

Wollongong Local Planning Panel Assessment Report | 2 May 2023

WLPP No.	Item No. 1
DA No.	DA-2022/1221
Proposal	Residential – continued use of mezzanine area
Property	11 Coledale Avenue, Coledale NSW 2515; Lot 19 DP 997936
Applicant	Stantec Australia Pty Ltd
Responsible Team	Development Assessment and Certification - City Wide Team – (RT)
Prior WLPP meeting	N/A

ASSESSMENT REPORT AND RECOMMENDATION

Executive Summary

Reason for consideration by Local Planning Panel

The proposal has been referred to Local Planning Panel for **determination** pursuant to clause 3, Schedule 2 of the Local Planning Panels Direction for an exception to a development 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 100% to the FSR zoning standard of 0.3:1

Proposal

The proposal seeks consent for the following:

- Continued use of a mezzanine level that has been constructed without prior approval within an existing dwelling raked roof space void

Permissibility

The site is zoned C4 Environmental Living pursuant to Wollongong Local Environmental Plan (WLEP) 2009. The proposal is categorised as mezzanine, ancillary to a dwelling house and is permissible in the zone with development consent.

Consultation

Details of the proposal were publicly exhibited in accordance with Council's adopted Community Participation Plan 2019. Two (2) submissions were received. The issues identified are discussed at section 1.5 of this report

Amended plans were submitted by the applicant to address Council's additional information request on 14 March 2023. This information, whilst not changing the internal floor configuration of the dwelling as lodged, included replacing the glazing in the window to the stairwell with obscure/translucent glazing to address concerns raised by an adjoining neighbour. This information was re-notified to the adjoining neighbour on 3 April 2023, no response has been received to date.

Main Issues

The main issues are:

- Floor space ratio – departure from Clause 4.4 of WLEP 2009

RECOMMENDATION

DA-2022/1221 be approved subject to the conditions outlined at **Attachment 6**.

1 APPLICATION OVERVIEW

1.1 PLANNING CONTROLS

The following planning controls apply to the development:

State Environmental Planning Policies:

- State Environmental Planning Policy (Resilience and Hazards) 2021

Local Environmental Planning Policies:

- Wollongong Local Environmental Plan (WLEP) 2009

Development Control Plans:

- Wollongong Development Control Plan (WDCP) 2009

Other policies

- Wollongong City Wide Development Contributions Plan 2022
- Wollongong Community Participation Plan 2019
- Wollongong Coastal Zone Management Plan

1.2 DETAILED DESCRIPTION OF PROPOSAL

The proposal seeks consent for the following:

- Use of a mezzanine level provided to the roof space of the dwelling; and
- Replacing glazing in the window to the stairwell with obscure/translucent glazing.

1.3 BACKGROUND

Application Number	Description (Application)	Decision	Determined
BA-1998/1144	Two Storey Dwelling	APPROVED	12-Oct-98
BA-1960/2892	Dwelling & Garage	APPROVED	07-Dec-60
BA-1962/2383	Additions & Garage	APPROVED	07-Nov-62
DA-1996/569	Dwelling	REFUSED	28-Nov-96
DA-1997/528	Dwelling	APPROVED	11-Dec-97
DA-2020/325	Residential - alterations and additions to dwelling to create a multi-purpose studio space including roofline amendment	APPROVED	13-Jul-20
PC-2020/1306	Residential - alterations and additions to dwelling to create a multi-purpose studio space including roofline amendment	APPROVED	22-Oct-20
DA-2020/325/A	Residential - alterations and additions to dwelling to create a multi-purpose studio space including roofline amendment Modification A - use of as constructed change in roof slope and additional minor design modifications to various building elements	APPROVED	29-Nov-21
BIC-2022/42	Residential - stair case and mezzanine level	UNDER ASSESSMENT	

Proposed Development History

The existing dwelling was renovated in 2021 under DA-2020/325/A to lift the roof to create a large volume multipurpose space for use by the owner as a creative art studio space and entertaining area.

In addition to the approved works, a mezzanine level was provided in this roof space, resulting in the split level dwelling having a 'rumpus level' on the lower ground floor, an 'entry level' in the middle and a 'mezzanine level' as an upper floor. The floor space ratio approved under DA-2020/325 and DA-2020/325/A was 0.54:1. DA-2020/325 and DA-2020/325 did not comprise additional gross floor area to that approved under DA-1997/528 which was assessed under WLEP 1990. The subject site was zoned 7c under WLEP 1990. There was no minimum FSR requirement for land zoned 7c under WLEP 1990.

The mezzanine space is 45m² in area and contains a bathroom and two partitioned 'studio' spaces. This mezzanine level extends 6.8m over the entry level to a glass balustrade.

The works for the mezzanine level were the subject of two (2) separate customer service requests, CR0107858 and CR0111068, which remain outstanding. A Building Information Certificate, BIC-2022/42, was lodged on 1 August 2022 in respect to the mezzanine level and staircase.

The current application, DA-2022/1221, seeks approval for the continued use of the constructed mezzanine level which is consistent with the residential use of the existing dwelling. This may then be followed with the building information certificate, BIC-2022/42, to address existing works completed on the mezzanine level through various certificates from professional engineers, licenced contractors and the builder.

BIC-2022/42 remains under assessment pending the outcome of the assessment of the subject application, DA-2022/1221. It is noted that advice received from Council's Building Officer assessing BIC-2022/42 is that documentation and certification submitted in support of application BIC-2022/42 indicate that the mezzanine and staircase are considered satisfactory.

No pre-lodgement was held for the proposal.

Customer service actions

There are two (2) outstanding customer service requests, CR0107858 and CR0111068, of relevance to the development.

1.4 SITE DESCRIPTION

The site is located at 11 Coledale Avenue, Coledale NSW 2515 and the title reference Lot 18 DP 997936.

Situated on the land is a split level dwelling with a pitched iron roof. The site is accessed via driveway off Coledale Avenue.

The land is an irregular shaped allotment with an overall site area of 328.8m². The site slope to the rear of the block.

The street scene in the immediate locality is generally characterised by low density residential development with detached dwelling houses. Along the eastern side of Coledale Avenue are large 2 - 3 storey dwelling houses. On the western side of Coledale Avenue comprises of mixed-use development however, primarily single to two storey dwelling properties that front Lawrence Hargrave Drive but with vehicular access to the rear. Adjoining development consists of a two-storey dwelling and secondary dwelling to the North of the site and a three storey dwelling house to the south. To the east is grassed foreshore area being Crown Land .



Figure 1: Aerial photograph

Property constraints

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

- Acid sulfate soils – Class 5
- Foreshore building line
- Coastal Hazard(s): Geotechnical risk

There are no restrictions on the Title that preclude assessment of the application.

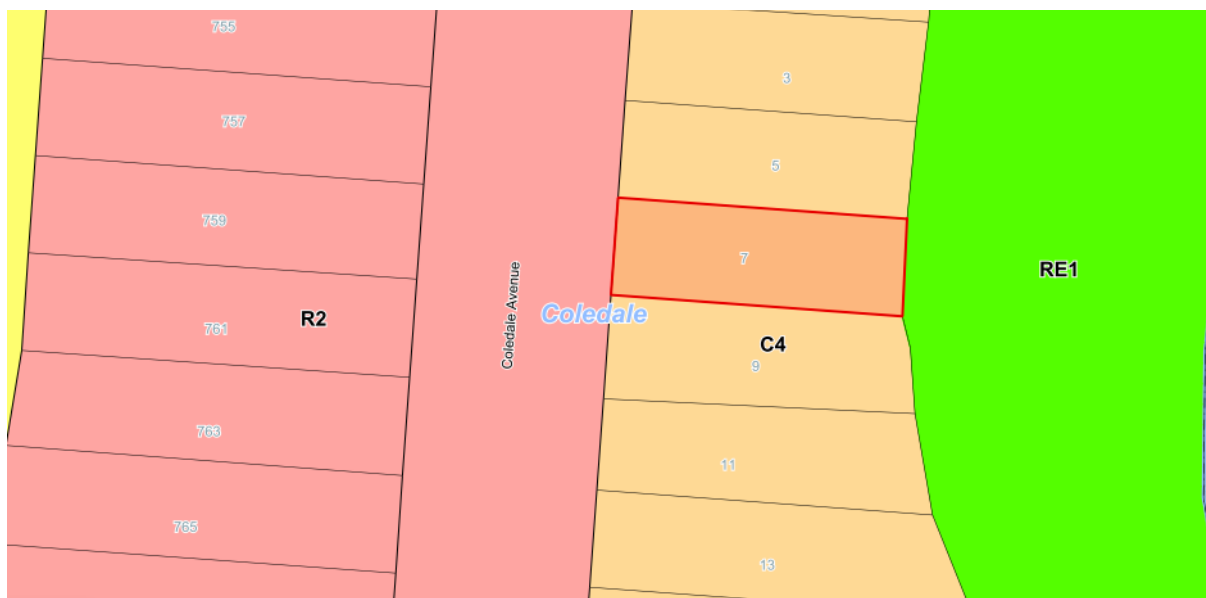


Figure 2: WLEP 2009 zoning map

1.5 SUBMISSIONS

The application was exhibited in accordance with Council's Community Participation Plan 2019 between 8 December 2022 to the 13 January 2023 and a total of two (2) submissions were received.

Amended plans were submitted by the applicant to address Council's additional information request on 14 March 2023. This information, whilst not changing the internal floor configuration of the dwelling as lodged, included replacing the glazing in the window to the stairwell with

obscure/translucent glazing to address concerns raised by an adjoining neighbour. This information was re-notified to the adjoining neighbour on 3 April 2023. No response has been received to date.

The issues are discussed below.

Table 1: Submissions

Concern	Comment
1. Privacy impacts from stairwell window	<p>Consideration was given to privacy impacts, overlooking of the adjoining property to the North from the window to the stairwell. Council raised concerns with regard to overlooking on the adjoining property to the North from the stairwell window.</p> <p>Amended plans were provided by the applicant indicating that the clear glazing to the stairwell window will be replaced with opaque, translucent glazing. Condition 2 at Attachment 6 specifies the requirement for the replacement of the clear glazing to the stairwell window with opaque, translucent glazing.</p> <p>Concerns raised are considered to be resolved.</p>
2. Floor space ratio	<p>The floor space ratio for the proposed development exceeds the maximum 0.3:1 and concerns that this will have adverse impacts on the amenity, infrastructure and pedestrian traffic and parking of neighbourhood.</p> <p>The proposal seeks a departure to Clause 4.4 Floor space ratio development standard under WLEP 2009. A Clause 4.6 written request has been submitted by the applicant and is considered capable of support. Refer to section 2.3.1 for further discussion.</p>
3. Traffic, pedestrian traffic and parking	<p>Concerns raised regarding the impacts of the development on traffic and car parking were considered in the assessment of this application.</p> <p>The proposed development is considered acceptable in this regard for the following reasons:</p> <ul style="list-style-type: none"> • Council's DCP requires two (2) parking spaces for the proposed new development. The proposal provides two (2) onsite parking spaces within the double garage with the added ability for visitors to park on the driveway forward of the garage. • The development will have no impact on the existing driveway cross over width. • The development it is considered will have minimal impact on traffic and pedestrian safety along Coledale Avenue. • It is considered that the traffic generated by the single dwelling will not be unreasonable in this circumstance and is within the environmental capacity of the local road network.

Concern	Comment
	The proposed development is considered to satisfy Council's onsite car parking and access requirements in this circumstance.
4. Potential for Dual Occupancy Development	Dual occupancy development is not listed as permissible development in the C4 zone.
5. Inconsistent with the objectives of C4 Zone	It is considered that the objectives of the C4 zoning for the site have been met as outlined in the report.
6. Amenity impacts	<p>Concerns are raised that the proposed development will result in adverse amenity impacts on the adjoining and nearby properties.</p> <p>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 a reasonable level of amenity for adjoining and nearby properties that is satisfactory in accordance with the relevant development standards and controls.</p>

Table 2: Number of concerns raised in submissions

Concern	1	2	3	4	5	6
Frequency	1	1	1	1	1	1

1.6 CONSULTATION

1.6.1 INTERNAL CONSULTATION

Building Officer

Council's Building Officer has assessed the application submission and provided conditionally satisfactory advice noting that structural reports and Building Code of Australia matters submitted with the Building Information Certificate BIC-2022/42 application are satisfactory.

1.6.2 EXTERNAL CONSULTATION

None required

2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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

2.1.1 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021

Chapter 2 – Coastal Management

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.*

2.3 Land to which Chapter applies

This Policy applies to land within the coastal zone.

2.3 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 3 Coastal environment area

2.10 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) coastal environmental values and natural coastal processes,*
 - (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) Aboriginal cultural heritage, practices and places,*
 - (g) the use of the surf zone.*
- (2) *Development consent must not be granted to development on land to which this 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.*
- (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 located within the overlapping Coastal Environment and Use area, therefore this clause applies to the proposal. The proposal is for use of an internal mezzanine level and replacement of the glazing to the window of the stairwell. No changes are proposed to the existing dwelling footprint and bulk and scale. As such 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.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- (1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
- (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) *Aboriginal cultural heritage, practices and places,*
 - (v) *cultural and built environment heritage, and*
 - (b) *is satisfied that:*
 - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
 - (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*
- (2) *This 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 located within the overlapping Coastal Environment and Use area, therefore this clause applies to the proposal. The proposal is for use of an internal mezzanine level and replacement of the glazing to the window of the stairwell. No changes are proposed to the existing dwelling footprint and bulk and scale. 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.

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.

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.

2.14 Other development controls not affected

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

- (a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or*
- (b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.*

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 proposed works have been reviewed in relation to Clauses 2.12 to 2.15 above and is considered acceptable in this instance.

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 proposal is for use of an internal mezzanine level, no works are proposed external to the existing, approved building footprint.

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—land—

(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 requirements of clause 4.6.

2.1.1.2 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Clause 1.4 Definitions

Dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

dwelling house means a building containing only one dwelling.

Note—

Dwelling houses are a type of **residential accommodation**—see the definition of that term in this Dictionary.

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 Environment Living**.

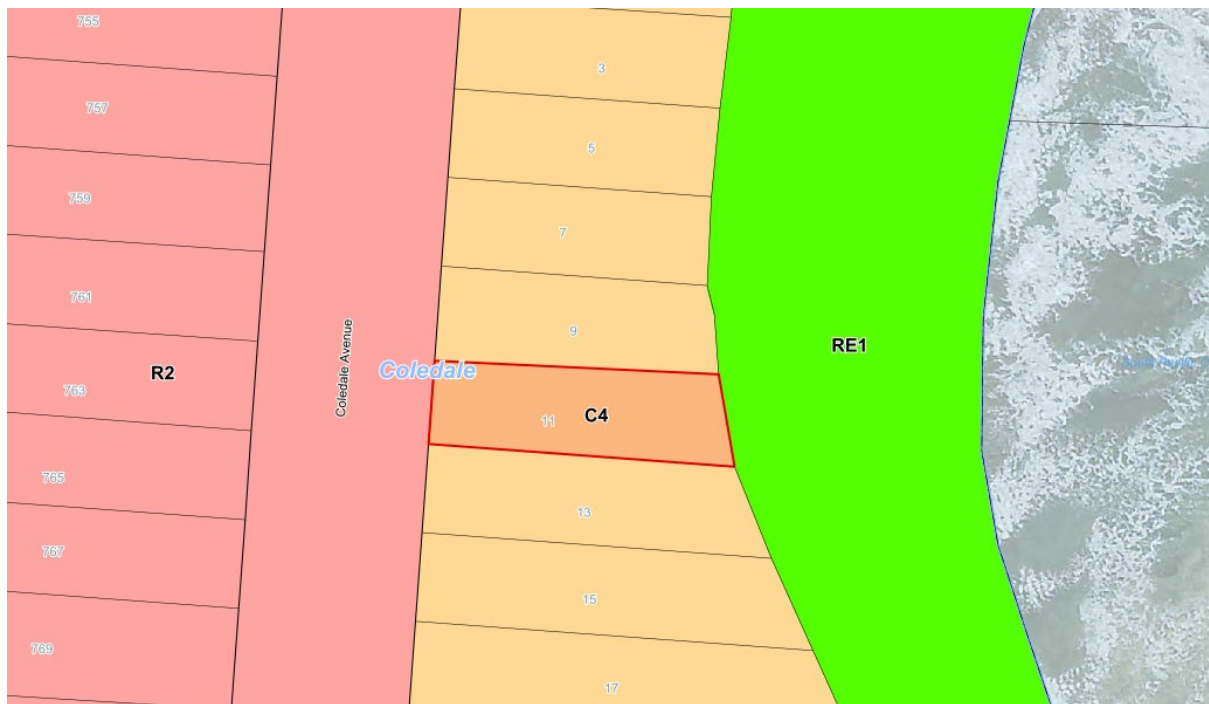


Figure 2: WLEP 2009 zoning map

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 proposed development does not impact adversely on ecological or scientific values of the site. The design incorporates features in keeping with existing dwelling and that will not detract from the character of the coastal area. The proposal is satisfactory with regard to the above objectives.

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

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

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

Part 4 Principal development standards

Clause 4.3 Height of buildings

The proposal does not alter the maximum height of the existing building approved under DA-2020/325/A.

The maximum building height for the development is 9m which 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: 328.8m²

GFA: 202m²

FSR: $198\text{m}^2/328.8\text{m}^2 = 0.6:1$

The proposed FSR for the site exceeds 0.3:1 and does not comply.

Clause 4.6 Exceptions of 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 0.6:1.
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 4 .
that there are sufficient environmental planning grounds to justify contravening the development standard.	Yes, the applicant's request contains this justification shown at Attachment 3.
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 4) is considered to have 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 exception is capable of support in this case for the following reasons:</p> <p>A review of other development approvals granted in Coledale Avenue in the C4 zone and the schedule at Attachment 5, have identified circumstances in that specific location have warranted a number of variations rather than strict compliance with the standard.</p> <p>It is noted land with a FSR maximum of 0.3:1 usually corresponds to a minimum lot size is 999m² for C4 zoned land in WLEP 2009. However, as the site has an existing area of 328.8m² it does not</p>

	<p>meet the minimum lot size presenting as a planning anomaly that has been accepted in other locations along the street.</p> <p>The proposed development does not impact adversely on ecological or scientific values of the site. The primary quality of the area is its proximity to the ocean and the foreshore with public access to the ocean and foreshore provided at either end of Coledale Avenue.</p> <p>It has been demonstrated that compliance with the standard is both unreasonable and unnecessary in the circumstances of this case as the FSR for this street is variable. Whilst the proposal exceeds the maximum FSR, the subject works are internal only with no change to the bulk and scale of the dwelling, site coverage or boundary setbacks such that it is considered there is no change to the amenity of the area, overshadowing or view sharing. The written request has adequately addressed the matters required to be addressed under subclause (3).</p>
<p>(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</p>	<p>It is considered that strict numerical compliance with the floor space ratio development standard in the context of the proposal would not result in significant public benefit.</p> <p>The proposal is for use of an internal mezzanine level and replacement of the glazing to the window of the stairwell to the single dwelling house.</p> <p>The proposal will have no impact on the existing external built form of the dwelling or its footprint approved under DA-1997/528. The existing dwelling is not considered out of character with the overall bulk and scale of nearby and surrounding residential development in this locality. The proposal will increase the available parking within the site with a double garage. The proposal is not considered to result in traffic generation that would adversely impact the local road network.</p> <p>The proposal as discussed in the report is considered to maintain a reasonable level of amenity for the adjoining and nearby properties. The application has been reviewed by Council's Building Officer and no objections were raised.</p> <p>The statement demonstrates that the proposed development will be in the public interest because it is consistent with the objectives of the standard. It provides a form of development which is consistent with the objectives of the C4 zone. The proposal will not give rise to detrimental impacts on adjoining residential development.</p> <p>The statement has satisfactorily demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds specific to the site to justify contravening the development standard.</p> <p>On balance, the proposal is considered to be in the public interest.</p>

(b) the concurrence of the Secretary has been obtained.

The WLPP can assume the Secretary's concurrence as the consent authority.

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

The proposal has been assessed against Clause 7.1 of WLEP2009 and it is considered that the subject site is already serviced by public utilities.

Clause 7.5 Acid Sulfate Soils

The proposal is identified as potentially being affected by class 5 acid sulfate soils. However as there are no earthworks proposed the development is not likely to lower the water table beyond 1m it is considered that there is minimal impact. As such no special conditions are required in relation to Acid Sulphate Soils.

Clause 7.7 Foreshore building line

The site is identified to be affected by a foreshore building line as indicated at Figure 3. A portion of the existing dwelling is located within the area of the foreshore building line. Development consent can be granted for an alteration of an existing dwelling pursuant to Clause 7.7(2)(a) provided the requirements of subclause (3) are met.



Figure 3: Foreshore building line

The proposal achieves the objectives of the zone and is compatible with the surrounding area. There is no adverse impact on drainage, natural processes and surrounding uses. The appearance of the encroachment is compatible within the surrounding area. It is unlikely to generate conflicts between, people using open space areas or the water and does not impede continuous public access along the foreshore due to the location of the site. There also will not be an adverse impact on the amenity or aesthetic appearance of the foreshore.

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

None relevant.

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

2.3.1 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 WDCP 2009 is contained at **Attachment 3**.

2.3.2 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN 2022

The estimated cost of works is \$30,000 and a levy is therefore not applicable under this plan as the threshold value is \$100,000.00.

2.4 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.

2.5 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

Not Applicable.

61 Additional matters that consent authority must consider

Not Applicable.

62 Consideration of fire safety

Not applicable

63 Considerations for erection of temporary structures

Not applicable

64 Consent authority may require upgrade of buildings

Not applicable.

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

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

Context and Setting:

In regard to the matter of context, the planning principle in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 is relevant in that it provides guidance in the assessment of compatibility. The two major aspects of compatibility are physical impact and visual impact. In assessing each of these the following questions should be asked:

- Are the proposals physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.
- Is the proposals appearance in harmony with the buildings around it and the character of the street?

In response to the first question, matters such as overshadowing, privacy concerns, bulk scale and setbacks are relevant. The proposed development is for use for use of an internal mezzanine level and replacement of the glazing to the window of the stairwell to a single dwelling house. The proposal will have no impact on the existing dwelling footprint and as such existing boundary setbacks. It is considered that the building has been reasonably sited such that it satisfies the objectives of Council's boundary setback requirements so as to have minimal impact on the adjoining properties in terms of privacy and overshadowing and to allow reasonable solar access to the units and adjoining development.

In regard to the visual impact, the development is considered to be largely in harmony with the surrounding character the area. The immediate area surrounding the site is characterised predominantly by low density residential development of varying architectural styles. The proposed development satisfies Council's Building Height development standards as identified in the WLEP 2009, and overall, the bulk and scale of the proposed development is considered acceptable in this circumstance.

The applicant's development standard departure in respect to the FSR has been discussed in the report and are considered capable of support

The proposal will have no impact on the external built form, and no impact on the scale of the existing building and therefore will have minimal impact on the existing street scape.

It is considered that the scale of the development as viewed from the street and foreshore is comparable to other developments in 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:

There are no 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:

The soil profile is considered to be acceptable for the proposed development.

Air and Microclimate:

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

Flora and Fauna:

No tree removal is proposed with this application. 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:

There are no technological hazards affecting the site that would prevent the proposal.

The proposal is identified as potentially being affected by class 5 acid sulfate soils. However as there are no earthworks proposed, the development is not likely to lower the water table beyond 1m it is considered that there is minimal impact. As such no special conditions are required in relation to Acid Sulphate Soils.

The site is identified to be affected by coastal hazard - geotechnical risk. The proposal is for use of an internal mezzanine level, no works are proposed external to the existing, approved building footprint.

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 proposal does involve an exception to WLEP 2009 development standard for Minimum site width. The exception is considered to have been adequately justified via the submission of an appropriate justification statement and capable of support.

The application does not result in any variations to Council's development control plans as outlined at **Attachment 3**.

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.

2.7 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 is sought the built 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.

Are the site attributes conducive to development?

There are no site constraints that would prevent the proposal.

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

Refer to discussion above in Section 1.5 of this report.

2.9 SECTION 4.15(1)(E) THE PUBLIC INTEREST

The application is not expected to have unreasonable impacts on the environment or the amenity of the locality. It is considered appropriate with consideration to the zoning and the character of the area and satisfactory with regard to the applicable planning controls. The proposal is considered to be in the public interest.

3 CONCLUSION

The proposed development has been assessed with regard to the relevant prescribed matters for consideration outlined in Section 4.15 of the Environmental Planning & Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies discussed in this report, Wollongong Local Environmental Plan 2009 and all relevant Council DCPs, Codes and Policies.

The proposed development is permissible with consent and is consistent with the zone objectives. There is a development departure sought in relation to the floor space ratio, Clause 4.4 of WLEP 2009 which has been justified by the applicant as required by Clause 4.6 (3) of WLEP 2009 and is considered capable of support.

An internal BCA referral was satisfactory and submissions have been considered as well as similar development proposals involving a departure to the FSR of WLEP 2009 within the immediate locality of Coledale Avenue

It is considered that the proposed development is unlikely to result in adverse impacts on the character or amenity of the surrounding area, environment and adjoining development as it is within the existing building footprint and does not add to the existing bulk and scale.

4 RECOMMENDATION

DA-2022/1221 be approved subject to the conditions at **Attachment 6**.

5 ATTACHMENTS

- 1 Plans
- 2 Site inspection photos
- 3 WDCP 2009 compliance table
- 4 Applicant's submission to development departure – Clause 4.4 Floor Space Ratio
- 5 Schedule of FSR Exceedances in Coledale Avenue
- 6 Draft Conditions

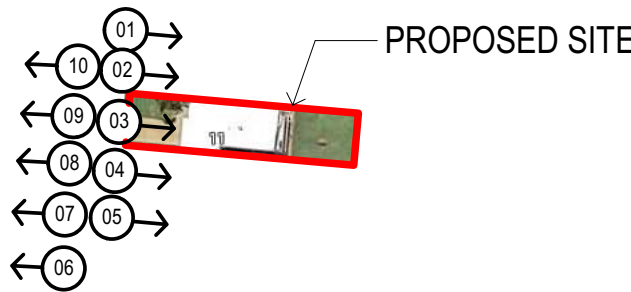
PROPOSED MINOR ALTERATIONS TO AN EXISTING DWELLING
11 COLEDALE AVENUE COLEDALE NSW



DA APPLICATION

CONTENTS:

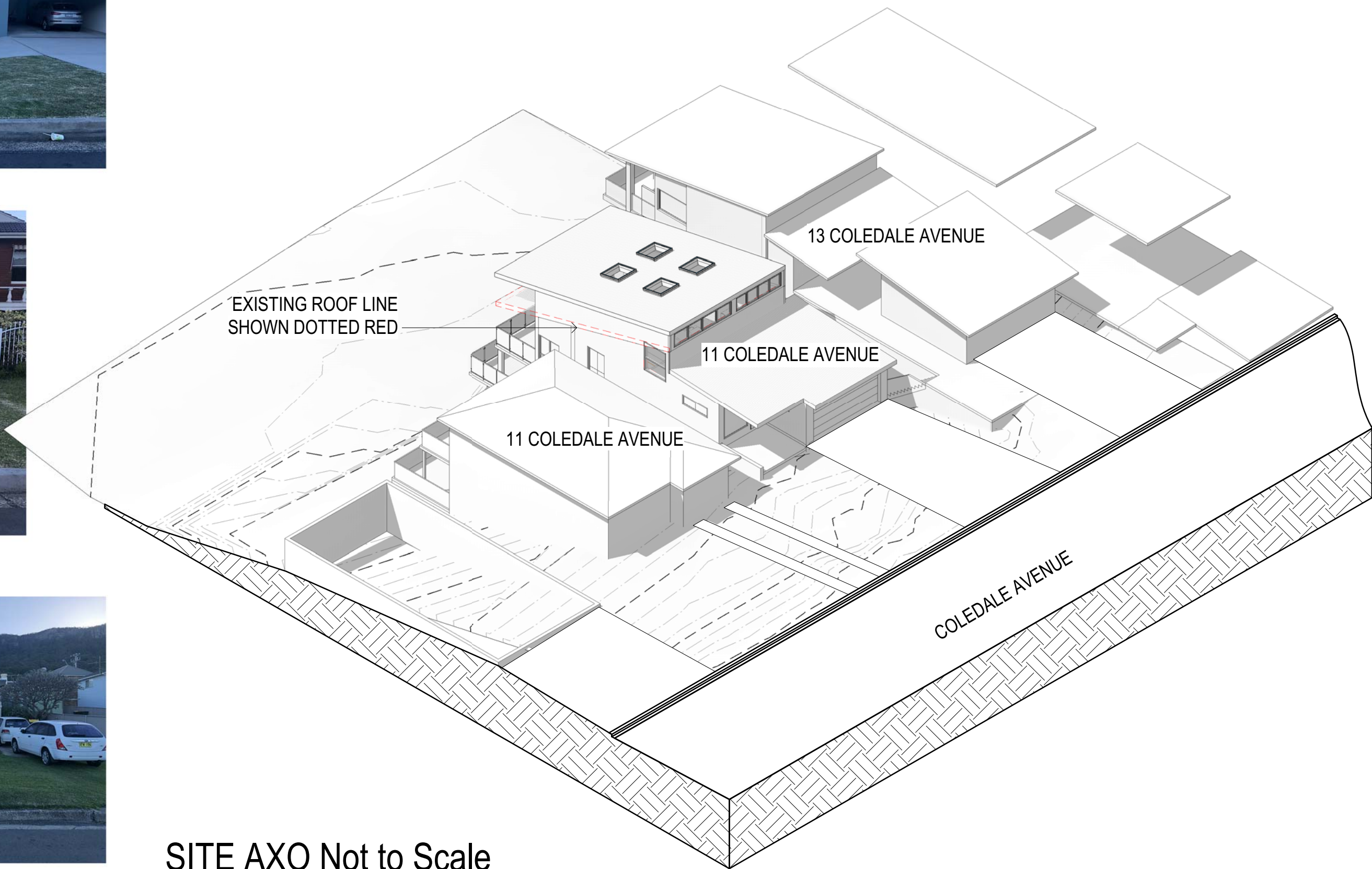
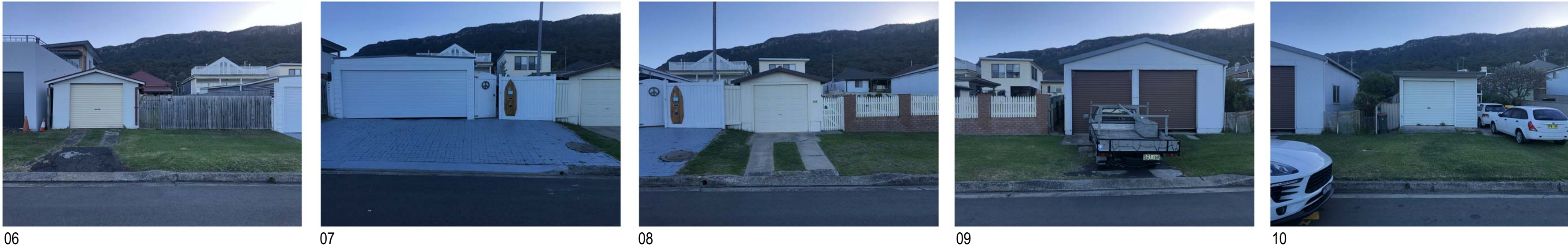
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A-S-112	STRUCTURE MEZZANINE
A-S-113	STRUCTURE ROOF
DA-001	Site Plan
DA-002	Existing Rumpus Room Level
DA-003	Existing Entry Level
DA-004	Proposed Mezzanine Level
DA-005	Existing Roof Plan
DA-006	Section & Elevations
DA-900	Shadow Analysis
DA-901	Elevation Shadow Analysis - Sheet 01
DA-902	Elevation Shadow Analysis - Sheet 02
DA-903	Elevation Shadow Analysis - Sheet 03
DA-1201	Photo Survey-Sheet 01
DA-1202	Photo Survey-Sheet 02
DA-1203	Photo Survey-Sheet 03



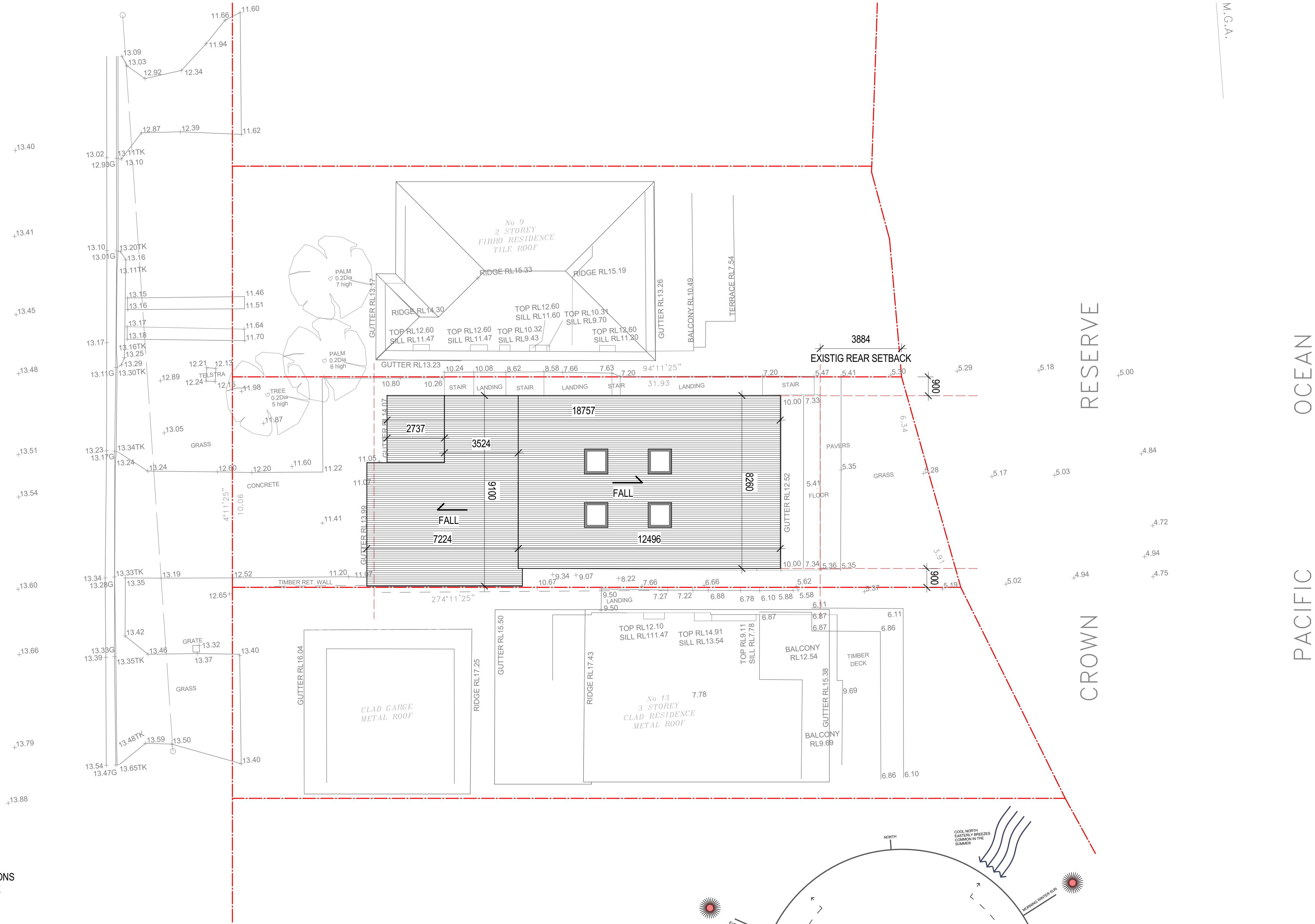
WIDE AREA CONTEXT PLAN Scale 1:100 @ A1



COLEDALE AVENUE STREET ELEVATION COLLAGE



SITE AXO Not to Scale

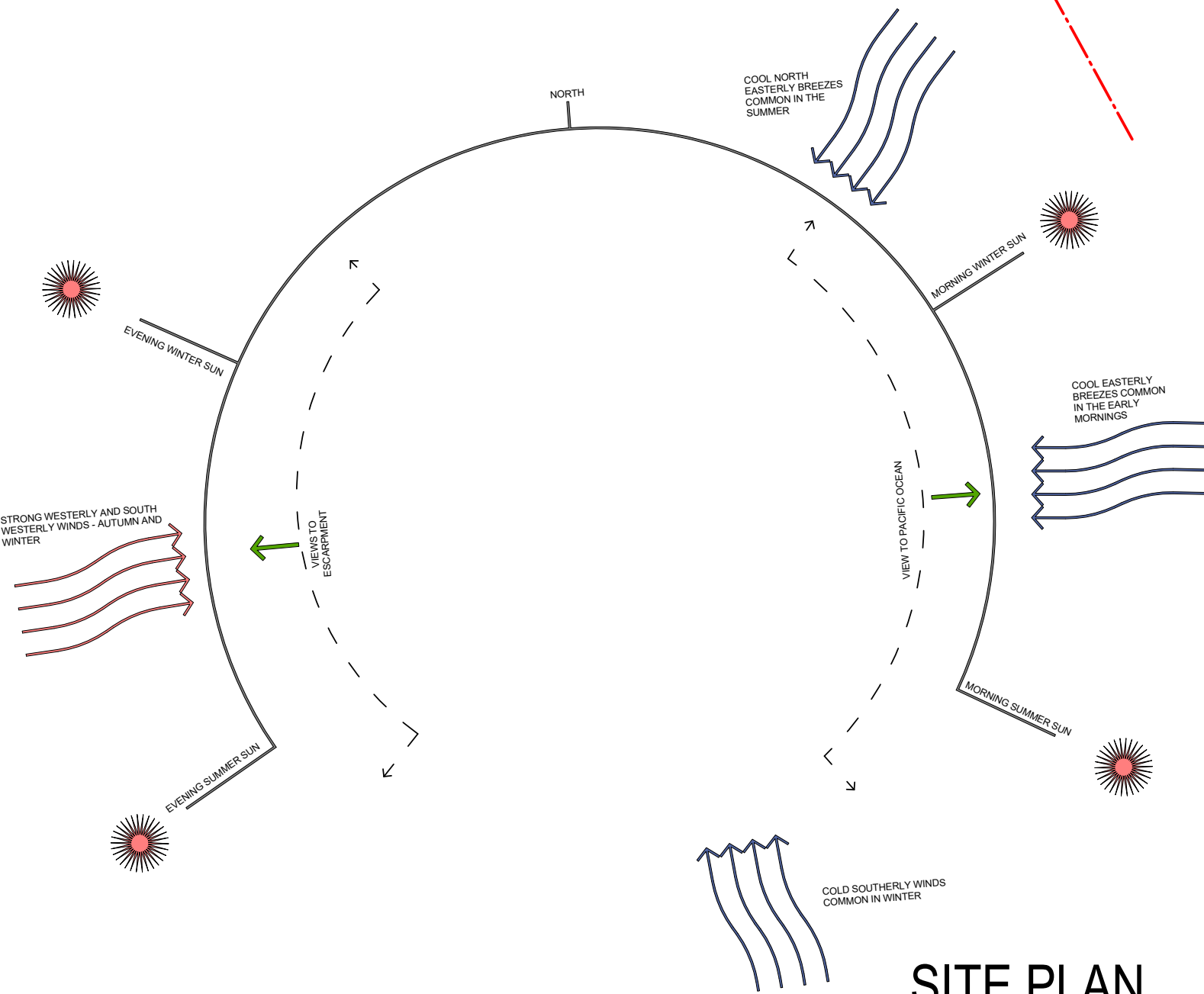
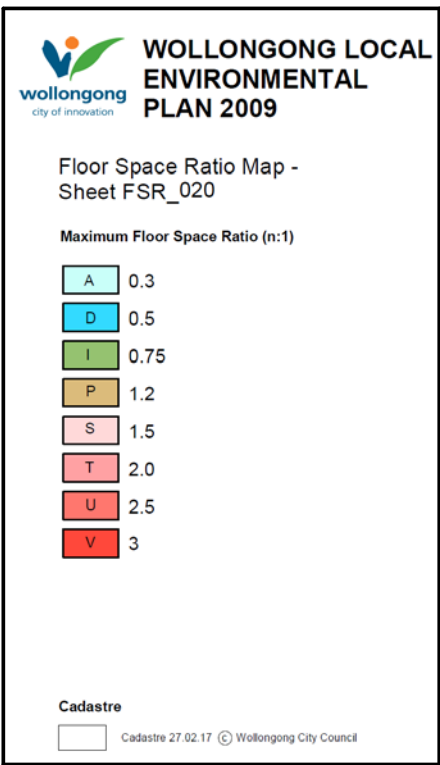
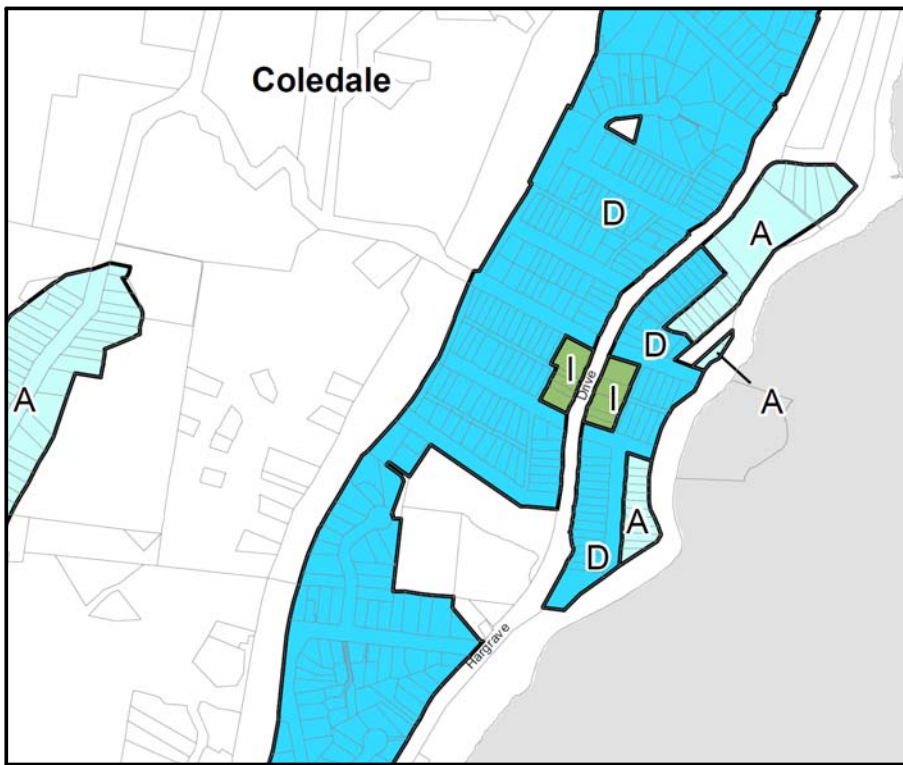
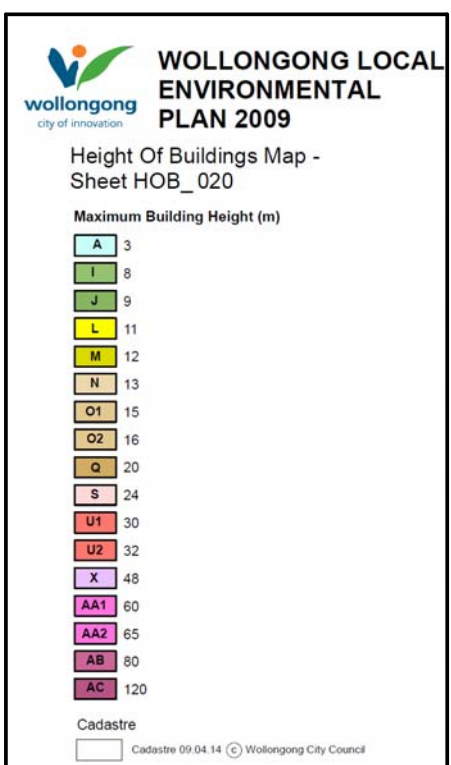


M.G.A.

COLEDALE AVENUE

OCEAN PACIFIC CROWN

NOTE: THE PROPOSED ALTERATIONS INVOLVE CHANGES TO ROOF LINE WITHIN MAX HEIGHT PLAN AS STIPULATED BY WCC LEP 2009



SITE PLAN

Scale 1:100 @ A1



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The Builder/Contractor shall verify job dimensions prior to any work commencing. Figured dimensions shall take precedence over scaled work.

DA APPLICATION

Rev	Date	Revision	By	Chk.
1	2022-07-08	For Approval		

NOTES:

- Existing
- Building Elements As Subject To Building Information Certificate

Minor Alterations to Existing Dwelling

11 Coledale Avenue,
Coledale NSW

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PREPARED FOR MR YBIN XU
Mob: 0418 868 041

Site Plan

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1	AS	KL

Drawing No. DA-001 /1



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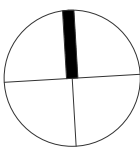
Rev	Date	Revision	By	Chk.
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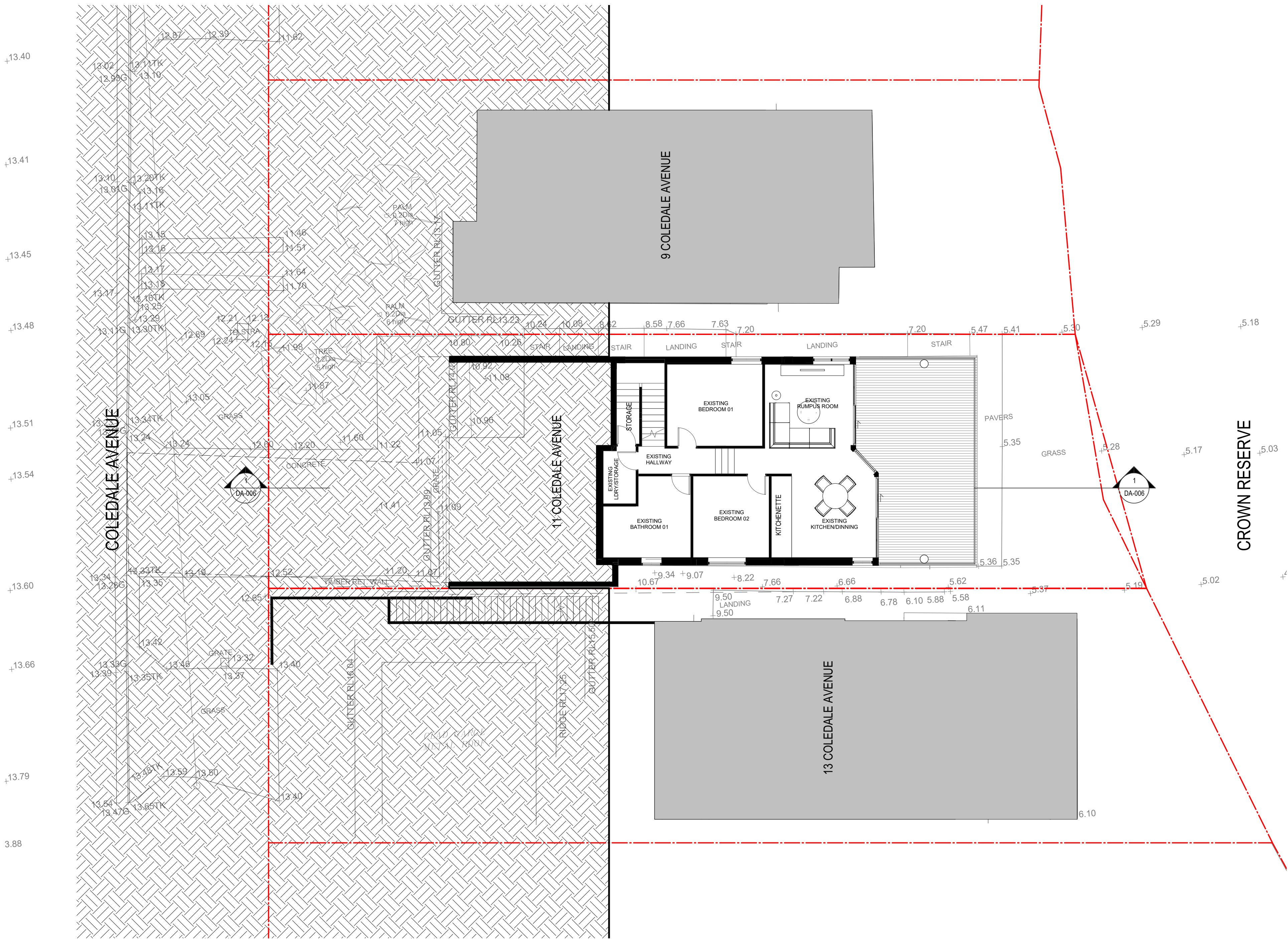
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Existing Rumpus Room Level

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Revision	Drawn	Chk.
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Drawing No. **DA-002** /1





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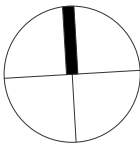
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Minor Alterations to Existing Dwelling

11 Coledale Avenue,
Coledale NSW



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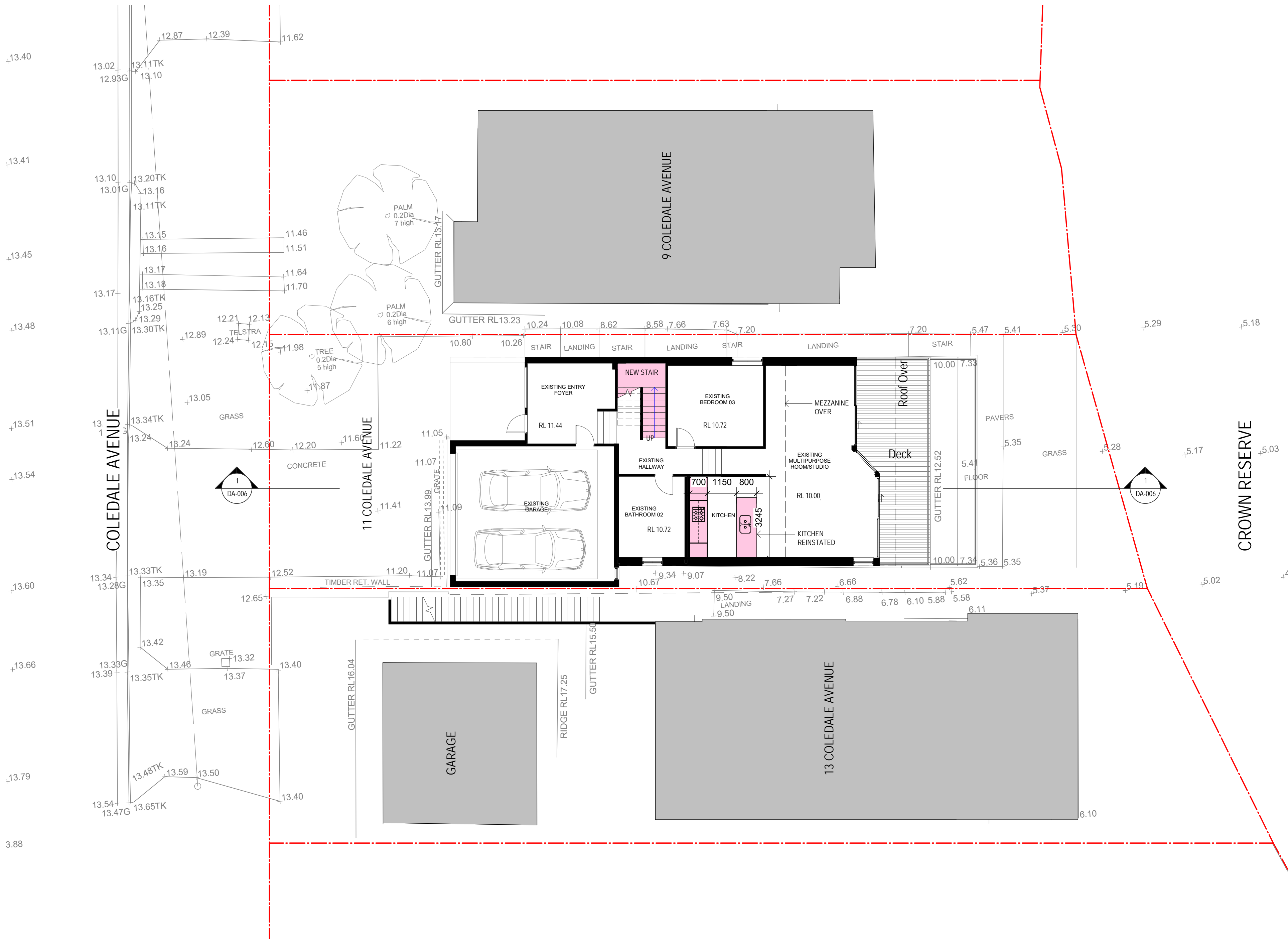
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Existing Entry Level

Date	Scale	Sheet Size
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1	AS	KL

Drawing No. **DA-003** /1





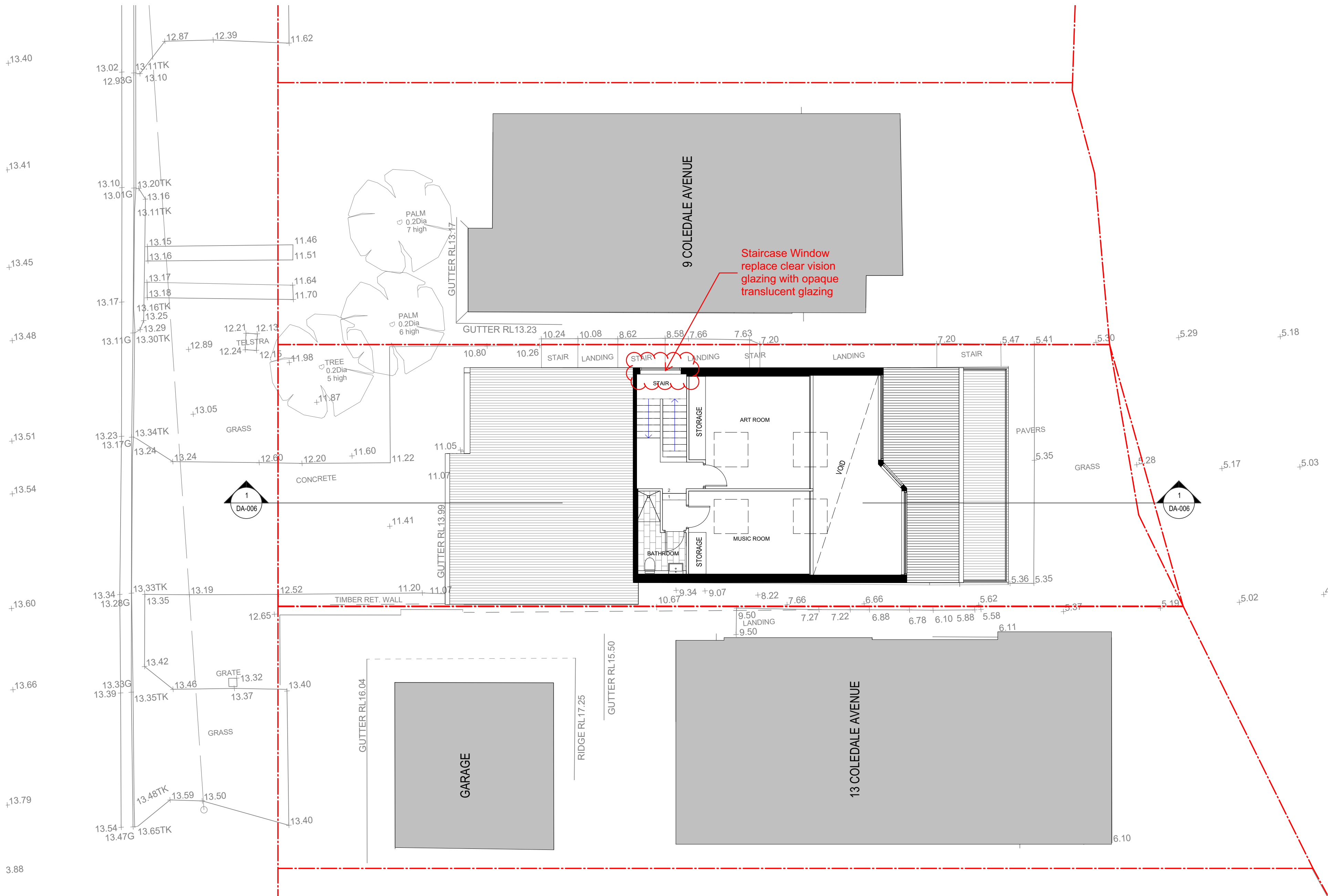
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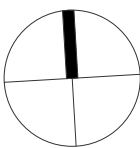
DA APPLICATION

Rev	Date	Revision	By	Chk.
1	2022-07-08	For Approval		
2	2023-03-14	Council comments amendments		



Minor Alterations to Existing Dwelling

11 Coledale Avenue,
Coledale NSW



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Proposed Mezzanine Level

Date	Scale	Sheet Size
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Revision	Drawn	Chk.
	Author	Checker

Drawing No. **DA-004 / 2**



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DA APPLICATION

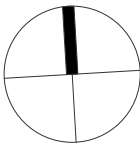
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1	2022-07-08	For Approval		

NOTES:

- Existing
- Building Elements As Subject To Building Information Certificate

Minor Alterations to Existing Dwelling

11 Coledale Avenue,
Coledale NSW

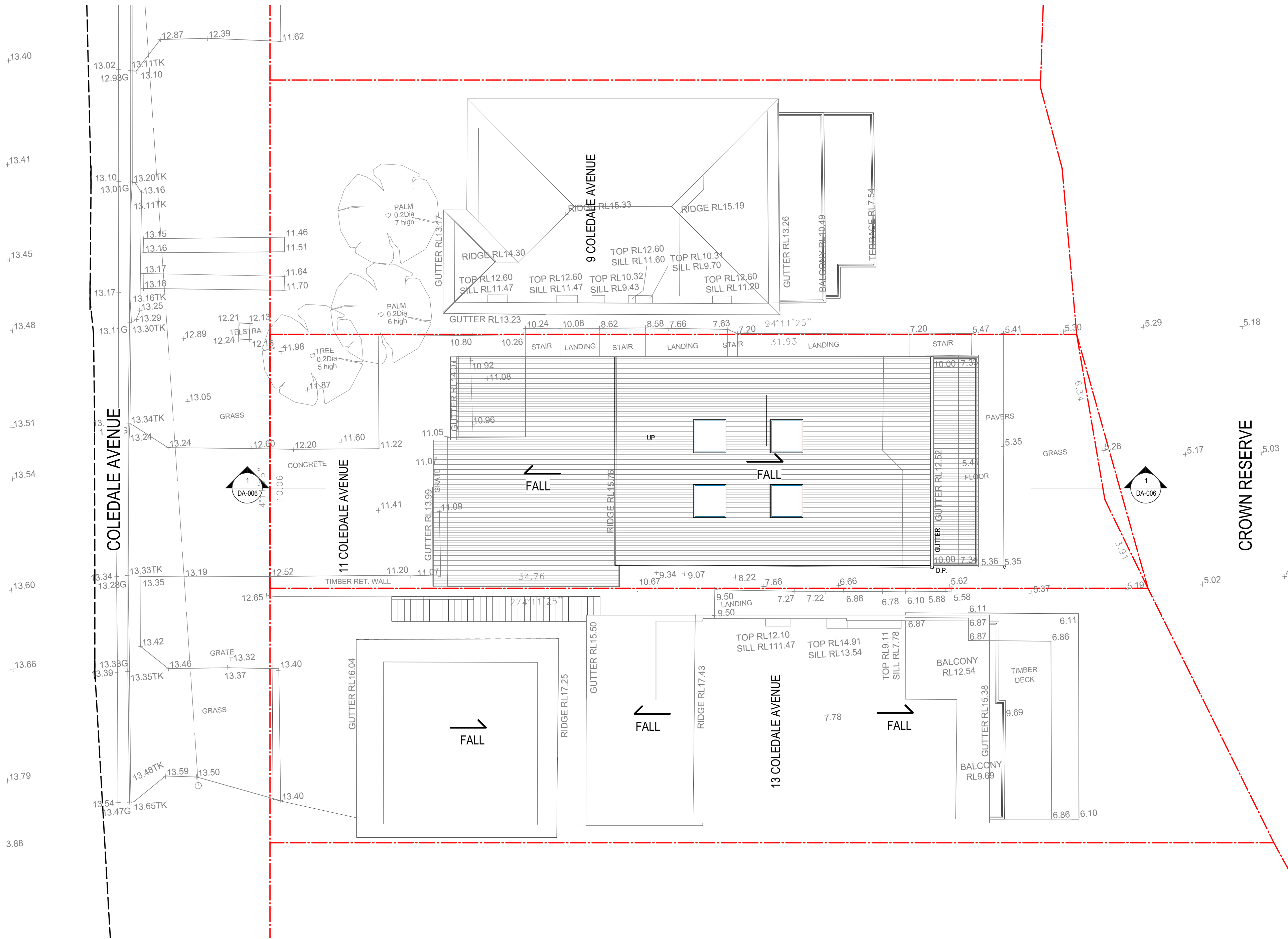


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Existing Roof Plan

Date	Scale	Sheet Size
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Revision	Drawn	Chk.
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Drawing No. **DA-005** /1





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DA APPLICATION

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1	2022-07-08	For Approval		
2	2023-03-14	Council comments amendments		

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- Building Elements As Subject To Building Information Certificate

Minor Alterations to Existing Dwelling

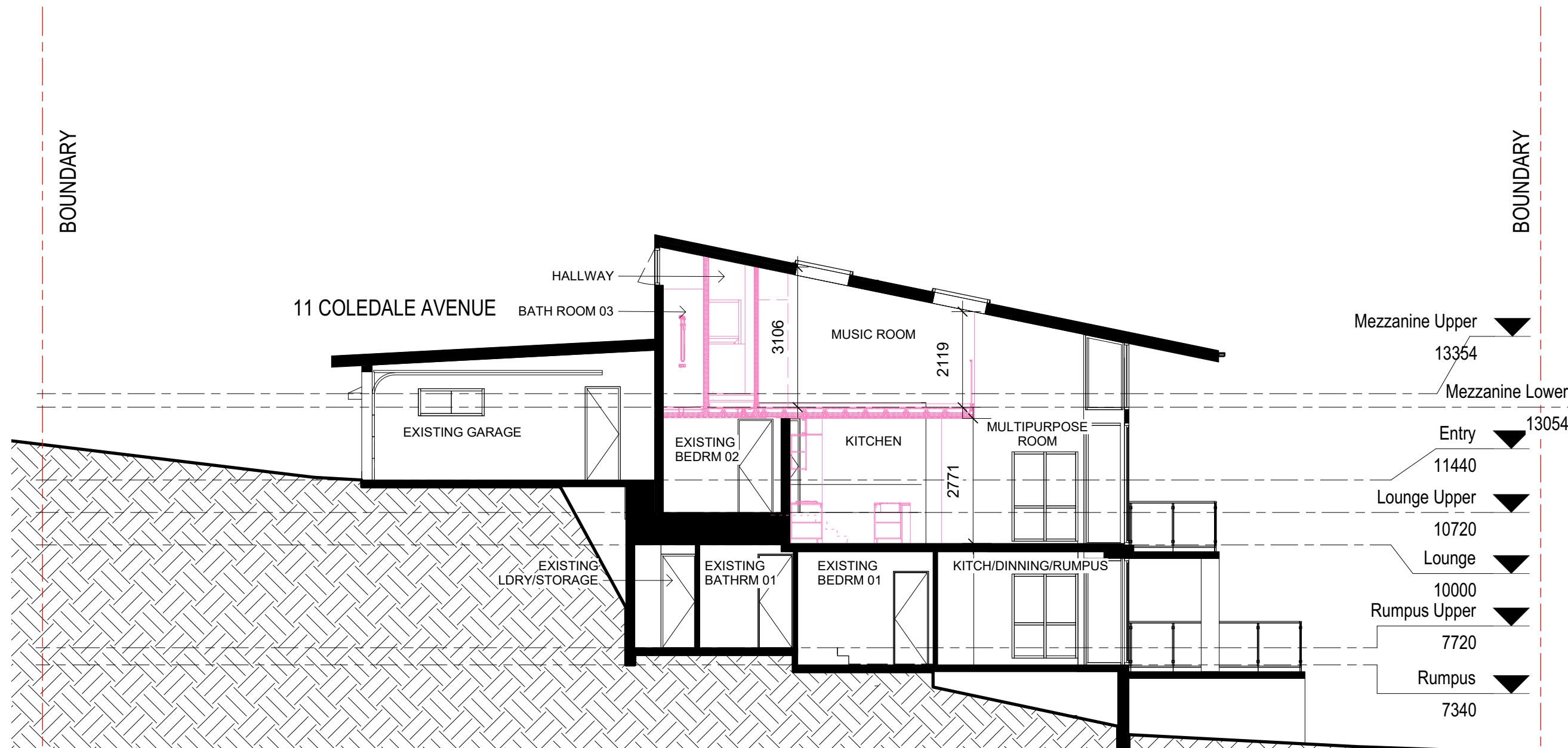
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Coledale NSW

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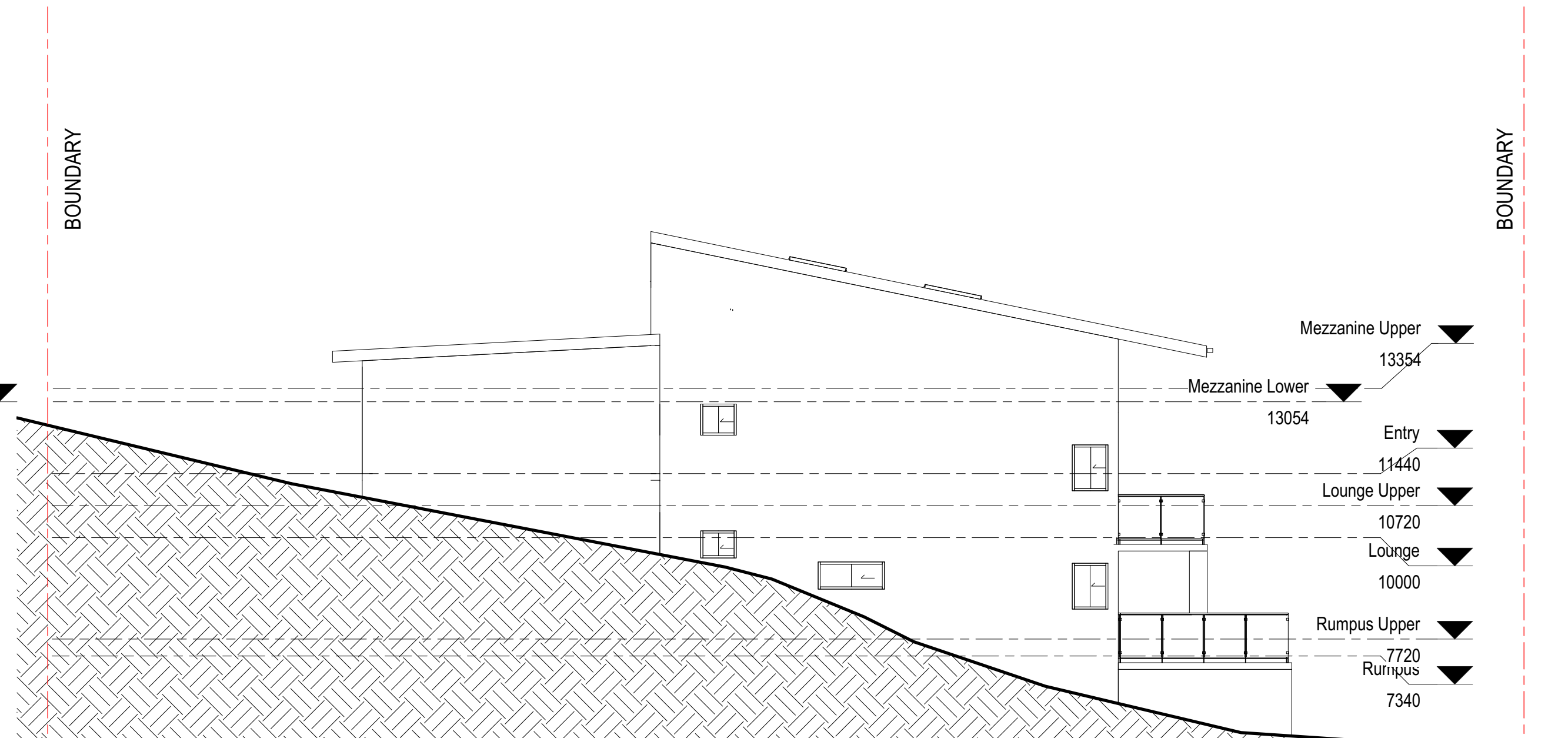
Section & Elevations

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Revision	Drawn	Chk.
1	AS	KL

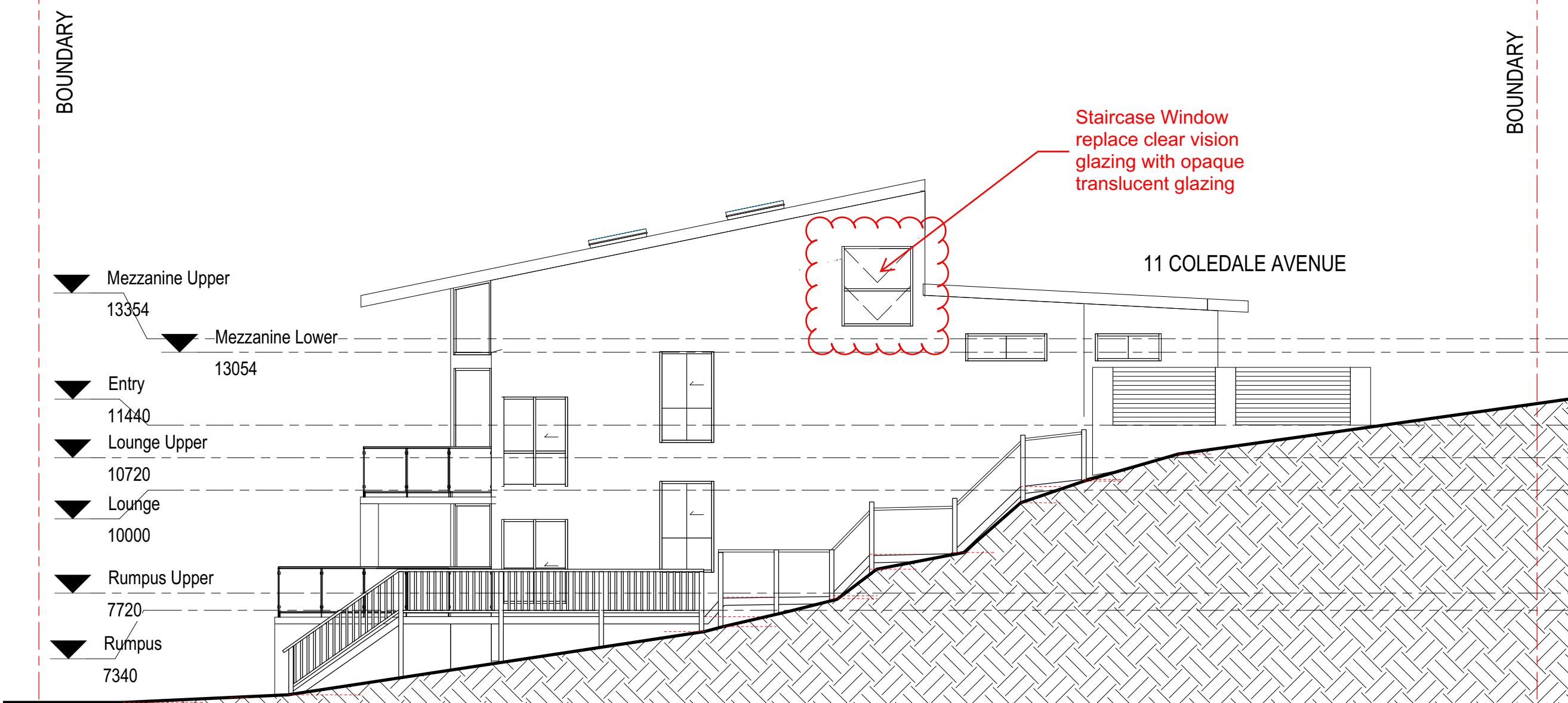
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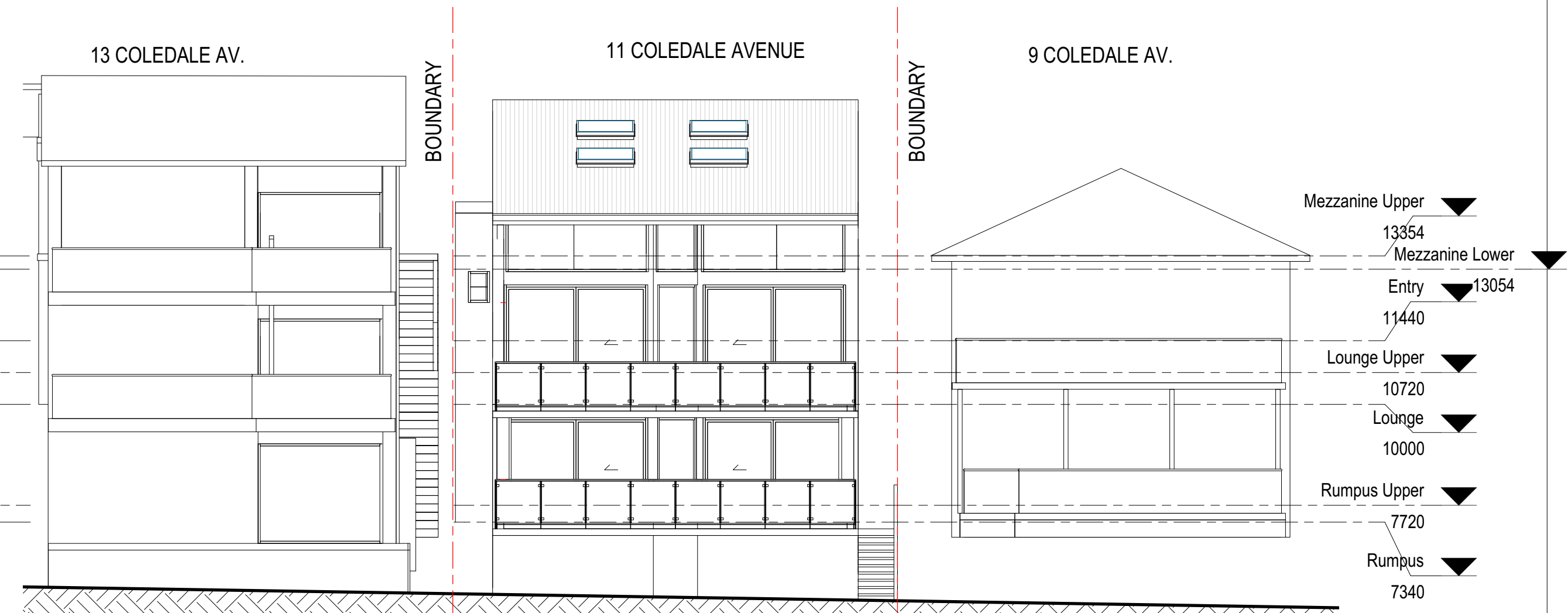
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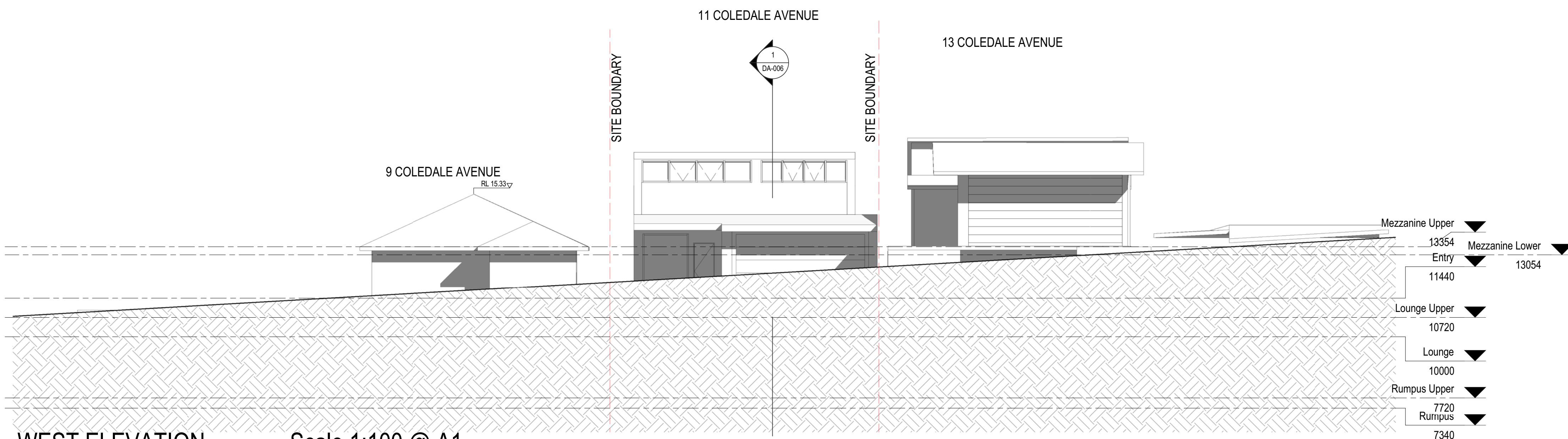
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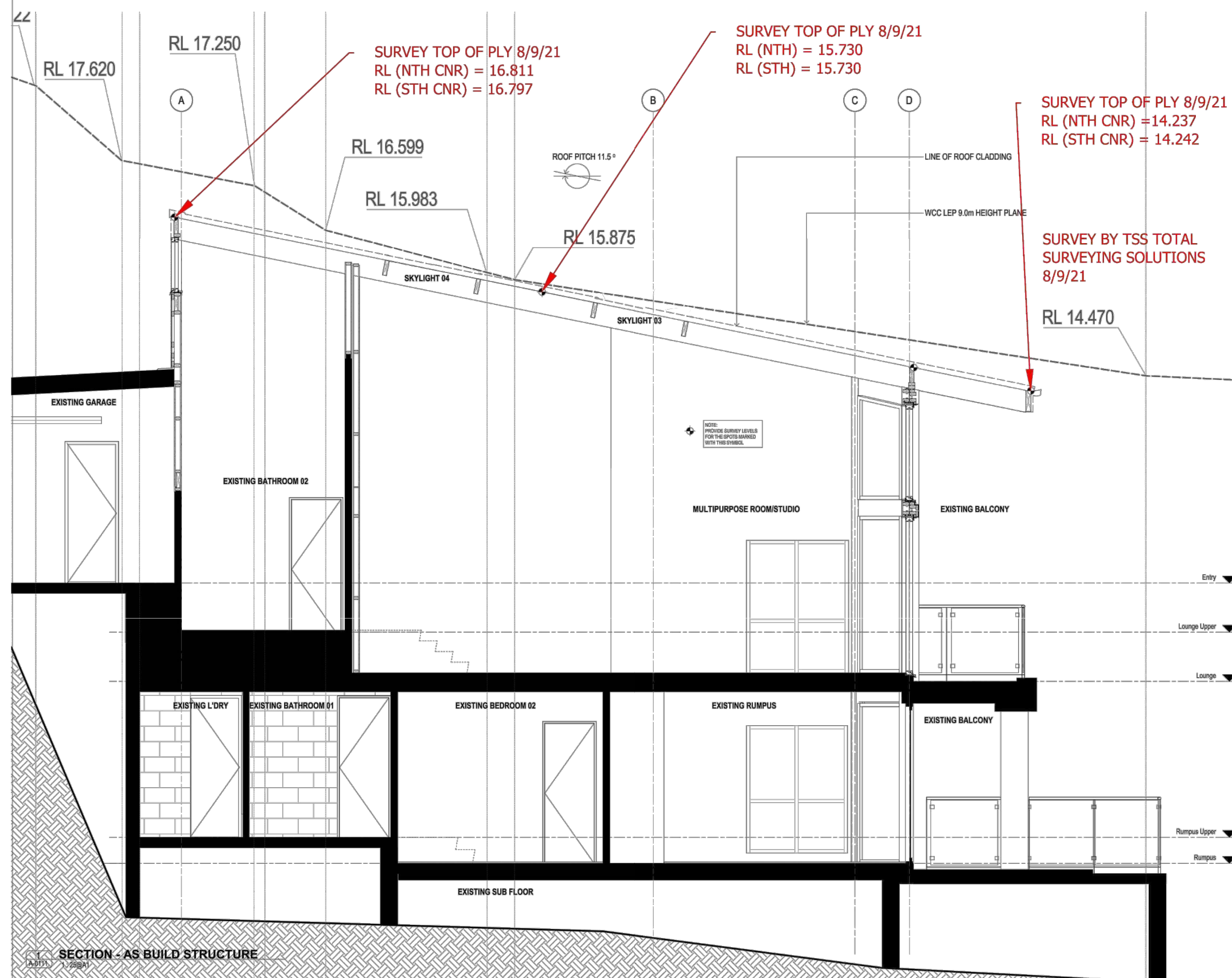
NORTH ELEVATION Scale 1:100 @ A1



EAST ELEVATION Scale 1:100 @ A1



WEST ELEVATION Scale 1:100 @ A1



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Minor Alterations to Existing Dwelling
11 Coledale Avenue,
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SECTION
AS BUILT ROOF STRUCTURE

Date Scale Sheet Size
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Revision Drawn Chk
Author Checker

Drawing No. A-0650



TSS TOTAL SURVEYING
SOLUTIONS

LANE COVE | CAMDEN | MANLY VALE | CENTRAL COAST

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PLAN SHOWING ROOF LEVELS OVER LOT 18 IN DP 997936

CLIENT: SCOTT MARKS
PROJECT: COLEDALE
ADDRESS: 11 COLEDALE AV COLEDALE

JOB No.: 211291	LGA: WOLLONGONG
PLAN No.: 211291-4	DATUM: SITE DATUM
DATE: 10-09-2021	SCALE: NTS
DRAWN: BP	CONT. INTERVAL: N/A
CHK: GS	SHEET 1 OF 1

ATTACHMENT 2 – Site Inspection Photos

Date: 8 February 2023

Description: Existing dwelling on subject as viewed from Coledale Avenue.



Date: 8 February 2023

Description: Adjoining dwellings (principal and secondary dwelling) to the North of the subject site as viewed from Coledale Avenue. Photo taken standing forward of the subject site.



Date: 8 February 2023

Description: Adjoining dwelling to the South of the subject site as viewed from Coledale Avenue. Photo taken standing forward of the subject site.



Date: 8 February 2023

Description: Rear elevation of the existing dwelling. Photo taken from reserve to the rear of subject site.



Date: 8 February 2023

Description: Rear elevations of dwellings to the South of the subject site. Photo taken from Council reserve to the rear of the subject site.



Date: 8 February 2023

Description: Rear elevations of dwellings to the North of the subject site. Photo taken from Council reserve to the rear of the subject site.



Date: 8 February 2023

Description: Existing South side boundary setback to remain unchanged with the application.



Date: 8 February 2023

Description: Existing North side boundary setback to remain unchanged with the application.



Date: 8 February 2023

Description: North elevation of existing dwelling including window proposed for change of glazing.



Date: 8 February 2023

Description: Southern elevation of adjoining dwelling to the North of the subject site.



Attachment 3: WDCP 2009 compliance table

CHAPTER A1 – INTRODUCTION

8 Variations to development controls in the DCP

No variations are proposed to Council's Development Control Plan.

CHAPTER A2: ECOLOGICALLY SUSTAINABLE DEVELOPMENT

Development controls to improve the sustainability of development throughout Wollongong are integrated into the relevant chapters of this DCP.

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

CHAPTER B1 – RESIDENTIAL DEVELOPMENT

4.0 General Residential controls

Chapter B1 contains residential development controls for dwelling houses and secondary dwellings and applies to all residential zoned lands including C4 Environmental Living.

The proposal is for use of an internal mezzanine level and replacement of the glazing to the window of the stairwell of an existing single dwelling house as such Chapter B1 applies to the development. The development will have no impact on the footprint of the existing dwelling and as such no change to the bulk and scale of the dwelling, building form and character, site coverage or boundary setbacks such that it is considered there is no change to the amenity of the area, overshadowing or view sharing.

Overall, the proposed development has been considered against the provisions of WDCP 2009 Chapter B1 and found to be acceptable.

CHAPTER D1: COLEDALE

Existing Character

Coledale is a small seaside village which is characterised by low density residential development. The village contains a mix of one to two storey detached dwelling-houses and includes older style weatherboard cottages and new contemporary coastal themed dwellings. Coledale also contains the historic Coledale railway station, a railway tunnel No. 8 and a number of Norfolk Island Pines along South Coledale Beach and Lawrence Hargrave Drive.

Desired Future Character

Coledale should retain its low density residential village character with predominantly one to two storey detached dwelling-houses envisaged in the village. New dwellings should be individually designed in a coastal theme with either a weatherboard or rendered brick construction and varied sloping flat, dutch gable pitched or curved roof forms encouraged. Light beige or light to mid grey or light to dark blue coloured external wall finishes are preferred. New dwellings should be designed to maximise view sharing opportunities for neighbouring dwellings. This may be achieved by way of staggering of the building form through wider side setbacks on first floor levels and minimising the wall and roofline height of dwellings, wherever possible. The roof line of any new two storey dwelling should be flanked by wide eaves, wherever practicable, to help to improve the overall appearance of the building. The use of extensive windows and lightly framed balconies and verandahs plus a variety of materials and finishes rather than plain masonry walls and balustrades is recommended. All balconies should be designed to minimise any potential amenity or privacy impacts upon the habitable rooms of the dwellings or private courtyard areas of adjoining properties.

The dwelling houses are a permissible use in the C4 zone. The proposal is for use of an internal mezzanine level and replacement of the glazing to the window of the stairwell of an existing single dwelling house. The proposed replacement of the clear glazing on the window to the stairwell with translucent glazing it is considered will minimise privacy impacts on the adjoining property to the

North. The proposal will have no impact on the existing built form and character the existing dwelling and as such is not considered to detract from the character of the locality.

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

It is considered the parking and access arrangements are suitable for this proposal and site and will not adversely affect the safe, efficient and effective use of the site or the local road network.

CHAPTER E6: LANDSCAPING

The proposal will have no impact on existing landscaping to the site.

CHAPTER E7: WASTE MANAGEMENT

It is considered that the proposed development satisfies the objectives of this Chapter. Council's street waste collection service is to be utilised.

CHAPTER E12 GEOTECHNICAL ASSESSMENT

The site is identified to be affected by coastal hazard - geotechnical risk. The proposal is for use of an internal mezzanine level, no works are proposed external to the existing, approved building footprint.

CHAPTER E14 STORMWATER MANAGEMENT

The proposed development will have no impact on the existing stormwater management system.

Appendix A: Clause 4.6 Exception to Development Standards Statement

1.1 Introduction

Clause 4.6 'Exceptions to Development Standards' of Wollongong Local Environmental Plan 2009 provides the ability to contravene a development standard with approval of the consent authority and concurrence by the Director-General. A development standard is defined by the Environmental Planning and Assessment Act, 1979 as:

"Provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development".

The objectives of Clause 4.6 are as follows:

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

This statement is therefore provided to justify variation to Clause 4.4 'Floor Space Ratio' in accordance with Clause 4.6 of that Plan, as the application of this requirement is considered unreasonable or unnecessary for this particular development.

1.2 Description of Development

The development application seeks approval for the continued use of alterations and additions to an existing dwelling. These works are wholly contained within the existing internal space of the dwelling, and form a mezzanine level, in the upper portion of the building.

1.3 Variation to Clause 4.4 Floor Space Ratio

Background

Subclause 4.4(2) 'Floor Space Ratio' provides that

"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".

In accordance with the Floor Space Ratio Map, a maximum permissible FSR of 0.3:1 applies to the subject site.

Floor space ratio means

"the ratio of the gross floor area of all buildings within the site to the site area".

Gross Floor area means

"the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*
but excludes—
- (d) any area for common vertical circulation, such as lifts and stairs, and*

- (e) any basement—
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above”.

The existing FSR and Gross Floor Area (GFA) is 153m², which would result in an FSR of 0.46:1. This is the calculation that has been used herein as the existing approved GFA. It is noted, however, that Council’s Section 4.15 Assessment of DA-2020/325 states that the existing dwelling was built in 1998, with an FSR of 0.54:1.

Extent of Variation Sought

The site is 328.8m² in area and hence a maximum gross floor area (GFA) of 98.64m² is permitted, if strict compliance were to be achieved and enforced.

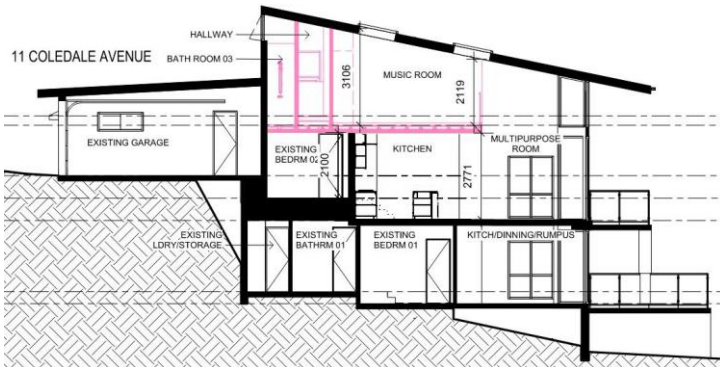
- > Additional GFA: The mezzanine area provides 45m².
- > Approved GFA: In accordance with DA-2020/325 the dwelling has an approved GFA of 153.0m². This corresponds to an FSR of 0.46:1.
- > Provided GFA: In accordance with the supplied architectural plans, the GFA of the dwelling, inclusive of the mezzanine level, is 198m², which corresponds to an FSR of 0.60:1
- > Therefore, the FSR of the dwelling, inclusive of the mezzanine level, is 0.60:1. This represents 99.36m² over the allowable GFA and 45m² over the approved GFA.


This Statement therefore seeks variation to the FSR of the development.


Table 1 below outlines how the proposal relates to the provisions of Clause 4.6 as it applies to the contravened development standard in Clause 4.4 of the WLEP.

Table 1: Assessment against the provisions of Clause 4.6

Compliance with WLEP 2009 - Contravention of Clause 4.3 Building Height	
Clause 4.6 Exceptions to Development Standards	Response/Justification
<p>(1) Objectives</p> <p>a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and</p> <p>b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</p>	<p>Flexibility is sought for the application of the FSR for the subject works.</p> <p>The particular circumstances for this are as follows:</p> <ul style="list-style-type: none"> > The works are internal and do not change the built form, site coverage or building setbacks. > The existing dwelling does not exceed the maximum height of 9m permitted for the site. > The bulk and scale resulting from the dwelling is consistent with existing and recently approved dwellings in the street and broader locality. > The proposal will have no adverse impacts than if the approved FSR of 0.48:1 was met. > The dwelling will not have any unreasonable adverse impacts on views of adjoining dwellings or the visual setting of the nearby Illawarra escarpment. > Council’s actions in implementing the standard caused this dwelling, amongst others, to immediately depart from the standard, thereby destroying the standard since its inception. Since then, the standard

Compliance with WLEP 2009 - Contravention of Clause 4.3 Building Height	
Clause 4.6 Exceptions to Development Standards	Response/Justification
	<p>has been virtually abandoned in Council's approval of dwellings significantly exceeding the standard.</p> <p>> Development in this C4 Environmental Living zone, despite its differing development controls, has occurred in a manner and visual density similar to the adjacent R2 Low Density zone to the west.</p> <p>The subject development allows the owner to utilise the existing roof space as a habitable area as permitted under Clause 4.1 of DCP Chapter B1. The existing ground level floor to ceiling height is sought to be retained (3m).</p> <p>Justified</p>  <p>Figure A: Excerpt from 'Sections & Elevations' diagram (dwg. BIC 006) prepared by Bridgehill Group, that shows the extent of the subject development (in pink) contained within the existing structure.</p>
<p>(2) Consent may, subject to this clause, be granted for development even though the development may contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.</p>	<p>This subclause is not relevant to the subject proposal.</p> <p>Clause 4.6(6) specifies the standards which may not be varied under this clause and includes specified subdivisions in the nominated zones including <u>Zone C4 Environmental Living</u>.</p> <p>The subject site is located in the C4 Environmental Living zone, which is listed as an excluded zone, however the subject development does not include a subdivision of the land, therefore this sub-clause is not relevant.</p>
<p>(3) 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:</p> <p>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p>	<p>(3) This table comprises the written request seeking to justify the contravention of the height development standard.</p> <p><i>In Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009, para 61, Commissioner Person summarises the considerations from Wehbe v Pittwater Council [2007] NSWLEC 827 at [42] per Preston CJ, and notes in para 62 that clause 4.6 can be considered in a similar way to that of SEPP 1.</i></p> <p><i>In Wehbe at [44]-[48] Preston CJ identified other ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary, namely that <u>the underlying objective or purpose is not relevant to the development</u>; that <u>the objective would be defeated or thwarted if compliance was required</u>; that <u>the development standard has been virtually abandoned or destroyed by the Council's own actions in departing from the standard</u>; or that <u>the zoning of the land is unreasonable or inappropriate</u>.</i></p>

Compliance with WLEP 2009 - Contravention of Clause 4.3 Building Height	
Clause 4.6 Exceptions to Development Standards	Response/Justification
	<p><u>The development standard has been virtually abandoned or destroyed by the Council's own actions in departing from the standard.</u></p> <p>Compliance with the applicable 0.3:1 FSR is considered to be unreasonable and unnecessary in the circumstances of the case as the standard has never been strictly applied to proposals for new dwellings and additional floorspace, including the most recent application for development of the subject site at 11 Coledale Ave. The standard has been compromised since its inception, as the GFAs of many of the existing dwellings were already in excess of the implemented controls.</p> <p>Additionally, it is considered that the 0.3:1 FSR has been virtually abandoned by Council with a number of variations to the permissible 0.3:1 FSR evident in the vicinity, where it would appear dwellings with floor space ratios ranging up to 0.7:1 have been built. This includes development at numbers 3 and 13 Coledale Avenue as approved by Council, as well as multiple comparable properties on the south eastern side of Hyde Lane Coledale and the eastern side of Lawrence Hargrave Drive Wombarra.</p> <p>Based upon the site area of 328.8m² and a permissible FSR of 0.3:1, the site could accommodate a building of only 98.64m². In a foreshore location such as No. 11 Coledale Ave, it is an unreasonable expectation to assume that a building of 98m² would satisfy the needs of residents. This requirement is an unreasonable size for a dwelling in this prime real estate and waterfront location.</p> <p>The subject development maintains the established character of the newer dwelling houses in the street. As the area was first established with small miner's cottages, the age and amenity of these dwellings are no longer sufficient for the occupants needs, and have inspired a desire for more contemporary configurations and internal layouts.</p> <p><u>The underlying objective is not relevant to the development:</u></p> <p>This is not strictly applicable as the objective of the 'development standard' is relevant to the development. However, it is the numerical standard itself that is not relevant to the development. The 0.3 FSR limit applies to the eastern side of Coledale Avenue only within the C4 zoned land, while the western side has a 0.5:1 FSR limit.</p> <p>This would imply that development on the eastern side of Coledale Ave is intended to be of a smaller scale than development on the western side. The photos below show that development in this C4 zone, despite its differing development controls, has not occurred in the manner intended.</p> <p>Figure B demonstrates that the outcome of the standard being consistently abandoned on the eastern side has resulted in the majority of the dwellings on the eastern side of the road being similar or much larger in scale than the western side of the road. Figure C shows a comparable scenario in nearby C4 zone at Hyde Lane Coledale.</p> 

Compliance with WLEP 2009 - Contravention of Clause 4.3 Building Height	
Clause 4.6 Exceptions to Development Standards	Response/Justification
	<p>Figure B: aerial image showing inverse correlation to the outcome of the FSR standards on opposing sides of Coledale Avenue. (Source Realestate.com)</p>  <p>Figure C: aerial image showing inverse correlation to the outcome of the FSR standards on opposing sides of Hyde Lane Coledale (Source Realestate.com)</p> <p>Provided and Justified</p>
<p>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p>	<p><i>In Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009, Commissioner Person determined that it is necessary for applicants to show sufficient grounds <u>particular to the development</u> in the Clause 4.6 objection.</i></p> <p>The accompanying plans, the approved scale of the building and Figure A above illustrate that the increased floor space ratio provides an acceptable outcome and does not result in any greater impact in terms of visual impact, disruption of views, loss of privacy or any other adverse impacts <u>than if the approved FSR was maintained.</u></p> <p>The departure from the standards is considered to be reasonable in this circumstance as the internal works have no overshadowing, view or other external amenity impacts on the surrounding development.</p> <p>Justified</p>
<p>(4) Consent must not be granted for development that contravenes a development standard unless:</p> <p>(a) the consent authority is satisfied that:</p>	
<p>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</p>	<p>This Variation Statement provides a discussion in support of the justification for varying the development standards as indicated in (3) above. In our opinion, there is sufficient justification provided to support a variation to the building height requirements.</p> <p>Satisfied</p>
<p>(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</p> <p><u>Wollongong LEP 2009:</u></p> <p><u>Objectives of the Standard</u></p> <p>(a) to provide an appropriate correlation between the size of a</p>	<p>Despite the exceedance of the allowable FSR, the subject development is in the public interest as it meets the objectives of the FSR development standard as:</p> <ul style="list-style-type: none"> > The development is consistent in design and character of the existing neighbourhood and is within the allowable height limit for the site. > The correlation between the size of the site and the extent of the development has already been approved in the form of the building's bulk and scale under DA-2020/325/A. > The subject development does not affect the density, in terms of dwellings per hectare, persons per hectare, nor does it affect the perceived density in terms of the scale of the built form.

Compliance with WLEP 2009 - Contravention of Clause 4.3 Building Height	
Clause 4.6 Exceptions to Development Standards	Response/Justification
<p><i>site and the extent of any development on that site,</i></p> <p>(b) <i>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>(c) <i>to ensure buildings are compatible with the bulk and scale of the locality.</i></p> <p><u>Objectives of the C4 Environmental Living Zone:</u></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 subject development does not alter the intensity of the land use – it does not place any strain on the infrastructure, traffic or pedestrian networks.</p> <p>> The development is low-impact in terms of ecological and aesthetic values as all subject works are internal.</p> <p>> The configuration of the mez floor does not generate an additional car parking demand as the spaces do not comprise enclosed bedrooms.</p> <p>Justified</p>
<p>(c) <i>the concurrence of the Director-General has been obtained.</i></p>	<p>Planning Circular PS 20-002-Variations to Development Standards (Department of Planning, May 2020) provides that the Secretary's concurrence is required if the development contravenes a numerical standard by greater than 10%; however, this restriction does not apply to decisions made by independent hearing and assessment panels / formally known as local planning panels, who exercise consent authority functions on behalf of councils.</p> <p>Council to confirm path forward for matter to be referred to the IHAP/LPP.</p>
<p>(5) <i>In deciding whether to grant concurrence, the Director-General must consider:</i></p>	
<p>(a) <i>whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</i></p>	<p>The contravention of this development standard does not raise any matter of significance for state or regional environmental planning. Refer to further discussion below in this table.</p> <p>Addressed</p>
<p>(b) <i>the public benefit of maintaining the development standard, and</i></p>	<p>There is no public benefit by maintaining the development standard in this instance, as there are no identifiable adverse impacts to approval being granted to the submitted design. These works are strictly internal, are not visible from the public realm and do not result in change in neighbourhood amenity, view corridors or visual amenity.</p> <p>Justified</p>
<p>(c) <i>any other matters required to be taken into consideration by the Director-General before granting concurrence.</i></p>	<p>It is considered that there are no environmental planning considerations that would hinder the Director-General from providing concurrence.</p> <p>Addressed</p>

Conclusion: This Statement has addressed the provisions of Clause 4.6 of Wollongong LEP 2009 and demonstrates that the variation sought to Clause 4.4 FSR of the LEP is justifiable and should be supported.

Compliance with the applicable FSR control is considered to be unreasonable and unnecessary in the circumstances of the case as:

- > Based upon the site area of 328.8m² and the applicable FSR of 0.3:1, would permit a building of only 98.64m².
- > The subject works are internal and provide no change to the scale of the building, the built form, site coverage or setbacks and do not change the amenity of the area, overshadowing or view sharing.
- > The existing dwelling is within the maximum allowable height of buildings of 9m for the subject site.
- > There is no intensification of use associated with installation of the mezzanine floor – the floor space provides for studio space for the sole use of the dwelling occupants.
- > The standard has been virtually abandoned in Council's approval of dwellings significantly exceeding the standard.
- > The existing and proposed FSR and GFA is comparable (and not inconsistent with) other dwellings located in and adjacent to Coledale Avenue.
- > Development in this C4 Environmental Living zone, despite its differing development controls, has occurred with a bulk, scale and visual density similar to the adjacent R2 Low Density Residential zone to the west.
- > The proposal will have no adverse impacts than if the FSR (under the approved DA) was adhered to.

Attachment 5: Schedule of FSR exceedances in Coledale Avenue

Coledale Avenue FSR Comparative Table							
Address	Application No	Development	Date Approved	Approved by	FSR	Planning Instrument	Notes
1 Coledale Avenue	DA-2010/1487	Two storey residential dwelling-house and demolition of existing dwelling-house	1/04/2011	WLPP (formerly IHAP)	0.45:1	WLEP 2009 C4 zone 0.3:1	
3 Coledale Avenue	DA-2005/1512	Alterations and Additions to dwelling	2/03/2006	Delegated Authority	0.76:1	WLEP 1990 7c zone 0.3:1	
5 Coledale Avenue	DA-2009/1619	Alterations and additions to two storey dwelling-house	18/05/2010	Delegated Authority	0.68:1	WLEP 1990 7c zone 0.3:1	Existing exceedance of 0.68:1 – change to FSR in DA-2009/1619 sought
7 Coledale Avenue	DA-2022/476	Residential - demolition works and tree removal, alterations and additions to existing dwelling	13/12/22	WLPP	Existing 0.48:1	WLEP 2009 C4 zone 0.3:1	
9 Coledale Avenue	DA-2014/1473/B	Residential - demolition of existing dwelling and erection of a new dwelling house and attached secondary dwelling Modification B - addition of louvres, minor internal arrangements and increase to GFA	28/04/2021	Delegated Authority	0.6:1	WLEP 2009 C4 zone 0.3:1	Original DA exceedance of 0.59:1 granted by LEC
11 Coledale Avenue	DA-1997/528	Dwelling	10/12/1997	Delegated Authority	0.54:1	WLEP 1990 7c zone 0.3:1	

13 Coledale Avenue	DA-2005/1867	Demolition of dwelling-house and construction of three (3) storey dwelling-house and garage	8/06/2006	Delegated Authority	0.64:1	WLEP 1990 7c zone 0.3:1	Former Round Table with Councillors
15 Coledale Avenue	DA-2001/2190	Demolition of existing dwelling and garage and the construction of a new tri-level dwelling	30/07/2002	Delegated Authority	0.58:1	WLEP 1990 7c zone 0.3:1	
17 Coledale Avenue	DA-2001/2193	Demolition of existing dwelling and construction of a new two storey dwelling	23/07/2002	Delegated Authority	0.44:1	WLEP 1990 7c zone 0.3:1	
19 Coledale Avenue	DA-2019/598	Residential - demolition of dwelling and construction of dwelling house and swimming pool	14/08/2019	WLPP	0.45:1	WLEP 2009 C4 zone 0.3:1	
21 Coledale Avenue	DA-2009/915	Alterations and additions to dwelling-house	27/11/2009	Council	0.4:1	WLEP 2009 C4 zone 0.3:1	DA considered by IHAP then Council
23 Coledale Avenue	DA-2001/2185	Demolition of existing dwelling and garage and construction of new single storey dwelling	25/03/2002	Delegated Authority	0.5:1	WLEP 1990 7c zone 0.3:1	

ATTACHMENT 6 - DRAFT CONDITIONS FOR: DA-2022/1221

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
DA-001 /1	1	Site Plan	Bridgehill Group	8 July 2022
DA-004 /2	2	Proposed Mezzanine Level	Bridgehill Group	14 March 2023
DA-006 /2	2	Section & Elevations	Bridgehill Group	14 March 2023

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.

General Conditions

2. Glazing to Staircase Window

The clear glazing to the staircase window on the Northern elevation of the dwelling shall be replaced with translucent, opaque glazing as detailed on the drawings numbered DA-004 /2 and DA-006 /2 dated 14 March 2023 prepared by Bridgehill Group to the satisfaction of Council's Building Officer prior to the issue of BIC-2022/42.

3. Hours of Work

Building work, demolition or vegetation removal is only to be carried out between:

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

Building work, demolition or vegetation removal is not to be 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*.

4. Compliance with the Building Code of Australia (BCA)

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

Reasons

The reasons for the imposition of the conditions are:

1. To minimise any likely adverse environmental impact of the proposed development.
2. To ensure the protection of the amenity and character of land adjoining and in the locality.
3. To ensure the proposed development complies with the provisions of Environmental Planning Instruments and Council's Codes and Policies.
4. To ensure the development does not conflict with the public interest.