwelling housing on the existing lot of land having a 21 metre wide frontage to George Street and narrowing down throughout the depth of the site to 14.9 metres wide at the rear boundary which does not satisfy the minimum lot width requirement prescribed in Clause 7.14(1) of the LEP, which requires a minimum lot width of 18 metres for any proposed multi dwelling housing. The proposed variation is for the 50% rear half of the site that has a lot width of 18 metres narrowing down to 14.9 metres at its narrowest point.

Pursuant to Clause 4.6 of the LEP, justification for the contravention of Clause 7.14(1) is provided in Section 2 below.

2 PLANNING CONSIDERATION

1. What is the name of the environmental planning instrument that applies to the land?

Wollongong Local Environment Plan 2009

2. What is the zoning of the land?

The site is zoned R2 Low Density Residential.

3. What are the objectives of the 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.*

4. What is the development standard being varied?

Minimum site width for the purpose of multi dwelling housing.

5. Under what clause is the development standard listed in the environmental planning instrument?

Clause 7.14(1)

6. What are the objectives of the development standard?

No objectives are prescribed in the LEP for the development standard.



7. What is the numeric value of the development standard in the environmental planning instrument?

18 metres

8. What is the proposed numeric value of the development standard in your development application?

The existing lot of land has a 21 metre wide frontage to George Street which narrows down throughout the depth of the site to 14.9 metre wide at its narrowest point at the rear boundary.

9. What is the percentage variation (between your proposal and the environmental planning instrument)?

The proposed variation is for the 50% rear half of the site with a lot width of 18 metres narrowing down to 14.9 metres at the rear boundary and ranges from 1% to 17.2%.

10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The following assessment outlines that compliance with the development standard would be unreasonable or unnecessary in the circumstances of the case and that there are sufficient reasons to justify contravening the development standard with specific reference to the test developed by *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* which confirmed the approach as held in *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC7*.

Test 1: Randwick City Council v Micaul Holdings [2016] NSW LEC 7

(at [25]) that the test in 4.6(4)(a)(i) does not require the consent authority to directly form the opinion of satisfaction regarding the matters specified. Rather, it needs to do so only indirectly in forming its opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated.

The LEP requires a minimum lot width of 18 metres for development for the purposes of multi dwelling housing.

The subject application is not proposed on a typical lot that was created by a typical subdivision creating typical lot dimensions. The existing site has a 21 metre wide frontage to George Street which is 16.7% wider than the minimum required 18 metre lot width. However, 50% of the site's rear half does not achieve a minimum width of 18 metres and narrows down to 14.9 metres at the site's rear boundary with the variation ranging from 1% to 17.2%. The development proposes House C and House D within the area of the non-compliant lot width and does not propose any built forms within the narrowest parts of the site to the rear for a depth of 11 metres from the site's rear boundary. The proposed dwellings comply with the requirements for minimum setbacks, landscaping, car parking spaces and private open space as prescribed for multi dwelling housing under the *Wollongong Development Control Plan 2009*.

Enforcing strict compliance with the minimum lot width requirement of 18 metres throughout the total depth of the existing lot would be unnecessary and onerous as the existing lot is still capable of providing functional dwellings that will be suitable for its purpose and consistent with applicable development controls. The proposal will ensure that the existing lot dimensions are capable of accommodating residential development that is suitable to achieve a balance between the development of residential land and the amenity of existing occupants and ultimately to provide a functional, attractive and safe environment for residents given that the narrowest part of the land would be at the rear boundary with a wider frontage and an average width of over 18 metres.



Given the above, it is considered onerous to require strict compliance with the numerical component of the development standard.

Test 2: Randwick City Council v Micaul Holdings [2016] NSW LEC 7

The consent authority must be directly satisfied about the matter in that clause (at [26]); namely that the development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (at [27]).

There are no objectives prescribed in the LEP for the development standard. However, the proposal will ensure that the existing lot dimensions are capable of accommodating residential development that is suitable to achieve a balance between the development of residential land and the amenity of existing occupants and ultimately to provide a functional, attractive and safe environment for residents given that the narrowest part of the land would be at the rear boundary with a wider frontage and an average width of over 18 metres.

Furthermore, the development achieves the objectives of the R2 Low Density Residential land use zone as follows:

- The proposed development will provide 4 x 2 storeys dwellings that can cater for the housing needs of the community within a low density residential environment; and
- The proposed development provides a suitable low scale residential character commensurate with a low dwelling density.

Having regard to the above, the development achieves the objectives of the land use zone and strict compliance with the numerical component of the development standard is therefore unreasonable and unnecessary in these circumstances. Furthermore, it is noted that the site width when viewed from the street would be greater than the 18 metre minimum required under Clause 7.14(1) of the LEP and therefore there would be no visual impact of the development on the streetscape and locality.

Given the above, it is considered onerous to require strict compliance with the numerical component of the development standard. Having regard to the above, strict compliance with the development standard is unreasonable and unnecessary in this particular case in the interest of achieving a development outcome that is consistent with Council's controls and there are sufficient environmental planning grounds to justify contravening the development standard. The development is therefore considered to be in the public interest.

Notably, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified that the consideration of Clause 4.6 requests does not require that a development that contravenes a development standard must have a *neutral or better* environmental planning outcome than one that does not.

11. How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act?

The development, even with its non-compliance with the numerical component of the development standard, will achieve the objectives of the Act by enabling the orderly and economic use and development of the land; promoting good design and amenity of the built environment; and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants. The development achieves the objectives in a manner that surpasses what a compliant development would if strict compliance with the numerical component of the development standard was enforced. Accordingly, strict compliance with the development standard has been determined to be unreasonable and unnecessary in the circumstances as discussed above.



12. Is the development standard a performance-based control?

No, the development standard is a numerical control.

13. Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why?

Yes. The reasons have been canvassed under heading 10 above. In addition, strict compliance with the development standard would be onerous and a little difference would result if full compliance was made.

14. Are there sufficient environmental planning grounds to justify contravening the development standard?

Yes. Considering that the development achieves the objectives of the land use zone, and furthermore achieves a satisfactory level of compliance with the other applicable State and Council Planning Policies, the proposal is meritorious and the contravention of the development standard is justified. The contravention of the development standard allows for a better amenity and design outcome to be realised for the site and development than what would be achieved if strict compliance was to be enforced.

TABLE 1: PLANNING CONSIDERATIONS

CL	PROVISION	RESPONSE
4.6(1)	<i>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.</i>	The development achieves the objectives by allowing an appropriate degree of flexibility in the application of the development standard to the development which will achieve a better outcome for and from the development by allowing the flexibility in the particular circumstances.
4.6(2)	<i>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.</i>	Clause 7.14 is not excluded from operation of the Clause.
4.6(3)	<i>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.</i>	The subject variation has been prepared for consideration to Wollongong City Council and demonstrates that compliance with the development standard is unreasonable or unnecessary in these circumstances as there are sufficient reasoning to justify contravening the development standard. Enforcing strict compliance with the development standard would not provide any public benefit or result in a better design outcome for the site. The underlying object and purpose of the standard would therefore be defeated if strict compliance was to be enforced and therefore compliance is unreasonable.



CL	PROVISION	RESPONSE
4.6(4)	<p><i>Development consent must not be granted for development that contravenes a development standard unless:</i></p> <p><i>(a) the consent authority is satisfied that:</i></p> <p><i>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</i></p> <p><i>(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</i></p> <p><i>(b) the concurrence of the Secretary has been obtained.</i></p>	<p>The subject variation request adequately addresses the matters required to be demonstrated by subclause 3 and demonstrates that the proposed development will be in the public interest given that it achieves the objectives for development within the R2 Low Density Residential zone.</p> <p>The Wollongong Local Planning Panel has the concurrence of the Secretary and is therefore able to grant consent, unless the Secretary has allowed concurrence to be assumed by Council staff for contravening development standards and the panel has delegated such applications to Council staff to determine.</p>
4.6(5)	<p><i>In deciding whether to grant concurrence, the Secretary must consider:</i></p> <p><i>(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</i></p> <p><i>(b) the public benefit of maintaining the development standard, and</i></p> <p><i>(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.</i></p>	<p>The Wollongong Local Planning Panel has the concurrence of the Secretary and is therefore able to grant consent, unless the Secretary has allowed concurrence to be assumed by Council staff for contravening development standards and the panel has delegated such applications to Council staff to determine.</p> <p>Contravention of the development standard does not raise any matter of significance for State or regional environmental planning and as demonstrated within the subject request, as there is no public benefit obtained from maintaining the development standard in these particular circumstances.</p>
4.6(6)	<p><i>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:[...]</i></p>	<p>The application does not seek consent for subdivision of land in any of the nominated zones.</p>
4.6(7)	<p><i>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).</i></p>	<p>This is an administrative matter for Council.</p>
4.6(8)	<p><i>This clause does not allow development consent to be granted for development that would contravene any of the following:</i></p> <p><i>(a) a development standard for complying development,</i></p> <p><i>(b) a development standard that arises, under the regulations under the Act, in</i></p>	<p>The development:</p> <p>(a) does not seek consent for a complying development application;</p> <p>(b) does not affect any of the commitments set out in the BASIX Certificates accompanying the development;</p> <p>(c) Clause 5.4 does not apply to the</p>



CL	PROVISION	RESPONSE
	<p>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,</p> <p>(c) clause 5.4,</p> <p>(ca) clause 4.2A, 6.1 or 8.3.</p>	<p>subject application;</p> <p>(ca) does not seek to vary any of the development standards in Clauses 4.2A, 6.1 or 8.3.</p>

TABLE 2: SUMMARY OF CLAUSE 4.6 MATTERS FOR CONSIDERATION

3 NSW LAND AND ENVIRONMENT COURT CASE LAW

INITIAL ACTION PTY LTD V WOOLLAHRA MUNICIPAL COUNCIL [2018] NSWLEC 118

In the case of *Initial Action Pty Ltd V Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ concluded:

- *Clause 4.6(4) of an LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.*
- *The first opinion of satisfaction in clause 4.6(4)(a)(i) is whether the clause 4.6 request has adequately addressed the matters required to be demonstrated in clause 4.6(3). Those matters are:*
 - o *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and*
 - o *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- *The consent authority does not have to directly form the opinion of satisfaction regarding these matters, but only indirectly form the opinion of satisfaction that the written request has adequately addressed these matters.*
- *The second opinion of satisfaction in clause 4.6(4)(a)(ii) is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.*
- *The consent authority must be directly satisfied that the clause 4.6 request adequately addresses the matter in clause 4.6(4)(a)(ii), which is not merely that the proposed development will be in the public interest, but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development in the zone.*

The subject Clause 4.6 request has adequately addressed 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. As detailed in the above judgement pre-conditions, there is no requirement for Council to form a separate opinion as to whether 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, but rather, Council only needs to be satisfied that this Clause 4.6 request has adequately addressed these matters.

This request has appropriately demonstrated that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.



Having regard to the above, this written request has been prepared in accordance with the requirements of Clause 4.6 of the *Wollongong Local Environment Plan 2009* and has had regard to the findings in Chief Justice Preston's decision in the NSW Land and Environment Court proceedings *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. Accordingly, The Wollongong Local Planning Panel (or Council staff where delegated) can exercise its power to grant development consent for the development that contravenes the development standard.

4 CONCLUSION

Having regard to the assessment of the proposal and Clause 4.6 Variation to Development Standard, it is considered that the proposed development achieves the objectives of the land use zone; strict compliance with the numerical component of the development standard is unnecessary and unreasonable in these circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

For the reasons outlined within this request, the subject variation is worthy of Council's support.

ATTACHMENT 6: WDCP 2009 Compliance Table

CHAPTER A2 – ECOLOGICALLY SUSTAINABLE DEVELOPMENT

Development controls to improve the sustainability of development throughout Wollongong are integrated into the relevant chapters of this DCP. The proposal is considered to be consistent with the principles of Ecologically Sustainable Development as follows:

- (a) Greenhouse gas emissions will be reduced.
- (b) Potable water use will be reduced.
- (c) Development can adapt to climate change.
- (d) Waste will be reduced.
- (e) Recycling of waste and use of products from recycled sources will be increased.
- (f) Energy that is used will be renewable and low carbon.
- (g) Indoor environmental quality is improved.
- (h) The environmental impacts from building materials will be reduced through reduction, reuse and recycling of materials, resources and building components.
- (i) Biodiversity values are improved.

CHAPTER B1 – RESIDENTIAL DEVELOPMENT

4.0 General Residential controls

<i>Controls/objectives</i>	<i>Comment</i>	<i>Compliance</i>
<u>4.12 Site Facilities</u> <ul style="list-style-type: none">• letterboxes in an accessible location• air-con, satellite dishes and other ancillary structures to be located away from street frontage, not in a place where they are a skyline feature and adequately setback	Site facilities in appropriate location.	Yes
<u>4.13 Fire Brigade Servicing</u>		
<ul style="list-style-type: none">• All dwellings located within 60m of a fire hydrant	No details of fire hydrant servicing provided, may be conditioned as required.	Yes
<u>4.14 Services</u> <ul style="list-style-type: none">• Encourage early consideration of servicing requirements	Site is adequately serviced.	Yes
<u>4.15 Development near the coastline</u> <ul style="list-style-type: none">• Must minimise built intrusions into coastal landscape• Retain views to the ocean from roads and public spaces• Maintain buildings consistent with coastal character	Site is not near the coastline	Yes

<u>4.16 View sharing</u> <ul style="list-style-type: none"> To protect and enhance view sharing, significant view corridors A range of view sharing measures to be considered for building design 	No view loss as a result of the proposal.	Yes
<u>4.17. Retaining walls</u> <ul style="list-style-type: none"> To ensure well designed retaining walls that are structurally sound 	No significant retaining walls are required.	Yes

5.0 Attached dwellings and multi -dwelling housing

<i>Controls/objectives</i>	<i>Comment</i>	<i>Compliance</i>
<u>5.1 Minimum Site Width Requirement</u> minimum site width of 18 metres	Site is greater than 18m wide at street frontage but not compliant for the full length of the site. A variation request has been submitted and is considered acceptable as the width of the site at the rear does not compromise the design of the development or create adverse impacts on adjoining properties.	Partial compliance but acceptable.
<u>5.2 Number of Storeys</u> R2 Low Density Residential zone – max 2 storey	2 storeys	Yes
<u>5.3 Front Setbacks</u> 6m setback required	6m min setback	Yes
<u>5.4 Side and Rear Setbacks (R2 Zone)</u> 0.8 x ceiling height 1.0 x ceiling height (where balconies or windows of living areas at first floor face the boundary.	Ground floor $0.8 \times 2.7 = 2.16\text{m}$ Proposed 2.2m First Floor $0.8 \times 5.8 = 4.6\text{m}$ Proposed 2.4m – 4.7m	Yes Substantial compliance with minimal impacts
<u>5.5 Building Character and Form</u> (a) Articulate and fragment building walls that address the street and add visual interest. The appearance of blank walls or walls with only utility windows on the front elevation is not permitted.	The architectural design and materials/colours are considered acceptable.	Yes

<p>(b) Avoid expanses of any single material.</p> <p>(c) Utilise high quality and durable materials and finishes.</p> <p>(d) Entrances must be visible at eye level from the street and well lit.</p> <p>(e) For those dwellings adjacent to the street frontage, the habitable rooms must face the street.</p>		
<p><u>5.6 Access / Driveway Requirements</u></p> <p>1. The development proposal must provide access to the site in accordance with the following controls:</p> <p>(a) Paving colour, texture and material should be sympathetic with the character of the precinct and reflect a pleasant visual appearance.</p> <p>(b) Provide driveways to parking areas from lanes and secondary streets rather than the primary road or street, wherever practicable.</p> <p>(c) The number of access points to a development must be kept to a minimum.</p> <p>(d) Locate driveways taking into account any services within the road reserve, such as power poles, drainage inlet pits and existing street trees.</p> <p>(e) Long straight driveways should be avoided because these adversely dominate the streetscape and landscape. Curved driveways are more desirable. Landscaping between the buildings and the driveways is encouraged to soften the appearance of the hard surface.</p> <p>(f) All driveways must be located a minimum of 6 metres from the perpendicular of any intersection of any two roads.</p> <p>(g) Any driveway servicing a residential development is to be setback a minimum of 1.5m from any side property boundary.</p>	<p>Can be conditioned to comply.</p> <p>N/A</p> <p>Single driveway proposed</p> <p>Driveway is appropriately located.</p> <p>Driveway edge is curved to allow additional landscaping.</p> <p>>6m from corner</p> <p>1.5m setback provided.</p> <p>6m wide driveway provided.</p>	<p>Can comply</p> <p>N/A</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

(h) Driveways are to be a maximum of 6m in width.		
(i) The design of driveway and crossovers must be in accordance with council's standard vehicle entrance designs.	Conditions of consent imposed to ensure compliance.	Will comply
2. All vehicles within a multi dwelling development must provide vehicular manoeuvring areas to all parking spaces, so vehicles do not need to make more than a single point turn to leave the site in a forward direction. Direct reversing onto the street will only be considered where the garage fronts a secondary road, carrying reduced traffic volume and all other requirements of the policy are met.	Manoeuvring considered satisfactory.	Yes
<p><u>5.7 Car Parking Requirements</u></p> <p>1. On site car parking must be positioned to minimise impacts on the streetscape. Car parking must be located behind the building setback and be screened from view with well-designed structures and vegetation. Car parking may also be located within a basement.</p> <p>2. Car parking areas should be designed to conveniently, efficiently and appropriately serve residents and visitors of the site. This can be achieved in the following ways:</p> <p>(a) Ensuring that car parking areas are located close to entrances and access ways.</p> <p>(b) Car parking areas to be secure yet easily accessible for all residents.</p> <p>(c) Have clearly defined areas for visitor parking and disabled parking.</p> <p>Chapter E3 – car parking space per dwelling (<70m²) or 1.5 car parking spaces per dwelling (70-110m²) or 2 car parking spaces per dwelling (>110m²), plus 0.2 car parking spaces per dwelling for visitors</p>	<p>Visitor parking space is behind building line.</p> <p>Parking is appropriate for the development.</p> <p>Required = 3 x 2 + 1 x 1 + 1 visitor = 8 spaces</p> <p>Provided = 8 spaces</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
<p><u>5.8 Landscaping Requirements</u></p> <p>A minimum of 30% of the total site area to be provided as landscaped area.</p>	Landscaped area = 40.2%	Yes

<u>5.9 Deep Soil Planting</u> Deep soil may extend along the full length of the rear of the site, with a minimum width of 6m.	6m wide deep soil zone provided	Yes
<u>5.11 Private Open Space</u> <ul style="list-style-type: none"> Private open space must be provided for each dwelling within an attached dwelling development in the form of a balcony, courtyard, terrace and/or roof garden. Min dimension: 4 metres x 5 metres POS at least 70% of the dwellings must receive a minimum of three hours of direct sunlight between 9.00am and 3.00pm on June 21. 	Private open space is provided for each dwelling which meets dimensional requirements. POS has northerly aspect and meets solar access requirements.	Yes Yes
<u>5.12 Solar Access Requirements</u> <ul style="list-style-type: none"> Windows to living rooms of adjoining dwellings must receive 3 hours of sunlight between 9.00am and 3.00pm on 21 June. At least 50% of the private open areas of adjoining residential properties must receive at least 3 hours of sunlight between 9.00am and 3.00pm on June 21. Windows to north facing living rooms for each of the subject dwellings in the development must receive at least 3 hours of sunlight between 9.00am and 3.00pm on 21 June. At least 50% of the private open space area for each of the subject dwellings in the development must receive at least 3 hours of sunlight between 9.00am and 3.00pm on 21 June. 	Shadow diagrams indicate that there will be minimal overshadowing of adjoin development to the south.	Yes
<u>5.13 Additional Control for Multi Dwelling Housing - Dwelling Mix and Layout</u>	Only applies to developments with 10 or more dwellings	N/A

<u>5.14 Additional Control for Multi Dwelling Housing - Adaptable Housing</u>	Only applies to developments with 10 or more dwellings	N/A
<u>5.15 Additional Control for Multi Dwelling Housing – Crime Prevention through Environmental Design</u>	See comments under Chapter E2 - Crime Prevention through Environmental Design	Yes

CHAPTER D1 – CHARACTER STATEMENTS

Berkeley is located on the north-western corner of Lake Illawarra and is approximately 8 kilometres from the Wollongong City Centre. The Desired Future Character of Berkeley is for it to remain a low to medium density residential suburb. Affordable housing prices and expansive views over Lake Illawarra make this suburb an attractive location. It is anticipated that the replacement of older dwelling stock will occur, particularly in areas in close proximity to Lake Illawarra.

The proposal is considered satisfactory regarding the desired future character of the locality.

CHAPTER E3: CAR PARKING, ACCESS, SERVICING/LOADING FACILITIES AND TRAFFIC MANAGEMENT

The provision of 8 spaces (7 resident and one visitor) meets the numerical requirements for the development and is satisfactory.

CHAPTER E2: CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is satisfactory regarding the principles of CPTED.

CHAPTER E6: LANDSCAPING

Council's Landscape Officer provided a satisfactory referral with respect to landscaping.

CHAPTER E7: WASTE MANAGEMENT

Site Waste Minimisation and Management Plan provided

CHAPTER E14 STORMWATER MANAGEMENT

A stormwater design has been submitted and is considered acceptable by Council's Land Development Engineer. Appropriate conditions of consent are recommended.

CHAPTER E17 PRESERVATION AND MANAGEMENT OF TREES AND VEGETATION

No significant vegetation is proposed to be removed.

CHAPTER E19 EARTHWORKS (LAND RESHAPING WORKS)

Minimal earthworks are proposed, and no concerns are raised in this regard.

CHAPTER E20 CONTAMINATED LAND MANAGEMENT

A desktop audit of previous land uses does not indicate any historic use that would contribute to the contamination of the site. There are minimal earthworks proposed and the proposal does not comprise a change of use. No concerns are raised regarding site contamination.

CHAPTER E21 DEMOLITION AND HAZARDOUS BUILDING MATERIALS MANAGEMENT

Conditions of consent are proposed in relation to demolition of existing structures and appropriate disposal of building materials.

CHAPTER E22 SOIL EROSION AND SEDIMENT CONTROL

Conditions of consent are proposed regarding appropriate sediment and erosion control
Me

CHAPTER E23 RIPARIAN LAND MANAGEMENT

The site contains riparian land. The application is Integrated Development, requiring the approval of NRAR under the Water Management Act 2000. General Terms of Approval have been provided. In accordance with this Chapter, the riparian land on the site is considered a Category 3 stream and would therefore require a 10m buffer either side of the top of the bank. The watercourse lies approximately 20m to the south of the site on adjoining land and would satisfy this requirement.

ATTACHMENT 7 – Draft Conditions

Approved Plans and Specifications

- 1 The development shall be implemented substantially in accordance with the details and specifications set out on Job No A-18010 Drawing A-02-C to A-12-C dated 22 April 2020 prepared by Mahn Design and any details on the application form, and with any supporting information received, except as amended by the conditions specified and imposed hereunder.

General Matters

- 2 **Building Work - Compliance with the Building Code of Australia**

All building work must be carried out in compliance with the provisions of the Building Code of Australia.

- 3 **Construction Certificate**

A Construction Certificate must be obtained from Council or an Accredited Certifier prior to work commencing.

A Construction Certificate certifies that the provisions of Clauses 139-148 of the Environmental Planning and Assessment Amendment Regulations, 2000 have been satisfied, including compliance with all relevant conditions of Development Consent and the Building Code of Australia.

Note: The Certifier must cause notice of its determination to be given to the consent authority, and to the council, by forwarding to it, within two (2) days after the date of the determination, the plans and documentation referred to in clause 142 (2) of the Environmental Planning and Assessment Regulation 2000.

- 4 **Occupation Certificate**

An Occupation Certificate must be issued by the Principal Certifier prior to occupation or use of the development. In issuing an Occupation Certificate, the Principal Certifier must be satisfied that the requirements of section 6.9 of the Environmental Planning and Assessment Act 1979, have been complied with as well as all of the conditions of the Development Consent.

Prior to the Issue of the Construction Certificate

- 5 **Flows from Adjoining Properties**

Flows from adjoining properties shall be accepted and catered for within the site. Finished ground and top of retaining wall levels on the boundary shall be no higher than the existing upslope adjacent ground levels. The above requirements must be clearly shown on construction certificate plans prior to the release of the construction certificate.

- 6 The driveway crossover over the road reserve must be aligned so that it is perpendicular to the frontage road, to improve visibility of pedestrians and vehicular traffic from either side of the driveway as drivers leave the site. This requirement shall be reflected on the Construction Certificate plans.

- 7 **Present Plans to Sydney Water**

Approved plans must be submitted online using Sydney Water Tap, available through www.sydneywater.com.au to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met.

The Principal Certifier must ensure that Sydney Water has issued an approval receipt prior to the issue of a Construction Certificate.

Visit www.sydneywater.com.au or telephone 13 20 92 for further information.

- 8 **Car Parking and Access**

The development shall make provision for a total of 8 car parking spaces, 1 motorcycle parking space and a minimum of 2 secure (Class B) residential bicycle spaces. This requirement shall be reflected on the Construction Certificate plans. Any change in above parking numbers shown on

the approved DA plans shall be dealt with via a section 4.55 modification to the development. The approved car parking spaces shall be maintained to the satisfaction of Council, at all times.

- 9 The parking dimensions, internal circulation, aisle widths, kerb splay corners, head clearance heights, ramp widths and grades of the car parking areas are to be in conformity with the current relevant Australian Standard AS2890.1, except where amended by other conditions of this consent. Details of such compliance are to be reflected on the Construction Certificate plans.

- 10 A change in driveway paving is required at the entrance threshold within the property boundary to clearly show motorists they are crossing a pedestrian area. Between the property boundary and the kerb, the developer must construct the driveway pavement in accordance with the conditions, technical specifications and levels to be obtained from Council's Manager Works. This requirement shall be reflected on the Construction Certificate plans and any supporting documentation.

- 11 The edge of the driveway must be provided with a hob or dish drain to prevent surface water flows from entering the adjoining property. This requirement shall be reflected on the Construction Certificate plans, prior to the release of the Construction Certificate.

12 **Water/Wastewater Entering Road Reserve**

Provision shall be made for a minimum 200mm wide grated box drain along the boundary of the property at the vehicular crossing/s to prevent surface water entering the road reserve. This requirement shall be reflected on the Construction Certificate plans.

13 **Landscaping**

The submission of a final Landscape Plan will be required in accordance with the requirements of Wollongong City Council DCP 2009 Chapter E6 and the approved Landscape Plan (ie as part of this consent) for the approval by the Principal Certifier, prior to the release of the Construction Certificate.

- 14 The submission of a final Landscape Plan to the Principal Certifier, prior to the release of the Construction Certificate. The final Landscape Plan shall address the following requirements:

- a The 4x5m Private Open space areas are to be paved – turf is not a suitable surface for these high use areas;
- b The deep soil zone is to include minimum four (4) trees. Suggested species include: *Syzygium smithii* (syn *Acmena smithii*) Lilly pilli, *Elaeocarpus reticulatus* Blueberry ash, *Glochidion ferdinandii* Cheese tree, *Syzygium paniculatum* Brush cherry.
- c Landscape strip to front boundary is to be minimum width 1.5m;
- d turf is not a suitable surface for narrow shaded areas, in particular turf is not to be used in the narrow area between the dwellings and the planting along the northern boundary. These areas to be a gravel, paved, or mulched landscape surface.

The completion of the landscaping works as per the final approved Landscape Plan is required, prior to the issue of Occupation Certificate.

- 15 The submission of certification from a suitably qualified and experienced landscape designer and drainage consultant to the Principal Certifier prior to the release of the Construction Certificate, confirming that the landscape plan and the drainage plan are compatible.

- 16 The implementation of a landscape maintenance program in accordance with the approved Landscape Plan for a minimum period of 12 months to ensure that all landscape work becomes well established by regular maintenance. Details of the program must be submitted with the Landscape Plan to the Principal Certifier prior to release of the Construction Certificate.

17 **Stormwater Connection to Kerb**

Connection across footways shall be by means of one or two (maximum), sewer grade UPVC pipe(s), 100mm diameter pipes with a continuous downslope gradient to the kerb. Connection to the kerb shall be made with a rectangular, hot dipped galvanised mild steel weephole(s) shaped to suit the kerb profile, with each weephole having the capacity equal to a 100mm diameter pipe. Alternatively, a maximum of two 150mm x 100mm hot dipped galvanised steel pipes may be used across footways, with the 150mm dimension being parallel to the road surface to suit the kerb profile.

- 18 Bicycle parking facilities must have adequate weather protection and provide the appropriate level of security as required by the current relevant Australian Standard AS2890.3 - Bicycle Parking Facilities. This requirement shall be reflected on the Construction Certificate plans.

19 **Property Addressing Policy Compliance**

Prior to the issue of any construction certificate, the developer must ensure that any site addressing complies with Council's **Property Addressing Policy** (as amended). Where appropriate, the developer must also lodge a written request to Council's **Infrastructure Systems & Support – Property Addressing** (propertyaddressing@wollongong.nsw.gov.au), for the site addressing prior to the issue of the construction certificate. Please allow up to 3-5 business days for a reply. Enquiries regarding property addressing may be made by calling 4227 8660.

20 **Footpath Paving**

The developer is responsible for the construction of footpath paving for the entire frontage of the development. The type of paving for this development is a 1500mm wide, 100mm thick, reinforced, broom finished concrete. A nominal two percent (2%) minimum one percent (1%), maximum two and a half percent (2.5%) cross fall to be provided from property line to back of kerb. Any changes of level, ramps or stairs and associated tactile markers and handrails are to be contained within the property boundary.

The driveway entry threshold from the property boundary line to the face of kerb is to be broom finished concrete to match the footpath and be designed to withstand predicted traffic loadings.

The driveway threshold finish within property boundary line is to contrast with driveway entry.

The footpath and driveway entry on the council property must be installed to the satisfaction of WCC Manager of Works.

A Landscape Plan is to be submitted to Council for approval prior to the issue of the Construction Certificate showing proposed paving, footpath design levels, street tree details and location of all services.

21 **Stormwater Drainage Design**

A detailed drainage design for the development must be submitted to and approved by the Principal Certifying Authority prior to the release of the Construction Certificate. The detailed drainage design must satisfy the following requirements:

- a Be prepared by a suitably qualified civil engineer in accordance with Chapter E14 of Wollongong City Council's Development Control Plan 2009, Subdivision Policy, conditions listed under this consent, and generally in accordance with the concept plan/s lodged for development approval, being the Stormwater Drainage Plan, job no. 19043, Drawing no. SW-01, revision A, by Statiker, dated 6 May 2019.
- b Include details of the method of stormwater disposal. Stormwater from the development must be piped to Council's existing stormwater drainage system.
- c Engineering plans and supporting calculations for the stormwater drainage system are to be prepared by a suitably qualified engineer and be designed to ensure that stormwater runoff from upstream properties is conveyed through the site without adverse impact on the development or adjoining properties. The plan must indicate the method of disposal of all stormwater and must include rainwater tanks, existing ground levels, finished surface levels on all paved areas, estimated flow rates, invert levels and sizes of all pipelines.
- d Overflow paths shall be provided to allow for flows of water in excess of the capacity of the pipe/drainage system draining the land. Blocked pipe situations with 1 in 100 year ARI events shall be incorporated in the design. Overflow paths shall also be provided in low points and depressions. Each overflow path shall be designed to ensure no entry of surface water flows into any building and no concentration of surface water flows onto any adjoining property. Details of each overflow path shall be shown on the detailed drainage design.

22 **Council Footpath Reserve Works – Driveways and Crossings**

All redundant vehicular crossings and laybacks rendered unnecessary by this development must be reconstructed to normal kerb and gutter or existing edge of carriageway treatment to match the

existing. The verge from the back of kerb to the boundary must be removed and the area appropriately graded, topsoiled and turfed in a manner that conforms with adjoining road reserve. The area forward of the front boundary must be kept smooth, even and free from any trip hazards. All alterations of public infrastructure where necessary are at the developer's expense.

All new driveway laybacks and driveway crossings must be designed in accordance with Wollongong City Council Standards. Details and locations are to be shown on the Construction Certificate Plans.

23 **No Adverse Run-off Impacts on Adjoining Properties**

The design of the development shall ensure there are no adverse effects to adjoining properties or upon the land as a result of flood or stormwater run-off.

24 **Development Contributions**

Pursuant to Section 4.17 of the Environmental Planning and Assessment Act 1979 and the Wollongong City-Wide Development Contributions Plan, a monetary contribution of \$8,250.00 (subject to indexation) must be paid to Council towards the provision of public amenities and services, prior to the release of any associated Construction Certificate.

This amount has been calculated based on the estimated cost of development and the applicable percentage rate.

The contribution amount will be subject to indexation until the date of payment. The formula for indexing the contribution is:

$$\text{Contribution at time of payment} = \$C \times (\text{CP2}/\text{CP1})$$

Where:

\$C is the original contribution as set out in the Consent

CP1 is the Consumer Price Index; All Groups CPI; Sydney at the time the consent was issued

CP2 is the Consumer Price Index; All Groups CPI; Sydney at the time of payment

Details of CP1 and CP2 can be found in the Australian Bureau of Statistics website – Catalogue No. 6401.0 - Consumer Price Index, Australia.

The following payment methods are available:

METHOD	HOW	PAYMENT TYPE
Online (Full payment only)	http://www.wollongong.nsw.gov.au/applicationpayments Your Payment Reference: 1162175	<ul style="list-style-type: none"> • Credit Card
In Person	Wollongong City Council Administration Building - Customer Service Centre Ground Floor 41 Burelli Street, WOLLONGONG	<ul style="list-style-type: none"> • Cash • Credit Card • Bank Cheque
PLEASE MAKE BANK CHEQUE PAYABLE TO: Wollongong City Council (Personal or company cheques are not accepted)		

A copy of the Wollongong City-Wide Development Contributions Plan and accompanying Fact Sheet may be inspected or obtained from the Wollongong City Council Administration Building, 41 Burelli Street, Wollongong during business hours or on Council's web site at www.wollongong.nsw.gov.au

Prior to the Commencement of Works

25 **Sign – Supervisor Contact Details**

Before commencement of any work, a sign must be erected in a prominent, visible position:

- a stating that unauthorised entry to the work site is not permitted;

- b showing the name, address and telephone number of the Principal Certifier for the work; and
- c showing the name and address of the principal contractor in charge of the work site and a telephone number at which that person can be contacted at any time for business purposes.

This sign shall be maintained while the work is being carried out and removed upon the completion of the construction works.

26 **Works in Road Reserve - Minor Works**

Approval, under Section 138 of the Roads Act must be obtained from Wollongong City Council's Development Engineering Team prior to any works commencing or any proposed interruption to pedestrian and/or vehicular traffic within the road reserve caused by the construction of this development.

The application form for Works within the Road Reserve – Section 138 Roads Act can be found on Council's website. The form outlines the requirements to be submitted with the application, to give approval to commence works under the roads act. It is advised that all applications are submitted and fees paid, five (5) days prior to the works within the road reserve are intended to commence. The Applicant is responsible for the restoration of all Council assets within the road reserve which are impacted by the works/occupation. Restoration must be in accordance with the following requirements:

- a All restorations are at the cost of the Applicant and must be undertaken in accordance with Council's standard document, "Specification for work within Council's Road reserve".
- b Any existing damage within the immediate work area or caused as a result of the work/occupation, must also be restored with the final works.

27 **Tree Protection**

Prior to commencement of any work on the site, including any demolition, all trees not approved for removal as part of this consent that may be subjected to impacts of this approved development must be protected in accordance with Section 4 of the Australian Standard Protection of Trees on Development Sites (AS 4970-2009).

Tree protection zones must be established prior to the commencement of any work associated with this approved development.

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.

28 **Demolition Notification to Surrounding Residents**

Demolition must not commence unless at least two (2) days written notice has been given to adjoining residents of the date on which demolition works will commence.

During Demolition, Excavation or Construction

29 **No Adverse Run-off Impacts on Adjoining Properties**

The design and construction of the development shall ensure there are no adverse effects to adjoining properties, as a result of flood or stormwater run-off. Attention must be paid to ensure adequate protection for buildings against the ingress of surface run-off.

Allowance must be made for surface run-off from adjoining properties. Any redirection or treatment of that run-off must not adversely affect any other property.

30 **Provision of Taps/Irrigation System**

The provision of common taps and/or an irrigation system is required to guarantee that all landscape works are adequately watered. The location of common taps and/or irrigation system must be implemented in accordance with the approved Landscape Plan.

31 **Screen Planting**

To mitigate impact to adjoining dwelling a continuous hedge is to be established along northern and southern boundaries for the length of property boundary.

Recommended species:

- i *Callistemon viminalis*,
- ii *Syzygium australe* Resilience,
- iii *Syzygium smithii* Firescreen.

Minimum spacing 900mm.

Minimum pot size 5 lt.

A further list of suitable suggested species may be found in Wollongong Development Control Plan 2009 – Chapter E6: Landscaping.

32 **Demolition Works**

The demolition of the existing structures shall be carried out in accordance with Australian Standard AS2601-2001: The Demolition of Structures or any other subsequent relevant Australian Standard and the requirements of the SafeWork NSW.

No demolition materials shall be burnt or buried on-site. The person responsible for the demolition works shall ensure that all vehicles leaving the site carrying demolition materials have their loads covered and do not track soil or waste materials onto the road. Any unforeseen hazardous and/or intractable wastes shall be disposed of to the satisfaction of the Principal Certifier. In the event that the demolition works may involve the obstruction of any road reserve/footpath or other Council owned land, a separate application shall be made to Council to enclose the public place with a hoarding or fence over the footpath or other Council owned land.

33 **BASIX**

All the commitments listed in each relevant BASIX Certificate for the development must be fulfilled in accordance with Clause 97A(2) of the Environmental Planning & Assessment Regulation 2000.

A relevant BASIX Certificate means:

- A BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 4.55 of the Environmental Planning & Assessment Act 1979, a BASIX Certificate that is applicable to the development when this development consent is modified); or
- if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and
- BASIX Certificate has the meaning given to that term in the Environmental Planning & Assessment Regulation 2000.”

Prior to the Issue of the Occupation Certificate

34 **Completion of Landscape Works**

The completion of the landscaping works as per the final approved Landscape Plan is required prior to the issue of Occupation Certificate.

35 **BASIX**

An Occupation Certificate must not be issued unless accompanied by the BASIX Certificate applicable to the development. The Principal Certifier must not issue the final occupation certificate unless satisfied that selected commitments have been complied with as specified in the relevant BASIX Certificate. NOTE: Clause 154B of the Environmental Planning and Assessment Regulation 2000 provides for independent verification of compliance in relation to certain BASIX commitments.

Operational Phases of the Development/Use of the Site

- 36 All vehicles must turn within the site and exit onto the public road in a forward direction.