

Wollongong Local Planning Panel Assessment Report | 17 May 2022

WLPP No.	Item No.6
DA No.	RD-2006/1376/A
Proposal	Review of Determination – Modification of consent to allow for <u>retrospective approval of works already undertaken</u> , including an increase in the FFL of all floor levels of the dwelling, increase in overall building height, installation of an internal lift, enclosure of roof top terrace with windows, increase in floor area of garage/basement level and addition of storage room in garage/basement level
Property	Lot 11 DP 285763, 13 Weaver Terrace, Bulli NSW 2516
Applicant	Plannex Environmental Planning
Responsible Team	Development Assessment & Certification – Building and Certification Team (EF)

ASSESSMENT REPORT AND RECOMMENDATION

Executive Summary

Reason for consideration by Wollongong Local Planning Panel (WLPP)

The proposal has been referred to the Wollongong Local Planning Panel (WLPP) for **determination** pursuant to Section 3 of Schedule 2 of the Local Planning Panels Direction of 30 June 2020, as the proposed development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

Proposal

The proposal is for the modification of consent to allow for retrospective approval of works already undertaken, including an increase in the FFL of all floor levels of the dwelling, increase in overall building height, installation of an internal lift, enclosure of roof top terrace with windows, increase in floor area of garage/basement level and addition of storage room in garage/basement level.

Permissibility

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

Exhibition

The application was notified in accordance with the Wollongong Community Participation Plan 2019 and received Three (3) submissions. The Three (3) submissions received are discussed at section 1.5 of this report.

Consultation

The Development Application did not require any internal/external consultation.

Main Issues

The main issues arising from the assessment process are:

- The modification is for the retrospective approval of unauthorised works which have completed
- Building Character and Form
- The development exceeds the maximum permissible building height of 9m, as prescribed by Clause 4.3 of Council's Wollongong Local Environmental Plan 2009.

- The proposed dwelling exceeds the maximum permissible 0.50:1 Floor Space Ratio (FSR) permissible for the site, as prescribed by Clause 4.4 of Council's Wollongong Local Environmental Plan 2009.
- View Sharing

Recommendation

It is recommended that RD--2006/1376/A be Refused for the following reasons:

1. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development exceeds the maximum permissible Building Height of 9m as prescribed by Part 4.3 – Height of Buildings, Wollongong Local Environmental Plan 2009, and is contrary to the objectives of this clause, as:
 - a) The proposal has not been designed to not exceed the maximum height limit,
 - b) The proposed overall building height does not encourage high quality built urban form.
2. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development exceeds the maximum permissible Floor Space Ratio (FSR) of 0.50:1 as prescribed by Part 4.4 – Floor Space Ratio, Wollongong Local Environmental Plan 2009, and is contrary to the objectives of this clause, as:
 - a) The proposal does not provide an appropriate correlation between the size of the site and the extent of the development on the site,
 - b) The bulk and scale of the proposed development is not compatible with the locality.
3. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is inconsistent with the provisions of the Wollongong Development Control Plan 2009, Chapter B1 *Residential Development*, Clause 4.1 – Number of Storeys.
4. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered the shadow diagrams submitted with the application do not address the provisions of the Wollongong Development Control Plan 2009, Chapter B1 *Residential Development* of Clause 4.7 – Solar Access. The shadow diagrams do not depict the overshadowing resulting from the entirety of the dwelling, as they only depict the shadow cast by the enclosed roof top terrace.
5. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the bulk and scale of the proposed development is inconsistent with the objectives of the Wollongong Development Control Plan 2009, Chapter B1 *Residential Development*, Clause 4.8 – Building Character and Form.
6. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development fails to satisfy the objectives and provisions of the Wollongong Development Control Plan 2009, Chapter B1 *Residential Development* of Clause 4.16 – View Sharing. The view loss analysis prepared and submitted to Council fails to address the planning principles as established by *Tenacity v Warringah Council*.
7. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the significant bulk and scale of the proposed development is inconsistent with the desired future character of Bulli, as prescribed by Wollongong Development Control Plan 2009, Chapter D1 *Character Statements*, of Clause 3.15 – Bulli.

8. Pursuant to the provisions of Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is excessive in bulk and scale and would likely adversely impact upon the amenity of the locality.
9. Pursuant to the provisions of Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979, it is considered that the site is not suitable for the development.
10. Pursuant to the provisions of Section 4.15 (1)(d) of the Environmental Planning and Assessment Act 1979, it is considered that having regard for public submissions, the development is not suitable having regard to the impact on the amenity of the occupants of the adjoining premises
11. Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, it is considered that approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.

1. SECTION 4.55 APPLICATION

DA-2006/1376 was assessed and approved by Council on 19/12/2006. This application seeks to amend the current consent by allowing for retrospective approval of the following works which have already been undertaken:

- Increase FFL of all floor levels of the dwelling,
- Increase in overall building height,
- Installation of internal lift,
- Enclosure of roof top terrace with windows,
- Increase in floor area of garage/basement level,
- Addition of storage room in garage/basement level
- Enclose roof terrace with walls and windows.

The application is considered to be a modification under Section 4.55(1A) of the Environmental Planning & Assessment Act 1979 being a modification involving minimal environmental impact and it being substantially the same development. The original development has been commenced and can be modified.

The subject modification can be considered under clause of Section 4.55(1A) of the Environmental Planning & Assessment Act 1979, as the proposed development is substantially the same development, noting that the rooftop terrace was substantially enclosed with timber batten screening on the eastern and western elevations, and the increase in gross floor area of the dwelling is contained within the original approved dwelling footprint.

The proposed modification does not alter the categorisation of the approved development, however, results in the development exceeding both the maximum permissible overall building height and floor space ratio development standards applicable to the site as prescribed by WLEP2009 and is unsatisfactory with regard to the zoning and applicable planning controls.

The application has been notified and Three (3) submissions were received. These submissions have been addressed in Section 2.5 of this report.

The proposed modification was assessed under Section 4.15 of the Environmental Planning & Assessment Act 1979, the Wollongong Local Environmental Plan and the Wollongong Development Control Plan 2009. The proposed development is excessive in bulk and scale and would likely adversely impact upon the amenity of the locality. It is considered that approval of the development

would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.

An exception to imposing development contributions on the original development consent was granted by Council during the approval of the original development application.

The application is considered to be unsatisfactory, and it is recommended that the modification be refused subject to the reasons in Attachment 3.

2. APPLICATION OVERVIEW

2.1 PLANNING CONTROLS

The following planning controls apply to the development:

State Environmental Planning Policies:

- SEPP (Building Sustainability Index: BASIX) 2004

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 2021
- Wollongong Community Participation Plan 2019

2.2 PROPOSAL

The proposal is for the modification of an existing development consent for a dwelling and swimming pool, to allow for the installation of an internal lift and the installation of windows to the perimeter of the roof terrace level.

2.3 BACKGROUND

Application No.	Description	Determination Date	Decision
DA-2006/1376	Two storey dwelling house and swimming pool	19/12/2006	Approved
DA-2006/1376/A	Two storey dwelling house and swimming pool – modification to change windows to standard sizes and remove western wall feature	11/01/2008	Approved
PC-2008/42	Two storey dwelling house and swimming pool	17/01/2008	Approved
DA-2006/1376/B	Two storey dwelling house and swimming pool – modification to add spa and slatted child proof hardcover added	08/02/2011	Approved

DA-2006/1376/C	Two storey dwelling house and swimming pool – Modification C – removal of space wall in basement	24/09/2014	Approved
BC-2021/12	Installation of a lift and installation of windows to the roof terrace level	09/06/2021	Refused
DA-2006/1376/D	Two storey dwelling house and swimming pool – Modification D – legitimise the installation of internal lift, enclosing roof terrace and the installation of windows to the roof terrace level	09/06/2021	Refused
BC-2021/99	Internal lift, uppermost terrace windows, floor plan changes and floor level changes		<i>Under Assessment (being assessed in conjunction with subject review of determination)</i>
RD-2006/1376/A <i>(current application)</i>	Two storey dwelling house and swimming pool - Modification of consent to allow for retrospective approval of works already undertaken, including an increase in the FFL of all floor levels of the dwelling, increase in overall building height, installation of an internal lift, enclosure of roof top terrace with windows, increase in floor area of garage/basement level and addition of storage room in garage/basement level		<i>Referred to WLPP</i>

DA-2006/1376/D was refused by Council on 19/06/2021 for the following reasons:

1. Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development is inconsistent with the provisions of the Wollongong Local Environmental Plan 2009, Clause 4.3, with regard to Height of Buildings.
2. Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development is inconsistent with the provisions of the Wollongong Local Environmental Plan 2009, Clause 4.4, with regard to Floor Space Ratio.
3. Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application is inconsistent with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. The application seeks to amend a development consent applicable to a building subject of a BASIX certificate and an amended BASIX certificate has not been provided.
4. Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the development is inconsistent with the provisions of the Wollongong Development Control Plan 2009, Chapter B1 (Residential Development), Clause 4.1, with regard to Number of Storeys.
5. Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the development is inconsistent with the provisions of the Wollongong Development Control Plan 2009, Chapter B1 (Residential Development), Clause 4.8 - Building Character and Form having regard to the bulk and scale of the development.
6. Pursuant to the provisions of Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, it is considered that the dwelling has an undesirable impact on the built environment in the locality.
7. Pursuant to the provisions of Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979, it is considered that the site is not suitable for the development.
8. Pursuant to the provisions of Section 4.15 (1)(d) of the Environmental Planning and Assessment Act 1979, it is considered that having regard for public submissions, the development is not suitable having regard to the impact on the amenity of the occupants of the adjoining premises.
9. Pursuant to the provisions of Section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979, it is considered that in the circumstances of the case, approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.

8.2 Determinations and decisions subject to review

Section 8.2(1)(b) provides an applicant may request a review of an application for the modification of a development consent that has been refused by a Council. As a consequence of the review, the Council may confirm or change the original determination.

A determination cannot be reviewed *(a) after the period within which any appeal may be made to the Court has expired if no appeal was made, or (b) after the Court has disposed of an appeal against the determination or decision* as stated under Section 8.3(2). COVID-19 amendments to Section 8.10 of the *Environmental Planning & Assessment Act 1979* have extended appeal rights to the NSW Land and Environment Court made under Division 8 of the Act.

The 6-month time limit on appeals brought by applicants for development consent has been extended to 12 months, if either the appeal right arises during the prescribed period of 25 March 2020 to 25 March 2022 or had arisen before this period but had not lapsed.

As the subject application was refused on 6 June 2021, the review must be conducted before 6 June 2022.

The documents supplied by the applicant with the request for review of determination seeks to resolve concerns raised in Council's refusal of the original DA, with revised building plans and additional information being provided.

This review has considered all of the documentation in respect of DA-2006/1376/D which was attached to Council's electronic file; all of the documentation provided in support of RD-2006/1376/A was attached to Council's electronic file.

Customer service actions

There are no outstanding customer service requests that would preclude the development.

2.4 SITE DESCRIPTION

The site is located at Lot 16 DP 285763, 2 Weaver Terrace, BULLI NSW 2516.

The subject site is located on the south-western side of Weaver Terrace, northwest of Bulli town centre. The site is rectangular in shape and has a site area of 711m². The site currently contains an existing four (4) storey dwelling located on the site, and the works detailed in this review of determination have already been completed.

Property constraints

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

- Acid Sulfate Soils – Class 5
- Filled Land - Affected

Easements

These restrictions relate to:

- 'B' Easement for Underground Cables 1 Wide
- 'V' Easement for Access and Drainage Purposes 5.5 and 7.5 Variable
- 'X' Easement for Water Supply Purposes 2.5 Wide

88b Restrictions

These restrictions relate to:

- An Easement for Underground Cables in the terms set out in Memorandum 3021851 filed in the office of Land and Property Information.
- No dividing fence shall be erected on the lot burdened unless it is erected without expense to Stockland.
- An Easement for Sydney Water Supply Purposes in the terms set out in Part 1 of Memorandum 5736755 filed in the office of Land and Property Information.
- An Easement for Access and Drainage Purposes 5.5 & 7.5 Wide and Variable in the terms set out in Part 2 of Memorandum 5736755 filed in the office of Land and Property Information New South Wales.
- No building shall be erected or permitted to remain on that part of the lot hereby burdened unless the footings and foundation of the building have been erected in accordance with plans and specifications which have been prepared by a suitably qualified structural and/or civil engineer.
- The Point Design Guidelines
- A Positive Covenant in the terms set out in Part 3 of Memorandum 5736755 filed in the office of Land and Property Information New South Wales.

- No lot hereby burdened shall be subdivided to create additional lots.
- No more than one dwelling shall be erected on any lot hereby burdened
- No structure other than fencing shall be erected on any lot hereby burdened within three metres (3m) of the property boundaries of Lot 1.



Figure 1: Aerial photograph



Figure 2: WLEP 2009 zoning map

2.5 SUBMISSIONS

The Development Application was exhibited in accordance with the Wollongong Community Consultation Plan 2019. Three (3) submissions were received in response to Council's exhibition of the application.

Concern	Comment
1. Building Character and Form	Refer to the DCP compliance table in Section 2.3.1 of this report the proposal has been assessed against the requirements and objectives of

	<p>Clause 4.8 – Building Character and Form of Chapter B1 of Council's DCP2009 and considered unsatisfactory.</p> <p>Council considers that the design of the development:</p> <ul style="list-style-type: none"> • does not respond to both its natural and built context, • the development does not respond to the existing character and the future character of the area, • the building design does not contribute to the locality through a design that considers building scale.
2. Floor Space Ratio	<p>Council's assessment of the application confirms that the development exceeds the maximum permissible FSR of 0.50:1 for the site. The development has an FSR of 0.577:1, which is an exceedance of 15%. Council does not support the FSR.</p> <p>Refer to Section 4 of this report assessment of floor space ratio and assessment of <i>Clause 4.6 – Exception to development standards</i>.</p>
3. Overall Building Height	<p>Council's assessment of the application confirms that the development exceeds the maximum permissible building height of 9m for the site. The development has a building height of 9.245m, which is an exceedance of 2.7%. Council does not support the overall building height.</p> <p>Refer to Section 4 of this report assessment of building height and assessment of <i>Clause 4.6 – Exception to development standards</i>.</p>
4. Number of Storeys	<p>Council considers that the development is inconsistent with the provisions of the Wollongong Development Control Plan 2009, Chapter B1 <i>Residential Development</i>, Clause 4.1 – Number of Storeys.</p>
5. View Sharing	<p>It is considered that the development fails to satisfy the objectives and provisions of the Wollongong Development Control Plan 2009, Chapter B1 <i>Residential Development</i> of Clause 4.16 – View Sharing. The view loss analysis prepared and submitted to Council fails to address the planning principles as established by <i>Tenacity v Warringah Council</i>.</p>

TABLE 2: NUMBER OF CONCERNS RAISED IN SUBMISSIONS

Issue	1.	2.	3	4.	5.
No.	3	3	3	3	3

Submissions from public authorities – Nil

2.6 CONSULTATION

2.6.1 INTERNAL CONSULTATION

Not applicable.

2.6.2 EXTERNAL CONSULTATION

Not applicable.

2.6.3 REFERRAL TO WOLLONGONG LOCAL PLANNING PANEL (WLPP)

The proposal has been referred to the Wollongong Local Planning Panel (WLPP) for **determination** pursuant to Section 3 of Schedule 2 of the Local Planning Panels Direction of 30 June 2020, as the proposed development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

3. ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 – SECTION 8.2 REVIEW OF DETERMINATION

8.2 Determinations and decisions subject to review

A review of determination is able to be conducted as outlined in Section 2.3 above.

8.3 Application for and conduct of review

- 1) *An application for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.*
- 2) *A determination or decision cannot be reviewed under this Division:*
 - a) *after the period within which any appeal may be made to the Court has expired if no appeal was made, or*
 - b) *after the Court has disposed of an appeal against the determination or decision.*

Comment: The review must be conducted prior to 9 June 2022.

- 3) *In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.*

Comment: The plans that were refused under the original development application have been resubmitted, an updated BASIX Certificate and Clause 4.6 Variation to development standards requests for both building height and floor space ratio added to the SEE.

- 4) *The review of a determination or decision made by a delegate of a Council is to be conducted:*
 - a) *by the Council (unless the determination or decision may be made only by a local planning panel or delegate of the Council), or*
 - b) *by another delegate of the Council who is not subordinate to the delegate who made the determination or decision.*

Comment: The review has been conducted by another delegate of the Council not involved in the original assessment

- 5) *The review of a determination or decision made by a local planning panel is also to be conducted by the panel.*

Comment: N/A; original determination was made under delegated authority.

- 6) *The review of a determination or decision made by a Council is to be conducted by the Council and not by a delegate of the Council.*

Comment: N/A; original determination was made under delegated authority.

7) *The review of a determination or decision made by a Sydney district or regional planning panel is also to be conducted by the panel.*

Comment: N/A; original determination was made under delegated authority.

8) *The review of a determination or decision made by the Independent Planning Commission is also to be conducted by the Commission.*

Comment: N/A; original determination was made under delegated authority.

9) *The review of a determination or decision made by a delegate of the Minister (other than the Independent Planning Commission) is to be conducted by the Independent Planning Commission or by another delegate of the Minister who is not subordinate to the delegate who made the determination or decision.*

Comment: N/A; the original determination was made under delegated authority.

4. ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 – 4.15 EVALUATION

4.1 SECTION 4.15(A)(I) ANY ENVIRONMENTAL PLANNING INSTRUMENT

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

SEPP BASIX applies to the development.

In accordance with Schedule 1 of the Regulations and SEPP 2004 a BASIX Certificate (BASIX Certificate No. A395346 dated 8 July 2021) has been submitted in support of the application demonstrating that the proposed scheme achieves the BASIX targets.

The aforementioned certificate is dated no earlier than 3 months of the lodgement of this application.

4.1.2 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Part 1 Preliminary

Clause 1.4 Definitions

dwelling house means a building containing only one dwelling.

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.

Part 2 Permitted or prohibited development

Clause 2.2 – zoning of land to which Plan applies

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

Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

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

The development would be considered generally satisfactory with regard to the above objectives as it would provide for the housing needs of the community within a low density residential environment. However, due to the bulk and scale of the development, in addition to the exceedance of the

maximum permissible FSR and overall building height applicable to the site, the application is not supported.

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 remains categorised as dwelling house and is permissible in the zone with development consent.

Part 4 Principal development standards

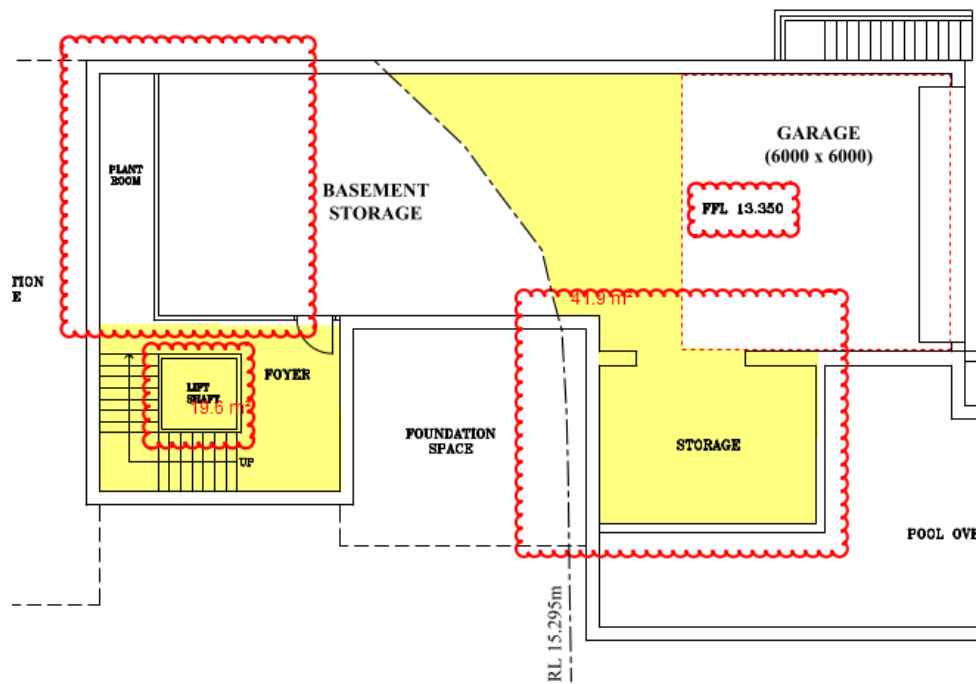
Clause 4.3 Height of buildings

The proposed building height of 9.245 metres exceeds the maximum of 9 metres permitted for the site.

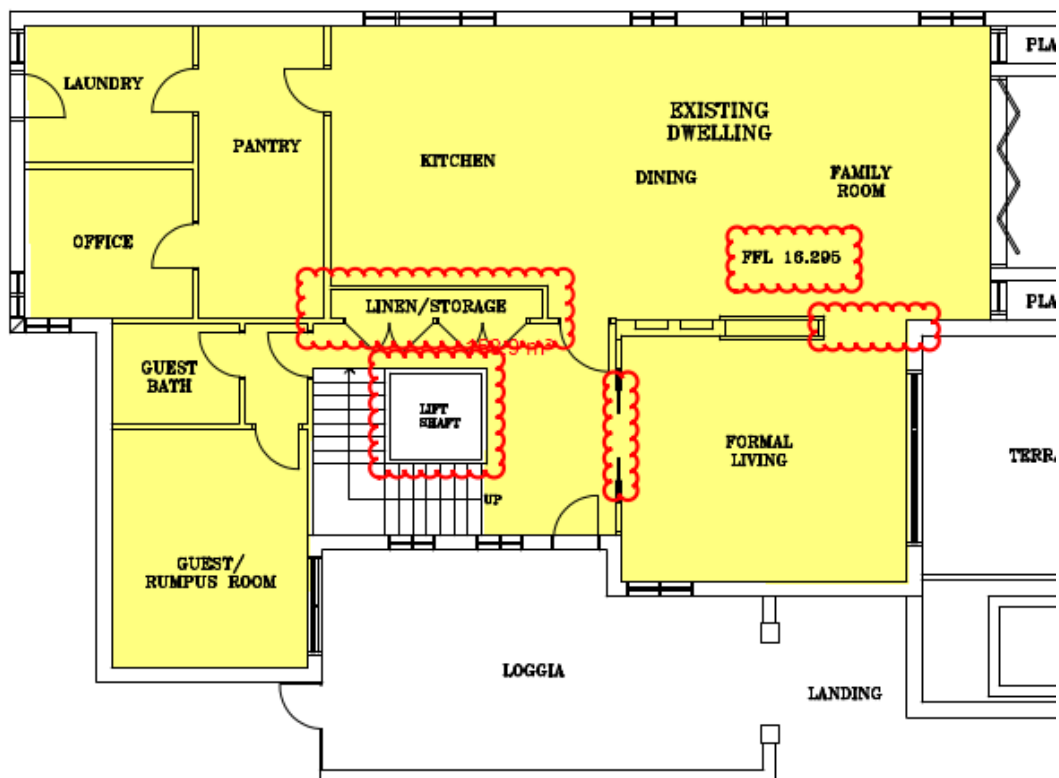
Clause 4.4 Floor space ratio

Maximum FSR permitted for the zone:	0.50:1
FSR calculated:	Garage/Basement Level = 61.5m ²
	First Floor = 159.9m ²
	Second Floor = 149m ²
	Terrace Level = 40.5m ²
	409.9m ² /711m ² = 0.577:1
	Exceeds 0.50:1 by 15%

All areas highlighted in the below images have been included in the calculation of **gross floor area** as per the definition within WLEP2009. The areas not highlighted within the garage/basement level have been excluded in accordance with the WLEP2009 definition of a **basement**, and areas within a basement which can be excluded, in addition to the 36m² of required car parking that has been excluded. A contour level has been illustrated on the garage/basement plan to allow for accurate delineation of the area within the garage/basement area, which meets the WLEP2009 definition of a basement.



PLAN OF BASEMENT & GARAGE



PLAN OF FIRST FLOOR
SCALE 1:100

Development Departure	Clause 4.3 Height of buildings WLEP 2009
Is the planning control in question a development standard?	Yes
4.6(3) Written request submitted by an applicant contains a justification:	
(a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	<p>No</p> <p>In summary, the applicant's written justification relies on compliance with each development standard are unreasonable or unnecessary because the underlying objectives of the standard are achieved irrespective of the non-compliance, and accordingly justifies the variation. The applicant's request has noted the following:</p> <ul style="list-style-type: none"> • The dwelling house has generally been constructed to sit below the 9m building height limit, with only the roof of the topmost level breaching the height limit by up to 245mm. This constitutes a variation of 2.7%, which is negligible in the context of the dwelling house. The encroaching element of the building is a relatively small, roofed terrace area (measuring 6.09m by 8.77m overall). This part of the building has been set in from the edges of the roof below in order to reduce its visibility from ground level. • The form of the modified development is not substantially different from that of the approved development. • The changes to the approved development arising from the installation of a lift within the dwelling house, the provision of windows to enclose the uppermost level, and an overall increase in building height of between 140mm and 427mm, do not materially alter the form or scale of the dwelling house to the point where it is unacceptable when compared to the approved development. • The dwelling house is highly articulated, with variable sized floor plates at each level and extensive balconies and terraces. The uppermost level has been set in from the from the edges of the roof below to reduce its visibility from ground level and to avoid large expanses of unbroken wall mass. • The existing dwelling house does not prevent views of the sky from public spaces or surrounding buildings. • Shadows from the existing dwelling house fall onto no.16 Sommerville Street during the morning and retract throughout the day having little impact at midday and no impact at all thereafter. The rear yard area and rear ground floor deck of no.16 Sommerville Street will receive more than 3 hours of direct sunlight throughout the day on 21st June.
(b) That there are sufficient environmental planning grounds to justify contravening the development standard.	<p>No</p> <p>The applicants' written request has noted the following environmental planning grounds that justify the departure:</p> <ul style="list-style-type: none"> • The proposal will not have any detrimental impacts on solar access to the neighbouring dwelling houses at no.16 Sommerville Street and No. 11 Weaver Terrace.

	<ul style="list-style-type: none"> • The breach of the 9m building height limit will not contribute to any deleterious privacy impacts for any of the neighbouring properties. • The uppermost level was approved as a roofed and trafficable terrace area. Enclosing the openings above the balustrades with windows does not increase the potential for adverse privacy impacts for neighbouring dwellings. The enclosed roof terrace is centrally located within the building footprint and has the majority of its windows on its northern, eastern and western sides. Windows facing the west and east look over the roof tops of the neighbouring dwelling houses and do not impact on privacy for those dwellings. North-facing windows are set back 25m from the northern neighbour and do not promote overlooking of that property. • The breach of the height limit will not result in any views from neighbouring properties being detrimentally impacted.
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	The applicant's written request is considered not to have adequately addressed the matters required to be demonstrated by (3).
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>The development is not considered to be in the public interest, as the development is not consistent with the objectives of Clause 4.3 of WLEP2009.</p> <p>The objectives of clause 4.3 are as per the following:</p> <p><i>(a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,</i></p> <p><i>(b) to permit building heights that encourage high quality urban form,</i></p> <p><i>(c) to ensure buildings and public space areas continue to have views of the sky.</i></p> <p>The development is inconsistent with these objectives, as the development exceeds the maximum height limit prescribed by this clause and results in a building height that does not encourage high quality urban form.</p> <p>The objectives of the R2 zone are as per the following:</p> <ul style="list-style-type: none"> • <i>To provide for the housing needs of the community within a low density residential environment.</i> • <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> <p>The development is not considered inconsistent with the above objectives, as outlined below:</p> <ul style="list-style-type: none"> • The development is for a single residential dwelling • The development is suitably located with regard to public transport, schools and recreation areas, all located within walking distance from the site.

	Although the development is for a modification to an approved four (4) storey dwelling house, the development is excessive in bulk and scale, is inconsistent with the established streetscape character and would likely adversely impact upon the amenity of the locality.
4.6 (4)(b) the concurrence of the Planning Secretary has been obtained.	
On the 21 May 2014, the Planning Secretary returned their concurrence to Council in relation to development applications that contravene development standards up to 10% numerical non-compliance.	

Development Departure	Clause 4.4 Floor space ratio WLEP 2009
Is the planning control in question a development standard?	Yes
4.6(3) Written request submitted by an applicant contains a justification:	
(a) (b) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	<p>No</p> <p>In summary, the applicant's written justification relies on compliance with each development standard are unreasonable or unnecessary because the underlying objectives of the standard are achieved irrespective of the non-compliance, and accordingly justifies the variation. The applicant's request has noted the following:</p> <ul style="list-style-type: none"> • The breach of the FSR development standard is very minor in nature (at just 1.3%) and the additional GFA is accommodated within the cubic space of the existing dwelling house. • Despite the non-compliance with the FSR development standard the underlying objectives of the development standard are achieved. • To the extent that the FSR development standard seeks to control the height, bulk and scale of development, it is noted that the additional GFA has been created within the confines of the current building footprint and entirely within the cubic space of the existing dwelling house. Accordingly, there will be no change to the current dwelling house's height, bulk or scale.
(c) That there are sufficient environmental planning grounds to justify contravening the development standard.	<p>No</p> <p>The applicants' written request has noted the following environmental planning grounds that justify the departure:</p> <ul style="list-style-type: none"> • The increase in the dwelling house's GFA takes place within the existing building footprint and within its existing cubic space. Therefore, the proposal will not result in any increase in building height, bulk or scale and will not reduce existing setbacks. • The only observable external change to the existing dwelling is the incorporation of glass windows to the perimeter of the uppermost floor, in lieu of openings. The glass windows enable penetration of natural light through the upper floor level and help maintain the visual openness of the outside walls of the roofed terrace space.

	<ul style="list-style-type: none"> As the increase in GFA is confined to within the existing building footprint, there will be no changes to the landscaped area or outdoor private open space areas on the site. The maintenance of these areas provides amenity for residents of the dwelling house.
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	The applicant's written request is considered not to have adequately addressed the matters required to be demonstrated by (3).
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>The development is not considered to be in the public interest, as the development is not consistent with the objectives of Clause 4.4 of WLEP2009.</p> <p>The objectives of clause 4.4 are as per the following:</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>The development is inconsistent with these objectives, as the development is not considered to provide an appropriate correlation between the size of the site and the extent of the development on the site, given the significant bulk and scale of the development.</p> <p>The subject site, having a site area of 711m², allows for a maximum permissible gross floor area of 355.5m², excluding an additional 36m² for providing required car parking facilities in accordance with Clause 4.10 of Chapter B1 of Council's DCP2009.</p> <p>355.5m² of gross floor area is considered more than adequate to provide facilities and services to meet the day to day needs for residents of a single dwelling.</p> <p>The objectives of the R2 zone are as per the following:</p> <ul style="list-style-type: none"> <i>To provide for the housing needs of the community within a low density residential environment.</i> <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> <p>The development is not considered inconsistent with the above objectives, as outlined below:</p> <ul style="list-style-type: none"> The development is for a single residential dwelling The development is suitably located with regard to public transport, schools and recreation areas, all located within walking distance from the site.

	Although the development is for modifications to a single residential dwelling, the building character and form is considerably excessive.
4.6 (4)(b) the concurrence of the Planning Secretary has been obtained.	
The application has been referred to the Wollongong Local Planning Panel (WLPP) for determination pursuant to Section 3 of Schedule 2 of the Local Planning Panels Direction of 30 June 2020, as the proposed development contravenes a development standard imposed by Clause 4.4 – Floor Space Ratio of the <i>Wollongong Local Environmental Plan 2009</i> by more than 10%.	

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

The subject site is already serviced by public utilities.

Clause 7.2 Natural Resource Sensitivity – Biodiversity

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

Clause 7.4 – Riparian Lands

The site is not identified in the Riparian Land Map as containing “riparian land”.

Clause 7.5 Acid Sulfate Soils

The proposal is identified as being affected by class 5 acid sulfate soils. An acid sulfate soils management plan is not required as no excavation is proposed.

Clause 7.6 Earthworks

The proposed earthworks are exempt under WLEP09 or are of a minor nature.

4.2 SECTION 4.15(A)(II) ANY PROPOSED INSTRUMENT

None applicable.

4.3 SECTION 4.15(A)(III) ANY DEVELOPMENT CONTROL PLAN

4.3.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

CHAPTER B1 – RESIDENTIAL DEVELOPMENT

An assessment of the proposed application has been undertaken against the controls of Chapter B1 below:

4.0 General Residential controls

<i>Controls/objectives</i>	<i>Comment</i>	<i>Compliance</i>
4.1 Number of Storeys		
<ul style="list-style-type: none"> <i>R2 max height of 9m or two storey</i> <i>Ancillary structures – 1 storey</i> <i>Built form that has a positive impact on the visual amenity of the area and addresses site constraints and overlooking of neighbouring properties</i> <i>In R2 Low Density Residential zones, where development occurs within 8m rear</i> 	<p>Storeys: 4</p> <p>Max Height: 9.245m</p> <p>The development has been assessed against the relevant objectives and considered unsatisfactory.</p>	No

<i>setback the development is limited to single storey</i>		
<u>4.2 Front Setbacks</u> <ul style="list-style-type: none"> <i>Infill 6m min but less dependent on street character</i> <i>Garages and carports 5.5m min</i> <i>Greenfield sites 4m min</i> 	<p>Front setback: 6.23m</p> <p>The development has been assessed against the relevant objectives and considered satisfactory.</p>	Yes
<u>4.3 Side and Rear Setbacks</u> <ul style="list-style-type: none"> <i>Wall Setback: 900mm min</i> <i>Eave Setback: 450mm min</i> <i>Rear Setback: 900mm min</i> 	<p>East Side: 1.7m</p> <p>West Side: 1.7m</p> <p>Eaves: >450mm</p> <p>The development has been assessed against the relevant objectives and considered satisfactory.</p>	Yes
<u>4.4 Site Coverage</u> <ul style="list-style-type: none"> <i>55% of the area of the lot, if the lot has an area less than 450m²</i> <i>50% of the area of the lot, if the lot has an area of at least 450m² but less than 900m²</i> <i>40% of the area of the lot, if the lot has an area of at least 900m²</i> 	<p>Site Area = 711m²</p> <p>Site Coverage = <50%</p> <p>The development has been assessed against the relevant objectives and considered satisfactory.</p>	Yes
<u>4.5 Landscaped Area</u> <ul style="list-style-type: none"> <i>Minimum Required 20% permeable area capable of growing trees, shrubs, groundcover and/or lawn.</i> <i>50% behind the building line to the primary road</i> <i>Integrated with drainage design</i> <i>Dual occupancy requires 1.5m min landscape strip within the front setback for the majority of site width (excluding driveway)</i> 	<p>Site Area = 711m²</p> <p>Landscaped Area = >153m²</p> <p>The development has been assessed against the relevant objectives and considered satisfactory.</p>	Yes
<u>Clause 4.6 Private Open Space</u> <ul style="list-style-type: none"> <i>24m² of private open space must be directly accessible from the living areas; min width of 4m and no steeper than 1:50.</i> <i>Not to be located on side boundaries or front yards without variation.</i> 	<p>Private open space >24m².</p> <p>The development has been assessed against the relevant objectives and considered satisfactory.</p>	Yes
<u>4.7 Solar Access Requirements</u>		

<ul style="list-style-type: none"> • <i>Windows to living rooms of adjoining dwellings must receive at least 3hrs continuous sunlight between 9.00am - 3.00pm on 21 June.</i> • <i>At least 50% of the private open areas of adjoining residential properties must receive at least 3hrs continuous sunlight between 9.00am - 3.00pm on June 21.</i> • <i>Shadow diagrams will be required by Council for 9am, 12pm, 3pm for the 21 June for two storey dwellings.</i> 	<p>Shadow diagrams provided for Winter Solstice – June 21st, at 9am, 12pm and 3pm, however do not reflect the shadows cast by the entirety of the development.</p> <p>The development has been assessed against the relevant objectives and considered unsatisfactory.</p>	No
<p><u>4.8 Building Character and Form</u></p> <ul style="list-style-type: none"> • <i>Design, height and siting of a new dwelling-house or secondary dwelling must respond to its site context</i> • <i>New dwelling-houses within established residential areas should be sympathetic with the existing character of the immediate locality.</i> • <i>All residential buildings must be designed with building frontages and entries clearly addressing the street frontage.</i> • <i>Where garages are proposed on the front elevation they must be articulated from the front façade.</i> 	<p>The development has been assessed against the relevant objectives and considered unsatisfactory. The design of the development:</p> <ul style="list-style-type: none"> • does not respond to both its natural and built context, • the development does not respond to the existing character and the future character of the area, • the building design does not contribute to the locality through a design that considers building scale. 	No
<p><u>4.9 Fences</u></p> <ul style="list-style-type: none"> • <i>Fences must be constructed to allow natural flow of stormwater or runoff.</i> • <i>Fences within front and secondary building lines should be mainly constructed of transparent fence materials.</i> • <i>Any fence or related retaining wall within the front setback from the primary road frontage must be a max 1.2m in height</i> 	<p>The development has been assessed against the relevant objectives and considered satisfactory.</p> <p>1200mm high swimming pool safety barrier (fencing).</p>	Yes
<p><u>4.10 Car parking and Access</u></p> <ul style="list-style-type: none"> • <i>1 space per dwelling with a GFA of less than 125m²</i> • <i>2 spaces per dwelling with a GFA of greater than 125m²</i> • <i>Car parking spaces may be open hard stand space, driveway, carport or a garage.</i> 	<p>GFA>125m²</p> <p>Two (2) car parking spaces provided.</p> <p>The development has been assessed against the relevant objectives and considered satisfactory.</p>	Yes

<ul style="list-style-type: none"> • <i>Garage door facing roads—not greater than 50% of the width of the dwelling.</i> • <i>Carports must be setback behind the front building line.</i> • <i>Garages must be setback min of 5.5 from front boundary.</i> • <i>Driveways shall be separated from side boundaries by a minimum of 1m.</i> • <i>Driveways shall have a max cross-over width of 3m.</i> 		
<p><u>4.11 Storage Facilities</u></p> <ul style="list-style-type: none"> • <i>Studio/1 bedroom- 6m³ storage volume to 3m² storage area</i> • <i>2 bedroom- 8m³ storage volume to 4m² storage area</i> • <i>3 bedroom- 10m³ storage volume to 5m² storage area</i> 	The development has been assessed against the relevant objectives and considered satisfactory.	Yes
<p><u>4.12 Site Facilities</u></p> <ul style="list-style-type: none"> • <i>Letterboxes in an accessible location</i> • <i>Air-con, satellite dishes and other ancillary structures to be located away from street frontage, not in a place where they are a skyline feature and adequately setback</i> 	The development has been assessed against the relevant objectives and considered satisfactory and is capable of complying.	Yes
<p><u>4.13 Fire Brigade Servicing</u></p> <ul style="list-style-type: none"> • <i>All dwellings located within 60m of a fire hydrant</i> 	The development has been assessed against the relevant objectives and considered satisfactory.	Yes
<p><u>4.14 Services</u></p> <ul style="list-style-type: none"> • <i>Encourage early consideration of servicing requirements</i> 	The development has been assessed against the relevant objectives and considered satisfactory. Services are available.	Yes
<p><u>4.15 Development near the coastline</u></p> <ul style="list-style-type: none"> • <i>Must minimise built intrusions into coastal landscape</i> • <i>Retain views to the ocean from roads and public spaces</i> • <i>Maintain buildings consistent with coastal character</i> 	The subject site is not located within 10m of a clifftop and/or a beach.	n/a

Clause 4.16 View Sharing

- a) *Is impact of view loss acceptable?*
- b) *Tenacity Consulting v Waringah, Roseth, SC (2004)*



It is considered that the development fails to satisfy the objectives and provisions of the Wollongong Development Control Plan 2009, Chapter B1 *Residential Development* of Clause 4.16 – View Sharing. The view loss analysis prepared and submitted to Council fails to address the planning principles as established by *Tenacity v Warringah Council*.

As illustrated by the above image, the enclosed roof top terrace, the increase in FFL's of each level of the dwelling and increase in overall height of the development in excess of 9m, is contrary to the objectives of this clause. The design of the development does not encourage view sharing from the adjoining property to the rear of the site, being no.16 Sommerville Street.

<u>4.17. Retaining walls</u> <ul style="list-style-type: none"><i>To ensure well designed retaining walls that are structurally sound</i>	No retaining walls are proposed.	n/a
<u>4.18 Swimming pools and spas</u> <ul style="list-style-type: none"><i>To ensure relevant safety standards meet user's needs.</i><i>To ensure site and design maintain the amenity of the area</i>	The proposal has been assessed against the relevant objectives and considered satisfactory.	Yes
<u>4.19 Development near railway corridors and major roads</u> <ul style="list-style-type: none"><i>Ensure development near rail corridors and major roads are protected from vibration</i><i>Ensure development does not affect operations or safety</i><i>Comply with SEPP Infrastructure.</i>	The subject site is not located adjacent to a railway corridor and/or a major road.	n/a

CHAPTER D1: CHARACTER STATEMENTS

Clause 3.15 – Bulli

Bulli should retain its relatively low density residential suburban character with some limited multi-dwelling housing opportunities within a short walking distance (i.e. 400 – 600 metres) to Bulli railway station.

Dwellings within the eastern coastal part of Bulli should be designed to minimise the scale and bulk of the development through well-articulated forms.

It is considered that the design, bulk and scale of the development does not meet the desired future character of Bulli.

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

A two (2) car garage has been provided attached to the dwelling house. The proposed driveway grades are capable of complying with Australian Standard AS 2890.1

CHAPTER E7: WASTE MANAGEMENT

A Site Waste Minimisation and Management Plan has been submitted. The proposal has been assessed against the relevant objectives and considered satisfactory. Conditions would be imposed on any development consent in regard to waste management and asbestos removal.

CHAPTER E14 STORMWATER MANAGEMENT

Stormwater generated from the proposed development is to be connected to the existing stormwater drainage system.

CHAPTER E17 PRESERVATION AND MANAGEMENT OF TREES AND VEGETATION

No tree removal is proposed and/or required as part of the proposed development.

CHAPTER E21 DEMOLITION AND ASBESTOS MANAGEMENT

The proposed development does not involve any demolition works.

CHAPTER E22 SOIL EROSION AND SEDIMENT CONTROL

Conditions in relation to soil and erosion control have been imposed on the original development consent.

4.3.2 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN (2021)

The original development application was exempt from development contributions.

4.4 SECTION 4.15(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 7.4 which affect the development.

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

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

The application does not involve demolition.

93 Fire safety and other considerations

Not applicable.

94 Consent authority may require buildings to be upgraded

Not applicable.

4.6 SECTION 4.15 1(A)(V) ANY COASTAL ZONE MANAGEMENT PLAN (WITHIN THE MEANING OF THE COASTAL PROTECTION ACT

Not applicable.

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

<p><u>Context and Setting:</u></p> <p>The proposed development is located within a low density residential area and is permissible with development consent, however, it is considered that the proposed development is inconsistent with the surrounding context and setting.</p>
<p><u>Access, Transport and Traffic:</u></p> <p>Access to the site is from Weaver Terrace. The development is considered not to result in an adverse impact on the traffic movement and access to the site.</p>
<p><u>Public Domain:</u></p> <p>There will be adverse impact on the public domain as a result of the proposed development.</p>
<p><u>Utilities:</u></p> <p>The proposal is not envisaged to place an unreasonable demand on utilities supply. Existing utilities are adequate to service the proposal.</p>
<p><u>Heritage:</u></p> <p>No known heritage items will be impacted by the proposal.</p>
<p><u>Other land resources:</u></p> <p>The proposal is not considered to contribute to orderly development of the site, however, it is not envisaged to impact upon any valuable land resources.</p>
<p><u>Water:</u></p> <p>The site is presently serviced by Sydney Water, which can be readily extended to meet the requirements of the proposed development.</p> <p>The proposal is not envisaged to have unreasonable water consumption.</p>
<p><u>Soils:</u></p> <p>There will be no adverse impacts on the soils of the subject site or surrounding area as a result of the proposed development.</p>
<p><u>Air and Microclimate:</u></p> <p>The proposal is not expected to have negative impacts on air or microclimate.</p>
<p><u>Flora and Fauna:</u></p> <p>There is no significant vegetation removal proposed and/or required.</p>
<p><u>Waste:</u></p> <p>A condition will be attached to any consent granted that an appropriate receptacle be in place for any waste generated during the construction.</p>
<p><u>Energy:</u></p> <p>The proposal is not envisaged to have unreasonable energy consumption.</p>
<p><u>Noise and vibration:</u></p> <p>A condition will be attached to any consent granted that nuisance be minimised during any construction, demolition, or works.</p>
<p><u>Natural hazards:</u></p> <p>There are no natural hazards affecting the site that would prevent the proposal.</p>

Technological hazards:

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

Safety, Security and Crime Prevention:

This application does not result in opportunities for criminal or antisocial behaviour.

Social Impact:

The proposal is not expected to create negative social impacts.

Economic Impact:

The proposal is not expected to create negative economic impacts.

Site Design and Internal Design:

The site is located within an R2 Low Density Residential Zone, and under Clause 4.3 and Clause 4.4 of Council's WLEP2009 a maximum height of buildings of 9m and maximum floor space ratio of 0.50:1 is applicable to the site.

The proposed development has an overall building height of 9.245m, which exceeds the development standard by 2.7%. Council has concluded that the development is contrary to the objectives of Clause 4.3 of the WLEP2009.

The proposed development has an FSR of 0.577:1, which exceeds the maximum development standard by 15%. Council has concluded that the development is contrary to the objectives of Clause 4.4 of WLEP2009, and that there is not an appropriate correlation between size of the site and the extent of the proposed development on the site, and also that the development is not compatible with the bulk and scale of the locality.

Construction:

Conditions of consent are applicable in relation to construction impacts such as hours of work, erosion and sedimentation controls, works in the road reserve, excavation, demolition and use of any crane, hoist, plant or scaffolding. A condition will be attached to any consent granted that all works are to be in compliance with the Building Code of Australia.

Cumulative Impacts:

The development as constructed would result in a negative cumulative impact, as it promotes similar undesired developments in the area.

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

Does the proposal fit in the locality?

The development is considered permissible with regard to the zoning of the site with development consent, however the design of the development is resulting in negative impacts on the amenity of the locality and adjoining developments.

Are the site attributes conducive to development?

The site is located within an R2 Low Density Residential Zone, and under Clauses 4.3 and 4.4 of Council's WLEP2009, a maximum building height of 9m and maximum floor space ratio of 0.50:1 is applicable to the site, respectively. The development has an overall building height of 9.245m, an exceedance of 2.7% and an FSR of 0.577:1, which exceeds the maximum development standard by 15%. Council has concluded that the development is contrary to the objectives of both Clause 4.3 and Clause 4.4 of WLEP2009, and that there is not an appropriate correlation between size of the site and the extent of the proposed development on the site, and also that the development is not compatible with the bulk and scale of the locality. The development is contrary to the objectives of the zone.

It is concluded that the subject site is not suitable for the development.

4.9 SECTION 4.15 (D) SUBMISSIONS

Refer to Section 2.5 of this report.

4.10 SECTION 4.15 1(E) THE PUBLIC INTEREST

The development is excessive in bulk and scale, is inconsistent with the established streetscape character and is adversely impacting upon the amenity of the area. It is considered that approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.

5. CONCLUSION

This application has been assessed having regard to the Heads of Consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of WLEP 2009 and all relevant Council DCPs, Codes and Policies.

There are no outstanding issues.

The development is permitted in the R2 Low Density Residential Zone with development consent pursuant to WLEP 2009. The application request does involve an exception to development standard, specifically to Clause 4.3 – Height of Buildings and Clause 4.4 – Floor Space Ratio of WLEP2009, which have been considered and are not supported.

The issues raised in submissions are not considered to be adequately addressed through the design of the proposal. The predominant issues raised throughout the submissions relating to building character and form, number of storeys and overall building height, are considered appropriate grounds for refusal of the application.

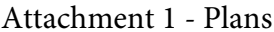
It is considered that the application has not been designed appropriately given the nature and characteristics of the site and is resulting in significant adverse impacts on the character and amenity of the surrounding area.

6. RECOMMENDATION

It is recommended that the development application be refused subject to the reasons contained in Attachment 3.

7. ATTACHMENTS

1. Architectural Plans
2. Architectural Plans approved under Original Development Consent – DA-2006/1376
3. Statement of Environmental Effects – Inclusive of Clause 4.6 – Exception to Development Standards
4. Draft Refusal



DIAL 1100 BEFORE YOU DIG
UNDERGROUND SERVICE SEARCH SHOULD BE UNDERTAKEN
PRIOR TO ANY EXCAVATION TAKEN PLACE UPON THE SITE

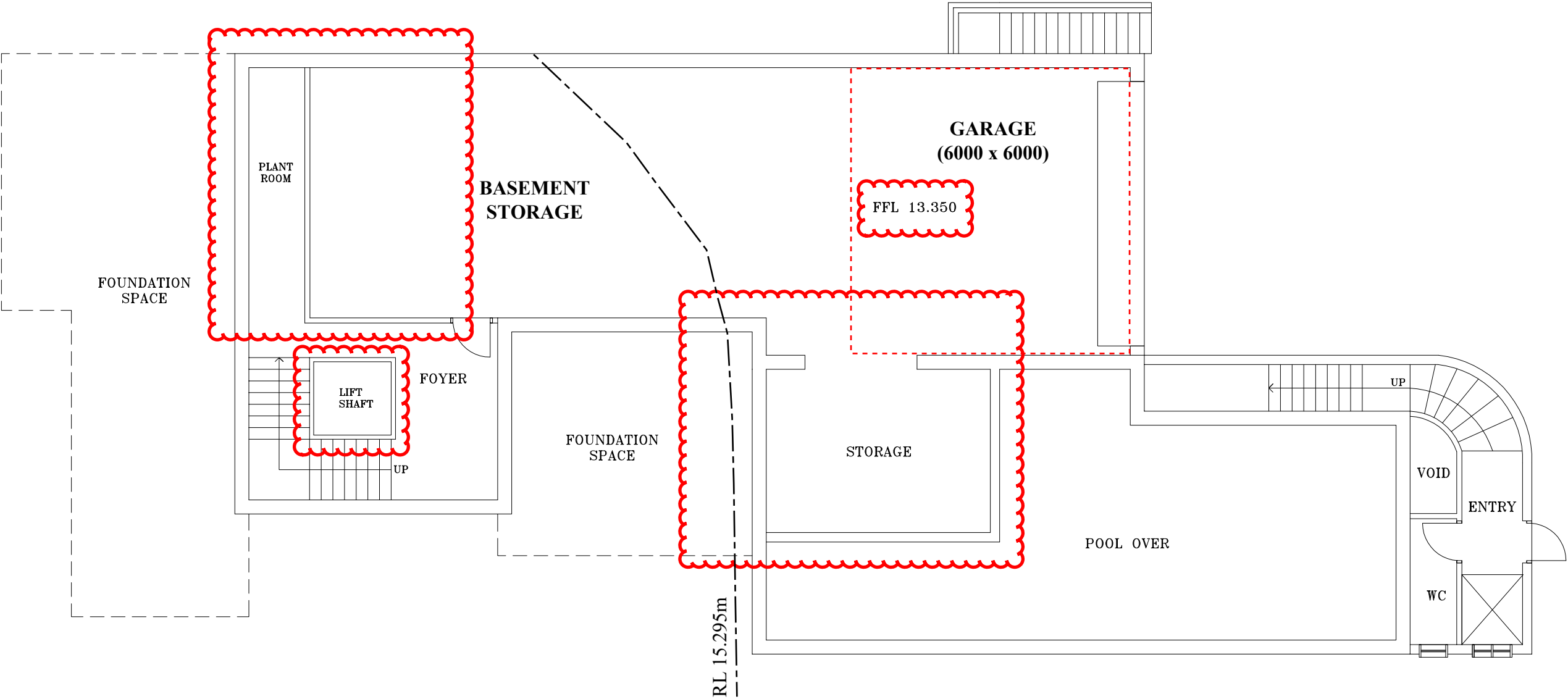


Rev	Date	Amendment
D	19/10/2021	

LOT. 11. D.P. 285763

1428-D01
No in set : 7

No in set : 7



PLAN OF BASEMENT & GARAGE
SCALE 1:100

GENERAL NOTES:
ALL GROUND LINES ARE APPROXIMATE.
DO NOT SCALE OFF THIS DRAWING.
ALL MEASUREMENTS AND DIMENSIONS ARE TO BE VERIFIED ON-SITE.
DO NOT KEEP SUPER CEDED DRAWINGS ON SITE.
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THIS DRAWING SHALL BE READ IN CONJUNCTION WITH ALL OTHER DRAWINGS AND DOCUMENTS - INCLUDING CONSULTANTS DRAWINGS, IF ANY - IN THE SET.
ALL DIMENSIONS, GROUND AND FLOOR LEVELS, INCLUDING THOSE OF EXISTING, ARE TO BE VERIFIED BY THE BUILDER BEFORE COMMENCING ANY WORK. ALL GROUND LEVELS SHOWN ON THE DRAWING ARE INDICATIVE ONLY.
IT IS STRONGLY RECOMMENDED THAT A REGISTER SURVEYOR DEFINE THE CORNERS OF THE PROPOSED DEVELOPMENT IN ACCORDANCE WITH COUNCILS APPROVED PLANS PRIOR TO THE BUILDER SETTING OUT. THE OWNER IS TO APPROVE THE POSITION BEFORE WORK COMMENCES.
ALL WORK IS TO CONFORM WITH THE BUILDING CODE OF AUSTRALIA, COUNCIL CONDITIONS OF APPROVAL, SPECIFICATIONS, CONSULTANTS DETAILS, ALL RELEVANT CODES AND THE REQUIREMENTS OF ALL AUTHORITIES HAVING JURISDICTION OVER THE WORKS.
THE BUILDER SHALL BE RESPONSIBLE FOR CHECKING THAT ALL TIMBER SIZES SHOWN ARE IN ACCORDANCE WITH AS1684, 1992 NATIONAL TIMBER FRAMING CODE AND ITS AMENDMENTS THEREAFTER.
THE POSITION OF DOWN PIPES, UNLESS SHOWN ON PLAN, SHALL BE DETERMINED ON SITE AND TO APPROVAL.
ALL WORK IS TO BE PERFORMED IN A GOOD AND WORKMANSHIP MANNER. FAULTY OR UNSUITABLE MATERIALS SHALL NOT BE USED.
ALL FINISHES, INCLUDING ELECTRICAL LAYOUT, SHALL BE DETERMINED BY THE OWNER PRIOR TO TENDERING OR QUOTING BY BUILDER.
TERMITE PROTECTION UNDER AND AROUND PERIMETER OF WORK SHALL BE CARRIED OUT IN ACCORDANCE WITH AS 3660. A CERTIFICATE SHALL BE PROVIDED ON COMPLETION OF PROTECTION WORKS.
STORMWATER CALCULATIONS IN ACCORDANCE WITH AS 3500
AS REQUIRED ALL RETAINING & SURFACE WATER DRAINAGE TO BE COMPLETED BY THE OWNER TO COUNCIL SPECIFICATIONS UNLESS INCLUDED IN THE CONTRACT.

Rev	Date	Amendment
A	15/12/2020	
B	16/12/2020	
C	12/05/2021	

Project:
Proposed : CHANGES TO COVERED AREA

at 13 WEAVER TERRACE
BULLI NSW

for DR A AURANGABADKAR

LOT. 11. D.P. 285763

Drawing:

Floor Plan

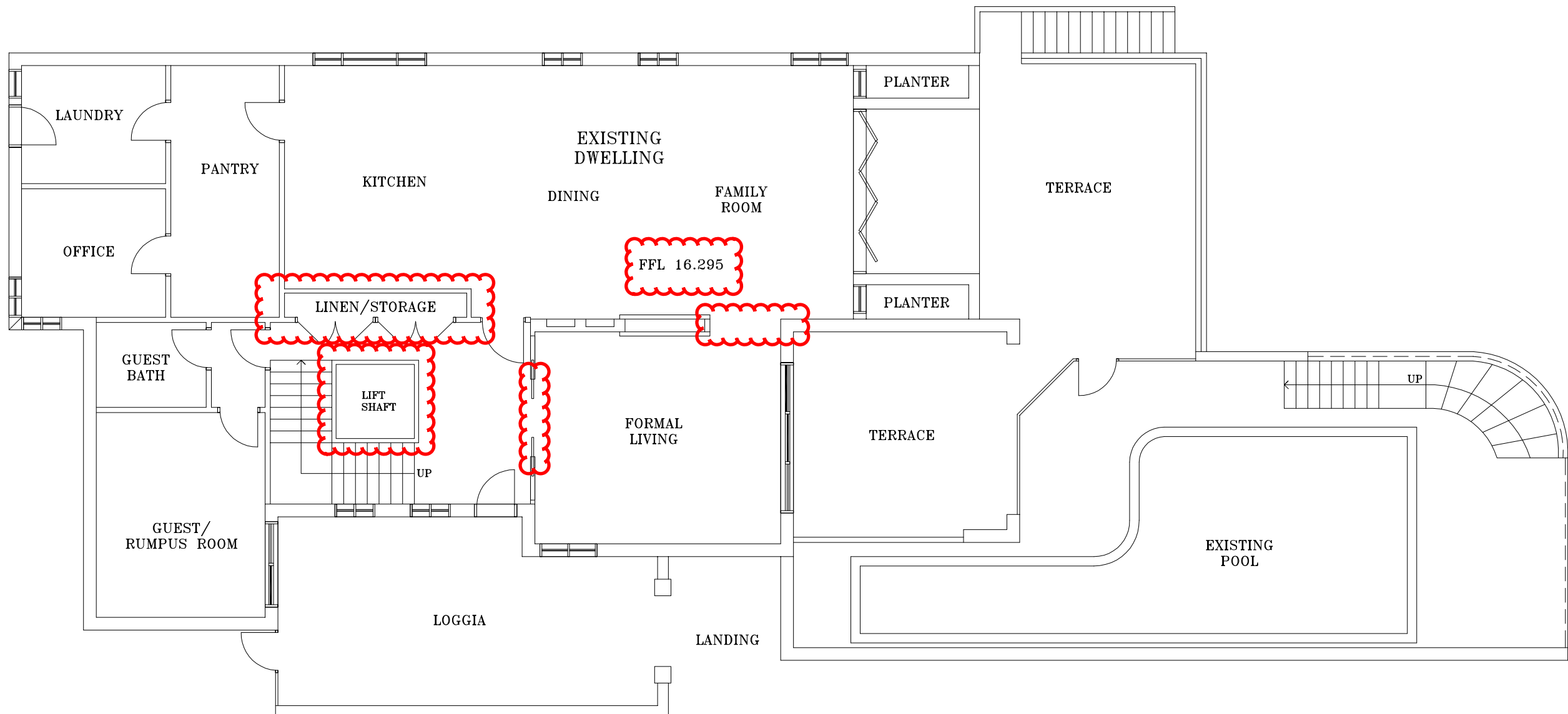
BUILDCHECK
drafting

UNIT 2-102 INDUSTRIAL ROAD
OAK FLATS NSW
MOB: 0408027925

BUILDCHECK (NSW) PTY LTD
A.B.N. 88104967240

Date: 08/12/2020	Drawn: BF
Scale: 1:100	Checked:

Drawing No:
1428-C01
No in set :3



PLAN OF FIRST FLOOR
SCALE 1:100

GENERAL NOTES:
ALL GROUND LINES ARE APPROXIMATE.
DO NOT SCALE OFF THIS DRAWING.
ALL MEASUREMENTS AND DIMENSIONS ARE TO BE VERIFIED ON-SITE.
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Rev	Date	Amendment
A	15/12/2020	
B	16/12/2020	
C	12/05/2021	

Project:
Proposed : CHANGES TO COVERED AREA

at 13 WEAVER TERRACE
BULLI NSW

for DR A AURANGABADKAR

LOT. 11. D.P. 285763

Drawing:
Floor Plan

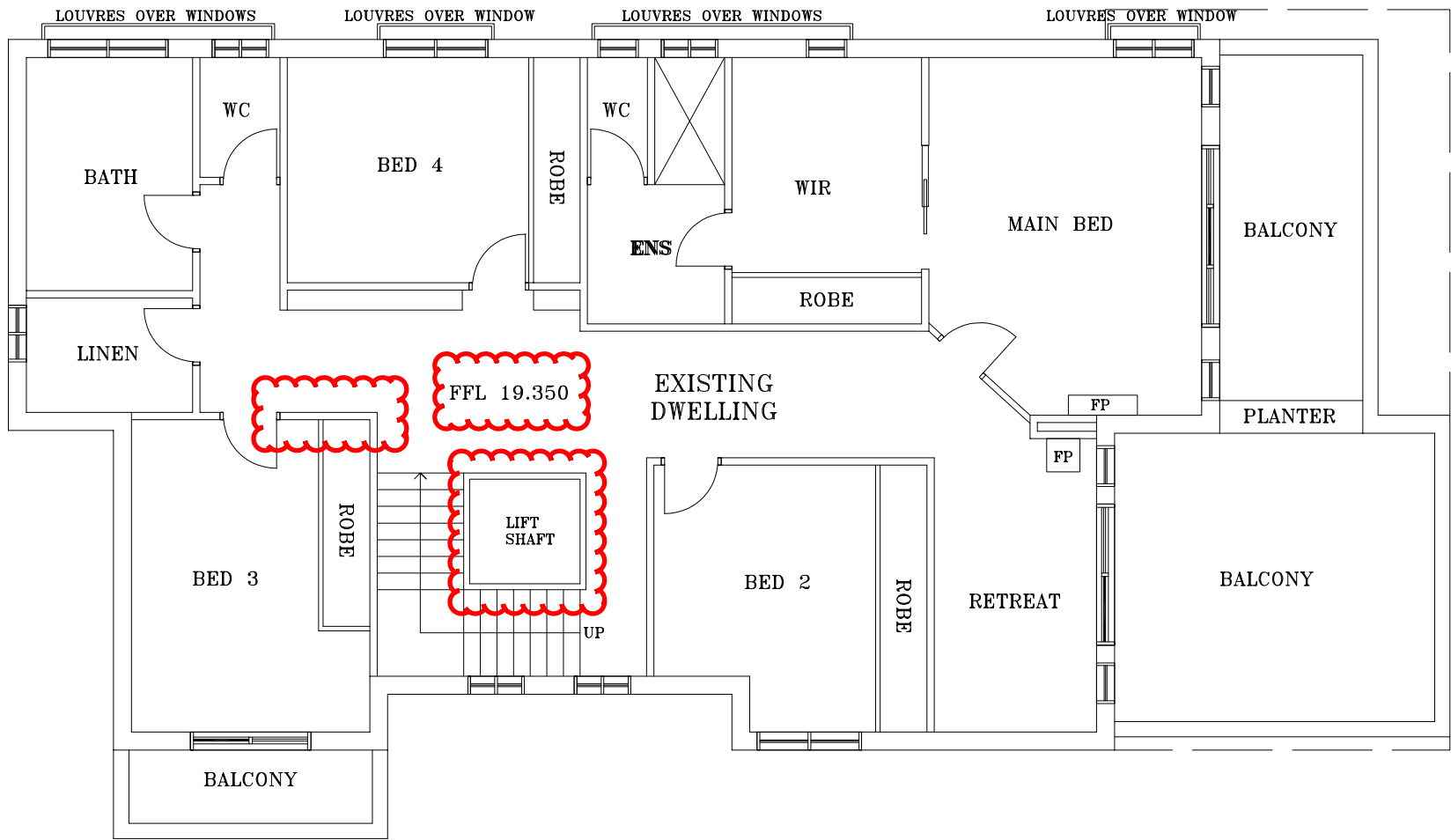
BUILDCHECK 
drafting

UNIT 2-102 INDUSTRIAL ROAD
OAK FLATS NSW
MOB: 0408027925

BUILDCHECK (NSW) PTY LTD
A.B.N. 88104967240

Date: 08/12/2020	Drawn: BF
Scale: 1:100	Checked:

Drawing No:
1428-C02
No in set :3



PLAN OF SECOND FLOOR
SCALE 1:100

GENERAL NOTES:
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Rev	Date	Amendment
A	15/12/2020	
B	16/12/2020	
C	11/05/2021	


Project:
Proposed : CHANGES TO COVERED AREA

at 13 WEAVER TERRACE
BULLI NSW

for DR A AURANGABADKAR

LOT. 11. D.P. 285763

Drawing:
Floor Plan

BUILDCHECK
drafting

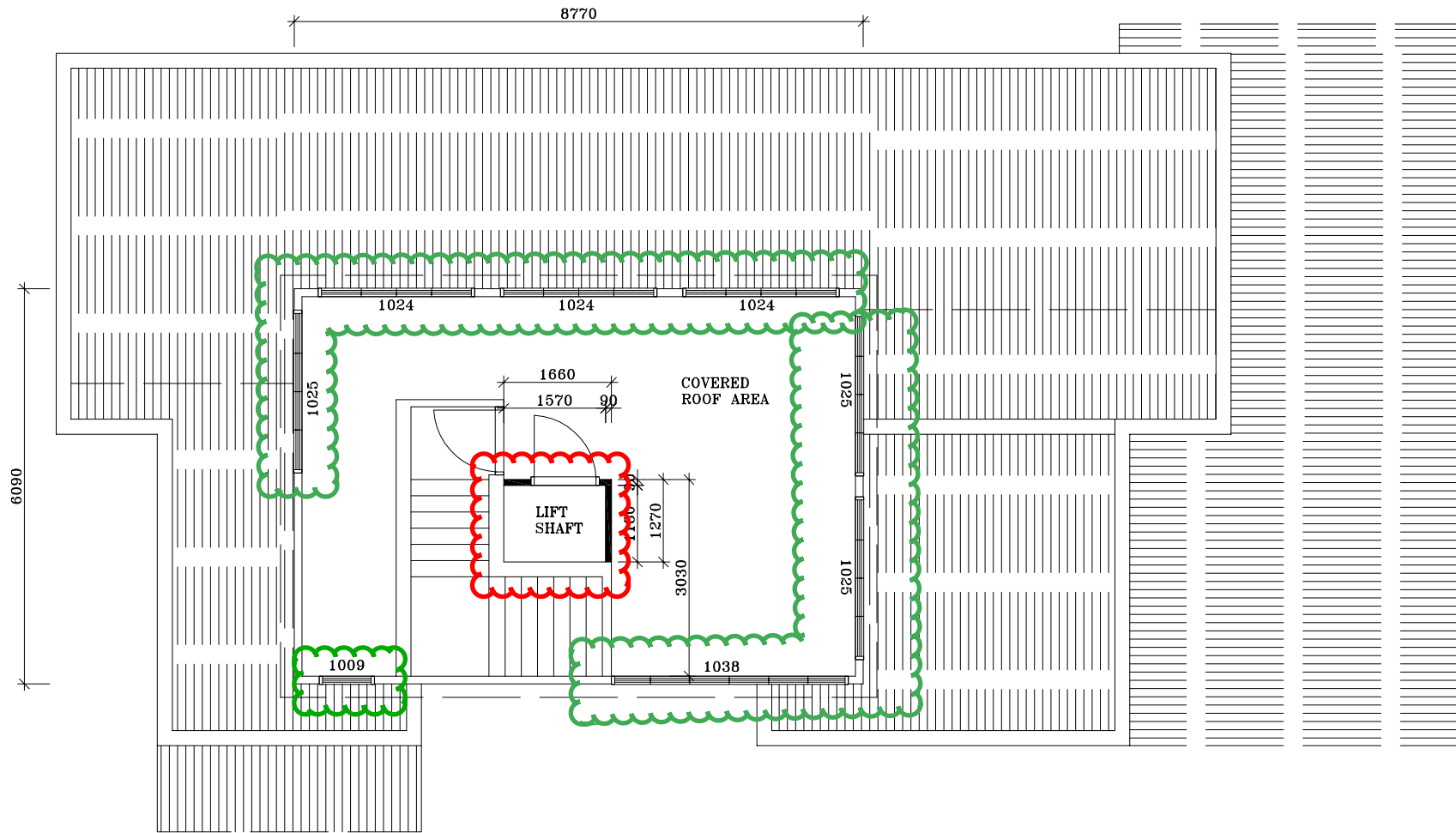
UNIT 2-102 INDUSTRIAL ROAD
OAK FLATS NSW
MOB: 0408027925

BUILDCHECK (NSW) PTY LTD
A.B.N. 88104967240

Date: 08/12/2020	Drawn: BF
Scale: 1:100	Checked:

Drawing No:
1428-C03
No in set :3

GROSS FLOOR AREA CALCULATIONS FOR
THE ADDITIONAL FLOOR AREA
= 39.436M²



PLAN OF ROOF & TERRACE LAYOUT
SCALE 1:100

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Rev	Date	Amendment
A	15/12/2020	
B	16/12/2020	

Project:
Proposed : CHANGES TO
COVERED AREA

at 13 WEAVER TERRACE
BULLI NSW

for DR A AURANGABADKAR

LOT. 11. D.P. 285763

Drawing:
Floor Plan

BUILDCHECK 
drafting

UNIT 2-102 INDUSTRIAL ROAD
OAK FLATS NSW
MOB: 0408027925

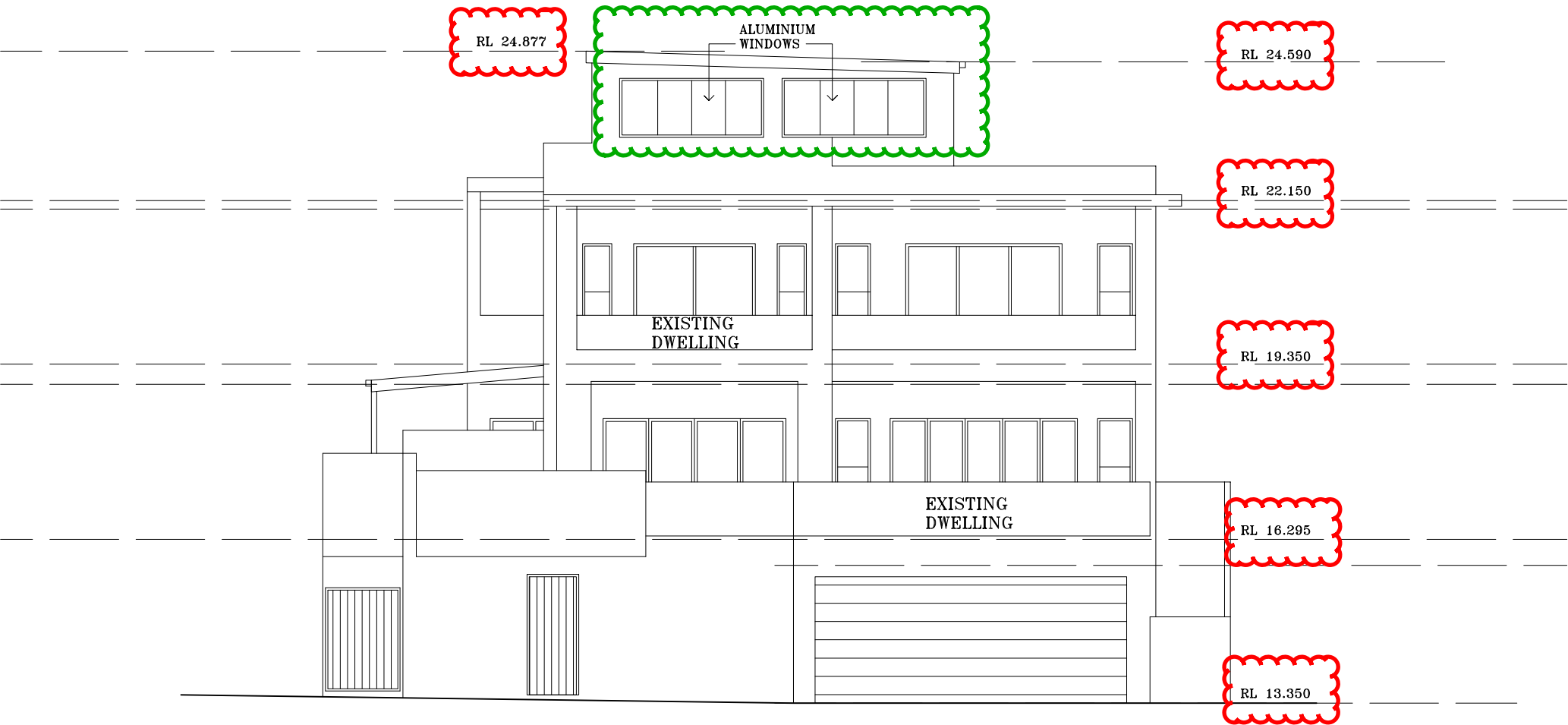
BUILDCHECK (NSW) PTY LTD
A.B.N. 88104967240

Date: 08/12/2020	Drawn: BF
Scale: 1:100	Checked:

Drawing No:
1428-B02
No in set : 4



EASTERN ELEVATION
SCALE 1:100



NORTHERN ELEVATION
SCALE 1:100

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Rev	Date	Amendment
D	19/10/2021	

Project:
Proposed : CHANGES TO COVERED AREA

at 13 WEAVER TERRACE
BULLI NSW

for DR A AURANGABADKAR

LOT. 11. D.P. 285763

Drawing:

Elevations

BUILDCHECK
drafting

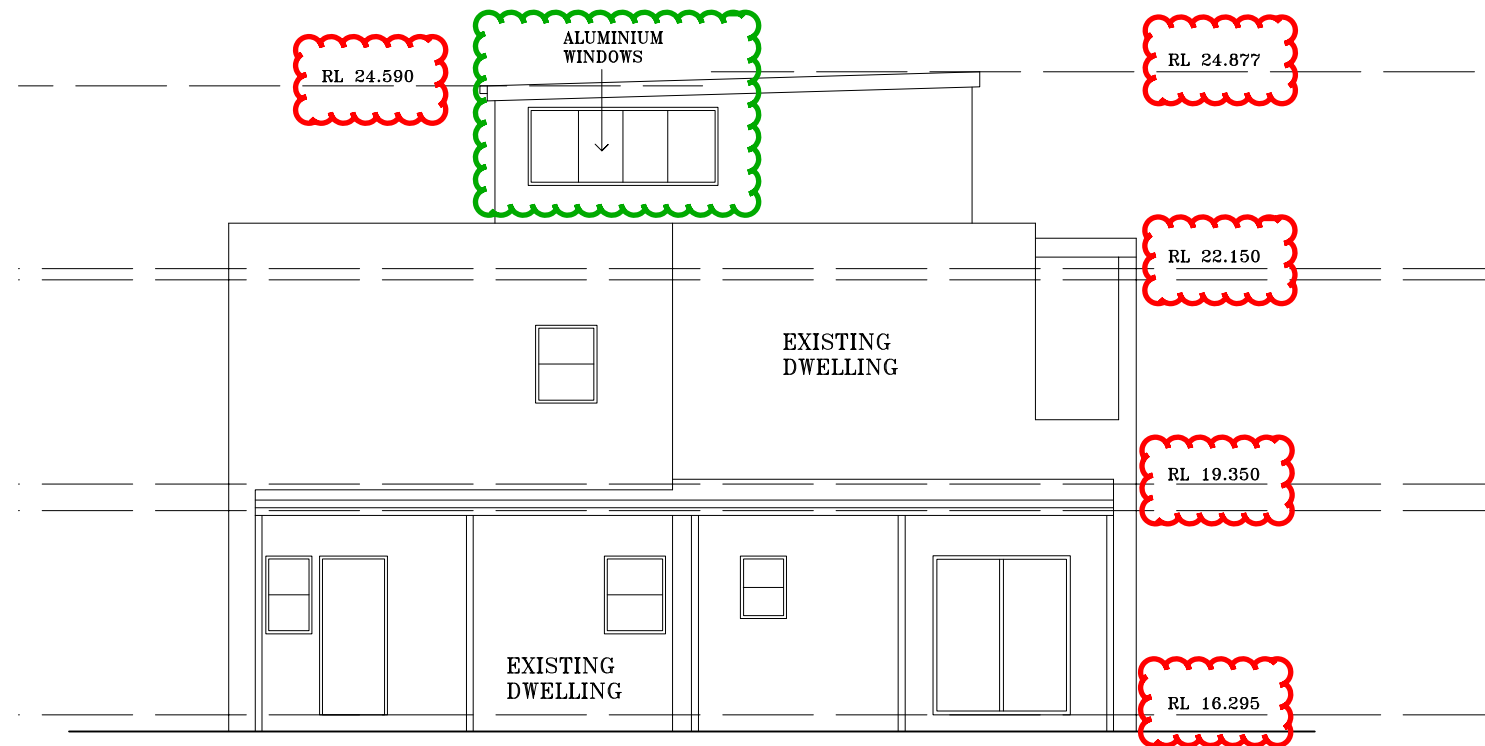
UNIT 2-102 INDUSTRIAL ROAD
OAK FLATS NSW
MOB: 0408027925

BUILDCHECK (NSW) PTY LTD
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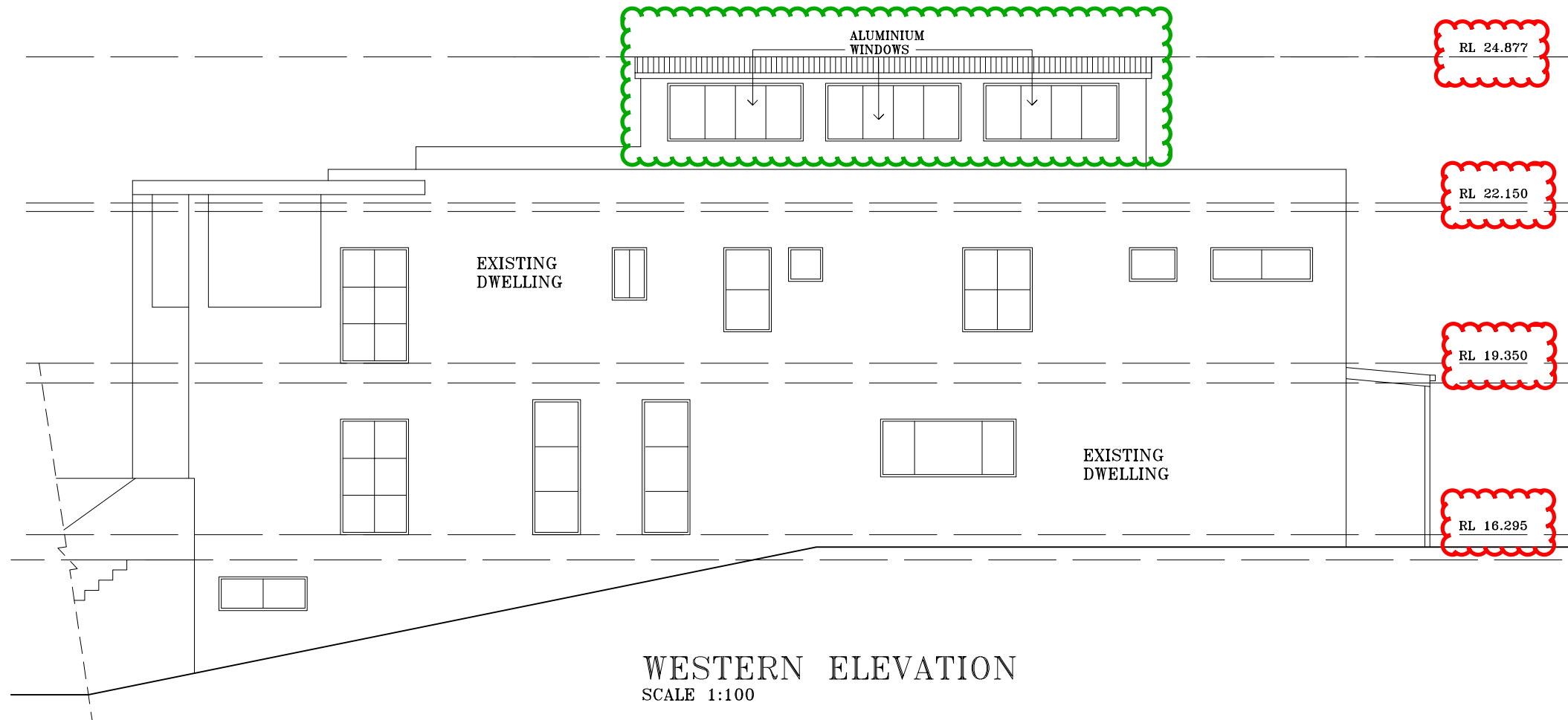
Date: 08/12/2020	Drawn: BF
Scale: 1:100	Checked:

Drawing No:

1428 – D06
No in set : 7




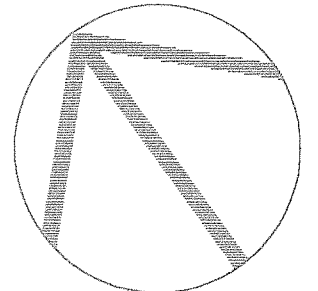
SOUTHERN ELEVATION
SCALE 1:100



WESTERN ELEVATION
SCALE 1:100

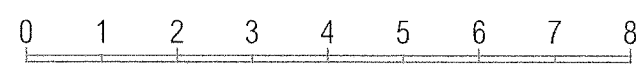
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Rev	Date	Amendment
D	19/10/2021	
Project: Proposed : CHANGES TO COVERED AREA at 13 WEAVER TERRACE BULLI NSW for DR A AURANGABADKAR LOT. 11. D.P. 285763		
Drawing:		
Elevations		
BUILDCHECK  <i>drafting</i>		
UNIT 2-102 INDUSTRIAL ROAD OAK FLATS NSW MOB: 0408027925 BUILDCHECK (NSW) PTY LTD A.B.N. 88104967240		
Date: 08/12/2020		Drawn: BF
Scale: 1:100		Checked:
Drawing No: 1428-D07 No in set : 7		



NOTES:

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FOR DETAIL REFER TO LANDSCAPE ARCHITECT'S DRAWINGS
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- FURNITURE LAYOUT SHOWN INDICATIVELY ONLY



LEGEND:

- × A 465 - EXISTING LEVELS SHOWN (TAKEN FROM SURVEY)
- + 13.200 - PROPOSED LEVELS SHOWN

NO.	DESCRIPTION	BY	DATE
E	LODGEMENT TO STOCKLANDS	SB	18.08.06
D	HEIGHT REDUCED AS PER STOCKLAND REQUEST	SB	26.06.06
C	LODGEMENT TO STOCKLANDS	SB	30.05.06
B	PRELIM. DEVELOPMENT APPLICATION DRAWINGS	SB	22.05.06
A	PRELIM. DEVELOPMENT APPLICATION DRAWINGS	SB	09.03.06

AMENDMENTS

GENERAL NOTES TO
BUILDER / OR CONTRACTOR

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MARTIN MCGRANE
ARCHITECTS

ABN: 99 776 806 227

PO BOX 512
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BALMAIN NSW 2041
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FAX 02 9555 2487

The Royal Australian
Institute of Architects

mrm@mcgranearchitects.com
www.mcgranearchitects.com

CLIENT

MR & MRS SMITH

PROJECT

SMITH RESIDENCE
AT LOT 11, SANDON POINT, NSW

TITLE

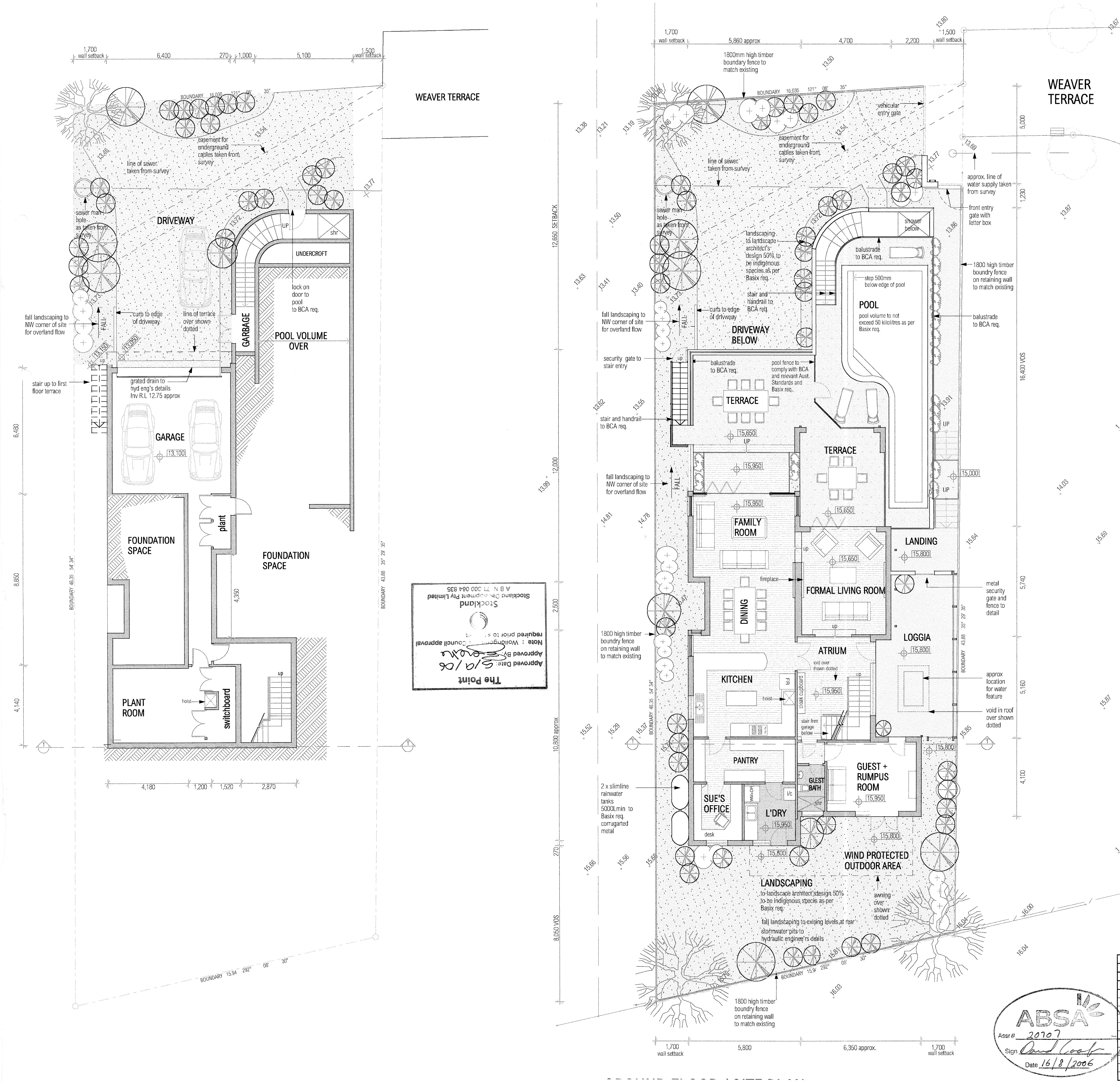
PLANS

DRAWN BY: SB
PROJECT ARCHITECT: MM
SIGNED: 7.08.03
CHECKED BY:
SIGNED: 1:00 @ A1

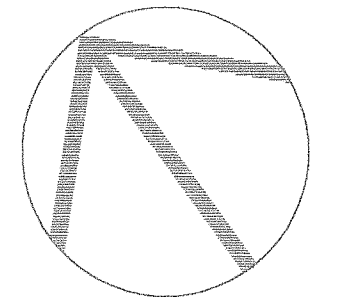
DO NOT LEFT / DRAWING NUMBER

AMENDMENT

445:01 DA01 'E'



NATHERS Requirements			
Mr & Mrs D. Smith			
Lot 11 Sandon Point			
Job Name: MMCG004	Job No: 6903472	Date: 26/06/2006	
Glazing to North and East Elevations - Double Glazed 3/12/4 Pyrolytic, Low - E, Argon Fill			
Glazing to North and East Elevations - Aluminium Frames, Uw - 3.31, SHGCw - 0.733			
Glazing to South and West Elevations - Single Glazed 6mm Pyrolytic, Low - E			
Glazing to South and West Elevations - Aluminium Frames, Uw - 4.6, SHGCw - 0.602			
Wall Insulation - R2.0 Recommend Protherm Reflecta Guard			
Ceiling Insulation - R3.5, Recommend Polyester Batts			
Timber Floor Insulation - R1.5, Recommend Polyester Batts			
Weather Seals to Windows and Doors to AS2046			
External Wall Colour - Medium, Solar Absorbance - 0.475 to 0.7			
Roof Insulation - Foil + R1.0 Batts, Recommend Protherm Reflecta Shield			
Roof Colour - Light, Solar Absorbance < 0.475			



NOTES:

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0 1 2 3 4 5 6 7 8

LEGEND:

- ✕ 4.865 - EXISTING LEVELS SHOWN (TAKEN FROM SURVEY)
- ⊕ 13.200 - PROPOSED LEVELS SHOWN

NO.	DESCRIPTION	BY	DATE
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CLIENT

MR & MRS SMITH

PROJECT

SMITH RESIDENCE
AT LOT 11, SANDON POINT, NSW

TITLE

PLANS

DRAWN BY: SB

PROJECT ARCHITECT: MM

SIGNED: 7.08.03

CHECKED BY:

SIGNED:

DATE

SCALE

1:100 @ A1

DESIGN / DRAWING NUMBER

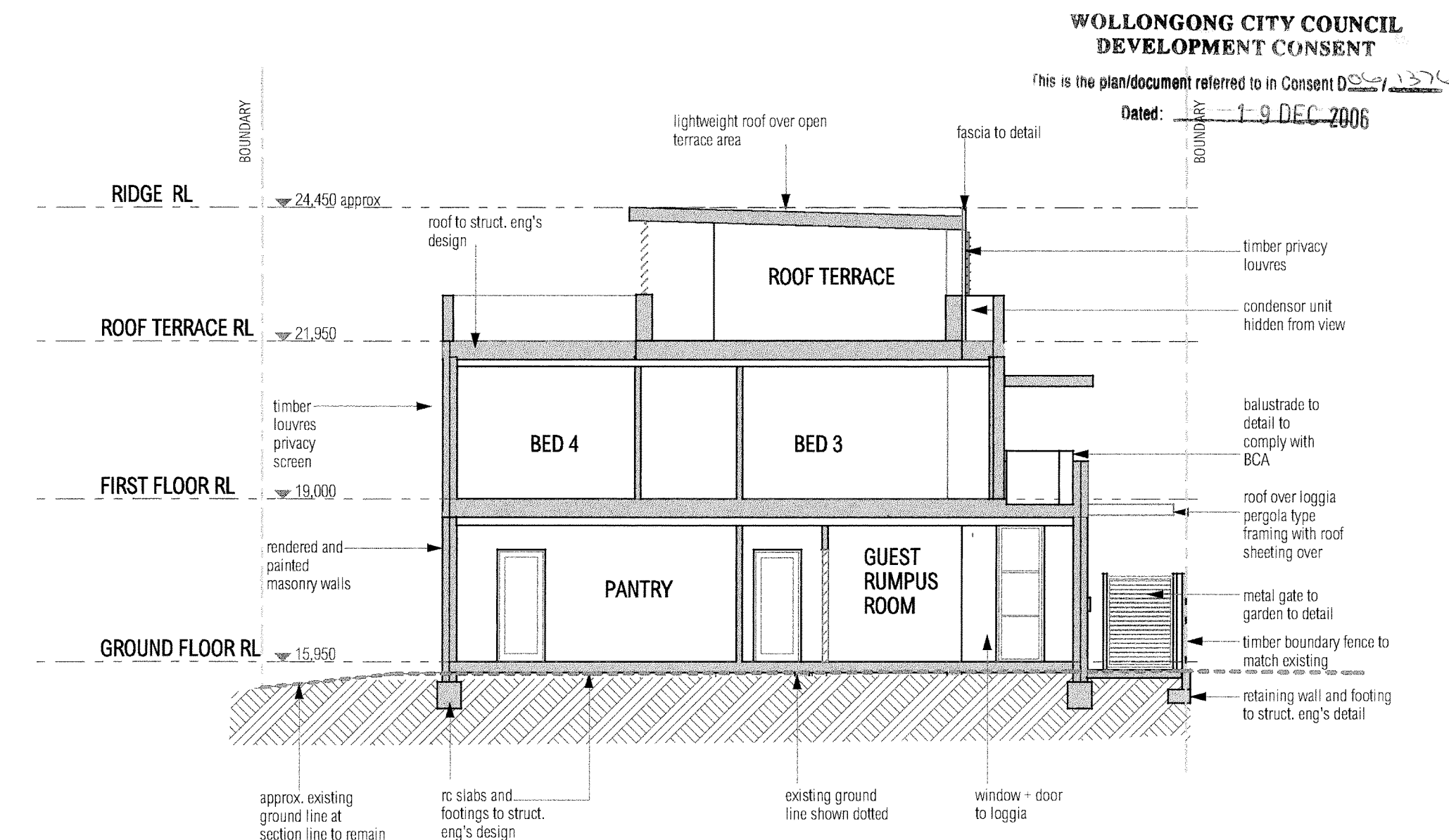
AMENDMENT

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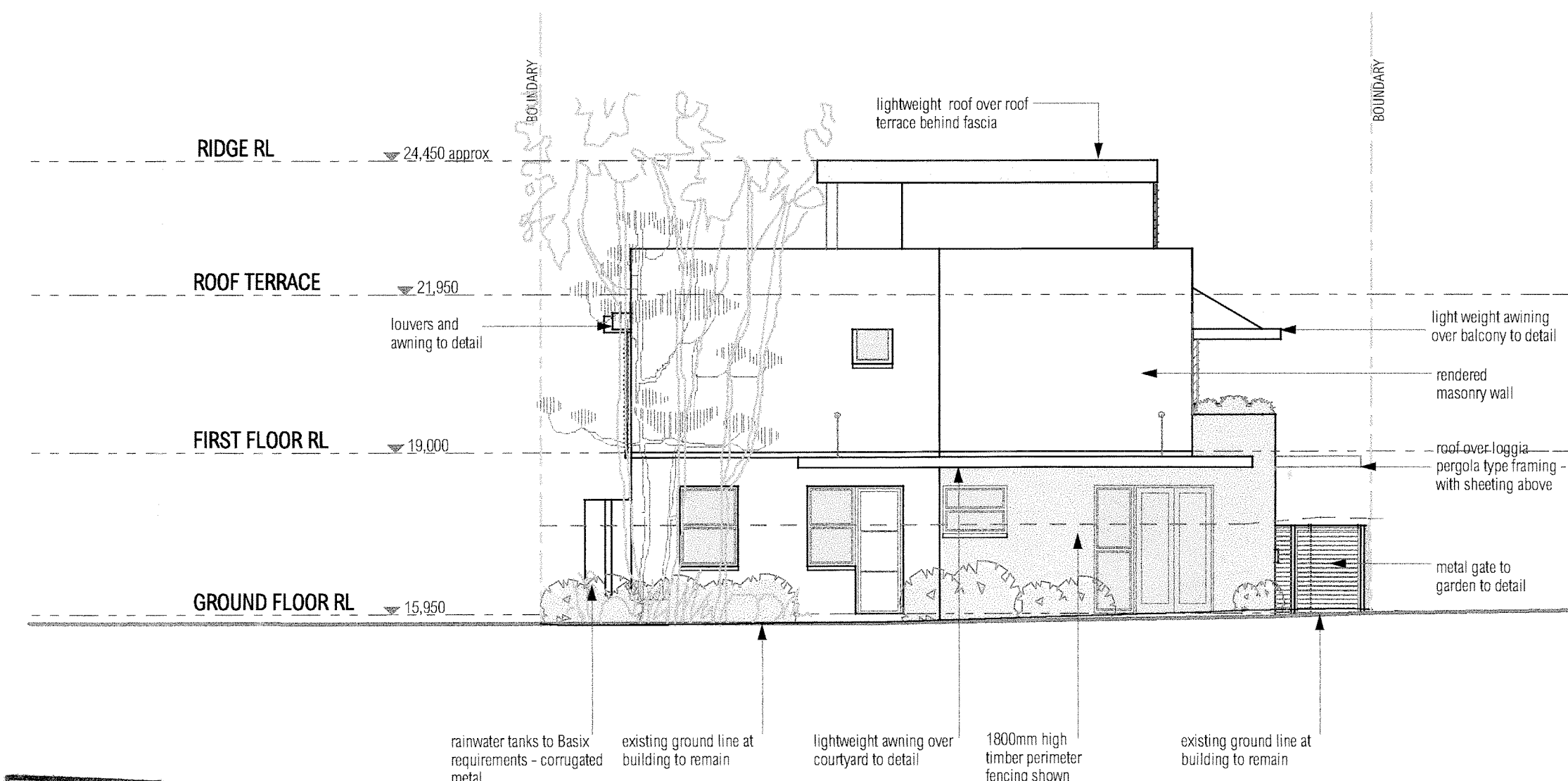
FIRST FLOOR PLAN

ROOF TERRACE PLAN

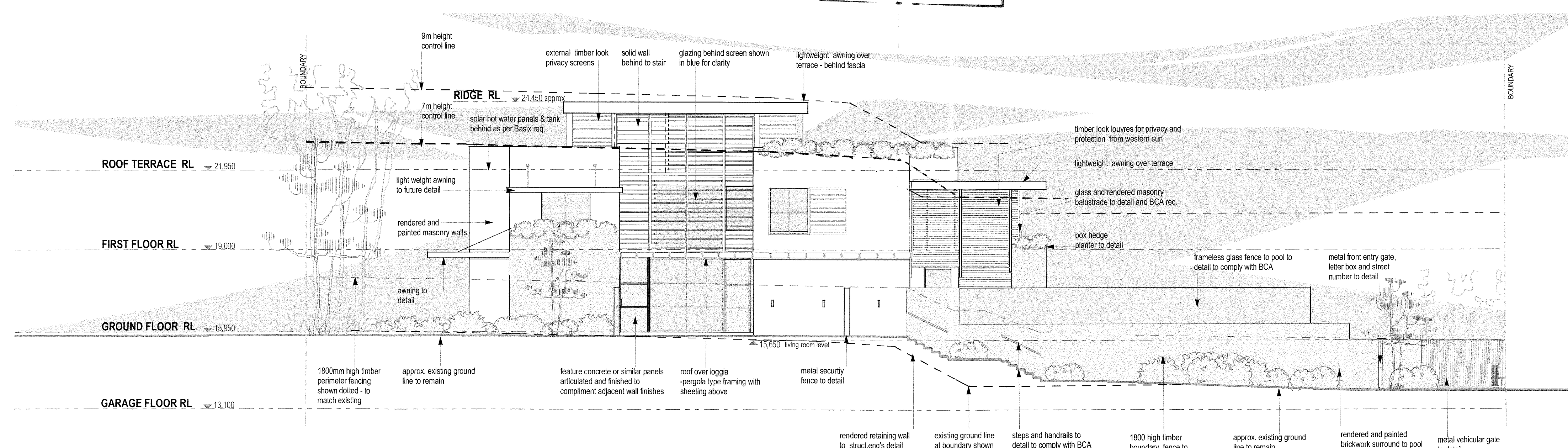
ROOF PLAN



CROSS SECTION



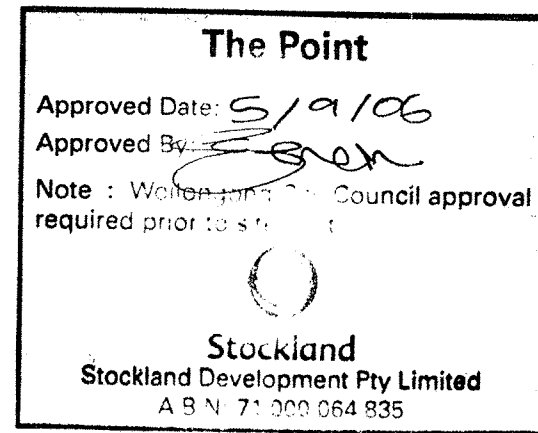
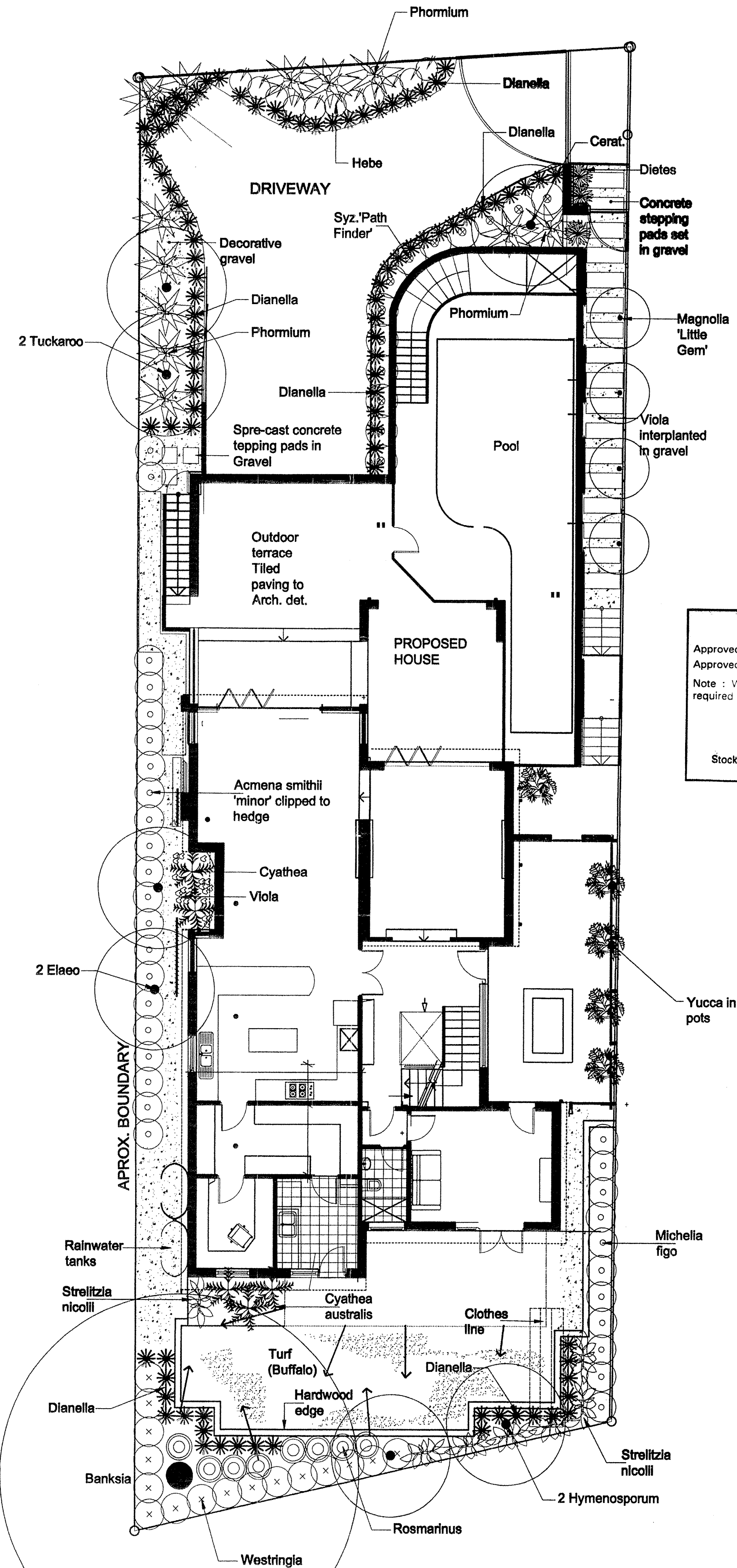
NORTH ELEVATION



PROJECT / DRAWING NUMBER	AMENDMENT

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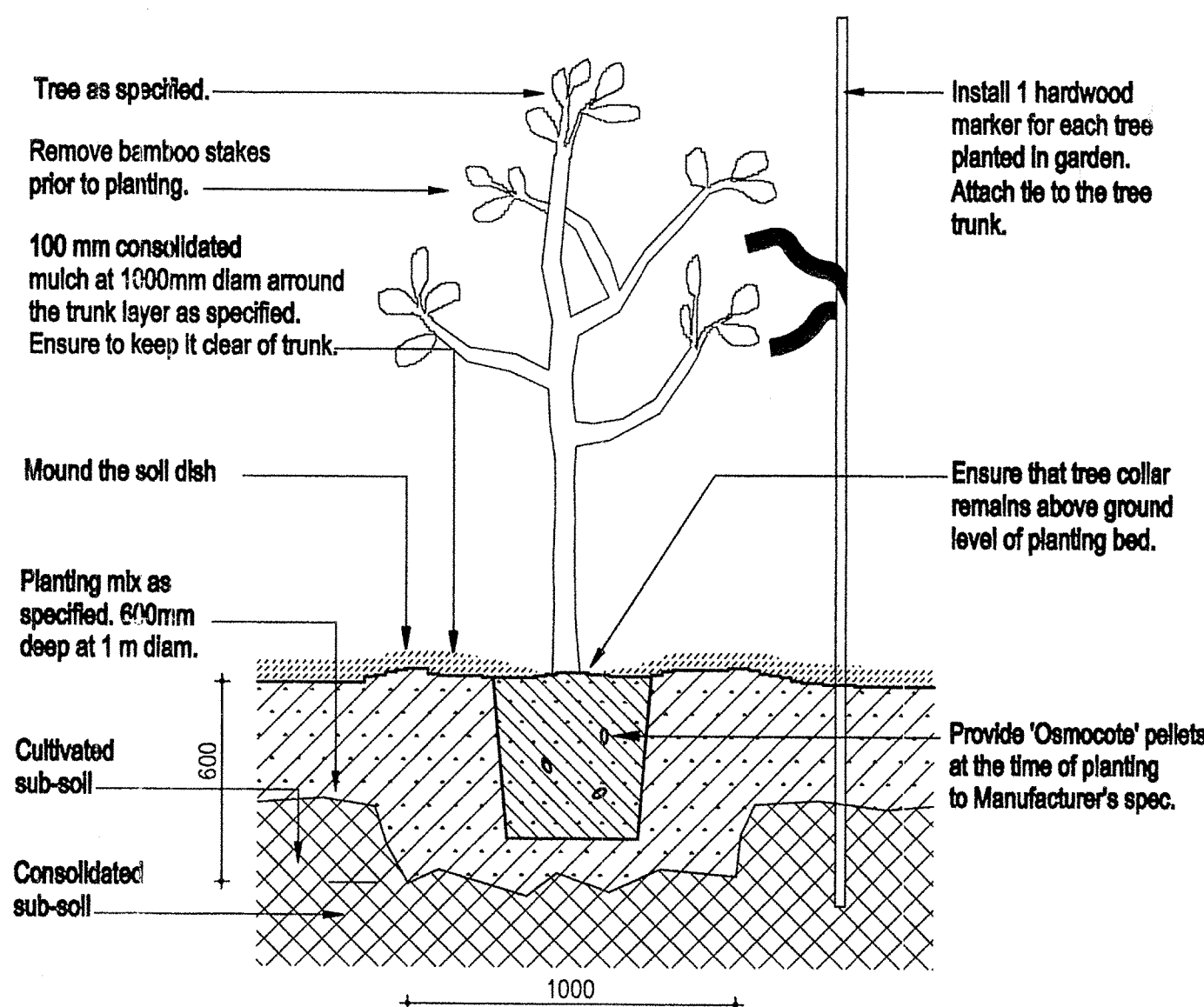
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SUGGESTED PLANT SPECIES LIST

Botanical name	Common name	cont. size	spacing (mm)
TREES			
Acmena smithii 'minor'	Small leaved Lillypillly	25 L	as shown
Banksia integrifolia	Coast Banksia	75 L	as shown
Ceratopetalum gummiferum	New Z Christmas Bush	25 L	as shown
Cupanopsis anacardoides	Tuckaroo	75 L	as shown
Elaeocarpus reticulatus	Blueberry Ash	25 L	as shown
Hymenosporum flavum	Native Frangipani	25 L	as shown
Magnolia 'Little Gem'	Magnolia 'Little Gem'	75 L	as shown
SHRUBS			
Hebe sp.	Hebe	25 L	800
Phormium tenax 'Atropurpureum'	NZ Flax - purple	25 L	800
Michelia figo	Port Wine Magnolia	25 L	800
Strelitzia reginae	Strelitzia	25 L	800
Syzygium 'Path finder'	Dwarf Lillypillly	25 L	800
Yucca elephantoides	Yucca	25 L	as shown
Rosmarinus officinalis	Rosemary	25 L	as shown
Westringia fruticosa	Coastal Rosemary	25 L	as shown
GROUNDCOVERS			
Dianella caerulea	Paroo Lily	150 mm	3 / m2
Dietes grandiflora	Wild Iris	150 mm	as shown
Viola hederacea	Native Violet	150 mm	10 / m2
Myoporum parvifolium	Creeping Boobialla	150 mm	2 / m2
FERNS			
Cyathea australis	Rough Tree Fern	25 L	As shown

This Suggested Species list was based on recommended Suggested Species List by Stockland; Landscape Design Guidelines

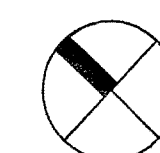


TREE PLANTING IN PLANTER BED

Typical detail nts

LEGEND

RL 24.150



0 1 2 3 5 10m
SCALE

ISSUE	AMENDMENT	DATE
A	PRELIMINARY	26.8.03
B	For approval	29.8.03
C	For DA approval	1.9.03
D	For DA approval	1.9.03
F	For DA approval	21.8.2006

Figured dimensions are to be taken in preference to all scaled dimensions. The contractor is to check and verify figured dimensions prior to any commencement of work on site.
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PROJECT
Proposed residence at
lot 11 Sandon Point NSW

CLIENT
Mr & Mrs Smith

ARCHITECT
Martin McGrane Architects Pty. Ltd.
6/193 Darling Street Balmain NSW
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Fax: 02 9555 2487

LANDSCAPE PLAN

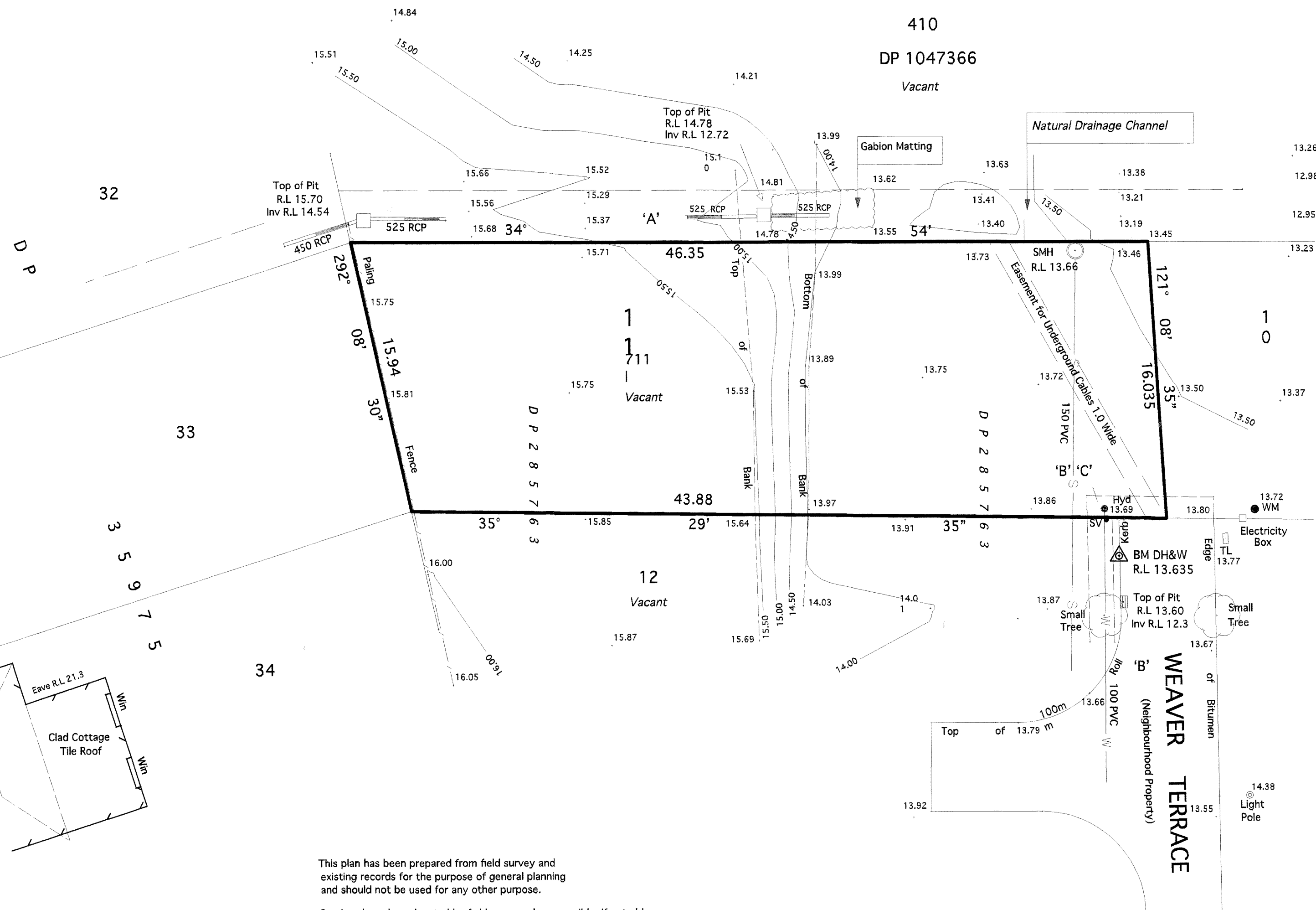
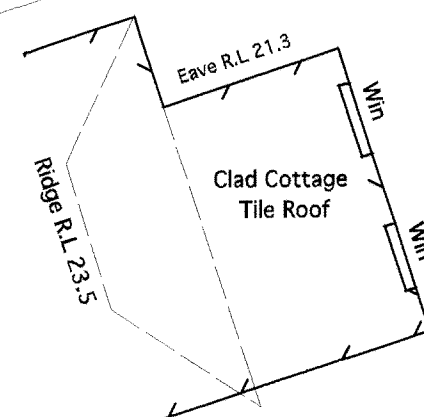
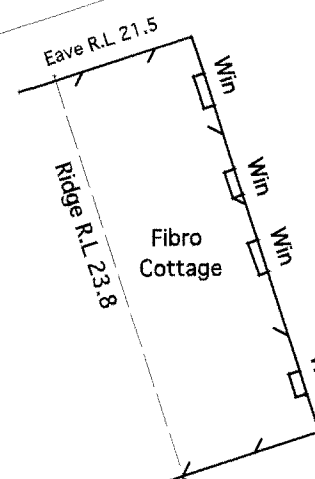
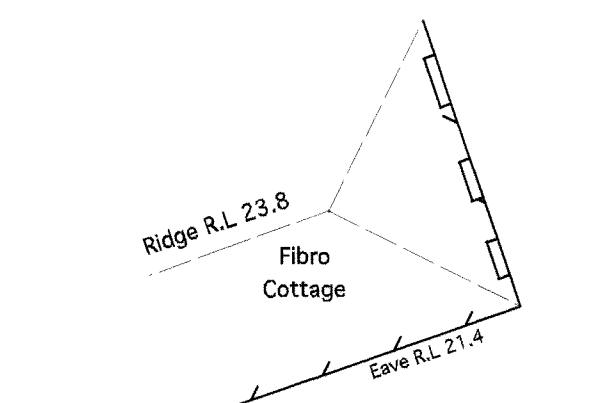
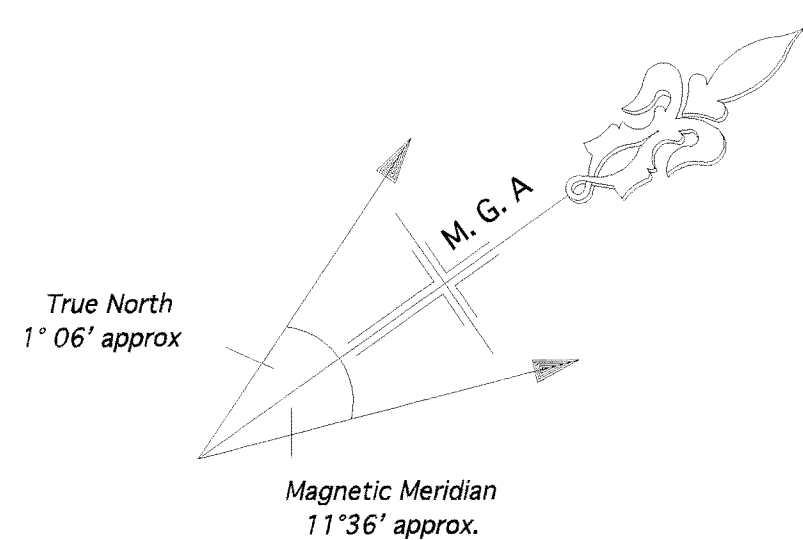
Scale
1 : 100 @ A1

Issue **F**
Date
August 2006

Job No. 0329

Dwg. No. DAL01

'A' Easement to Drain Water 3 Wide Vide DP 1047366
'B' Easement for Access and Drainage Purposes
5.5 and 7.5 wide and var.
'C' Easement for Water supply purposes 2.5 wide



This plan has been prepared from field survey and existing records for the purpose of general planning and should not be used for any other purpose.

Services have been located by field survey where possible. If not able to be so located, known services have been plotted from the records of relevant authorities where available and have been noted accordingly on this plan. Prior to any demolition, excavation or construction on the site, the relevant authority should be contacted for possible location of further underground services.

Contours shown are interpolated and are an indication of land form only.
Spot levels should be adopted in preference to contours.

Concurrence to determination of Development Application



*I am satisfied that a full assessment of this
Development Application DA.2006/1376...
has been completed pursuant to s79C of
the EPAA, and that the assessing officer
has the appropriate delegation to
determine the application.*

..... Jason Lamberge
(print name)

..... [Signature] Dated... 19/12/06...
(signature)

Plannex Environmental Planning

**SUBMISSION TO ACCOMPANY A SECTION 8.3
APPLICATION FOR REVIEW OF DETERMINATION OF
MODIFICATION APPLICATION DA-2006/1376/D**

**IN RESPECT OF LOT 11 DP 285763
No.13 WEAVER TERRACE, BULLI**

**PREPARED ON BEHALF OF
DR AMEY AURAGABADKAR**

OCTOBER 2021

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APPENDICES

APPENDIX A	Surveyed Roof Levels and Heights
APPENDIX B	Clause 4.6 Variation Justification Statement – Clause 4.3
APPENDIX C	Clause 4.6 Variation Justification Statement – Clause 4.4
APPENDIX D	BASIX Certificate

Version	Date
Original	October 2021

Disclaimer This planning report is true and correct at the time of writing. It is based on the information provided by the client and other relevant organisations during preparation. Plannex Environmental Planning accepts no contractual, tortious or other form of liability for any consequences arising from its use. People using the information in the report should apply and rely on their own skill and judgment to a particular issue they are considering. This report shall be used solely for the purpose of this proposal and shall not be replicated or altered without the authorisation of Plannex Environmental Planning.

1.0 INTRODUCTION

Plannex Environmental Planning has been retained by Dr Amey Aurangabadkar, property owner, to prepare a submission to Council seeking a formal review of its refusal of the application for modification of consent to Development Application DA-2006/1376 (Council's ref. DA-2006/1376/D), relating to Lot 13 DP 285763 No.13 Weaver Terrace, Bulli. This review of determination is being sought pursuant to the provisions of Section 8.2 of the Environmental Planning and Assessment Act, 1979 (EP&A Act) that a decision of the consent in relation to an application for modification of consent may be reviewed in accordance with Section 8.3, which provides as follows:-

8.3 Application for and conduct of review

- (1) An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.*
- (2) A determination or decision cannot be reviewed under this Division:*
 - (a) after the period within which any appeal may be made to the Court has expired if no appeal was made, or*
 - (b) after the Court has disposed of an appeal against the determination or decision.*
- (3) In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.*
- (4) The review of a determination or decision made by a delegate of a council is to be conducted:*
 - (a) by the council (unless the determination or decision may be made only by a local planning panel or delegate of the council), or*
 - (b) by another delegate of the council who is not subordinate to the delegate who made the determination or decision.*
- (5) The review of a determination or decision made by a local planning panel is also to be conducted by the panel.*
- (6) The review of a determination or decision made by a council is to be conducted by the council and not by a delegate of the council.*
- (7) The review of a determination or decision made by a Sydney district or regional planning panel is also to be conducted by the panel.*
- (8) The review of a determination or decision made by the Independent Planning Commission is also to be conducted by the Commission.*
- (9) The review of a determination or decision made by a delegate of the Minister (other than the Independent Planning Commission) is to be conducted by the Independent Planning Commission or by another delegate of the Minister who is not subordinate to the delegate who made the determination or decision.*

This submission provides the following:-

- (a) Background information, including Council's reasons for refusal;
- (b) A description of the revised development proposal; and
- (c) A response to each of the reasons for refusal.

In accordance with Sub-Section 8.3(2) Council must have its review **completed** by **9th June 2022**, being the date twelve (12) months after the date the decision appealed against is notified or registered on the NSW Planning Portal (in accordance with sub-Section 8.10(1) of the EP&A Act – as the development application was refused within the “*prescribed period*” of 25th March 2020 to 25th March 2022).

A separate and concurrent application has been made for a Building Information Certificate in relation to works undertaken without prior consent.

2.0 BACKGROUND INFORMATION

The following summary of events is provided by way of background to the current request for review under Section 8.3 of the EP&A Act:-

- On 19th December 2006, Council granted conditional consent to Development Application DA-2006/1376 to enable the construction of a multi storey, rendered masonry dwelling house and swimming pool upon the subject site. The approved dwelling house comprised four levels – a garage level; a level containing internal and external living areas; a level containing bedrooms; and, a covered roof terrace level. Access between each of the levels was provided by an internal stairway and the sides of the roof terrace were open (with the exception of a 1m high solid balustrade, timber louvred privacy screens along the western edge, and a solid wall on the eastern side of the access stairwell).
- The development consent was firstly modified on 11th January 2008 to change windows to standard sizes and deleted the timber louvred privacy screens from the western side of the roof terrace (ref. DA-2006/1376/A).
- A second modification of consent to add a spa with child proof cover to the swimming pool area was approved by Council on 8th February 2011 (ref. DA-2006/1376/B).
- On 24th September 2014 the development consent was further amended to delete an internal wall from within the basement garage space (ref. DA-2006/1376/C).
- Since the approval of DA-2006/1376/C, a lift has been installed within the dwelling house; the property has been sold; and, the new owner has installed windows above the perimeter balustrade of the covered roof terrace to completely enclose that level. The installation of the lift and the roof terrace level windows were not identified on any approved plans and have been undertaken without Council's prior consent. Council has served the owner of the property with a Development Control Order No.3 and No.11 (ref. NO-2020/430) requiring that the premises be returned to their approved condition (in accordance with plans approved under DA-2006/1376/C) by removing the glass panels from the roof terrace level and removing the lift installed within the building.
- In order to try to legitimise the unauthorised works, a further application for modification of consent pursuant to Section 4.55(1A) of the EP&A Act was lodged with Council on 16th March 2021. A concurrent application for a Building Information Certificate (BC-2021/12) was also submitted on 1st March 2021.
- On 9th June 2021 Council issued determination notices in respect of the modification application and the Building Information Certificate, advising that application DA-2006/1376/D and BC-2021/12 had both been refused. The reasons for refusal of DA-2006/1376/D were outlined as:-

1. *Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development is inconsistent with the*

provisions of the Wollongong Local Environmental Plan 2009, Clause 4.3, with regard to Height of Buildings.

- 2. Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development is inconsistent with the provisions of the Wollongong Local Environmental Plan 2009, Clause 4.4, with regard to Floor Space Ratio.*
- 3. Pursuant to the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application is inconsistent with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. The application seeks to amend a development consent applicable to a building subject of a BASIX certificate and an amended BASIX certificate has not been provided.*
- 4. Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the development is inconsistent with the provisions of the Wollongong Development Control Plan 2009, Chapter B1 (Residential Development), Clause 4.1, with regard to Number of Storeys.*
- 5. Pursuant to the provisions of Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the development is inconsistent with the provisions of the Wollongong Development Control Plan 2009, Chapter B1 (Residential Development), Clause 4.8 - Building Character and Form having regard to the bulk and scale of the development.*
- 6. Pursuant to the provisions of Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, it is considered that the dwelling has an undesirable impact on the built environment in the locality.*
- 7. Pursuant to the provisions of Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979, it is considered that the site is not suitable for the development.*
- 8. Pursuant to the provisions of Section 4.15 (1)(d) of the Environmental Planning and Assessment Act 1979, it is considered that having regard for public submissions, the development is not suitable having regard to the impact on the amenity of the occupants of the adjoining premises.*
- 9. Pursuant to the provisions of Section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979, it is considered that in the circumstances of the case, approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.*

The reasons for refusal of the modification have been reviewed and are addressed in this submission. It is considered that the reasons for refusal have all been adequately responded to by way of further information, and the modification proposal is re-submitted for Council's consideration under the provisions of Section 8.3.

3.0 DEVELOPMENT PROPOSAL

The architectural floor plans and elevations accompanying this review request have been amended to clearly identify (through 'clouding') changes between the approved plans for the dwelling house and the as-constructed plans. These are the changes for which approval is being sought, and include:-

(a) changes clouded in red (ie changes made during construction and/or by a previous owner):-

- internal floor plan changes;
- changes to the finished floor levels; and
- installation of an internal lift within the stairwell void space.

(b) changes clouded in green (ie changes made by the current owner):-

- installation of windows above the balustrades of the uppermost floor level.

4.0 CONSIDERATION OF REASONS FOR REFUSAL

In order to understand the context of the reasons for refusal outlined in Council's determination notice dated 9th June 2021, they have been reviewed in light of the comments made within the s4.15 application assessment report. Based on an understanding of the reasons for refusal, the following commentary demonstrates how each of the reasons for refusal has been addressed by the information and plans accompanying this Section 8.3 application.

1. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development is inconsistent with the provisions of the Wollongong Local Environmental Plan 2009, Clause 4.3, with regard to Height of Buildings.

Comment

It has become apparent that the dwelling house has been constructed with floor levels higher than those approved. The table below provides a comparison of the original approved floor levels and the current surveyed levels.

	DA-2006/1376	Surveyed Levels
Garage Floor	RL 13.10m AHD	RL 13.35m AHD
Ground Floor	RL 15.95m AHD	RL 16.295m AHD
First Floor	RL 19.00m AHD	RL 19.35m AHD
Roof Terrace	RL 21.95m AHD	RL 22.15m AHD
Ridge Level	RL 24.45m AHD	RL 24.877m AHD (max.)

Based on the above levels, the maximum overall height of the original approved dwelling house was 8.912m. The maximum height applying to the subject site under clause 4.3 of Wollongong Local Environmental Plan 2009 (WLEP 2009) is 9m.

The overall heights of the uppermost roof of the dwelling house have been surveyed (see Appendix A) and are 9.245m (at the north-eastern corner); 9.052m (north-western corner); 8.856m (south-western corner); and, 9.071m (south-eastern corner). These overall heights vary between 245mm above the 9m height limit, and 144mm less than the 9m height limit.

As the overall height of the dwelling house exceeds 9m, a variation justification has been provided (at Appendix B) in accordance with clause 4.6 of WLEP 2009, to enable Council to consider the breach of the height limit.

2. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development is inconsistent with the provisions of the Wollongong Local Environmental Plan 2009, Clause 4.4, with regard to Floor Space Ratio.

Comment

The subject site is within an area affected by a maximum floor space ratio (FSR) of 0.5:1 in accordance with clause 4.4 of WLEP 2009. The gross floor area (GFA) and

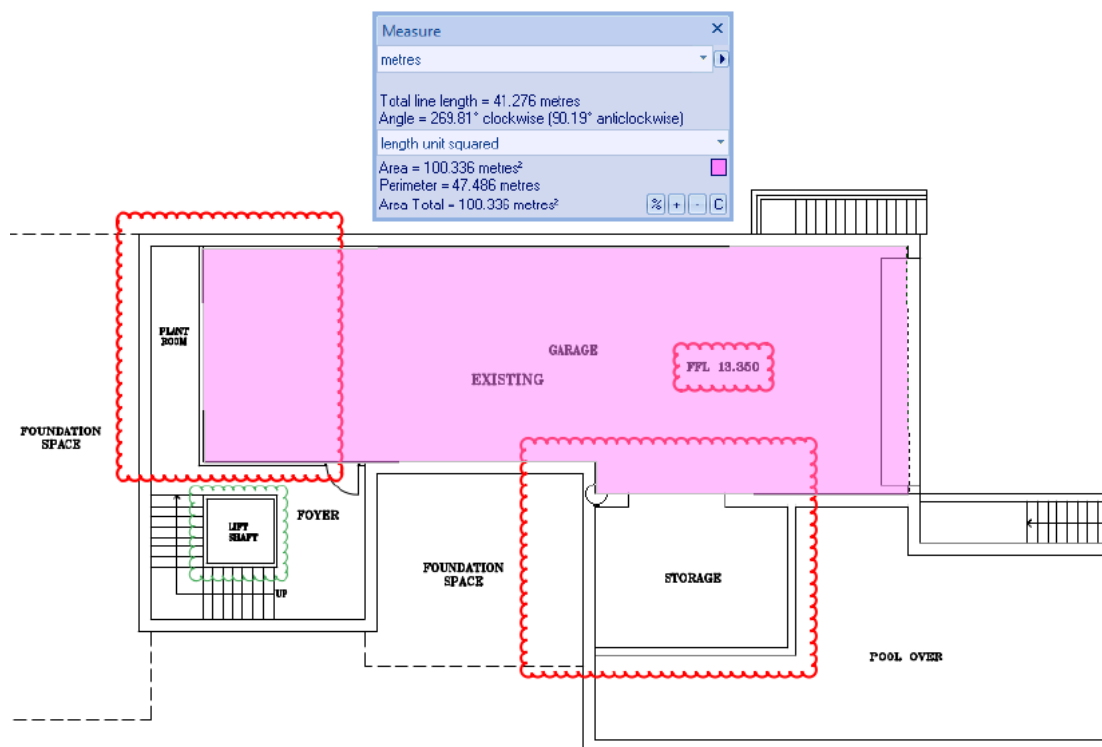
FSR calculations contained in the Section 4.15 assessment report in respect of the refused modification of consent indicated that the GFA of the proposal was 405.5m², resulting in an FSR of 0.57:1.

The definition of “gross floor area” adopted by WLEP 2009 is as follows:-

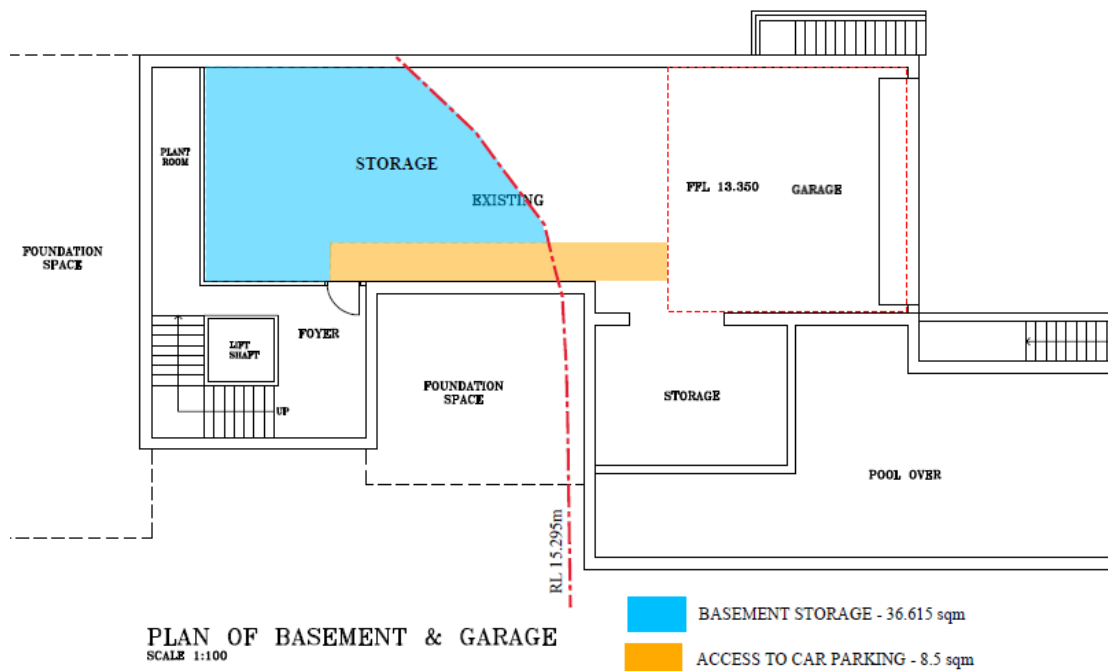
gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes –

- (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 assessment report included diagrams that detailed which areas of each floor had been included as GFA for the purposes of the calculations. In relation to the garage floor level, the relevant GFA diagram is shown below.



Part of the pink shaded area is basement storage space and part serves as access to the car parking spaces. As allowed for in the definition of “*gross floor area*”, these areas should be excluded from the calculated GFA and FSR. The floor plan extract below shows these areas.



The basement storage area has been taken as that part of the garage floor level where the finished floor level above (ie RL 16.295m AHD) is not more than 1m above ground level (existing) – ie that part of the floor located on land where the pre-development site level was RL 15.295m AHD or greater. This is consistent with the definition of “*basement*” in the Dictionary to WLEP 2009:-

***basement** means the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing).*

The basement storage space has an area of 36.615m².

The definition of “*gross floor area*” allows the exclusion of car parking to meet any requirements of Council and access to that car parking. The 36m² garage space for two (2) vehicles was excluded from Council’s GFA calculations, but not the access to those spaces from the foyer door (as shaded orange above). The access has been taken as a nominal 1m wide walkway, with a total area of 8.5m².

The additional exclusions from Council’s calculation of the GFA total 45.115m², reducing Council’s GFA figure from 405.5m² to 360.385m², and the FSR from 0.57:1 to 0.506:1. This figure is still 4.885m² above the maximum allowable FSR and a variation justification has been provided at Appendix C to enable Council to consider the departure from the development standard.

3. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application is inconsistent with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. The application seeks to amend a development consent applicable to a building subject of a BASIX certificate and an amended BASIX certificate has not been provided.

Comment

A BASIX Certificate has been obtained in respect of the works and is attached at Appendix D. The BASIX Certificate demonstrates that the proposal is consistent with the provisions of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 and the BASIX scheme.

4. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the development is inconsistent with the provisions of the Wollongong Development Control Plan 2009, Chapter B1 (Residential Development), Clause 4.1, with regard to Number of Storeys.

Comment

The subject site is zoned R2 Low Density Residential under the provisions of WLEP 2009. Clause 4.1 of Chapter B1 of Wollongong Development Control Plan 2009 (WDCP 2009) contains the following provision with regard to the number of storeys in a building:-

The maximum building height is set by the Local Environmental Plans generally:

a) R2 Low Density Residential Zones permit a maximum height of 9m – a maximum of 2 storeys

The Dictionary to WLEP 2009 defines “storey” in the following terms:-

storey means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include –

(a) a space that contains only a lift shaft, stairway or meter room, or

(b) a mezzanine, or

(c) an attic.

To be a “storey” the floor does not necessarily need to be enclosed by walls, it only needs to have a ceiling or roof above. The plans for the dwelling house, as originally approved under DA-2006/1376, contain four (4) storeys – the garage level; a level containing living and kitchen areas; a level containing bedroom accommodation; and, the roofed terrace at the uppermost level.

The modification of consent proposed by DA-2017/1376/D did not propose any additional storeys within the building, and instead maintained the existing four (4) storeys. As the uppermost terrace was approved with a roof, this part of the dwelling house already constituted a “storey”. The enclosure of the walls of this uppermost

roofed terrace level does not change the categorisation of this part of the dwelling house as a “storey”.

As the approved dwelling house is four (4) storeys in height, and as the proposed modification does not alter that, the reason for refusal on the grounds of the number of storeys in the dwelling house is not valid.

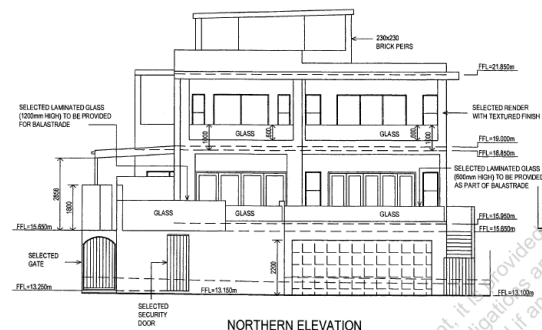
5. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the development is inconsistent with the provisions of the Wollongong Development Control Plan 2009, Chapter B1 (Residential Development), Clause 4.8 - Building Character and Form having regard to the bulk and scale of the development.

6. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, it is considered that the dwelling has an undesirable impact on the built environment in the locality.

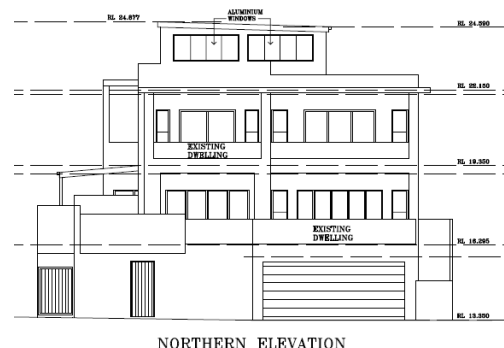
Comment

The form of the modified development is not substantially different from that of the approved development. The image below on the left shows the northern elevation of the dwelling house as approved by DA-2006/1376/A, while the image on the right shows the northern elevation of the modified development (ie the dwelling house as constructed).

DA-2006/1376/A



DA-2006/1376/D



The changes to the approved development arising from the installation of a lift within the dwelling house, the provision of windows to enclose the uppermost level, and an overall increase in building height of between 140mm and 427mm, do not materially alter the form or scale of the dwelling house to the point where it is unacceptable when compared to the approved development.

7. Pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, it is considered that the site is not suitable for the development.

Comment

The site was considered to be acceptable for the original approved dwelling house and subsequent modifications to that development – as evidenced by Council's approval of those applications. The dwelling house as constructed, and subject to the modification proposed by DA-2006/1376/D, does not alter the building footprint from that approved and does not alter the boundary setbacks of the building from those approved.

The modification does include internal changes to the floor plan layout and the installation of a lift within what would have otherwise been a stairwell void space, and the enclosure of the uppermost level through the installation of windows. The modification also includes changes to the finished floor levels within the dwelling, which have resulted in an increase in overall height of up to 427mm.

To the extent that the modified proposal exceeds the 9m height limit (by a maximum of 245mm) and the maximum 0.5:1 FSR is breached (by 4.885m²), the clause 4.6 variation justifications submitted with this review request demonstrate the variations do not result in any negative amenity impacts.

For the above reasons, the subject site is considered to be suitable for the modified proposal.

8. Pursuant to the provisions of Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979, it is considered that having regard for public submissions, the development is not suitable having regard to the impact on the amenity of the occupants of the adjoining premises.

Comment

The impact of the proposal on the amenity of the neighbouring properties and dwellings has been considered. The modified proposal stands between 140mm and 427mm higher than the approved development. This additional height and the use of the enclosed roof top terrace has the potential to impact on the amenity of neighbouring properties in terms of shadowing, privacy and views. Each of these matters has been considered as follows:-

(a) Shadowing

Shadows from the existing dwelling house fall onto No.16 Sommerville Street during the morning, and retract throughout the day having little impact at midday and no impact at all thereafter. The rear yard area and rear ground floor deck of No.16 Sommerville Street will receive more than 3 hours of direct sunlight throughout the day on 21st June.

The neighbouring dwelling house to the east (No.11 Weaver Terrace) receives shadowing from midday onwards. However, this shadow does not impact that dwelling's swimming pool area or living room windows, and the roof-mounted solar collectors will not be impacted by any shadowing at all until mid to late afternoon.

Shadow diagrams have been prepared to demonstrate that the additional shadowing resulting from the difference in height between the approved dwelling house and the dwelling house as constructed is negligible.

(b) Privacy

The uppermost level was approved as a covered and trafficable terrace area. Enclosing the openings above the balustrade with windows does not increase the potential for adverse privacy impacts for neighbouring properties. The enclosed roof terrace is centrally located within the building footprint and has the majority of its windows on its northern, eastern and western sides. Windows facing the west and east look over the roof tops of the neighbouring dwelling houses and do not impact on privacy for those dwellings. North-facing windows are set back 25m from the northern neighbour and do not promote overlooking of that property.

Image 1 (below) shows the relationship between the dwelling houses at No.16 Sommersville Street and No.13 Weaver Terrace. The south-facing window in the enclosed terrace is 23m from the dwelling house at No.16 Sommersville Street and is not likely to have any greater impact on privacy than the approved open balustrade. The main internal space within the enclosed terrace is located to the north, with the space to the south containing only a narrow corridor adjacent to the stairway.



Image 1 – View from first floor living room balcony of No.16 Sommersville Street looking directly at No.13 Weaver Terrace [taken from the objector's submission].

(c) Views

The neighbouring dwellings to the east and west are orientated towards the north-east and their views are not impacted by the dwelling house at No.13 Weaver Terrace. Similarly, the adjacent properties to the south-east (in Sommersville Street) are uphill of the subject site and are primarily orientated to the north-east, with those views unaffected by the existing dwelling house.

The adjacent property at No.18 Sommersville Street currently contains an older, single storey, fibro-clad dwelling house with vegetation in its rear yard. The single storey height of this dwelling house and existing vegetation block views across the subject site.

The adjoining property at No.16 Sommerville Street does have an outlook directly towards the existing dwelling house at No.13 Weaver Terrace (as shown in Image 1 below). The primary living, dining and kitchen area at No.16 Sommerville Street is located at first floor level and adjoins a large outdoor balcony. As shown in Images 2 and 3 (below), the internal and external living areas have ocean views to the north-east – over the roofs of other dwellings in Weaver Terrace – and views to the north-west to the Illawarra Escarpment.



Image 2 – View from first floor main outdoor area looking towards the escarpment (No.13 Weaver Terrace is at the extreme right). [Source- realestate.com.au]

The roofed uppermost terrace level of No.13 Weaver Terrace does affect the outlook from the rear of No.16 Sommerville Street. However, even if this portion of the dwelling house were 427mm lower (as approved) there would still be the same impact on the outlook, as the increased height of that element is only affecting the view of the sky above the escarpment.

In terms of view impacts arising from the existing dwelling at No.13 Weaver Terrace, it is considered that those impacts are not materially different to the impacts arising from the approved dwelling house.



Image 3 – View from first floor main outdoor area looking towards the ocean and horizon (No.13 Weaver Terrace is at the extreme left). [Source- realestate.com.au]

9. Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, it is considered that in the circumstances of the case, approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.

Comment

The modified development proposal must be assessed on its own merits and having regard to the circumstances of the case. This case is considered to be unique in that the dwelling house approved on the site contains four (4) storeys, regardless of whether the topmost level is enclosed with windows or not. It has also become apparent that the dwelling house has not been constructed in accordance with the approved plans (as amended), and despite this an Occupation Certificate has been issued.

Variation requests in respect of the building height and FSR development standards have been submitted in support of this proposal and demonstrate that, in the circumstances of this particular case, the variations are reasonable. Any proposals for similar development must be considered on their own merits, and the approval of this proposal does not mean that similar proposals will be granted consent.

It is also noted that the planning controls in place at the time of the granting of the original consent to DA-2006/1376 have been superseded by WLEP 2009 and WDCP 2009. It is therefore unlikely that similar proposals would be successful in obtaining approval under the current regime of planning controls.

For the above reasons, it is considered that the proposal is unlikely to set any form of precedent.

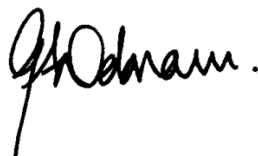
5.0 CONCLUSION

Council's s4.15 assessment report indicated that the modified development proposal was unacceptable having regard to issues of height, FSR, bulk and scale, and impacts on the built environment and neighbour amenity.

It is acknowledged that the modified development proposal does exceed the maximum 9m height limit (by up to 245mm) and that the maximum allowable FSR is breached (by 4.885m²). In both cases the breaches are very minor in nature (2.7% and 1.3%, respectively) and consequence, and clause 4.6 variation justifications have been submitted with this review request.

This submission has demonstrated that the impacts of the development as modified on the built environment and neighbour amenity are not so dissimilar to those of the approved development as to warrant refusal on those grounds.

Having regard to the contents of this submission and the provision of further supporting information, it is considered that the reasons for refusal of DA-2006/1376/D (as outlined in Council's determination notice dated 9th June 2021) have been satisfactorily responded to. Accordingly, Council is requested to review its determination of that application (as allowed for under Section 8.3 of the EP&A Act) and grant consent to DA-2006/1376/D.

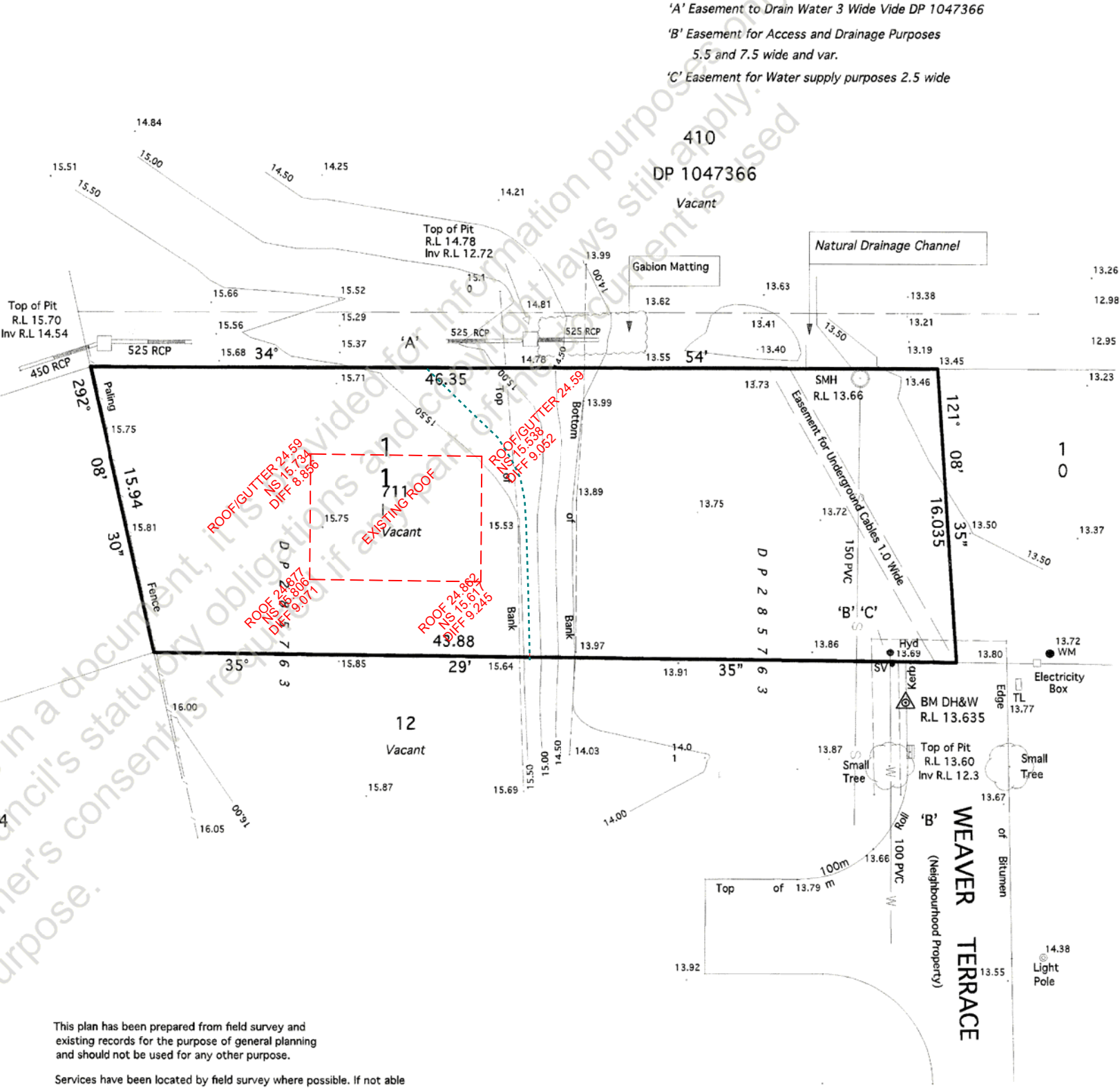
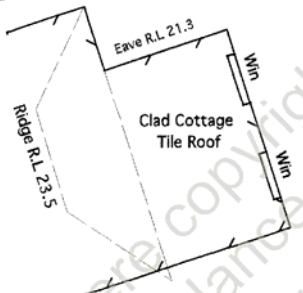
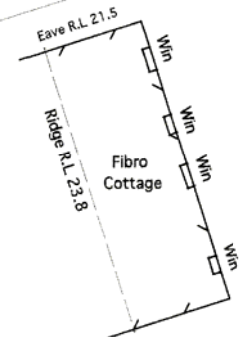
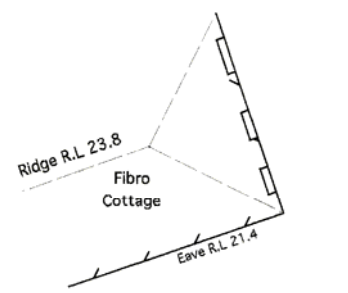
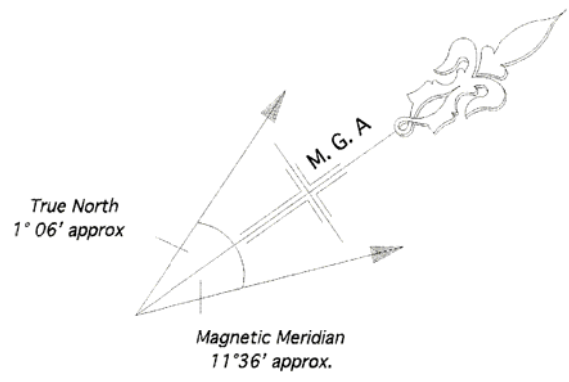


Glenn Debnam BTP (UNSW) RPIA
Town Planner
Director

25th October 2021

APPENDIX A

Surveyed Roof Levels and Heights



APPENDIX B

Justification Statement for a Variation to
Clause 4.3 of Wollongong LEP 2009

1.0 INTRODUCTION

Clause 4.6 of WLEP 2009 sets out the procedure to be followed by applicants for consent, Council, and the Director-General of Planning in requesting, assessing and determining an application for development that involves a contravention of a development standard.

The objectives of clause 4.6 are stated as:-

- (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 submission has been prepared in accordance with the provisions of clause 4.6 and is submitted for Council's consideration and assessment and the Director-General's concurrence (where required).

1.1 Subject Site

The subject site is an almost rectangular-shaped allotment of land situated at the western end of Weaver Terrace at Bulli. The subject site is known as Lot 11 in Deposited Plan No.285763 No.13 Weaver Terrace, and has an area of 711m².

The subject site contains a four-storey dwelling house, with an integrated swimming pool, originally approved by Council in December 2006.

The site is zoned R2 Low Density Residential under the provisions of Wollongong Local Environmental Plan 2009 (WLEP 2009).

1.2 Development Proposal

The modified development proposal seeks Council's approval for a series of changes to the approved dwelling house which have occurred both during construction and post-construction, and which include changes to the internal floor plan, changes to finished floor levels and overall building height, the installation of a lift within the stairwell void space, and the enclosure of the roofed terrace space with windows.

Clause 4.3 of WLEP 2009 relates to building height and provides that “*the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map*”.

The extract (below) from the *Height of Buildings Map* indicates that a 9m maximum building height applies to the subject site.

Figure 1 *Wollongong LEP 2009 – Building Height Map Extract*

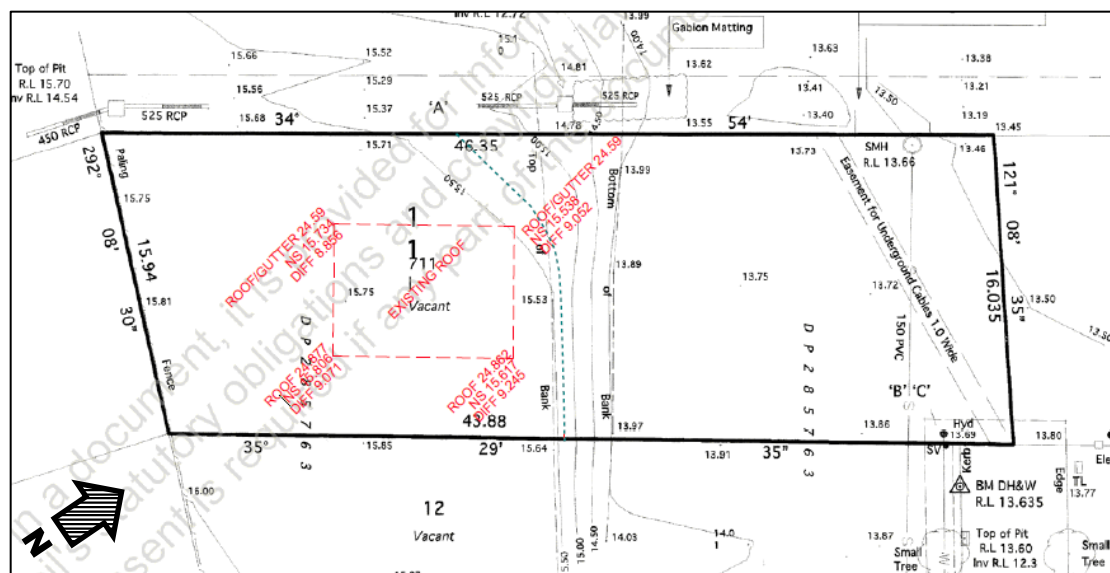


Source www.wollongong.nsw.gov.au

The existing dwelling house has been constructed with floor levels higher than those approved under the original DA-2006/1376. The difference in floor levels between the approved development and the existing development is summarised in the table below.

	DA-2006/1376	Surveyed Levels
Garage Floor	RL 13.10m AHD	RL 13.35m AHD
Ground Floor	RL 15.95m AHD	RL 16.295m AHD
First Floor	RL 19.00m AHD	RL 19.35m AHD
Roof Terrace	RL 21.95m AHD	RL 22.15m AHD
Ridge Level	RL 24.45m AHD	RL 24.877m AHD (max.)

Figure 2 *Surveyed Roof Levels and Building Heights*



Section of Roof	Surveyed Roof Level	Ground Level (Existing)	Overall Height	9m +/- Differential
North-East Corner	RL 24.862m AHD	RL 15.617m AHD	9.245m	+245mm
North-West Corner	RL 24.590m AHD	RL 15.538m AHD	9.052m	+52mm
South-West Corner	RL 24.590m AHD	RL 15.734m AHD	8.856m	-144mm
South-East Corner	RL 24.877m AHD	RL 15.806m AHD	9.071m	+71mm

The building height development standard is not expressly excluded from the operation of clause 4.6, and accordingly Council is able to exercise flexibility in the application of the 9m maximum building height development standard in accordance with that clause.

3.0 JUSTIFICATION IN SUPPORT OF THE CONTRAVENTION

Clause 4.6(3) of WLEP 2009 requires that an application involving a contravention of a development standard must be accompanied by a written request from the applicant that seeks to justify the contravention by demonstrating that compliance with the development standard is unreasonable or unnecessary under the circumstances of the case, and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

3.1 The Development Standard is Unreasonable or Unnecessary

Typically, the method by which compliance with a development standard is established as unreasonable or unnecessary is by proving that the underlying objectives of the development standard are achieved. Preston J in *Wehbe v Pittwater Council (2007) NSWLEC 827* identified four (4) further means by which it is possible to establish that compliance is unreasonable or unnecessary as follows:-

- (a) establish that the “*underlying objective or purpose is not relevant to the development*” and consequently compliance is unnecessary;
- (b) establish that the “*underlying objective or purpose would be defeated or thwarted if compliance was required*”, and therefore compliance is unreasonable;
- (c) establish that the “*development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard*”, therefore compliance is both unreasonable and unnecessary; or
- (d) establish that “*‘the zoning of particular land’ was ‘unreasonable or inappropriate’ so that ‘a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land’*”, and therefore compliance with the standard is unreasonable and unnecessary.

In this instance, it is proposed to rely on the usual approach of establishing that the underlying objectives of the development standard are achieved in order to establish that strict compliance with the 9m maximum building height development standard is unreasonable and unnecessary under the circumstances of the case.

The objectives of the maximum building height development standard are identified in sub-clause 4.3(1) of WLEP 2009 as:-

- (a) *to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*
- (b) *to permit building heights that encourage high quality urban form,*
- (c) *to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.*

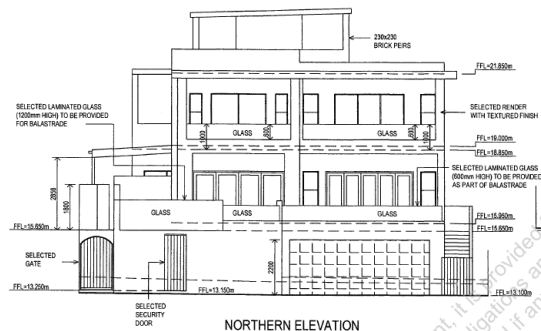
The development proposal is considered to be consistent with these objectives as:-

- The dwelling house has generally been constructed to sit below the 9m building height limit, with only the roof of the topmost level breaching the height limit by up

to 245mm. This constitutes a variation of 2.7%, which is negligible in the context of the dwelling house. The encroaching element of the building is a relatively small roofed terrace area (measuring 6.09m by 8.77m overall). This part of the building has been set in from the edges of the roof below in order to reduce its visibility from ground level.

- The form of the modified development is not substantially different from that of the approved development. The image below on the left shows the northern elevation of the dwelling house as approved by DA-2006/1376/A, while the image on the right shows the northern elevation of the modified development (ie the dwelling house as constructed).

DA-2006/1376/A



DA-2006/1376/D

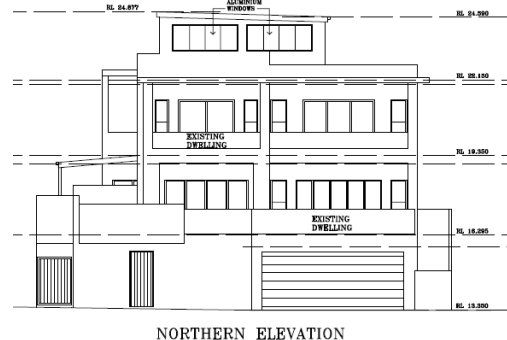


Image 1 – Approved dwelling house (left) and as-constructed dwelling house (right).

The changes to the approved development arising from the installation of a lift within the dwelling house, the provision of windows to enclose the uppermost level, and an overall increase in building height of between 140mm and 427mm, do not materially alter the form or scale of the dwelling house to the point where it is unacceptable when compared to the approved development.

The dwelling house is highly articulated, with variable sized floor plates at each level and extensive balconies and terraces. The uppermost level has been set in from the edges of the roof below to reduce its visibility from ground level and to avoid large expanses of unbroken wall mass.

- The existing dwelling house does not prevent views of the sky from public places or surrounding buildings. The image below, taken from the neighbouring dwelling house immediately to the rear (No.16 Sommerville Street), shows that there is no disruption to views of the sky.

In the image, it should be noted that the left-hand side of the topmost roof sits below the 9m height limit and the right-hand side of the roof only encroaches by 71mm, so the building profile represented in that view is almost compliant.



Image 2 – View from first floor living room balcony of No.16 Sommerville Street looking directly at No.13 Weaver Terrace [taken from the objector's submission].

- Shadows from the existing dwelling house fall onto No.16 Sommerville Street during the morning, and retract throughout the day having little impact at midday and no impact at all thereafter. The rear yard area and rear ground floor deck of No.16 Sommerville Street will receive more than 3 hours of direct sunlight throughout the day on 21st June.

The neighbouring dwelling house to the east (No.11 Weaver Terrace) receives shadowing from midday onwards. However, this shadow does not impact that dwelling's swimming pool area or living room windows, and the roof-mounted solar collectors will not be impacted by any shadowing at all until mid to late afternoon.

Shadow diagrams accompany the review request and demonstrate that the additional shadowing resulting from the difference in height between the approved dwelling house and the dwelling house as constructed is negligible.

Having regard to the above, it is not considered necessary for the dwelling house to strictly comply with the 9m maximum building height limit in order to maintain a desirable streetscape presentation, achieve compatibility with the scale and form of neighbouring dwellings, or avoid having detrimental shadowing impacts on its neighbours and the public domain. As the underlying objectives of the maximum building height development standard can be achieved by the proposal, strict compliance is considered to be both unreasonable and unnecessary.

3.2 There are Sufficient Environmental Planning Grounds

The dwelling house will not have any adverse environmental or negative amenity impacts, in particular:-

- As mentioned in 3.1, above, the proposal will not have any detrimental impacts on solar access to the neighbouring dwelling houses at No.16 Sommerville Street and No.11 Weaver Terrace.
- The breach of the 9m building height limit will not contribute to any deleterious privacy impacts for any of the neighbouring properties (ie No.11 Weaver Terrace, No.10 Garaban Court, or Nos. 16 and 18 Sommerville Street).

The uppermost level was approved as a roofed and trafficable terrace area. Enclosing the openings above the balustrades with windows does not increase the potential for adverse privacy impacts for neighbouring properties. The enclosed roof terrace is centrally located within the building footprint and has the majority of its windows on its northern, eastern and western sides. Windows facing the west and east look over the roof tops of the neighbouring dwelling houses and do not impact on privacy for those dwellings. North-facing windows are set back 25m from the northern neighbour and do not promote overlooking of that property.

Image 2 (above) shows the relationship between the dwelling houses at No.16 Sommerville Street and No.13 Weaver Terrace. The south-facing window in the enclosed terrace is 23m from the dwelling house at No.16 Sommerville Street and is not likely to have any greater impact on privacy than the approved open balustrade. The main internal space within the enclosed terrace is located to the north, with the space to the south containing only a narrow corridor adjacent to the stairway.

- The breach of the building height limit will not result in any views from neighbouring properties being detrimentally impacted. The neighbouring dwellings to the east and west are orientated towards the north-east and their views are not impacted by the dwelling house at No.13 Weaver Terrace. Similarly, the adjacent properties to the south-east (in Sommerville Street) are uphill of the subject site and are primarily orientated to the north-east, with those views unaffected by the existing dwelling house. The adjacent property at No.18 Sommerville Street currently contains an older, single storey, fibro-clad dwelling house with vegetation in its rear yard. The single storey height of this dwelling house and existing vegetation block views across the subject site.



Image 3 – View from first floor main outdoor area looking towards the escarpment (No.13 Weaver Terrace is at the extreme right). [Source- realestate.com.au]

The primary living, dining and kitchen area at No.16 Sommerville Street is located at first floor level and adjoins a large outdoor balcony. As shown in Images 3 (above) and 4 (below), the internal and external living areas have ocean views to the north-east – over the roofs of other dwellings in Weaver Terrace – and views to the north-west to the Illawarra Escarpment.



Image 4 – View from first floor main outdoor area looking towards the ocean and horizon (No.13 Weaver Terrace is at the extreme left). [Source- realestate.com.au]

As mentioned in 3.1, above, whilst the roofed uppermost terrace level of No.13 Weaver Terrace is visible from the rear of No.16 Sommerville Street, the overall height and visible building profile is essentially compliant with the 9m height limit (the right-hand edge of the roof encroaching by just 71mm). On this basis, it is considered that the impact on views arising from the breach of the 9m height limit is not materially different to the impact of a compliant building. The additional building height only affects the view of the sky above the escarpment, and the major view corridors to the north-east and north-west are unaffected.

For the above reasons, despite the uppermost roof of the dwelling house exceeding 9m in height, it is considered that there are sufficient environmental planning grounds to justify variation of the development standard.

4.0 PUBLIC INTEREST

In considering a development proposal that contravenes a development standard Council must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and those of the relevant zone.

4.1 Objectives of the Development Standard

The objectives of the maximum building height development standard are identified in sub-clause 4.3(1) of WLEP 2009 as:-

- (a) *to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*
- (b) *to permit building heights that encourage high quality urban form,*
- (c) *to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.*

As outlined in section 3.1 (above) the proposal is considered to be consistent with the underlying objectives of the development standard.

4.2 Objectives of the Zone

The subject site is zoned R2 Low Density Residential under the provisions of WLEP 2009. The objectives of the R2 zone are stated as:-

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

The existing building is a single, detached dwelling house on a 711m² allotment of land. The overall height of the dwelling house is largely less than 9m, it is only the roof of the topmost floor level which exceeds the height limit – by up to 245mm at most. The height of the dwelling house is generally consistent with the height of other dwellings in this part of Bulli and the breach of the building height limit is minor in both extent and nature. For these reasons, the proposal is considered to satisfy the first objective of providing for the housing needs of the community within a low density residential environment.

The remaining objective is not specifically relevant to the development proposal.

The achievement of the relevant objectives of the planning control and zone is considered to be demonstrative of the proposal's consistency with the public interest.

5.0 OTHER MATTERS

In determining whether or not to grant concurrence to a development proposal that involves the contravention of a development standard, the Director-General of Planning must consider whether the contravention of the development standard raises any matters of State or regional planning significance; and, the public benefit of maintaining the development standard.

5.1 State and Regional Planning Matters

The minor contravention of the maximum building height development standard does not raise any matters of State or Regional environmental planning significance.

The proposed development is not inconsistent with any relevant State Environmental Planning Policies, particularly *State Environmental Planning Policy (Coastal Management) 2018*. The proposal is not inconsistent with the *Illawarra-Shoalhaven Regional Plan (2015)*.

5.2 Public Benefit

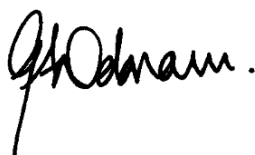
It is considered that, having regard to the circumstances of the case, there is no public benefit to be gained by insisting upon strict compliance with the 9m maximum building height development standard. As outlined in this submission (and detailed in the planning report accompanying the review application), the proposal will not have any detrimental impacts upon the amenity of the adjoining residential neighbours – there will be no loss of view; no loss of privacy; no deleterious shadowing impact; and, no negative visual amenity impact.

The absence of any detrimental impacts and the proposal's consistency with the underlying objectives of the development standard and the R2 zoning, will ensure that the public benefit of the maximum building height development standard is achieved despite the very minor non-compliance.

6.0 CONCLUSION

This justification statement has been prepared in accordance with clause 4.6 of WLEP 2009 and demonstrates that, under the circumstances of this case, the strict compliance with the 9m maximum building height development standard is unreasonable and unnecessary; is supportable on the basis of there being sufficient environmental planning grounds to justify the departure; will not compromise the attainment of the objectives of the development standard or the R2 zone; does not raise any issues of State or regional significance; and, is not contrary to the public interest.

For the reasons outlined in this submission, the variation of the maximum building height development standard in respect of the existing dwelling house is recommended for Council's support and approval.



Glenn Debnam BTP (UNSW) RPIA
Town Planner
Director

26th October 2021

APPENDIX C

Justification Statement for a Variation to
Clause 4.4 of Wollongong LEP 2009

1.0 INTRODUCTION

Clause 4.6 of WLEP 2009 sets out the procedure to be followed by applicants for consent, Council, and the Director-General of Planning in requesting, assessing and determining an application for development that involves a contravention of a development standard.

The objectives of clause 4.6 are stated as:-

- (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 submission has been prepared in accordance with the provisions of clause 4.6 and is submitted for Council's consideration and assessment and the Director-General's concurrence (where required).

1.1 Subject Site

The subject site is an almost rectangular-shaped allotment of land situated at the western end of Weaver Terrace at Bulli. The subject site is known as Lot 11 in Deposited Plan No.285763 No.13 Weaver Terrace, and has an area of 711m².

The subject site contains a four-storey dwelling house, with an integrated swimming pool, originally approved by Council in December 2006.

The site is zoned R2 Low Density Residential under the provisions of Wollongong Local Environmental Plan 2009 (WLEP 2009).

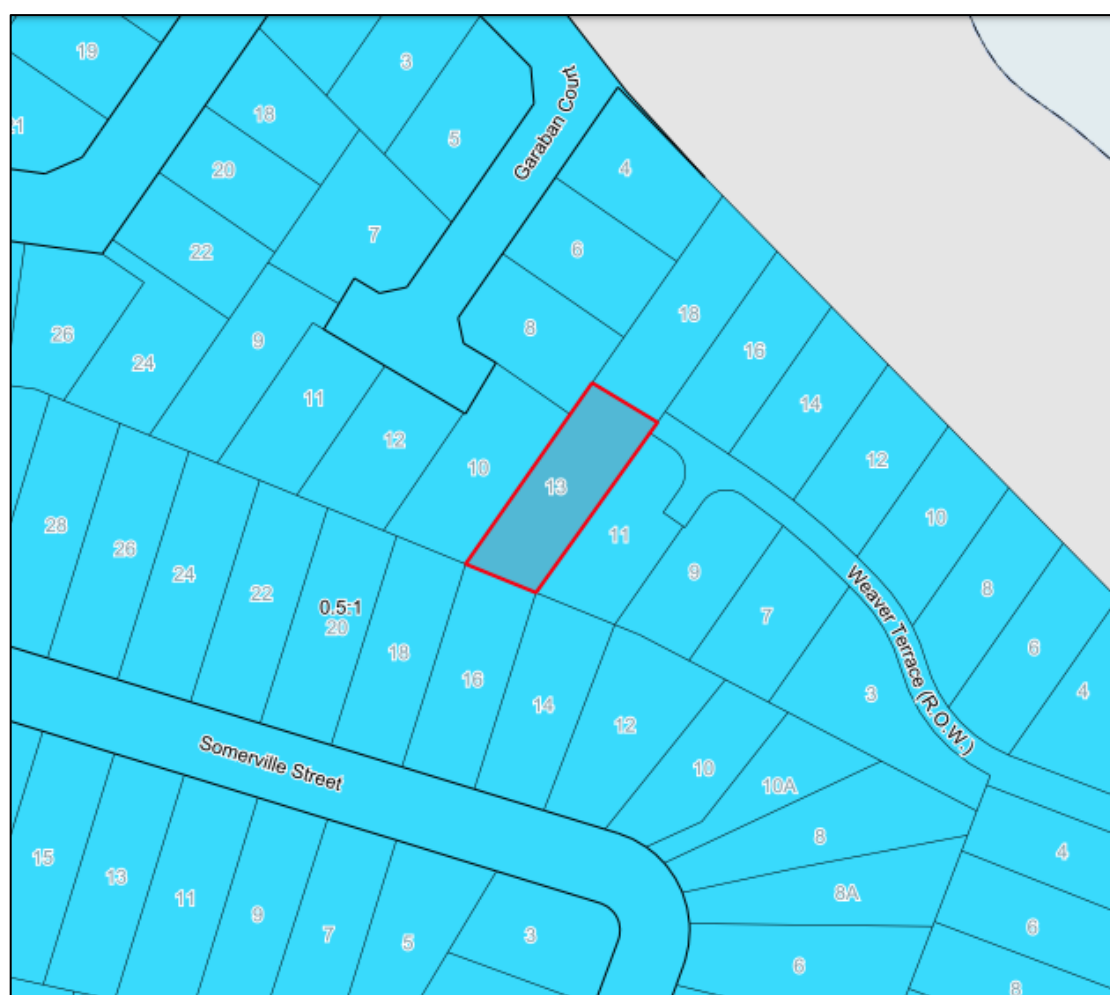
1.2 Development Proposal

The modified development proposal seeks Council's approval for a series of changes to the approved dwelling house which have occurred both during construction and post-construction, and which include changes to the internal floor plan, changes to finished floor levels and overall building height, the installation of a lift within the stairwell void space, and the enclosure of the roofed terrace space with windows.

2.0 DEVELOPMENT STANDARD TO BE VARIED

Clause 4.4 of WLEP 2009 relates to floor space ratio (FSR) and 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*”. The extract (below) from the *Floor Space Ratio Map* indicates that a FSR of 0.5:1 applies to the subject site.

Figure 1 Wollongong LEP 2009 – FSR Map Extract



Source www.wollongong.nsw.gov.au

Windows have been installed within openings between the top of the balustrades and the underside of the ceiling at the uppermost floor of the dwelling house. These windows have the effect of enclosing this space and adding 38.6m² of gross floor area (GFA). The additional GFA increases the GFA of the dwelling house to 360.385m². As the site has an area of 711m², this equates to an FSR of 0.506:1, or 4.885m² more than the maximum allowable FSR. The exceedance of the FSR development standard represents a breach in the order of 1.3%.

The FSR development standard is not expressly excluded from the operation of clause 4.6, and accordingly Council is able to exercise flexibility in the application of the 0.5:1 maximum FSR development standard in accordance with that clause.

3.0 JUSTIFICATION IN SUPPORT OF THE CONTRAVENTION

Clause 4.6(3) of WLEP 2009 requires that an application involving a contravention of a development standard must be accompanied by a written request from the applicant that seeks to justify the contravention by demonstrating that compliance with the development standard is unreasonable or unnecessary under the circumstances of the case, and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

3.1 The Development Standard is Unreasonable or Unnecessary

Typically, the method by which compliance with a development standard is established as unreasonable or unnecessary is by proving that the underlying objectives of the development standard are achieved. However, Preston J in *Wehbe v Pittwater Council* (2007) NSWLEC 827 identified to four (4) other means by which it is possible to establish that compliance is unreasonable or unnecessary as follows:-

- (a) establish that the “*underlying objective or purpose is not relevant to the development*” and consequently compliance is unnecessary;
- (b) establish that the “*underlying objective or purpose would be defeated or thwarted if compliance was required*”, and therefore compliance is unreasonable;
- (c) establish that the “*development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard*”, therefore compliance is both unreasonable and unnecessary; or
- (d) establish that “*‘the zoning of particular land’ was ‘unreasonable or inappropriate’ so that ‘a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land’*”, and therefore compliance with the standard is unreasonable and unnecessary.

The strict application of the 0.5:1 FSR development standard is considered to be unreasonable and unnecessary under the circumstances of the case for the following reasons:-

- The breach of the FSR development standard is very minor in nature (at just 1.3%) and the additional GFA is accommodated within the cubic space of the existing dwelling house.
- Despite the non-compliance with the FSR development standard the underlying objectives of the development standard are achieved (refer to 4.1 below).
- To the extent that the FSR development standard seeks to control the height, bulk and scale of development, it is noted that the additional GFA has been created within the confines of the current building footprint and entirely within the cubic space of the existing dwelling house. Accordingly, there will be no change to the current dwelling house’s height, bulk or scale.

3.2 There are Sufficient Environmental Planning Grounds

The proposal does not have any adverse environmental impacts, in particular:-

- The increase in the dwelling house's GFA takes place within the existing building footprint and within its existing cubic space. Therefore, the proposal will not result in any increase in building height, bulk or scale and will not reduce existing setbacks.
- The only observable external change to the existing dwelling is the incorporation of glass windows to the perimeter of the uppermost floor, in lieu of openings. The glass windows enable the penetration of natural light through the upper floor level and help maintain the visual openness of the outside walls of the roofed terrace space.
- As the increase in GFA is confined to within the existing building footprint, there will be no changes to the landscaped area or outdoor private open space areas on the site. The maintenance of these areas provides amenity for residents of the dwelling house.

4.0 PUBLIC INTEREST

In considering a development proposal that contravenes a development standard Council must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and those of the relevant zone.

4.1 Objectives of the Development Standard

The objectives of the FSR development standard are identified in clause 4.4 of WLEP 2009 as:-

- (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 proposal is considered to be consistent with these objectives as it:-

- achieves an appropriate correlation between the size of the building and the size of the development site, particularly as the increase in GFA has been achieved without altering the building footprint or the setbacks provided to the site boundaries. The existing dwelling house maintains a form and scale that is not too dissimilar to that of the approved dwelling house;
- will not generate any additional demands on service infrastructure (such as water, sewerage, gas, or electricity) as there is no increase in useable floor area. The uppermost floor exists as an open-sided, roofed terrace. Enclosing this space through the installation of openable windows does not necessarily translate to a change in the intensity of the use of the area or its demand for services. There is no alteration to the means of accessing the property from Weaver Terrace and no increase in the number of on-site car parking spaces required or the volume of generated; and
- will maintain its current bulk and scale, which is not substantially different to that of the originally approved dwelling house. The dwelling house remains compatible with other larger dwellings in this beachside, coastal locality.

4.2 Objectives of the Zone

The subject site is zoned R2 Low Density Residential under the provisions of WLEP 2009. The objectives of the R2 zone are stated as:-

- *To provide for the housing needs of the community within a low density residential environment.*

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The existing building is a single, detached dwelling house on a 711m² allotment of land. The built form and scale of the development is generally consistent with that which has been approved for the site. The area's desirable coastal location and expensive real estate prices have resulted in a neighbourhood character of larger, architecturally-designed dwelling houses, and the proposal is therefore compatible with built form, scale and character of other dwelling houses constructed in the immediate locality. For these reasons, the proposal is considered to satisfy the first objective of providing for the housing needs of the community within a low density residential environment.

The remaining objective is not specifically relevant to the development proposal.

The achievement of the relevant objectives of the planning control and zone is considered to be demonstrative of the proposal's consistency with the public interest.

5.0 OTHER MATTERS

In determining whether or not to grant concurrence to a development proposal that involves the contravention of a development standard, the Director-General of Planning must consider whether the contravention of the development standard raises any matters of State or regional planning significance; and, the public benefit of maintaining the development standard.

5.1 State and Regional Planning Matters

The proposed contravention of the 0.5:1 FSR does not raise any State or Regional planning matters. The proposed development is consistent with all relevant State Environmental Planning Policies, particularly *State Environmental Planning Policy (Coastal Management) 2018*. The proposal is not inconsistent with the *Illawarra-Shoalhaven Regional Plan* (2015).

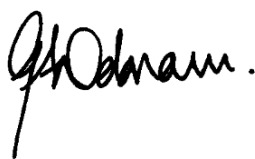
5.2 Public Benefit

It is considered that, having regard to the circumstances of the case, there is no public benefit to be gained by insisting upon strict compliance with the 0.5:1 FSR development standard. The enclosure of the uppermost roofed terrace with windows in place of openings has contributed to the breach of the FSR, and even then, only by 4.885m². The increase in the dwelling house's GFA takes place within the confines of the existing building and will have no impact on the general public's perception of the existing built form of the development. The only observable external change will be the incorporation of the glass windows in lieu of openings. The glass windows enable the penetration of natural light through the upper floor level and help maintain the visual openness of the outside walls of the terrace.

6.0 CONCLUSION

This justification statement has been prepared in accordance with clause 4.6 of WLEP 2009 and demonstrates that strict compliance with the maximum 0.5:1 FSR development standard is considered to be unreasonable and unnecessary in the circumstances of the case. The absence of any deleterious environmental or amenity impacts is supporting proof that there are sufficient environmental planning grounds to support the variation. The proposal is not inconsistent with State or Regional planning matters and will not conflict with the public interest.

For the reasons outlined in this submission, the variation of the FSR development standard to allow the proposed development is recommended for Council's support and approval.

A handwritten signature in black ink, appearing to read 'Glenn Debnam'.

Glenn Debnam BTP (UNSW) RPIA
Town Planner
Director

26th October 2021

APPENDIX D

BASIX Certificate

Attachment 3 – Refusal Conditions

1. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development exceeds the maximum permissible Building Height of 9m as prescribed by Part 4.3 – Height of Buildings, Wollongong Local Environmental Plan 2009, and is contrary to the objectives of this clause, as:
 - a) The proposal has not been designed to not exceed the maximum height limit and also exceeds the maximum height and floor space,
 - b) The proposed overall building height does not encourage high quality built urban form.
2. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development exceeds the maximum permissible Floor Space Ratio (FSR) of 0.50:1 as prescribed by Part 4.4 – Floor Space Ratio, Wollongong Local Environmental Plan 2009, and is contrary to the objectives of this clause, as:
 - a) The proposal does not provide an appropriate correlation between the size of the site and the extent of the development on the site,
 - b) The bulk and scale of the proposed development is not compatible with the locality.
3. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development is inconsistent with the provisions of the Wollongong Development Control Plan 2009, Chapter B1 *Residential Development*, Clause 4.1 – Number of Storeys.
4. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered the shadow diagrams submitted with the application do not address the provisions of the Wollongong Development Control Plan 2009, Chapter B1 *Residential Development* of Clause 4.7 – Solar Access. The shadow diagrams do not depict the overshadowing resulting from the entirety of the dwelling, as they only depict the shadow cast by the enclosed roof top terrace.
5. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the bulk and scale of the proposed development is inconsistent with the objectives of the Wollongong Development Control Plan 2009, Chapter B1 *Residential Development*, Clause 4.8 – Building Character and Form.
6. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development fails to satisfy the objectives and provisions of the Wollongong Development Control Plan 2009, Chapter B1 *Residential Development* of Clause 4.16 – View Sharing. The view loss analysis prepared and submitted to Council fails to address the planning principles as established by *Tenacity v Warringah Council*.
7. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, it is considered that the significant bulk and scale of the proposed development is inconsistent with the desired future character of Bulli, as prescribed by Wollongong Development Control Plan 2009, Chapter D1 *Character Statements*, of Clause 3.15 – Bulli.
8. Pursuant to the provisions of Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is excessive in bulk and scale and would likely adversely impact upon the amenity of the locality.
9. Pursuant to the provisions of Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979, it is considered that the site is not suitable for the development.
10. Pursuant to the provisions of Section 4.15 (1)(d) of the Environmental Planning and Assessment Act 1979, it is considered that having regard for public submissions, the development is not suitable having regard to the impact on the amenity of the occupants of the adjoining premises

11. Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, it is considered that approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.