

Wollongong Local Planning Panel Assessment Report | 21 November 2023

WLPP No.	Item No. 2
DA No.	DA-2022/1010
Proposal	Residential - demolition of existing dwelling, tree removal, construction of dwelling, swimming pool and associated landscape works including retaining walls
Property	127 Lawrence Hargrave Drive AUSTINMER NSW 2515
Applicant	Rebecca Goodman Town Planning Pty Ltd
Responsible Team	Development Assessment & Certification Team - City Wide Team (BM)

ASSESSMENT REPORT AND RECOMMENDATION

Executive Summary

Reason for consideration by Local Planning Panel

The proposal has been referred to the Wollongong Local Planning Panel **for Determination** pursuant to clause 3, Schedule 2 of the Local Planning Panels Direction for departure to Clause 4.4 Floor Space Ratio in Wollongong Local Environmental Plan (WLEP) 2009 by more than 10%. The proposal seeks a departure of 11.86%.

Proposal

- Demolition of the existing dwelling and retaining walls;
- Construction of new dwelling and swimming pool; and
- Tree removal and associated landscape works including retaining walls.

Permissibility

The site is zoned C4 Environmental Living pursuant to Wollongong Local Environmental Plan (WLEP) 2009. The proposal is categorised as a Dwelling house and is permissible in the zone with development consent. Demolition is permitted with development consent. Construction of a swimming pool, retaining walls and tree removal are ancillary to the proposal and are permissible.

Consultation

The proposal was exhibited in accordance with Council's Community Participation Plan. Seven (7) submissions were received during this period. The submissions received are discussed at section 1.5.

Additional information was submitted by the applicant to clarify certain matters at Council's request. The information received did not significantly change the design of the proposal to the extent that necessitated further exhibition.

Internal

Details of the proposal were referred to Council's Development Engineering, Landscape, Geotech, Statutory Property and Heritage officers for assessment. Comments and/or recommended conditions were provided in each instance.

Main Issues

- Floor space ratio – departure from Clause 4.4 of WLEP 2009
- Wollongong Development Control Plan 2009 (WDCP2009) Chapter B1 Residential development variations to the controls for front setback, height of retaining walls and swimming pool protrusion.

Recommendation

DA-2022/1010 be approved subject to conditions presented at Attachment 5.

1 APPLICATION OVERVIEW

1.1 PLANNING CONTROLS

The following planning controls apply to the development which was accepted for lodgement on 28 September 2022:

State Environmental Planning Policies:

- State Environmental Planning Policy (Resilience and Hazards) 2021
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Transport and Infrastructure) 2021

Local Environmental Planning Policies:

- Wollongong Local Environmental Plan (WLEP) 2009

Development Control Plans:

- Wollongong Development Control Plan 2009

Other policies

- Wollongong City-Wide Development Contributions Plan 2023
- Wollongong Community Participation Plan 2019

1.2 DETAILED DESCRIPTION OF PROPOSAL

Demolition:

- Demolition of the existing dwelling and retaining walls,

Dwelling House:

- Construction of a new two storey dwelling containing:
 - Four (4) bedrooms on the upper level;
 - Guest bedroom, open plan kitchen, living & dining area opening to terraces facing east and north on the ground floor;
 - Basement level having 2 open parking spaces, stair and lift access to the upper levels; plant room and storage area.

Swimming Pool:

- 12m x 2.6m swimming pool to extend from the northern terrace towards the ground floor.

Landscape Works:

- Removal of 2 street trees.
- Terraced landscape areas, steps and retaining walls.
- Relocation of Endeavour energy power pole to facilitate new vehicular entry.

1.3 BACKGROUND

Application Title	Description (Application)
DA-1973/238	9 Home Units
DA-1973/238	Amended Application
DA-1979/783	2-Storey Residence
BA-1979/2347	Dwelling

No Pre-lodgement meeting was held.

Customer service actions

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

1.4 SITE DESCRIPTION

The site is located at 127 Lawrence Hargrave Drive AUSTINMER NSW 2515. Title reference is Lot B DP 344298.

The site is irregular in shape with a street frontage of 37.655m to Lawrence Hargrave Drive and a total land area of 710.7m². To the east and north, the site adjoins the beach reserve, Austinmer Bather's Pavilion and the War Memorial.

Adjoining the southern side boundary is a residential allotment containing a single storey dwelling.

Property constraints

Council records identify the land as being impacted by the following constraints:

- Coastal Hazard Geotechnical Risk,
- Acid Sulphate Class 5 and
- Flood affected- undetermined levels.

There are no restrictions on the Title.





Figure 2: Aerial photographs

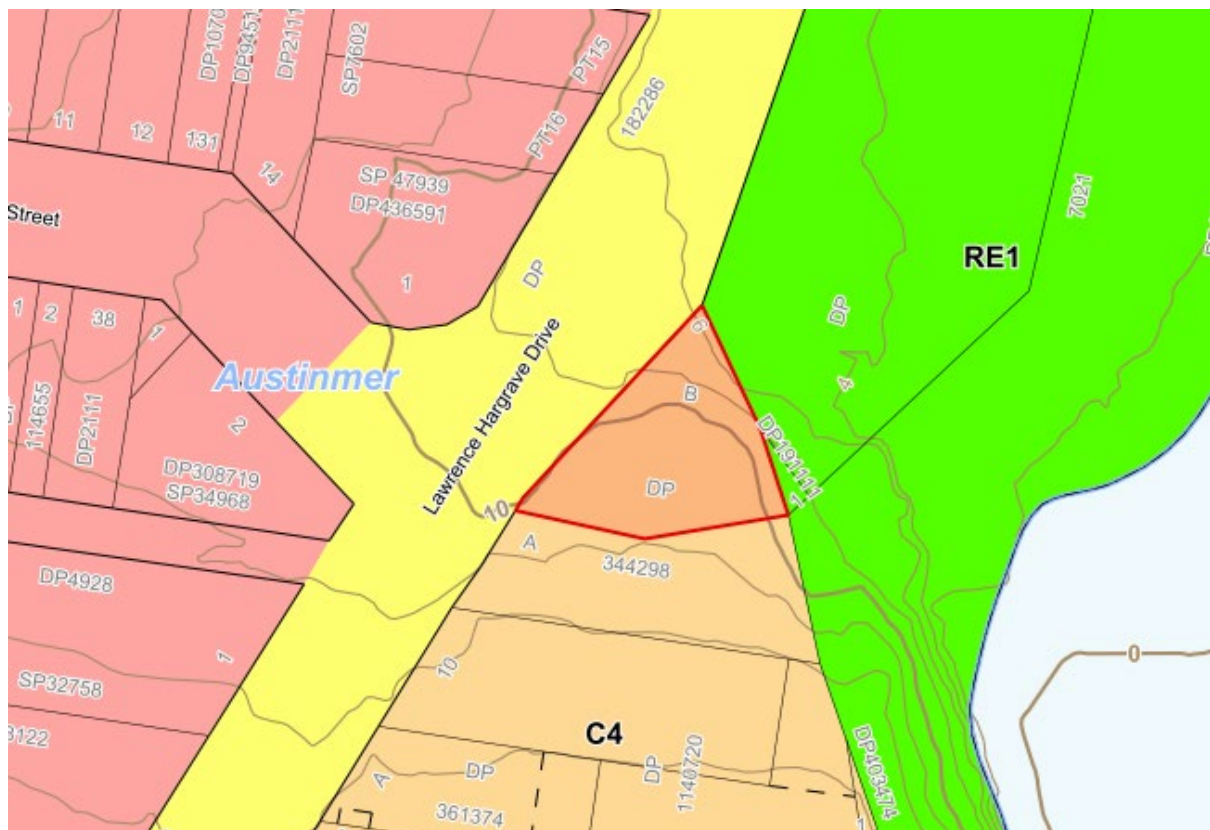


Figure 3: WLEP 2009 zoning map

1.5 SUBMISSIONS

The application was exhibited in accordance with Wollongong Community Participation Plan 2019. Seven (7) unique submissions were received.

Amended plans and additional information was submitted by the applicant to address Council's concerns.

Changes were made to the proposal in terms of the front entry steps and works adjacent the site boundary, further heritage considerations clarification of the FSR for the proposed development and revised Clause 4.6 request. This information did not require re- exhibition as the design aspects of the proposal did not fundamentally change.

The issues identified are discussed below.

Table 1: Submissions

Concern	Comment
1. Non-compliance in Floor Space Ratio, Development in-appropriate for the zone	The floor space ratio for the proposed development exceeds the maximum 0.3:1 for the C4 zone of WLEP2009. Additional information was provided to clarify the gross floor area calculations at Attachment 1. A Clause 4.6 written request has been submitted by the applicant and is considered capable of support. Refer to section 3.1.4 of this report.
2. Overdevelopment having non-compliance with setback, Number of storeys, height	The part of the basement wall visible above ground is less than 1m above the existing ground levels hence the dwelling is of 2 storeys only. The proposal complies with the permitted height as required under WLEP2009. It is assessed to satisfy the objectives for setback controls of WDCP2009 and is not considered to cause adverse amenity impacts to the neighbours in terms of overlooking, overshadowing or view loss. A variation request to the front setback control is capable of support as detailed in Section 2.3.1.
3. Tree removal	Council's Landscape officer has provided satisfactory comments on the proposal subject to conditions of consent including compensatory tree planting to replace the two (2) trees being removed.
4. Construction can cause landslides and coastal erosion	Council's Geotechnical Officer has reviewed the proposal. Comments provided did not raise significant safety concerns subject to conditions.
5. Works proposed in RE1 zone	Amendments made to the plans shows no works outside the site boundary. See Attachment 1.
6. Impacts on public places, impacts on neighbouring property with overshadowing	Concerns are raised that the proposed development will result in impacts on the adjoining and nearby properties. Amenity impacts of the proposed development including view loss, overshadowing, overlooking have been assessed as outlined in this report. On balance it is considered that the proposal maintains adequate setbacks and a reasonable level of amenity for

Concern	Comment
	<p>adjoining and nearby properties that is satisfactory in accordance with the relevant development standards and controls.</p> <p>Solar access to southern lot is considered acceptable in this circumstance based on a merit-based assessment. Overshadowing to the north facing bedroom windows of the dwelling from similarly oriented sites having topographical constraints is not completely avoidable. The proposal also complies with the maximum building height development standard and minimum side setback controls specified in WDCP 2009 so as to protect amenity impacts to neighbouring lots including overshadowing.</p>
7. Adverse impacts on the character of Austinmer setting undesirable precedence, Impacts on Heritage location	<p>It is considered that the objectives of the C4 zoning for the site have been met as outlined in the report.</p> <p>Council's Heritage Officer has reviewed the submitted Heritage Impact statement. Whilst general concerns were raised in relation to FSR and bulk and scale no particular concerns are raised with regard to direct impact on Heritage listed items in the locality. Conditions are proposed as a precaution in relation to unexpected finds protocols for both Aboriginal and European heritage given the location and excavation proposed</p>
8. Existing development encroaching neighbouring property	<p>The proposal involves demolishing the existing building and ancillary structures. New construction is proposed to be confined to within the site boundaries only. Conditions are proposed in relation to site survey peg-out prior to works commencing and all development work being located wholly within the site boundary confines with the exception of the new vehicular entry</p>

Table 2: Number of concerns raised in submissions

Concern:	1	2	3	4	5	6	7	8
Frequency:	5	5	1	3	1	2	4	1

1.6 CONSULTATION

1.6.1 INTERNAL CONSULTATION

Development Engineer

Council's Development Engineer has reviewed the proposal in terms of Traffic, Stormwater drainage and parking and provided a satisfactory referral subject to conditions.

Landscape Architect

Council's Landscape Officer has reviewed the proposal and provided a satisfactory referral subject to conditions in relation to impact to the removal of street trees.

Statutory Property Officer

Council's property officer raised initial concerns on works related on Council's land. Amended plans indicate no works outside the site boundary. Additionally, a condition of consent is imposed restricting pedestrian access from the site to Council reserve.

Geotech

No concerns were raised subject to conditions.

Heritage Officer

After the initial review of the proposal Council's Heritage officer requested a Heritage Impact Statement and raised concerns mainly related to visual impacts when viewed from the nearby Heritage Items and the Heritage Conservation area and the bulk of the development arising from the non-compliance with the FSR development standard, the retaining walls and fence. On reviewing the additional information submitted by the applicant matters related to the non-compliant FSR and height of retaining walls were mentioned to be unresolved from a heritage perspective.

The departure to the FSR development standard and controls varying requirements for the retaining walls are assessed under other planning matters and found satisfactory as detailed in the following sections of this report. Additional conditions are also imposed regarding the selection of material finishes and colours in order to minimise the bulk and visual impacts when viewed from the neighbouring sites. The proposal is considered by planning staff to be satisfactory on Heritage grounds in this instance.

1.6.2 EXTERNAL CONSULTATION

None required.

2 OTHER LEGISLATION

2.1 COASTAL MANAGEMENT Amendment Act 2021

The *Coastal Management Amendment Act 2021* commenced on 1 November 2021, to give coastal councils until 31 December 2023 to implement their CZMPs. By effect this enables a continuation of the current certified CZMP (20 December 2017) whilst Council undertakes further studies and community consultation for a transition to a new Coastal Management Plan.

3 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 – 4.15 EVALUATION

3.1 SECTION 4.15(1)(A)(1) ANY ENVIRONMENTAL PLANNING INSTRUMENT

3.1.1 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Chapter 2 Coastal management

Part 2.1 Preliminary

2.1 Aim of Chapter

The aim of this Policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016, including the management objectives for each coastal management area, by:

- (a) managing development in the coastal zone and protecting the environmental assets of the coast, and
- (b) establishing a framework for land use planning to guide decision-making in the coastal zone, and

- (c) mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the Coastal Management Act 2016.

This Policy applies to land within the coastal zone.

2.5 Relationship with other environmental planning instruments

- (1) In the event of an inconsistency between this Policy and another environmental planning instrument, whether made before or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency.
- (2) This Policy does not apply to land within the Lease Area within the meaning of State Environmental Planning Policy (Three Ports) 2013.

Part 2.2 Development controls for coastal management areas

Division 1 Coastal wetlands and littoral rainforests area

2.7 Development on certain land within coastal wetlands and littoral rainforests area

Comment: The subject site is not identified within the SEPP maps as containing coastal wetlands or littoral rainforest areas. As such, this part does not apply to the subject development.

2.8 Development on land in proximity to coastal wetlands or littoral rainforest

Comment: The subject site is not identified as being within the proximity area of either the coastal wetland or littoral rainforest area. As such, this part does not apply to the subject development.

Division 2 Coastal vulnerability area

Comment: At the commencement of this Policy, no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified. As such, this part does not apply to the subject development.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment: The subject site is located partly within the Coastal Environment Area map, therefore this clause applies to the proposal. The development is not expected to result in adverse impacts on the integrity and resilience of the ecological environment, the coastal environmental values, natural

processes, water quality, marine vegetation, habitats or headlands or rock platforms, public open space and access to that public open space, aboriginal cultural heritage or the use of the surf zone.

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

Comment: As discussed above, generally, the proposal has been designed and sited to avoid potential impacts to the coastal environment.

3) 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.

Comment: The subject site is not located within the Foreshores and Waterways Area.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment: the proposed development would not be likely to cause an adverse impact on access to the foreshore area, any overshadowing of the foreshore area, impacts on the visual amenity of the coast, Aboriginal cultural heritage or cultural or built environmental heritage.

(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.

Comment: The subject site is not located within the Foreshores and Waterways Area of the Sydney Regional Plan (Sydney Harbour Catchment) 2005

Division 5 General

2.12 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.

Comment: Council is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on the subject land or any other land.

2.13 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.

Comment: On 30 October 2017, Council endorsed the final draft of the Wollongong Coastal Zone Management Plan for resubmission to the NSW Minister for Environment for certification. The draft Plan was certified on 20 December 2017. This Plan identifies that the site is affected by ocean inundation, and the site has been subsequently mapped according and considered as discussed throughout this report. There are no other provisions of the Plan which apply to the subject land.

2.14 Other development controls not affected

Subject to section 2.5, 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.

Comment: noted

2.15 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.

Comment: The subject site is located within the Coastal Environment Area and Coastal Use Area. There is no inconsistency between the controls as discussed above.

NSW Coastal Management Act 2016, Coastal Management Amendment Act 2021, and Wollongong Coastal Zone Management Plan

The Wollongong Coastal Zone Management Plan (Wollongong CZMP) (BMT WBM 2017) was certified on 20 December 2017 and applies to the coastal zone of the Wollongong Local Government Area which includes this development application site. The *Coastal Management Amendment Act 2021* commenced on 1 November 2021, to give coastal councils until 31 December 2023 to implement their CZMPs. By effect this enables a continuation of the current certified CZMP (20 December 2017) whilst

Council undertakes further studies and community consultation for a transition to a new Coastal Management Plan.

The Wollongong CZMP identifies the site as being located in a coastal geotechnical risk area. The proposed development has been assessed by Council's Geotechnical Officer who has raised no objection subject to conditions of consent recommended at Attachment 5.

The proposal is therefore considered satisfactory with regard to the aims outlined in clause 3 of this policy and the matters outlined for consideration.

Chapter 4 Remediation of land

4.6 Contamination and remediation to be considered in determining development application

- (1) A consent authority must not consent to the carrying out of any development on land unless—*
- (a) it has considered whether the land is contaminated, and*
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*
- (2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.*
- (3) The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.*
- (4) The land concerned is—*
- (a) land that is within an investigation area,*
 - (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
 - (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—and—*
 - (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
 - (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

Council records do not indicate any historic use that would contribute to the potential contamination of the site and the land is not identified as being contaminated on Council's land mapping system. The proposal does not comprise a change of use. No concerns are raised regarding contamination as relates to the intended use of the land and the consent authority can be satisfied the requirements of clause 4.6 have been satisfied.

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

The proposal is BASIX affected development to which this policy applies. In accordance with Part 3 Division 1 Section 27 of the Environmental Planning and Assessment Regulation 2021, 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.

3.1.3 STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT & INFRASTRUCTURE) 2021

2.119 Development with frontage to classified road

(1) The objectives of this clause are—

(a) to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and

(b) to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.

(2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and

(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—

(i) the design of the vehicular access to the land, or

(ii) the emission of smoke or dust from the development, or

(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and

(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Whilst Lawrence Hargrave Drive is classified road the proposal is to replace the existing single dwelling with 2 car parking spaces. Council's development engineer has reviewed the proposal and raised no concerns, however, prior to any works commencing, the applicant shall obtain a Road Occupancy License from TfNSW in conjunction with Council's permit under Section 138 of the Roads Act 1993. Daily traffic volumes do not trigger any specific considerations for mitigation of traffic noise.

3.1.4 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Clause 1.4 Definitions

Demolition: In relation to a building means wholly or partly destroy, dismantle or deface the building.

Dwelling house means a building containing only one dwelling.

Residential accommodation means a building or place used predominantly as a place of residence, and includes any of the following—

(a) attached dwellings,

(b) boarding houses,

(baa) co-living housing,

(c) dual occupancies,

(d) dwelling houses,

(e) group homes,

- (f) hostels,
- (faa) (Repealed)
- (g) multi dwelling housing,
- (h) residential flat buildings,
- (i) rural workers' dwellings,
- (j) secondary dwellings,
- (k) semi-detached dwellings,
- (l) seniors housing,
- (m) shop top housing,

but does not include tourist and visitor accommodation or caravan parks.

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 C4 Environmental Living.

Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values

The proposal is satisfactory with regard to the above objectives.

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

Bed and breakfast accommodation; Business identification signs; Community facilities; **Dwelling houses**; Environmental facilities; Environmental protection works; Home-based child care; Home businesses; Home industries; Oyster aquaculture; Pond-based aquaculture; Recreation areas; Roads; Secondary dwellings; Tank-based aquaculture

The proposal is categorised as a Dwelling House as defined above and is permissible in the zone with development consent.

Clause 2.7 Demolition requires development consent

Conditions of consent have been recommended with regard to demolition.

Part 4 Principal development standards

Clause 4.3 Height of buildings

The proposed maximum building height of 8.4m does not exceed the maximum of 9m permitted for the site.

Clause 4.4 Floor space ratio

Maximum FSR permitted for the zone: 0.3:1

Site area: 710.7 m²

GFA: 238.5m²

FSR: $238.5/710.7 \text{ m}^2 = 0.34:1$

The maximum floor space ratio for the zone is 0.3:1. The proposal exceeds the maximum permitted FSR having 0.34:1.

The proposed development results in 11.86 % (25.29m²) departure to the development standard under WLEP 2009. The development is not considered of significant bulk and scale to impact adversely on the neighbourhood in terms of traffic, parking, streetscape or amenity of the neighbouring developments. The departure to the development standard can be regarded as acceptable.

Clause 4.6 Exceptions to development standards

WLEP 2009 clause 4.6 proposed development departure assessment	
Development departure	Clause 4.4 Floor Space Ratio 0.3:1 The proposal has a FSR of 0.34:1.
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	Yes, the applicant's request contains this justification as provided at Attachment 3.

that there are sufficient environmental planning grounds to justify contravening the development standard.	<p>Yes, the applicant's request contains this justification shown at Attachment 3.</p> <p>It is requested that Council give consideration to the following justifications:</p> <p>The proposed development is consistent with the objectives of Clause 4.4.</p> <p>The proposed dwelling is of two storeys and demonstrates compliance with the required height and setback distances. The design of the single dwelling maintain reasonable amenities for a single dwelling providing necessary features to suit the locality. The proposal is regarded reasonable in the location considering the constraints related to the zoning and site area (the permitted FSR / minimum lot size ratio) and the topography. The design has been adopted to fit within the setback requirements and height limits, demonstrating that the development is appropriate to the size and shape of the site in that context.</p> <p>The exceedance of the floor space ratio by 11.86% will not unduly intensify the proposed land use.</p>
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	<p>The applicant's submission include justification for the departure that the developments within immediately surrounding area has varied character and density and the proposal ensures the minor increase of 25.29m² will not be visually apparent or out of keeping with the character of the area.</p> <p>The development satisfies the objectives of the floor space ratio development standard in this instance.</p>
4.6 (4) (a) Consent authority is satisfied that:	
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	<p>The statement submitted by the applicant (Attachment 3) adequately addressed the matters required to be demonstrated, in that compliance to the development standard is unnecessary or unreasonable in the circumstances of the case. In demonstrating that there is sufficient planning grounds the statement appropriately provides reasons that are specific to the site.</p> <p>The site has a smaller area compared to other C4 land and strict adherence to the permitted max FSR on a coastal lot having other constraints can be considered unreasonable. The site-specific design is found to appropriately balance a functional dwelling with a positive contribution to the streetscape, while taking into account the siting and design of surrounding developments.</p> <p>It is noted land with a FSR maximum of 0.3:1 usually corresponds to a minimum lot size 999sqm for C4 zoned land in WLEP 2009. As the site has an existing area of 710.7 sqm and does not meet the minimum lot size the lot can be considered affected by a planning anomaly to be restricted to FSR 0.3:1. Further, a review of other development approvals granted in similar C4 zoned beach front lots have variations accepted rather than strict compliance with the standard.</p> <p>The Clause 4.6 Statement has provided reasonable justification that the development achieves the objectives of Clause 4.4 and has sufficient planning grounds to justify the variation.</p>
(ii) the proposed development will be in the public interest	It is considered that strict numerical compliance with the floor space ratio development standard

<p>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>	<p>in the context of the proposal would not result in significant public benefit.</p> <p>The objectives of Clause 4.4 Floor Space Ratio are:</p> <p><i>(a) to provide an appropriate correlation between the size of a site and the extent of any development on that site,</i></p> <p><i>(b) to establish the maximum development density and intensity of land use, taking into account the availability of infrastructure to service that site and the vehicle and pedestrian traffic the development will generate,</i></p> <p><i>(c) to ensure buildings are compatible with the bulk and scale of the locality.</i></p> <p>With regard to the above, the proposed development will have minimal adverse impacts on the surrounding developments. The extent of the development, density and intensity, and bulk and scale are not to have adverse impacts to the existing infrastructure and vehicle and pedestrian traffic.</p> <p>The objectives of the C4 Environmental Living:</p> <ul style="list-style-type: none"> <i>• To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.</i> <i>• To ensure that residential development does not have an adverse effect on those values.</i> <p>The development is consistent with the above objectives and has minimal impacts on the aesthetic and ecological values of the area. Given that the development is consistent with the objectives of Clause 4.4 and the objectives of the zone, the proposed variation to the floor space ratio is considered to be in the public interest.</p>
<p>(b) the concurrence of the Secretary has been obtained.</p>	<p>The WLPP can assume the Secretary's concurrence as the consent authority.</p>

Comment: The requested departure to the development standard as detailed above is considered capable of support.

Part 5 Miscellaneous provisions

Clause 5.10 Heritage Conservation

The subject site is in the vicinity of the Austinmer War Memorial and Row of Norfolk Pines (listed items) and the Austinmer Bathers Pavilion, an unlisted potential heritage item. The subject site is also visible from the Austinmer Heritage Conservation Area.

After the initial review of the proposal Council's Heritage officer requested a Heritage Impact Statement and raised concerns mainly related to visual impacts when viewed from the nearby Heritage Items and the Heritage Conservation area and the bulk of the development arising from the non-compliance with the FSR development standard, the retaining walls and fence. On reviewing the additional information submitted by the applicant matters related to the FSR exceedance and height of retaining walls were mentioned to be unresolved from a heritage perspective.

The departure to the FSR development standard and controls varying requirements for the retaining walls are assessed under other planning matters and found satisfactory as detailed in the following sections of this report. Additional conditions are also imposed regarding the selection of material finishes and colours in order to minimise the bulk and visual impacts when viewed from the neighbouring sites. The proposal is considered by planning staff to be satisfactory on Heritage grounds in this instance.

Clause 5.21 Flood Planning

The site is identified as Flood affected. Council's stormwater engineer has reviewed the proposal and is assessed to comply with the Clause.

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

The development site is already serviced by electricity, water and sewage services. An existing power pole is proposed to be relocated to Endeavour Energy's requirements to facilitate a new vehicular entry arrangement to the site.

Clause 7.5 Acid Sulfate Soils

The site is identified as being affected by class 5 acid sulphate soils. An acid sulphate soils management plan is not required.

Clause 7.6 Earthworks

The proposal comprises excavation earthworks related to the construction of the buildings and related infrastructure and landscaping. The earthworks are not expected to have significant detrimental impact on environmental functions and processes, neighbouring uses or heritage items and features surrounding land. Conditions are proposed for site fencing and safety of adjacent structures.

3.2 SECTION 4.15(1)(A)(II) ANY PROPOSED INSTRUMENT

N/A

3.3 SECTION 4.15(1)(A)(III) ANY DEVELOPMENT CONTROL PLAN

3.3.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

The development has been assessed against the relevant chapters of WDCP 2009 and found to be satisfactory. A full assessment of the proposal in relation to Chapter B1 of WDCP 2009 is contained at Attachment 2.

CHAPTER A1 – INTRODUCTION

8 Variations to development controls in the DCP

The proposal seeks a number of variations to the development controls in Chapter B1 Residential Development in WDCP 2009, being:

- Section 4.2 Front Setbacks

- Section 4.9 Fencing
- Section 4.17 Retaining Walls
- Section 4.18 Swimming Pools and Spas

Control (Front Setbacks)	Comment
The variation statement must address the following points:	
a) The control being varied; and	The variation request statement identifies the control being varied to Clause 4.2 Front Setbacks of Chapter B1 Residential Development of WDCP 2009.
b) The extent of the proposed variation and the unique circumstances as to why the variation is requested; and	<p>Justification for Front setback Variation:</p> <p>The proposal involves parts of the terrace and upper level balcony and the entry steps from the street to the ground floor terrace/front door located within the 6m of the front building line.</p> <p>Part of the terrace/balcony encroaches into the front setback line with the closest corner having 3.66m from the front boundary. The siting of the dwelling is considered to be keeping with the existing street character.</p> <p>The variation can be justified due to the irregular shape of the site with the front boundary tapering in a northern direction. This presents a wider Council verge between the street and the front boundary where the non-compliance occurs to the front setback. The intrusion within the front building line is not highly visible due to the existing and proposed landscaping between the street and the dwelling.</p> <p>Moreover there are other developments along that stretch of Lawrence Hargrave Drive having reduced setbacks. The overall presentation is considered to improve the streetscape and having minimal visual impacts when viewed from surrounding public areas.</p> <p>Although the numerical requirements have not been strictly met in this circumstance it is considered that the objectives of the clause have been met ensuring minimal impact on the street scene and on the amenity of the adjoining dwellings.</p>
c) Demonstrate how the objectives are met with the proposed variations; and	<p>The overall objectives of the WDCP 2009 Chapter B1 Clause 4.2 Retaining Walls Clause are to:</p> <p>(a) To reinforce the existing character of the street and locality by acknowledging building setbacks.</p> <p>(b) To ensure that buildings are appropriately sited, having regard to site constraints.</p>

	<p>(c) To ensure building setbacks are representative of the character of the area.</p> <p>(d) To provide for compatibility in front setbacks to provide unity in the building line.</p> <p>(e) To ensure that setbacks do not have a detrimental effect on streetscape or view corridors.</p> <p>(f) To ensure that hard stand areas can be provided in front of garage without imposing on movement corridors (pathways, cycle ways and road reserves). The applicant has indicated that they consider the development consistent with the above objectives.</p> <p>Council comment:</p> <p>The development is not considered to be inconsistent with the above objectives.</p>
d) Demonstrate that the development will not have additional adverse impacts as a result of the variation.	<p>Council comment:</p> <p>The proposed variation to the front setback is considered satisfactory in this circumstance. The development is not considered to result in adverse impacts as a result of the variation.</p>
<p>Comment:</p> <p>The requested variation is considered capable of support.</p>	
Control (Fencing)	Comment
The variation statement must address the following points:	
a)The control being varied; and	The variation request statement identifies the control being varied as Clause 4.9 Fencing of Chapter B1 Residential Development of WDCP 2009.
b)The extent of the proposed variation and the unique circumstances as to why the variation is requested; and	<p>Justification for Front Fence Height Variation:</p> <p>The applicant has proposed a front fence with a maximum height of 1.8m.</p> <p>Clause 4.9 of Chapter B1 of the WDCP2009 stipulates that:</p> <ul style="list-style-type: none"> Any fence and associated retaining wall within the front setback area from the primary road frontage must be a maximum 1.2 metres in height, above existing ground level.' 'Front fences must be open for at least 50% of the upper 2/3 of the area of the fence. Any brick or other solid portion of the fence above 600mm must not be more than 250mm wide.' 'A fence or a fence and an associated retaining wall on a sloping site may be stepped, provided the height of each step is not more than:

	<p>(a) 1.6 metres above the existing ground level, if it is located within a setback area from a primary road, or</p> <p>(b) 2.2 metres above the existing ground level for side or rear fences, behind the front building line.’.</p> <p>Following justification is submitted for the variation requested.</p> <p>“The proposed fencing along the northern portion of the Lawrence Hargrave Drive frontage is proposed to be an open style metal palisade fence with a height of 1.8m. The fence will be transparent and setback from the front boundary to allow for landscape planting within the frontage. The intent of the increased fencing height is to provide a level of security to the highly accessible site and a level of privacy to the lower portion of the allotment, when combined with the proposed landscape planting.</p> <p>The fence will not run for the full extent of the frontage and will compliment the overall landscape design of the site. The open style fencing will not be visually obtrusive and will not prevent passive surveillance of the street. The living area and several outdoor areas maintain a line of sight across the street frontage due to the topography of the site.</p> <p>Review of surrounding developments identifies varied fencing, including solid 1.8m high front fences”.</p> <p>Although the numerical requirements have not been strictly met in this circumstance the objectives of the clause have been met ensuring minimal impact on the street scene and on the amenity of the adjoining dwellings.</p>
c) Demonstrate how the objectives are met with the proposed variations; and	<p>The overall objectives of the WDCP 2009 Chapter B1 Clause 4.9 Fencing are to:</p> <p>(a) To allow for the physical separation of properties for resident privacy.</p> <p>(b) To define the boundaries between public and private land.</p> <p>(c) To enhance the usability of private open space areas / courtyards.</p> <p>(d) To ensure that the design, heights and materials of fencing are appropriately selected.</p> <p>(e) To ensure that fencing design and location complements the building design, enhance the streetscape and complement the objectives of passive surveillance</p> <p>(f) To ensure that the design allows for casual surveillance of the lot.</p>

	<p>(g) To ensure that clear lines of sight are maintained for motorists and pedestrians to and from the lot.</p> <p>(h) To provide suitable fencing to improve the acoustic and visual privacy for residential properties fronting major (busy) roads, where appropriate slight line distances can be maintained.</p> <p>The applicant has indicated that they consider the development consistent with the above objectives.</p> <p><u>Council comment:</u></p> <p>The development is consistent with the above objectives.</p>
d) Demonstrate that the development will not have additional adverse impacts as a result of the variation.	<p><u>Council comment:</u></p> <p>The proposed variation to the height of the proposed front fence along the northern sides of the site is considered satisfactory in this circumstance. The development will not result in adverse impacts as a result of the variation.</p>
<p>Comment:</p> <p>The requested variation is considered capable of support.</p>	
Control (Height of Retaining Walls)	Comment
The variation statement must address the following points:	
a) The control being varied; and	The variation request statement identifies the control being varied as Clause 4.17 Retaining Walls of Chapter B1 Residential Development of WDCP 2009.
b) The extent of the proposed variation and the unique circumstances as to why the variation is requested; and	<p>Justification for Retaining Walls Variation:</p> <p>The proposal includes retaining walls with heights varying between 1m and 2m.</p> <p>Clause 4.17.3 of Chapter B1 of the WDCP2009 stipulates that a retaining wall or embankment should be restricted to a maximum height above or depth below natural ground level of no more than:</p> <ul style="list-style-type: none"> • 600mm at any distance up to 900mm setback from any side or rear boundary; or • 1 metre, if the toe of the retaining wall or embankment is setback greater than 900mm from any side or rear boundary. <p>The retaining walls as proposed, measure between 1m and 2m mainly closer to the swimming pool to the east and north sides that are setback more than 900mm from the site boundaries.</p> <p>In accordance with 4.17.3(4), retaining walls can be a maximum of 1m with a minimum setback of 1m from a boundary.</p>

	<p>The retaining walls are necessary for the terraced landscaped areas and garden beds providing levelled surfaces closer to the dwelling. The walls are screened by landscape plantings within the garden beds. The overall presentation improves the streetscape and view from surrounding public areas.</p> <p>Although the numerical requirements have not been strictly met in this circumstance the objectives of the clause have been met ensuring minimal impact on the street scene and on the amenity of the adjoining dwellings.</p>
<ul style="list-style-type: none"> Demonstrate how the objectives are met with the proposed variations; and 	<p>The overall objectives of the WDCP 2009 Chapter B1 Clause 4.17 Retaining Walls Clause are to:</p> <ol style="list-style-type: none"> <i>To ensure that retaining walls are structurally sound and are located to minimise any adverse stormwater drainage, visual, amenity or overlooking impacts upon adjoining properties.</i> <i>To guide the design and construction of low height aesthetically pleasing retaining walls.</i> <i>To ensure any retaining wall is well designed, in order to achieve long term structural integrity of the wall.</i> <i>To ensure slope stabilisation techniques are implemented to preserve and enhance the natural features and characteristics of the site and to maintain the long term structural integrity of any retaining wall.</i> <p>The applicant has indicated that they consider the development consistent with the above objectives.</p> <p><u>Council comment:</u></p> <p>The development is not considered to be inconsistent with the above objectives.</p>
d) Demonstrate that the development will not have additional adverse impacts as a result of the variation.	<p><u>Council comment:</u></p> <p>The proposed variation to the height of the proposed retaining walls are considered satisfactory in this circumstance. The development does not result in adverse impacts as a result of the variation.</p>
<p>Comment:</p> <p>The requested variation is considered capable of support.</p>	
Control (Height of Swimming Pool above ground)	Comment
The variation statement must address the following points:	

a) The control being varied; and	The variation request statement identifies the control being varied to Clause 4.18 Swimming Pools & Spas of Chapter B1 Residential Development of WDCP 2009.
b) The extent of the proposed variation and the unique circumstances as to why the variation is requested; and	
c) Demonstrate how the objectives are met with the proposed variations; and	<p>The overall objectives of the WDCP 2009 Chapter B1 Clause 4.18 Swimming Pools and Spas are to:</p> <p>(a) To ensure that swimming pools meet relevant safety standards and meet user needs.</p> <p>(b) To ensure swimming pools and spas are sited and designed to maintain the amenity of the surrounding residential neighbourhood.</p> <p>The applicant has provided the following justification:</p> <p>“The site has only one residential neighbour to the south, while the proposed pool is to be located to the north of the dwelling ensuring there will be no potential impact on the amenity of the neighbour property as a result of the variation. With regard to streetscape character, the raised pool decking is suitably screened by the site specific landscape design. The variation will not be visually apparent as viewed from the street. It is considered that the trafficable pool decking is sited at a level most suitable, with a line of sight from within the main living area of the dwelling was a major design feature of their proposal for safety, amenity and aesthetics.”</p> <p>Council comment:</p> <p>The irregular lot shape, large boundary setbacks, topography and high level of landscaping enable the variation to proceed without any additional adverse impacts on residential amenity. The development is consistent with the above objectives.</p>
d) Demonstrate that the development will not have additional adverse impacts as a result of the variation.	<p>Council comment:</p> <p>The proposed variation to the height of the pool and associated deck is satisfactory in this circumstance. The development is not considered to result in adverse impacts as a result of the variation.</p>
<p>Comment:</p> <p>The requested variation is considered capable of support.</p>	

CHAPTER A2 – ECOLOGICALLY SUSTAINABLE DEVELOPMENT

Development controls to improve the sustainability of development throughout Wollongong are integrated into the relevant chapters of this DCP. A Basix Certificate has been submitted with the application.

Generally speaking, the proposal is considered to be consistent with the principles of Ecologically Sustainable Development.

3.3.2 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN 2023

The estimated cost of works \$2,233,000.00 and as the works are >\$100,000.00 a levy is applicable under this plan and will be applied to any consent issued. A contribution fee of \$22,330.00 applies to the development.

3.4 SECTION 4.15(1)(A)(IIIA) ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 7.4, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 7.4

There are no planning agreements entered into or any draft agreement offered to enter into under S7.4 which affect the development.

3.5 SECTION 4.15(A)(IV) THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)

Environmental Planning and Assessment Regulation 2021

2 Savings

Any act, matter or thing that, immediately before the repeal of the 2000 Regulation, had effect under the 2000 Regulation continues to have effect under this Regulation.

2000 Regulation means the Environmental Planning and Assessment Regulation 2000 as in force immediately before its repeal on 1 March 2022.

6 Determination of BASIX development

The proposal is BASIX affected.

61 Additional matters that consent authority must consider

Conditions of consent are recommended with regard to demolition.

62 Consideration of fire safety

No change of use.

63 Considerations for erection of temporary structures

Not applicable.

3.6 SECTION 4.15(1)(B) THE LIKELY IMPACTS OF DEVELOPMENT

The proposal is considered acceptable with regard to the likely impacts.

The key impacts have been discussed largely within this report. Further impacts are discussed below:

Context and Setting:

The site is heavily constrained with the shape, topography, zoning and the locality. Regarding the physical and visual impacts on surrounding developments matters such as overshadowing, privacy concerns, bulk scale and setbacks are relevant and the proposal is considered acceptable for reasons identified in the report.

The development standard departure in respect to FSR, and variations to retaining wall, pool and fence heights, front setback have been discussed in the report and are considered capable of support. The scale of the development as viewed from the street and foreshore is comparable to other developments in the locality especially along the beachfront.

On balance, the development is considered to provide for reasonable amenity to the occupants, neighbours and public areas and is in keeping with the character of the area and compatible with the locality.

In summary, the proposal has been assessed with regard to the amenity impacts from the development, the zoning, permissible lot size and existing and future character of the area and is considered to be compatible with the local area.

Access, Transport and Traffic:

The design and configuration of the vehicular access and car parking arrangements is considered to be acceptable. The proposal will not result in traffic generation that will adversely impact the locality.

Public Domain:

The development is not expected to have adverse impact on the public domain. The form of the building is acceptable with regard to the current and desired future character of the area.

Utilities:

The proposal is not envisaged to place an unreasonable demand on utilities supply.

Heritage:

Council's Heritage Officer has reviewed the proposal in terms of the impact to the Heritage Items in the vicinity. The concerns raised in relation to the bulk of the overall development is considered acceptable by planning staff with the proposed landscaped settings partly covering the retaining walls and terraces, the palisade fencing on the northern side boundary along the Council reserve. The dwelling is considered not to have adverse visual impacts from the nearby Heritage items.

Other land resources:

The proposal is considered to contribute to orderly development of the site and is not envisaged to impact upon valuable land resources.

Water:

The site is presently serviced by Sydney Water, and the proposal is not envisaged to have unreasonable water consumption.

Soils:

Council records identify the site as containing Class 5 acid sulfate soils, the proposal will not require an acid sulfate soil management plan. With the implementation of appropriate soil and water management during construction, it is expected that soil resources will not be compromised during the course of construction activities. Council's Geotechnical officer has considered the proposal and is satisfied subject to conditions.

Air and Microclimate:

The proposal is not expected to have negative impact on air or microclimate.

Flora and Fauna:

Two small street trees are proposed for removal and conditions for replacement trees are proposed by Council's Landscape officer. The proposal is not expected to adversely impact fauna.

Waste:

Construction waste can be managed via the imposition of appropriate conditions. Bins can be stored in an appropriate location and will be collected from the street frontage.

Energy:

The proposal is not expected to involve unreasonable energy consumption subject to the implementation of the measures identified in the BASIX certificate.

Noise and vibration:

A condition is to be imposed that nuisance be minimised during any construction, demolition, or works.

Natural hazards:

There are no known site constraints that would preclude development of the site.

Technological hazards:

The site is identified to be affected by coastal hazard - geotechnical risk. The application has been reviewed by Council's Geotechnical officer in relation to site stability and is satisfied subject to conditions.

Safety, Security and Crime Prevention:

The development is not expected to give rise to increased opportunities for criminal and/ or antisocial behaviour.

Social Impact:

There are not expected to be adverse social impacts arising from the proposed development.

Economic Impact:

There are not expected to be adverse economic impacts arising from the proposed development.

Site Design and Internal Design:

The site design, car parking and manoeuvring arrangements proposed are acceptable. All other aspects of the proposal are compliant with applicable controls. The application results in a departure from a development standards and variations to Council's development control plans as discussed within the report - all of which are capable of support.

Construction:

A condition will be attached to any consent granted that the development is to be in compliance with the Building Code of Australia.

Cumulative Impacts:

The proposal is not expected to have negative cumulative impacts.

3.7 SECTION 4.15(1)(C) THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT

Does the proposal fit in the locality?

The proposal is permitted in the C4 zone and whilst a development standard departure and variations to development controls are sought, the form of the development is not considered to be inappropriate with regard to the character of the development in the locality and is not expected to give rise to adverse impacts on the amenity of the locality or adjoining developments. The proposal is considered appropriate with regard to the zoning of the site and is not expected to have 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.

3.8 SECTION 4.15(1)(D) ANY SUBMISSIONS MADE IN ACCORDANCE WITH THIS ACT OR THE REGULATIONS

Details of the proposal were publicly exhibited in accordance with Wollongong Community Participation Plan 2019. Seven (7) submissions were received during the notification period. Detailed discussion on submissions received is provided at section 1.5.

3.9 SECTION 4.15(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 is satisfactory with regard to the applicable planning controls. Internal referrals are satisfactory subject to appropriate conditions of consent. The proposal is considered to be in the public interest.

4 CONCLUSION

This application has been assessed as satisfactory having regard to the Heads of Consideration under Section S4.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of Wollongong Local Environmental Plan 2009 and all relevant Council DCPs, Codes and Policies. The proposal is considered supportable in its current form.

Pursuant to clause 2.3 of WLEP 2009, Dwelling Houses are permissible in the C4 Environmental Living zone with development consent. The proposal is considered to be consistent with the zone objectives. The departure request to the development standard regarding Floor Space Ratio and variation requests to the development controls for the front setback, heights for swimming pool, retaining walls and fencing are capable of support for reasons outlined in this report.

Internal referral comments and submissions have been considered. It is considered the proposed development is unlikely to result in adverse impacts on the character or amenity of the surrounding area, environment and adjoining development.

5 RECOMMENDATION

DA-2022/1010 be approved subject to the conditions presented at Attachment 5.

6 ATTACHMENTS

- 1 Architectural Plans
- 2 WDCP Compliance Table
- 3 Applicant's submission to development departure – Clause 4.4 Floor Space Ratio
- 4 Statements of Variation to development controls – Applicant
- 5 Conditions

Austinmer House

DEVELOPMENT APPLICATION

127 Lawrence Hargrave Drive, Austinmer - NSW 2516

DRAWING LIST		
Sheet Number	Sheet Name	Current Revision
DA000	COVER SHEET	C
DA002	SITE ANALYSIS PLAN	A
DA003	PLAN - EXISTING	A
DA004	PLAN - DEMOLITION	A
DA005	PLAN - SITE	A
DA100	PLAN - BASEMENT	C
DA101	PLAN - GROUND FLOOR	C
DA102	PLAN - LEVEL 01	B
DA103	PLAN - ROOF	A
DA200	ELEVATIONS	A
DA201	ELEVATIONS	A
DA202	STREET ELEVATION	A
DA300	SECTION	A
DA301	SECTION	A
DA302	STREET SECTION	A
DA400	EXTERNAL FINISHES	A
DA600	SOLAR DIAGRAM	A
DA800	GFA DIAGRAM - BASEMENT	B
DA801	GFA DIAGRAM - GROUND FLOOR	B
DA802	GFA DIAGRAM - LEVEL 01	B
DA900	CGI	A
DA901	CGI	A
DA902	CGI	A
DA903	CGI	A
DA904	CGI	A

SITE

ZONE - C4 ENVIRONMENTAL LIVING
AREA - 710.7 m²
FSR - 0.3:1 (213.2m²)

GFA BASEMENT	8.1	
GFA GF	130.4	
GFA FF	100	
TOTAL	238.5 m ²	(0.336:1)



Aerial Site Location of Lot DP 344298

Issue		
No.		
A	16.08.2022	FOR DA SUBMISSION
B	21.02.2023	FOR DA SUBMISSION
C	24.10.2023	FOR DA SUBMISSION

Project
Austinmer House

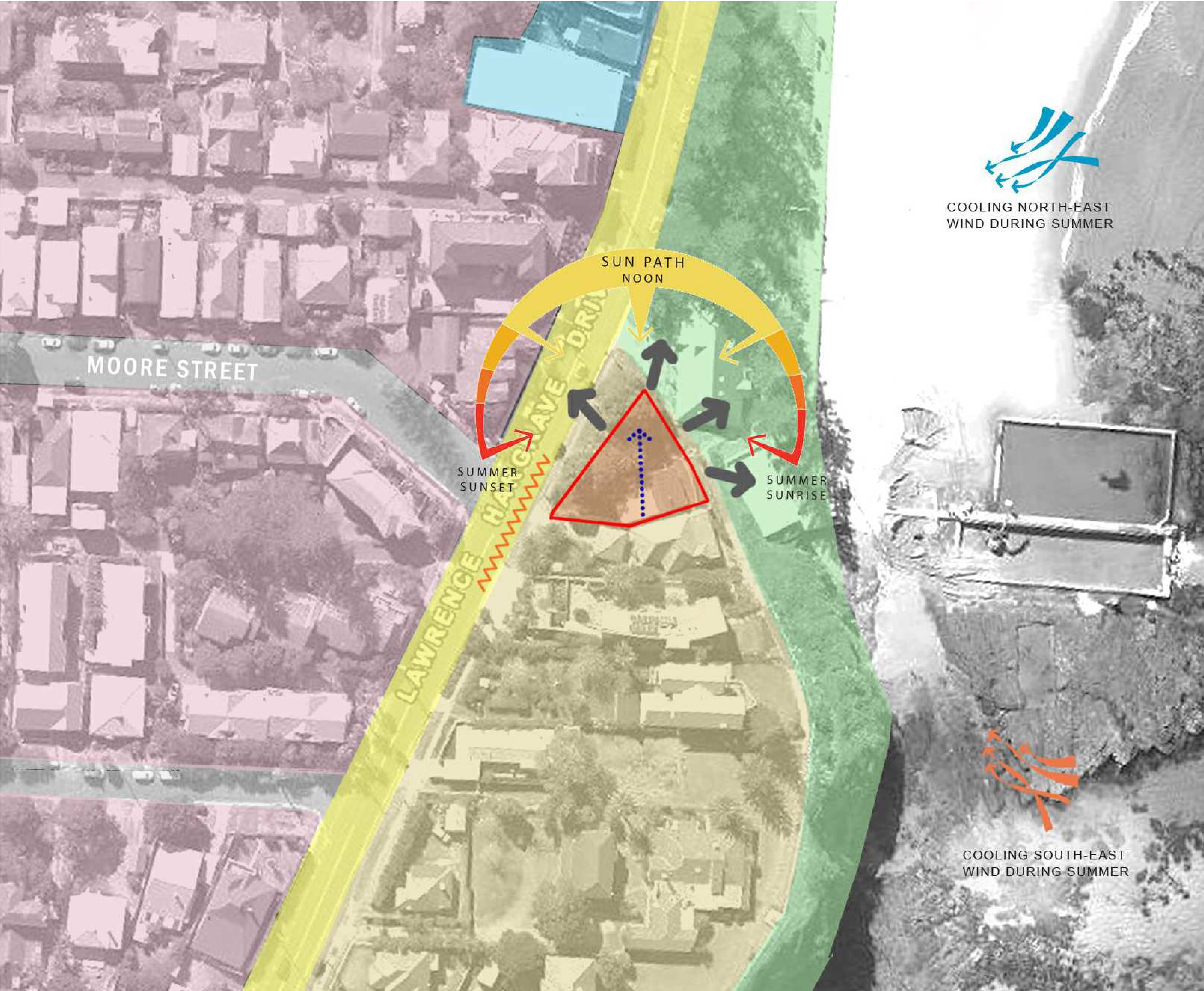
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Bruce & Tracey Ager
Address
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Drawing Title
COVER SHEET

Date
AUG / 2022
Scale
@ A1

Drawing Reference
20220077 - DA000



LEGEND

RE1 Public Recreation

R2 Low Density Residential

E4 Environmental Living

B1 Neighbourhood Centre

SP2 Infrastructure

Site Boundaty

SITE INFORMATION

Lot Number

B DP 344298

Maximum Height

9M

Floor Space Ratio

0.3:1

Acid Sulphate Soils

CLASS 5

SITE FALL

VIEWS

NOISE FROM LAWRENCE HARGRAVE DRIVE

SITE ANALYSIS
SCALE 1 : 500

DA - EXISTING GROUND FLOOR
SCALE 1 : 100

Issue
No.
A 16.08.2022 FOR DA SUBMISSION

Project
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Bruce & Tracey Ager
Address
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NSW 2516

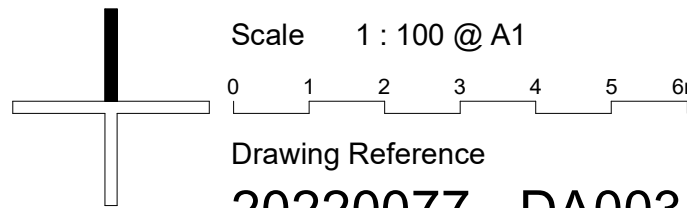
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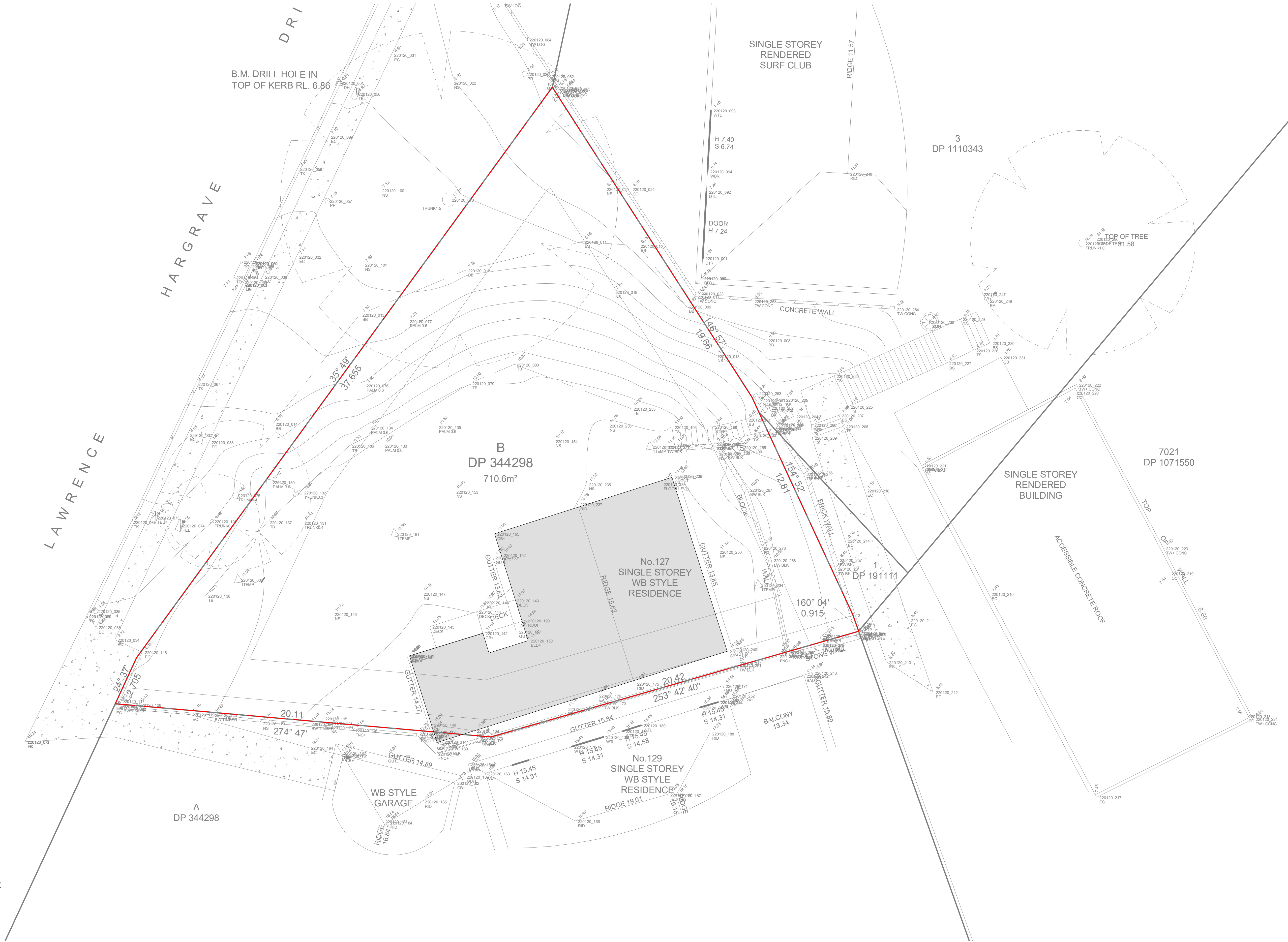
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PLAN - EXISTING

Date
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1 : 100 @ A1



Drawing Reference
20220077 - DA003




TELEGRAPH POLE TO BE
RELOCATED 850MM TO THE
OTHER SIDE OF NEIGHBORS
DRIVEWAY TO CLEAR
SWEEPED PATH TO GARAGE
ENTRY

DA - DEMILITION
SCALE 1 : 100

Issue
No.
A 16.08.2022 FOR DA SUBMISSION

Project
Austinmer House

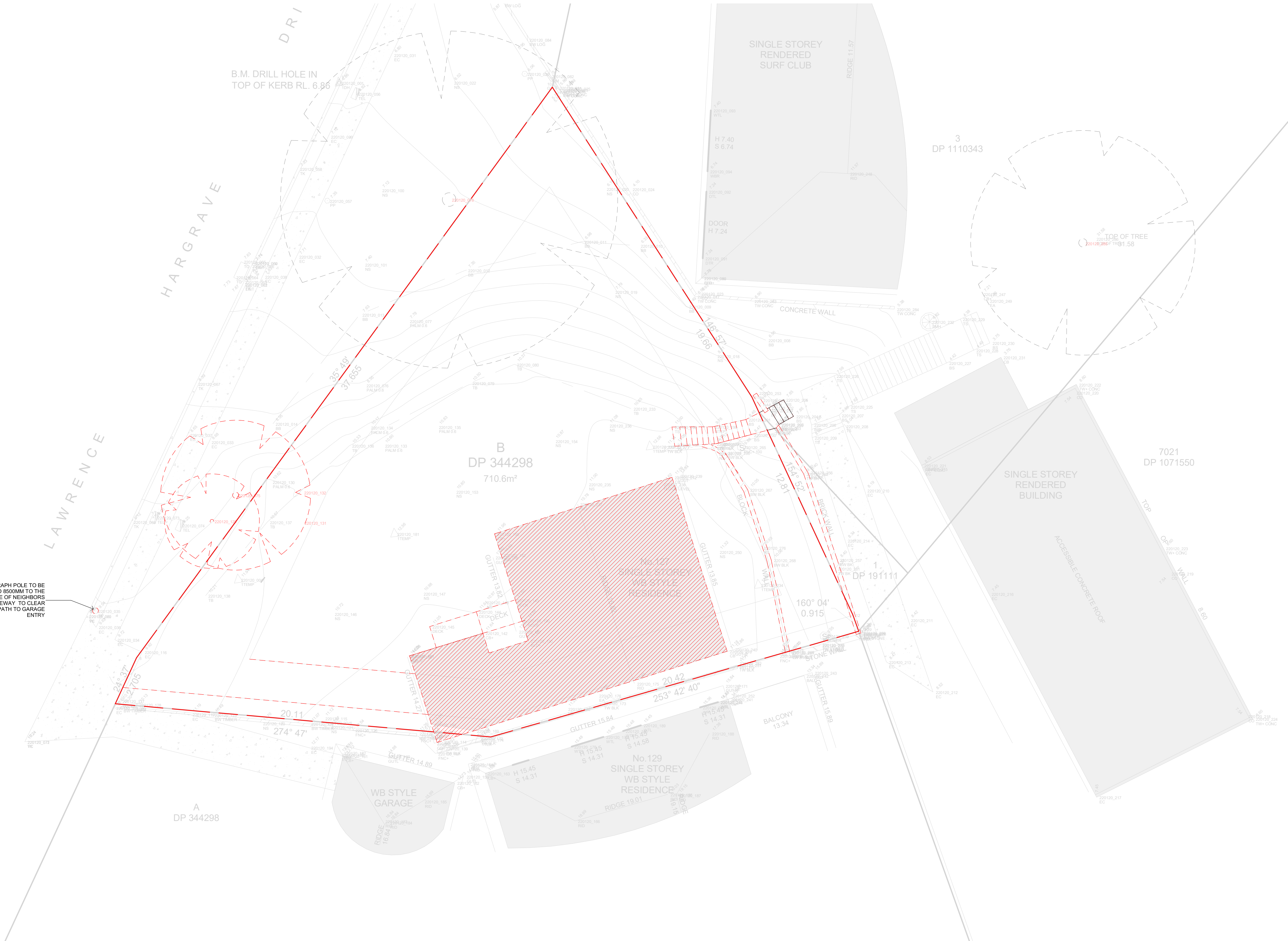
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 DEMOLITION
DEMOLITION BINS
B1 METAL WASTE
B2 GREEN WASTE
B3 CEMENT WASTE
B4 RECYCLING

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PLAN - DEMOLITION

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20220077 - DA004



SITE PLAN
SCALE 1 : 100

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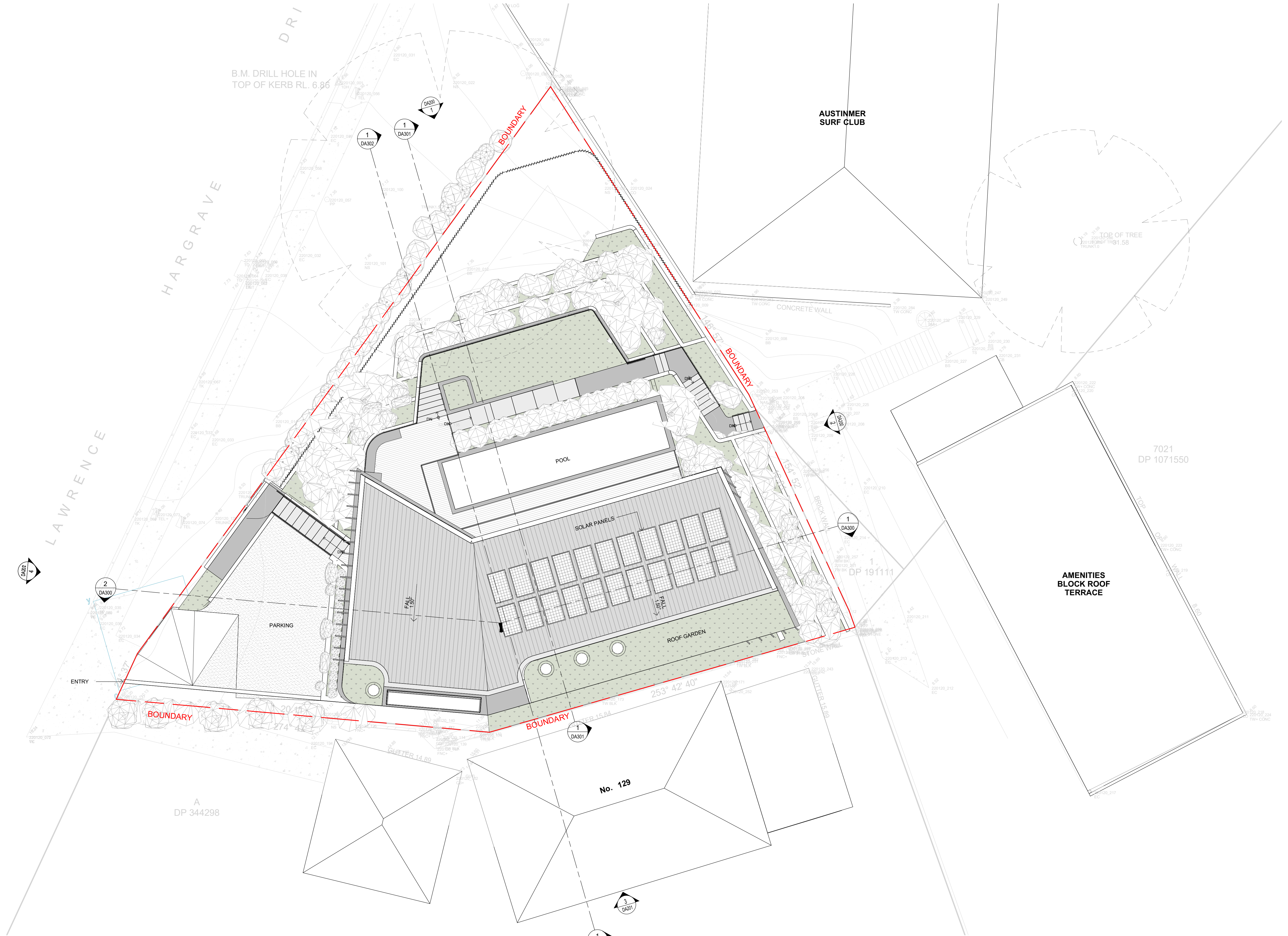
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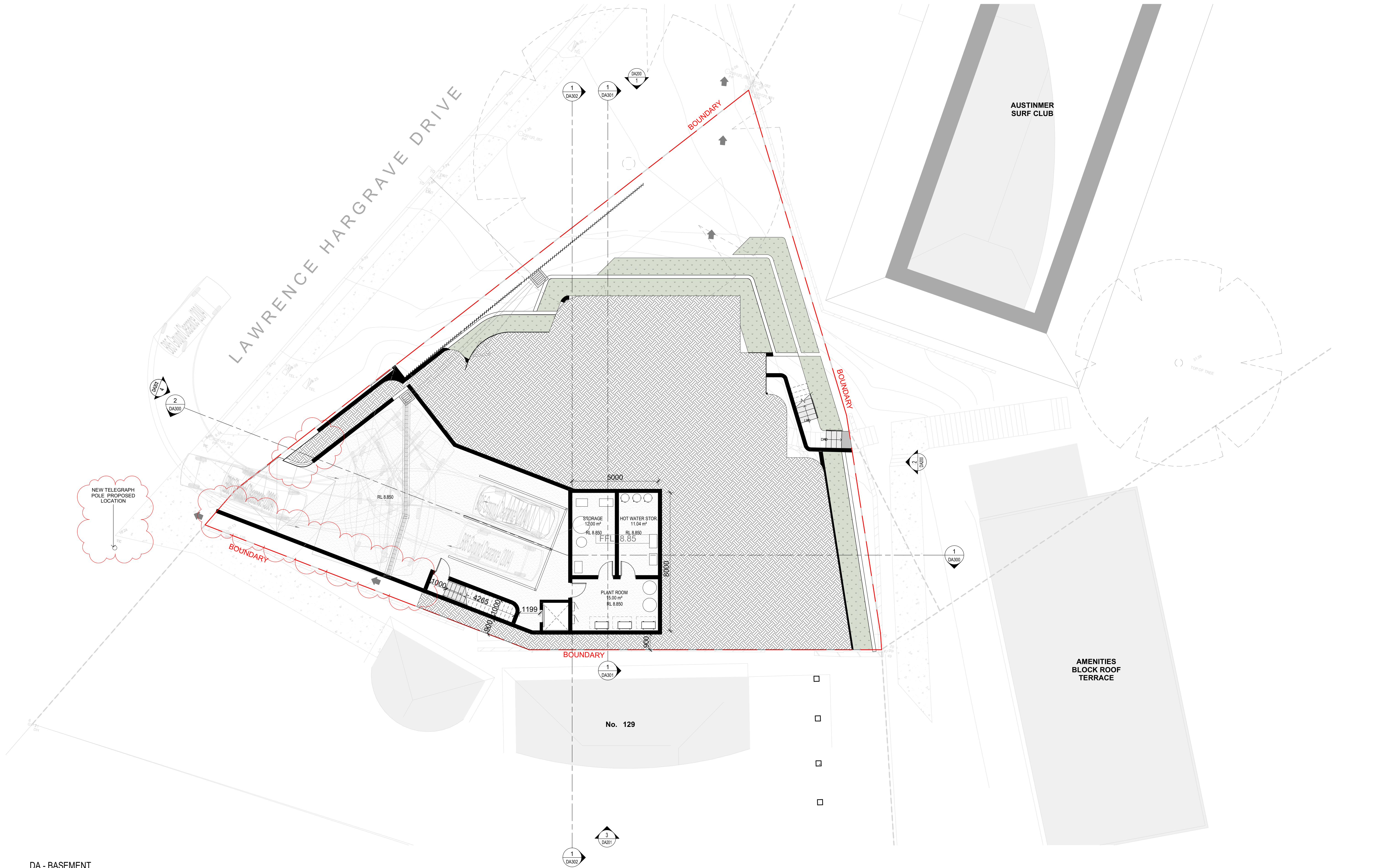
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PLAN - SITE

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Drawing Reference
20220077 - DA005





DA - BASEMENT
SCALE 1 : 100

Issue		
No.		
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B	21.02.2023	FOR DA SUBMISSION
C	24.10.2023	FOR DA SUBMISSION

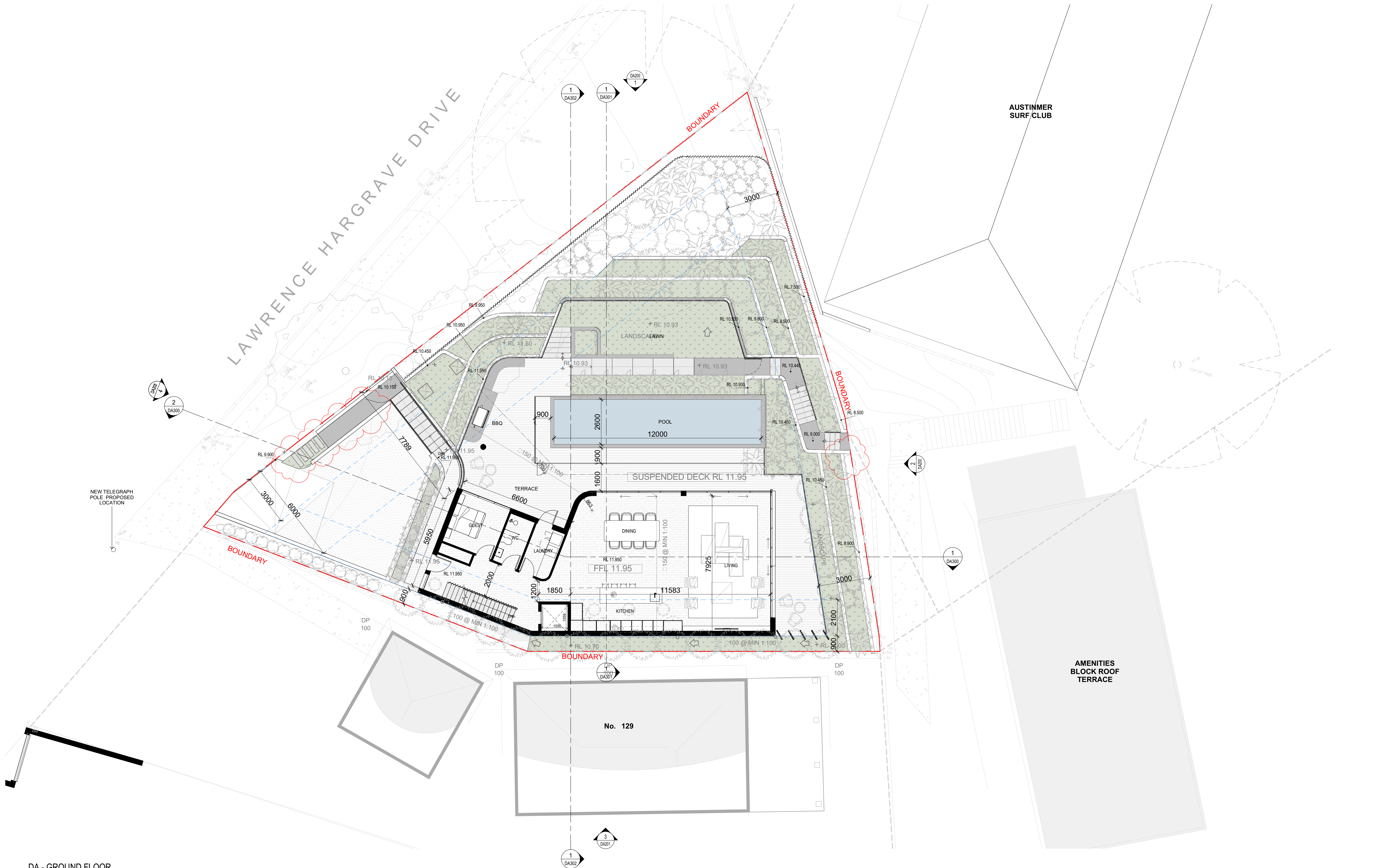
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PLAN - BASEMENT

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20220077 - DA100



DA - GROUND FLOOR
SCALE 1 : 100

Issue		
No.	Date	Description
A	16.08.2022	FOR DA SUBMISSION
B	21.02.2023	FOR DA SUBMISSION
C	24.10.2023	FOR DA SUBMISSION

Project
Austinmer House

Client
Bruce & Tracey Ager
Address
127 Lawrence Hargrave Drive, Austinmer -
NSW 2516

- EXISTING TREE TO BE DEMOLISHED
- EXISTING TREE TO BE RETAINED
- TREE PROPOSED

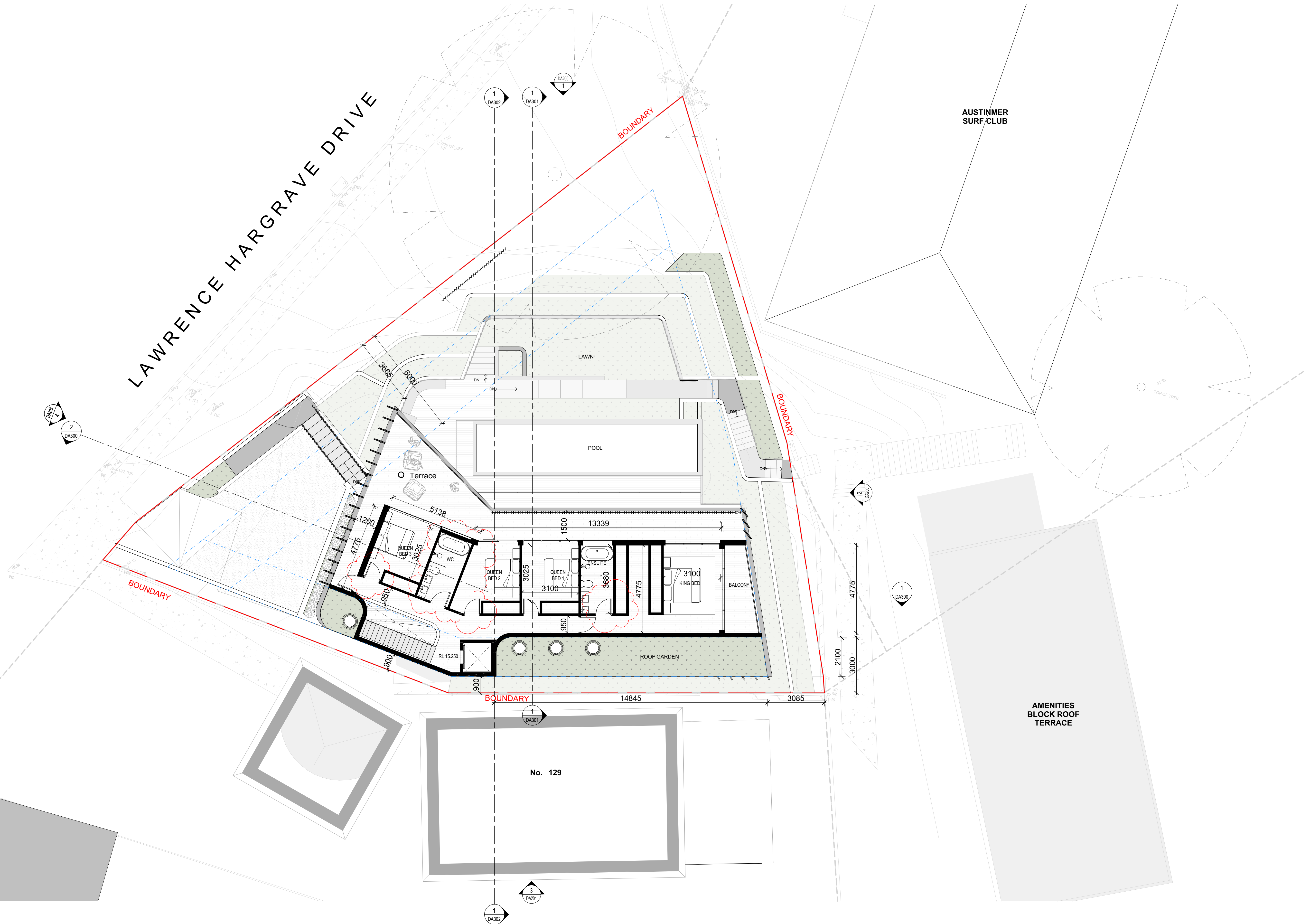
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Drawing Title
PLAN - GROUND FLOOR

Date AUG / 2022
Scale As indicated @ A1
Drawing Reference
20220077 - DA101



DA - FIRST FLOOR
SCALE 1 : 100

Issue		
No.	16.08.2022	FOR DA SUBMISSION
A	24.10.2023	FOR DA SUBMISSION
B		

Project
Austinmer House

Client
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NSW 2516

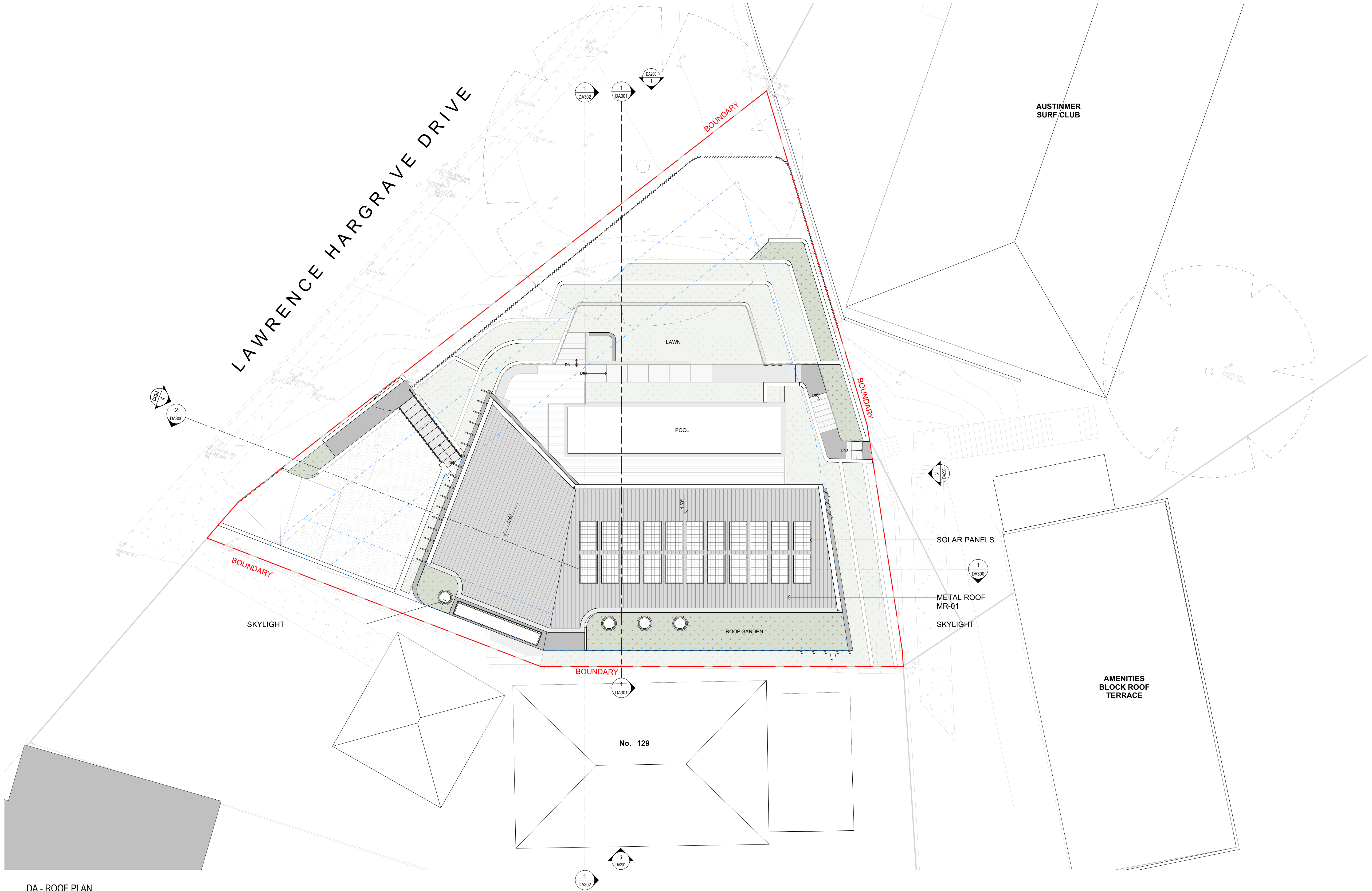
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Drawing Title
PLAN - LEVEL 01

Date
AUG / 2022
Scale
1 : 100 @ A1
Drawing Reference
20220077 - DA102



DA - ROOF PLAN
SCALE 1 : 100

Issue
No.
A 16.08.2022 FOR DA SUBMISSION

Project
Austinmer House

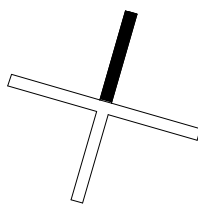
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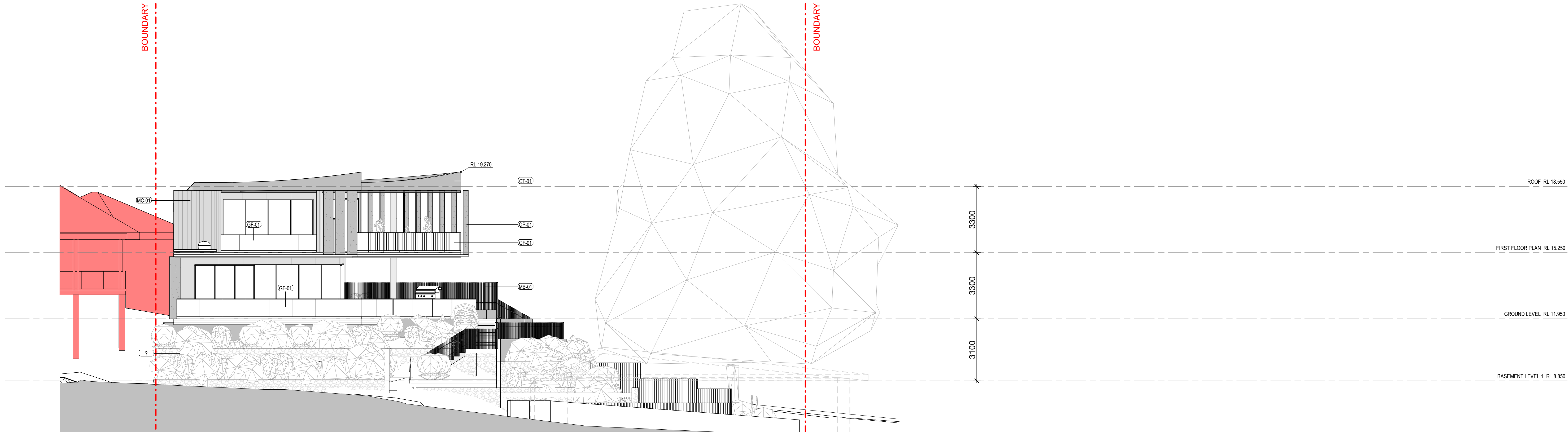
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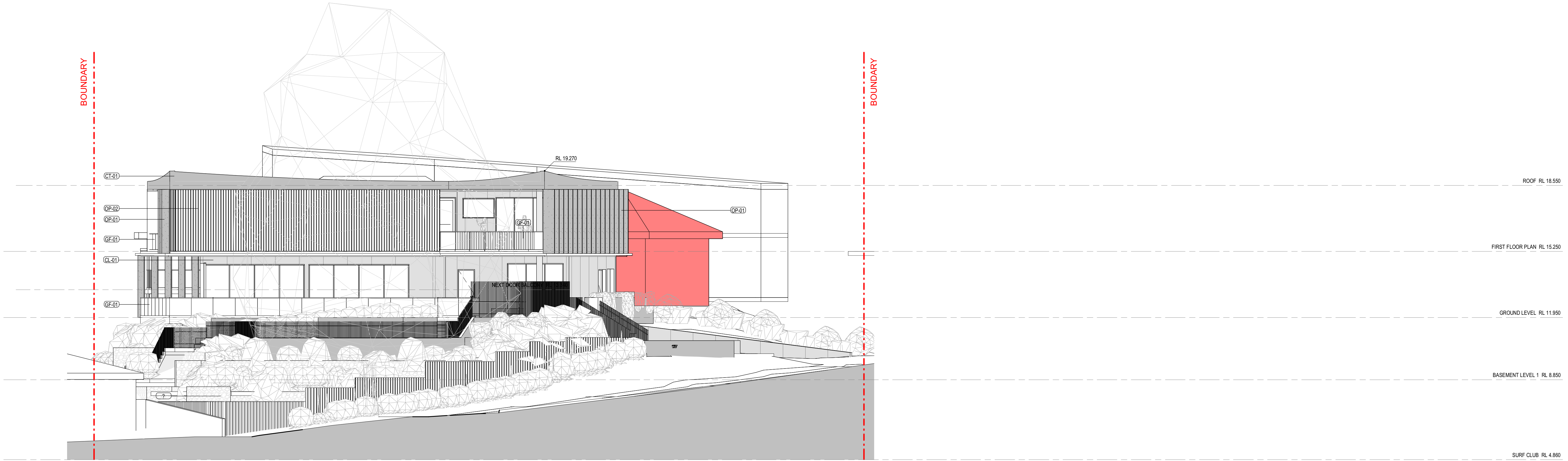
Drawing Title
PLAN - ROOF



Date
AUG / 2022
Scale
1 : 100 @ A1
Drawing Reference
20220077 - DA103



EAST ELEVATION
SCALE 1 : 100



NORTH ELEVATION
SCALE 1 : 100

Issue
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A

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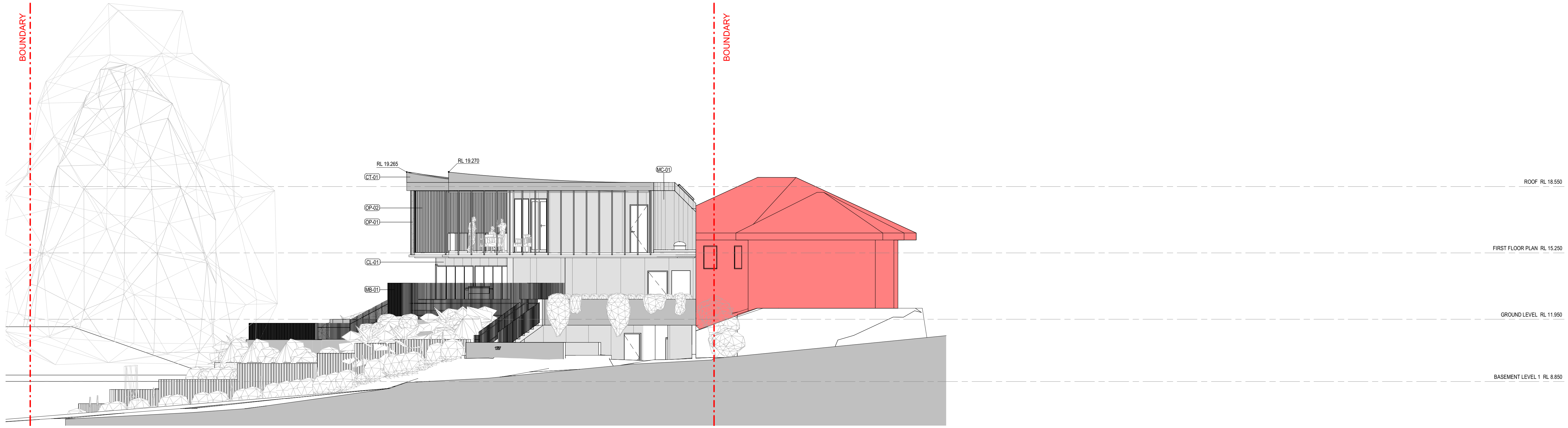
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ELEVATIONS

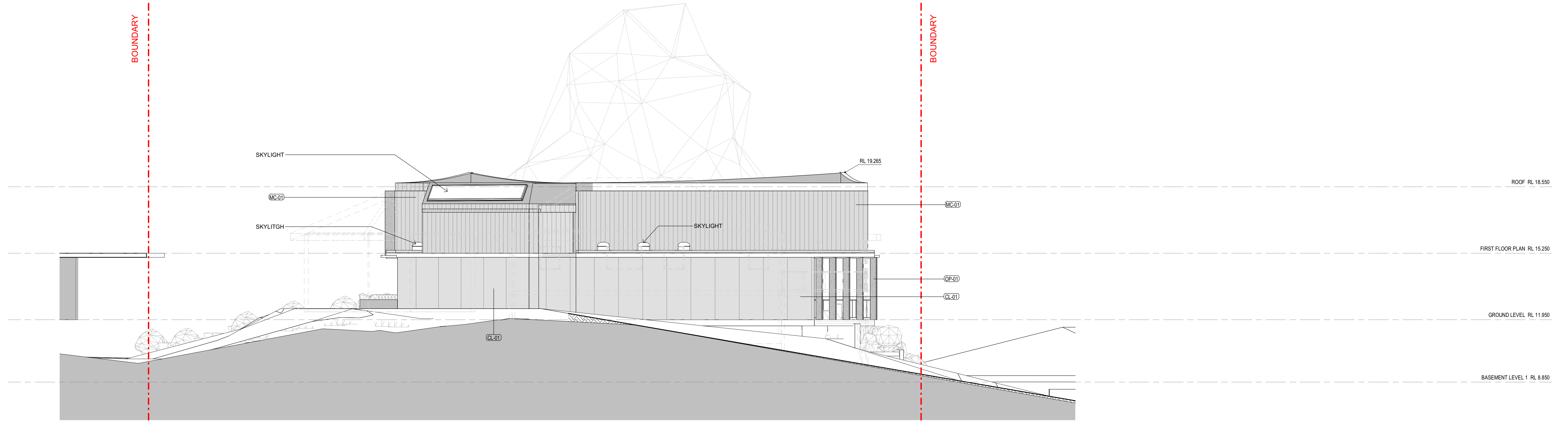
Date AUG / 2022
Scale 1 : 100 @ A1

0 1 2 3 4 5 6m

Drawing Reference
20220077 - DA200



WEST ELEVATION b
SCALE 1 : 100



SOUTH ELEVATION
SCALE 1 : 100

Issue
No. 16.08.2022 FOR DA SUBMISSION
A

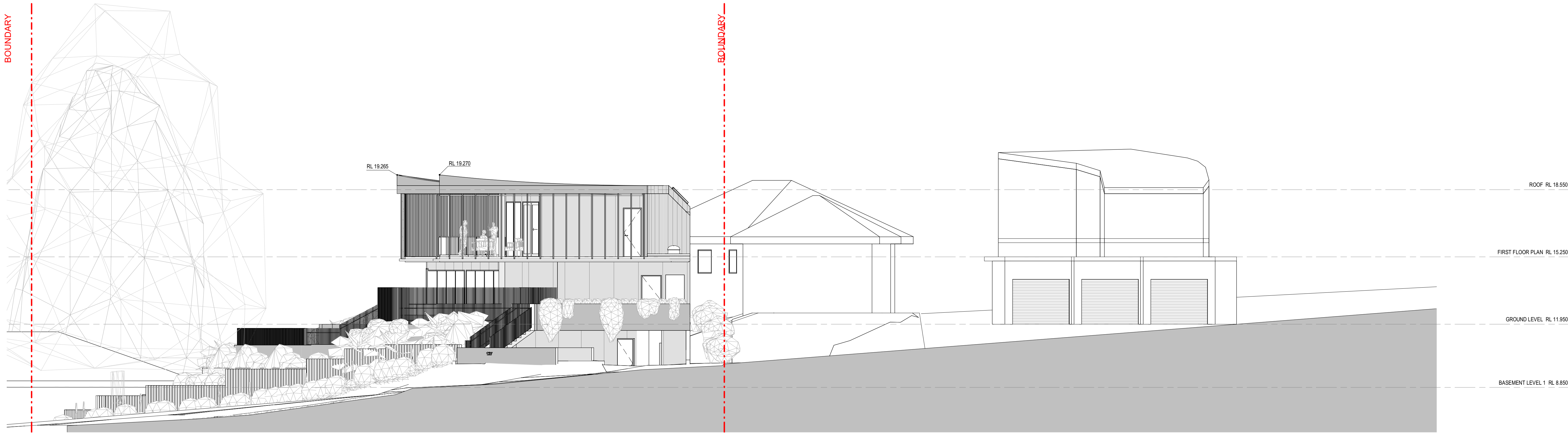
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ELEVATIONS

Date AUG / 2022
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Drawing Reference
20220077 - DA201



STREET ELEVATION
SCALE 1 : 100

Issue
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A 21.02.2023 FOR DA SUBMISSION

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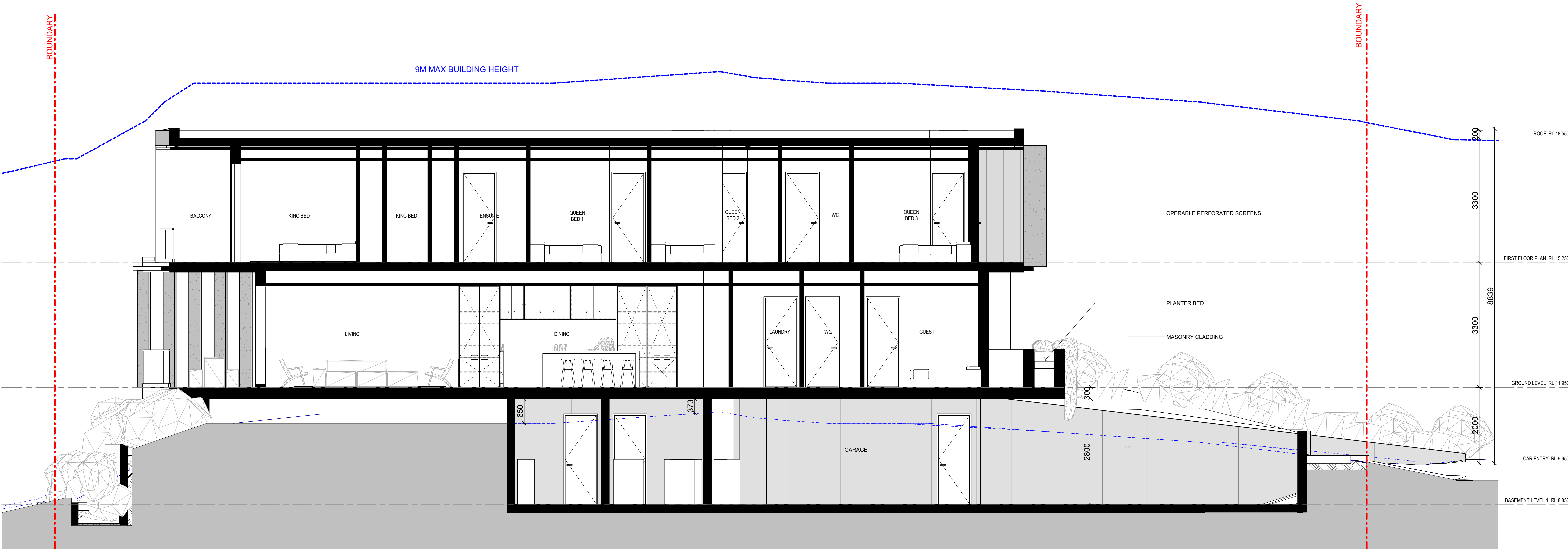
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STREET ELEVATION

Date
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Drawing Reference
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SECTION 01_a
SCALE 1 : 50

SECTION 01_b
SCALE 1 : 50

Issue
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Drawing Title
SECTION

Date
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Scale
1 : 50 @ A1

0 1 2 3 4 5 6m

Drawing Reference
20220077 - DA300

BOUNDARY

BOUNDARY

9M MAX BUILDING HEIGHT

ROOF RL 18.550

FIRST FLOOR PLAN RL 15.250

GROUND LEVEL RL 11.950

BASEMENT LEVEL 1 RL 8.850

OPERABLE ALUMINIUM SCREENS

ROOF GARDEN

QUEEN
BED 1

DINING

KITCHEN

POOL

PLANT
ROOM

683

SECTION 02
SCALE 1 : 50

Issue
No.
A 16.08.2022 FOR DA SUBMISSION

Project
Austinmer House

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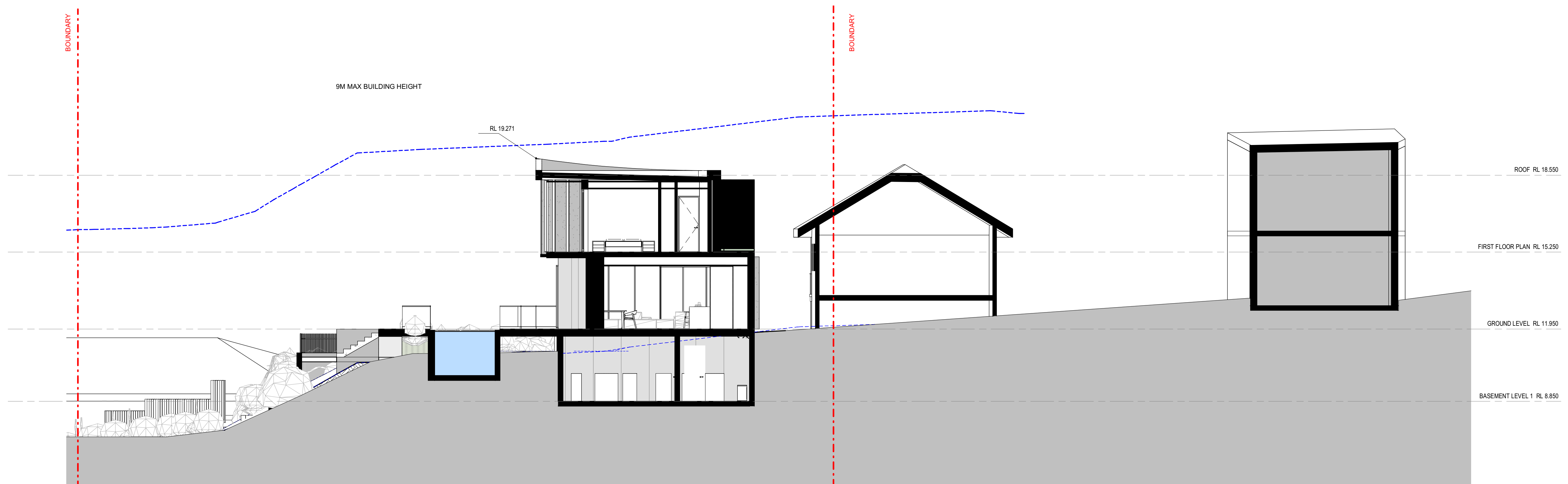
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Drawing Title
SECTION

Date
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Scale
1 : 50 @ A1

Drawing Reference
20220077 - DA301

0 1 2 3 4 5 6m



STREET SECTION
SCALE 1 : 100

Issue
No.
A 21.02.2023 FOR DA SUBMISSION

Project
Austinmer House

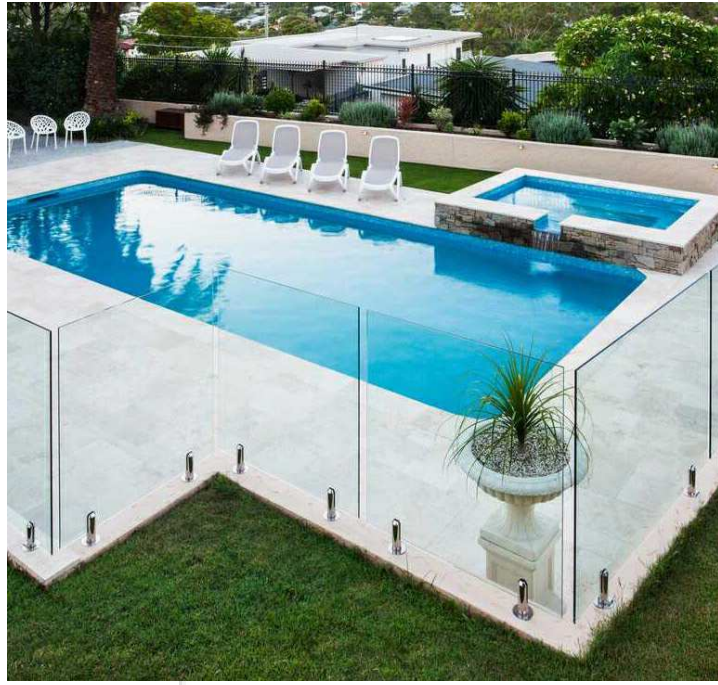
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Drawing Title
STREET SECTION

Date
AUG / 2022
Scale
1 : 100 @ A1

Drawing Reference
20220077 - DA302



GF-01
GLASS POOL FENCE



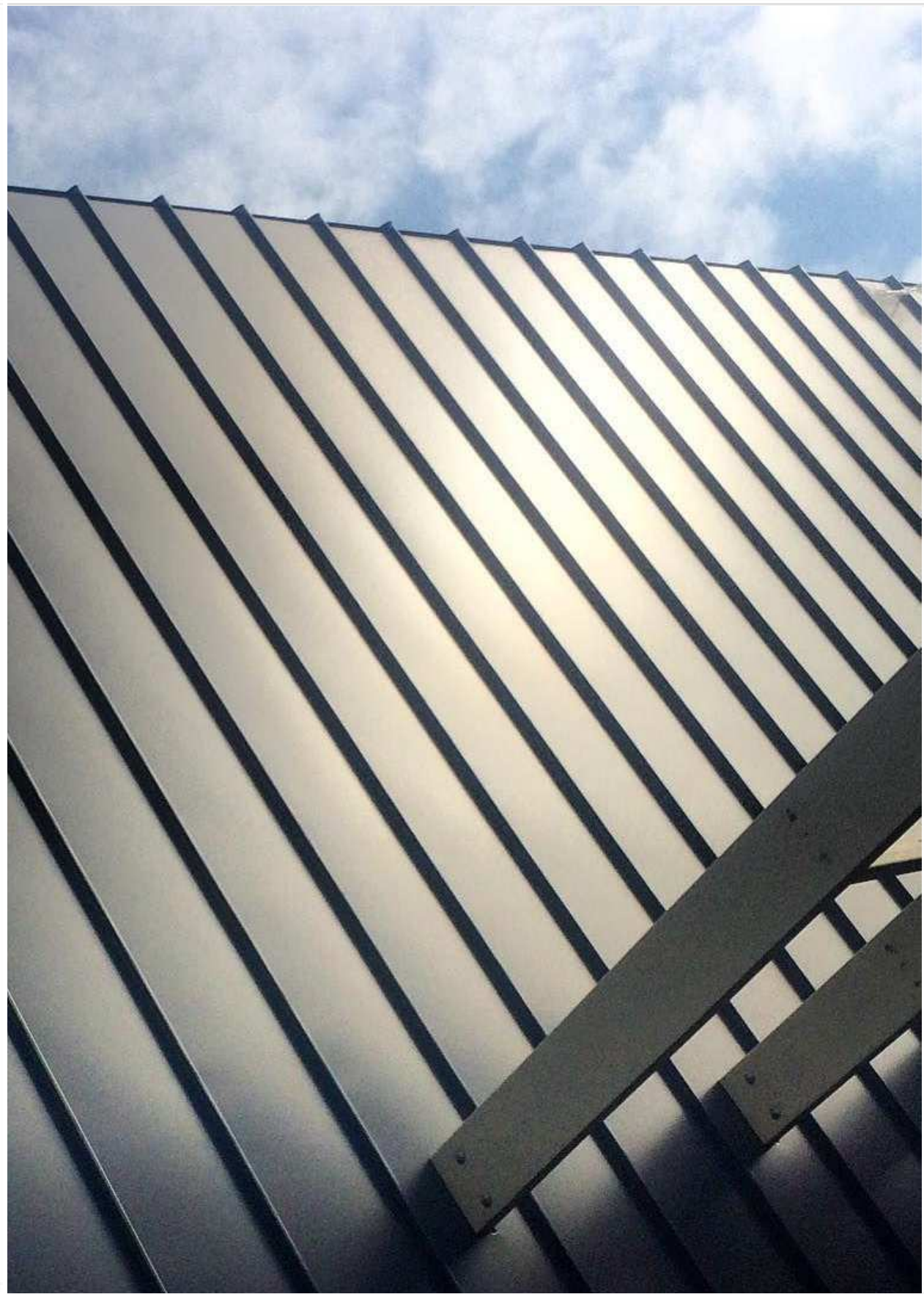
SN-01
GREY SANDSTONE



OP-01
OPERABLE PERFORATED PANEL
BLACK



TD-01
TIMBER DECKING



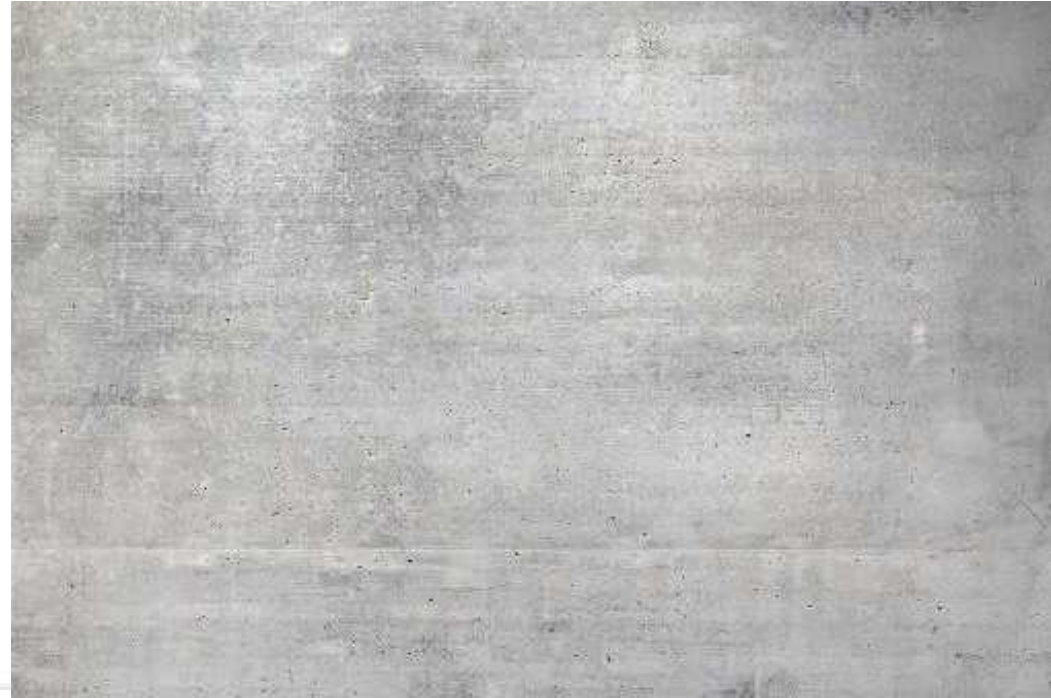
MC-01
METAL CLADDING
LYSAGHT STANDING SEAM



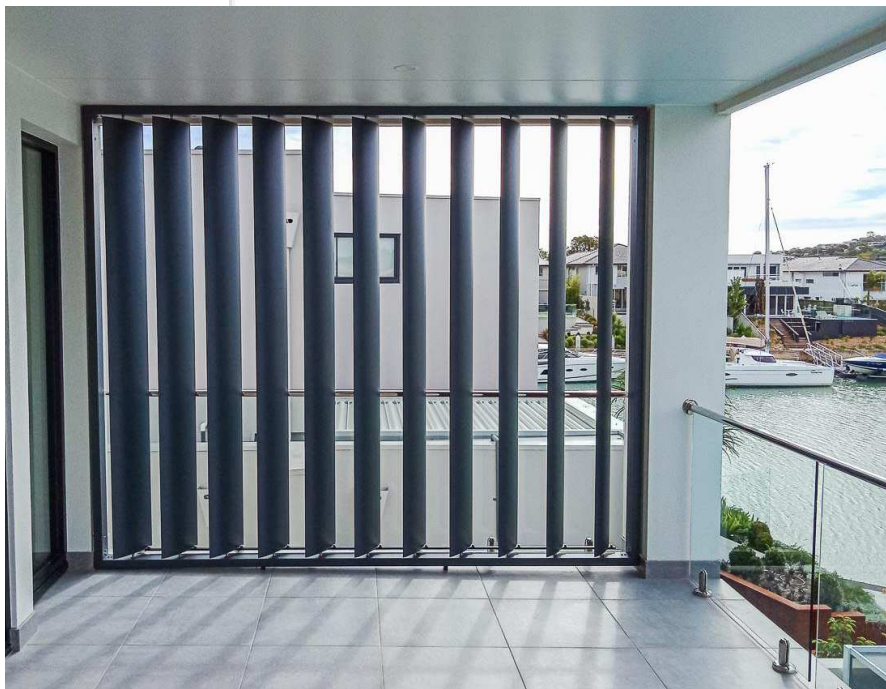
MB-01
METAL FLAT BAR BALUSTRADE
WHITE



FF-01
FLOOR FINISHING
BLACKBUT



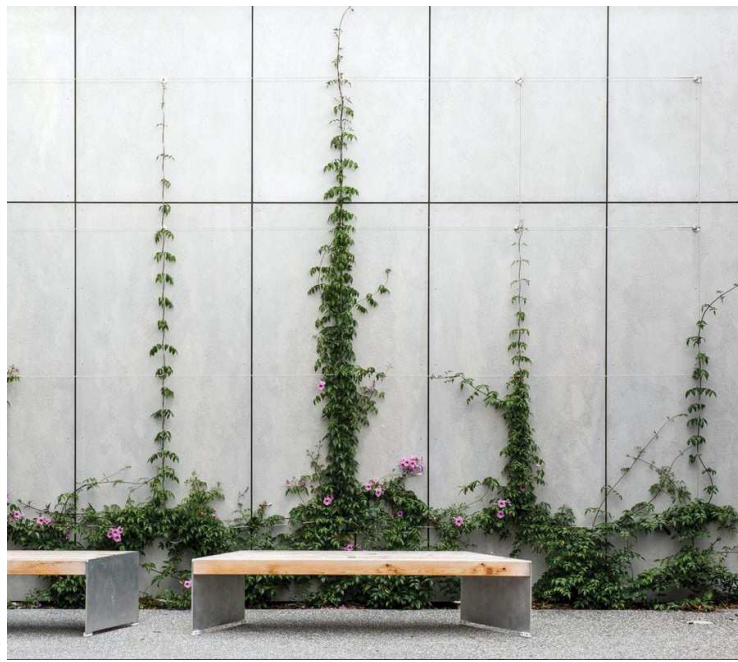
CT-01
OFF FORM CONCRETE



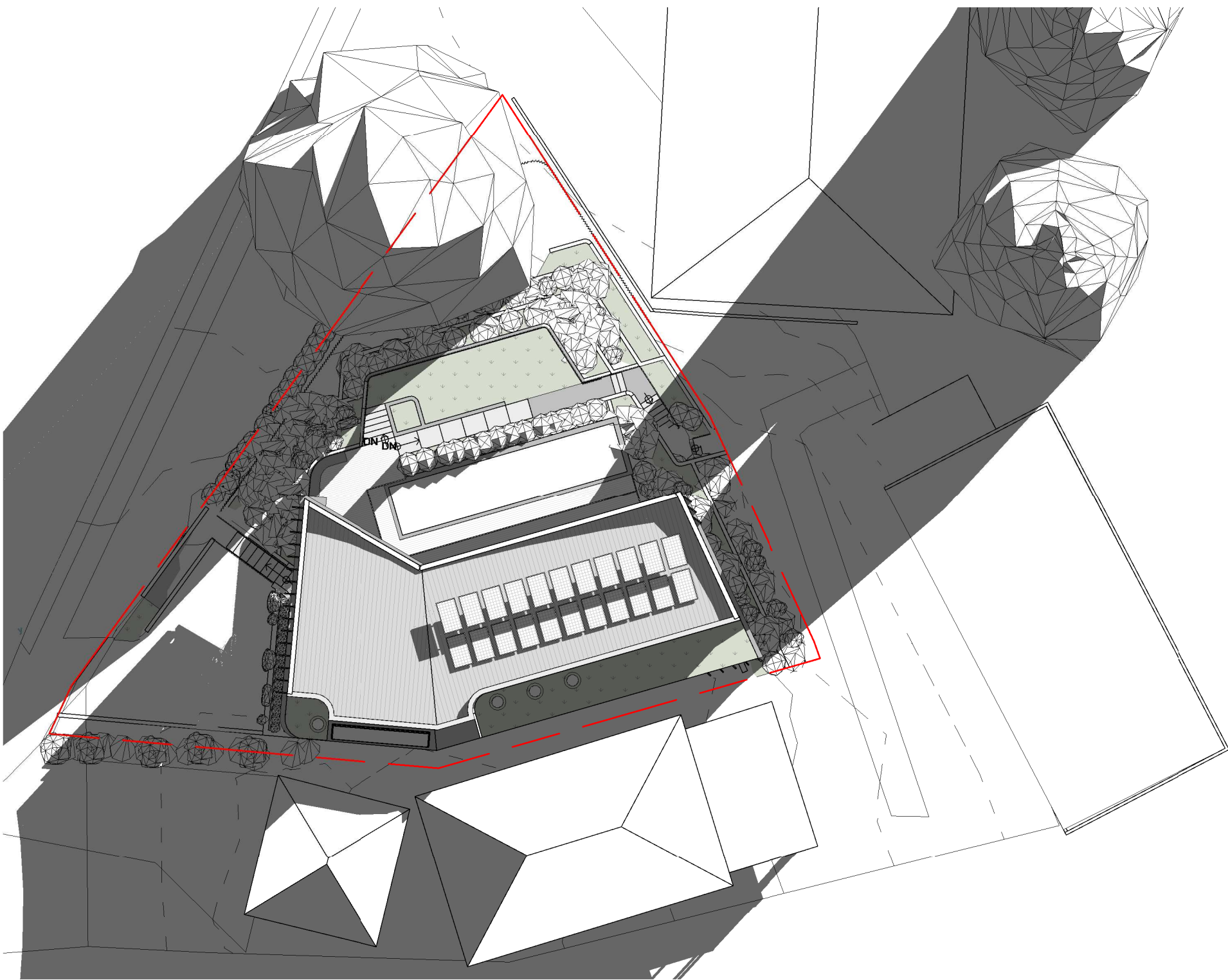
OP-02
OPERABLE ALUMINIUM SCREEN
BLACK



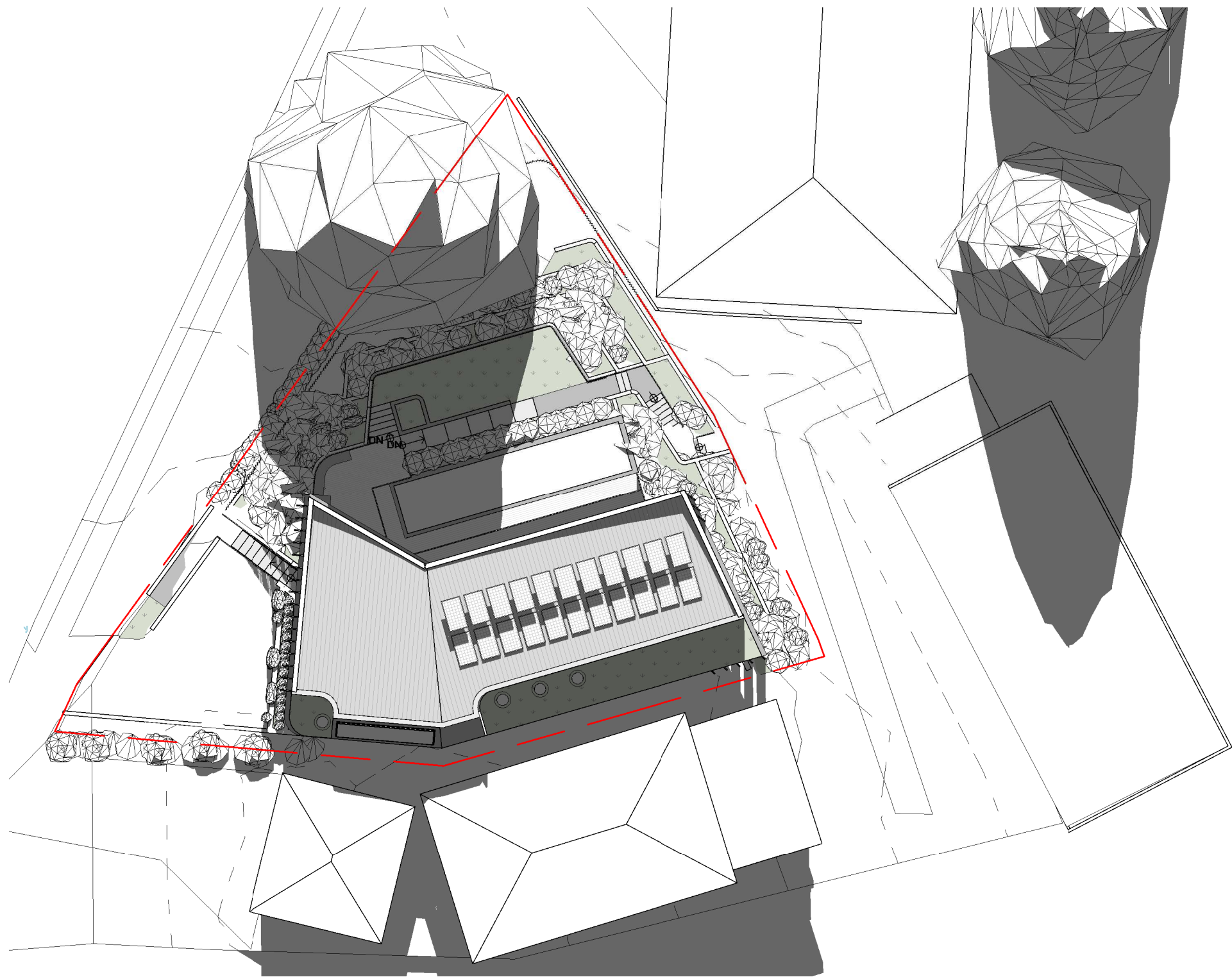
MR-01
METAL ROOF FINISH
COLORBOND



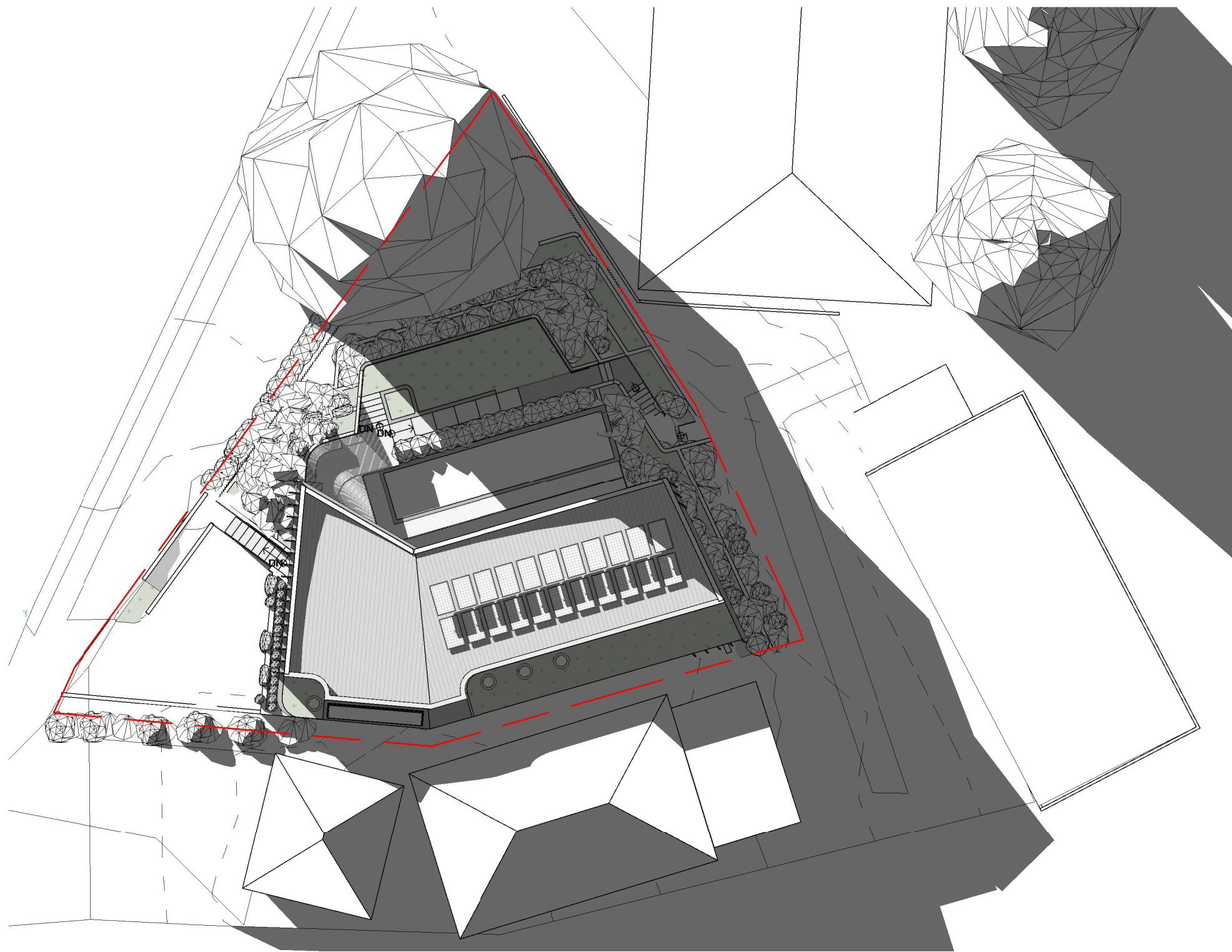
CL-01
CFC PANEL CLADDING



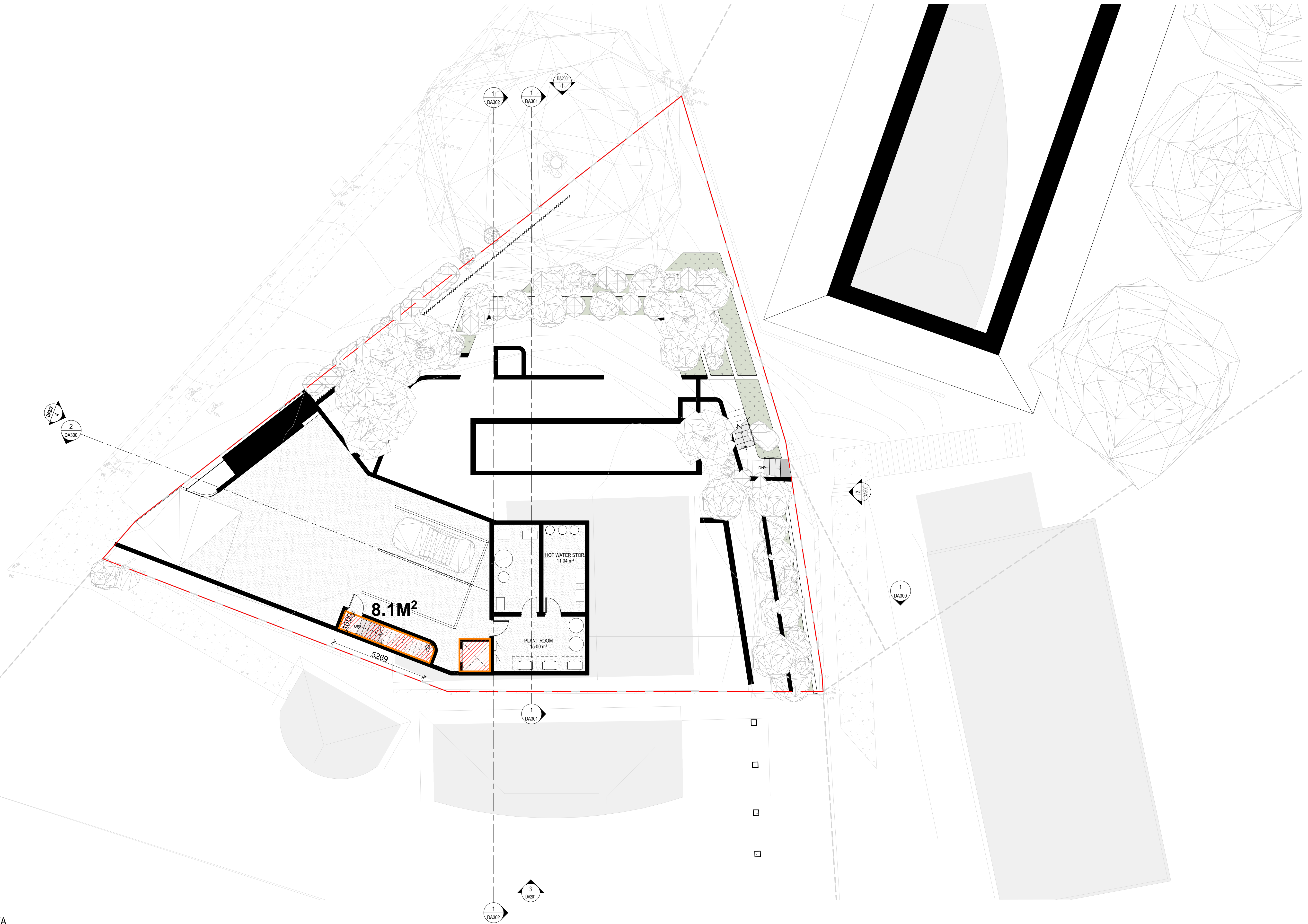
SITE PLAN _SHADOW DIAGRAM_JUN -9.00AM
SCALE 1 : 250



SITE PLAN _SHADOW DIAGRAM_JUN -12.00PM
SCALE 1 : 250



SITE PLAN _SHADOW DIAGRAM_JUN -15.00PM
SCALE 1 : 250



DA - BASEMENT - GFA
SCALE 1 : 100

Issue		
No.		
A	21.02.2023	FOR DA SUBMISSION
B	24.10.2023	FOR DA SUBMISSION

Project
Austinmer House

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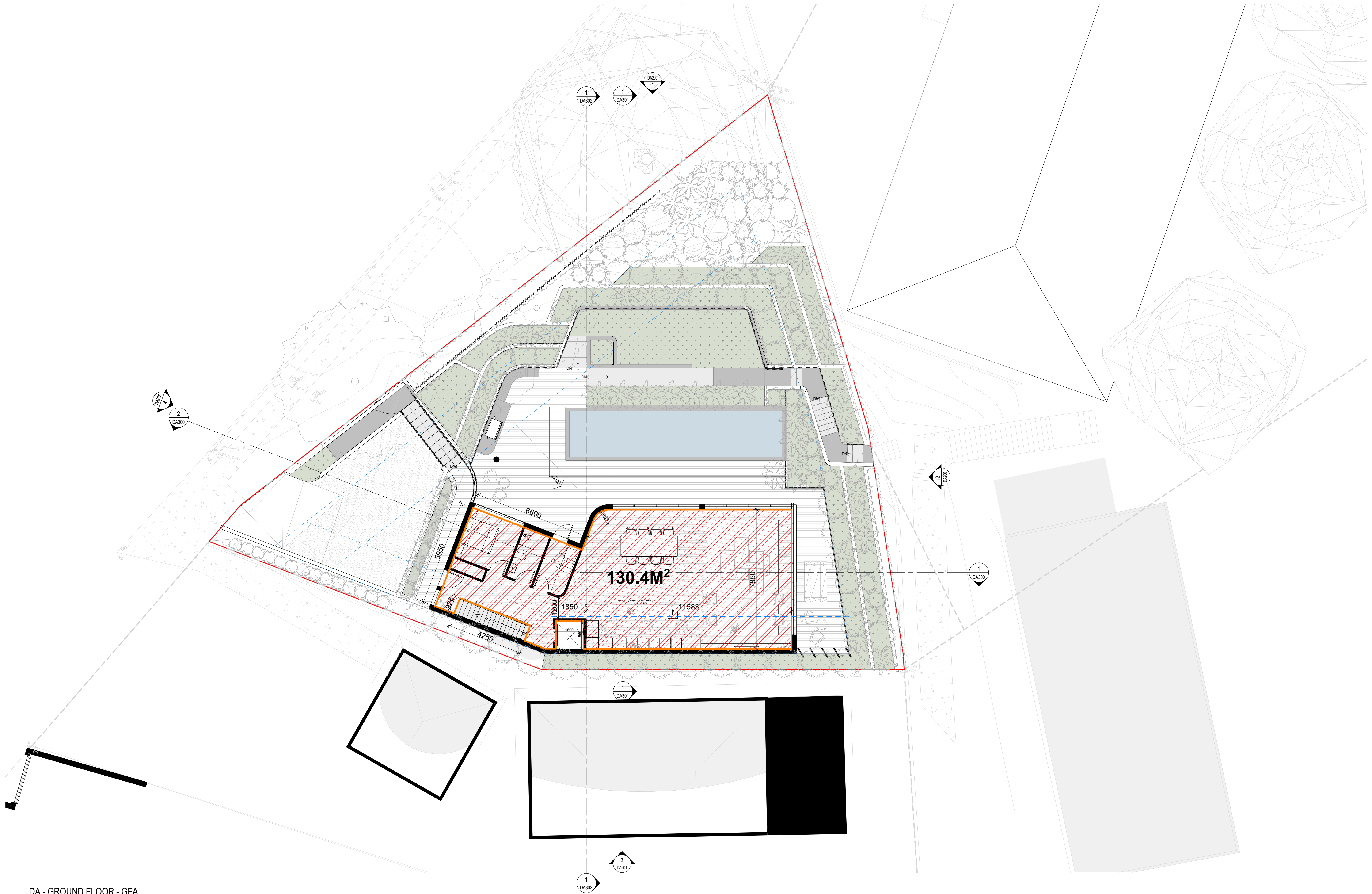
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Drawing Title
GFA DIAGRAM - BASEMENT

Date
AUG / 2022

Scale
1 : 100 @ A1

Drawing Reference
20220077 - DA800



DA - GROUND FLOOR - GFA
SCALE 1 : 100

Issue		
No.	21.02.2023	FOR DA SUBMISSION
A	24.10.2023	FOR DA SUBMISSION
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Date
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Issue
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CGI

Date
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Scale
@ A1

0 1 2 3 4 5 6m

Drawing Reference
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Scale
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A

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Drawing Title
CGI

Date AUG / 2022
Scale @ A1

Drawing Reference
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CGI

Date
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Scale
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Drawing Reference
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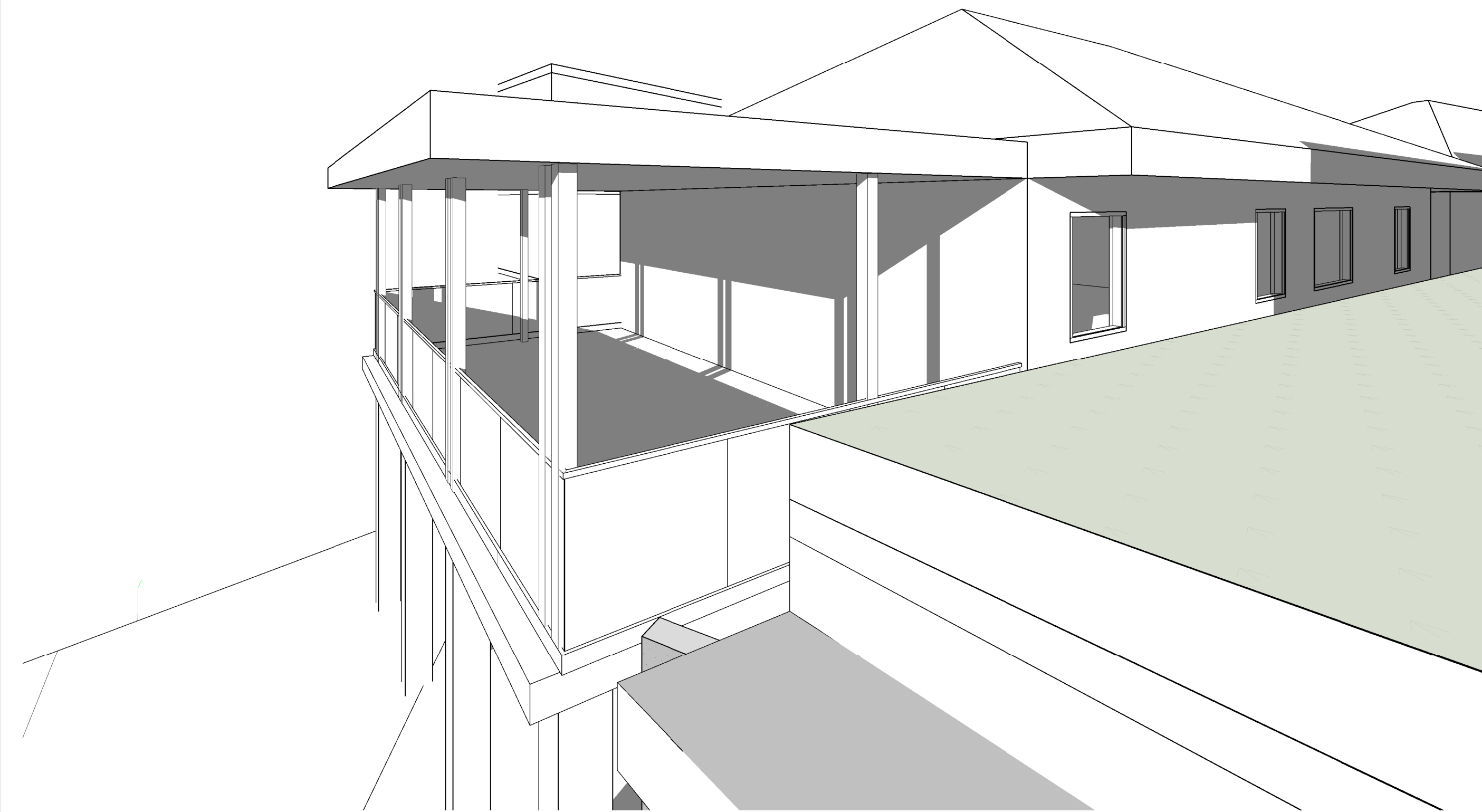
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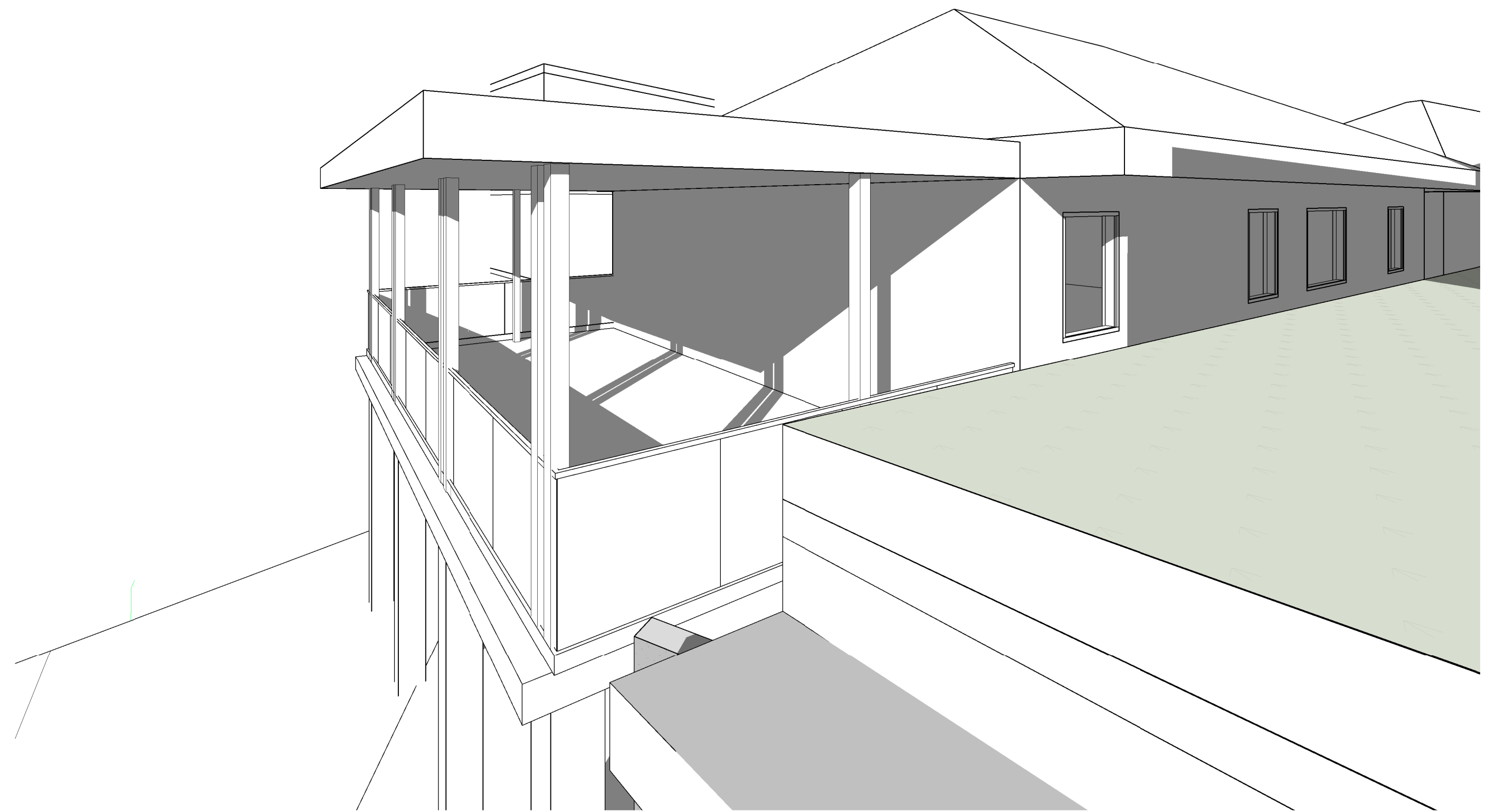
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Date
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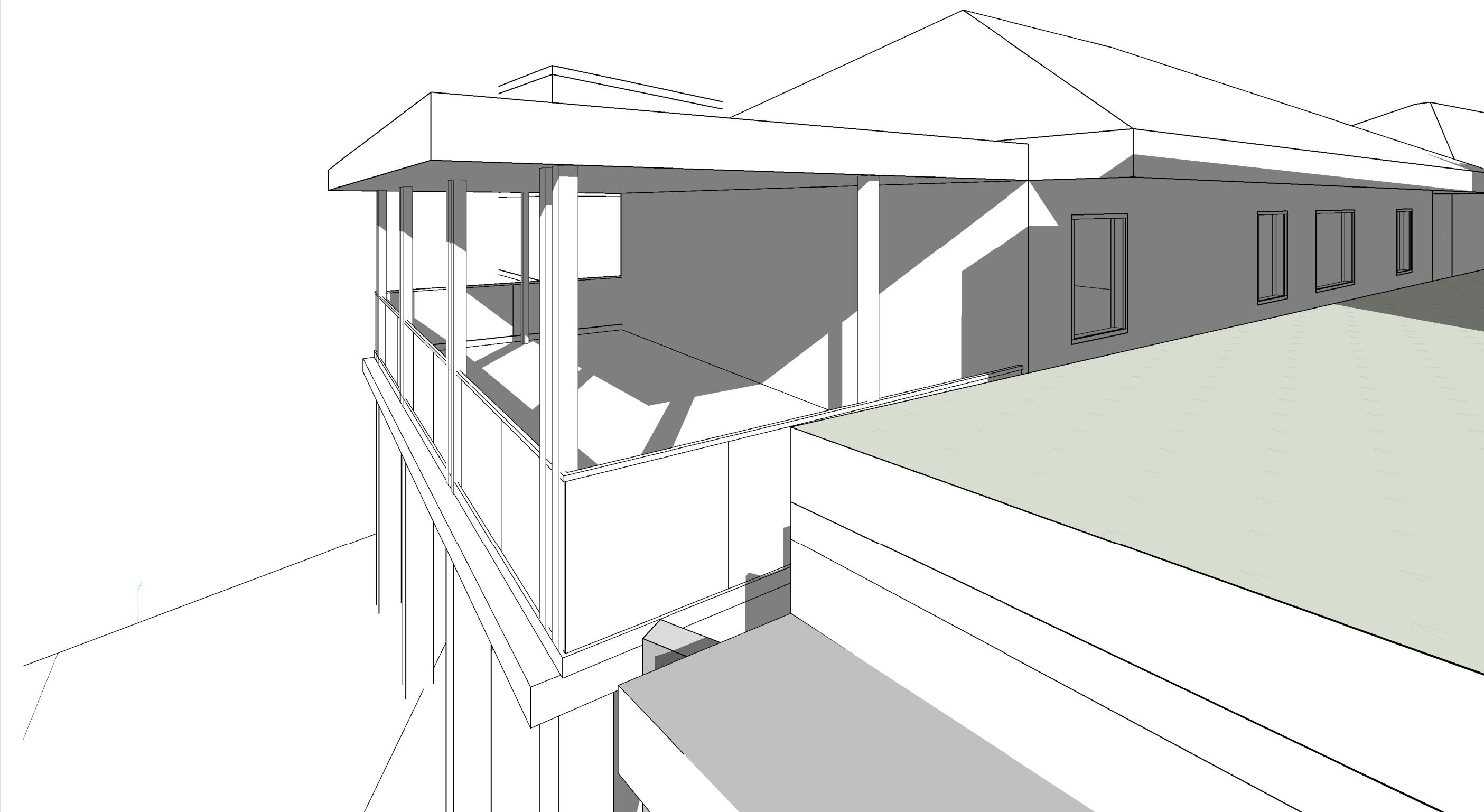
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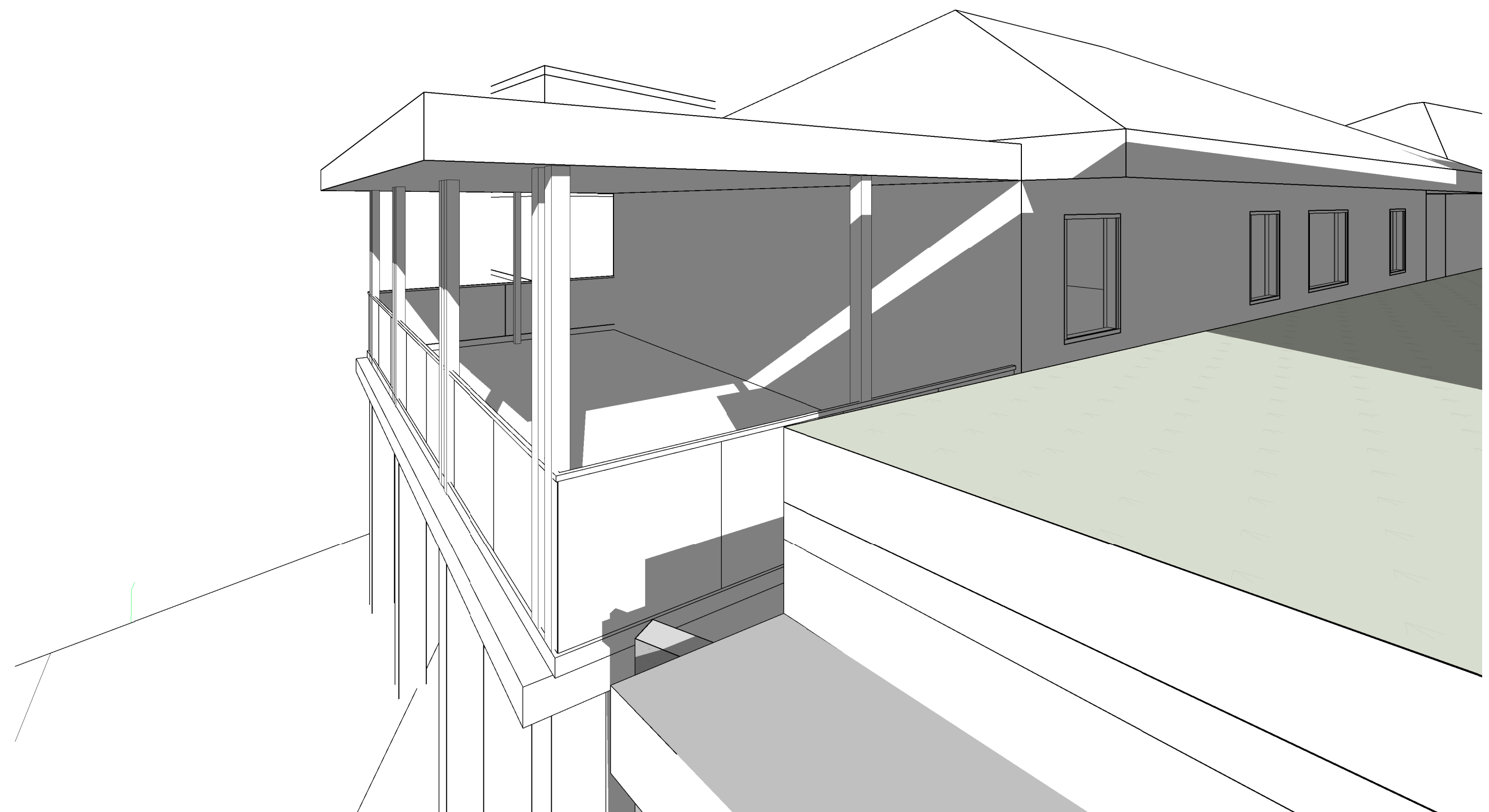
3D 129 BALCONY - 21.06.2022 - 8.30AM



3D 129 BALCONY - 21.06.2022 - 9.30AM



3D 129 BALCONY - 21.06.2022 - 10.30AM



3D 129 BALCONY - 21.06.2022 - 11.30AM

Issue
No.

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Drawing Title
129 BALCONY SOLAR DIAGRAM

Date AUG / 2022
Scale @ A1

Drawing Reference
20220077 - SK901

CHAPTER B1 – RESIDENTIAL DEVELOPMENT**4.0 General Residential controls**

<i>Controls/objectives</i>	<i>Comment</i>	<i>Compliance</i>
<u>4.1 Maximum Number of Storeys</u>		
<ul style="list-style-type: none"> Max 9m / 2 storey in R2 zone Max 13m / 3 storey in R3 zone In R2 Low Density Residential zones, where development occurs within the 8m rear setback the development is limited to single storey, so as to not adversely impact on the amenity of the adjoining property. Landscaping may be required within the side and rear setbacks to mitigate the visual impact of the building form from adjoining properties. 	The proposal has a total height of 8.7m and is two storeys in height.	Yes
<u>4.2 Front Setbacks</u>		
<ul style="list-style-type: none"> 6m front setback 	Parts of the proposed terrace/balcony and front steps has a front setback of <6m Terrace/balcony at 3.66m	No – variation supported See Section A1 of the report.
<u>4.3 Side and Rear Setbacks</u>		
<ul style="list-style-type: none"> Minimum 900mm 	The proposal has a northern rear setback of 18.4m The southern side setback is 900m The eastern side setback is 3m.	Yes
<u>4.4 Site coverage</u>		
55% (lot area <450m ²)	The proposal has a total site coverage <50%	Yes
50% (450m ² to 900m ²)		
40% (>900m ²)		
<u>4.5 Landscaped Area</u>		
<ul style="list-style-type: none"> lot area less than 600m² - 20% landscaped area lot area from 600m² to 900m² – 120m² + 30% of the site area > 600m² landscaped area lot area greater than 900m² - 210m² + 40% of the site area > 900m² landscaped area. At least 50% of the landscaped area must be located behind 	There is a total landscaped of >200m ² . Appropriate landscaping has been incorporated into the site and considers drainage.	Yes

Controls/objectives	Comment	Compliance
<p>the building line to the primary road boundary.</p> <p><u>4.6 Private Open Space</u></p> <ul style="list-style-type: none"> • 24m² minimum POS area, minimum 4m dimension • should not be located on side boundaries or front yard • defined through the use of planting, fencing, or landscape features. • screened where necessary • must not extend forward of the front building line by greater than 900mm. • Space shall be provided for clothes lines and waste/recycling bins and rain water tanks behind the front building line but outside of the private open space area. <p><u>4.7 Solar Access</u></p> <ul style="list-style-type: none"> • Windows to living rooms of adjoining dwellings must receive at least 3 hours continuous sunlight, between hours of 9.00am and 3.00pm on 21 June. 	<p>There are ample opportunities for private open space on the site.</p> <p>A POS area directly accessible from the main living area achieves a 24m² area. A north facing area directly accessible off the living area could also be utilised as POS</p> <p>It is setback appropriately from the building line,</p> <p>The lot to the south comprises a single dwelling with the balcony and POS to the eastern side facing the beach and solar access to the living rooms are not affected. The northern façade and bedroom room windows will have some shadow impacts with the proposal that are to some extent already affected with the existing structures and building.</p> <p>The new dwelling is proposed at the same location utilising the existing levelled areas. The design incorporates a larger part of the first floor facade to be setback at 3m while the ground floor is setback at 900mm from the southern boundary.</p> <p>Overshadowing from developments from similarly oriented (east–west) sites is not completely avoidable especially on sites having topographical constraints. Solar access to southern lot is considered acceptable in this circumstance based on a merit based assessment as there are no adverse loss of sunlight to the living areas and POS areas of the adjoining dwelling.</p> <p>The proposal also complies with the maximum building height development standard and minimum setback controls specified in the LEP and DCP.</p>	<p>Yes</p> <p>Yes</p>

Controls/objectives	Comment	Compliance
<ul style="list-style-type: none"> At least 50% of the private open areas of adjoining residential properties must receive at least 3 hours of continuous sunlight, between hours of 9.00am and 3.00pm on June 21. 		
<p><u>4.8 Building Character and Form</u></p> <ul style="list-style-type: none"> The design, height and siting of a new development must respond to its site context taking into account both natural and built form features of that locality. The design of the development must have particular regard to the topography of the site to minimise the extent of cut and fill associated with dwelling construction. 	<p>Plans suggest the dwelling responds to its site context and takes into account both natural and built form features of the locality..</p> <p>The incorporation of balconies and terraces on the front and side facades assist in reducing the bulk and scale of the proposal.</p> <p>No garage doors that dominate the street frontage as open car parking areas are provided within the basement floor. The entry is clearly visible and articulated from the rest of the façade.</p>	Yes
<p><u>4.9 Fences</u></p> <ul style="list-style-type: none"> Various. 	Front fencing proposed having height above 1.2m.	No – variation supported See section A1 of the report.
<p><u>4.10 Car parking and Access</u></p> <p>The provision of car parking shall be as follows:</p> <p>(a) 1 space per dwelling with a gross floor area of less than 125m²</p> <p>(b) 2 spaces per dwelling with a gross floor area of 125m² or greater</p>	<p>The proposal has an open car space for two vehicles within the basement area.</p> <p>Council's Development Engineer has reviewed the proposal with respect to car parking and access and provided a satisfactory referral subject to conditions.</p>	yes
<p><u>4.11 Storage Facilities</u></p> <ul style="list-style-type: none"> 10m³ / 5m² 	There is adequate storage space proposed within the dwelling.	Yes
<p><u>4.12 Site Facilities</u></p> <ul style="list-style-type: none"> To ensure that site facilities (such as clothes drying, mail boxes, recycling and garbage disposal units/areas, screens, lighting, storage areas, air conditioning units, rainwater tanks and communication structures) are effectively integrated into the development and are unobtrusive 	The proposal will have adequate site facilities to service the dwelling.	Yes

<i>Controls/objectives</i>	<i>Comment</i>	<i>Compliance</i>
<p><u>4.13 Fire Brigade Servicing</u></p> <p>ensure that all dwellings can be serviced by fire fighting vehicles.</p>	As existing	Yes
<p><u>4.14 Services</u></p> <ul style="list-style-type: none"> encourage early consideration of servicing requirements, to ensure that all residential development can be appropriately serviced. 	Site is appropriately serviced.	Yes
<p><u>4.17. Retaining walls</u></p> <p>A retaining wall or embankment should be restricted to a maximum height above or depth below natural ground level of no more than:</p> <p>(a) 600mm at any distance up to 900mm setback from any side or rear boundary; or</p> <p>(b) 1 metre, if the toe of the retaining wall or embankment is setback greater than 900mm from any side or rear boundary</p>	<p>Several retaining walls have been proposed to mitigate the slope on site. The retaining wall located close to the pool along the northern and eastern sides exceeds 1m in height.</p> <p>This retaining wall is setback from the side boundary by 1m</p>	No – variation supported. See section A1 of the report.
<p><u>4.18. Swimming Pool</u></p> <ul style="list-style-type: none"> Land must contain a dwelling Behind building line Not located on easement Minimum 900mm setback to the waterline Maximum 600mm above NGL Coping maximum 300mm wide Fences to comply with relevant AS Pool pump away from adjoining dwellings <p>Minimum 50% pool perimeter accessible for rescue purposes</p>	<p>Pool part of the dwelling</p> <p>Located behind building line</p> <p>no easement</p> <p>Parts of the pool wall and associated deck over 600mm above NGL</p> <p>Conditioned</p>	No – variation supported. See section A1 of the report.
<p><u>4.19 Development near railway corridors and major roads</u></p> <p>Development immediately adjacent to rail corridors needs to take into consideration the provisions of the SEPP Infrastructure under clause 85. Council may require to refer the development application to the Rail Authority.</p>	The application is not located within proximity to the rail corridor or a major road	NA

CHAPTER D1 – CHARACTER STATEMENTS

Austinmer

The proposal is considered to be consistent with the existing and desired future character for the locality.

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

The development requires two (2) car parking spaces for the dwelling. Council's Development Engineer has reviewed the application and provided a satisfactory referral. Car parking and access is considered satisfactory and will be suitably conditioned for.

CHAPTER E6: LANDSCAPING

Landscaping is considered satisfactory in accordance with this chapter of the DCP. The application has demonstrated that sufficient amounts of soft landscaping have been provided.

The proposal was reviewed by Council's Landscape Officer in regard to tree removal and appropriate conditions have been recommended in this regard including condition for tree replacement. It is noted that 2 trees are approved for removal. A final landscaping plan will be conditioned in this regard.

CHAPTER E11: HERITAGE CONSERVATION

The site itself does not contain heritage listed items but is in proximity to the WLEP2009 mapped and listed Austinmer Heritage Conservation Area, row of Norfolk Pines and the Austinmer War Memorial. Another item of community interest being the unlisted Austinmer Bathers Pavilion adjacent the site.

After the initial review of the proposal Council's Heritage officer requested a Heritage Impact Statement and raised concerns mainly related to visual impacts when viewed from the nearby Heritage Items and the Heritage Conservation area and the bulk of the development arising from the non-compliance with the FSR development standard, the retaining walls and fence. On reviewing the additional information submitted by the applicant matters related to the FSR exceedance and height of retaining walls were mentioned to be unresolved from a heritage perspective.

The departure to the FSR development standard and controls varying requirements for the retaining walls are assessed under other planning matters and found satisfactory as detailed in the following sections of this report. Additional conditions are also imposed regarding the selection of material finishes and colours in order to minimise the bulk and visual impacts when viewed from the neighbouring sites. The proposal is considered by planning staff to be satisfactory on Heritage grounds in this instance.

CHAPTER E12 GEOTECHNICAL ASSESSMENT

The application has been reviewed by Council's Geotechnical Engineer in relation to site stability and the suitability of the site for the development. Appropriate conditions have been recommended.

CHAPTER E14 STORMWATER MANAGEMENT

Stormwater is proposed to be disposed of to existing stormwater system. Council's stormwater engineer has reviewed the proposal with respect to the provisions of this chapter and has recommended conditions .

CHAPTER E17 PRESERVATION AND MANAGEMENT OF TREES AND VEGETATION

The application proposes tree removal for 2 trees on Council verge. Council's Landscape Architect has reviewed the application in this regard and concurs with this removal. Conditions have been recommended.

CHAPTER E19 EARTHWORKS (LAND RESHAPING WORKS)

Earthworks have been proposed for the basement, pool and landscaping works. Given the slope across the site. Council's Geotechnical Engineer has provided a satisfactory referral subject to conditions.

CHAPTER E21 DEMOLITION AND HAZARDOUS BUILDING MATERIALS MANAGEMENT

The application proposes partial demolition of an existing dwelling house and associated structures. Standard conditions for demolition have been applied.

CHAPTER E22 SOIL EROSION AND SEDIMENT CONTROL

Conditions are recommended in regard to appropriate sediment and erosion control measures to be in place during works.



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Updated - Variation Pursuant to Clause 4.6 - Wollongong LEP 2009
Clause 4.4 – Floor Space Ratio

No. 127 Lawrence Hargrave Drive, Austinmer
Proposed Dwelling-House

In accordance with the provision of Clause 4.6 of Wollongong Local Environmental Plan 2009, please consider the following request for a variation to 'Clause 4.4 – Floor Space Ratio' as part of the assessment of this Development Application for a new dwelling house.

Wollongong Local Environmental Plan 2009

Clause 4.6 Exceptions to development standards

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

In order to clarify the extent of matters required to be addressed within a request for a variation under Clause 4.6, consideration has been given to the following case law:

Winton v North Sydney Council
Wehbe v Pittwater [2007] NSWLEC827
Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC90
Randwick City Council v Micaul Holdings Pty LTD [2016] NSWLEC7
Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118
Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245

Review of these cases indicates that a request for a variation under the provisions of Clause 4.6 is more onerous than previously required under SEPP 1. The case of *Randwick v Micaul* indicates that Council, as the consent authority, maintains a high level of discretion with regard to the extent of justification required in order to support a variation request. The following must be demonstrated to Council's satisfaction within the justification provided:

- Identify the development standard & the extent of the variation requested;
- Compliance with the objectives of the development standard;
- Compliance with the objectives of the zone;
- That the development standard is unreasonable or unnecessary in the circumstances of the case;
- Sufficient environmental planning grounds that are particular to the circumstances of the proposed development; and
- Whether there is any matter of state or regional significance & consideration of public benefit.

This submission individually addresses each of the above requirements in the following manner:

Identification of Development Standard & Extent of Variation

A variation is requested to the following clause within Wollongong LEP 2009:

'Clause 4.4 – Floor Space Ratio

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).

The floor space ratio map identifies this site has having a FSR of 0.3:1. The permitted and proposed floor areas are identified below:

<i>Permitted FSR</i>	<i>Proposed FSR</i>	<i>Extent of variation</i>
Site Area – 710.7m ² FSR - 0.3:1 Floor Area – 213.21m ²	FSR – 0.336:1 Floor Area – 238.5m ²	25.29m ² or 11.86%

Compliance with the objectives of the development standard

The development continues to achieve the objectives of *Clause 4.4 – Floor Space Ratio* in the following manner:

- (a) *to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- (b) *to establish the maximum development density and intensity of land use, taking into account the availability of infrastructure to service that site and the vehicle and pedestrian traffic the development will generate,*
- (c) *to ensure buildings are compatible with the bulk and scale of the locality.*

The variation is not the result of an oversized dwelling, rather it relates to the reduced FSR allowance for the properties along the coast zoned C4 – Environmental Living. The C4 zoning and reduced FSR are due to many beachside allotments having environmental constraints to mitigate against, view corridors to consider and to encourage developments to have a high aesthetic value due to their prominence within the beach reserves.

Where a new dwelling provides a high-quality design, appropriately considers view lines and environmental constraints have been mitigated, it is common for the 0.3:1 FSR to be varied along the coastal strip within the northern suburbs of Wollongong. This is predominantly due to the ability for the larger size dwellings to fit within the streetscape character of the area as the opposite side of the road is within the R2 Low Density Residential Zone with a FSR allowance of 0.5:1.

While this approach is noted to have been applied relatively recently by Council along Lawrence Hargrave Drive in Austinmer (No. 157), it is also a common approach that has been taken for many C4 zoned allotments within Coledale Avenue and Hyde Street, Coledale. In these areas, not only has Council supported increased floor areas, the Wollongong Local Planning Panel and the NSW Land & Environment Court have also supported such variations. Many of these determinations suggest that a floor space ratio of up to 0.5:1, in line with the alternate side of the street is a reasonable approach, subject to site specific considerations.

In this instance, the proposed dwelling is only seeking a minor increase in FSR to 0.336:1 and remains well below the scale of many nearby developments. In this area of Austinmer, the streetscape incorporates single and two storey dwellings, shop-top housing, commercial developments, 2 & 3 storey townhouses, residential flat buildings and a surf club that directly adjoins the site. The varied character and density within the immediately surrounding area ensures the minor increase of 25.29m² will not be visually apparent or out of keeping with the character of the area.

The development is considered to achieve the objectives of the floor space ratio development standard despite the requested variation.

Compliance with the objectives of the zone

The objectives of the C4 Zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*

The site is zoned C4 as it is located in close proximity to the coastal foreshore with increased environmental considerations and a high level of visibility from public land. The dwelling design, including the increased floor area, has the support of a coastal engineer, geotechnical engineer and provides a site-specific design that addresses the many view points from which the dwelling will have a level of prominence.

The site is within proximity to items of heritage significance, being the war memorial and Norfolk island pine trees located within the beach reserve, along with the nearby Moore Street heritage conservation area. As detailed in the Heritage Impact Statement submitted for review, the development is found to be appropriately designed and sited to ensure there is no detrimental impact on the significance of these items. It will not obstruct any line of sight toward the items from prominent locations and will not dominate their curtilage.

As the overall dwelling design gives consideration to the amenity of the surrounding sites and will not impact on the aesthetics of the streetscape or the significance of surrounding heritage items, the development as proposed is found to achieve the objectives of the C4 Environmental Living Zone.

Development Standard is unreasonable or unnecessary in the circumstances of the case

A detailed assessment of the bulk, scale, aesthetic and environmental impact of the subject dwelling found that the site is capable of supporting the increased floor area without any impact beyond that of a compliant proposal. Compliance with the Floor Space Ratio development standard is considered to be both unreasonable and unnecessary for the following reasons:

- the dwelling design is able to remain well below the allowable site coverage & building height, while providing side and rear setbacks that exceed Council's requirements. This results in a large landscaped area to complement the dwelling and ensure it does not present as an overdevelopment of the site;
- the required view corridors are able to be provided and existing coastal view lines from the adjoining dwelling will not be impacted upon;
- the scale of the dwelling remains in keeping with contemporary dwellings within the area, partially due to the increased FSR allowance on the western side of LHD and partially due to several residential allotments to the south having a greater lot size and subsequent floor area allowance. The site is also within proximity to Austinmer's shops within the E1 Local Centre zone which have a FSR allowance of 0.75:1;
- the additional floor area will not result in additional site works or dwelling footprint, ensuring it will be not result in adverse impacts on ecological or scientific values of the site;
- the development, as proposed, will continue to achieve the objectives of the C4 Zone while addressing the unique siting of the allotment within an area of Austinmer having a notably varied character and density of development;
- the development, as proposed, will continue to achieve the objectives of the Floor Space Ratio development standard;
- the completed development will continue to achieve the aims and objectives of the EPA Act 1979.

Due to the reduced lot size of 710.7m² compliance with the floor space ratio of 0.3:1 would result in a maximum permitted floor area of 213.21m² which is not in line with the scale of contemporary coastal homes in the northern suburbs. When the floor space ratio was determined for these allotments within the C4 zone, it was applied in conjunction with a minimum lot size allowance of 999m² without direct consideration toward the existing reduced lot sizes. Application of both the minimum lot size and FSR concurrently would result in a floor area allowance of 300sqm, being a more reasonable allowance. In this instance the floor area of the dwelling remains quite modest at 238.5m² and is considered to be of a scale intended for the site.

In this particular location, land values are very high due to the waterfront location. It is a reasonable expectation for persons purchasing such land to be permitted to have a typical contemporary size dwelling. The proposed floor area of 238.5m² is considered to be a fair outcome for the site as the dwelling will continue to remain of a lesser scale than many nearby contemporary dwellings.

This concept was acknowledged in previous Council assessments, noting that compliance with the FSR of 0.3:1 on an undersized coastal allotment was *'unrealistic and unfeasible given the high land value of the area'*. As the intent of the development standard will continue to be achieved, with no impact on the surrounding area directly resulting from the increased floor area, the requested variation is considered to be most reasonable in this instance.

Sufficient environmental planning grounds that are particular to the circumstances of the proposed development

Initial Action Pty Ltd v Woollahra Municipal Council provides that while 'environmental planning' grounds are not defined, they would refer to the subject matter, scope and purpose of the *Environmental Planning & Assessment Act 1979* (EPA Act), including the objects in s1.3 of the EPA Act.

The objects of the EPA Act are noted to be:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows—

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

The subject dwelling, as proposed with a FSR of 0.336:1, will continue to achieve the objects of the EPA Act. Replacing an aged dwelling with a new contemporary coastal dwelling, in line with Council's desired future character of Austinmer, is considered to be an *orderly and economic use of the land*, without resulting in any detrimental impact on the surrounding natural environment.

Allowing for replacement of aged dwellings over time promotes *the proper construction and maintenance of buildings* utilises updated construction techniques and addresses the changing needs of landowners. The proposed dwelling will *promote good design and amenity of the built environment*. The objects of the Act are directly achieved as a result of the proposed works.

It is essential in the assessment of the Clause 4.6 variation and the subsequent consideration of 'environmental planning grounds', according to *Initial Action Pty Ltd v Woollahra Municipal Council*, that the focus remains on the *'aspect or element of the development that contravenes the development standard, not of the development as a whole'*.

In this regard, the following questions are considered:

What are the direct impacts arising from the variation and how have they been established?

It would be reasonable to suggest that if asked to remove the 25.29m² additional floor area, this could occur by removing upper Bedroom 3 and the adjacent hallway (being closest to the major roadway) and reconfiguring and reducing the size of the upper bedrooms. This area would then create a larger upper terrace without changing the overall building envelope of the dwelling. This reduction in the number of bedrooms would no longer meet the needs of the property owner and would not result in any notable difference to the built form, rather it may result in a design that appears out of balance.

It is not considered that the minor increase in floor area is resulting in any detrimental impacts that would not be present within a compliant dwelling on this site. The requested increase in floor area allows for an improved use of the site and provides an internal amenity of a reasonable standard.

What are the indirect and cumulative impacts arising from the variation?

There are not considered to be any indirect or cumulative impacts resulting from the variation. There will be no precedent set as a result of this application, beyond that already established by Council. While Council is noted to consistently consider floor area variations on coastal C4 zoned allotments, each assessment is to be site specific. This particular site has only 1 adjoining residential property, with all remaining boundaries adjoining public land. This results in the site having an open feel and reduced opportunity to impact on residential amenity. No indirect or cumulative impacts are noted.

Is the desired future character of the area maintained

The minor extent of the variation will not be visually apparent and will not result in any detriment to the streetscape character of the area or the amenity of the adjoining sites. The development will remain in keeping with the scale of contemporary dwellings within the streetscape character and is balanced with a

far greater landscaped area than is available on most sites. There is no apparent impact on the desired future character of the area as a result of the increased floor area.

Has any visual intrusion been minimised?

Visual intrusion has been suitably mitigated by incorporating a basement within the design, a high level of articulation throughout each elevation and offset boundary setback at ground and first floor. The overall height and site coverage remain well below Council's allowance. This application is not pushing to maximise all 'bulk and scale' related controls, rather focusing on a site specific design that would benefit from a slightly increased floor area in order to enhance internal amenity.

Consideration has been given to the visual impact of the development on nearby heritage items and there is found to be no detrimental impact on the significance of the items or lines of sight to such items from public land.

Has the control been abandoned?

Application of the 0.3:1 Floor Space Ratio control for coastal C4 Zoned dwellings in the adjoining suburb of Coledale has been acknowledged as having been abandoned. This has been demonstrated in approvals granted by Wollongong Council, Wollongong Local Planning Panel and the NSW Land & Environment Court within both Hyde Street and the C4 zoned allotments within Coledale Avenue. The purpose of consistently varying this control within Coledale relates to the proximity of the sites to R2 Zone land (western side of same road) which have an increased FSR of 0.5:1. This enables larger dwellings on the C4 land to remain in keeping with the streetscape.

It is considered that the same principle applies to the C4 zoned land within Austinmer. The western side of Lawrence Hargrave is predominantly zone R2 with a nearby pocket of E1 zoned land presenting a FSR of 0.75:1. The subject site also has a direct line of sight between the proposed dwelling and the built form within the E1 Zone. If anything, the sites in this area of Austinmer have increased grounds for Council to abandon the control due to the streetscape incorporating a number of developments with a far higher density and a reduced need for view corridors due to the topography preventing most sites from achieving water views through the C4 zoned allotments.

Noting Council has granted a floor space variation relatively recently at No. 157 Lawrence Hargrave Drive, it would be fair to suggest that the development control has been abandoned for C4 coastal allotments in the broader northern suburbs of Wollongong.

The site-specific design is found to appropriately balance a functional dwelling with a positive contribution to the streetscape, while taking into account the siting and design of surrounding developments. These attributes combined with the developments ability to achieve the objectives of the EPA Act, C4 Environmental Living Zone and the development standard itself, provide site specific environmental planning grounds in support of the minor increase in floor area.

Whether there is any matter of state or regional significance & consideration of public benefit.

The proposed development is not considered to result in any impact of state or regional significance due to the low density nature of the proposal. Any impact resulting from the new dwelling is a beneficial impact to the coastal character of the area.

Strict compliance with the development standard is considered to hinder the attainment of the following objectives of the EPA Act:

- (c) to promote the orderly and economic use and development of land,*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*

Replacement of an aged dwelling with a new contemporary coastal dwelling results in an improved '*design and amenity of the built environment*' which in turn is an '*orderly and economic use*' of the land. Allowing the construction of a dwelling that entirely meets the needs of the landowners, is considered to be an intended and sustainable approach to development.

Strict compliance with the numerical floor space ratio control in this circumstance is not considered to result in any significant public benefit. The increased floor area will not have any impact on the foreshore area and will not intensify the way in which the dwelling is utilised.

* * * * *

The 25.29m² increase in floor area is not considered to result in any impact that would warrant the development to not proceed. Numerical provisions such as FSR are in force as a guide to achieve the objectives of a control. In this instance the objectives of the development standard are achieved, despite the minor variation. It is requested that Council apply the provisions of Clause 4.6 in the intended manner and favourably consider this variation during the assessment of the development application.

Should you require any further information or clarification please do not hesitate to contact the undersigned on M: 0401 443 566.



Rebecca Goodman
Town Planner
Bach. Urb. Reg. Plan.
October 2023

ATTACHMENT 4

VARIATIONS TO WOLLONGONG DCP 2009

In accordance with Chapter A1 - Clause 8, variations to following development controls are requested:

4.2 – Front Setbacks

Council's controls in relation to front setbacks for new dwellings indicate:

1. The following setback requirements apply from the primary street frontage to the front facade of the building:

- a) Infill development sites require a minimum setback of 6m from the front property boundary, or*
- b) Less than 6 metres where the prevailing street character permits and the future desired character of the area is not prejudiced. Reduced setbacks must be demonstrated through a Site and Context Analysis (Chapter A.1 cl.11.1).*

While it is the opinion of RG Town Planning that only the front façade is required to achieve the 6m front setback, as directly stated in the above control, it is understood Council applies the setback to covered balconies/terraces. The proposed terrace, while >6m at the southern end, reduces to a setback of 3.665m where the boundary tapers in. In this instance, subclause (b) is proposed to be utilised as the development will remain in keeping with the prevailing streetscape character in this area of Lawrence Hargrave Drive despite the reduced setback to the garage.

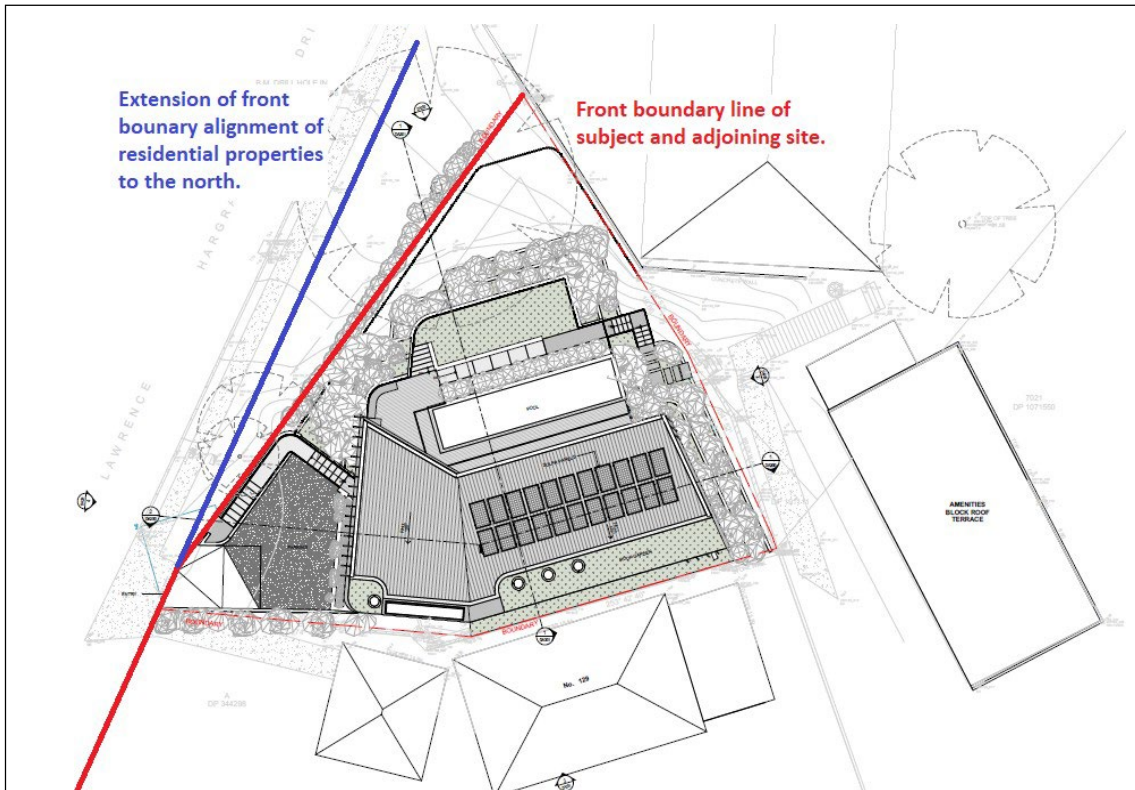
The proposed dwelling incorporates the following front setbacks:

- 7.789m to front facade; and
- 3.665m to balcony/terrace.

The development also provides entry stairs extending from the front boundary which is considered a landscape feature and will present in keeping with the scale of typical front fencing.

The proposed siting of the dwelling will be in closer keeping with the streetscape as a result of the reduced front setback to the terrace for the following reasons:

- the site has an irregular front boundary alignment that angles away from the roadway across the width of the site, increasing the Council verge width. As this only occurs on the subject site, the boundary alignment is out of keeping with the character of the area and results in a front setback that will present in person as far greater than its numerical figure;
- the siting of the front terrace is in alignment with the garage on the adjoining site to the south, being the only adjoining residential allotment;



The blue line will visually present as the front boundary alignment on approach.

- The existing front setbacks along this section of Lawrence Hargrave Drive are highly irregular, with the proposed siting considered to provide an appropriate balance within the streetscape while allowing for a functional design within the difficult allotment.



The terrace forms an open, articulated feature of the design that balances the front façade. The siting and design of the dwelling reinforces the existing character of the street by acknowledging the varied nature of surrounding building setbacks and directly responding to the setback of the neighbouring property. Following a detailed site-specific analysis, it is found that the proposed front setback is most suitable in this instance.

4.9 – Fences

Identify the control being varied:

Council's controls in relation to fencing include:

'Fences within the front and secondary building lines should be predominantly constructed in transparent fence materials, allowing visual connection between the dwelling and the street.'

'Any fence and associated retaining wall within the front setback area from the primary road frontage must be a maximum 1.2 metres in height, above existing ground level.'

'Front fences must be open for at least 50% of the upper 2/3 of the area of the fence. Any brick or other solid portion of the fence above 600mm must not be more than 250mm wide.'

'A fence or a fence and an associated retaining wall on a sloping site may be stepped, provided the height of each step is not more than:

(a) 1.6 metres above the existing ground level, if it is located within a setback area from a primary road, or

(b) 2.2 metres above the existing ground level for side or rear fences, behind the front building line.'

As the proposed fence is located along the Lawrence Hargrave Drive frontage and exceeds 1.2m in height, a variation is requested. The site circumstances and fence design are found to achieve the requirements of the following allowance within Wollongong DCP 2009:

'Fences which exceed the maximum fence heights above will only be considered in exceptional circumstances where Council is of the opinion that the variation is reasonable in the circumstances. For example, the erection of a higher front fence for a property fronting a major arterial road, in order to improve the privacy or amenity of the property. In such cases, any fence will be required to be well articulated and landscaped with appropriate planting, to help soften the visual impact and improve the streetscape appearance of the fence.'

Identify the extent of the variation and the unique circumstances as to why it is requested:

The proposed fencing along the northern portion of the Lawrence Hargrave Drive frontage is proposed to be an open style metal palisade fence with a height of 1.8m. The fence will be transparent and setback from the front boundary to allow for landscape planting within the frontage. The intent of the increased fencing height is to provide a level of security to the highly accessible site and a level of privacy to the lower portion of the allotment, when combined with the proposed landscape planting.

The fence will not run for the full extent of the frontage and will compliment the overall landscape design of the site. The open style fencing will not be visually obtrusive and will not prevent passive surveillance of the street. The living area and several outdoor areas maintain a line of sight across the street frontage due to the topography of the site.

Review of surrounding developments identifies varied fencing, including solid 1.8m high front fences. The existing streetscape character in the immediately surrounding area includes the following street presentations:



No. 129 Lawrence Hargrave Drive – adjoining site to south.
Solid front fence obscured by landscaping. No passive surveillance of LHD.



No. 131 Lawrence Hargrave Drive – 2 properties south of subject site. Approx. 3m high garage structure with landscaping and fencing above.
No passive surveillance of LHD from dwelling.



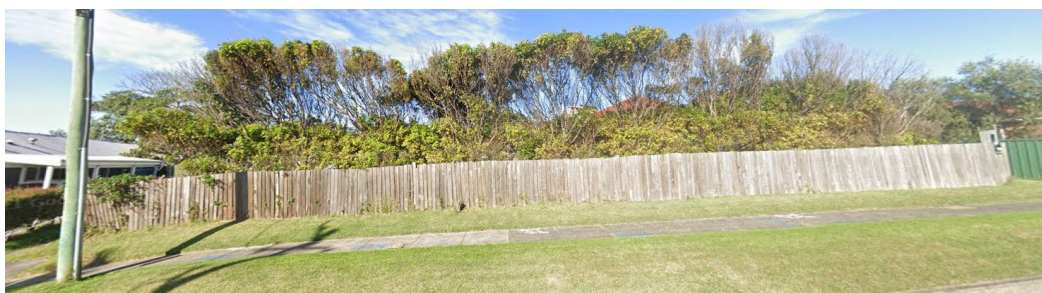
No. 133 Lawrence Hargrave Drive – 3 properties south of subject site. Solid landscape screen with no passive surveillance from dwelling.



*Cnr Oceana Pde & Lawrence Hargrave Drive – western side of LHD.
Solid 1.8m fencing with bamboo screen in front, with no passive surveillance of LHD.*



*No. 137 Lawrence Hargrave Drive – 4 properties to south of site.
Solid 1.8m front fencing with no landscaping. No passive surveillance of LHD.*



*Existing fencing at No. 143 Lawrence Hargrave Drive.
Existing 1.5m high fence with vegetation beyond. No passive surveillance of LHD.*

The street presentation of dwellings within this area of Austinmer is significantly varied in order to apply a site-specific design for each unique allotment and acknowledging the irregular siting of dwellings due to their waterfront location. While the proposed fence will not appear out of character within the streetscape, in this instance it is found more appropriate to assess the fencing in context to the overall development of the site itself.

The front fence will improve the streetscape by defining the property boundaries with clear determination of public and private space and complimenting the overall landscape design for the development.

This area of Lawrence Hargrave Drive incorporates many dwellings orientated toward the ocean, resulting in the road frontage presenting as a rear boundary. In this instance, the northern portion of the site is required to be utilised as the 'rear yard' and should be entitled to a level of security and definition.

Demonstrate how the Objectives are met with the proposed variation;

The objectives of the front fencing controls are:

- (a) To allow for the physical separation of properties for resident privacy.*

- (b) To define the boundaries between public and private land.*
- (c) To enhance the usability of private open space areas / courtyards.*
- (d) To ensure that the design, heights and materials of fencing are appropriately selected.*
- (e) To ensure that fencing design and location complements the building design, enhance the streetscape and complement the objectives of passive surveillance*
- (f) To ensure that the design allows for casual surveillance of the lot.*

The proposed front fence is directly intended to define boundary between public and private land & provide security to the allotment. The northern area of the site has for many years been utilised as though it forms part of the road reserve due to lack of definition. This area of the site sits much lower than the proposed POS area and will significantly benefit from the level of enclosure provided by a 1.8m fence. The height of the fence will be in keeping with the scale of the development and the landscape strip forward of the fencing will result in a high quality streetscape.

- (g) To ensure that clear lines of sight are maintained for motorists and pedestrians to and from the lot.*
- (h) To provide suitable fencing to improve the acoustic and visual privacy for residential properties fronting major (busy) roads, where appropriate sight line distances can be maintained.*

The proposed fence will not extend to the driveway ensure no impact on sight lines. The front stairs are of a low level adjacent to the driveway to allow for safe egress from the site.

Demonstrate that the development will not have additional adverse impacts as a result of the variation;

The fencing is in direct keeping with the intentions of Council's controls for unique sites along major roadways and is in keeping with the varied character of the area. The fencing will not prevent passive surveillance and will not result in any detrimental impact on the character of the area.

It is requested that Council undertaken a merit based assessment of the proposed fencing in context to the development site as a whole, with the view of supporting the variation to the height for typical front fencing.

Clause 4.17 – Retaining Walls

(1) A retaining wall or embankment should be restricted to a maximum height above or depth below natural ground level of no more than:

- (a) 600mm at any distance up to 900mm setback from any side or rear boundary; or*
- (b) 1 metre, if the toe of the retaining wall or embankment is setback greater than 900mm from any side or rear boundary.*

Note: Council may consider a variation to the abovementioned maximum height / depth of a retaining wall, in cases where the subject site is steeply sloping and the proposed retaining wall is setback more than 1 metre from any side or rear common property boundary. Additionally, appropriate structural design details will be required and in some cases appropriate landscape buffer screen planting may be required, where necessary.

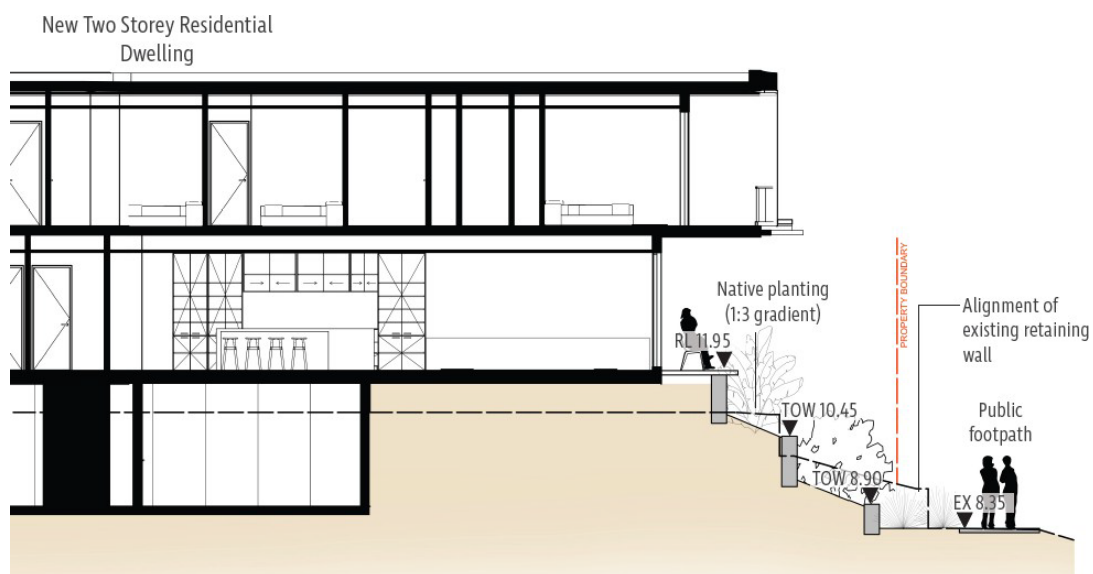
(4) To limit the overall height impact, terracing of retaining walls is required, limiting the maximum vertical rise of a retaining wall to 1 metre, with a minimum horizontal setback of 1 metre.

Identify the extent of the variation and the unique circumstances as to why it is requested:

This allotment incorporates a highly irregular topography, combined with a large tree protection zone. The proposed design of the retaining walls throughout the site are found to appropriately address the topography and constraints in the intended manner for a steep site. Walls have been terraced, with graded landscape beds between, and will present as a high-quality aesthetic through the use of appropriate materials and suitably scaled plants.

Eastern walls

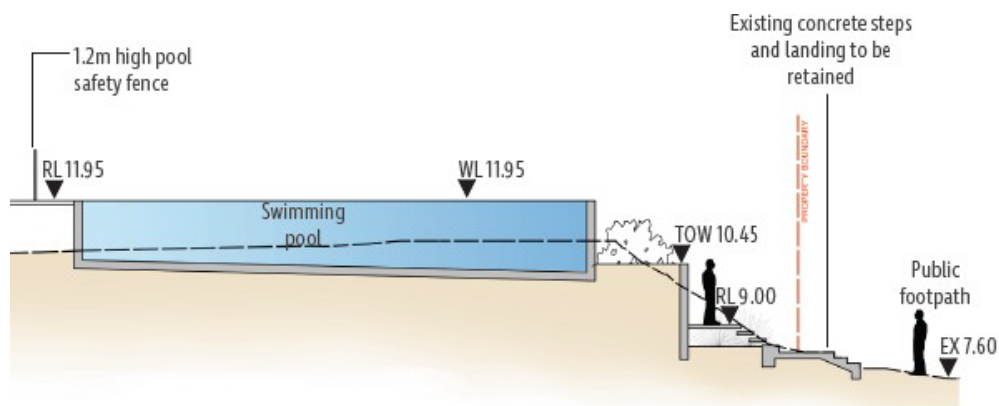
The retaining walls between the dwelling and the eastern beach reserve are to be replaced to improve structural integrity and to ensure the walls are located within the property boundaries. The below image demonstrates the dashed line of the existing retaining wall levels along with the proposed walls:



Section outlining existing and proposed retaining walls to eastern side of dwelling

The new terraced walls provide 'top of wall' heights increasing from RL8.9m adjacent to the eastern boundary to RL10.45m and RL11.95m for the upper wall beneath the deck. While these wall heights provide increments exceeding 1m, the graded garden beds ensure the exposed face of each wall will not exceed 1m. The landscape planting within the terraced garden beds will further reduce the visibility of the walls and will ensure this area of the site will not be trafficable or form part of the outdoor entertaining area. This approach ensures the objectives of the retaining wall controls are directly achieved through detailed consideration of structural integrity, aesthetics and privacy impacts on adjoining land. The outcome presents a complimentary landscape character to the foreshore, showing clear separation between public and private land, while maintaining privacy within the dwelling through a change in levels.

Consideration has also been given to the height of the retaining wall shown below, between the pool and the eastern stairs:

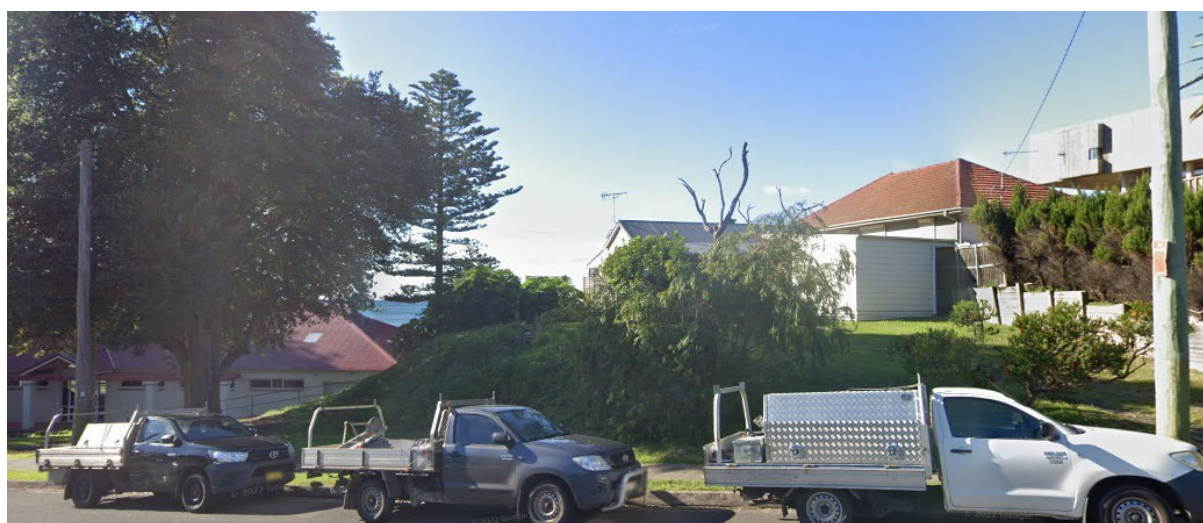


Cross section through pool and stairs to eastern side.

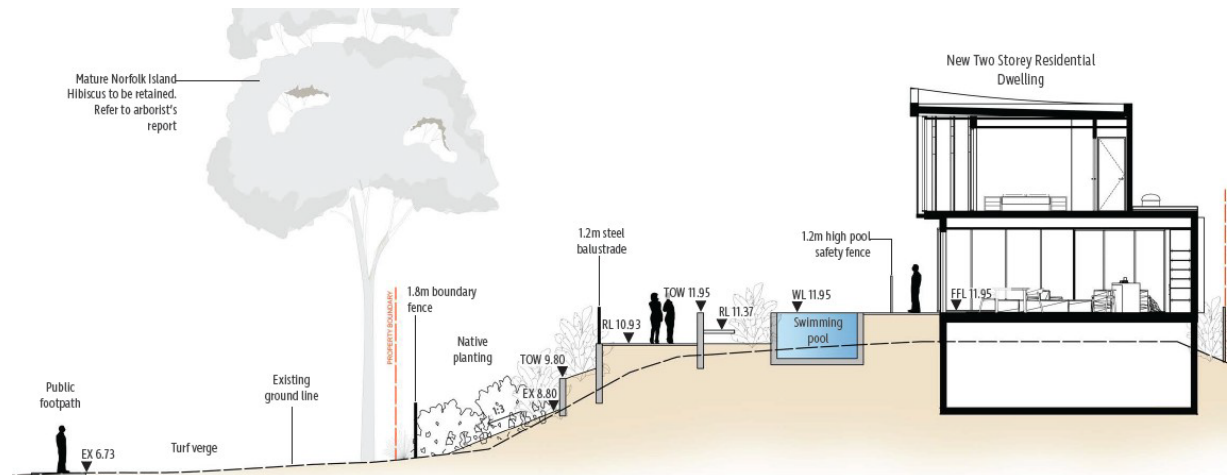
A retaining wall with an overall height exceeding 1m is proposed in this area, with a top of wall height of RL10.45m. The existing ground line at the location of the wall is RL9.79m proposing a combination of cut and fill in this location. The raised design of the stairs, with planting beneath breaks up the built form, resulting in a visible wall height in context to the site and proposed built form. This wall is not considered to result in any detrimental impact on the visual amenity of the development and does not have potential to impact on the privacy or amenity of the residential neighbour to the south. The wall will be subject to a structural design and is found to be in keeping with the objectives of the retaining wall controls.

Northern Walls

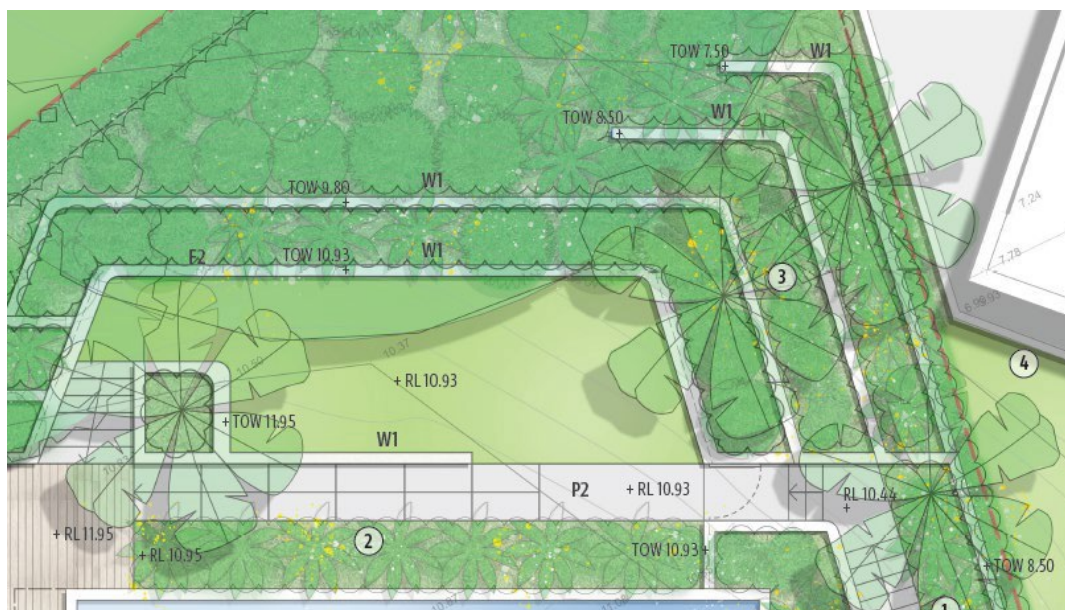
To the northern side of the dwelling, the retaining walls cannot commence on the northernmost portion of the site due to the tree protection zone, resulting in the terraced walls being in closer succession. However, the number of retaining walls and their subsequent heights are not considered to be excessive for the topography of the land as demonstrated in the below images of the existing site, cross section of the northern walls and overall retaining wall plan for this portion of the site:



Existing topography of site as viewed from Lawrence Hargrave Drive



Cross Section of proposed retaining walls to the north of the pool.



Retaining wall plan for north-eastern portion of the site.

As with the eastern retaining walls, the terraced design and graded garden beds are utilised to ensure no wall will have a visible face exceeding 1m from the ground level of the garden bed to the top of the wall. The walls will be further screened by landscape planting within the garden beds. While structural integrity will be ensured through engineer designed walls and geotechnical advice, the overall landscape character presenting to the north is found to significantly improve the streetscape aesthetic in this area of the site. These walls are adjacent to the parking area of the surf club, with no visibility from the foreshore and no residential neighbour. These northern walls work to stabilise the existing landform and create a functional outdoor areas for the dwelling with suitable levels to ensure privacy, and essential element given the sites location on a busy roadway.

Western Walls

Retaining walls to the western street frontage have been designed in the same manner as the remainder of the site. Terraced walls have been utilised to reduce the height of each wall, graded garden beds further reduce visibility and a high level of planting ensures quality streetscape presentation. Retaining walls within this portion of the site are found to directly achieve the objectives of the controls.



Retaining wall plan for western portion of the site.

Demonstrate how the Objectives are met with the proposed variation:

The objectives of the retaining wall height controls are:

- (a) To ensure that retaining walls are structurally sound and are located to minimise any adverse stormwater drainage, visual, amenity or overlooking impacts upon adjoining properties.*
- (b) To guide the design and construction of low height aesthetically pleasing retaining walls.*
- (c) To ensure any retaining wall is well designed, in order to achieve long term structural integrity of the wall.*
- (d) To ensure slope stabilisation techniques are implemented to preserve and enhance the natural features and characteristics of the site and to maintain the long term structural integrity of any retaining wall.*

The retaining walls will be engineer designed with input from the geotechnical engineer and coastal engineer and have been considered in the stormwater concept plan. The design will have strong structural integrity while serving their intended purpose of creating a functional outdoor area for the dwelling at a level that is offset from the roadway and surrounding public lands.

Where visible from the neighbouring dwelling, the street and the beach reserve, effort has been made to reduce the scale of the walls while also minimising the number of walls that are required. From an aesthetic view, the slightly increased heights of a some walls results in a better planning outcome than incorporating an additional terrace level. The walls are suitably offset from key areas of adjoining lands to ensure they do not result in any unreasonable impact in relation to overlooking or amenity. The proposed retaining walls and overall landscape design are found to achieve the objectives of the control to an anticipated level for a steeply sloping site.

Demonstrate that the development will not have additional adverse impacts as a result of the variation;

The height and siting of the retaining walls is most appropriate for the site and is not found to result any adverse impacts beyond those of walls with compliant heights/setbacks. The walls are found to be appropriately sited and utilise quality materials and appropriately scaled landscape planting. A high-quality, integrated design outcome is considered to have been achieved in this instance.

Clause 4.18 – Swimming Pools & Spas

7. Any decking around a swimming pool or spa must not be more than 600mm above ground level (existing).

Identify the extent of the variation and the unique circumstances as to why it is requested;

Certain areas of the decking within the pool enclosure will extend >600mm above existing ground level, to a maximum height of 1.0m. However, the irregular shape of the allotment enables this to occur without any detrimental impact on the amenity of adjoining properties or the streetscape character of Lawrence Hargrave Drive.

The site has only one residential neighbour to the south, while the proposed pool is to be located to the north of the dwelling ensuring there will be no potential impact on the amenity of the neighbour property as a result of the variation. With regard to streetscape character, the raised pool decking is suitably screened by the site specific landscape design. The variation will not be visually apparent as viewed from the street. It is considered that the trafficable pool decking is sited at a level most suitable for this particular allotment.

Demonstrate how the Objectives are met with the proposed variation;

The objectives of the retaining wall height controls are:

- (a) *To ensure that swimming pools meet relevant safety standards and meet user needs.*
- (b) *To ensure swimming pools and spas are sited and designed to maintain the amenity of the surrounding residential neighbourhood.*

The objective of the pool decking control is to maintain the amenity of adjoining properties by keeping trafficable areas around a pool relatively close to ground level. This is predominantly to minimise privacy intrusion over boundary fences.

The pool decking has been raised to allow for a level outdoor recreation area, significantly enhancing the amenity of the proposed dwelling. As discussed above, the pool area is not visible from the adjoining dwelling and is coupled with formal landscape planting to ensure the raised decking is not visually apparent. The proposed design improves the overall amenity of the development without any unreasonable impact on adjoining sites and is considered an appropriate outcome to address the irregular allotment.

Demonstrate that the development will not have additional adverse impacts as a result of the variation;

The design and siting of the pool decking is the result of a detailed site analysis and is found to be an appropriate outcome for this particular site. The irregular lot shape, large boundary setbacks, topography and high level of landscaping enable the variation to proceed without any additional adverse impacts on residential amenity.

ATTACHMENT 5 - DRAFT CONDITIONS FOR: DA-2022/1010

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Consent has been granted subject to the following conditions:

1. **Approved Plans and Supporting Documentation**

Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

Plan No	Revision No	Plan Title	Drawn By	Dated
DA004	A	Plan - Demolition	Sherson Architecture	16.08.2022
DA005	A	Plan - Site	Sherson Architecture	16.08.2022
DA100	C	Plan - Basement	Sherson Architecture	24.10.2023
DA101	C	Plan – Ground Floor	Sherson Architecture	24.10.2023
DA102	B	Plan – Level 01	Sherson Architecture	24.10.2023
DA103	A	Plan - Roof	Sherson Architecture	16.08.2022
DA200	A	Elevations	Sherson Architecture	16.08.2022
DA201	A	Elevations	Sherson Architecture	16.08.2022
DA202	A	Street Elevation	Sherson Architecture	21.02.2023
DA300	A	Section	Sherson Architecture	16.08.2022
DA301	A	Section	Sherson Architecture	16.08.2022
DA302	A	Section	Sherson Architecture	21.02.2023

Document Title	Version No	Prepared By	Dated
Austinmer House_ Landscape Development Application	05	Flame Tree Landscape Design	September 2023
DA-100-Landscape Plan		Flame Tree Landscape Design	September 2023
DA-101-Detail Plan 01		Flame Tree Landscape Design	September 2023
DA-101-Detail Plan 02		Flame Tree Landscape Design	September 2023

SK-200-Site Sections 01		Flame Tree Landscape Design	September 2023
DA-201- Site Sections 02		Flame Tree Landscape Design	September 2023
Material & Character Imagery		Flame Tree Landscape Design	September 2023
Planting Schedule & Imagery		Flame Tree Landscape Design	September 2023
Planting Imagery		Flame Tree Landscape Design	September 2023
CDA 1.2 Driveway Access Layout	2	Partridge Hydraulic Services	30.05.23

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Note: An inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.

Reason:

To ensure all parties are aware of the approved plans and supporting documentation.

General Conditions

2. Tree Management

The developer shall retain existing tree indicated on Landscape Plan by Flame Tree Dwg. No. DA-100 Is dated Sept 2022 consisting of tree numbered 3 on adjacent property. Total number: one (1 No.)

Any branch or root pruning which has been given approval, must be carried out by a qualified arborist in accordance with Australian Standard AS4373 (2007).

All tree protection measures are to be installed in accordance with Australian standard AS4970-2009 Protection of Trees on development Sites.

Recommendations in arborist's reports dated Sept 2022 by Monkey Mats Tree Services Author: Mathew De Prato to be implemented including and not restricted to: establishing Tree Protection Zones (TPZs), project arborist being present during work within Structural Root Zones (SRZs) and supervising work within TPZs, site induction with reference to tree protection, referring matters to project arborist, re routing of sub surface utilities to avoid TPZs, hand excavation within TPZ near tree roots, remedial tree pruning, deadwooding, fencing and signage, sediment buffer, stem protection, mulching and watering and root hormone application if required. Soil levels within the TPZ must remain the same.

Reason:

To comply with Council's Development Control Plan.

3. Street Tree Removal

The developer shall remove existing the street trees indicated on the Landscape Plan by Flame Tree Dwg. No. DA-100 Is dated Sept 2022 & in arborist report dated Sept 2022 by Monkey Mats Tree Services Author: Mathew De Prato consisting of tree(s) numbered 1 & 2. Total number: Two (2 No.)

Tree removal costs are to be borne by developer. The removal of trees, including stumps, is to be carried out by suitably qualified tree contractor. This contractor must be appropriately insured to indemnify Council against any loss or damage incurred during the above works. They must also have appropriate WH&S policies and procedures (including traffic control) to ensure that works are carried out in a safe manner and in accordance in Council's own WH&S policies.

The developer must apply for (and be granted) permission under section 138 of the roads act to work within the road reserve. Tree removal must be carried out to the satisfaction of WCC Manager of Works.

Reason:

To comply with Council's Development Control Plan.

4. **Unexpected Finds of Aboriginal Cultural Heritage**

If any Aboriginal object(s) is discovered and/or harmed in, or under the land, while undertaking the proposed development activities, the proponent must ensure:

- a. No further harm is undertaken to the object(s);
- b. Immediately cease all work at the particular location;
- c. Secure the area so as to avoid further harm to the Aboriginal object(s);
- d. Notify Heritage NSW as soon as practical by calling 131 555 or emailing: info@environment.nsw.gov.au, providing any details of the Aboriginal object(s) and its location;
- e. Not recommence any work at the particular location unless authorised in writing by Heritage NSW;
- f. If harm cannot be avoided, an Aboriginal Heritage Impact Permit (AHIP) under the NSW National Parks and Wildlife Act 1974 will be required prior to recommencing.

Wollongong City Council's Heritage Staff should also be notified by calling 4227 7111.

Reason:

To satisfy the requirements of the legislation.

5. **Low Reflective and Muted Tones - External Finishes**

To ensure development blends with the surrounding environment, colours and finishes are to be muted tones of low reflective quality.

Reason:

To ensure the development is compatible with the surrounding environment.

6. **Geotechnical Conditions:**

- a. Foundation systems are to be designed for Class P soils with all footings to be founded within the underlying weathered bedrock as recommended by geotechnical consultant, White Geotechnical Group, in their report dated 23 May 2023.
- b. Prior to issue of any CC, supplementary geotechnical advice is required to confirm the depth to and quality of the underlying bedrock.
- c. The structural designs for foundations are to be completed or modified in accordance with the supplementary geotechnical advice required for condition 1.
- d. All excavations need to be supported during and after construction particularly to protect adjoining property with nearby existing development.
- e. All stormwater and wastewater are to be taken away from the building envelope by means as recommended by the geotechnical consultant. There is to be no in-ground absorption.
- f. All earthworks including drainage, retaining wall and footing construction is to be subject to geotechnical supervision as defined in Australian Standard AS3798 Guidelines for Earthworks for Commercial and Residential Developments. Where necessary amendments are to be made to the designs during construction based on supplementary geotechnical advice given during the supervision to ensure that the completed works accommodates all encountered geotechnical constraints.
- g. Hard bedrock if encountered will be difficult to excavate. Alternative excavation methods should be considered to minimise noise and vibration.

- h. All surface water from the pool surrounds should be piped away from the site.
- i. A generic design for the pool is not appropriate for this site. A site-specific design is required for the hillside land where geotechnical constraints such as lateral earth pressures due to soil creep can affect the integrity of the structure. The structural designer of the pool needs to refer to the site geotechnical constraints as described in the geotechnical report.
- j. A subsoil drain needs to be installed under the pool with gravity outlet to maintain equilibrium soil moisture conditions.
- k. All excavations for foundations are to be inspected by the geotechnical consultant and certified that the ground has been suitably prepared for the placement of footings.

Reason:

To comply with Council's Development Control Plan.

7. **Compliance with the Building Code of Australia (BCA)**

Building work must be carried out in accordance with the requirements of the BCA.

Reason:

To ensure the development is built in accordance with the Building Code of Australia.

8. **Construction Certificate**

A Construction Certificate must be obtained from Council or a Registered Certifier prior to work commencing.

A Construction Certificate certifies that the provisions of Part 3 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 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 Section 13 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

Reason:

To satisfy the requirements of the legislation.

9. **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.

Reason:

To satisfy the requirements of the legislation.

10. **Development Contributions**

In accordance with Section 4.17(1)(h) of the Environmental Planning and Assessment Act 1979 and the Wollongong City Wide Development Contributions Plan (2022), a monetary contribution of \$22,330.00 (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 proposed cost of development and the applicable percentage levy rate.

The contribution amount will be indexed quarterly until the date of payment using Consumer Price Index; All Groups, Sydney (CPI) based on the formula show in the Contributions Plan.

To request an invoice to pay the contribution amount go www.wollongong.nsw.gov/contributions and submit a contributions enquiry. The following will be required:

- Application number and property address.

- Name and address of who the invoice and receipt should be issue to.
- Email address where the invoice should be sent.

A copy of the Contributions Plan and accompanying information is available on Council's website www.wollongong.gov.au.

Before the Issue of a Construction Certificate

11. Works and adjacent Public Reserve

No works including demolition are permitted within or upon the adjacent Public Reserve.

Details verifying the requirement to be shown on the Construction Certificate Plans.

Reason:

To satisfy the requirements of the legislation.

12. Fencing

The development is to be provided with fencing and screen walls at full cost to the applicant/developer as follows:

- where a screen wall faces the road, pedestrian walkway, reserve or public place that wall shall be constructed of the same brickwork as that used in the external wall of the building;
- rear and side property boundaries (behind the building line) and private rear courtyards are to be provided with minimum 1.8 metre high brick, timber lapped and capped, palisade or colorbond fences;
- any new fences or screens constructed on the site shall be of a type that will not obstruct the free flow of surface runoff from adjoining properties and be compatible with stormwater drainage requirements; and;
- fencing to suit character of local area;

This requirement is to be reflected on the Construction Certificate plans.

Reason:

To comply with Council's Development Control Plan.

13. Final Landscape Plan Requirements

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:

- planting of indigenous plant species typical of the Illawarra region such as: *Syzygium smithii* (formerly *Acmena smithii*) Lilly pilly, *Archontophoenix cunninghamiana* Bangalow palm, *Backhousia myrtifolia* Grey myrtle, *Elaeocarpus reticulatus* Blueberry ash, *Glochidion ferdinandii* Cheese tree, *Livistona australis* Cabbage palm tree, *Brachychiton acerifolius* Illawarra Flame Tree.; A further list of suitable suggested species for the Austinmer area may be found in Wollongong Development Control Plan 2009 – Chapter E6: Landscaping;
- a schedule of proposed planting, including botanic name, common name, expected mature height and staking requirements as well as number of plants and pot sizes;
- the location of all proposed and existing overhead and underground service lines. The location of such service lines shall be clear of the dripline of existing and proposed trees;
- plant recovery of any herbaceous plants/native grasses and climbers to be undertaken;
- any proposed hard surface under the canopy of an existing trees shall be permeable and must be laid such that the finished surface levels match the existing level. Permeable paving is to be installed in accordance with the manufacturer's recommendations;
- the developer shall ensure that proposed planting is child friendly and must not include any of the types of plants listed below: i) plants known to produce toxins; ii) plant with high allergen properties; vi) any weed or potential weed species;
- compensatory planting to be incorporated;

- h. planting not to overhang public footpaths;
- i. coastal planting recommended; and;
- j. any fill material should not cover topsoil. Topsoil shall be removed, stockpiled, ameliorated and replaced over any fill material to a minimum depth of 100mm.

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

Reason:

To comply with Council's Development Control Plan.

14. Certification for Landscape and Drainage

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.

Reason:

To comply with Council's Development Control Plan.

15. Landscape Maintenance Plan

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.

Reason:

To comply with Council's Development Control Plan.

16. Tree Protection Measures

The existing trees are to be retained upon the subject property and any trees on adjoining properties shall not be impacted upon during the excavation or construction phases of the development. This will require the installation and maintenance of appropriate tree protection measures, including (but not necessarily limited to) the following:

- a. Installation of Tree Protection Fencing - Protective fencing shall be 1.8 metre cyclone chainmesh fence, with posts and portable concrete footings. Details and location of protective fencing must be indicated on the architectural and engineering plans to be submitted to the Principal Certifier prior to release of the Construction Certificate.
- b. Mulch Tree Protection Zone: Areas within a Tree Protection Zone are to be mulched with minimum 75 mm thick 100% recycled hardwood chip/leaf litter mulch.
- c. Irrigate: Areas within the Tree Protection Zone are to be regularly watered in accordance with the arborist's recommendations.
- d. The submission of a final Site Plan to the Principal Certifier indicating required tree protection fencing is required, prior to the release of the Construction Certificate.

Reason:

To comply with Council's Development Control Plan.

17. 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 restored 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. Any redundant linemarking such as 'marked parking bays' are adjusted/removed at the developer's expense by a Council recognised contractor with the relevant insurances. Details and locations are to be shown on the Construction Certificate Plans.

Reason:

To comply with Council's Development Control Plan.

18. Engineering Plans and Specifications - Retaining Wall Structures Greater than One (1) Metre

The submission of engineering plans and supporting documentation of all proposed retaining walls greater than one (1) metre to the Principal Certifier for approval prior to the issue of the Construction Certificate. The retaining walls shall be designed by a suitably qualified and experienced civil and/or structural engineer. The required engineering plans and supporting documentation shall include the following:

- a. A plan of the wall showing location and proximity to property boundaries;
- b. An elevation of the wall showing ground levels, maximum height of the wall, materials to be used and details of the footing design and longitudinal steps that may be required along the length of the wall;
- c. Details of fencing or handrails to be erected on top of the wall;
- d. Sections of the wall showing wall and footing design, property boundaries, subsoil drainage and backfill material. Sections shall be provided at sufficient intervals to determine the impact of the wall on existing ground levels. The developer shall note that the retaining wall, subsoil drainage and footing structure must be contained wholly within the subject property;
- e. The proposed method of subsurface and surface drainage, including water disposal. This is to include subsoil drainage connections to an inter-allotment drainage line or junction pit that discharges to the appropriate receiving system;
- f. The assumed loading used by the engineer for the wall design.
- g. 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.

Reason:

To comply with Council's Development Control Plan.

19. Street Trees

The developer must address the street frontage by installing street tree planting. The number and species for this development is one (1 No.) Banksia integrifolia Coastal Banksia 200 litre container size, in accordance with AS 2303:2018 Tree stock for landscape use. Street trees are to be installed in accordance with Wollongong Development Control Plan 2009 – Chapter E6: Landscaping. 'Dial Before You Dig' must be consulted prior to any excavation on site. Pot holing must be carried out to determine service location. Tree pits must be adequately mulched, plants installed and staking installed to the satisfaction of WCC Manager of Works. Staking is to consist of min. 3 x 2400 x 50 x 50mm hardwood stakes driven min 600mm into firm ground. Hessian webbing is to be utilised to secure plant stock to industry standard.

These requirements shall be reflected on the Construction Certificate plans and any supporting documentation.

Reason:

To comply with Council's Development Control Plan.

20. Structures Adjacent to Driveway

Any proposed structures adjacent to the driveway shall comply with the requirements of the current relevant Australian Standard AS 2890.1 (figure 3.2 and 3.3) to provide for adequate pedestrian and vehicle sight distance. This includes, but is not limited to, structures such as signs, letterboxes, retaining walls, dense planting etc. This requirement shall be reflected on the Construction Certificate plans.

Reason:

To ensure compliance with Australian Standards.

21. Stormwater Drainage Design

A detailed drainage design for the development must be submitted to and approved by the Principal Certifier 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 Layout Plans, job no. 2022H0095, drawing no. SWDA 1.5-1.6, Revision 1, by Partridge, dated 12/05/2023
- 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% AEP 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.

Reason:

To comply with Council's Development Control Plan.

22. No Adverse Runoff 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 runoff.

Reason:

To protect neighbourhood amenity.

23. Relocation of Power Pole

The existing power pole within the verge is to be relocated to the satisfaction of Endeavour Energy prior to the release of the Construction Certificate. The design and civil works are to be carried out by an approved Electrical Engineer. All works are to be carried out at no cost to Council. Details of such compliance are to be reflected on the Construction Certificate plans.

Reason:

To satisfy the requirements of the legislation.

24. Driveway Longsection

To verify that vehicular access will comply with Council's requirements, a scaled long section of the proposed driveway, from kerb and gutter at the point of access to the proposed garage floor level must be submitted with the Construction Certificate and shall include:

- a. existing natural surface levels,
- b. proposed grades and finished surface levels of the driveway,
- c. preliminary details of the method of treatment of any fill/retaining wall which may be required in conjunction with the proposed driveway.

No part of the driveway must have grades exceeding Council's standards. As such, the long section shall be taken along the critical path, i.e. the side of the driveway that will have the steepest grades.

Reason:

To comply with Council's Development Control Plan.

25. 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.

Reason:

To comply with Council's Development Control Plan.

26. Schedule of External Building Materials/Finishes

The final details of the proposed external treatment/appearance of the development, including a schedule of building materials and external finishes (including the type and colour of the finishes) shall be approved by the Principal Certifier, prior to the release of the Construction Certificate.

Reason:

To ensure the development is compatible with the surrounding environment.

27. Present Plans to Sydney Water

Approved plans must be submitted online using Sydney Water Tap In, 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.

Reason:

To satisfy the requirements of the legislation.

Before the Commencement of Building Work

28. Dilapidation Report

The developer shall submit a Dilapidation Report recording the condition of the existing streetscape, street trees and adjoining reserve prior to work commencing and include a detailed description of elements and photographic record.

Reason:

To ensure public assets are not impacted.

29. Survey Report - Boundaries

A survey report prepared by a registered surveyor is required to be submitted to the Principal Certifier to ensure that the proposed development is located on the correct allotment and at the approved distances from the boundary. This must be verified by pegging the site prior to commencement of works.

Reason:

To ensure correct development location.

30. Tree Protection Implementation

The existing trees are to be retained upon the subject property and any trees on adjoining properties shall not be impacted upon during the excavation or construction phases of the development. This will require the installation and maintenance of appropriate tree protection measures, including (but not necessarily limited to) the following:

- a. installation of Tree Protection Fencing - Protective fencing shall be 1.8 m cyclone chainmesh fence, with posts and portable concrete footings;
- b. mulch Tree Protection Zone: Areas within a Tree Protection Zone are to be mulched with minimum 75 mm thick 100% recycled hardwood chip/leaf litter mulch;
- c. irrigate: Areas within the Tree Protection Zone are to be regularly watered in accordance with the arborist's recommendations.

The tree protection fencing shall be installed prior to the commencement of any demolition, excavation or construction works and shall be maintained throughout the entire construction phases of the development.

Reason:

To comply with Council's Development Control Plan.

31. Certification from Arborist - Adequate Protection of Trees to be Retained

A qualified Arborist is required to be engaged for the supervision of all on-site excavation or land clearing works. The submission of appropriate certification from the appointed Arborist to the Principal Certifier is required which confirms that all trees and other vegetation to be retained are protected by fencing and other measures, prior to the commencement of any such excavation or land clearing works.

Reason:

To comply with Council's Development Control Plan.

32. Road Occupancy Licence (ROL) from Transport for NSW (TfNSW)

Prior to any works commencing, the applicant shall obtain a ROL from TfNSW in conjunction with Council's permit under Section 138 of the Roads Act 1993.

The developer shall apply for a ROL from the TfNSW Traffic Operations Unit (TOU) prior to commencing work within the classified road reserve or within 100m of traffic signals. The application will require a Traffic Management Plan (TMP) to be prepared by a person who is certified to prepare Traffic Control Plans. Should the TMP require a reduction of the speed limit, a Direction to Restrict will also be required from the TOU. Please allow two (2) weeks prior to commencement of work to process the ROL.

Note: An approved ROL does not constitute an approval to commence works until an authorisation letter for the works has been issued by the TfNSW Project Manager.

Reason:

To satisfy the requirements of the legislation.

33. 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.

Reason:

To satisfy the requirements of the legislation.

34. Signs On Site

A sign must be erected in a prominent position on any site on which building work or demolition work is being carried out:

- a. showing the name, address and telephone number of the Principal Certifier for the work, and

- b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- c. stating that unauthorised entry to the worksite is prohibited.

Any such sign is to be maintained while the building work or demolition work is being carried out but must be removed when the work has been completed.

Note: This does not apply in relation to building work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

Reason:

To satisfy the requirements of the legislation.

35. Temporary Toilet/Closet Facilities

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

Each toilet provided must be:

- a. a standard flushing toilet, and
- b. connected to either:
 - i. the Sydney Water Corporation Ltd sewerage system or
 - ii. an accredited sewage management facility or
 - iii. an approved chemical closet.

The toilet facilities shall be provided on-site, prior to the commencement of any works.

Reason:

To satisfy the requirements of the legislation.

36. Enclosure of the Site

The site must be enclosed with a suitable security fence to prohibit unauthorised access, to be approved by the Principal Certifier. No building work is to commence until the fence is erected.

Reason:

To ensure safety.

37. Demolition Works

The demolition of the existing structures shall be carried out in accordance with Australian Standard AS 2601:2001: The Demolition of Structures or any other subsequent relevant Australian Standard and the requirements of 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.

Reason:

To satisfy the requirements of the legislation and Australian Standards.

38. 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.

Reason:

To advise neighbourhood.

39. **Consultation with SafeWork NSW - Prior to Asbestos Removal**

A licensed asbestos removalist must give written notice to SafeWork NSW at least five (5) days before licensed asbestos removal work is commenced.

Reason:

To satisfy the requirements of the legislation.

40. **Appointment of Principal Certifier**

Prior to commencement of work, the person having the benefit of the Development Consent and a Construction Certificate must:

- a. appoint a Principal Certifier and notify Council in writing of the appointment irrespective of whether Council or a Registered Certifier is appointed; and
- b. notify Council in writing of their intention to commence work (at least two [2] days' notice is required).

The Principal Certifier must determine when inspections and compliance certificates are required.

Reason:

To satisfy the requirements of the legislation.

41. **Home Building Act Requirements**

Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- a. In the case of work for which a principal contractor is required to be appointed:
 - i. the name and licence number of the principal contractor; and
 - ii. the name of the insurer by which the work is insured under Part 6 of that Act.
- b. In the case of work to be done by an owner-builder:
 - i. the name of the owner-builder; and
 - ii. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

Reason:

To satisfy the requirements of the legislation.

42. **Structural Engineer's Details**

Structural Engineer's details for all structurally designed building works such as reinforced concrete footings, reinforced concrete slabs and structural steelwork must be submitted to the Principal Certifier, prior to the commencement of any works on the site.

Reason:

To ensure structural integrity.

43. **Temporary Sediment Fences**

Temporary sediment fences (eg haybales or geotextile fabric) must be installed on the site, prior to the commencement of any excavation, demolition or construction works in accordance with Council's guidelines. Upon completion of the development, sediment fencing is to remain until the site is grassed or alternatively, a two (2) metre strip of turf is provided along the perimeter of the site, particularly lower boundary areas.

Reason:

To protect neighbourhood amenity.

While Building Work is Being Carried Out

44. Copy of Consent to be in Possession of Person carrying out Tree Removal

The applicant must ensure that any person carrying out tree removal is in possession of this development consent and the approved landscape plan, in respect to the vegetation which has been given approval to be removed in accordance with this consent.

Reason:

To comply with Council's Development Control Plan.

45. Protection of Public Infrastructure

Council must be notified in the event of any existing damage to any of its infrastructure such as the road, kerb and gutter, road shoulder, footpath, drainage structures and street trees fronting the development site, prior to commencement of any work.

Adequate protection must be provided for Council infrastructure prior to work commencing and during building operations.

Any damage to Council's assets shall be made good, prior to the issue of any Occupation Certificate or commencement of the operation.

Reason:

To satisfy the requirements of the legislation.

46. Unexpected Archaeological Finds

Should an unexpected find be identified during ground disturbing works, work should cease and the area be cordoned off to prevent any further disturbance. The applicant should engage an archaeologist to assess the condition and significance of the find. Should the find be determined to be of heritage significance (local or State), the Heritage Council should be notified under s.146 of the NSW *Heritage Act 1977*. Depending on the nature of the discovery, additional assessment and possibly an excavation permit may be required prior to the recommencement of excavation in the affected area.

Works are not to recommence until advised in writing by Heritage NSW or Council's Heritage Staff.

Reason:

To satisfy the requirements of the legislation.

47. 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.

Reason:

To comply with Council's Development Control Plan.

48. 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.

Reason:

To comply with Council's Development Control Plan.

49. Hours of Work

The Principal Certifier must ensure that building work, demolition or vegetation removal is only carried out between:

- 7:00am to 5:00pm on Monday to Saturday

The Principal Certifier must ensure building work, demolition or vegetation removal is not carried out on Sundays and public holidays, except where there is an emergency.

Unless otherwise approved within a construction site management plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Any variation to the hours of work requires Council's approval.

Any request to vary the approved hours shall be submitted to the Council in writing detailing:

- a. The variation in hours required (length of duration);
- b. the reason for that variation (scope of works);
- c. the type of work and machinery to be used;
- d. method of neighbour notification;
- e. supervisor contact number; and
- f. any proposed measures required to mitigate the impacts of the works.

Note: The developer is advised that other legislation, such as Noise Guidelines for Local Government January 2023, may control the activities for which Council has granted consent, including but not limited to, the *Protection of the Environment Operations Act 1997*.

Reason:

To protect the amenity of the surrounding area.

50. Asbestos - Removal, Handling and Disposal Measures/Requirements Asbestos Removal by a Licensed Asbestos Removalist

The removal of any asbestos material must be carried out by a licensed asbestos removalist if over 10 square metres in area of non-friable asbestos, or if any type of friable asbestos in strict accordance with SafeWork NSW requirements (<https://www.safework.nsw.gov.au>).

Reason:

To satisfy the requirements of the legislation.

51. Asbestos Waste Collection, Transportation and Disposal

Asbestos waste must be prepared, contained, transported and disposed of in accordance with SafeWork NSW and NSW Environment Protection Authority requirements. Asbestos waste must only be disposed of at a landfill site that can lawfully receive this type of waste. A receipt must be retained and submitted to the Principal Certifier, and a copy submitted to Council (in the event that Council is not the Principal Certifier), prior to commencement of the construction works.

Reason:

To satisfy the requirements of the legislation.

52. Provision of Waste Receptacle

The developer must provide an adequate receptacle to store all waste generated by the development, pending disposal. The receptacle must be regularly emptied and waste must not be allowed to lie or accumulate on the property other than in the receptacle. Consideration should be given to the source separation of recyclable and re-usable materials.

Reason:

To comply with Council's Development Control Plan.

53. Piping of Stormwater to Existing Stormwater Drainage System

Stormwater for the land must be piped to Council's existing stormwater drainage system.

Reason:

To ensure all parties are aware of the approved plans and supporting documentation.

54. Excavation/Filling/Retaining Wall Structures

Any proposed filling on the site must not:

- a. Encroach onto the adjoining properties, and
- b. adversely affect the adjoining properties with surface run-off.

Reason:

To ensure ongoing protection of the environment and neighbourhood amenity.

55. Implementation of BASIX commitments

While building work is being carried out, the applicant must undertake the development strictly in accordance with the commitments listed in the BASIX certificate(s) approved by this consent, for the development to which the consent applies.

Reason:

To satisfy the requirements of the legislation.

56. Cut and Fill Retained

All proposed cut and filling works must be adequately retained with all battered slopes being no steeper than 2H:1V.

Reason:

To ensure ongoing protection of the environment and neighbourhood amenity.

57. Survey Report

The submission of a survey report by a registered Land Surveyor to the Principal Certifier is required, prior to the work proceeding beyond each of the following respective stages so as to guarantee that each stage of the development is completed in accordance with the approved plans:

- a. footing excavation;
- b. slab formwork;
- c. foundation walls;
- d. walls and completed eaves/gutter/fascia/gable;
- e. building on the site.
- f. Retaining walls

Reason:

To ensure all parties are aware of the approved plans and supporting documentation.

58. Shoring and adequacy of adjoining property

If the development involves an excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land (including any structure or work within a road or rail corridor), the person having the benefit of the development consent must, at the person's own expense:

- a. Protect and support the building, structure or work from possible damage from the excavation, and
- b. Where necessary, underpin the building, structure or work to prevent any such damage.

This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

Reason:

To satisfy the requirements of the legislation.

Before the Issue of an Occupation Certificate

59. Completion of Landscape Works on Council Owned or Controlled Land

The Developer must complete all landscape works required within Council's road reserve, or other Council owned or controlled land, in accordance with the conditions of this consent. The total cost of all such landscape works shall be fully borne by the Developer and any damage to Council's assets shall be the subject of restoration works sufficient to restore the asset to its previous state and configuration previous to the commencement of works. Evidence that this requirement has been met must be satisfied prior to the issue of the Occupation Certificate.

Reason:

To comply with Council's Development Control Plan.

60. **Swimming Pool Barriers**

The swimming pool shall be provided with child-resistant barriers, prior to the placement of water in the pool, in accordance with Section 7 of the Swimming Pools Act 1992 and Australian Standards AS 1926. The barrier shall be installed to the satisfaction of the Principal Certifier and prior to the issue of an Occupation Certificate.

Reason:

To satisfy the requirements of the legislation.

61. **Warning Notice**

A warning notice complying with Clauses 10 and 11 of the Swimming Pools Regulation 2008 is to be displayed in a prominent position in the immediate vicinity of the swimming pool as required by Section 17 of the Swimming Pools Act 1992, prior to the filling of the pool with water and prior to the issue of an Occupation Certificate.

Reason:

To satisfy the requirements of the legislation.

62. **Arborist Verification – Street Tree Installation**

Prior to the issue of Occupation Certificate, the developer must supply certification in the form of a report, including photographic evidence, from an AQF Level 5 Arborist to the Principal Certifier and Wollongong City Council to verify:

- a. The tree stock complies with AS 2203:2018 Tree Stock for Landscape Use.
- b. The tree pits have been constructed and the trees installed in accordance with the requirements of the Wollongong City Council City Centre Public Domain Technical Manual and arboricultural best practice.

Reason:

To comply with Council's Development Control Plan.

63. **Retaining Wall Certification**

The submission of a certificate from a suitably qualified and experienced structural engineer or civil engineer to the Principal Certifier is required, prior to the issue of the Occupation Certificate or commencement of the use. This certification is required to verify the structural adequacy of the retaining walls and that the retaining walls have been constructed in accordance with plans approved by the Principal Certifier.

Reason:

To comply with the relevant Standards.

64. **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 Occupation Certificate unless satisfied that selected commitments have been complied with as specified in the relevant BASIX Certificate.

NOTE: Clause 44 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 provides for independent verification of compliance in relation to certain BASIX commitments.

Reason:

To satisfy the requirements of the legislation.

Occupation and Ongoing Use

65. **Pedestrian Traffic to Beach**

Pedestrian traffic from the dwelling/property to the beach should occur via the existing pathway on Lawrence Hargrave Drive and not through the adjacent Public Reserve.

Reason:

To ensure ongoing protection of the environment and neighbourhood amenity.

66. **Loading/Unloading Operations/Activities**

All loading/unloading operations are to take place at all times wholly within the confines of the site or within the road reserve under an approved traffic control plan.

Reason:

To comply with legislation and Australian Standards.