

**NSLPP MEETING HELD 03/11/21****Attachments:**

1. Site Plan
2. Architectural Plans
3. Clause 4.6 variation (Height of Buildings)
4. Applicant's Views Sharing Assessment

**ADDRESS/WARD:** 1 Baden Road, Kurraba Point**APPLICATION No:** DA 122/21**PROPOSAL:** Demolition of all existing structures and construction of a part 4, part 5 storey dwelling house with an integrated garage, swimming pool and associated landscaping.**PLANS REF:**

Plan No	Issue	Title	Dated	Prepared	Received
DA03	B	Site & Roof Plan	October 2021	Luigi Rosselli Architects	26 October 2021
DA05	A	Level 1 Plan	August 2021		27 September 2021
DA06	B	Level 2 Plan	October 2021		26 October 2021
DA07	B	Level 3 Plan	October 2021		26 October 2021
DA08	A	Level 4 Plan	August 2021		27 September 2021
DA09	A	Level 5 Plan	August 2021		27 September 2021
DA10	A	Southern Elevation	August 2021		27 September 2021
DA11	A	Western Elevation	August 2021		27 September 2021
DA12	A	North Elevation	August 2021		27 September 2021
DA13	B	Eastern Elevation	October 2021		26 October 2021
DA14	A	Section	August 2021		27 September 2021
DA14A	C	Sections	October 2021		26 October 2021
DA14B	A	Swimming Pool Elevations & Sections	May 2021		8 June 2021
1,2 & 3 of 3	-	Landscaped Plans	20 April 2021		Bates Landscaping

**OWNER:** Laura Hazzouri and Charbel Hazzouri**APPLICANT:** Charbel Hazzouri C/- Revelop**AUTHOR:** Michael Stephens, Senior Assessment Officer**DATE OF REPORT:** 29 October 2021**DATE LODGED:** 4 May 2021**DATE AMENDED:** 27 September 2021**RECOMMENDATION:** Approval

## EXECUTIVE SUMMARY

This development application seeks consent for the demolition of the existing dwelling house, bulk excavation of the site and construction of a new dwelling house over four to five levels with an integrated double garage, swimming pool, associated landscaping and fencing on land at 1 Baden Road, Kurraba Point.

**The application is reported to the North Sydney Local Planning Panel for determination as the application attracted more than 10 submission by way of objection. In accordance with the Ministers direction of 1 August 2020 a public determination meeting is required because there were more than 10 submissions.**

The proposed development breaches the maximum permitted building height of 8.5m by up to 600mm, equating to a maximum variation of 6.81%. The variation is limited to the southern leading edge of the fifth level roof form, curved roof awning over the fourth level and a glazed balustrade. The Applicant has submitted a written request to vary the development standard pursuant to clause 4.6 in NSLEP 2013 which satisfactorily demonstrates that compliance with the development standard is both unreasonable and unnecessary, and there are sufficient environmental planning grounds and that approval of the development would be in the public interest. The written request is well founded and worthy of support.

The proposed dwelling seeks to shift the massing of the building further from the waterway in comparison to the existing dwelling given the existing steep topography of the site which has a significant drop towards the rear. The overall height of the dwelling does not exceed the height of the existing dwelling and includes larger side setback which intend to reduce the view impacts in comparison to the existing dwelling and contribute to view sharing amongst surrounding development.

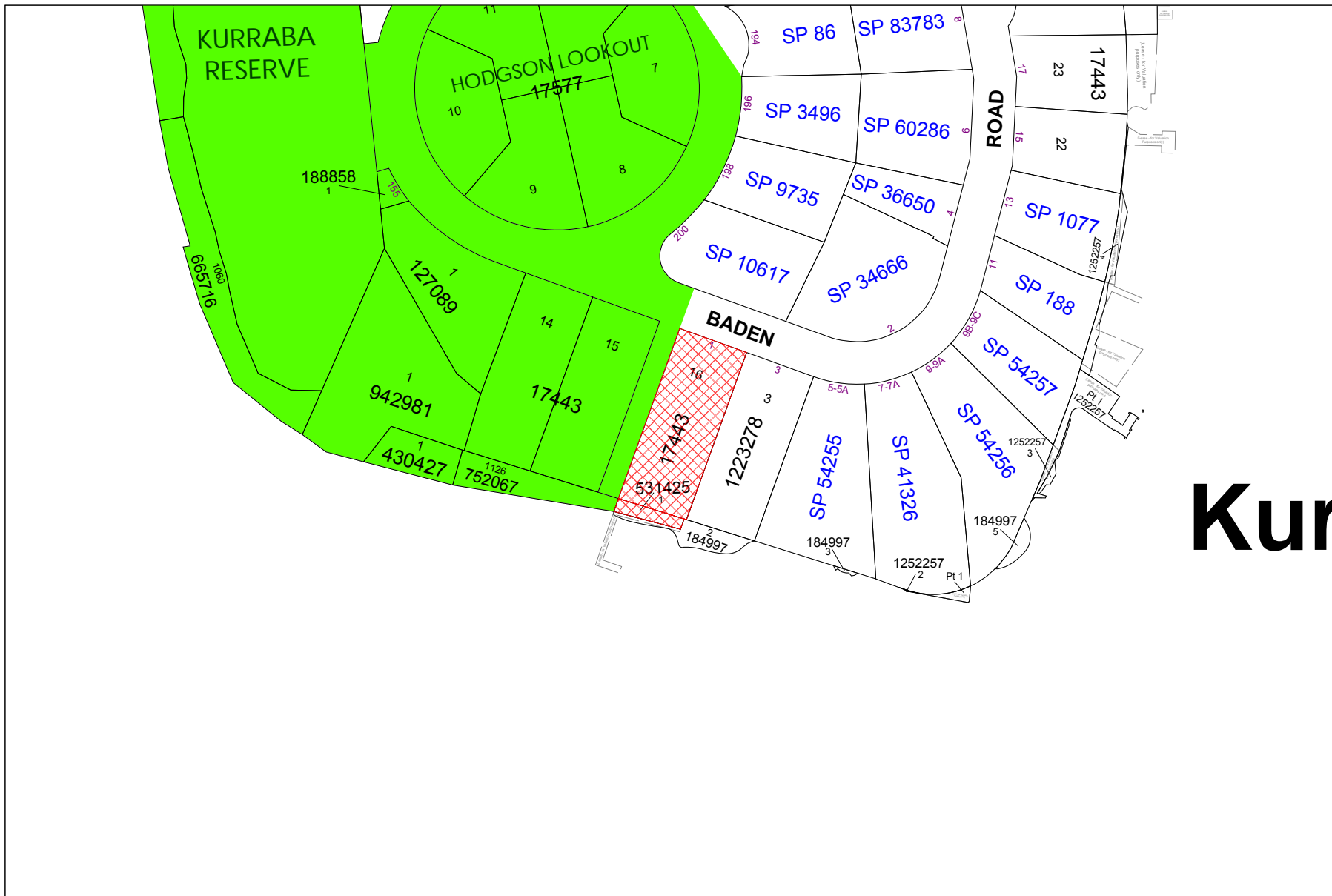
The proposed development exceeds the maximum permitted site coverage of 40% by 12%. However, the proposal would achieve a significant reduction in comparison to the existing dwelling and also complies with the minimum required landscaped area. The proposed architectural design of the dwelling would not have an adverse impact on the character of the area or diminish views to or from the Harbour or its foreshores.

Notification of the proposal has attracted eleven (13) submissions raising particular concerns regarding the proposed height variation, view sharing, amenity impacts, construction impacts including excavation and traffic management.

Following this assessment, the development application is considered to be reasonable in the circumstances of the case and is recommended for **approval** subject to conditions.

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### LOCATION MAP



Property/Applicant    ● Submitters - Properties Notified

## **DESCRIPTION OF PROPOSAL**

This development application seeks consent for the demolition of the existing dwelling house, cabana and swimming pool, although retains the existing seawall, and construction of a dwelling house with an integrated garage, swimming pool and associated landscaping.

The proposed works include:

### **Foreshore (Rear) Setback Area**

- Retention of the existing seawall;
- Reconstruction of the existing swimming pool within the existing shell with a smaller footprint and backfilling of the surrounding area for landscaping;
- Primarily turfed landscaped area; and
- Fencing

### **Level 1 – RL 2.90**

- Outdoor covered loggia;
- Rumpus room;
- Gym with bathroom and sauna;
- Powder rooms;
- Cellar;
- Laundry with drying room;
- Storage;
- External lightwell and retaining wall; and
- Foyer with lift and staircase to the storeys above;

### **Level 2 - RL 6.80**

- Main bedroom with ensuite, dressing rooms and storage;
- Two bedrooms;
- Two bathrooms;
- Guest bedroom with ensuite;
- Linen closet and storage; and
- Foyer with lift and staircase to the storeys below and above;

### **Level 3 – RL 10.10**

- Open plan kitchen with butlers pantry, living, meals and dining area with rear balcony;
- Secondary living room,
- Study;
- Storage;
- Rainwater tank; and
- Foyer with lift and staircase to the storeys below and above;

### **Level 4 – (Street Level) RL 13.00**

- Two vehicle garage with bin storage, mudroom with an entry to the dwelling;
- Entry foyer;
- Study area;
- Foyer with lift and staircase to the storeys below;



### Level 5 – RL15.80

- Parents retreat with study, bathroom, balcony and closet; and
- Lift and internal staircase to the storeys below.

### Front Setback Area

- Driveway, landscaping, and front entry path; and
- Masonry front fence.

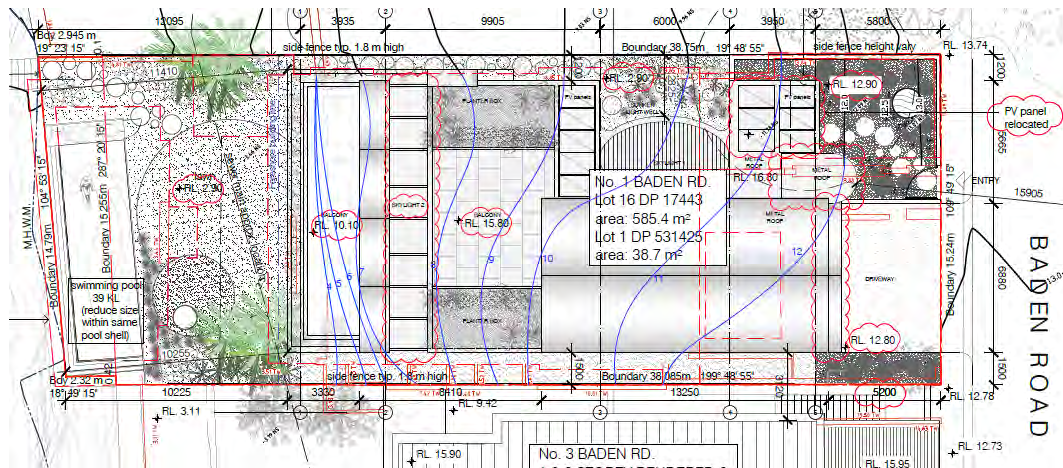


Figure 1. Site Plan

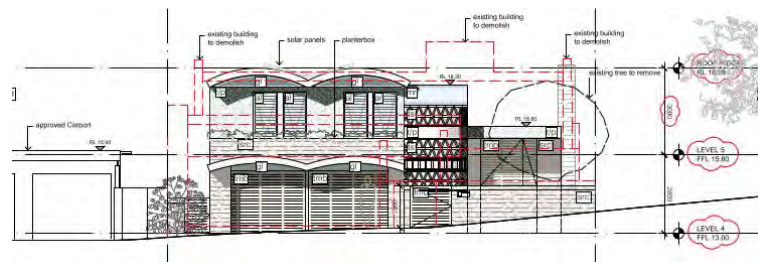


Figure 2. Northern (Street) Elevation

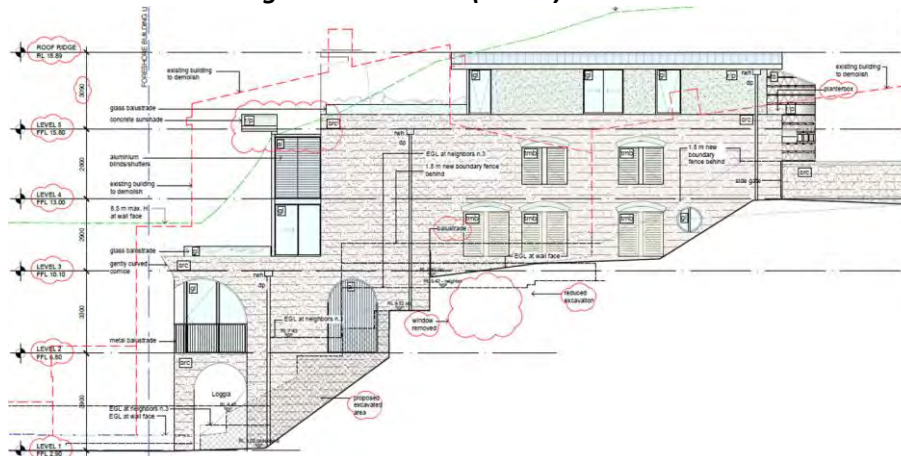
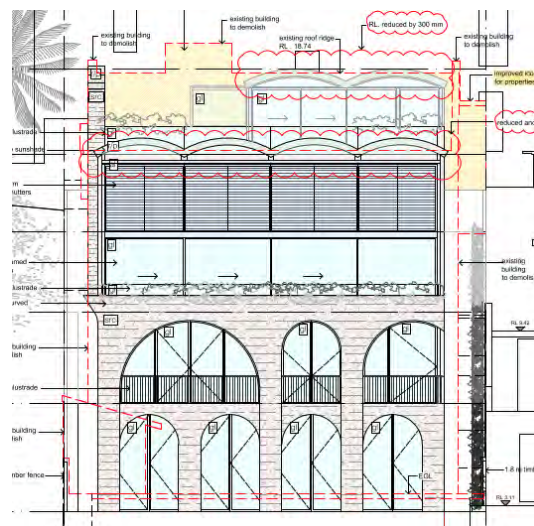
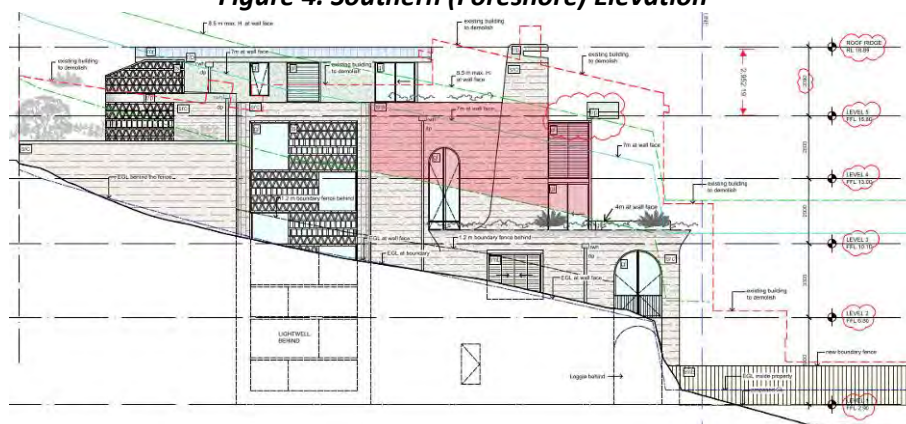


Figure 3. Eastern Elevation



**Figure 4. Southern (Foreshore) Elevation**



**Figure 5. Western Elevation**

## STATUTORY CONTROLS

### North Sydney Local Environmental Plan 2013

- Zoning – R3 Medium Density Residential
- Item of Heritage – No
- In Vicinity of Item of Heritage – I0669 (Kurraba Reserve), I0669 (Hodgson lookout), I0551 (Kurraba house)
- Conservation Area – No
- Foreshore Building Line – Yes

### Environmental Planning & Assessment Act 1979

SEPP No. 55 – Remediation of Land and Draft Remediation SEPP

SREP (Sydney Harbour Catchment) 2005 and Draft Environment SEPP

SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Vegetation in Non-Rural Areas) 2017

Local Development



## POLICY CONTROLS

North Sydney Development Control Plan 2013  
Sydney Harbour Area Development Control Plan 2005  
North Sydney Local Infrastructure Control Plan 2020

## DESCRIPTION OF LOCALITY

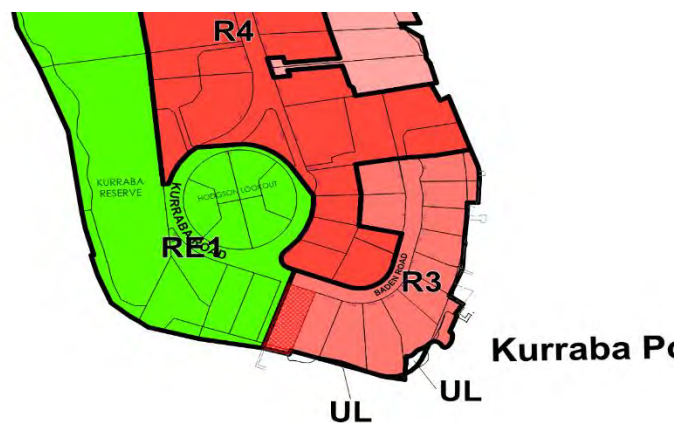
The subject site is legally described as Lot 16 in DP17443 and Lot 1 in DP 531425 and is known as 1 Baden Road, Kurraba Point. The subject site is a foreshore property located on the southern (low) side of Baden Road at the junction with Kurraba Road and adjoins Kurraba Reserve to the west.



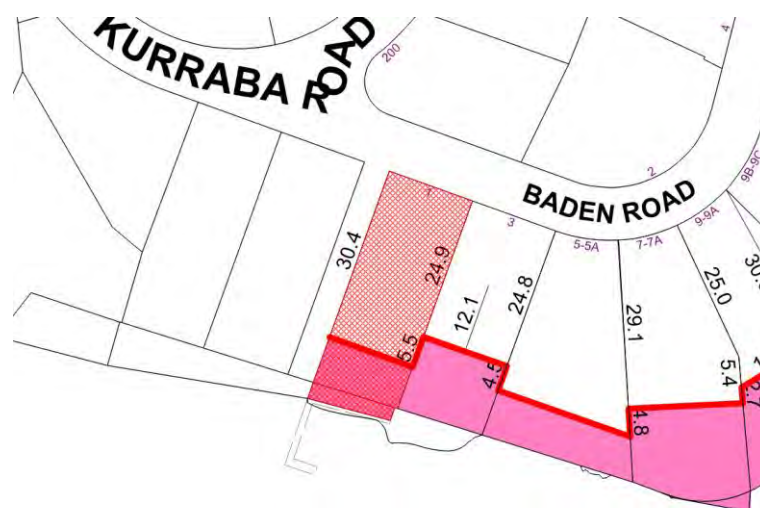
**Figure 6. Aerial Image of the subject site and surrounds (Nearmap 4 October 2021)**

The land falls from the road to the water below by approximately 10m and there is also a cross fall from the eastern side to the western side by approximately 1-2m.

The subject site is zoned R3 Medium Density Residential under NSLEP 2013. The adjoining reserve is zoned RE1 Public Recreation under NSLEP 2013, and the adjoining area of the Harbour is zoned W8 Scenic Passive Waters under SREP (Sydney Harbour Catchment) 2005.



**Figure 7. NSLEP 2013 land use planning map with the subject site shown crosshatched.**



**Figure 8. NSLEP Foreshore Building Line Map with the subject site shown crosshatched**

The subject site is burdened by the Foreshore Building Line identified on the Foreshore Building Line Map. The FSBL is located between 10.7-12.2m from the MHW.

The existing dwelling was designed by Andre Porebski and is an early example of Sydney Modernism. The dwelling is perched on the rock shelf and is part 2, part 3 storeys. There is an existing swimming pool and cabana within the foreshore setback area and a jetty which extends out into the Harbour.





**Figure 9. Site Photo of existing dwelling from the jetty**



**Figure 12. Site Photo of existing dwelling from Kurraba Reserve**



**Figure 11. Site Photo of existing dwelling from Baden Road**



**Figure 12. Site Photo of existing dwelling from Baden Road**



**Figure 13. Site Photo of existing foreshore area**



**Figure 14. Site Photo of view from inside the existing dwelling**

## RELEVANT DEVELOPMENT HISTORY

Development Application **DA1021/2001** for alterations to an existing dwelling to create a dual occupancy (attached) and construct garages was approved on 3 June 2002. This approval was never acted upon.

## RELEVANT APPLICATION HISTORY

Date	Assessment
3 December 2020	The applicant undertook a pre-lodgement application with Council Assessment Staff.
4 May 2021	The development application was lodged with Council.
12 May 2021	The application was notified in accordance with Council's Community Engagement Protocol from 21 May 2021 until 18 June 2021.
13 May 2021	A "Stop the Clock" letter was issued requesting additional information regarding works to the seawall, the height of the building and further view loss assessment.
3 June 2021	The additional information requested on 13 May 2021 was provided to Council.
12 July 2021	A site inspection was undertaken by Council Assessment Staff.
29 July 2021	A letter was sent to the Applicant outlining preliminary issues identified in the preliminary assessment of the application.
5 August 2021	A meeting was convened between the Applicant and Council Assessment Staff to discuss the issues raised in Council's letter
27 September 2021	Amended plans were received which included a clause 4.6 variation.
29 September 2021	The amended application was notified in accordance with Council's Community Engagement Protocol from 8 October 2021 until 22 October 2021.
26 October 2021	The applicant submitted amended plans to address minor remaining issues, in part in response to submission received. These further plans are minor details and do not require renotification.

## INTERNAL REFERRALS

### Engineering

The application was referred to Council's Development Engineers who raised no objection to the proposed development and provided standard conditions of consent particularly with regard to the proposed excavation works, sediment and erosion control and construction management.

### Landscaping

The application was referred to Council's Landscape Development Officer who raised no objection to the proposed development and provided standard conditions relating to the protection of trees located on the adjoining property (No. 3 Baden Road), within the road reserve and within the adjoining public reserve. Two additional tree plantings were also recommended to increase the number of trees on the site (**Refer to Condition C31**).

## **Environmental Health**

The application was referred to Council's Environmental Health Officer due to the historic use of the site including marine industrial uses. A Preliminary Site Investigation accompanying the application claimed that the fill material surrounding the existing pool area at the lower level of the site may be contaminated given the former use of the site for marine purposes as well as a fuel pipeline. According to the preliminary report, the source of the fill is unknown. Nevertheless, the report concluded that further sampling should be undertaken prior to the commencement of the works to identify the status of the fill with respect to contamination and whether any waste should be classified and/or delivered to a safe repository. Council's Environmental Health Officer has recommended conditions of consent that address these concerns (*Refer to Conditions C1, C2 and E1*).

## **EXTERNAL REFERRALS**

### **Sydney Water**

The application was referred to Sydney Water as an existing sewer line traverses the rear of the site. No objections were raised subject to a condition of consent being imposed requiring the applicant to submit the approved plans to the *Sydney Water Tap In online service*.

### **Foreshores and Waterways Development Advisory Committee**

The application was referred to the Foreshores and Waterways Development Advisory Committee because the proposed works include demolition which is listed in Schedule 2 within the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. The Committee confirmed that Council has met its statutory obligation pursuant to Clause 29 of the SREP and that no specific issues were raised.

### **National Resources Access Regulator**

The application was referred to the National Resource Access Regulator (NRAR) because, at the time of lodgement, it was unclear whether there were works relating to the reconstruction of the seawall which would impact land below the Mean High Water Mark which would in turn would be considered Integrated Development pursuant to Section 91 of the Water Management Act 2000. The Applicant submitted further design details to confirm that there are no works to the existing seawall.

NRAR confirmed that the application did not constitute integrated development and returned the application.

### **Sydney Opera House Buffer Zone**

The application was referred to the Sydney Opera House as it is located within the Opera House Buffer zone. No response was received, nevertheless, the application has been assessed with respect to Section 58A in Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and was found to be acceptable as addressed further below.

## SUBMISSIONS

The development application was notified in accordance with Council's Community Engagement Protocol from 21 May 2021 until 18 June 2021. Council received ten (10) submissions which are summarised further below.

- *The architecture firm of the original architect, Andre Porebski, provided no objection to the proposed development, however, suggested that an archival recording be prepared noting the heritage significance of the dwelling being one of the best early examples of the Sydney Modernism.*
- *A Construction Traffic Management Plan should be implemented because of the difficult site access and cumulative impact of surrounding development. The plan should also address parking for construction workers.*
- *The additional level above the garage would result in additional bulk and massing when viewed from Baden Road and the adjoining property to the north (No. 200 Kurraba Road).*
- *The proposed fifth level windows facing the street would overlook the adjoining property to the north (No. 200 Kurraba Road).*
- *The design of the dwelling is incompatible with the heritage and character of the area.*
- *The proposed excavation may cause subsistence and damage to the road or surrounding properties. Dilapidation reports should be prepared for surrounding properties.*
- *Concern the proposed roof material and solar panels would cause glare and have an adverse visual impact to surrounding properties.*
- *The height of the building should be limited to a single storey above road level as agreed for the 2001 development application for No. 3 Baden Road.*
- *The height of the building appears to exceed the maximum permitted building height of 8.5m.*
- *The curved roof forms over the fifth level would exceed the height of the cross ridgeline of the existing dwelling.*
- *The front setback of the building has been reduced in comparison to the existing dwelling.*
- *Concern that excavation and construction would result in air and noise pollution.*
- *Noise and vibration monitoring should be installed to monitor impacts during construction.*
- *The bulk and scale of the building would impact views from surrounding properties.*
- *Any crane should not have any signage or lights installed.*

Amended plans were lodged on 27 September 2021 that made minor amendments to the height of the proposed building and the built form character of the dwelling to address the concerns raised in the submissions as well as by Council officers. The amended plans included a written request pursuant to clause 4.6 in NSLEP 2013 to justify the proposed variation to the height of buildings development standard.

The amended application was notified in accordance with Council's Community Engagement Protocol from 8 October 2021 until 22 October 2021. A further three submission were received that raised the following new issues summarised below. The original submissions may be viewed by way of DA tracking on Council's website [https://www.northsydney.nsw.gov.au/Building\\_Development/CurrentDAs](https://www.northsydney.nsw.gov.au/Building_Development/CurrentDAs) and are available in full for review by NSLPP members.

- *The Clause 4.6 variation should not be supported. The written statement has not adequately addressed the objective regarding the views of the height of building development standard.*
- *It is suggested that the visual mass of the fifth level massing be shifted further towards the water to minimise the impact on the streetscape and to preserve views.*
- *The proposed materials are incompatible with the foreshore and bushland location.*
- *The amendments to the upper level windows facing the street have not resolved the privacy issue.*



- *The view loss assessment has not adequately considered or model the potential view loss from all potentially affected units. The view loss assessment would lead the assessing officer to be misled. Height poles should be erected.*
- *With regard to the view sharing planning principle established in *Tenacity Consulting v Warringah [2004] NSWLEC 140* the potential impact is “devastating”.*

Other concerns regarding view impacts and bulk and scale were reiterated.

All issues raised in all submissions received in response to both notification periods are addressed later in this report.

## **CONSIDERATION**

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, are assessed under the following headings:

### **SYDNEY REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT) 2005**

The area of Sydney Harbour adjoining the subject site is zoned W8. The proposed works are contained wholly within the subject site and does not impact the Harbour land.

#### **Division 2 Matters for consideration**

The following matters for consideration are considered relevant to the proposal and are addressed below:

#### **Section 21 Biodiversity, ecology and environment protection**

The proposed works are contained wholly above the existing seawall which is to be retained. This area also has previously been disturbed with fill from an unknown used to build up the foreshore area and therefore does not comprise an area of biological or ecological significance. The proposed works are therefore unlikely to result in any biodiversity, ecology or environmental impacts subject to the implementation of appropriate conditions of consent regarding sediment and erosion control to prevent sediment entering the Harbour. Council's Environmental Health Officer has also recommended conditions that would require remediation measures to be undertaken subject to further sampling to ensure that any existing contaminates are safely removed.

#### **Section 25 Foreshore and waterways scenic quality**

The proposed development would not detract from the scenic quality of the Harbour or its foreshores given that the proposed development is consistent with the existing residential development of the foreshore area. The proposed development does not exceed the height of the existing development and shifts the massing of the building further up the slope of the land to maintain compliance with the Foreshore Building Line and minimise the imposition on the foreshore land. The landscaped foreshore setback area and proposed swimming pool are consistent with the existing residential and do not require the removal of any landscaping or natural features.

## Section 26 Maintenance, protection and enhancement of views

The proposed development has been designed to retain and to an extent enhance existing views enjoyed from surrounding properties by not exceeding the height of the cross ridgeline of the existing dwelling and by increasing the side setbacks of the dwelling at the upper level. Views from the adjoining property to the east (No. 3 Baden Road) would also be nominally improved as the rear (foreshore) setback has been increased, particularly at the upper levels (third and fourth levels) of the dwelling.

## Section 29 Consultation required for certain development applications

Consultation with the Foreshores and Waterways Planning and Development Advisory Committee was deemed to be required as the proposed development includes demolition which is listed in Schedule 2 to the SREP. The application was referred to the Committee who confirmed on 24 June 2021 that Council has satisfied the statutory obligations under the SREP and that no specific issues were raised.

## Section 58A Protection of world heritage value of Sydney Opera House.

The subject site would form part of the backdrop for the Sydney Opera House when viewed from the City foreshore and Opera House forecourt area and is located within the identified Sydney Opera House Visual Buffer Area. It is noted, however, that the proposed development has been designed to avoid replicating the architecture of the building and/or using white tones to ensure that the visual dominance of the Opera House is not diminished.

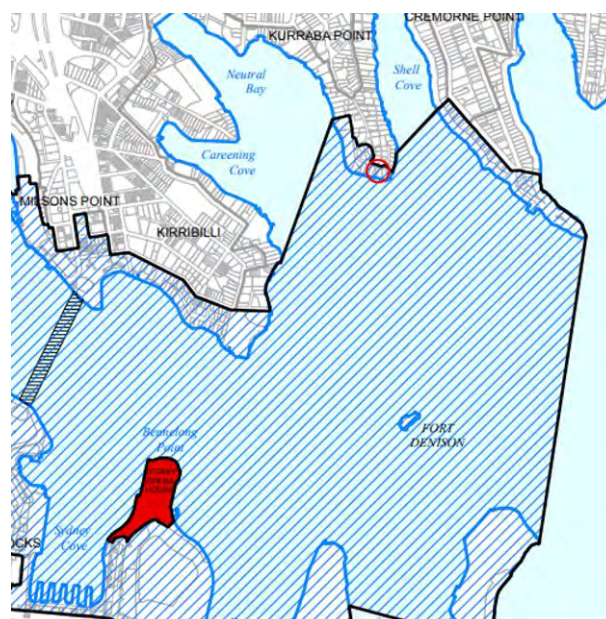


Figure 15. Extract from Sydney Opera House Buffer Zone Map (Amendment 2016)

## FORESHORES AND WATERWAYS DEVELOPMENT CONTROL PLAN 2005

The subject site is located within Vegetation Character Type 8. The area is defined primarily by the high level of built form including residential uses.

The following performance criteria are considered to be reasonably achieved.

- *Vegetation is integrated with land-based development to minimise the contrast between natural and built elements;*
- *Design and mitigation measures are provided to minimise noise and amenity impacts between incompatible land uses;*
- *The maritime uses on the Harbour are preserved.*
- *Pressure for these uses to relocate is minimised.*
- *New developments adjoining maritime uses are designed and sited to maintain compatibility with existing maritime uses; and*
- *Remaining natural features that are significant along the foreshore are preserved and views of these features are maintained.*

The proposed development would increase the quantity and quality of landscaping within the foreshore setback area. The dwelling is compatible with the amenity of the surrounding residential environment and adjoining public reserve. The proposed development would not disrupt any existing maritime uses. The proposed development would result in the removal of some exposed natural rocky outcrop, however, it is noted that this rocky outcrop has already been built upon and is largely obscured by the existing structural elements, pool cabana and staircases. The adjoining small section of bush within the reserve is to be retained.



**Figure 16. Site photo of the limited natural rocky outcrop visible from the foreshore**

#### **STATE ENVIRONMENTAL PLANNING POLICY 55 – REMEDIATION OF LAND AND DRAFT REMEDIATION OF LAND SEPP**

The provisions of SEPP 55 require Council to consider the likelihood of land contamination and any remediation necessary to rehabilitate the site. A Stage 1 Preliminary Site Investigation was submitted with the application providing details of the historical use of the subject site and surrounding area for maritime services formerly known as the Port Jackson and Manly Steamship Company that previously occupied the adjoining land now known as Kurraba Reserve.

The facilitates may have also been used for Naval purposes during World War II. The report identifies that a fuel pipeline traversed the lower portion of the site connecting to a floating wharf off the south of Kurraba Point. The wharf and associated infrastructure were removed by 1965. Unknown fill material has also been brought to the site to construct the swimming pool area over the natural rock shelf and is contained by a brick seawall.

The proposed changes to the pool area including excavation into the unknown fill material a number of recommendations were included in the Preliminary Site Investigation report. Council's Environmental Health Officer has recommended the following conditions of consent to ensure that the site is made suitable for residential purposes: -

***Condition C1 – Soil Contamination***

***Condition C2 - Hazardous Materials Audit of Buildings***

***Condition E23 - Imported Fill Material***

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

A valid BASIX Certificate has been provided to meet the requirements of the Policy.

#### **SEPP (Vegetation in Non-Rural Areas) 2017**

The application does not require the removal of or impact to any tree listed for protection in Section 16 of NSDCP 2013 and therefore is considered to satisfy the Policy.

#### **NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2013.**

##### **Permissibility**

The subject site is zoned R3 Medium Density Residential in NSLEP 2013. The proposed development is for the purpose of a dwelling house which is a permitted use within the zone.

##### **Objective of the Zone**

The objectives of the R3 Medium Density Residential zone are as follows:

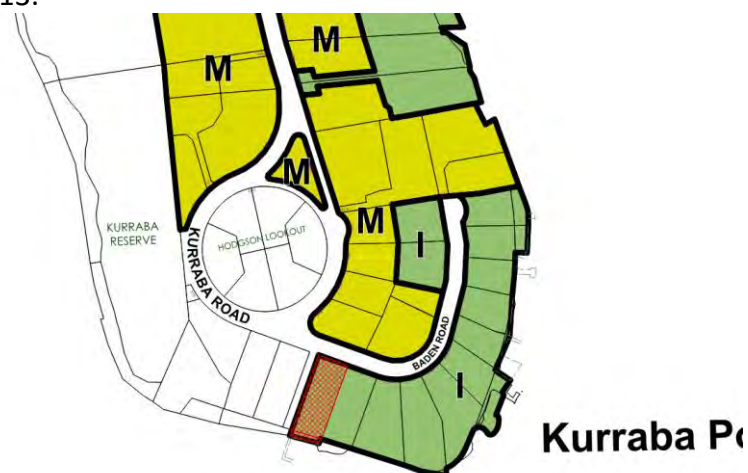
- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the development of sites for medium density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To provide for a suitable visual transition between high density residential areas and lower density residential areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposed development would provide for the housing needs of the community within a medium density residential environment by replacing the existing dwelling house which is a permitted type of development within the R3 Medium Density zone. The proposed development has regard to the amenity and quality of the surrounding environment having regard to the foreshore setting, adjoining public reserve which includes a small patch of bushland and surrounding heritage listed buildings.

The proposed development would appear as a smaller scaled building than the nearby residential flat building to the north located on land zoned R4 High Density Residential zone. However, there is no nearby land zoned R2 Low Density Residential zone. The proposed development has been designed to achieve a high level of residential amenity and to maintain a high level of amenity enjoyed by the surrounding properties particularly with regard to the retention of views given its foreshore location with iconic views to Sydney Harbour, Fort Denison, the City of Sydney Skyline, Sydney Opera House and Sydney Harbour Bridge.

#### Clause 4.3 – Height of Buildings

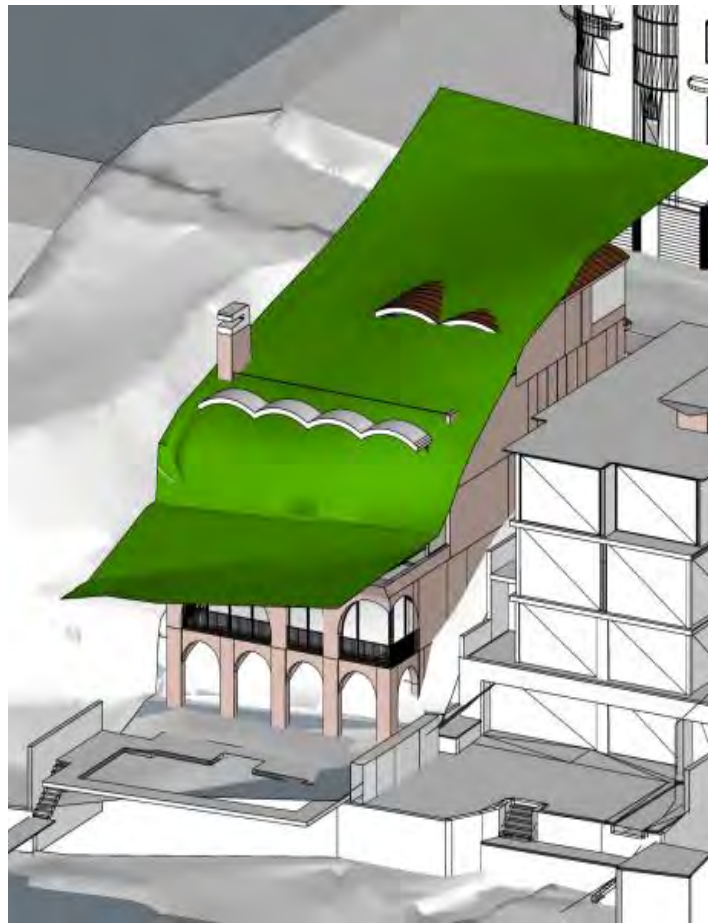
The subject site has a maximum permitted building height of 8.5m pursuant to subclause 4.3(2) in NSLEP 2013.



**Figure 17. NSLEP Height of Buildings Development Standard Map with the subject site shown crosshatched**

The existing building has a maximum height of 14m. The proposed development has a maximum building height of 9.1m and breaches the maximum permitted building height of 8.5m at three points as described below:

- A. Fifth Level Roof Form – 470mm or 5.38%
- B. Rear Roof Awning – 200mm or 2.35%
- C. Glazed Balustrade - 600mm or 6.81%



**Figure 18. Height plane analysis indicating the roof and awning projection.**

The height of the building has been measured from the existing ground level where is assumed that the existing dwelling is, in part perched on the rock shelf, and on review of previous development plans, the building has a subfloor area which is in part evident when viewed from the south, however, remains enclosed and cannot be accessed.

In order to calculate the existing floor levels (excluding the basement), the existing land levels as surveyed within each side setback area and internal floor levels has been extrapolated through the building footprint at the relevant contours. This provides a reasonable conclusion as to the existing land levels within the building footprint in the absence of the building being demolished and is reflective of the surrounding topography of the land.

It is noted that the proposed chimney also breaches the maximum permitted building height, however, is exempt from the calculation of the maximum permitted building height as per the definition in NSLEP 2013.

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

A written request to contravene the development standard for height has been submitted and has been considered below.



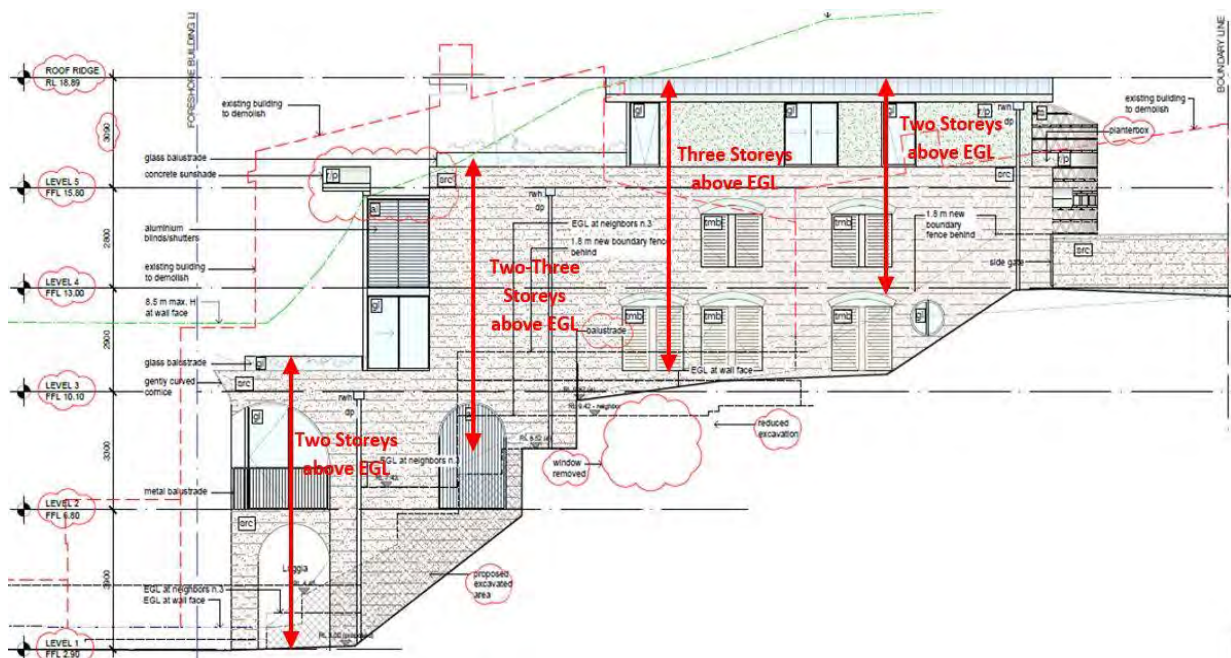
**Clause 4.6(3)(a) Is compliance with the development standard unreasonable and unnecessary in the circumstances of the case?**

***(1)(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,***

The proposed building is constructed over four to five levels within a significant portion being basement, however, the building would appear as either two and three levels when viewed from either side elevation. The subject site is steeply sloping from the north (Baden Road) to the south (Sydney Harbour) and has a significant rock shelf drop off towards the southern end of the site with an area of relatively flat reclaimed land towards the bottom of the site.

The proposed maximum height of the proposed building form aligns with the maximum RL height of the existing building because the southern edge of the roof over the fifth level aligns with the existing cross ridgeline being the highest RL of the existing dwelling (Circled blue in **figure 19** below).

The massing of the proposed building has been shifted towards the north of the site in comparison to the existing building form (outlined dashed red in **figure 19** below) and therefore the maximum height of the building has been reduced to conform to the existing topography and the masing decreased at the southern edge of the existing rock shelf.



**Figure 19. Eastern Elevation to demonstrate the stepped built form**

The building would appear as two storey from the street before stepping down the site in a three storey built form through the middle of the site before stepping down again by two storeys to another two storey form at the rear (foreshore side). The dwelling would appear as five storeys from the south (Sydney Harbour) although would evidently step up the slope when viewed from an angle or from the side boundary. The height of the building at any one point is limited through the stepping of the building form to align with the existing ground level and largely complies with the maximum permitted building height with the exception of the two curved roof forms and balustrade.

***(1)(b) to promote the retention and, if appropriate, sharing of existing views***

The subject site is located on the foreshore of Sydney Harbour and is in a sensitive location given the surrounding development along Baden Road including the residential flat buildings at No. 200 Kurraba Road and No. 2 Baden Road and the views available to the Harbour, the City of Sydney skyline, the Opera House, Fort Denison and the Sydney Harbour Bridge.

The building has been designed in principle to respect, and in part improve, these views by shifting the massing towards the road, retaining the maximum RL of the building and increasing the setbacks to the side boundaries. The southern leading edge of the proposed curved roof form over the fifth level has the same maximum RL as the cross ridgeline of the existing building. The existing cross ridgeline provides a point of comparison to undertake the view assessment below. Views would also be improved where the existing chimney box is removed, the eastern side setback is increase by 0.5m and the western side setback is increased by 3.75m.

A complete assessment in accordance with the view sharing planning principle established in *Tenacity Consulting vs Waringah Council* [2004] NSWLEC 140 is provided below.

**Views from residential flat building at No. 200 Kurraba Road.**

The residential flat building at No. 200 Kurrba Road is located directly to the north of the subject site and contains seven apartments with two apartments on each level with the exception of the lower ground floor which contains only one dwelling (Unit 7) which is located on the eastern side of the floor plate. The following view assessment deals with the lower ground floor and ground floor apartments. It is considered that the views from the first and second floor level apartments (Units 3, 4, 5 and 6) would not be impacted as these apartments are elevated above the subject site and enjoy uninterrupted views over the existing and therefore the proposed building.

**Unit 2 No. 200 Kurraba Road – eastern side of ground floor level**

***Step 1 Views Affected*** - The views in question are of Sydney Harbour, the City of Sydney skyline and the Sydney Opera House. These views are considered iconic.



**Step 2 Location of Views**– The views are obtained primarily from the principle living area and dining area, noting that the apartment does not have a balcony or other area of private open space. The views are available over the front boundary of the property and are the focal point of the apartment’s layout. The views can be enjoyed from both a sitting and standing position. Views are also available from further into the apartment including the kitchen.

**Step 3 – Extent of the impact** The part of the view that would be impacted is of the water and not the land water interface, skyline or Opera House. The proportion of the view lost in comparison to a strictly complying development is considered minor, and is negligible in comparison to the existing views as the proposed development does not exceed the height of the existing building. Furthermore, the overall view would be improved given the increased side setbacks and removal of the existing chimney box.



**Figure 20. View from living area of Unit 1 / 200 Kurraba Road in seated position.**

**Step 4 Responsibility of the Proposal** – Although the view is in part impacted by the non-complying element of the proposed curved roof form over the fifth floor level, the variation is limited to between 0-470mm accounting for the arched roof form. Whilst the height of the roof could be amended to strictly comply, the benefit would be less than what is already provided by the increased setbacks and removal of the existing chimney box and this part of the view is already impacted by the existing dwelling house constructed in the 1960s.

#### **Unit 1 No. 200 Kurraba Road – western side of ground floor level**

**Step 1 Views Affected** – The views in question are of Sydney Harbour, the City of Sydney skyline, the Sydney Opera House and Fort Denison. In part these views are considered iconic.

**Step 2 Location of Views** – The views are obtained primarily from the principle living, dining and sitting areas, noting that the apartment does not have a balcony or any other private open space. The views are available over the front boundary of the property and are the focal point of layout of the apartment. The views can be enjoyed from both a sitting and standing position. Views are also available from further into the apartment including the kitchen.



**Figure 21. View from living area of Unit 2 / 200 Kurraba Road in seated position.**

**Step 3 Extent of the Impact** – The part of the view that would be impacted is of the water and not the land water interface, skyline or Opera House. The proportion of the view lost in comparison to a strictly complying development is considered minor, and is negligible in comparison to the existing views, as the proposed development does not exceed the height of the existing building. Furthermore, the view would be improved given the increased side setbacks and removal of the existing chimney box.

Furthermore, views from the adjoining sitting area include Fort Denison at an angle over the subject site. An assessment is also provided of this view as the fifth level of the proposed building extends towards the subject apartment



**Figure 22. View from living area of Unit 2 / 200 Kurraba Road in seated position.**

**Step 4 Responsibility of the Proposal** – Although the view from the living room is in part impacted by the non-complying element of the proposed curved roof form over the fifth floor level, the variation is limited to between 0-470mm accounting for the arched roof form. Whilst the height of the roof could be amended to strictly comply the benefit would be less than what is already provided by the increase setbacks and removal of the existing chimney box and this part of the view is already impacted by the existing dwelling house which was constructed in the 1960s.

Regarding the view of Fort Denison, it is also noted that the eastern side of the roof form is compliant with the maximum permitted building height and therefore any impact would be from a compliant element.

#### **Unit 7 No. 200 Kurraba Road – eastern side of lower ground floor level**

**Step 1 Views Affected** – The views in question are of Sydney Harbour and part of the City of Sydney skyline. These views are not as expansive as the views enjoyed from Units 1 and 2 which are located on the level above and are also impacted by the existing building.

The courtyard area also includes a view to part of the Sydney Harbour Bridge although this view would not be impacted by the non-complying elements. This view is addressed further below in respect to the view sharing provisions of the North Sydney Development Control Plan 2013 below.

**Step 2 Location of Views** – The views are obtained primarily from the principle living area, study and outdoor courtyard. The views are available over the front boundary of the property and forms the focal point of the apartment layout.

**Step 3 Extent of the Impact** – There would be a negligible impact to these views given the views are obtained directly over the proposed building and the height of the proposed building is directly in line with the existing cross ridgeline. The increased side setback on the eastern side would have a negligible improvement to the existing views.



**Figure 23. View from front courtyard or Unit 7 No. 200 Kurraba Road.**

**Step 4 Reasonability of the Proposal** – The non-complying element would have no impact as it would be located behind the complying portion of the fifth level as a person standing or sitting in the courtyard of the affected property is approximately in line with or below the the height of the building.

#### **Views from residential flat building at No 2 Baden Road.**

**Step 1 Views Affected** – Units 1, 3, and 5 are located on the southern side of the building and similarly enjoy views of Sydney Harbour and its iconic elements including the Sydney Harbour Bridge, Sydney Opera House and Fort Denison.

**Step 2 Location of Views** – The views are obtained primarily from principle living areas, bedrooms and front balconies with the extent of views improving at each level as the elevation increases. The views are available over the front (street) boundary of the property.

**Step 3 Extent of the Impact** – There would be a negligible impact on views given the views are obtained over the proposed building.

**Step 4 Reasonability of the Proposal** – The non-complying element would be located behind the complying portion of the fifth level when viewed from Unit 1 on the lowest level. The views from the upper levels (Unit 3 and Unit 5) would not be impacted by the non-complying element as the southern leading edge of the curved roof form aligns with the cross ridgeline of the existing building.





**Figure 24. Real estate photo of the view from the front balcony of Unit 1 No. 2 Baden Road over the subject site.**



**Figure 25. Real estate photo of the view from the front balcony of Unit 5 No. 2 Baden Road over the subject site.**

**(1)(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,**

The proposal would increase solar access to the adjoining property to the east as the existing non-complying element which was located further to the south is to be removed. The portions of the proposed roof forms that do not comply with the development standard represent a minor variation of between 200-470mm and would result in inconsequential overshadowing in comparison to a complying built form.

The proposal also adjoins Kurraba Reserve to the west with the immediate area containing bushland. Nethertheless, the proposed overshadowing to the adjoining public reserve is minimised through the inclusion of a significant setback to the fourth and fifth levels (one and two storeys above EGL).

***(1)(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,***

The non-compliant elements relating to the proposed roof curved forms would not have any privacy implications for adjoining properties. The proposed balustrade at the southern edge of the fifth level terrace area also exceeds the maximum permitted building height however the proposed terrace is not considered to result in any direct overlooking as it is setback from each side boundary.

***(1)(e) to ensure compatibility between development, particularly at zone boundaries,***

The subject site adjoins RE1 Public Recreation zoned land to the west which does not identify a height of building development standard and R4 High Density Residential zoned land to the north which has a maximum permitted building height of 12m. The height of the proposed development remains at a smaller scale than the residential flat building located across the road (No. 200 Kurraba Road) which demonstrates the transition between the zones, stepping down towards the water.

The proposed development has a larger western side setback at the upper level to transition towards the Reserve.

***(1)(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.***

The proposed development would be consistent with the surrounding development when viewed from the Harbour noting that the development along Baden Road is primarily perched on the rock shelf. As a result, development appears multistorey from the waterway although has been stepped to address the existing topography of the site. The development further to the east at Nos. 5-9 Baden Road significantly exceed the scale of the proposed development.

The dwelling would present as two storeys when viewed from the street which complies with the development standard and is consistent with the surrounding development along Baden Road.

**Whether there are sufficient environmental planning grounds to justify contravening the development standard?**

The environmental planning grounds advanced in the written request are considered to be sufficient to justify the contravention of the development standard in the circumstances of the case. The following justifications were provided.

“...

- *The proposed development is generally contained within the building envelope of the existing dwelling to be demolished.*
- *The minor variation to the height standard will not create any significant additional impact on the amenity of the surrounding developments with regard to overshadowing, privacy or views compared to that currently experienced as a result of the existing approved dwelling on the site.*

- *Despite the breach of the numerical height controls, the proposed development is appropriate for its context in that it has been appropriately designed to accommodate the sloping topography of the site.*
- *The minor exceedance will not result in any significant increase in the bulk and scale of the proposed dwelling.*

*The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:*

- *The proposal promotes the orderly and economic use and development of land (1.3(c)).*
- *The development represents good design (1.3(g)).*
- *The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).*

...”

It is generally concurred that there are sufficient environmental planning grounds to justify the proposed variation. The retention of the existing building envelope as the basis for the future development is reasonable in the circumstances. The building envelope has been further reduced through increases to the side setbacks and reduced massing on the foreshore which has had a positive impact on the amenity of the surrounding development. The minor non-comply elements are not indicative of a poorly sited development or intended exceedance of the key planning controls applicable to this site. The proposed development would be compatible with the existing buildings along the foreshore and would not cause any material impacts on the amenity of the adjoining properties.

### **Concurrence with Minister**

The consent authority may assume concurrence with the Minister as per the Planning Circular PS 20-002.

### **Whether the proposed development will be in the public interest?**

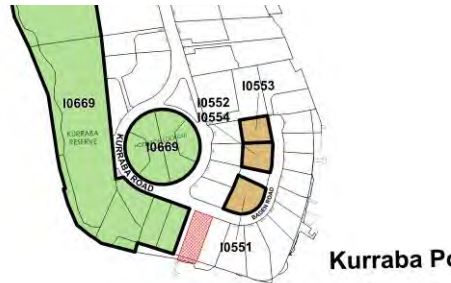
The proposed variation is considered to be in the public interest as it has been demonstrated that the proposed development is consistent with the objectives of the zone and the objectives of the development standard as discussed above.

### **Concluding Remarks**

The written request to vary the development standard provided by the applicant is considered well founded. The written request demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify the variation. The proposed development is considered to be in the public interest. It is recommended that the variation be supported in these circumstances.

### Clause 5.10 – Heritage Conservation

Clause 5.10(5) allows the consent authority to consider the potential impact to the heritage significance of heritage items within the vicinity of the subject site. The subject site is not identified as a Heritage Item or within a Conservation Area.



**Figure 26. NSLEP Heritage Map with the subject site shown crosshatched**

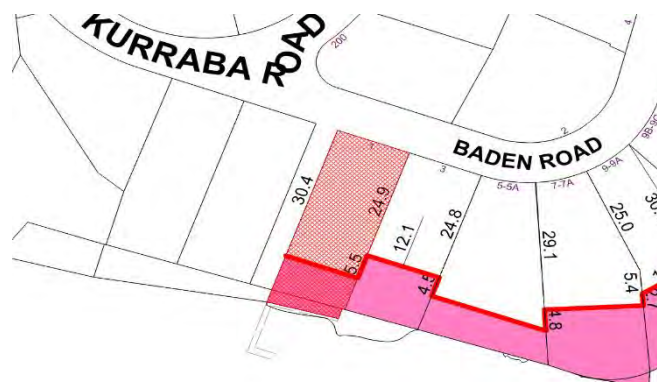
The subject site adjoins Kurraba Reserve to the west which is identified as a heritage item.

The subject site is close to Nos 2, 6 and 8 Baden Road which are Federation style heritage items. The proposed development is not considered to detract from the heritage significance, setting and curtilage of the nearby heritage items as the proposed works are physically separated, are located on the opposite side of Baden Road and will be of a smaller massing and scale than the heritage items when viewed from the Street.

Views to and from the Heritage Items from Baden Road would also be retained. Clause 5.10 is therefore considered to be satisfied.

### Clause 6.9 Limited Development within Foreshore Areas

The subject site is burdened by a Foreshore Building Line as indicated on the Foreshore Building Line Map. The FSBL traverses the subject site approximately at the location of the existing rear building line.



**Figure 27. NSLEP Foreshore Building Line Map with the subject site shown crosshatched**



Clause 6.9 seeks to ensure that development in the foreshore area which will not impact on natural foreshore processes or affect the significance of or amenity of the area.

The proposed construction of the dwelling house does not encroach the foreshore setback area which is defined as the area between the foreshore building line and the Mean High Water Mark.

The proposed works to the swimming pool, landscaping and fencing within the foreshore setback area are exempt from subclause 6.9(2) provided that the consent authority is satisfied of the matters in subclause 6.9(3).

**(3) Development consent must not be granted under subclause (2) unless the consent authority is satisfied that—**

**(a) the development will contribute to achieving the objectives for the zone in which the land is located, and**

The development is consistent with the objectives of the R3 Medium Density Residential zone as outlined above.

**(b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and**

The proposed pool would not be visible from the waterway or adjoining foreshore reserve. The proposed fencing is low scale and would not be inconsistent with the residential character of the area.

**(c) the development will not cause environmental harm such as—**  
**(i) pollution or siltation of the waterway, or**  
**(ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or**  
**(iii) an adverse effect on drainage patterns, and**

The proposed development is unlikely to cause environmental harm as the proposed works are to be carried out above and behind the seawall and would not alter the existing drainage patterns within the foreshore setback area.

**(d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and**

Not applicable.

**(e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and**

The subject site is private land and therefore the provision of public access would be unreasonable. The potential to create such an access in this locality is not practicable at this time.

- (f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and**

The foreshore setback area comprises fill and does not retain any notable features.

- (g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and**

Not applicable.

- (h) sea level rise or change of flooding patterns as a result of climate change has been considered.**

The proposed development retains the existing levels within the foreshore setback area and there is no change to the existing seawall. The foreshore setback area is approximately 2.9m above the water level.

The matters for consideration have been satisfied and the proposed works within the foreshore setback area are considered acceptable.

#### **Clause 6.10 – Earthworks**

Sub-clause 6.10(3) in NSLEP 2013 requires the consent authority to consider the following matters:

- (a) the likely disruption of, or any detrimental effect on:**
- (i) drainage patterns and soil stability in the locality of the development, and**
  - (ii) natural features of, and vegetation on, the site and adjoining land,**

The subject site is located on the foreshore of the Harbour. The proposed excavation is unlikely to alter the existing drainage patterns and would not result in overland flow over any adjoining property.

The site adjoins Kurraba Reserve where a section of bushland is located adjoining the western side boundary of the site. The applicant has submitted an arborist report which demonstrates that the proposed excavation would not adversely impact the health or stability of any trees within the reserve.

- (b) the effect of the development on the likely future use or redevelopment of the land,**

The proposed excavation would not adversely impact the potential future development of the adjoining properties.

**(c) the quality of the fill or the soil to be excavated, or both,**

The applicant has submitted a preliminary site contamination survey given the historical use of the site relating to industrial marine activities. The report recommended further testing and appropriate remediation measures to comply with the requirements of SEPP 55 – Remediation of land.

**(d) the effect of the development on the existing and likely amenity of adjoining properties,**

The proposed excavation is unlikely to adversely impact the adjoining properties. The basement footprint has been set back from the side boundaries and retaining walls and landscaping incorporated where there is excavation proposed within the side setback areas.

**(e) the source of any fill material and the destination of any excavated material,**

Conditions C9 and E24 are recommended relating to a waste management plan and removal of excavated material. Subject to these conditions, there is no concern regarding destination of excavated material with disposal sites being available.

**(f) the likelihood of disturbing Aboriginal objects or relics,**

The proposal is unlikely to disturb any Aboriginal objects or relics as the site has been previously developed and does not contain any rocky outcrops or other features that would indicate the presence of Aboriginal objects or relics.

**(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,**

The site is located directly adjoining the Harbour and therefore sediment and erosion control measures are to be employed on site to prevent any runoff carry sediment or contaminants from entering the water way. The existing seawall is to be retained which in part would assist in sediment control.

**(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.**

Conditions C7 and E6 have been recommended to ensure that the proposed excavation does not adversely impact the stability and structural integrity of the surrounding properties.

**NORTH SYDNEY DEVELOPEMNT CONTROL PLAN 2013**

<b>NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013 – Part B, Section 1 Residential Development</b>		
	<b>Complies</b>	<b>Comments</b>
<b>1.2 Function</b>		
<b>Maintaining residential accommodation</b>	Yes	The proposed development would replace the existing dwelling house and therefore the existing residential accommodation would be retained.
<b>Maintaining affordable housing</b>	Yes	SEPP (AFR) 2009 does not apply to dwelling houses.
<b>1.3 Environmental criteria</b>		
<b>Topography</b>	No, however acceptable	<p>The proposed development seeks to undertake significant excavation within the building footprint to establish multiple levels below ground level, however, these levels would be above existing ground level at the rear of the site and where habitable areas are proposed have uninterrupted access to natural light and ventilation at the rear or benefit from a substantial lightwell within the western side setback area.</p> <p>The proposed excavation within the western side setback area is retained along the western side boundary and would provide light to the lower levels of the dwelling and would not adversely impact the adjoining public reserve.</p> <p>The eastern side boundary is also proposed to be regraded to relate to the natural topography of the site and the adjoining properties levels. There would be some excavation to a maximum towards the rear of the side setback area to provide light and ventilation to the proposed principal bedroom ensuite window. As a result, part of the existing terracing within the side setback area is to be removed adjoining the existing boundary retaining wall. The proposed excavation would occur within the existing sandstone substrate and subject to condition C7 would not impact the stability of the adjoining property.</p>
<b>Properties with a foreshore building line</b>	Yes	The subject site is burdened by a foreshore building line as per clause 6.9 in NSLEP 2013. The proposed works within the foreshore setback area relate to the swimming pool, landscaping and fencing which are permitted structures within the setback area. The foreshore setback area comprises fill and therefore no natural features would be distributed.
<b>Views</b>	Yes, contributes to view sharing.	A detailed view assessment is undertaken above regarding the proposed height variation. In summary, proposed building establishes the maximum height based off the existing building form however reduces the massing by increasing both the eastern and western side setbacks and removing the existing chimney box which would improve the views enjoyed from Units 1 and 2 at No. 200 Kurraba Road to the north. The additional massing of the proposed fifth level that sits between the existing roof cross ridgeline and carport in a primarily compliant form, except for the southern leading edge, which is addressed above, and would not have any unreasonable impacts on the views enjoyed from surrounding properties. Views from the upper levels (Units 3, 4, 5 and 6) of No. 200 Kurraba Road would not be affected.



*Figure 28. View from Unit 2 No. 200 Kurraba Road*



*Figure 29. View from Unit 1 No. 200 Kurraba Road*



*Figure 30. View from Unit 6 No. 200 Kurraba Road*

**Views from Unit 7 No. 200 Kurraba Road**

The front courtyard enjoys a view to part of the Sydney Harbour Bridge although is partly obscured by the existing vegetation located within Kurraba Reserve. The proposed fifth level which is two storeys above the street level may impact the views towards the Sydney Harbour Bridge. The part of the arch is likely to be retained as the height of the fifth level and stairwell roof form are at the same level or below the cross ridgeline of the existing dwelling which provides a comparison point in the figure below and the massing of the fifth level has been shifted to the east which provides a view corridor over the northwestern front corner of the site.

The element causing the potential impact is wholly contained within a complying building envelope and has a maximum height of only 5m above the street level and is setback 4.6m from the western side boundary.



*Figure 31. Site photo from southeastern corner of the front courtyard of Unit 7 No. 200 Kurraba Road.*



*Figure 32. Site photo from southeastern corner of the front courtyard of Unit 7 No. 200 Kurraba Road.*



**Views from No. 3 Baden Road**

The proposed development would improve the views enjoyed at an angle over the western side boundary of No. 3 Baden Road as the massing of the building has been shifted up the site towards the road in comparison to the existing dwelling (*Refer to Figure 33 below regarding the rear setback*).

**Views from Units 1, 3 and 5 at No. 2 Baden Road**

Units 1, 3 and 5 at No. 2 Baden Road are located on the southern side of the building and enjoy views of the Harbour and its iconic features including the Sydney Harbour Bridge over and around the subject site. These views would be retained given the height of the building does not exceed the height of the cross ridgeline of the existing building which frames the view.



**Figure 33. Real estate photo of the view from the front balcony of Unit 1 No. 2 Baden Road over the subject site.**



**Figure 34. Real estate photo of the view from the front balcony of Unit 5 No. 2 Baden Road over the subject site.**

**Public Domain Views**

The proposed eastern and western side setback provide slot views towards the Harbour which currently do not exist.

<p><b>Solar Access</b></p>	<p>Acceptable</p>	<p>The subject site and adjoining property (No. 3 Baden Road) have an unfavorable southern aspect towards the rear where the primary living and private open spaces are located to take advantage of the Harbour setting.</p> <p><b>Subject Site</b></p> <p>The subject site would receive a minimum of three hours solar access to the western elevation of the living room between 12:00pm to 3:00pm in midwinter.</p> <p><b>Adjoining Property (No. 3 Baden Road)</b></p> <p>The proposed development would not result in any additional overshadowing to the primary living room of the adjoining dwelling which is located on the middle level and would already be overshadowed by the existing dwelling on the subject site.</p> <p>The proposed development shifts the massing of the building up the site towards the street in comparison to the existing dwelling resulting in some improvement to solar access to the adjoining property in the afternoon hours however this is likely to only benefit an ensuite and a bedroom. There would also be some additional overshadowing caused by the proposed fifth level, however, would fall across the roof of the adjoining property and therefore not impact the amenity of the dwelling. There would also be some reduction in the overshadowing to the rear setback of No. 3 Baden Road that is likely to benefit the pool area.</p>
<p><b>Acoustic privacy</b></p>	<p>Yes</p>	<p>The proposed dwelling is orientated with living and outdoor area towards the foreshore which is consistent with the surrounding development. The proposed primary living and rear balcony are elevated above the foreshore area although are located above the existing rock shelf and are therefore not as elevated as perceived to be when viewed in elevation and appropriately relate to the existing ground levels. The acoustic impact is considered to be comparable to the other development along the foreshore. The potential impact of the roof level terrace has been considered above having regard to the</p>
<p><b>Vibration</b></p>	<p>Yes</p>	<p>The proposed lift is centrally located within the building form and is unlikely to result in any adverse vibration impact to adjoining properties. Nevertheless, a condition of consent is recommended to minimize any impacts in this respect. <b><i>(Refer to Condition C22)</i></b></p>
<p><b>Visual privacy</b></p>	<p>Yes, subject to conditions</p>	<p><b>Eastern Elevation Windows</b></p> <p>The majority of the proposed windows within the eastern elevation have been strategically placed to be offset to the windows of the adjoining dwelling (No. 3 Baden Road). Additionally, the windows are proposed to have either an external metal louvered screening or timber operable shutter to prevent overlooking to the adjoining property. Condition C25 (b) is recommended requiring the shutters for habitable rooms above the fence line to be limited to opening a maximum of 300mm to prevent overlooking to the adjoining property.</p>





*Figure. Proposed semi operable external timber shutters.*

The floor to ceiling window within the south-eastern corner (W25) of the kitchen, living and dining room on the third level would directly overlook the private open space and western facing windows of the adjoining property (No. 3 Baden Road) and therefore Condition C25(c) is recommended requiring a privacy measure to be installed.

The floor to ceiling window within the southeastern corner (W9) of the bedroom on the second level would directly overlook the private open space of the adjoining property (No. 3 Baden Road) and therefore Condition C25(d) is recommended requiring a privacy measure to be installed.

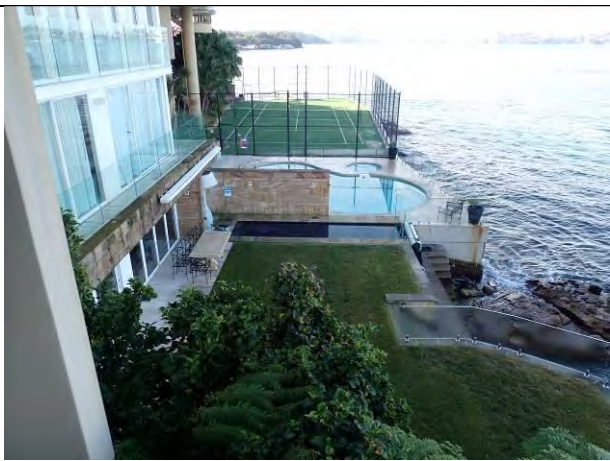
The windows within the eastern elevation of the fifth level bedroom and study (W44, W43 and W42) would overlook the adjoining properties (No. 3 Baden Road) roofline as the fifth level is located above the adjoining property and would not materially impact the privacy of the adjoining property.

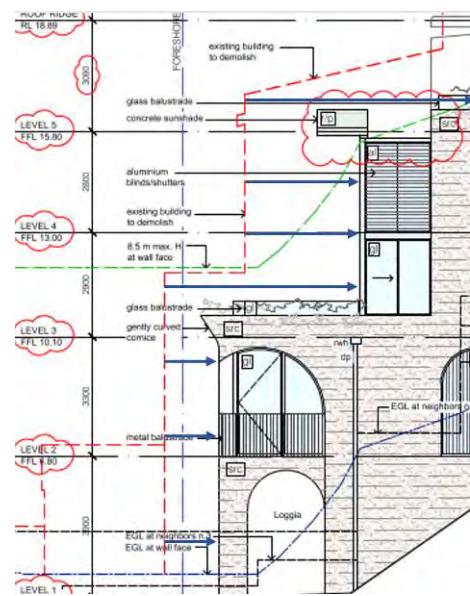
#### **Northern Elevation Windows**

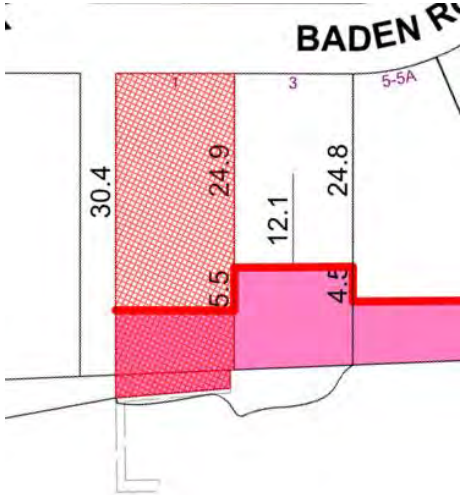
The proposed windows within the northern elevation of the fifth level study and hallway would not have any material impact to the privacy of the surrounding properties, including No. 200 Kurraba Road, as the windows would overlook the street and there is sufficient building separation of over 15m between the dwellings.

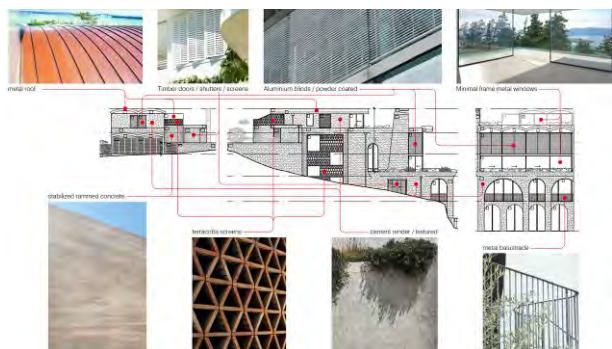
#### **Third Level Terrace**

The proposed elevated rear terrace which is accessed from a primary living area. The trafficable area is set back 3m from the eastern side boundary and includes a landscaped planter to reduce views down to the private open space area of the adjoining property.

		 <p><b>Figure 35. Site photo from existing balcony to the private open space of No. 3 Baden Road.</b></p> <p>Although the foreshore area remains open between the foreshore properties it is recommend that a privacy screen be installed to prevent overlooking back towards the adjoining dwelling. <i>Refer to Condition C25 (e).</i></p> <p><b>Fifth Level Terrace</b></p> <p>The proposed balcony accessed from the fifth level parents retreat is assessed below against Provision 8 in Section 1.3.10 of Part B in NSDCP 2013 regarding roof terraces. The proposed terrace is 38sqm and exceeds the maximum permitted area of 18sqm. The terrace is setback from the side boundary and incorporates landscaping within the non-trafficable area to prevent overlooking to the adjoining property to the east (No. 3 Baden Road). Condition C25(a) is recommended requiring the depth of the terrace to be reduced to 3m to limit the use of the terrace to comply with the provision and minimise any acoustic impact. The amended terrace would measure 3m <i>depth</i> x 6m <i>wide</i>, equating to 18sqm of trafficable area.</p> <p><b>Western Side</b></p> <p>No objection is raised to any overlooking to the adjoining public reserve. The proposed dwelling is in part screened by the existing area of bushland adjoining the western boundary of the subject site.</p>
<b>1.4 Quality Built Form</b>		
<b>Context</b>	Yes	The proposed development has regard to the constraints of the site having regard to the foreshore location, steep topography, availability of views and existing building form. The massing of the building has been shifted up the slope towards the north and does not exceed the maximum height of the existing dwelling to ensure that views from surrounding properties are reasonably maintained, and in part are improved through the increased side setbacks in comparison to the existing building form. Significant excavation is proposed to increase the floor space of the dwelling without increasing the bulk and scale of the dwelling on the foreshore albeit defining the lower levels when viewed from the harbor.
<b>Streetscape</b>	Yes	The proposed development would not impact any streetscape elements.
<b>Siting</b>	Yes	The proposed development is sited within a compliant footprint having regard to the foreshore building line, applicable setbacks and topography of the site. The proposed dwelling steps down towards the foreshore to address the steep topography of the site.

<p><b>Front Setback</b></p>	<p>Yes</p>	<p>The proposed development has a front setback of between 5.2-7m. The surrounding development along Baden Road is generally built towards the front boundary.</p> <p>The proposed setback would ensure that the form, massing and scale of the dwelling is not visually imposing when viewed from the street and provides an opportunity for a landscaped front garden area on the western side where the dwelling entry is located.</p>
<p><b>Setbacks</b></p>	<p>No, however acceptable</p>	<p><b>Western Side Setback</b></p> <p>The proposed dwelling is setback 1.2m from the western side boundary, in part the western wall of the double height living area on the third level does not comply with the minimum 1.5 and 2.5m setback requirements where the wall exceeds 4m and 7m in height above existing ground level respectively, however the site adjoins the reserve and is screened by the existing area of bushland. This setback is also increased, and the massing of the building is reduced in comparison to the existing built form and is therefore considered acceptable given the absence of any environmental or amenity impacts to the reserve.</p> <p><b>Eastern Side Setback</b></p> <p>The proposed dwelling is setback 1.5m from the eastern side boundary. The setback complies with the relevant requirements except for a small portion of the fifth level western wall at the southern end which does not meet the minimum 2.5m setback where the external wall height in exceeds 7m. The setback has been increased and the massing towards the rear reduced.</p> <p>The fifth level would result in some additional overshadowing to the adjoining property to the east (No. 3 Baden Road) although would be cast over the roof of the adjoining property. Additionally, some improvement is also made where the massing has been shifted up the slope towards the north in comparison to the existing built form.</p> <p>The proposed setback also provides a view corridor within the eastern side setback which currently does not exist.</p>
<p><b>Rear Setback</b></p>	<p>Yes</p>	<p>The proposed rear building line complies with the Foreshore Building Line and has been shifted towards the north (street) to increase the set back to the waters edge. This is particularly evident on the third and fourth level as demonstrated in <i>figure *</i> below.</p>  <p><b>Figure 36. Proposed rear building line compared to existing dashed red.</b></p>

		<p>The proposed development would still extend beyond the rear building line of the adjoining property to the east (No. 3 Baden Road), however, it is noted that this is reflective of the mapped Foreshore Building Line which is further towards the north for No. 3 Baden Road.</p>  <p><b>Figure 37. Extract from NSLEP 2013 Foreshore Building Line Map</b></p> <p>Nethertheless, the proposed rear building line, particularly for the upper levels would have an improved outcome for the adjoining property by decreasing the visual impact of the building and associated amenity impacts with regard to views and solar access.</p>
<p><b>Front fences</b></p>	<p>Yes</p>	<p>The proposed front fence is constructed of masonry and has a maximum height of between 0.9-1.5m accounting for the slope of Baden Road. The height of the proposed fencing would allow for views from the public domain of the dwelling, particularly the dwelling entry, and a slot view through the western side setback to the water. The proposed fencing balances the safety and security of the dwelling with the visual impact of the fencing and is considered acceptable.</p>
<p><b>Form, massing &amp; scale</b></p>	<p>Acceptable</p>	<p>The massing of the proposed dwelling has been shifted up the site towards the road in comparison to the existing dwelling. The massing over the rock shelf has been reduced and as a result the dwelling largely complies with the maximum permitted building height as the massing has been stepped down the slope to reflect the fall of the land. The removal of the existing carport would also reduce the massing at the Baden Road frontage. The proposed fifth level is sited between the existing cross ridgeline of the dwelling and the carport structure.</p> <p>The dwelling would appear as part four and five storeys when viewed from the water, however, this is indicative of the fall of the land. The upper levels (third and fourth levels) have been partly set back and the upper most level (fifth level) significantly set back to avoid the dwelling appearing overly vertical or bulky at the foreshore edge.</p> <p>The proposed development is further articulated by the inclusion of the more solid base with the asymmetrical arches (first and second levels) and lighter upper levels (third and fourth levels) with more significant glazing and lightweight external screening. The upper most level (fifth level) has a significantly smaller footprint in comparison to the storey below.</p>
<p><b>Built form character</b></p>	<p>Yes</p>	<p>The built form character of the dwelling is reflective of the wholistic architectural approach with various elements carried through the proposed development. The palette of materials is complementary of one another having regard to the various chosen textures and tones.</p> <p>The side elevations of the proposed dwelling include well proportioned windows with external timber shutters to add detail.</p>

		<p>A change of wall material at the upper most levels provide articulation and minimise the scale of the upper most level which has a smaller footprint than the storey below.</p> <p>The front elevation includes various architectural elements of interest including the proposed stairwell, recessed garage doors, roof awning and well proportioned fenestration and detailing so as to create a relationship with the street and the surrounding development.</p>
<b>Dwelling entry</b>	Yes	<p>The proposed dwelling entry is located within the front elevation of the building to provide a street address. The entryway would be visible from the public domain to provide passive surveillance to and from the dwelling.</p>
<b>Roofs</b>	Yes	<p>The proposed development includes a mixture of flat roofs and shallow curved roofs. The shallow curved roof profile assists in retaining views over the subject site. The curved roofs are continued throughout the development as projecting awnings. No objection is raised to the roof form in this context.</p> <p>The proposed solar panels have been relocated from the originally proposed location on the fifth level double curved roof form to the roof over the fourth level which would minimise the visual clutter that would otherwise have been highly visible from No. 200 Kurraba Road which overlooks the subject site.</p>
<b>Colours and materials</b>	Yes	<p>The Kurraba Point South Neighbourhood character statement does not specify a palette of materials and finishes. The proposed materials and finishes are considered to be of a high quality and would not detract from the scenic quality of the Harbour. The tones are generally muted blend into the landscape.</p>  <p style="text-align: center;"><b>Figure 38. Schedule of Materials and Finishes</b></p>

**1.5 Quality urban environment**

<b>Safety and security</b>	Yes	<p>The proposed dwelling would provide reasonable levels of safety and security within the residential environment.</p>																
<b>Car parking rates</b> Table B-10.1 – Residential Parking Rates Max 2 / dwelling containing 3+ bedrooms	Yes	<p>The proposed development contains a double garage for two vehicles and therefore complies with the maximum parking rates for dwelling houses in Section 10.2 of Part B in NSDCP 2013.</p>																
<b>Location of car parking and Vehicle Access</b>	Yes	<p>The proposed garage is integrated within the building design and is set back 5.2m from the front boundary. The width of the garage door has been limited to 5.6m and recessed behind the opening to ensure that the parking does not visually dominate the streetscape.</p>																
<b>Site Coverage</b>	No, however acceptable	<p>The site has an area of 624.1sqm. The proposed site coverage, unbuilt upon area and landscaped area is assessed in the table below having regard to the relevant provisions for dwelling houses in section 1.5.5-6 of Part B in NSDCP 2013.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Control</th> <th>Existing</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Site Coverage = 40%</td> <td>442sqm 71%</td> <td>323sqm 52%</td> <td>No</td> </tr> <tr> <td>Unbuilt Upon Area = 20%</td> <td>72sqm 12%</td> <td>52sqm 8%</td> <td>Yes</td> </tr> <tr> <td>Landscaped Area = 40%</td> <td>80sqm 12.9%</td> <td>249sqm 40%</td> <td>Yes</td> </tr> </tbody> </table>	Control	Existing	Proposed	Compliance	Site Coverage = 40%	442sqm 71%	323sqm 52%	No	Unbuilt Upon Area = 20%	72sqm 12%	52sqm 8%	Yes	Landscaped Area = 40%	80sqm 12.9%	249sqm 40%	Yes
Control	Existing		Proposed	Compliance														
Site Coverage = 40%	442sqm 71%	323sqm 52%	No															
Unbuilt Upon Area = 20%	72sqm 12%	52sqm 8%	Yes															
Landscaped Area = 40%	80sqm 12.9%	249sqm 40%	Yes															
<b>Unbuilt Area and Landscaped Area</b>	Yes																	

		<p>The proposed development exceeds the maximum permitted site coverage by 12%, however, is considered to improve the existing site circumstances by 19%. The proposed site coverage would also be consistent with the adjoining property at No. 3 Baden Road.</p> <p>The proposed site coverage is considered acceptable in the site circumstances given the significant improvement made in comparison to the existing building and increased setbacks including the front setback and foreshore setback. It is also noted that the development also complies with the relevant setbacks including the Foreshore Building Line and achieves compliance with the landscaped area provision where the existing site was devoid of landscaping.</p> <p>The proposed site coverage, despite the variation, is considered to meet the objectives of the site coverage provision in the context of the subject site as the proposed development:</p> <ul style="list-style-type: none"> <li>• Does not exceed the maximum capacity of the site as the relevant setback requirements are reasonably met and the building envelope considered potential seeks to reduce potential amenity impacts.</li> <li>• Is consistent with the existing and surrounding characteristic development given site coverage of surrounding development along the foreshore also exceeds the site current site coverage provision.</li> <li>• Does not increase the density of development on the site.</li> <li>• Complies with the landscaped area provision.</li> </ul>																
<b>Front gardens</b>	Yes	The existing front setback area is dominated by the carport and dwelling entry. The proposed dwelling is set back between 5.2-7m from the front boundary and incorporates a front garden area on the western side and includes landscaping along the eastern side of the driveway.																
<b>Swimming pools</b>	Yes	<p>The proposed swimming pool is located wholly within the existing swimming pool footprint and has been reduced in size to provide additional landscaping within the rear setback area. The proposed swimming pool is assessed against the provision in Section 1.5.10 of Part B in NSDCP 2013.</p> <table border="1"> <thead> <tr> <th></th> <th>Control</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td><b>Boundary Setback</b></td> <td>1.2m</td> <td>1.2m*</td> <td>Yes</td> </tr> <tr> <td><b>Dwelling Setback</b></td> <td>6m</td> <td>8.7m</td> <td>Yes</td> </tr> <tr> <td><b>Pool Coping Level</b></td> <td>500mm</td> <td>0mm</td> <td>Yes</td> </tr> </tbody> </table> <p>*The boundary setback is assessed to the boundary of the adjoining property at No. 3 Baden Road noting the subject site extends beyond the southern boundary of the adjoining property.</p>		Control	Proposed	Compliance	<b>Boundary Setback</b>	1.2m	1.2m*	Yes	<b>Dwelling Setback</b>	6m	8.7m	Yes	<b>Pool Coping Level</b>	500mm	0mm	Yes
	Control	Proposed	Compliance															
<b>Boundary Setback</b>	1.2m	1.2m*	Yes															
<b>Dwelling Setback</b>	6m	8.7m	Yes															
<b>Pool Coping Level</b>	500mm	0mm	Yes															
<b>Garbage storage</b>	Yes	A bin storage room is incorporated within the garage and would ensure that the bins are stored out of view from the public domain.																
<b>1.6 Efficient use of resources</b>																		
<b>BASIX</b>	Yes	A valid BASIX certificate has been provided to satisfy the SEPP.																

### Character Statement – Part C

The subject site is located within the Kurraba Point South Neighbourhood of the Cremorne South Planning Area.

## Section 6.1.2 Desired Future Character

### Diversity

**P1** *Primarily medium to high density residential accommodation, generally comprising attached dwellings, multi dwelling housing and residential flat buildings according to zone.*

The proposed development is a dwelling house although it is noted that dwelling houses are a permitted use in the zone.

## 6.1.3 Desired Built Form

### Siting

**P1** *Buildings address both the street, as well as the foreshore.*

The proposed dwelling establishes a front garden area and has a dwelling entry on the western side which would be visible from the street. Windows have also been included at the first floor level above the street to address the public domain.

**P3** *Sites should provide front setbacks to allow for soft landscaping.*

A portion of the front setback area has been dedicated to soft landscaping to provide a landscaped setting for the dwelling.

### Colours and materials

**P4** *Development adjoining foreshore or bushland areas (such as at Wonga Road) use muted colours and non-reflective materials, such as brick and timber to ensure the scenic and environmental qualities are enhanced.*

The proposed development utilised rammed earth and cement render which are considered to be muted and reflective of the natural elements. The proposed roofing would also patina in time to leave a muted finish. Timber window shutters and terracotta external screening have also been incorporated into the design of the dwelling to partially screen the glazing. It is noted there is significant sections of glazing towards the rear although efforts have been made to screen the glazing and provide some articulation or framing such as the archers or roof awning so that the glazing does not dominate the elevation.

## Section 7.12 Infrastructure Contributions

Under Council's Infrastructure Contributions Plan implemented on 1 March 2021 the proposed development would be subject to a contribution pursuant to section 7.12 of the Act. The contribution is based on the cost of works which was nominated as **\$5.45 million**. The total contribution payable is **\$54,500** and is required to be paid prior to the issue of the any Construction Certificate (*See condition C28*).



ENVIRONMENTAL APPRAISAL	CONSIDERED
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	N/A
5. Traffic generation and Carparking provision	Yes
6. Loading and Servicing facilities	N/A
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	Yes
9. All relevant s4.15(1) considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

### SUBMITTERS CONCERNS

The development application was notified in accordance with Council's Community Engagement Protocol from 21 May 2021 until 18 June 2021. Ten submissions were received. The amended application was notified in accordance with Council's Community Engagement Protocol from 8 October 2021 until 22 October 2021. A further three submissions were received.

The issues raised in all the submissions are addressed below:

- ***The architecture firm of the original architect, Andre Porebski, provided no objection to the proposed development, however, suggested that an archival recording be prepared noting the heritage significance of the dwelling being one of the best early examples of the Sydney Modernism.***

Given that the subject site is not identified as a heritage item it would be onerous to require an archival recording to be prepared. It is noted that the building had been extensively altered and the original detailing lost. Photographic records exist which provide a record of the dwelling shortly after completion and these address this concern.

- ***A Construction Traffic Management Plan should be implemented because of the difficult site access and cumulative impact of surrounding development. The plan should also address parking for construction workers.***

Council's Development Engineer has recommended that a Construction Traffic Management Plan be prepared to the satisfaction of Council and be implemented during construction. The plan would address issues including spoil removal, delivery of materials and equipment to the site, and construction worker parking.

- ***The additional level above the garage would result in additional bulk and massing when viewed from Baden Road and the adjoining property to the north (No. 200 Kurraba Road).***

The proposed development increases the front setback of the building to a minimum of 5.2m. The massing of the fifth level is largely located between the cross ridgeline of the existing dwelling and carport roof form which is evident on the eastern elevation drawing and would not significantly increase the bulk and massing of the building when viewed from the north.

- ***The proposed fifth level windows facing the street would overlook the adjoining property to the north (No. 200 Kurraba Road).***

These windows are for a study and hallway on the fifth level. There is a minimum of 15m building separation between the proposed windows and the adjoining property to the north. The proposed windows would provide passive surveillance over the road and would not materially impact the privacy of the adjoining property.

- ***The design of the dwelling is incompatible with the heritage and character of the area.***

The design of the dwelling is considered acceptable having regard to the mix of development within the Kurraba Point South Neighbourhood and particularly its foreshore location.

- ***The proposed excavation may cause subsistence and damage to the road or surrounding properties. Dilapidation reports should be prepared for surrounding properties.***

Council's Development Engineer has recommended conditions relating to excavation which would also include a requirement to prepare dilapidation reports for surrounding properties within the zone of influence.

- ***Concern the proposed roof material and solar panels would cause glare and have an adverse visual impact to surrounding properties.***

The proposed roof material is copper and over time would patina in the foreshore environment. The finish is unlikely to result in glare to No. 200 Kurraba Road which overlooks the site as the subject site is located to the south.

The proposed solar panels have been relocated from the originally proposed location on the fifth level roof to the roof over the fourth level. This would keep the upper most double curved roof form free from clutter which is desirable given that it is highly visible from No. 200 Kurraba Road and would minimise the visual impact of the solar panels.

- ***The height of the building should be limited to single storey above the road level as was agreed for the 2001 application for No. 3 Baden Road.***

The application has been assessed having regard to the current development controls. The height and massing of the building is largely based on the existing building envelope and would likely decrease amenity impacts in comparison to the existing building.

- ***The height of the building appears to exceed the maximum permitted building height of 8.5m.***

The proposed development was found to result in a minor variation to the height of building development standard at the southern leading edge of the fifth level and the roof awning at the rear on the fourth level. It is noted that the height of building is measured from existing ground level and not from the proposed excavated level. The variation to the building height control has little material impact on views and outlook.

- ***The Clause 4.6 variation should not be supported. The written statement has not adequately addressed the objective regarding the views of the height of building development standard.***

The written request made pursuant to Clause 4.6 in NSELP 2013 was found to be worthy of support as it has addressed the required matters. The extent of the variation is minor in the context and would not result in additional impacts as compared to the existing building.

- ***The curved roof forms over the fifth level would exceed the height of the cross ridgeline of the existing dwelling.***

The application was amended to reduce the maximum height of the building by 300mm to align the curved roof elements approximately with the cross ridgeline of the existing building.

- ***The front setback of the building has been reduced in comparison to the existing dwelling.***

The proposed dwelling includes a front setback of between 5.2-7m whilst removing the existing large carport to provide an open front setback area and front garden.

- ***Concern the excavation and construction would result in air and noise pollution. Noise and vibration monitoring should be installed to monitor impacts during construction.***

Various conditions of consent are recommended to ensure that construction impacts are minimised.

- ***The bulk and scale of the building would impact views from surrounding properties.***

A detailed views sharing assessment has been provided in response to the relevant objective of the height of building development standard and the view sharing provisions in the DCP. It was found that views would generally be improved in comparison to the existing views available.

- ***Any crane should not have any signage or lights installed.***

This would be a requirement of any permit issued for a crane.

- ***The proposed materials are incompatible with the foreshore location.***

The palette of materials and finishes is considered to be of a high quality and are appropriate having regard to the foreshore location.

- ***Suggestion the fifth level massing should be shifted further towards the water to minimise the impact on the streetscape and preserve views.***

It is considered that the view reference in the submission is retained by the proposal regardless, however, the suggestion is also not supported as it would result in increased view impacts for numerous properties by shifting the southern leading edge of the fifth level roof form towards the Harbour and increasing the overall building height above existing ground level in a non-complying form.

- ***The view loss assessment has not adequately considered or model the potential view loss from all potentially affected units. The view loss assessment would lead the assessing officer to be misled. Height poles should be erected.***

The view sharing assessment and supplementary assessments submitted by the applicant are unlikely to be able to model all potential viewpoints. The existing building form provides a reasonable point of comparison to assess the potential view loss in the absence of height poles. The Assessing Officer undertook a site inspection of all of the apartments that the submission referenced to gain a complete understanding of the potential impacts.

- ***With regard to the view sharing planning principle established in Tenacity Consulting v Warringah [2004] NSWLEC 140 the potential impact is “devastating”.***

A complete assessment is undertaken throughout this report in response to both the height of buildings development standard variation and DCP provisions regarding views sharing. Utilising the methodology established in Tenacity, the assessment revealed that any view loss would be minor and is considered negligible in the circumstances, noting that at some points views are also improved.

## **SITE SUITABILITY**

The subject site is considered suitable for the proposed development as the proposed development would replace the existing dwelling and has been designed to having regard to the foreshore setting.

## **HOW THE COMMUNITY VIEWS WERE TAKEN INTO CONSIDERATION**

The application was notified in accordance with Council Community Engagement Protocol from 21 May 2021 until 18 June 2021 and from 8 October 2021 until 22 October 2021. Amended plans which marginally reduce the height of the building and were accompanied by

further documentation submitted to Council in response to the view loss concerns raised by objectors. The application is to be referred to the North Sydney Local Planning Panel for a Public Determination Meeting given the number of submissions received.

## **CONCLUSION + REASONS**

The matters for consideration as outlined in section 4.15(1) of the Act have been satisfied. The proposed development is permissible, meets the relevant provisions of NSLEP 2013, with the exception of the non-compliance with the permissible height limit that is supported by a written request to vary the development standard pursuant to clause 4.6 in NSLEP 2013. The proposed development is generally in accordance with the objectives of the NSDCP 2013.

The submitted written request to vary the height of building development standard pursuant to clause 4.6 in NSLEP 2013 is considered worthy of support as it satisfactorily demonstrates that strict compliance with the development standard is unreasonable and unnecessary in the circumstance as the proposed development is consistent with the objectives of the standard and that there are sufficient environmental planning grounds to justify the variation. The variation will be in the public interest because it is consistent with the objectives of the standard and objectives of the zone.

The proposed development has regard to the existing ground and floor levels on the site and the assumed existing ground levels under the existing building where the subfloor is not accessible. The variations are minor in the context and relate to the steep topography of the site. The overall height of the proposed development does not exceed the maximum RL of the existing building being the existing cross ridgeline in order to preserve existing views enjoyed by surrounding properties. The bulk and scale of the development has also in part been reduced in comparison to the existing dwelling as the massing has been shifted up the slope of the land towards the street in a complying form and is stepped down towards the foreshore and does not encroach the foreshore setback area.

The proposed development exceeds with the maximum permitted site coverage of 40% by 12%, however, is a significant reduction in comparison to the existing building and generally complies with and where appropriate improves the boundary and foreshore setbacks. The proposed development also achieves the minimum landscaped area.

The built form character is reflective of the architect's style and provides a cohesive building form that includes appropriate articulation of the buildings massing and scale and provides visual interest through the use of high quality material and finishes, and landscaping.

The proposed development would not adversely impact the environmental or scenic quality of Sydney Harbour and complies with the Foreshore Building Line that burdens the rear of the site. The form and scale of the dwelling is consistent with the surrounding foreshore development noting the R3 Medium Density zoning.

The proposed development would not materially impact the amenity of the surrounding properties and to a degree would improve access to views for some of the surrounding properties given the increased side setback in comparison to the existing building. More specifically, the proposed development would likely reduce the amenity impacts to the adjoining property to the east, subject to conditions relating to privacy, particularly with regard to the sharing of views and solar access.

On balance, the proposed development is considered to be reasonable and is recommended for approval, subject to the recommended conditions of consent.

## **RECOMMENDATION**

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

**THAT** the North Sydney Local Planning Panel, exercising the functions of Council, as the consent authority, assume the concurrence of the Secretary, Department of Planning, Industry and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 of NSLEP 2013 and grant consent to Development Application No. 122/2021 for demolition of all existing structures and construction of a part 4, part 5 storey dwelling house with an integrated garage, swimming and associated landscaping subject to the following site specific and attached standard conditions of consent:

### **Privacy**

C25 The following privacy measures are to be provided:

- A) The depth of the roof terrace located on the fifth level (Drawing DA09 as referenced in Condition A1) is to be limited in depth to 3m measured perpendicularly from the rear (southern) wall of the "Master Bedroom Retreat". The remaining area is to be specified as non-trafficable roof or landscaping.
- B) The opening aperture of the timber shutters of the "Butler's Pantry" W24, 23 and "Family Room" W22, W21, W20, W19 (Drawing DA07 as referenced in Condition A1) on the eastern elevation is to be limited to 350mm on the southern side and hung from the northern side.
- C) W25 in the south eastern corner of the eastern elevation on the third level (Drawing DA07 as referenced in Condition A1) is to have a privacy measure such as fixed obscure glazing or an external privacy screen installed to a minimum height of 1.5m above the internal finished floor level.
- D) W9 in the south eastern corner of the eastern elevation on the second level (Drawing DA06 as referenced in Condition A2) is to have a privacy measure such as obscure glazing or an external privacy screen installed to a minimum height of 1.5m above the internal finished floor level.

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure an adequate level of privacy is provided to adjoining property located at No. 3 Baden Road)

**Michael Stephens**  
**SENIOR ASSESSMENT OFFICER**

**Robyn Pearson**  
**TEAM LEADER (ASSESSMENTS)**

**Stephen Beattie**  
**MANAGER OF DEVELOPMENT SERVICES**

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**NORTH SYDNEY COUNCIL**  
**CONDITIONS OF DEVELOPMENT APPROVAL**  
**1 BADEN ROAD, KURRABA POINT**  
**DEVELOPMENT APPLICATION NO. 122/21**

**A. Conditions that Identify Approved Plans**

**Development in Accordance with Plans/Documentation**

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Plan No	Issue	Title	Dated	Prepared	Received
DA03	B	Site & Roof Plan	October 2021	Luigi Rosselli Architects	26 October 2021
DA05	A	Level 1 Plan	August 2021		27 September 2021
DA06	B	Level 2 Plan	October 2021		26 October 2021
DA07	B	Level 3 Plan	October 2021		26 October 2021
DA08	A	Level 4 Plan	August 2021		27 September 2021
DA09	A	Level 5 Plan	August 2021		27 September 2021
DA10	A	Southern Elevation	August 2021		27 September 2021
DA11	A	Western Elevation	August 2021		27 September 2021
DA12	A	North Elevation	August 2021		27 September 2021
DA13	B	Eastern Elevation	October 2021		26 October 2021
DA14	A	Section	August 2021		27 September 2021
DA14A	C	Sections	October 2021		26 October 2021
DA14B	A	Swimming Pool Elevations & Sections	May 2021		8 June 2021
1,2 & 3 of 3	-	Landscaped Plans	20 April 2021		Bates Landscaping

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

**Plans on Site**

- A2. A copy of all stamped approved plans, specifications and documents (including the plans, specifications and documents submitted and approved with the Construction Certificate) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the certifying authority upon their request.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information and to ensure ongoing compliance)



**1 BADEN ROAD, KURRABA POINT  
DEVELOPMENT APPLICATION NO. 122/21**

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**No Demolition of Extra Fabric**

- A3. Alterations to, and demolition of the existing building shall be limited to that documented on the approved plans.

(Reason: To ensure compliance with the approved development)

**External Finishes and Materials**

- A4. External finishes and materials must be in accordance with DA24 Schedule of External Finishes, prepared by Luigi Rosselli, dated March 2021, received by Council on 4 May 2021, unless otherwise modified by Council in writing.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

**B. *Matters to be Completed before the lodgement of an Application for a Construction Certificate*****Construction Management Program - Local Traffic Committee Approval**

- B1. A Construction Management Program prepared by a suitably qualified and experienced traffic consultant must be submitted for consideration by the North Sydney Traffic Committee and approved in writing by North Sydney Council's Traffic Division PRIOR TO THE ISSUE OF ANY Construction Certificate. Any use of Council property will require appropriate approvals prior to any work commencing. At a minimum, the Construction Management Program must specifically address the following matters:

- a) A plan view (min 1:100 scale) of the entire site and frontage roadways indicating:
  - i. Dedicated temporary construction site driveway entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways and footways;
  - ii. The proposed signage for pedestrian management to comply with the relevant Australian Standards, including pram ramps;
  - iii. Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
  - iv. The locations of any proposed Work Zones in the frontage roadways (to be approved by Council's Traffic Committee);
  - v. Locations of hoardings proposed;
  - vi. Location of any proposed crane standing areas;
  - vii. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;

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- viii. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected; and
  - ix. The provision of an on-site parking area for employees, tradesperson and construction vehicles as far as possible.
- 
- b) A detailed heavy vehicle access route map through the Council area to Arterial Roads. Provision is to be made to ensure through traffic is maintained at all times.
  - c) The proposed phases of works on the site, and the expected duration of each phase.
  - d) How access to neighbouring properties will be maintained at all times and the proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of process.
  - e) The road is not to be used as a waiting area for trucks delivering to or awaiting pick up of materials.
  - f) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising structural engineer and must not involve any permanent or temporary encroachment onto Council's property.
  - g) Proposed protection for Council and adjoining properties. Details are to include site fencing and the provision of "B" class hoardings over footpaths and laneways.
  - h) A Waste Management Plan. The Waste Management Plan must include, but not be limited to, the estimated volume of waste and method of disposal for the construction and operation phases of the development, design of on-site waste storage and recycling area and administrative arrangements for waste and recycling management during the construction process.

All traffic control work and excavation, demolition and construction activities must be undertaken in accordance with the approved Construction Management Program and any conditions attached to the approved Program. A certificate of compliance with this condition must be obtained from Council's development engineers. The certificate and the approved Construction Management Program must be submitted as part of the documentation lodged with the application for approval of a construction certificate. A copy of the approved Construction Management Program and any conditions imposed on that Program, must be kept on the site at all times and made available to any officer of Council upon request.

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**Notes:**

- 1) North Sydney Council's adopted fee for certification of compliance with this condition shall be payable on lodgement, or in any event, prior to the issue of the relevant approval.
- 2) Any use of Council property will require appropriate approvals and demonstration of liability insurances prior to such work commencing.
- 3) Failure to provide complete and detailed information may result in delays. It is recommended that your Construction Management Plan be lodged with Council as early as possible, as **a minimum six (6) weeks' assessment period** is required, including referral to the Traffic Committee.
- 4) Dependent on the circumstances of the site, Council may request additional information to that detailed above.

(Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the demolition process in a manner that respects adjoining owner's property rights and residential amenity in the locality, without unreasonable inconvenience to the community)

**C. *Prior to the Issue of a Construction Certificate (and ongoing, where indicated)*****Soil Contamination**

- C1. A detailed (Stage 2) Site investigation is to be carried out by a suitably qualified environmental consultant. The assessment shall include characterisation of soil and groundwater with respect to contaminants of concern.

A site investigation plan is to be developed in accordance with NSW EPA (1995) Sampling Design Guidelines. The assessment shall address the contaminants of concern identified in the Preliminary Site Investigation prepared by Edwards Blasche Group Pty Ltd (EBG), dated March 2021. Results of the site soil testing shall be assessed against site acceptance criteria developed with reference to Assessment of Site Contamination – National Environmental Protection Measure (1999 amended 2013).

In the event contaminated soil is identified at the site through the soil testing process or otherwise, an Environmental Management Plan /Remedial Action Plan shall be drawn up by a suitably qualified person/environmental consultant detailing the process for excavation, storage and handling, classification, disposal, or reuse of disturbed soils on site.

Any soils found to contain contaminants of concern must be classified for disposal purposes, appropriately stored, and properly disposed of to a facility licensed to receive that category of waste.

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The site will be required to be adequately remediated and validated as being fit for its intended use by a suitably experienced environmental consultant. A notice of completion, including validation is to be provided to Council following removal of any contaminated soils.

A Validation report is required to be completed following the completion of any remediation works. The report is to be provided to the Certifying Authority and Council.

(Reason: To ensure the land is suitable for its intended purpose)

**Hazardous Material Survey**

- C2. A report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination or other hazardous material contamination, if asbestos or other hazardous material contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- a) the removal of asbestos must be undertaken by a Safework NSW licensed contractor.
- b) all removal must be in strict accordance with the requirements of the Safework NSW Authority in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.
- c) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Certifying Authority as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the report, and other plans, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the long-term health of workers on site and occupants of the building is not put at risk unnecessarily)

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**Dilapidation Report Damage to Public Infrastructure**

- C3. A dilapidation survey and report (including photographic record) must be prepared by a suitably qualified consultant which details the pre-developed condition of the existing public infrastructure in the vicinity of the development site. Particular attention must be paid to accurately recording any pre-developed damaged areas so that Council is fully informed when assessing any damage to public infrastructure caused as a result of the development. A copy of the dilapidation survey and report is to be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The developer may be held liable for all damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded and demonstrated as pre-existing under the requirements of this condition.

The developer shall bear the cost of carrying out works to restore all public infrastructure damaged as a result of the carrying out of the development, and no occupation of the development shall occur until damage caused as a result of the carrying out of the development is rectified.

A copy of the dilapidation survey and report must be lodged with North Sydney Council by the Certifying Authority with submission of the Construction Certificate documentation.

(Reason: To record the condition of public infrastructure prior to the commencement of construction)

**Dilapidation Report Private Property (Excavation)**

- C4. A full dilapidation survey and report on the visible and structural condition of all neighbouring structures within the 'zone of influence' of the required excavations must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The zone of influence is to be defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.

The dilapidation report and survey are to be prepared by a consulting structural/geotechnical engineer agreed to by both the applicant and the owner of any affected adjoining property.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant MUST DEMONSTRATE, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

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Note: This documentation is for record keeping purposes only and may be used by the developer or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: To record the condition of property/i.e., prior to the commencement of construction)

**Shoring for Adjoining Property**

- C5. Where any shoring for excavation is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practising structural engineer, showing all details, including the extent of encroachment and the method of removal and de-stressing of shoring elements, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. A copy of this documentation must be provided to the Council for record purposes.

*Note: Approval of engineering drawings for shoring works to be located on adjoining property by the Certifying Authority does not authorise a trespass on private or public land. All relevant permissions/legal rights must be obtained to undertake any works on adjoining land.*

(Reason: To ensure the protection of existing public infrastructure and adjoining properties)

**Structural Adequacy of Adjoining Properties - Excavation Works**

- C6. A report prepared by an appropriately qualified and practising structural engineer detailing the structural adequacy of adjoining properties No. 3 Baden Road, which certifies their ability to withstand the proposed excavation and outlines any measures required to be implemented to ensure that no damage will occur to adjoining properties during the course of the works, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The measures outlined in the certified report must be complied with at all times.

(Reason: To ensure the protection and structural integrity of adjoining properties in close proximity during excavation works)

**Geotechnical Report**

- C7. Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report must be prepared which addresses at a minimum (but is not limited to) the following:



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- a) the type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0 m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum;
- b) the appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations must be discussed and mechanisms to ameliorate any such impacts recommended;
- c) the proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support must be provided within the subject site);
- d) the existing groundwater levels in relation to the basement structure, where influenced;
- e) the drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilised in controlling groundwater. Where it is considered there is the potential for the development to create a "dam" for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flow path is constructed, artificial drains such as perimeter drains and through drainage may be utilised; and
- f) recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages.

The geotechnical report must be prepared by an appropriately qualified consulting geotechnical/hydrogeological engineer with previous experience in such investigations and reporting.

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It is the responsibility of the consulting geotechnical/hydrological specialist to undertake the appropriate investigations, reporting and specialist recommendations to ensure a reasonable level of protection to adjacent property and structures both during and after construction. The report must contain site-specific geotechnical recommendations and shall specify the necessary hold/inspection points by relevant professionals as appropriate.

The design principles for the geotechnical report are as follows:

- a) no ground settlement or movement is to be induced which is sufficient enough to cause an adverse impact to adjoining property and/or infrastructure;
- b) no changes to the ground water level are to occur as a result of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- c) no changes to the ground water level are to occur during the construction of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- d) vibration is to be minimised or eliminated to ensure no adverse impact on the surrounding property and infrastructure occurs, as a result of the construction of the development;
- e) appropriate support and retention systems are to be recommended and suitable designs prepared to allow the proposed development to comply with these Design Principles; and
- f) an adverse impact can be assumed to be crack damage as identified within the relevant Australian Standard for determining such damage.

The report, satisfying the requirements of this condition, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The professional recommendations, implementation program, monitoring program, mitigation measures and the like contained in the report must be implemented in full during the relevant stages of excavation and construction.

(Reason: To ensure the structural integrity of the subject site and adjoining sites during the excavation process)

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**Sediment Control**

- C8. Where construction or excavation activity requires the disturbance of the soil surface or existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication *Managing Urban Stormwater: Soils and Construction* (4th edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

A Sediment Control Plan must be prepared and submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate and prior to any works commencing. The Sediment Control Plan must be consistent with the Blue Book and disclose:

- a) All details of drainage to protect and drain the site during the construction processes;
- b) All sediment control devices, barriers and the like;
- c) Sedimentation tanks, ponds or the like;
- d) Covering materials and methods; and
- e) A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.
- f) Methods for the temporary and controlled disposal of stormwater during construction.

All works must be undertaken in accordance with the approved Sediment Control plan.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

**Waste Management Plan**

- C9. A Waste Management Plan is to be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate. The plan must include, but not be limited to:
- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
  - b) The design of the on-site waste storage and recycling area; and

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- c) Administrative arrangements for waste and recycling management during the construction process.

The approved Waste Management Plan must be complied with at all times in the carrying out of the development.

(Reason: To encourage the minimisation of waste and recycling of building waste)

**Skylight(s)**

- C10. Skylight flashing(s) and frame(s) to be coloured to match the roof material. Skylight(s) to sit no higher than 100 mm above roof plane when in a closed position. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The Certifying Authority must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To minimise the visual impact of the skylight(s) on the roof plane)

**Roofing Materials - Reflectivity**

- C11. Roofing materials must be factory pre-finished with low glare and reflectivity properties to be compatible with the colours of neighbouring buildings. The selected roofing material must not cause a glare nuisance or excessive reflectivity to adjoining or nearby properties. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that excessive glare or reflectivity nuisance from roofing materials does not occur as a result of the development)

**Work Zone**

- C12. If a Work Zone is proposed, an application must be made to the North Sydney Local Traffic Committee to install the 'Work Zone'. A Work Zone permit is required to be issued by the Council prior to the issue of any Construction Certificate.

Work Zones are provided specifically for the set down and pick up of materials and not for the parking of private vehicles associated with the site. Work Zones will generally not be approved where there is sufficient space on-site for the setting down and picking up of goods being taken to or from a construction site. If the Work Zone is approved by the Committee, the Applicant must obtain a written copy of the related resolution from the North Sydney Local Traffic Committee and submit a copy of this to the Certifying Authority to enable issue of the Construction Certificate.

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Where approval of the 'Work Zone' is given by the Committee, the requirements of the Committee, including installation of the necessary 'Work Zone' signage and payment of any fees, must occur prior to commencement of any works on the site. Further, at the expiration of the Work Zone approval, the developer is required to remove the Work Zone signs and reinstate any previous signs, all at the developer's cost. The requirements imposed by the Committee on the Work Zone permit (or permits) must be complied with at all times.

(Reason: Amenity and convenience during construction)

**Foundations Adjacent to Drainage Easements**

C13. The foundations for building structures and walls adjacent to the drainage easement are to be constructed in such a manner that does not affect stormwater drainage lines. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate fully satisfy the requirements of this condition.

(Reason: To allow maintenance without affecting the building and to ensure there is no damage to public assets)

**Stormwater Management and Disposal Design Plan – Construction Issue**

C14. Prior to issue of the Construction Certificate, the applicant shall have a site drainage management plan prepared by a qualified drainage design engineer. The site drainage management plan must detail the following requirements of North Sydney Council:

- (a) Compliance with BCA drainage requirements, Councils Engineering Performance guide and current Australian Standards and guidelines, such as AS/NZ3500.3.2 1998, National Plumbing and Drainage Code.
- (b) Stormwater runoff and subsoil drainage generated by the approved dwellings must be conveyed in a controlled manner by gravity to the Bay waters.
- (c) All sub-soil seepage drainage shall be discharged via a suitable silt arrester pit. Details of all plans certified as being adequate for their intended purpose and compliant with the provisions of AS3500.3.2 by an appropriately qualified and practising civil engineer, shall be submitted with the application for a Construction Certificate.
- (d) The design and installation of the Rainwater Tanks shall comply with Basix and Sydney Water requirements. Overflow from tank shall be connected by gravity to the stormwater disposal system.
- (e) The foundations for building structures and walls adjacent to the drainage easement
- (f) are to be constructed in such a manner that does not affect stormwater drainage lines.



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Details demonstrating compliance are to be submitted with the Construction Certificate.

The Certifying Authority issuing the Construction Certificate must ensure that the approved drainage plan and specifications, satisfying the requirements of this condition, is referenced on and accompanies the Construction Certificate.

(Reason: To ensure controlled stormwater management and disposal without nuisance)

**Bond for Damage and Completion of Infrastructure Works - Stormwater, Kerb and Gutter, Footpaths, Vehicular Crossing and Road Pavement**

C15. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$12,000.00 to be held by Council for the payment of cost for any/all of the following:

- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent.
- c) remedying any defects in any such public work that arise within six months after the work is completed.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

The security will be refundable following the expiration of six months from the issue of any final Occupation Certificate or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's Engineers.

Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in circumstances including the following:

- where the damage constitutes a hazard in which case Council may make use of the security immediately;
- the applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works;

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- works in the public road associated with the development are to an unacceptable quality; and
- the Certifying Authority must ensure that security is provided to North Sydney Council prior to issue of any Construction Certificate.

(Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure)

**Tree Bond for Public Trees**

- C16. Prior to the issue of any construction certificate, security in the sum of \$55,000.00 must be provided to Council for the protection of trees in public places, including the making good of any damage caused to such trees. The security is to be provided in accordance with the Schedule below.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

The security will be refundable following the expiration of 6 months from the issue of any final Occupation Certificate but only upon inspection and release by Council's Landscape Development Officer.

If any tree is removed or damaged Council may deduct from this security the reasonable cost of replacement with a tree of the same species and to a similar stage of growth it would have attained at the completion of the work.

In the case of any tree, which cannot be replaced with a similar specimen, the security for that tree will be forfeited to Council and used to provide replacement street plantings.

**SCHEDULE**

<b>Tree Species</b>	<b>Location</b>	<b>Bond</b>
Ficus 'Hillii' (18m x 27m)	Council verge - Cnr Baden Rd & Kurraba Rd	\$15,000
Phoenix canariensis (16m x 10m)	Council verge Kurraba Rd, south of Baden Rd & Kurraba Rd intersection	\$10,000
T2 Melaleuca quinquenervia (12x10)	Council reserve adjacent to 1 Baden Rd	\$10,000
T3 Agonis flexuosa(16x10)	Council reserve adjacent to 1 Baden Rd	\$10,000
T4 Pinus pinea (26x20m)	Council reserve adjacent to 1 Baden Rd	\$10,000

(Reason: Protection of existing environment public infrastructure, community assets and significant trees)

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**Tree Protection Measures to be shown on Construction Drawings**

- C17. The tree protection measures contained in the arborist report prepared by Arboreport dated 6/10/20, and received by Council on 5 May 2021, shall be shown clearly on the Construction Certificate drawings. Plans and specifications showing the said tree protection measures must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure the construction plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that appropriate tree protection measures are shown on construction drawings)

**Protection of Trees**

- C18. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 - Protection of trees on development sites:

Tree	Location	Height
Ficus 'Hillii'	Council verge - Cnr Baden Rd & Kurraba Rd	18 x 27m
<i>Phoenix canariensis</i>	Council verge Kurraba Rd, south of Baden Rd & Kurraba Rd intersection	16 x 10m
T2 Melaleuca quinquenervia	Council reserve adjacent to 1 Baden Rd	12x10m
T3 <i>Agonis flexuosa</i>	Council reserve adjacent to 1 Baden Rd	16x10m
T4 <i>Pinus pinea</i>	Council reserve adjacent to 1 Baden Rd	26x20m
Existing Screen Planting	Western boundary of 3 Baden Rd	Various

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

**Approval for removal of Trees**

- C19. The following tree(s) are approved for removal in accordance with the development consent:

Tree	Location	Height
T1 <i>Celtis occidentalis</i>	Front setback 1 Baden Rd	9m

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Removal or pruning of any other tree on the site is not approved, excluding species exempt under Council's Tree Preservation Order.

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

**Asbestos Material Survey**

C20. A report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- e) the removal of asbestos must be undertaken by a WorkCover licensed contractor;
- f) all removal must be in strict accordance with the requirements of the WorkCover Authority in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.
- g) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- h) Waste disposal receipts must be provided to the Certifying Authority as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the report, and other plans, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the long-term health of workers on site and occupants of the building is not put at risk unnecessarily)

**Noise from Plant and Equipment**

C21. The use of all plant and equipment installed on the premises must not:

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- (a) Contribute an LAeq(15min) which will cause the total LAeq(15min) from all plant and equipment operating contemporaneously on the site or in the strata scheme or in the mixed strata schemes to exceed the RBL by more than 5dB when measured at the boundary of any affected receiver. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.
- (b) Cause “offensive noise” as defined in the *Protection of the Environment Operations Act 1997*.

“affected receiver” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship, commercial premises and parks and such other affected receiver as may be notified by the Council in writing.

“boundary” includes any window or elevated window of an affected receiver.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

**Vibration from Plant and Equipment**

- C22. The use of all plant and equipment to be installed on the premises must comply with the vibration limits specified in “Assessing Vibration: a technical guideline” issued by the NSW Environment Protection Authority, at the boundary of any affected receiver.

A certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants must be submitted to the Certifying Authority, certifying that all plant and equipment on the site, together with the proposed plant and equipment, operating contemporaneously will comply with the requirements of this condition.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

“affected receiver” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship and commercial premises and such other affected receiver as may be notified by the Council in writing.

“boundary” includes any window or elevated window of an affected residence.

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“contemporaneously” means *existing at or occurring in the same period of time* (Macquarie Dictionary 3rd rev. ed. 2004).

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

**Air Conditioners in Residential Premises**

C23. The use of any air conditioner installed on the premises must comply with the requirements of the Protection of the Environment Operations (Noise Control) Regulations 2008 and State Environmental Planning Policy (Infrastructure) 2007 and must not:

- (a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
  - (i) before 8.00 am and after 10.00 pm on any Saturday, Sunday or Public Holiday; or
  - (ii) before 7.00 am or after 10.00 pm on any other day
- (b) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy will be applied.

“affected residence” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

“boundary” includes any window or elevated window of an affected residence. Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To maintain residential amenity)

**Swimming Pool Pumps on Residential Premises**

C24. The Certifying Authority must be satisfied that the swimming pool pump to be installed on the premises must not:

- a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
  - (i) before 8.00 am and after 8.00 pm on any Sunday or Public Holiday; or
  - (ii) before 7.00 am or after 8.00 pm on any other day



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- (c) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.

“affected residence” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals .

“boundary” includes any window or elevated window of an affected residence.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

Details demonstrating compliance with the requirements of this condition must be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

(Reason: To maintain residential amenity)

**Privacy**

C25. The following privacy devices are to be provided:

- A) The depth of the roof terrace located on the fifth level (Drawing DA09 as referenced in Condition A1) is to be limited in depth to 3m measured perpendicularly from the rear (southern) wall of the “Master Bedroom Retreat”. The remaining area is to be specified as non-trafficable roof or landscaping.
- B) The opening aperture of the timber shutters of the “Butler’s Pantry” W24, 23 and “Family Room” W22, W21, W20, W19 (Drawing DA07 as referenced in Condition A1) on the eastern elevation is to be limited to 350mm on the southern side and hung from the northern side.
- C) W25 in the south eastern corner of the eastern elevation on the third level (Drawing DA07 as referenced in Condition A1) is to have a privacy measure such as fixed obscure glazing or an external privacy screen installed to a minimum height of 1.5m above the internal finished floor level.
- D) W9 in the south eastern corner of the eastern elevation on the second level (Drawing DA06 as referenced in Condition A2) is to have a privacy measure such as obscure glazing or an external privacy screen installed to a minimum height of 1.5m above the internal finished floor level.

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Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure an adequate level of privacy is provided to adjoining property located at No. 3 Baden Road)

**Pool Access**

C26. Access to the pool must be restricted by a child resistant barrier in accordance with the regulations prescribed in the Swimming Pools Act 1992, and the barrier is to conform to the requirements of the applicable Australian Standard. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the safety of children and make applicant aware of the need to comply with applicable pool fencing legislation)

**Swimming Pool Water to Sewer**

C27. The swimming pool, including overflow water, must be drained to the sewer. The consent of Sydney Water to dispose of wastewater must be obtained prior to the issue of any Construction Certificate. Plans and specifications complying with this condition and any conditions/requirements of Sydney Water must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully comply with this condition and any conditions/ requirements imposed by Sydney Water.

(Reason: Water from a swimming pool is classified as wastewater and cannot be legally disposed of into the stormwater system)

**Section 7.12 Contributions**

C28. A monetary contribution pursuant to the provisions of Section 7.12 of the Environmental Planning and Assessment Act 1979 is to be paid to Council, in accordance with the North Sydney Council's Contribution Plan, to provide for local infrastructure improvements.

Based on the cost of development at the date of determination, the total contribution payable to Council is **\$54,500.00**.

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**Indexation**

The monetary contribution required under this consent will be indexed at the time of payment in accordance with quarterly movements in the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

**Timing of Payment**

The contribution must be paid to Council prior to issue of any Construction Certificate for any work approved by this consent.

A copy of the North Sydney Contribution Plan can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au).

(Reason: To provide for local infrastructure identified in the North Sydney Council Local Contributions Plan 2020)

**Security Deposit/Guarantee Schedule**

- C29. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

<b>Security deposit/ guarantee</b>	<b>Amount (\$)</b>
Street Tree Bond (on Council Property)	\$55,000.00
Footpath Damage Bond	\$5,000.00
Drainage Damage Bond	\$7,000.00
<b>TOTAL BONDS</b>	<b>\$67,000.00</b>

Note: The following fees applicable

<b>Fees</b>	
Section 7.12 Infrastructure Contribution	\$54,500.00
<b>TOTAL FEES</b>	<b>\$54,500.00</b>

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

(Reason: Compliance with the development consent)

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**BASIX Certificate**

C30. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. 1177626S, dated 16 April 2021 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

**Amendments to the Landscape Plan**

C31. The landscape plan must be amended as follows to provide an appropriate landscaped setting:

- 1 x Angophora costata (100l) and 1 x additional Banksia serrata (75l) shall be planted in the lower level western garden bed within the rear setback of the subject site, the Banksia serrata already shown to be planted here shall be 75l pot size.

An amended landscape plan complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the amended landscape plan and other plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To ensure residential amenity)

**Non-trafficable roof**

C32. The roof and landscaped area surrounding the fifth Level (Drawing DA09 A as referenced in Condition A1) roof terrace, as amended by condition C25 a), is to be non-trafficable and is only to be accessed for maintenance purposes.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To maintain privacy to surrounding properties)

***D. Prior to the Commencement of any Works (and continuing where indicated)***

**Protection of Trees**

D1. The tree protection measures detailed in the Tree Protection and Management Plan, contained within the arborist report prepared by Arboreport dated 6/10/20 and as directed by the project arboriculturist shall be established before work commences.

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Sensitive construction techniques including pier & beam construction, flexible location of footings, and hand excavation as required, shall be carried out within the TPZ of any protected tree. No roots greater than 45mm shall be cut.

No access shall be permitted to the public reserve adjacent to 1 Baden Road for the purpose of any demolition, excavation or construction works. All such work shall be carried out from within the subject site itself.

(Reason: To ensure that the stability and ongoing viability of trees being retained are not compromised Tree protection measures)

**Protection of Public Trees**

D2. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites:

Tree	Location	Protection
<i>Ficus 'Hillii'</i> (18m x 27m)	Council verge- Cnr Baden Rd & Kurraba Rd	Trunk & branch protection
<i>Phoenix canariensis</i> (16m x 10m)	Council verge Kurraba Rd, south of Baden Rd & Kurraba Rd intersection	Trunk protection
T2 <i>Melaleuca quinquenervia</i> (12x10)	Council reserve adjacent to 1 Baden Rd	1.8m high steel mesh tree protection fencing erected to extent of TPZ. Branch protection
T3 <i>Agonis flexuosa</i> (16x10)	Council reserve adjacent to 1 Baden Rd	1.8m high steel mesh tree protection fencing erected to extent of TPZ. Branch protection
T4 <i>Pinus pinea</i> (26x20m)	Council reserve adjacent to 1 Baden Rd	1.8m high steel mesh tree protection fencing erected to extent of TPZ

Trunk protection to be installed by first wrapping the stem of the tree in hessian or like material then strapping timber battens over the top. It is recommended that timber battens with the dimensions of length 2000mm, width 75mm and depth 50mm are used. The battens are not to be directly screwed or nailed into the tree.

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Protection of existing environmental and community assets)

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**Temporary Fences and Tree Protection**

- D3. All protected trees on-site that are specifically nominated as per condition C14 *Protection of Trees* to be retained by notation on plans or by condition as a requirement of this consent must be tagged with luminous tape or the like for purposes of identification prior to demolition, excavation or construction works and must remain so for the duration of works on the site. No materials or builder's waste are to be stored in the vicinity of the nominated tree/trees at any time.

Appropriate fencing or barricades in accordance with AS4970-2009 (Protection of trees on development sites), not less than the distance shown in the schedule hereunder, must be installed to the satisfaction of the Certifying Authority prior to demolition or commencement of any works and must be maintained for the duration of the works: -

(Reason: To protect the trees to be retained on the site during construction works)

**Public Liability Insurance - Works on Public Land**

- D4. Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent. The Policy is to note and provide protection/full indemnification for North Sydney Council, as an interested party. A copy of the Policy must be submitted to Council prior to commencement of any works. The Policy must be valid for the entire period that the works are being undertaken.

Note: Applications for hoarding permits, vehicular crossings etc will require evidence of insurance upon lodgement of the application.

(Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land)

**Sydney Water Approvals**

- D5. Prior to the commencement of any works, the approved plans must be submitted to Sydney Water to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The Certifying Authority must ensure that Sydney Water has appropriately stamped the plans before the commencement of building works.



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Notes: **Sydney Water Building Plan Approvals** can be obtained from the Sydney Water Tap in™ online service. Building plans must be submitted to the Tap in™ to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met. For further information visit <http://www.sydneywater.com.au/tapin/index.htm> or call 13 000 TAP IN (1300 082 746) for further information.

(Reason: To ensure compliance with Sydney Water requirements)

**Asbestos Material Survey**

- D6. Prior to the commencement of any works, a report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- a) the removal of asbestos must be undertaken by a WorkCover licensed contractor;
- b) all removal must be in strict accordance with the requirements of the WorkCover Authority in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.
- c) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Certifying Authority as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the report, and other plans, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the long-term health of workers on site and occupants of the building is not put at risk unnecessarily)

**Commencement of Works' Notice**

- D7. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

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(Reason: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

***E. During Demolition and Building Work***

**Soil Contamination**

- E1. Soil to be excavated/disturbed during the development shall be tested for contamination for retention and/or disposal purposes.

In the event contaminated soil is identified at the site through the soil testing process or otherwise, an Environmental Management Plan /Remedial Action Plan shall be drawn up by a suitably qualified person/environmental consultant detailing the process for excavation, storage and handling, classification, disposal or reUse of disturbed soils on site.

Any soils found to contain contaminants of concern must be classified for disposal purposes, appropriately stored, and properly disposed of to a facility licensed to receive that category of waste.

Waste facility receipts must be submitted to the Certifying Authority.

The site will be required to be adequately remediated and validated as being fit for its intended use by a suitably experienced environmental consultant. A notice of completion, including validation is to be provided to Council following removal of any contaminated soils.

(Reason: To ensure the land is suitable for its intended purpose)

**Cigarette Butt Receptacle**

- E2. A cigarette butt receptacle is to be provided on the site for the duration of excavation/demolition/construction process, for convenient use of site workers.

(Reason: To ensure adequate provision is made for builders' waste)

**Parking Restrictions**

- E3. Existing public parking provisions in the vicinity of the site must be maintained at all times during works. The placement of any barriers, traffic cones, obstructions or other device in the road shoulder or kerbside lane is prohibited without the prior written consent of Council. Changes to existing public parking facilities/restrictions must be approved by the North Sydney Local Traffic Committee. The Developer will be held responsible for any breaches of this condition and will incur any fines associated with enforcement by Council regulatory officers.

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(Reason: To ensure that existing kerbside parking provisions are not compromised during works)

**Road Reserve Safety**

- E4. All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works, with no obstructions caused to the said footways and roadways. Construction materials and plant must not be stored in the road reserve without approval of Council. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site.

Where public infrastructure is damaged, repair works must be carried out in when and as directed by Council officers (at full Developer cost). Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742-3 (1996) "Traffic Control Devices for Work on Roads". **If pedestrian circulation is not satisfactorily maintained across the site frontage, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.**

(Reason: Public Safety)

**Temporary Disposal of Stormwater Runoff**

- E5. During construction, stormwater runoff must be disposed in a controlled manner that is compatible with the erosion and sediment controls on the site. Immediately upon completion of any impervious areas on the site (including roofs, driveways, paving) and where the final drainage system is incomplete, the necessary temporary drainage systems must be installed to reasonably manage and control runoff as far as the approved point of stormwater discharge. Such ongoing measures must be to the satisfaction of the Certifying Authority.

(Reason: Stormwater control during construction)

**Geotechnical Stability during Works**

- E6. A contractor with specialist excavation experience must undertake the excavations for the development and a suitably qualified and consulting geotechnical engineer must oversee the excavation procedure.

Geotechnical aspects of the development work, namely appropriate excavation method and vibration control, support and retention of excavated faces, and hydrogeological considerations must be undertaken in accordance with the recommendations of the Geotechnical Engineer and all subsequent geotechnical inspections carried out during the excavation and construction phase.

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Approval must be obtained from all affected property owners, including North Sydney Council where rock anchors (both temporary and permanent) are proposed below adjacent private or public property.

(Reason: Ensure appropriate professional are engaged at appropriate stages during construction)

**Progress Survey**

E7. In order to ensure compliance with approved plans, a Survey Certificate, to Australian Height Datum, must be prepared by a Registered Surveyor as follows:

- a) at the completion of the first structural floor level indicating the level of that floor and the relationship of the building to the boundaries;
- b) at the completed height of the building, prior to the placement of concrete inform work, or the laying of roofing materials; and
- c) at completion, the relationship of the building, and any projections thereto, to the boundaries.

Progress certifications in response to points (a) through (c) must be provided to the Certifying Authority for approval at the time of carrying out relevant progress inspections. In the event that such survey information is not provided or reveals discrepancies between the approved plans and the proposed works, all works, save for works necessary to bring the development into compliance with the approved plans, must cease. Works may only continue upon notification by the Certifying Authority to the Applicant that survey information (included updated survey information following the carrying out of works to comply with the approved plans) complies with this condition.

(Reason: To ensure compliance with approved plans)

**Removal of Extra Fabric**

E8. Should any portion of the existing building, trees, or curtilage of the site which is indicated on the approved plans to be retained be damaged for whatever reason, all the works in the area of the damaged portion are to cease and written notification of the damage is to be given to Council forthwith. No work is to resume until the written approval of Council to do so is obtained. Failure to comply with the provisions of this condition may result in the Council taking further action including legal proceedings if necessary.

(Reason: To ensure compliance with the terms of this development consent)

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**Dust Emission and Air Quality**

E9. The following must be complied with at all times:

- (a) Materials must not be burnt on the site.
- (b) Vehicles entering and leaving the site with soil or fill material must be covered.
- (c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction.
- (d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

**Noise and Vibration**

E10. The works must be undertaken in accordance with the "Interim Construction Noise Guideline" published by the NSW Environment Protection Authority, to ensure excessive levels of noise and vibration do not occur so as to minimise adverse effects experienced on any adjoining land.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

**No Work on Public Open Space**

E11. No work can be undertaken within adjoining public lands (i.e., Parks, Reserves, Roads etc) without the prior written consent of Council. In this regard the developer is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

(Reason: Protection of existing public infrastructure and land and to ensure public safety and proper management of public land)

**Applicant's Cost of Work on Council Property**

E12. The applicant must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

(Reason: To ensure the proper management of public land and funds)

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**No Removal of Trees on Public Property**

- E13. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

(Reason: Protection of existing environmental infrastructure and community assets)

**Protection of Trees**

- E14. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009. All recommendations contained within the tree report prepared by Arboreport dated 6/10/20 must be implemented for the duration of the works.

In the event that any tree required to be retained is damaged during works on the site, notice of the damage must be given to Council forthwith.

Notes:

- a. If the nominated tree is damaged to a significant degree or removed from the site without prior written approval being obtained from Council, the issuing of fines or legal proceedings may be commenced for failure to comply with the conditions of this consent.
- b. An application to modify this consent pursuant to Section 7.11 of the Environmental Planning and Assessment Act 1979 will be required to address the non-compliance with any of the conditions of consent relating to the retention of nominated trees, and Council may require tree replenishment.

(Reason: Protection of existing environmental infrastructure and community assets)

**Trees to be Removed**

- E15. All trees on the site must be protected and retained save for those expressly identified below as being approved for removal:

Tree	Location	Height
T1 <i>Celtis occidentalis</i>	Front setback 1 Baden Rd	9m

(Reason: To ensure compliance with the terms of this development consent)

**Special Permits**

- E16. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

The developer, owner or builder may apply for specific permits available from Council's Customer Service Centre for the undermentioned activities on Council's property. In the event that a permit is granted by Council for the carrying out of works, processes, storage of materials, loading and unloading associated with the development on Council's property, the development must be carried out in accordance with the requirements of the permit. A minimum of forty-eight (48) hours' notice is required for any permit:

1) **On-street mobile plant**

E.g., cranes, concrete pumps, cherry-pickers, etc. - restrictions apply to the hours of operation, the area of operation, etc. Separate permits are required for each occasion and each piece of equipment. It is the developer's, owner's and builder's responsibilities to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

(Reason: Proper management of public land)

2) **Hoardings**

Permits are required to erect Class A and Class B hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

(Reason: Proper management of public land)

3) **Storage of building materials and building waste containers (skips) on Council's property**

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given. Storage of building materials and waste containers on open space reserves and parks is prohibited.

(Reason: Proper management of public land)



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**4) Kerbside restrictions, construction zones**

Attention is drawn to the existing kerbside restrictions adjacent to the development. Should alteration of existing kerbside restrictions be required, or the provision of a construction zone, the appropriate application must be made and the fee paid to Council. Alternatives to such restrictions may require referral to Council's Traffic Committee and may take considerable time to be resolved. An earlier application is suggested to avoid delays in construction programs.

(Reason: Proper management of public land)

**Construction Hours**

- E17. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

<b>Standard Construction Hours</b>		
<b>Location</b>	<b>Day</b>	<b>Hours</b>
<b>All Other Zones</b>	Monday - Friday	7.00 am - 5.00 pm
	Saturday	8.00 am - 1.00 pm
	Sunday, Public holiday	No work permitted

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above and any Construction Noise Management Plan required under this consent.

In the event of breach to the approved hours of construction Council take may take enforcement action under Part 9 of the EP&A Act 1979 and in accordance with Council's adopted Compliance and Enforcement Policy.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

**Sediment and Erosion Control Signage**

- E18. A durable sign must be erected during building works in a prominent location on site, warning of penalties should appropriate erosion and sedimentation control devices not be maintained. A sign of the type referred to in this condition is available from Council.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

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**Site Amenities and Facilities**

- E19. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of workplace determines the type of amenities required.

Further information and details can be obtained from the Internet at [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au).

(Reason: To ensure the health and safety of the community and workers on the site)

**Health and Safety**

- E20. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number for enquiries.

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au).

(Reason: To ensure the health and safety of the community and workers on the site)

**Prohibition on Use of Pavements**

- E21. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

(Reason: To ensure public safety and amenity on public land)

**Plant and Equipment Kept Within Site**

- E22. All plant and equipment used in the undertaking of the development/ works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.

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Details of Council requirements for permits on public land for standing plant, hoardings, storage of materials and construction zones and the like are available on Council's website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au).

(Reason: To ensure public safety and amenity on public land)

**Imported Fill Material**

E23. The only waste derived fill material that may be received at the development site is:

- a) Virgin excavated natural material (within the meaning of the Protection of the Environment Operations Act 1997); and
- b) Any other waste-derived material the subject of a resource recovery exemption under cl. 51A of the Protection of the Environment Operations (Waste) Regulation 2005 that is permitted to be used as fill material.

Any waste-derived material the subject of a resource recovery exemption received at the development site, must be accompanied by documentation as the material's compliance with the exemption conditions and must be provided to the Certifying Authority on request.

(Reason: To ensure that imported fill is of an acceptable standard for environmental protection purposes)

**Waste Disposal**

E24. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environmental Protection Authority.

(Reason: To ensure the lawful disposal of construction and demolition waste)

**Asbestos Removal**

E25. All demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence and removal must be carried out in accordance with National Occupational Health and Safety Commission.

(Reason: To ensure works are carried out in accordance with relevant WorkCover requirements)

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**Service Adjustment**

- E26. Where required, the adjustment or inclusion of any new utility service facilities must be carried out by the person acting on the consent and in accordance with the requirements of the relevant utility authority. These works shall be at no cost to Council. It is the Applicants full responsibility to make contact with the relevant utility authorities to ascertain the impacts of the proposal upon utility services at the appropriate stage of the development (including water, phone, gas and the like). Council accepts no responsibility whatsoever for any matter arising from its approval of this application involving any influence upon utility services provided by another authority.

(Reason: To ensure the service requirements are met)

**F. *Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation***

**National Construction Code**

- F1. All building work must be carried out in accordance with the provisions of the National Construction Code.

(Reason: Prescribed - Statutory)

**Home Building Act**

- F2. 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) for which the *Home Building Act 1989* requires there to be a contract of insurance under Part 6 of that Act must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given North Sydney Council written notice of the contract of insurance being issued and of the following:
- a) in the case of work for which a principal contractor is required to be appointed:
    - i) the name and licence number of the principal contractor, and
    - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or
  - (b) in the case of work to be done by an owner-builder:
    - (i) the name of the owner-builder, and
    - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

**1 BADEN ROAD, KURRABA POINT  
DEVELOPMENT APPLICATION NO. 122/21**

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- 2) If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this conditions is out of date, work must cease and no further work may be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

(Reason: Prescribed - Statutory)

**Appointment of a Principal Certifying Authority (PCA)**

- F3. Building work, demolition or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifying Authority for the building work in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

**Construction Certificate**

- F4. Building work, demolition or excavation in accordance with the development consent must not be commenced until a Construction Certificate for the relevant part of the building work has been issued in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

**Occupation Certificate**

- F5. A person must not commence occupation or use of the whole or any part of a new building (new building includes an altered portion of, or an extension to, an existing building) unless an Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifying Authority appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

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**Critical Stage Inspections**

- F6. Building work must be inspected by the Principal Certifying Authority on the critical stage occasions prescribed by the EP&A Act and its Regulations, and as directed by the appointed Principal Certifying Authority.

(Reason: Statutory)

**Excavation/Demolition**

- F7. 1) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- 2) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- 3) Demolition work must be undertaken in accordance with the provisions of AS2601- Demolition of Structures.

(Reason: To ensure that work is undertaken in a professional and responsible manner and protect adjoining property and persons from potential damage)

**Protection of Public Places**

- F8. 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
- 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- 4) Any such hoarding, fence or awning is to be removed when the work has been completed.
- 5) No access across public reserves or parks is permitted.

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Note: Prior to the erection of any temporary fence or hoarding over property owned or managed by Council, written approval must be obtained. Any application needs to be accompanied by plans indicating the type of hoarding and its layout. Fees are assessed and will form part of any approval given. These fees must be paid prior to the approval being given. Approval for hoardings will generally only be given in association with approved building works, maintenance or to ensure protection of the public. An application form for a Hoarding Permit can be downloaded from Council's website.

(Reason: To ensure public safety and the proper management of public land)

**Site Sign**

- F9. 1) A sign must be erected in a prominent position on the site
- a) stating that unauthorised entry to the work site is prohibited;
  - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
  - c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
- 2) Any such sign must be maintained while to building work or demolition work is being carried out but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

**G. *Prior to the Issue of an Occupation Certificate***

**Infrastructure Repair and Completion of Works**

- G1. Prior to the issue of any Occupation Certificate any and all works relating to the development:
- a. in the road reserve must be fully completed; and
  - b. to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

to the satisfaction of Council Engineers at no cost to Council.

(Reason: Maintain quality of public assets)



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**Pool Access**

- G2. Access to the pool must be restricted by a child resistant barrier in accordance with the regulations prescribed in the Swimming Pools Act 1992, and the requirements of the applicable Australian Standard. The pool must not be filled with water or be allowed to collect stormwater until the installation of the child resistant barrier is completed. Certification from an appropriately qualified person confirming compliance with these requirements must be provided prior to the issuing of any Occupation Certificate.

(Reason: To ensure that any person acting upon this consent is aware of their obligations under the provisions of the Swimming Pools Act)

**Pool Safety Requirements**

- G3. A notice must be displayed in a prominent position in the immediate vicinity of the pool at all times showing:
- a) Appropriate instructions of artificial resuscitation methods.
  - b) A warning stating:
    - (i) "YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL", and
    - (ii) "POOL GATES MUST BE KEPT CLOSED AT ALL TIMES", and
    - (iii) "KEEP ARTICLES, OBJECTS AND STRUCTURES AT LEAST 900 MILLIMETRES CLEAR OF THE POOL FENCE AT ALL TIMES",

Details demonstrating compliance are to be provided with any Occupation Certificate issued for the pool.

This notice must be kept in a legible condition and at the poolside.

(Reason: To ensure an adequate level of safety for young pool users)

**Damage to Adjoining Properties**

- G4. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

(Reason: To ensure adjoining owner's property rights are protected)

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DEVELOPMENT APPLICATION NO. 122/21**

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**Utility Services**

- G5. All utility services shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of an occupation certificate. This shall be at no cost to Council.

(Reason: To ensure compliance with the terms of this consent)

**Asbestos Clearance Certificate**

- G6. For building works where asbestos based products have been removed or altered, an asbestos clearance certificate signed by an appropriately qualified person (being an Occupational Hygienist or Environmental Consultant) must be submitted to and approved by the Certifying Authority (and a copy forwarded to Council if it is not the Certifying Authority) for the building work prior to the issue of any Occupation Certificate, the asbestos clearance certificate must certify the following:

- a) the building/land is free of asbestos; or
- b) the building/land has asbestos that is presently deemed safe.

The certificate must also be accompanied by tipping receipts, which detail that all asbestos waste has been disposed of at an approved asbestos waste disposal depot. If asbestos is retained on site the certificate must identify the type, location, use, condition and amount of such material.

Note: Further details of licensed asbestos waste disposal facilities can be obtained from [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au).

(Reason: To ensure that building works involving asbestos based products are safe for occupation and will pose no health risks to occupants)

**Certification of Tree Condition**

- G7. Prior to the issue of an Occupation Certificate, a report prepared by an appropriately qualified person (being an arborist or the like) must be submitted to the Certifying Authority, describing the health of the tree(s) specifically nominated below:

Tree	Location	Height
Ficus 'Hillii'	Council verge - Cnr Baden Rd & Kurraba Rd	18 x 27m
<i>Phoenix canariensis</i>	Council verge Kurraba Rd, south of Baden Rd & Kurraba Rd intersection	16 x 10m
T2 Melaleuca quinquenervia	Council reserve adjacent to 1 Baden Rd	12x10m
T3 <i>Agonis flexuosa</i>	Council reserve adjacent to 1 Baden Rd	16x10m
T4 <i>Pinus pinea</i>	Council reserve adjacent to 1 Baden Rd	26x20m
Existing Screen Planting	Western boundary of 3 Baden Rd	Various
1 x <i>Angophora costata</i>	lower level western garden bed-rear setback 1 Baden Rd	100l
2 x <i>Banksia serrata</i>	lower level western garden bed-rear setback 1 Baden Rd	75l

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DEVELOPMENT APPLICATION NO. 122/21**

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The report must detail the condition and health of the nominated tree(s) upon completion of the works and shall certify that the tree(s) has/have not been significantly damaged during the works on the site and has/have reasonable prospects for survival.

(Reason: To ensure compliance with the terms of this consent)

**BASIX Completion Certificate**

G8. In accordance with Clause 154C of the Environmental Planning and Assessment Regulation 2000, prior to issuing a final occupation certificate the Certifying Authority must apply to the Director-General for a BASIX completion receipt.

(Reason: To ensure compliance with the specified BASIX Certificate)

**Landscaping**

G9. The landscaping shown in the approved landscape plan numbered 1 of 3, 2 of 3 and 3 of 3, prepared by Bates Landscaping dated 20 April 2021 and received by Council on 4 May 2021 must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

**Compliance with Certain conditions**

G10. Prior to the issue of any Occupation Certificate, Condition C25 must be certified as having been implemented on site and complied with.

(Reason: To ensure the development is completed in accordance with the requirements of this consent)

***I. Ongoing/Operational Conditions***

**Pool Filter**

I1. The swimming pool pump installed at the premises must not operate so as to:

- (a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
  - (j) before 8.00 am and after 8.00 pm on any Sunday or Public Holiday; or
  - (ii) before 7.00 am or after 8.00 pm on any other day

**1 BADEN ROAD, KURRABA POINT  
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- (b) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.

“affected residence” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

“boundary” includes any window or elevated window of an affected residence.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

- (Reason: To ensure noise generated by equipment does not result in offensive noise)

**Non-trafficable Roof**

12. The roof and landscaped area surrounding the fifth Level (Drawing DA09 A as referenced in Condition A1) roof terrace, as amended by condition C25 a) *Privacy*, is to be non-trafficable and is only to be accessed for maintenance purposes.

- (Reason: To maintain privacy to surrounding properties)

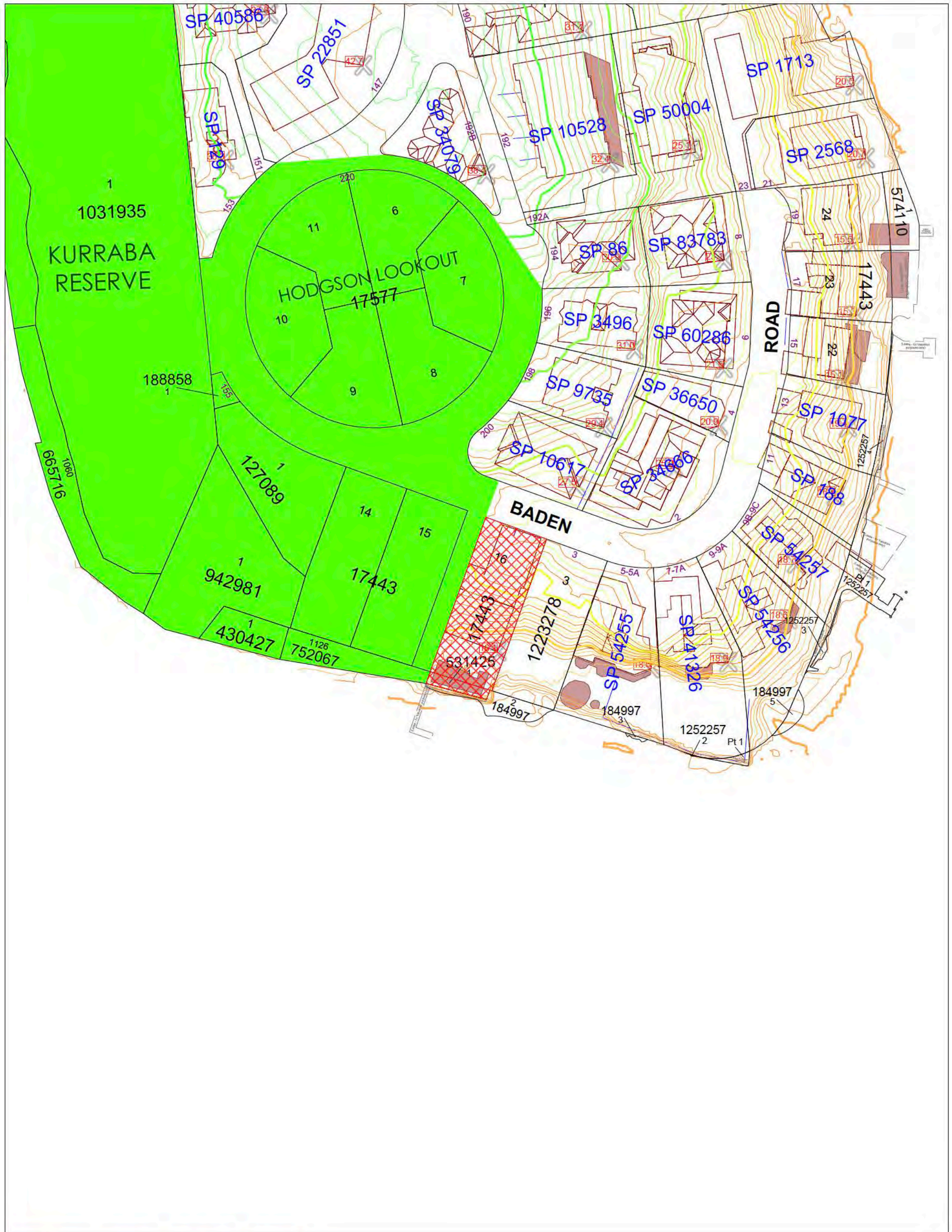
**Maintenance of Approved Landscaping**

13. The owner of the premises at 1 Baden Rd is to maintain the landscaping approved by this consent generally in accordance with Landscape Plan prepared by Bates Landscapes dated 20/4/21 as modified by conditions C31 *Amendments to Landscape Plan*.

Any replacement plants required shall be advanced in growth and be selected to maintain the anticipated mature height, canopy density and nature of those plant species as originally approved.

- (Reason: To ensure maintenance of the amenity, solar access and views of adjoining properties)



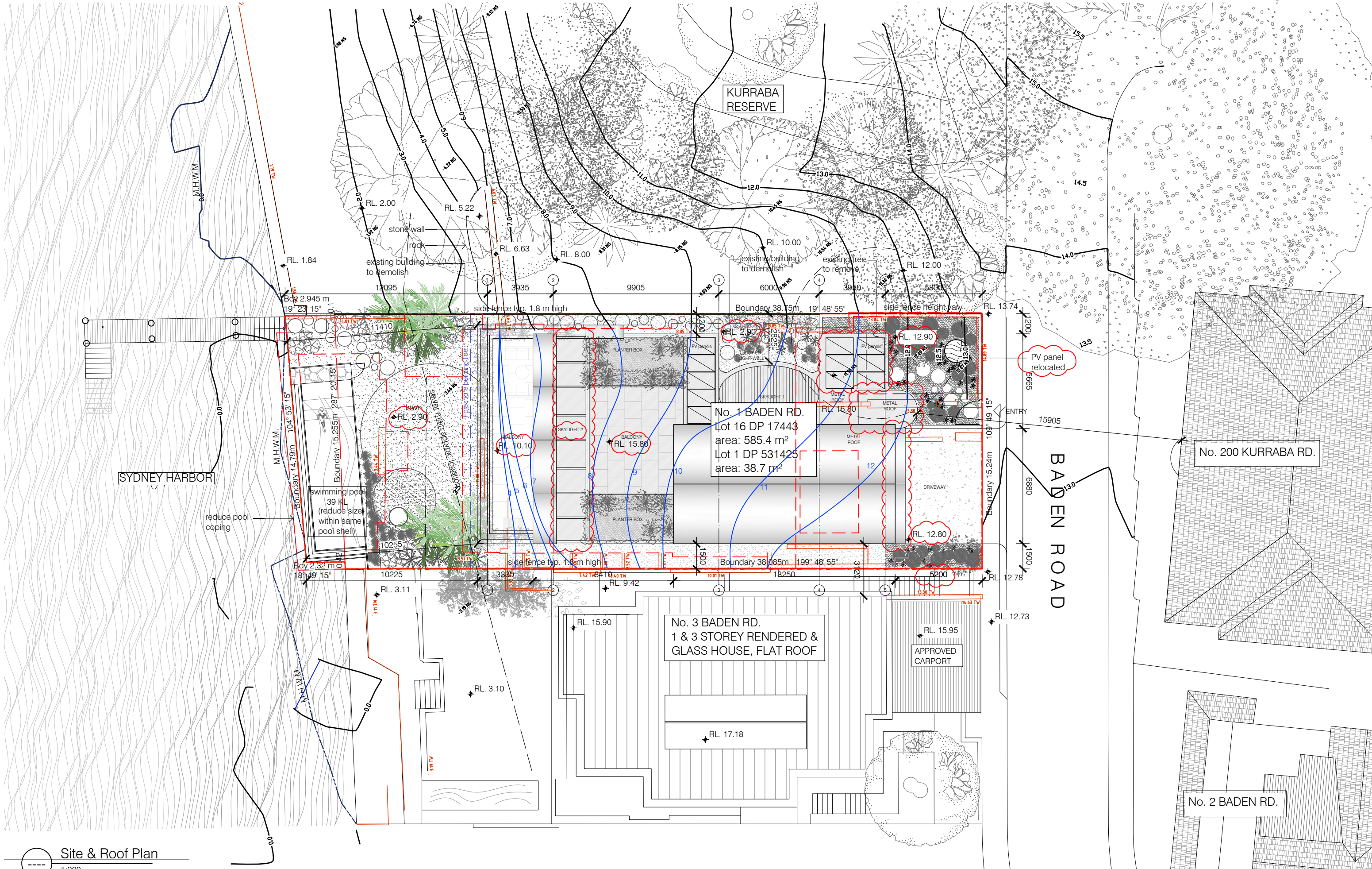


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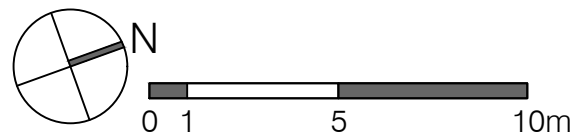
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Further details can be obtained by calling (02) 9936 8100 or e-mail [mapping@northsydney.nsw.gov.au](mailto:mapping@northsydney.nsw.gov.au).





Site & Roof Plan  
1:200



issue	date	description
-	04/21	DA
A	08/21	requested changes to DA
B	12/21	relocation of PV panels

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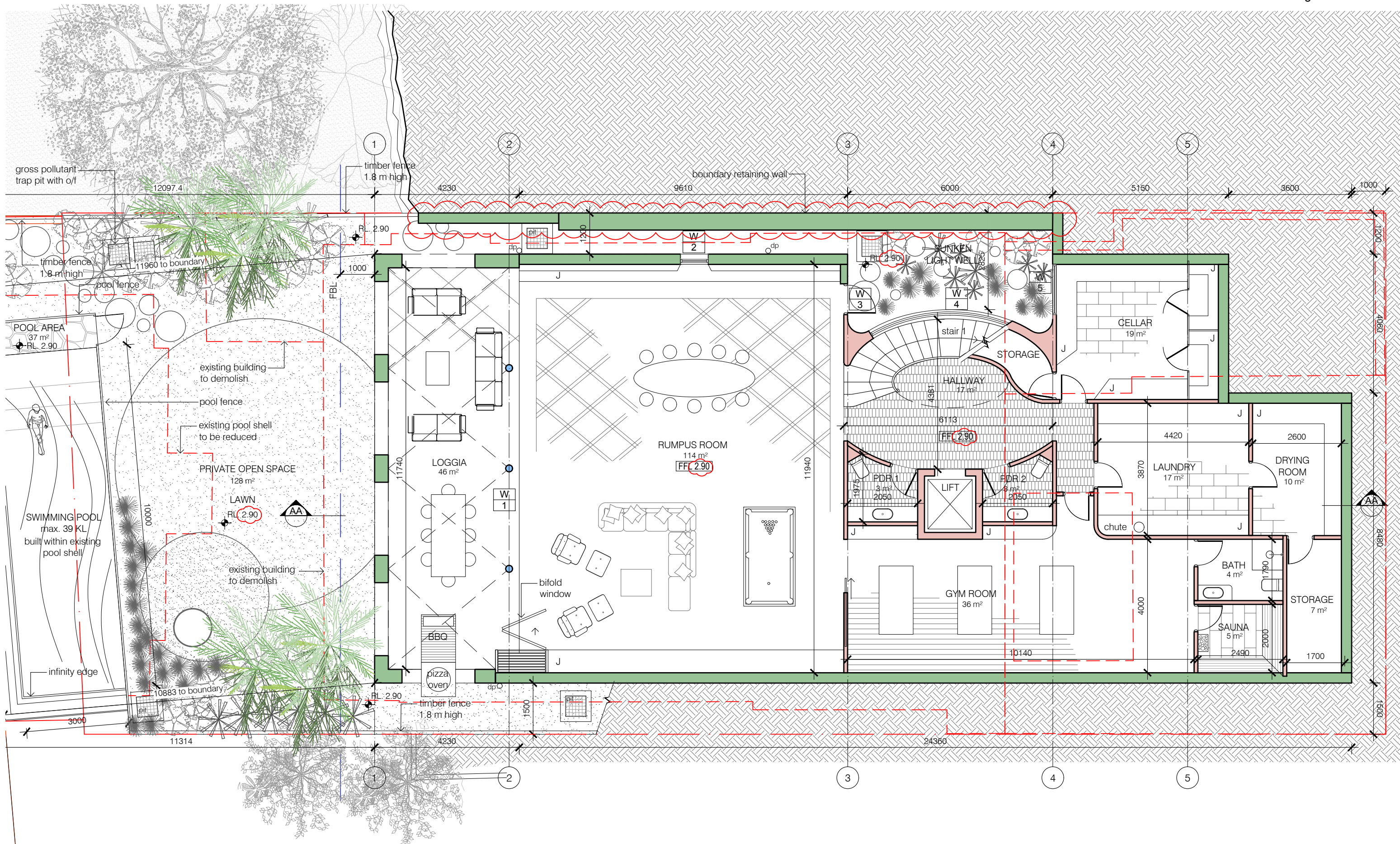
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 ABN 80 003 635 372  
 NOM REG NO. 4895

site & roof plan  
 new dwelling house  
 1 baden road  
 kurraba point

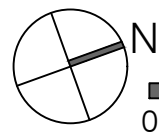
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 2026







Level 1  
1:100



issue	date	description
-	04/21	DA
A	08/21	requested changes to DA

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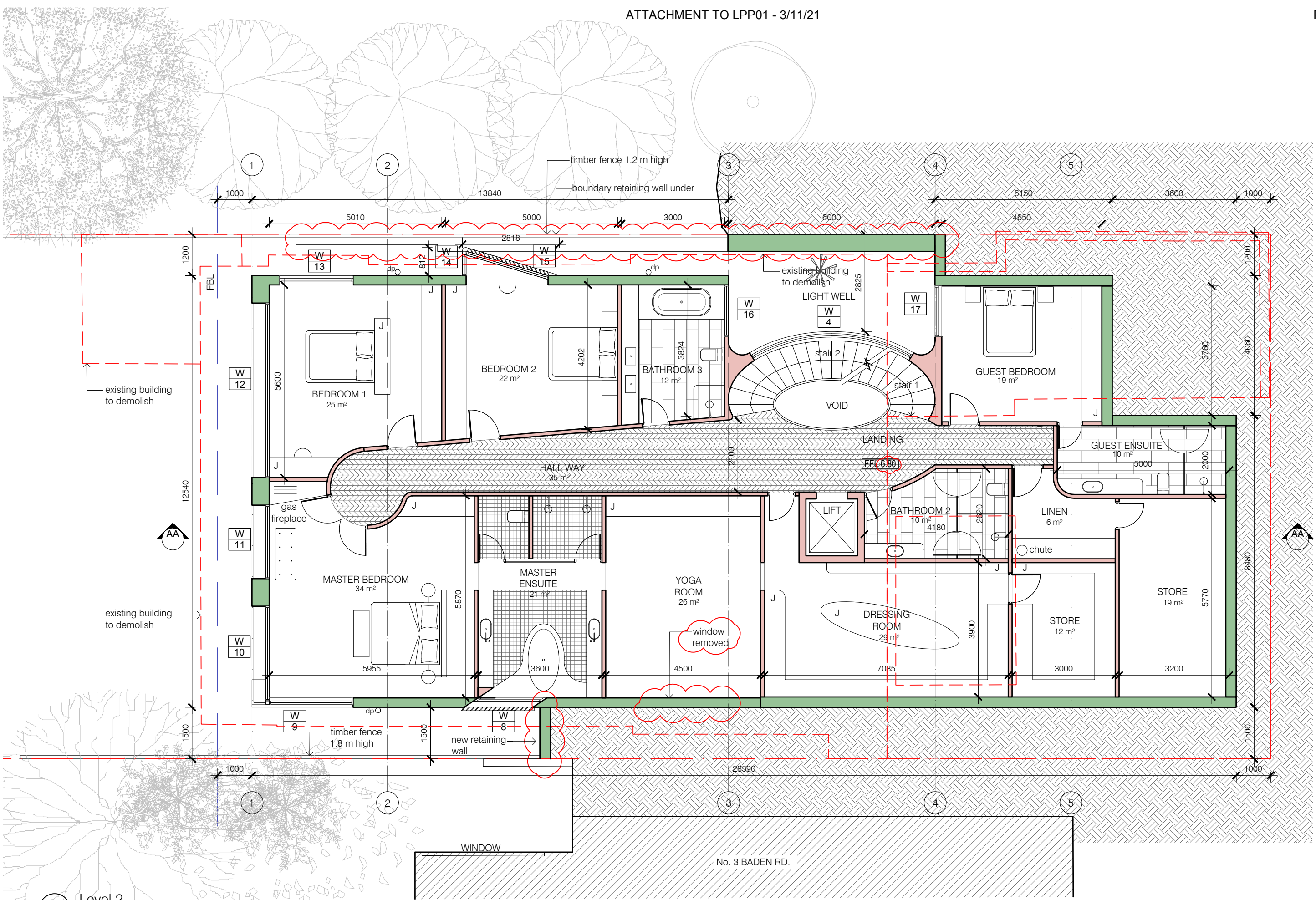
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level 1  
new dwelling house  
1 baden road  
kurraba point

DA05 issue A  
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2026







Level 2  
1:100



issue	date	description
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A	08/21	requested changes to DA
B	10/21	changes to ground levels on eastern boundary

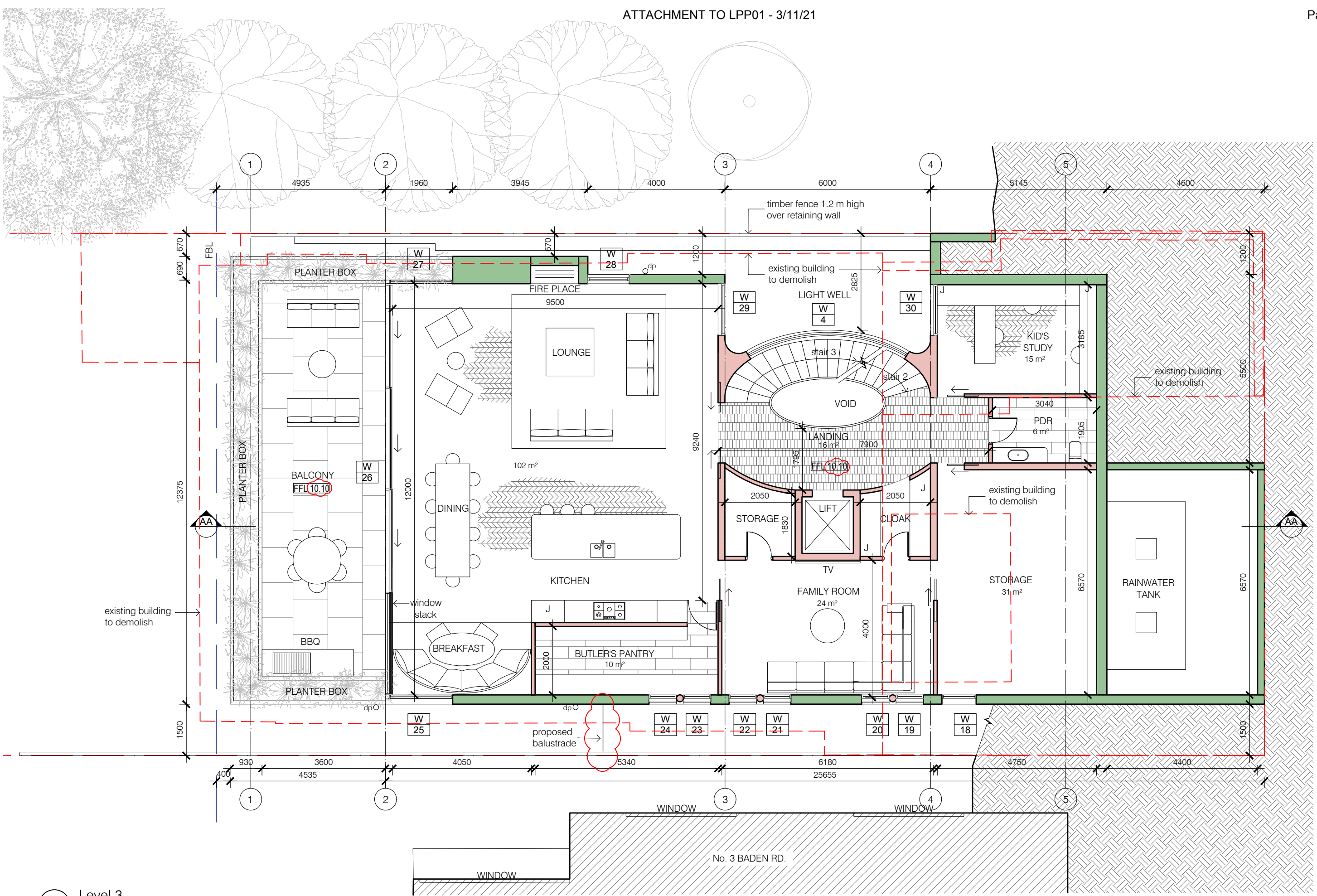
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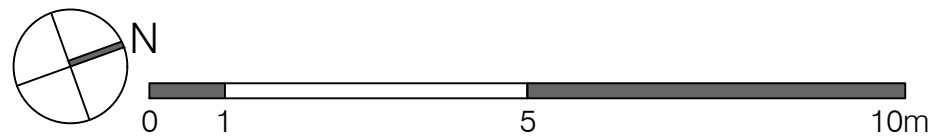
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kurraba point

DA06 issue B  
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cadfile da06 level 2.dwg  
2026





Level 3  
1:100



issue	date	description
-	04/21	DA
A	08/21	requested changes to DA
B	10/21	changes to ground levels on eastern boundary

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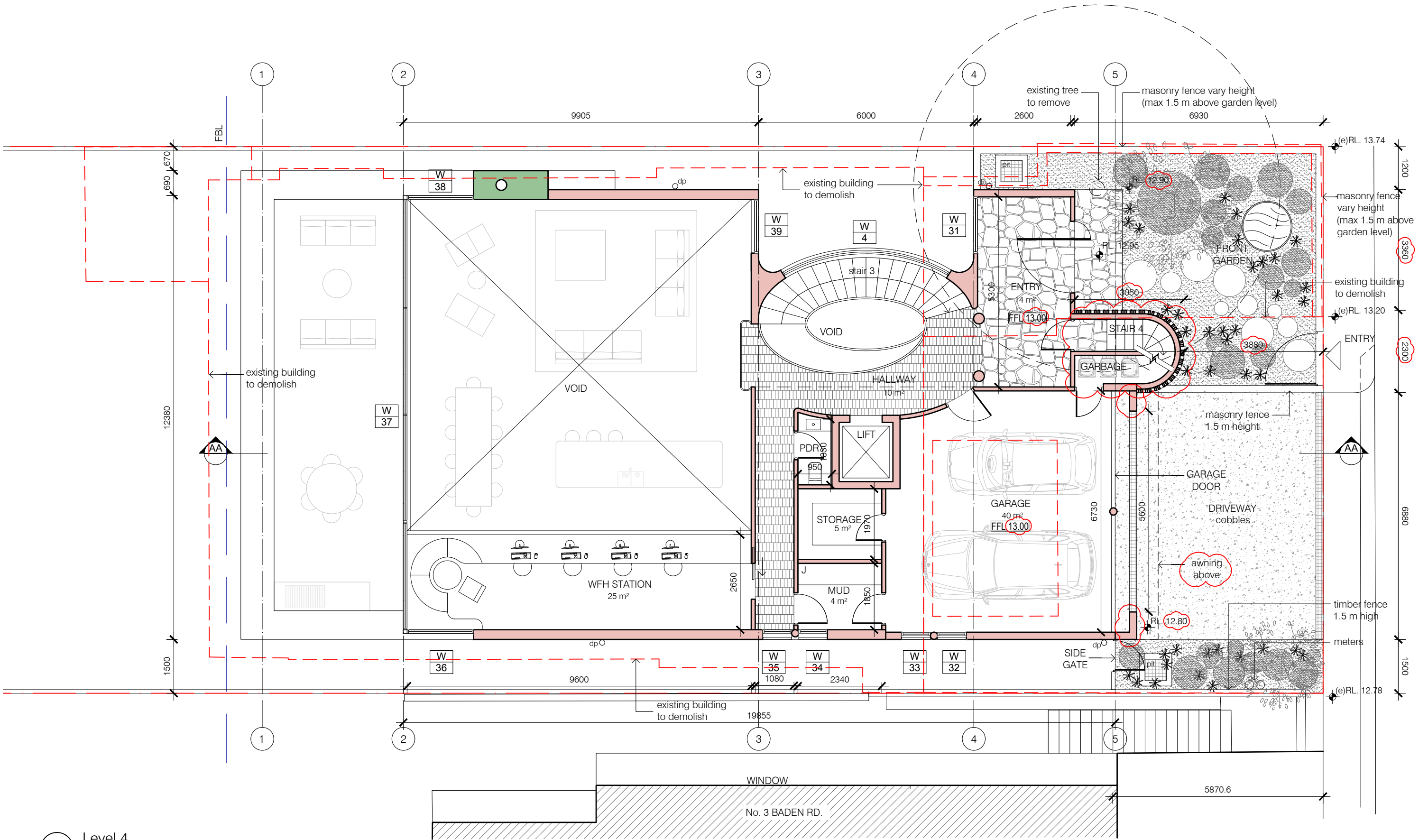
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level 3  
new dwelling house  
1 baden road  
kurraba point

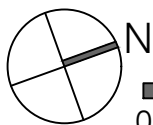
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Level 4  
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A	08/21	requested changes to DA

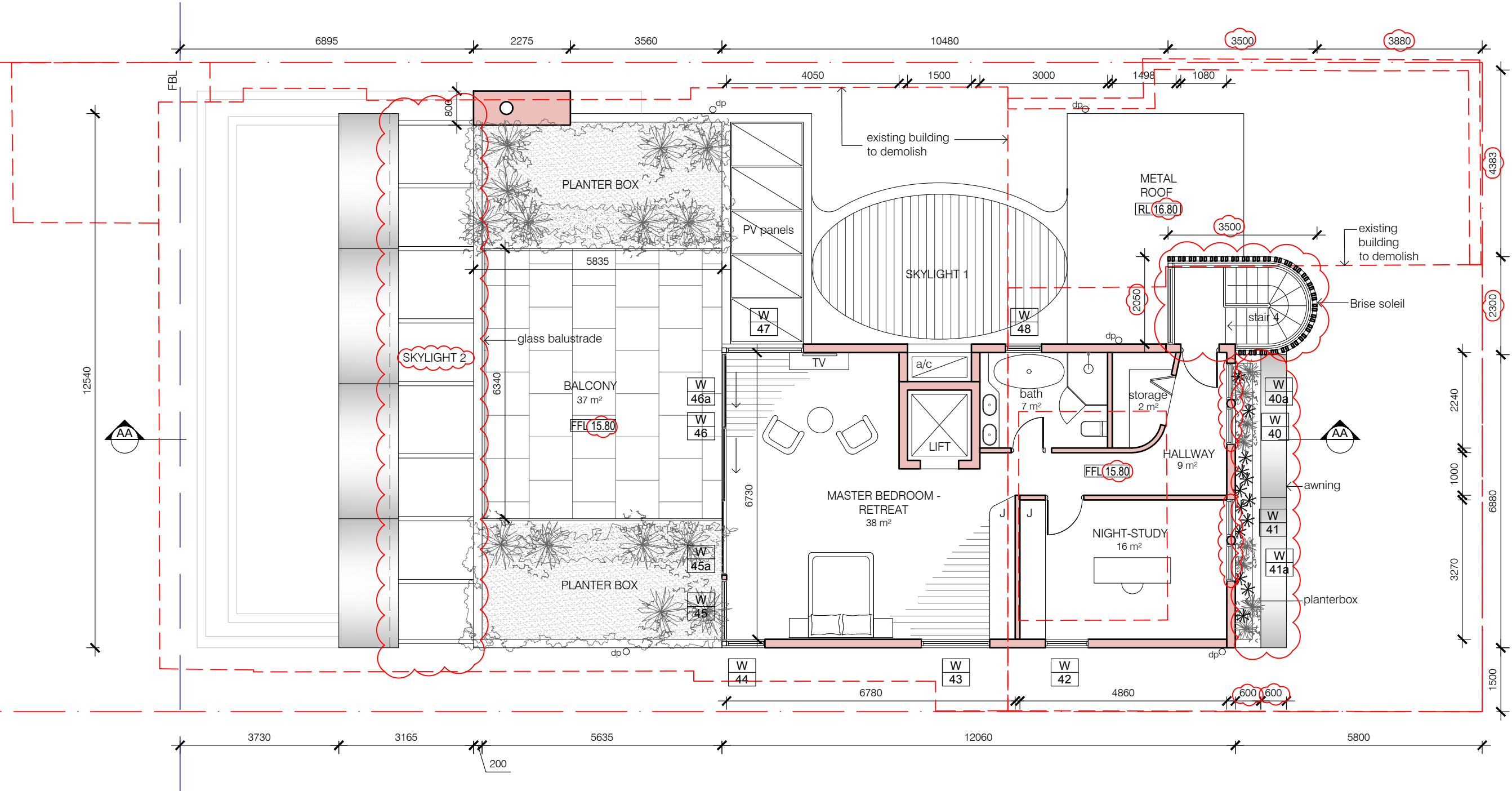
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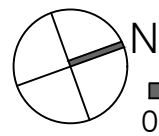
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kurraba point

DA08 issue A  
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2026





Level 5  
1:100



issue	date	description
-	04/21	DA
A	08/21	requested changes to DA

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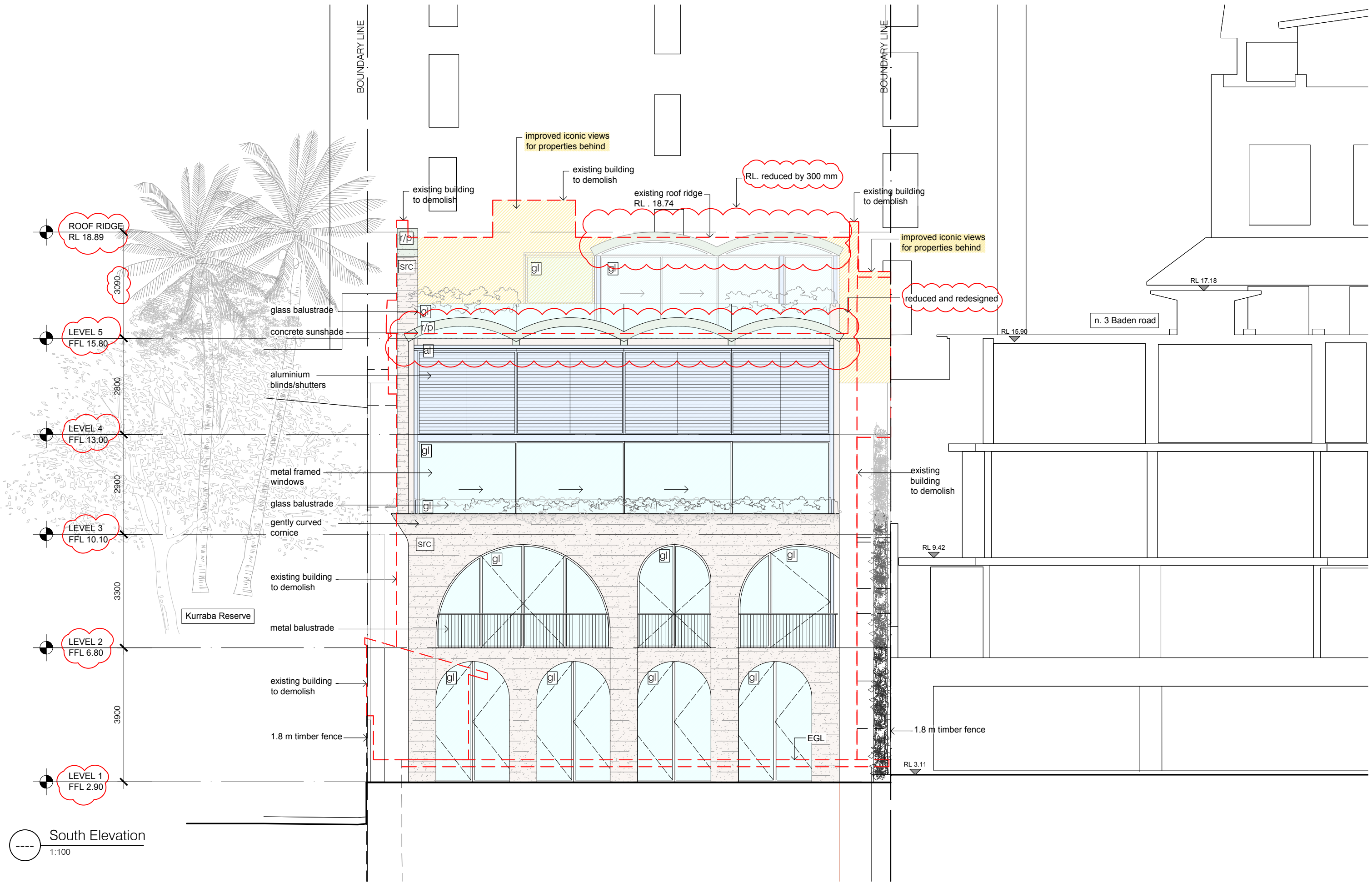
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level 5  
new dwelling house  
1 baden road  
kurraba point

DA09 issue A  
scale ---  
plotdate 8/30/2021 2:19 PM  
cadfile da09 level 5.dwg  
2026







South Elevation  
1:100

issue	date	description
-	04/21	DA
A	08/21	requested changes to DA

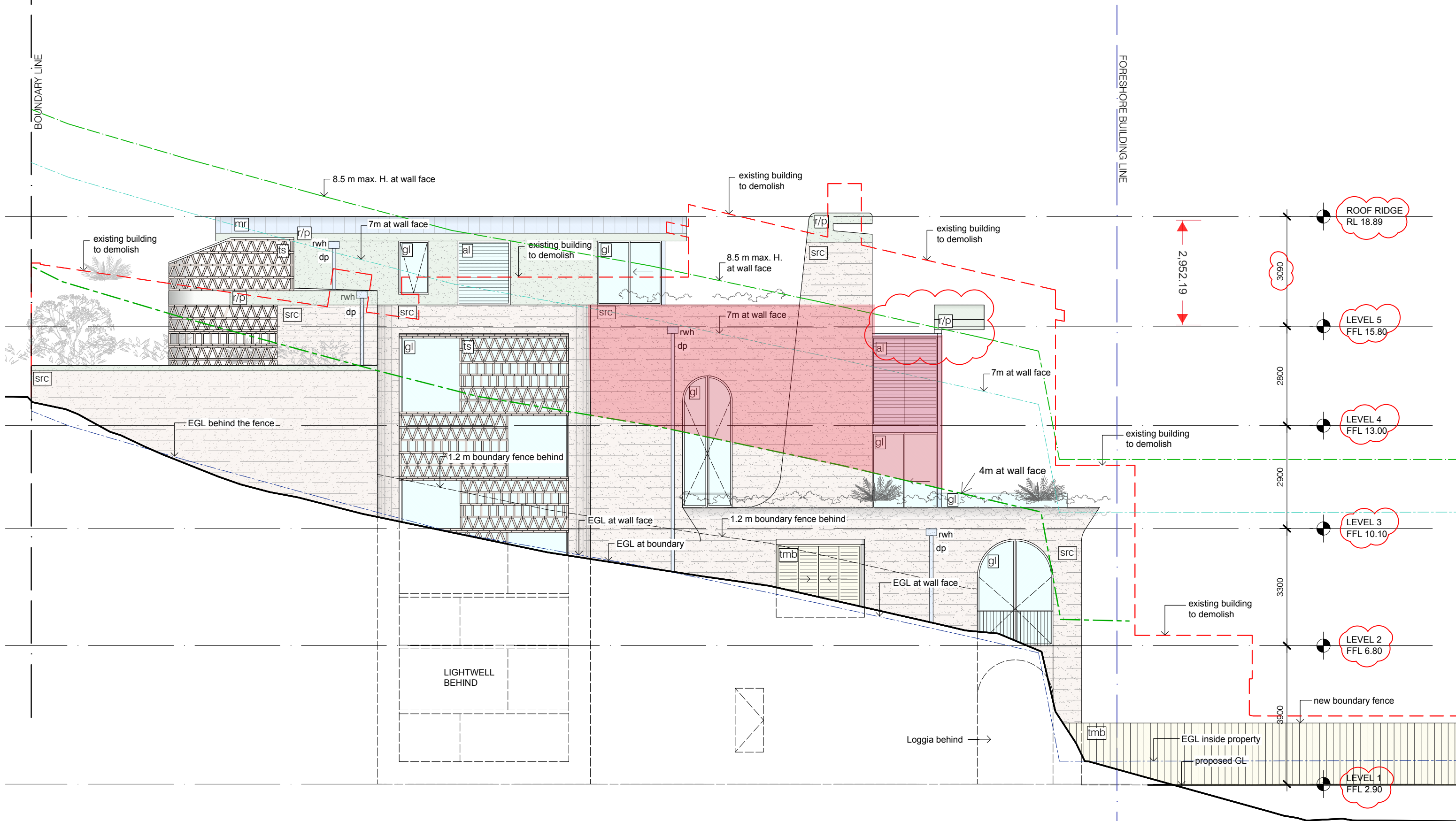
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south elevation  
new dwelling house  
1 baden road  
kurraba point

DA10 issue A  
scale ---  
plotdate 8/30/2021 2:19 PM  
cadfile da10 south elevation.dwg  
2026





West Elevation  
1:100

issue	date	description
-	04/21	DA
A	08/21	requested changes to DA

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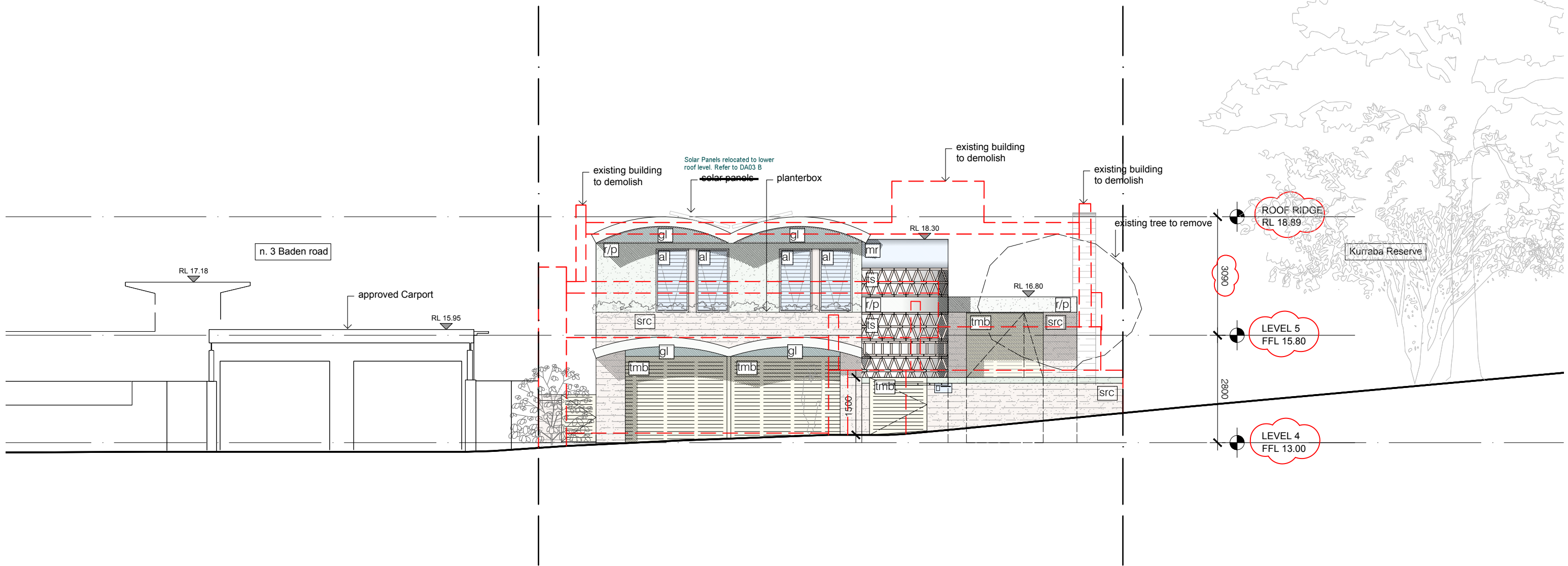
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west elevation  
new dwelling house  
1 baden road  
kurraba point

DA11 issue A  
scale ---  
plotdate 8/30/2021 2:19 PM  
cadfile da11 west elevation.dwg  
2026







North Elevation  
1:100

issue	date	description
-	04/21	DA
A	08/21	requested changes to DA

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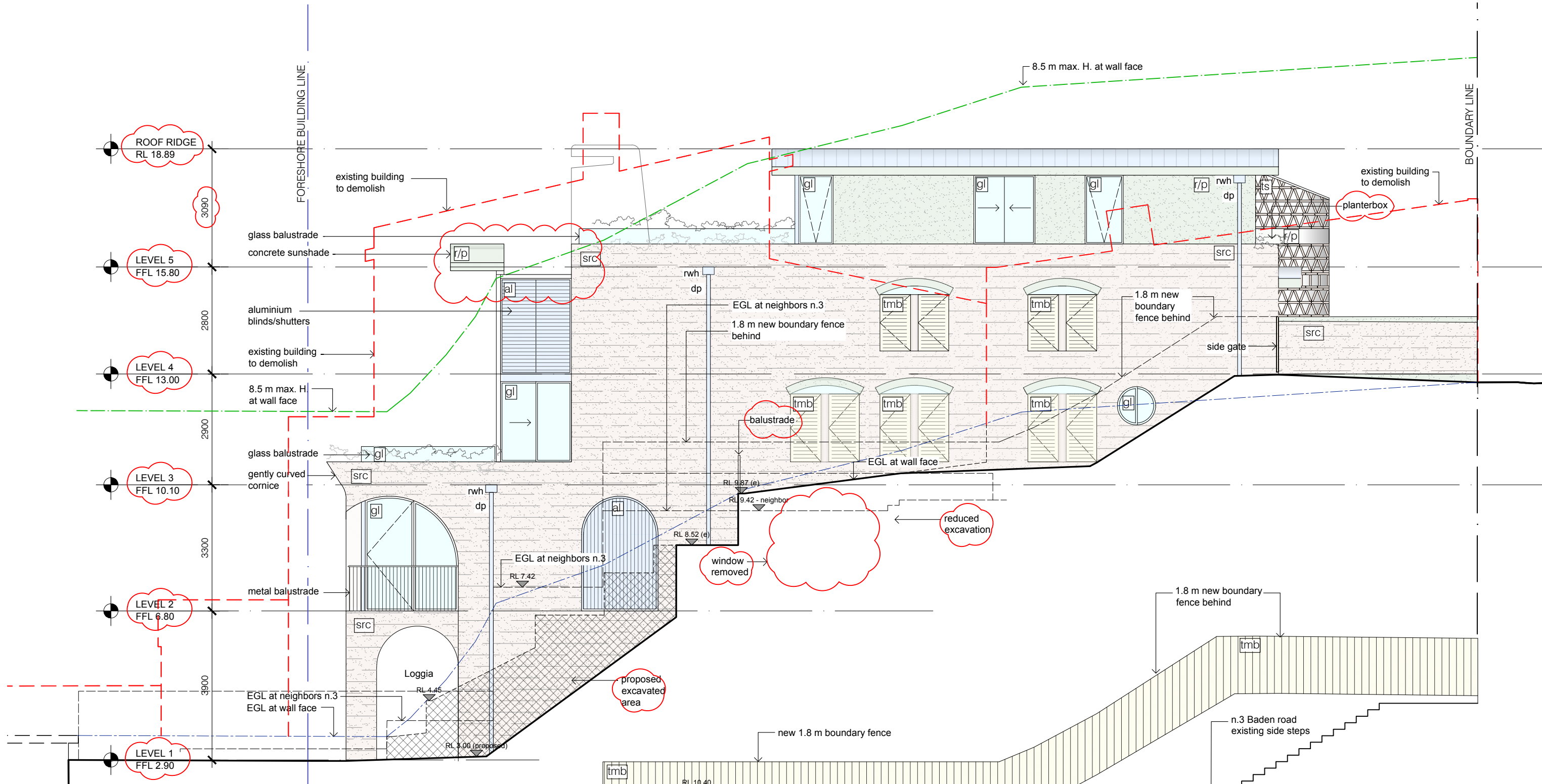
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north elevation  
new dwelling house  
1 baden road  
kurraba point

DA12 issue A  
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plotdate 8/30/2021 2:19 PM  
cadfile da12 north elevation.dwg  
2026







1 East Elevation  
1:100

2 Eastern Boundary Fence Elevation  
1:100

issue	date	description
-	04/21	DA
A	08/21	requested changes to DA
B	10/21	changes to ground levels on eastern boundary

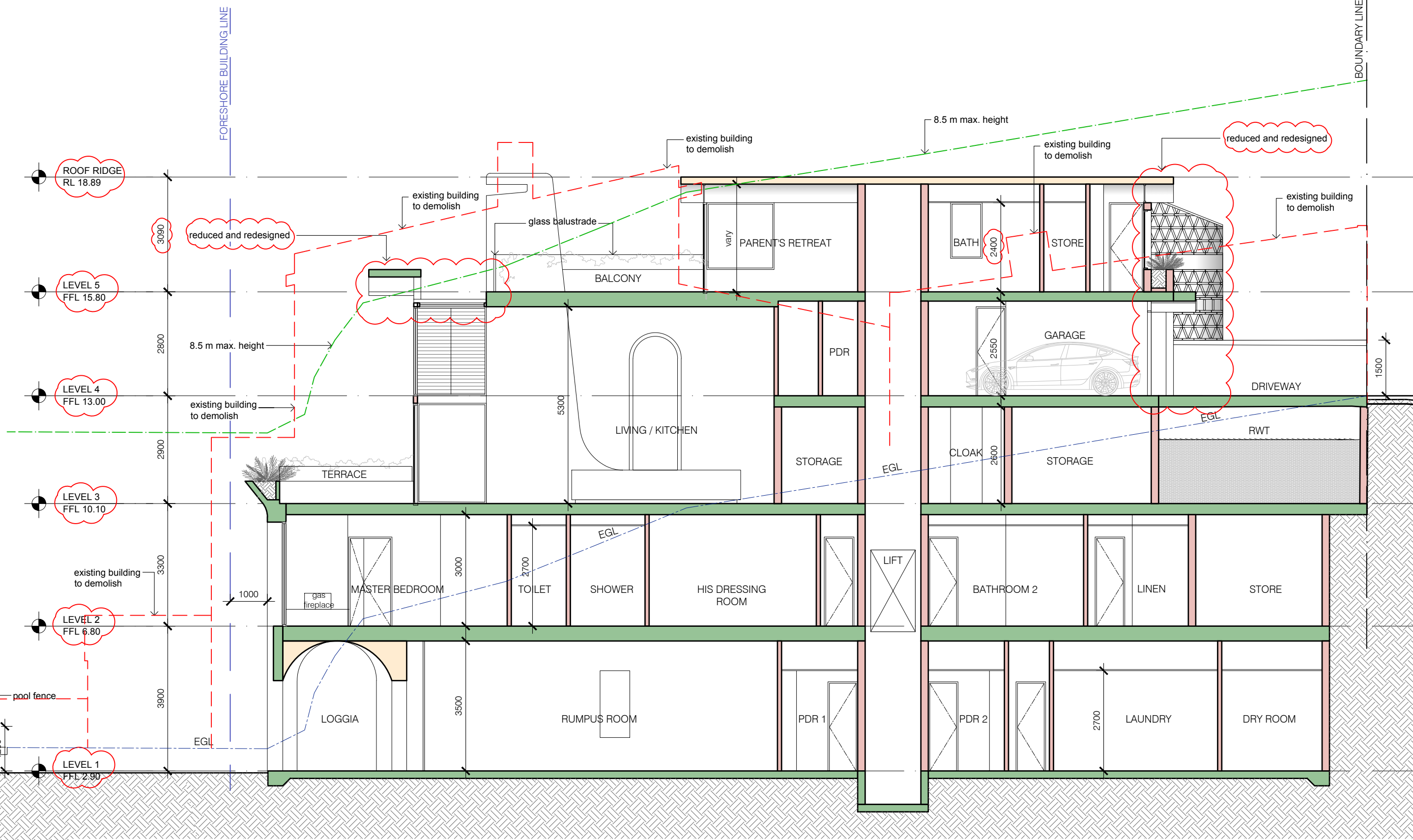
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east elevation  
 new dwelling house  
 1 baden road  
 kurraba point

DA13 issue B  
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 cadfile da13 east elevation.dwg  
 2026





Section AA

1:100



issue	date	description
-	04/21	DA
A	08/21	requested changes to DA

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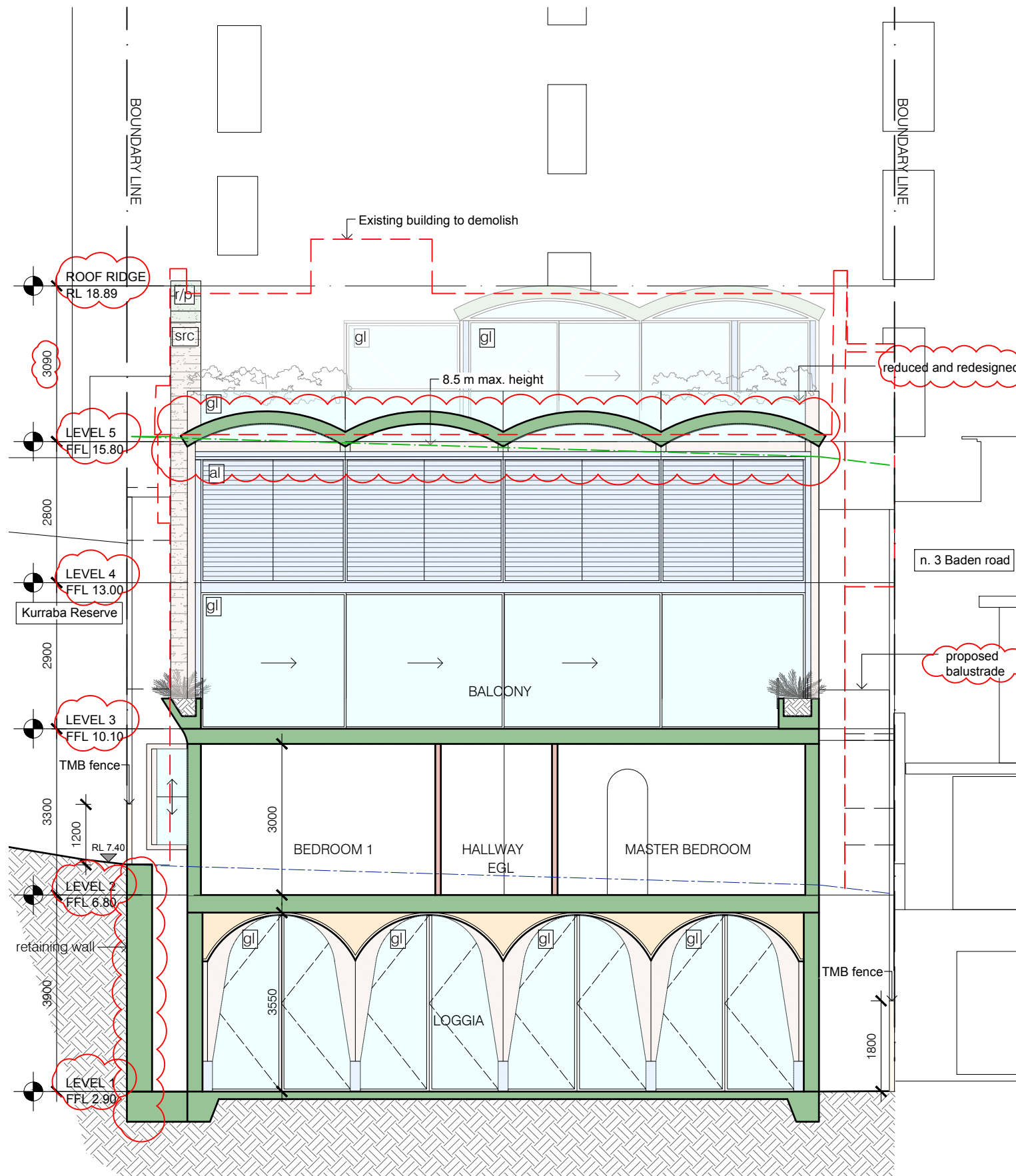
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section aa  
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 1 baden road  
 kurraba point

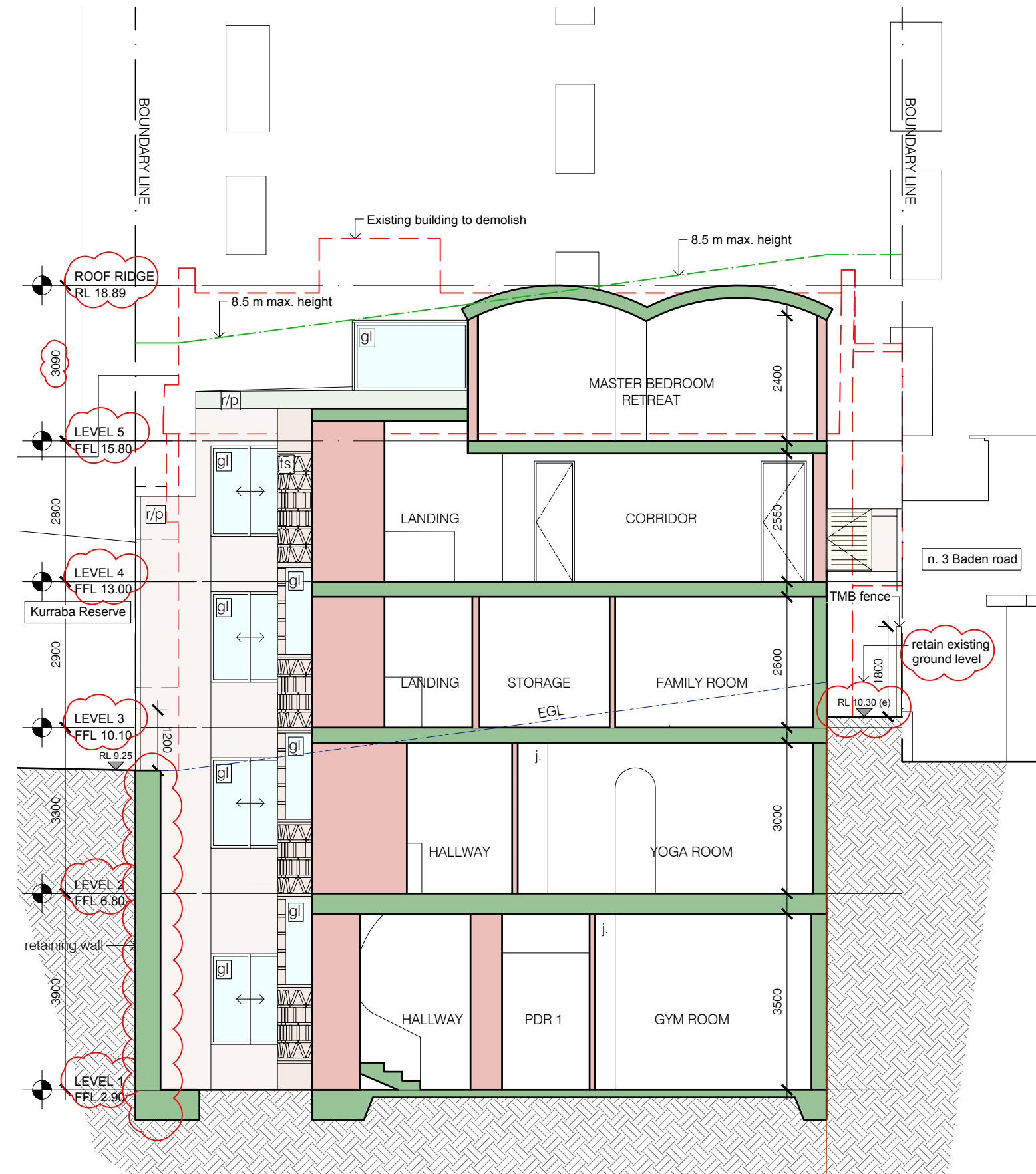
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 2026







1 Section on Grid line 2  
1:100



2 Section on Grid line 3  
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issue	date	description
A	05/21	Additional Information to Council
B	08/21	Requested changes to DA
C	10/21	changes to ground levels on eastern boundary

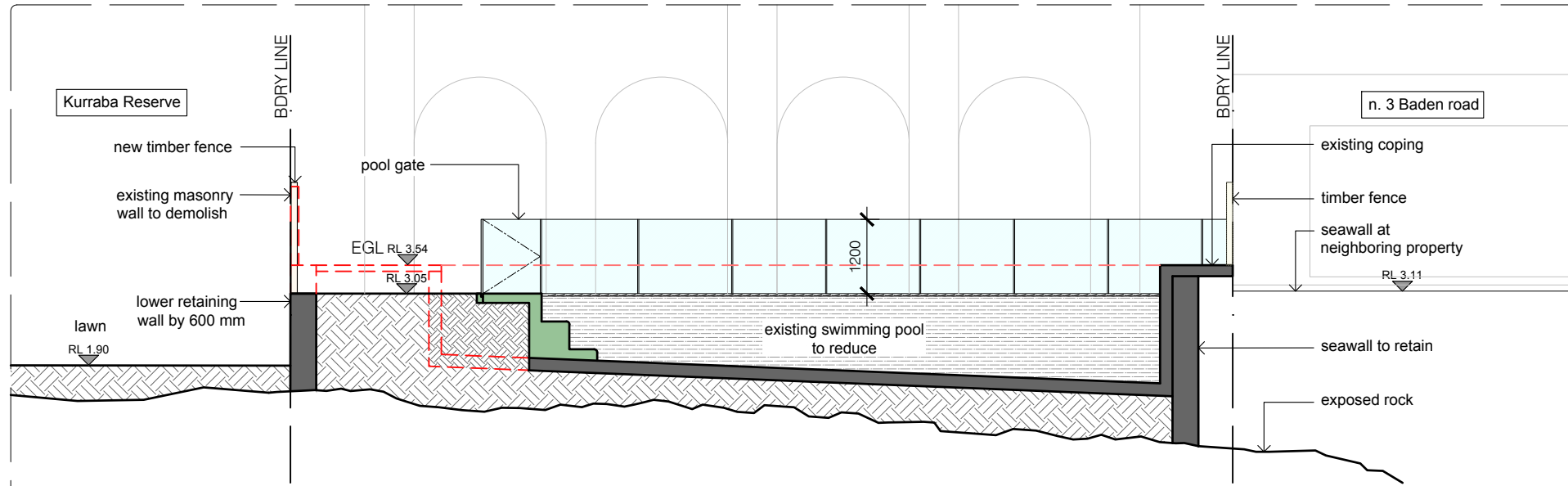
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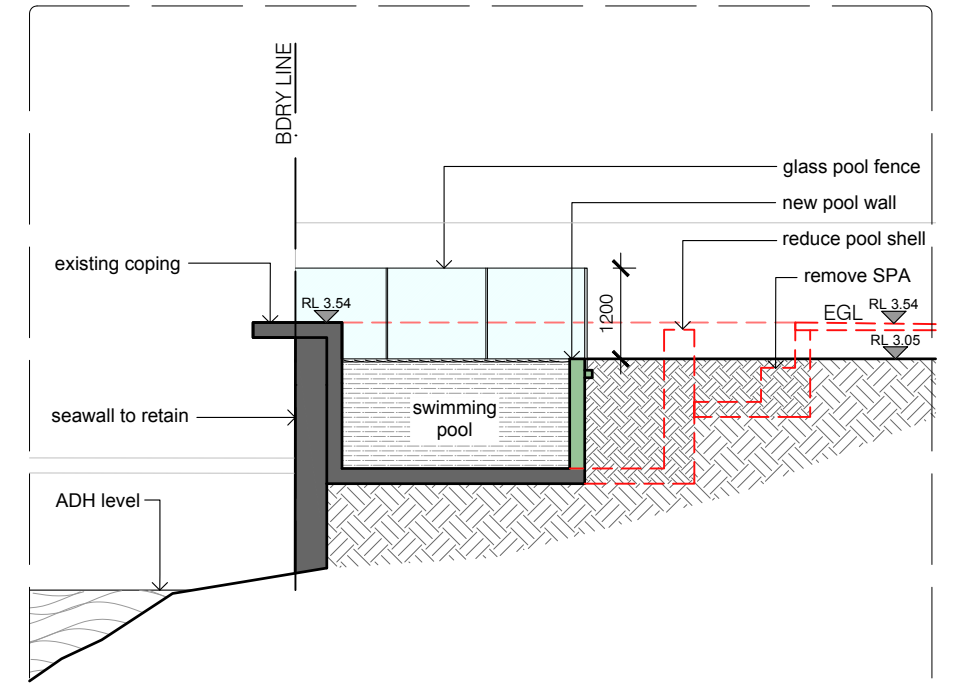
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new dwelling house  
1 baden road  
kurraba point

DA14 A issue C  
scale ---  
plotdate 10/26/2021 5:54 PM  
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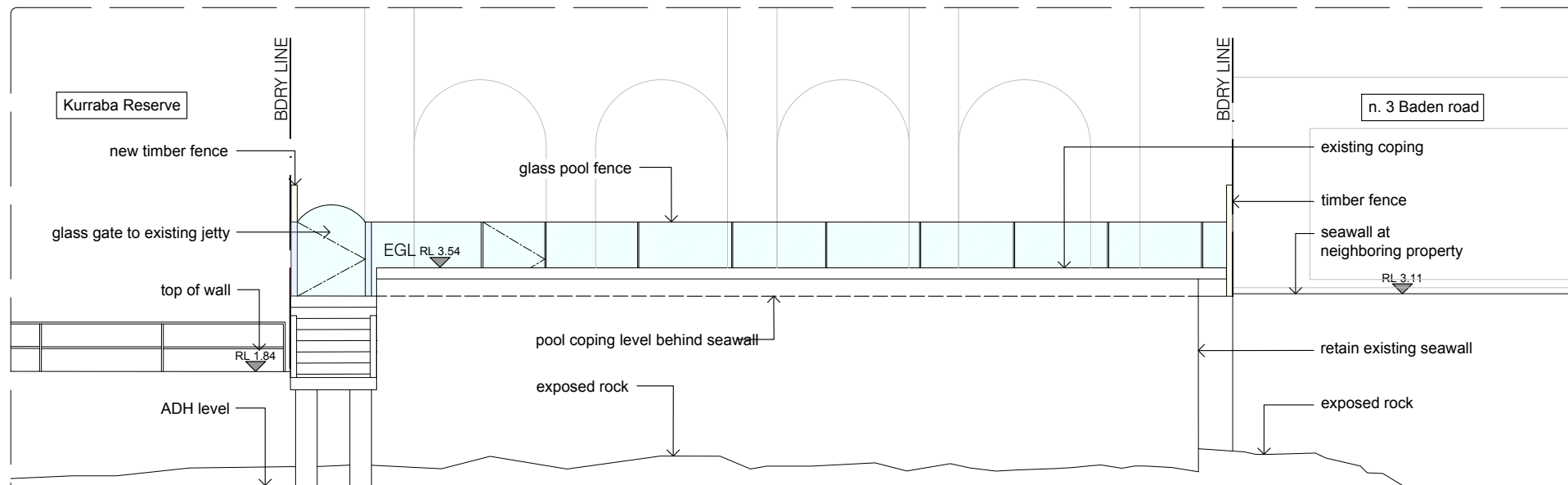




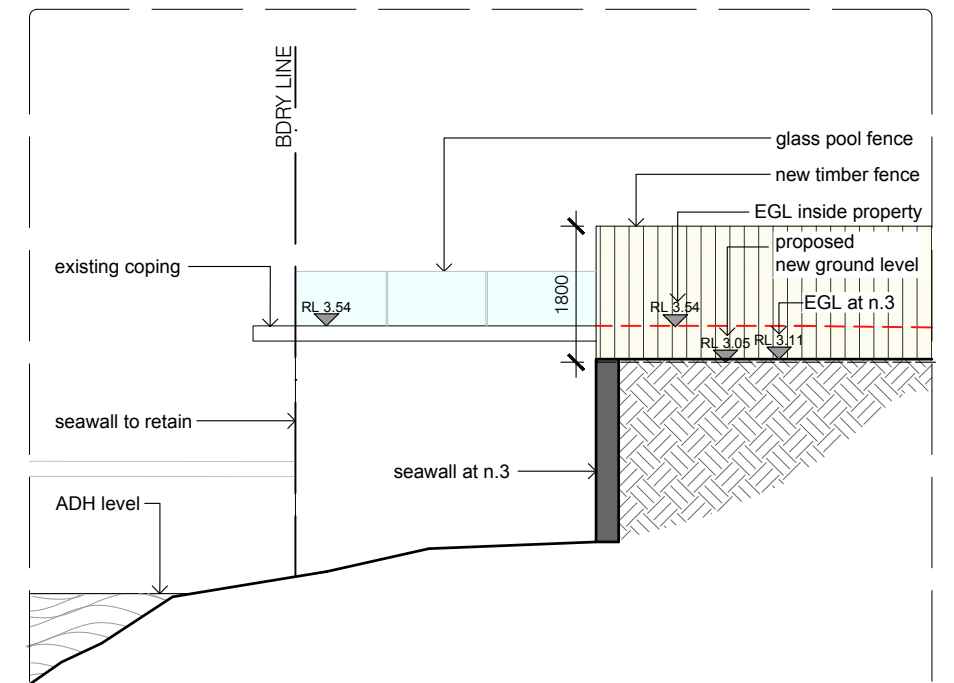
1 Swimming pool - long. section  
scale 1:100



2 Swimming Pool - cross section  
scale 1:100



3 Swimming Pool - South elevation  
scale 1:100



4 Swimming Pool - East elevation  
scale 1:100

issue	date	description
A	05/21	Additional Information to Council

The Contractor shall verify all dimensions & levels on the site. Written dimensions to take preference over scaled dimensions. Documents & design remain the copyright of the Architect & cannot be reproduced without written consent.

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pool sections & elevations  
new dwelling house  
1 baden road  
kurraba point

DA14 B issue A  
scale ----  
plotdate 5/26/2021 4:33 PM  
cadfile da14 b pool sections & elevations.dwg  
2026





Level 5 balcony planter with low level drift planting of *Carissa 'Desert Star'*, *Crassula 'Gollum'*, *Senecio mandraliscae*, and feature planting of *Zamia furfuracea*

Selected casual outdoor lounge seating

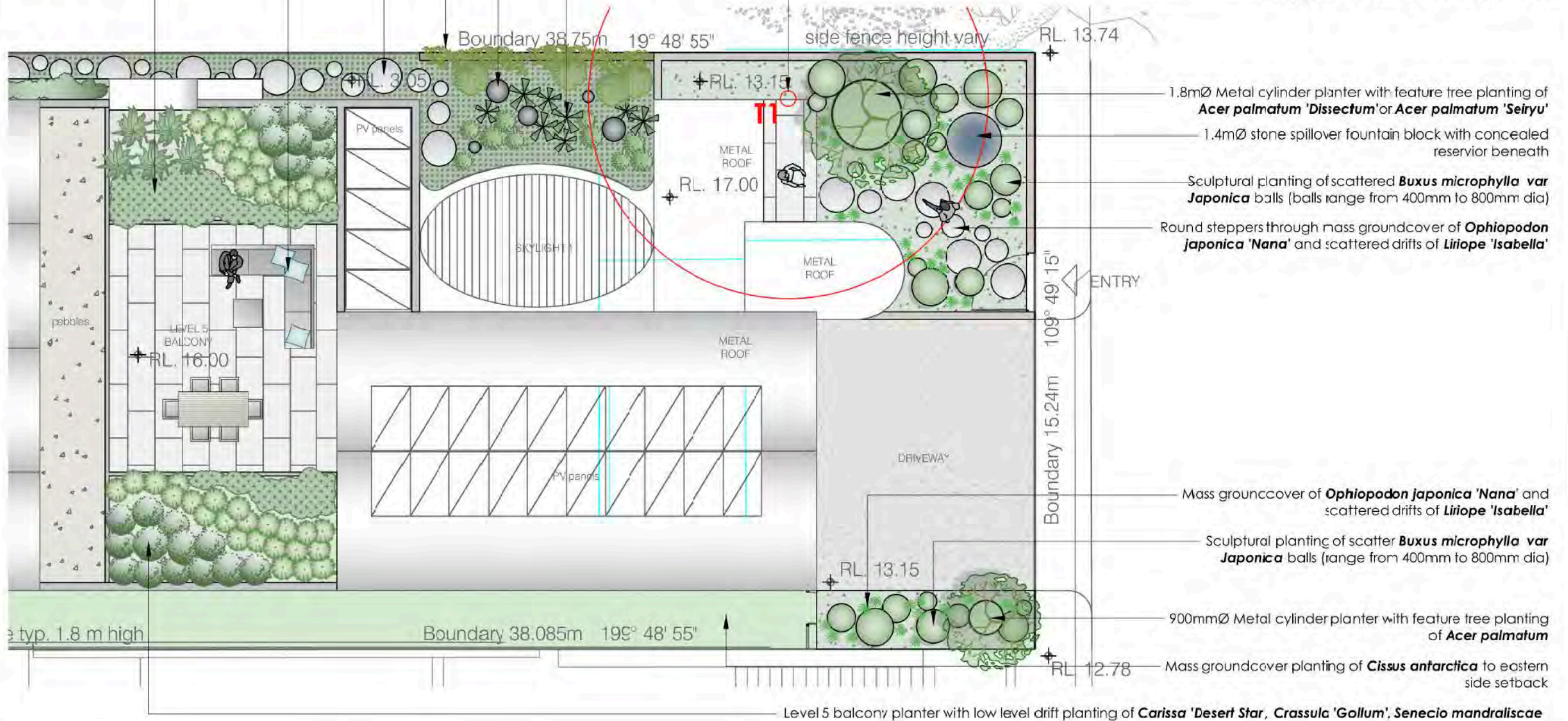
Round stepper access through groundcover of *Soleirolia soleirolii*

Boundary cutting inset 200mm to allow for spillover planting of *Cissus antarctica* Install metal planter to rock face at top to retain existing soil profile above bedrock layer. *Cissus* to spill down face of rock wall

Metal cylinder totem poles (300,500 and 600mmØ) with planting voids at varying heights. Feature planting of ferns and climbing plants to vegetate and dress the poles

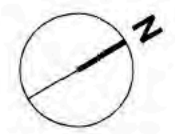
Ground level drift planting of shade tolerant species (*Ligularia reniformis*, *Blechnum 'Silver Lady'*, *Spathyphyllum* and *Monstera deliciosa*)

Existing *Celtis occidentalis* tree to be removed



NOTES

0 1 2 3 4 5 10  
 Scale in metres at 1:100 @ A3  
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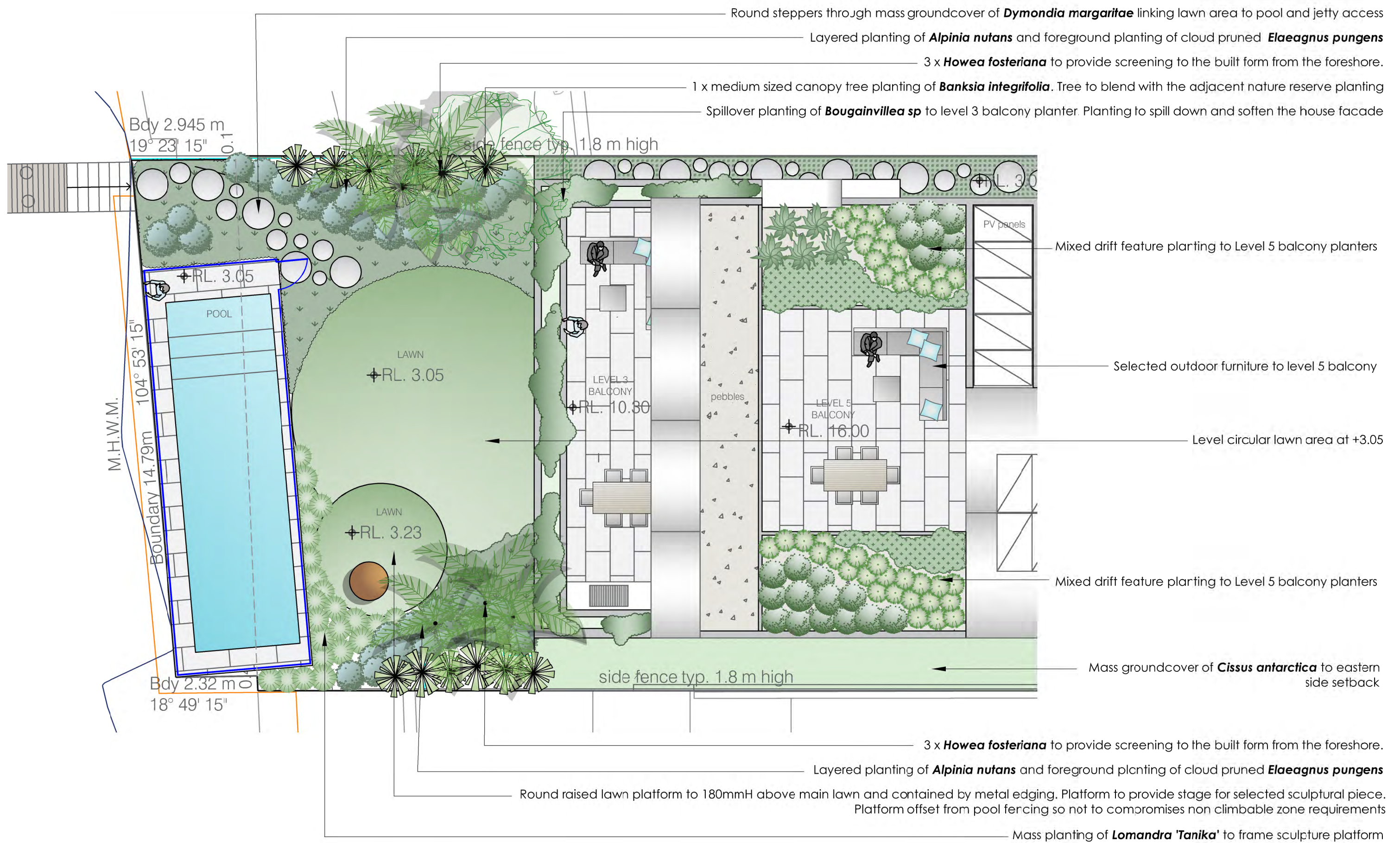


**LANDSCAPE PLAN**  
 HAZZOURI RESIDENCE  
 1 BADEN ROAD  
 KURRABA POINT NSW

**GARDEN PLAN**  
 20 APRIL 2021  
 PAGE 1 OF 3  
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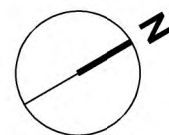


NOTES



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LANDSCAPE PLAN

HAZZOURI RESIDENCE  
1 BADEN ROAD  
KURRABA POINT NSW





















GARDEN PLAN

20 APRIL 2021  
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**PLANT SCHEDULE**

SYMBOL	QTY	BOTANICAL NAME	COMMON NAME	POT SIZE	MATURE SIZE	SPACING
	14	<i>Alpinia nutans</i>	False Cardimon	25Ltr	1.2m	700cts
	10	<i>Blechnum 'Silver Lady'</i>	Silver Lady Fern	200mm	600mm	scattered
	25	<i>Bougainvillea sp</i>	Bougainvillea	250mm	trailing	per plan
	23	<i>Buxus microphylla var Japonica - topiary balls</i>	Japanese Box Balls	25-45Ltr	400-800mm dia balls	per plan
	21	<i>Carissa macrocarpa 'Desert Star'</i>	Dwarf Natal Plum	300mm	600mm	600cts
	36m2	<i>Cissus antarctica</i>	Kangaroo Vine	140mm	trailing groundcover	1m cts
	40	<i>Crassula ovata 'Gollum'</i>	Coral Jade Plant	250mm	600mm	500cts
	29m2	<i>Dymondia margaritae</i>	Silver Carpet	140mm	100mm	per m2
	34	<i>Elaeagnus pungens</i>	Silverthorn	25-45Ltr	1m mounds	700cts
	6	<i>Howea fosteriana</i>	Kentia Palm	Advanced	6m	per plan
	10	<i>Ligularia reniformis</i>	Tractor Seat Plant	200mm	600mm	scattered
	39	<i>Liriope 'muscaria' 'Isabella'</i>	Lily Turf 'Isabella'	200mm	400mm	scattered
	26	<i>Lomandra 'Tanika'</i>	Mat Rush 'Lime Tuff'	200mm	600mm	500cts
	4	<i>Monstera deliciosa</i>	Fruit Salad Plant	45Ltr	climber	per plan
	35m2	<i>Ophiopogon japonica 'Nana'</i>	Dwarf Mondo Grass	Trays	50mm	per m2
	42	<i>Senecio mandraliscae</i>	Blue Chalk Sticks	140mm	300mm	500cts
	24m2	<i>Soleirolia soleiroliae</i>	Babies Tears	Trays	10mm	per m2
	5	<i>Zamia furfuracea</i>	Cardboard Plant	25Ltr	600mm	600cts
	2	<i>Acer palmatum Dissectum</i> or <i>Acer palmatum 'Seiryu'</i>	Japanese Maple cvs	75Ltr	4m	per plan
	1	<i>Banksia integrifolia</i>	Coastal Banksia	45-75Ltr	8-10m	per plan

**TREE SCHEDULE**

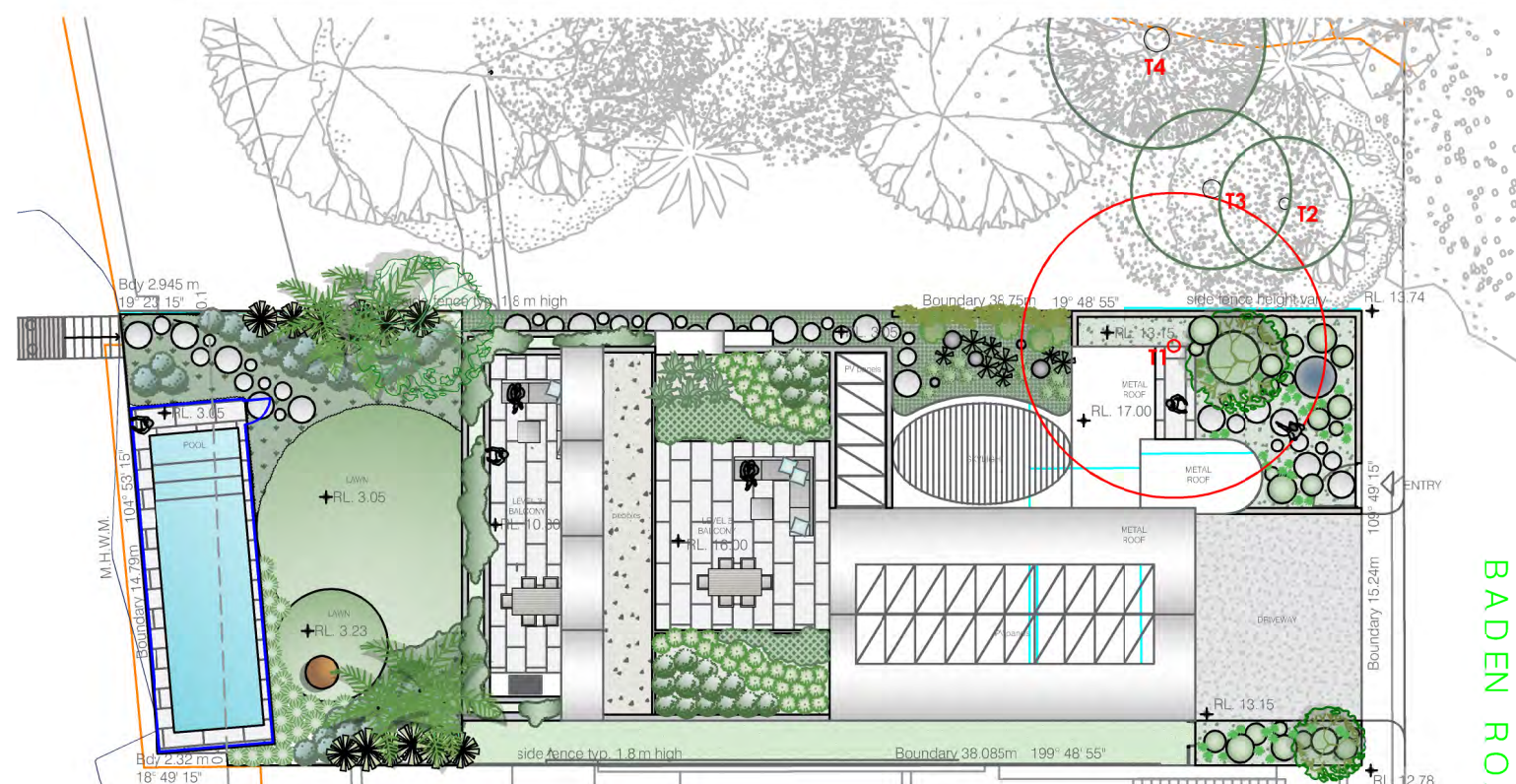
SYMBOL	BOTANICAL NAME	COMMON NAME	ACTION
T1	<i>Celtis occidentalis</i>	Hackberry	Remove - Exempt Species
T2	<i>Melaleuca quinquinervia</i>	Broad Leaf Paper Bark	Nil - located in adjacent reserve
T3	<i>Agonis flexuosa</i>	Willow Myrtle	Nil - located in adjacent reserve
T4	<i>Pinus pinea</i>	Stone Pine	Nil - located in adjacent reserve

**NATIVE SPECIES INCLUSIONS**

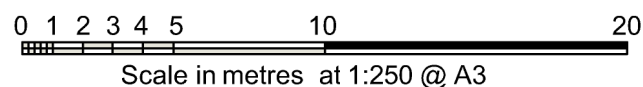
SYMBOL	BOTANICAL NAME	COMMON NAME	AREA OF SITE PLANTED
	<i>Cissus antarctica</i>	Kangaroo Vine	36.00m2
	<i>Lomandra longifolia 'Tanika'</i>	Mat Rush	6.70m2
		Proposed	<b>42.70m2</b>
		Required	<b>22.00m2</b>

**SITE CALCULATIONS**

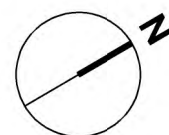
SITE AREA	624.10m2
LANDSCAPE AREA - REQUIRED	249.60m2
LANDSCAPE AREA - EXISTING	80.00m2
LANDSCAPE AREA - PROPOSED	<b>249.00m2 (40%)</b>



NOTES



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**LANDSCAPE PLAN**

HAZZOURI RESIDENCE  
 1 BADEN ROAD  
 KURRABA POINT NSW

**PLANT SCHEDULE**

20 APRIL 2021  
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 1 : 2 5 0 @ A 3



# 1 Baden Road, Kurraba

Clause 4.6 Variation Request to Clause 4.3 Height of Buildings of the North Sydney  
Local Environmental Plan 2013

On behalf of  
Revelop  
September 2021





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# 1 Introduction

This Clause 4.6 variation request accompanies a Development Application (**DA**) submitted to North Sydney Council (**Council**) for the demolition of the existing dwelling house, bulk excavation and construction of a new dwelling house at 1 Baden Road, Kurraba Point (**the site**).

The proposal seeks to demolish the existing house on site and construct a new 5 storey residence consisting of 5 bedrooms, 6 bathrooms (excluding 4 powder rooms) and 2 car spaces.

The Clause 4.6 variation request seeks to vary the maximum Building Height (**Height**) of the building standard which applies to the site under Clause 4.3 of the *North Sydney Local Environmental Plan 2013* (the **NSLEP 2013**). The maximum height standard which applies under the NSLEP 2013 is 8.5m.

Clause 4.3 of the NSLEP states the following:

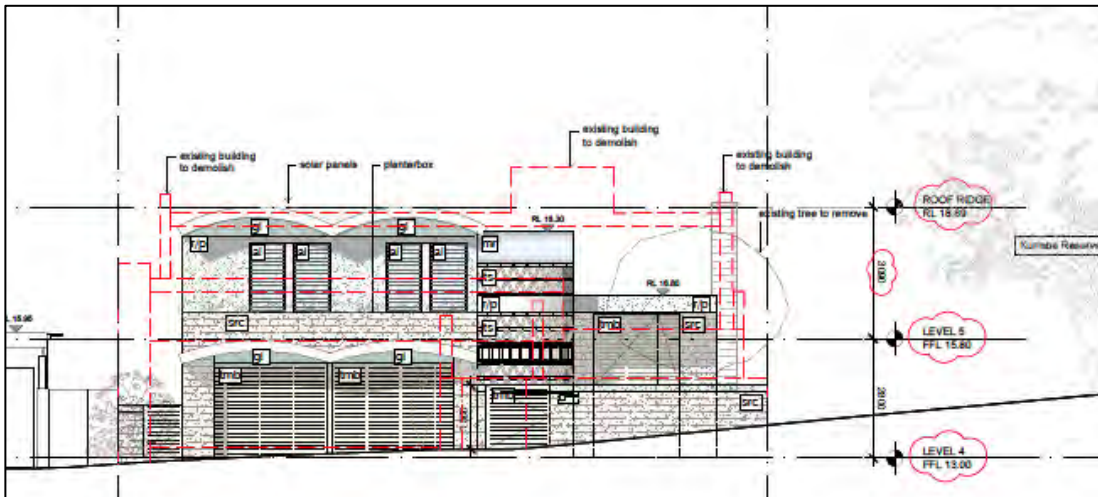
*(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*



**Figure 1.** Height Control - NSLEP2013

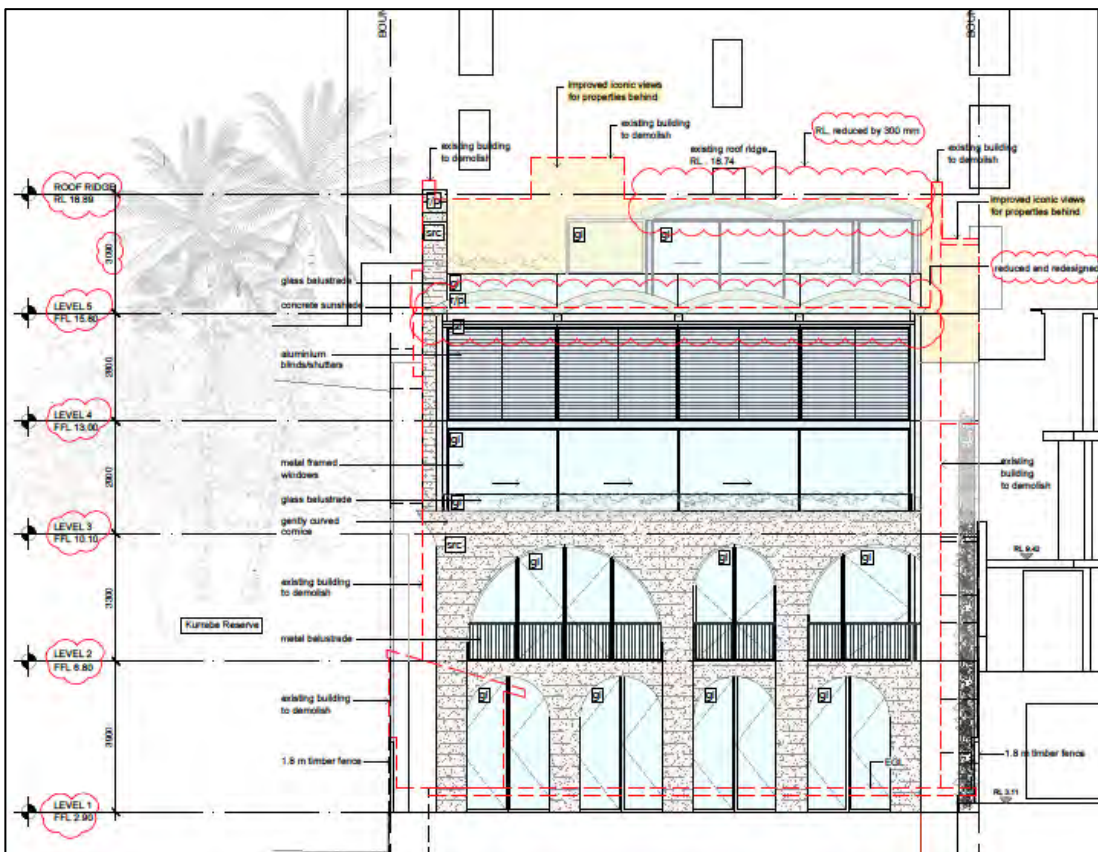
Source: Mecone MOSAIC

The proposed development includes the demolition of the existing dwelling, bulk excavation and construction of a new dwelling which will be stepped in response to the sloping topography of the Sydney Harbour foreshore. As depicted in the architectural images below, the proposal will present to Baden Road as a two-storey development and to Sydney Harbour as a 4-storey dwelling stepped in two storey sections.



**Figure 2. North Elevation (extract from DA12 A)**

Source: Source: Luigi Rosselli



**Figure 3. South Elevation (extract from DA10 A)**

Source: Source: Luigi Rosselli

The proposed bulk and massing of the dwelling on the site is generally within the envelope of the existing dwelling to be demolished. The minor exceedance of the 8.5m height standard applicable to the site is less than 500mm when measured from the existing ground level at the base of the sloping site. The exceedance is a result of the curved roof on the northern elevation and the balcony parapet on level 4 located on the eastern elevation of the proposed dwelling. The extent of variation is discussed below in **Section 3**.

This Clause 4.6 Variation request therefore seeks a minor variation to the height standard.

Strict application of the height controls is unnecessary and unreasonable because the proposed changes are minor in nature. Additionally, the View Assessment prepared for the development application notes that despite the minor exceedance, the proposed dwelling will likely result in improved site lines and views for some residents in neighbouring dwellings to the north of the site, over Baden Road. Further to this, the minor exceedance will not change the intensity of use and is compatible with the surrounding natural and built environment. Therefore, notwithstanding the proposed variation, the Objectives of Clause 4.3 Height of Buildings, and the R3 Residential Zone in which the site is located are nevertheless achieved.

The variation will enable the delivery of a residential dwelling that is compatible the Sydney Harbour foreshore and is considered an improvement of the existing dwelling on the site that will not generate any unreasonable environmental effects.

The following sections of this report provide an assessment of the request to vary the Height Standard of Clause 4.3 of NSLEP 2013. Consideration has been given to the following matters within this assessment:

- *Varying Development Standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011; and*
- Relevant planning principles and judgements issued by the Land and Environment Court.

## 2 Exceptions to Development Standards

Clause 4.6 of the NSLEP 2013 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of Clause 4.6 are as follows:

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

Clause 4.6 enables a variation to any development standard to be approved on consideration of a written request from the applicant that justifies the contravention in accordance with Clause 4.6.

Clause 4.6 provides flexibility in the application of planning provisions by allowing a Consent Authority to support a DA for approval, even where it does not comply with certain development standards where it can be shown that flexibility in the circumstances of the case would achieve better outcomes for the development.

In determining whether to grant consent for development that contravenes a development standard, Clause 4.6(3) and (4) requires that the Consent Authority consider a written request from the applicant, which demonstrates that:

- Compliance with the development standard is **unreasonable or unnecessary in the circumstances** of the case, and
- There are **sufficient environmental planning grounds** to justify contravening the development standard.
- That the proposed development will be **in the public interest** because it is consistent with the objectives of the particular standard and the **objectives for development within the zone** in which the development is proposed to be carried out.

A further judgement by Preston in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* clarified the correct approach to Clause 4.6 variation requests, including that:

*"The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard."* [88]

Accordingly, this Clause 4.6 variation request is set out using the relevant principles established by the Court.

Clause 4.6 of the NSLEP 2013 reads as follows:

### **Clause 4.6 Exceptions to development standards**

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

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

- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—
- (a) that **compliance with the development standard is unreasonable or unnecessary in the circumstances** of the case, and
  - (b) that there **are sufficient environmental planning grounds to justify contravening the development standard.**
- (4) Development consent must not be granted for development that contravenes a development standard unless—
- (a) the consent authority is satisfied that—
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
  - (b) the concurrence of the Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3)."

(Emphasis added)

The proposed non-compliance in height has been assessed against the objectives of the zone and development standard in **Section 6** and **Section 7**.



The assessment of the proposed variation has been undertaken in accordance with the requirements of the NSLEP 2013, Clause 4.6(3) Exceptions to Development Standards in the assessment in **Section 5** and **Section 6**.

This Clause 4.6 Variation has been prepared as a written request seeking to justify contravention of the following provisions under the NSLEP 2013:

**'4.3 Height of Buildings'**

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

*(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*

*(b) to promote the retention and, if appropriate, sharing of existing views,*

*(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*

*(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*

*(e) to ensure compatibility between development, particularly at zone boundaries,*

*(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,*

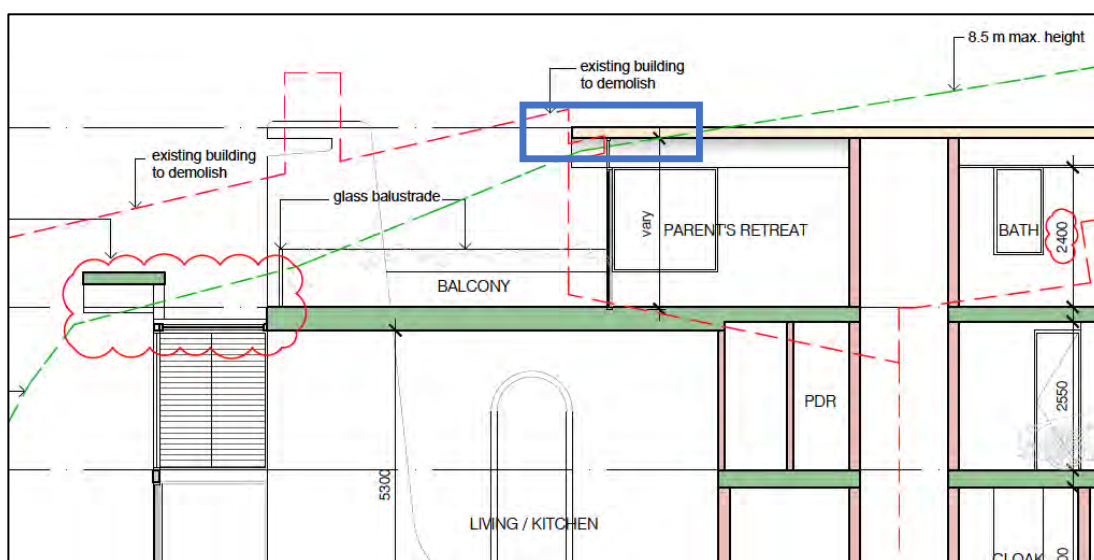
*(g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

### 3 Extent of variation to the development standard

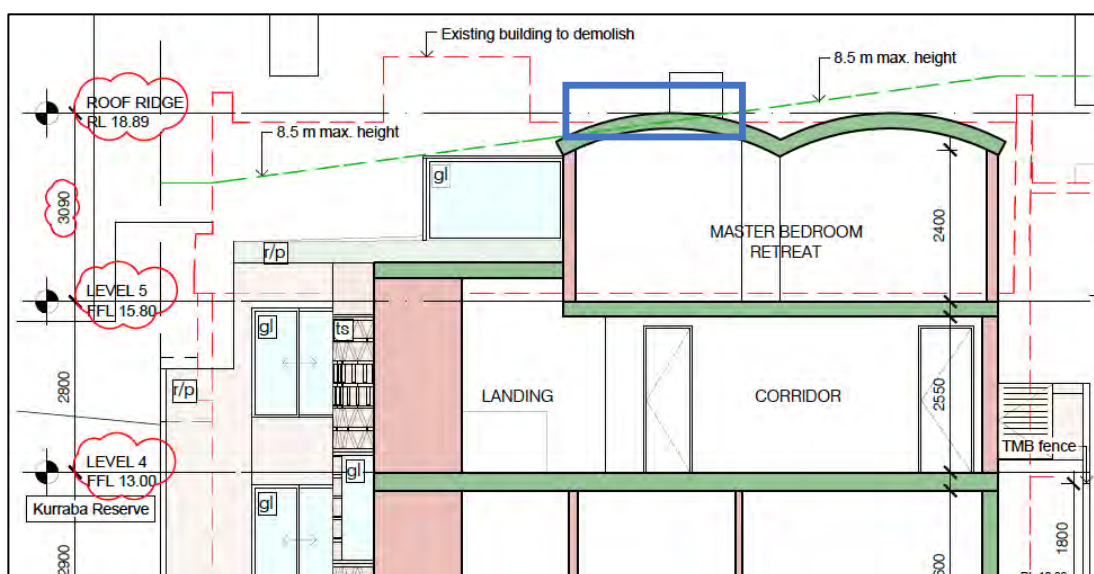
In accordance with Clause 4.3 of the NSLEP 2013, the site is subject to a maximum height development standard of 8.5m.

The proposed dwelling sits within both the existing dwelling envelope and the maximum building height standard of 8.5m, with a minor exceedance as a result of reconfiguration of roof features. Given the sloping topography of the site, the dwelling is stepped to reduce impacts to the neighbouring dwellings and surrounding environment. A minor exceedance of the maximum height standard occurs on the northern portion of the site as a result of the curved roof (**Figure 2**) and the balcony parapet located on level four of the eastern elevation of the dwelling (**Figure 3**). Despite the minor exceedance resulting from these features these design elements respond positively to the surrounding building and the existing streetscape.



**Figure 4.** Section AA (extract from DA14 A 2026)

Source: Luigi Rosselli



**Figure 5.** Section CC (extract from DA14 A 2026)

Source: Luigi Rosselli



The extent of variation from the 8.5m height standard is summarised in the table below.

Building Feature	Proposed Exceedance	Extent of Variation
Curved roof	<b>470 mm</b>	0.47m 5.38%
Balcony parapet on level 4	<b>600mm</b> 200 mm for the solid parapet and 400 mm of glass balustrade over it	0.6m 6.81%

As depicted in **Figure 4** below, the minor exceedance in height is a result of proposed roof features on various levels of the dwelling. The exceedance of both roof features is less than 10%, a minor in nature and unlikely to have a significant impact on the overall amenity of surrounding dwelling in regard to view loss, overshadowing or privacy.



**Figure 6.** Protrusions through height control plane

Source: Luigi Rosselli

Further to this, and as noted in the SEE, although the proposed chimney and concrete curved sunshades on level 4 exceed the 8.5m height control, these features are excluded from the LEP definition of building height, and the proposed chimney has since been reduced in size, now sits below the height of the existing chimney and does not create any view obstruction.

## 4 Clause 4.6 (3)(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe V Pittwater [2007] NSW LEC 827 (Wehbe)* a five-part test was established in which a variation to a development standard is considered to be unreasonable or unnecessary as per Clause 4.6(3A). The five tests established in *Wehbe* are (emphasis added):

1. **The objectives of the standard are achieved notwithstanding non-compliance with the standard;**
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

*Satisfaction of any one of these tests is sufficient to demonstrate the compliance with the standard is unreasonable or unnecessary.*

This objection is based on the **first test**, which is addressed further below

## 5 The objectives of the standard are achieved notwithstanding non-compliance with the standard

The **first test** of *Wehbe* requires demonstration that the objectives of a development standard can be achieved notwithstanding noncompliance with that particular standard.

Variation to Clause 4.3 Height of buildings of the NSLEP 2013 is proposed. Notwithstanding, the objective of the standards are achieved as outlined below.

**(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,**

The proposed design carefully considers the natural and existing topography on site with a proposed development that 'steps' down towards the water. The proposed built form will appear to be two storeys when viewed from the front on Baden Road, and four storeys (Level 3 and Level 4 combined) viewed from the rear. The proposed built form is sympathetic to the natural gradient of the land and therefore satisfies Objective (a).

**(b) to promote the retention and, if appropriate, sharing of existing views,**

A detailed View Assessment prepared by Urbis notes that,

*"In our opinion the potential view loss is negligible in both quantitative and qualitative terms in the view analysed, and therefore an assessment against Tenacity is not required"*.

The report acknowledges that despite the minor non-compliance, the proposed development will result in reasonable view sharing between neighbouring developments to the north of the site. The assessment concludes that any impacts to view sharing are minor in nature as a result of removal of the existing chimney to allow for increased views and sightlines to Sydney Harbour. Additionally, the stepped nature of the building in response to the sloping topography ensures the building is compatible with surrounding developments and minimises additional views lost from neighbouring dwellings, therefore satisfying Objective (b)



**Figure 7.** View assessment from Unit 1/200 Baden Road

Source: Luigi Rosselli

**(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,**

The proposal has been generally designed to minimise overshadowing effects on the surrounding built and natural environment. As depicted in the overshadowing diagrams included in Appendix 3 of the SEE, minor overshadowing of the adjoining dwelling at 3 Baden Road will occur as a result of the development. Despite this minor overshadowing, aspects of 3 Baden Rd will receive improved sun access as a result of the proposal with approximately 2hrs of additional sunlight into the 3<sup>rd</sup> bedroom of level 3.

Further to this, the living areas and principal private open space of the proposed dwelling will receive sun access that is considered appropriate given both the southern orientation of the site as well as the provision of additional balconies on the upper levels. These features ensure sufficient sun access to private open space is maintained. Given the above, Objective (c) is satisfied.

**(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,**

The proposed landscaping features and building setbacks in conjunction with the sloping topography of the site ensures that the dwelling will not overlook neighbouring properties. The minor exceedance of the height standard is a result of various roof features and will not impede on the privacy of neighbouring properties. As the proposed dwelling is consistent with the existing building envelope of the site the level of privacy experienced by residents is to remain largely unchanged. As such, Objective (d) is satisfied.

**(e) to ensure compatibility between development, particularly at zone boundaries,**

The scale-built form and materiality of the dwelling has been considered to ensure it remains compatible with the surrounding streetscape and environment. Given this, Objective (e) is satisfied.

**(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,**

The subject site is located in the Kurraba Point South Neighbourhood. The desired future character of the area is to be primarily medium to high density residential accommodation, with potential increases in density in the vicinity of Kurraba Wharf. The minor exceedance of the height standard will not impact on the character of the area as the proposal responds positively to both the street and foreshore. Sufficient landscaping has been introduced at the front setback as well as above the garage roof. The proposal includes materials that will enhance the scenic and environmental qualities of the coast. The proposal will bring a contemporary edge to the surrounding area whilst reflecting the scale, rhythm and materiality of the neighbouring residences. The proposal generally meets the desired character of the Kurraba Point South Neighbourhood and as such Objective (f) is satisfied.

**(g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.**

As a result of the sloping topography of the site, the dwelling has been stepped resulting in a 4-storey development when viewed from Sydney Harbour, but only a 2-storey dwelling when viewed from the primary frontage on Baden Road. Despite the minor height exceedance, the proposed scale and density of the development is consistent with surrounding developments

located within the R3 Medium Density residential Zone. As such, Objective (g) is satisfied.

In accordance with Wehbe Test 1, it is clearly demonstrated that the proposed development meets the objectives of the height control under Clauses 4.3 notwithstanding the minor noncompliance with the numerical controls for the site. As such, strict application of the standard is unreasonable and unnecessary in the circumstances.



## 6 Clause 4.6 (3)(b) Sufficient environmental planning ground to justify contravening the development standard

Clause 4.6(3)(b) requires the applicant to demonstrate that there are sufficient environmental planning grounds to contravene the development standard.

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].

Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].

In the case of the subject development, there are sufficient environmental planning grounds to justify contravening the development standard for the following reasons:

- The proposed development is generally contained within the building envelope of the existing dwelling to be demolished.
- The minor variation to the height standard will not create any significant additional impact on the amenity of the surrounding developments in regard to overshadowing, privacy or views compared to that currently experienced as a result of the existing approved dwelling on the site.
- Despite the breach of the numerical height controls, the proposed development is appropriate for its context in that it has been appropriately designed to accommodate the sloping topography of the site.
- The minor exceedance will not result in any significant increase in the bulk and scale of the proposed dwelling.

Furthermore, as demonstrated in **Section 5** of this report, the proposal demonstrates compliance with the objectives of the standard in that:

- The proposed development has been integrated into the natural landform by stepping the development along the natural gradient of the sloping land towards Sydney Harbour foreshore;
- The proposed design will ensure the retained of existing shared views to Sydney Harbour from neighbouring dwellings to the north of the site;
- Solar access and privacy to adjoining dwellings and public reserves will be retained;
- The proposed scale and density of the dwelling ensure the development remains compatible with the local character of the area;

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

Therefore, it is considered that there are sufficient environmental planning grounds to justify contravening the development standard in this instance, as, amongst other reasons listed above, the development will deliver one of the key objectives of the Planning Act, will promote the delivery of a residential dwelling that will compliment both the natural and built environment, while providing improved amenity in the locality.

In addition, it is noted that the proposed development will still produce a contextually appropriate development outcome consistent with the objectives of the development standards, despite the non-compliances with the numerical provisions.

## 7 Clause 4.6 (4a) (ii) Public Interest

Clause 4.6(4a)(ii) requires that the consent authority consider whether 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.

Preston CJ in *Initial Action* (Para [27]) described the relevant test for this as follows:

*The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.*

*If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).*

As detailed above the proposed development will be consistent with the objectives of the zone standards as discussed in detail below.

### 7.1 Consistency with Zone R3 Medium Density Residential

Further, it is considered that the proposal will remain consistent with the objectives of the *R3 Medium Density Residential* as summarised below:

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

The proposed development will deliver a residential dwelling within the envelope of the existing dwelling to be demolished on the site. The proposed dwelling responds well to the sloping topography as the minor exceedance in height will not impede on the character of the area. Further, the proposed dwelling is considered an appropriate use of the site to deliver a residential dwelling in the medium density residential zone.

- **To provide a variety of housing types within a medium density residential environment.**

The proposed dwelling will contribute to a variety of housing types located within the medium density zone.

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

The proposed development will not compromise the ability for existing facilities to meet the day to day needs of residents.

- **To encourage the development of sites for medium density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.**

Baden Road is characterised by detached houses and apartment structures, with the harbour side mostly consisting of large houses built in recent decades. The proposal has been designed with a greater front setback to improve the existing streetscape along Baden Road. The proposed development would not impede on the amenity of the surrounding area or physically impact any heritage items in the vicinity of the site or the heritage landscape of Kurraba Point Reserve.

- ***To provide for a suitable visual transition between high density residential areas and lower density residential areas.***

The proposed dwelling will maintain the existing visual transition between high density residential area and lower density area currently provided by the existing residential dwelling on the site. Further to this - The proposed built form was informed by a detailed view sharing analysis which concludes that the proposed development is unlikely to generate any significant visual effects or potential visual impacts on public or private domain views.

- ***To ensure that a high level of residential amenity is achieved and maintained.***

The proposed development provides a highly desirable development outcome. It positively contributes to the existing streetscape, introduces an architecturally designed building that provides high amenity environment for its site users, is sympathetic to the surrounding area whilst not resulting in any adverse impacts on the environment or surrounding developments in regard to overshadowing, privacy and view loss.

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the proposed change of use is to be carried out.

Accordingly, the Council can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

## 8 Clause 4.6(5) Grounds for Consideration

In deciding whether to grant concurrence, subclause 4.6(5) requires that the Secretary consider:

- a) *Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- b) *The public benefit of maintaining the development standard, and*
- c) *Any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The proposal has been assessed against the relative criteria below:

### **Would non-compliance raise any matter of significance for State or regional planning?**

The non-compliance is minor, specific to the circumstances of the site and proposed development and does not raise any matter of significance for State or regional environmental planning.

### **Is there a public benefit of maintaining the development standard?**

There is no public benefit associated with maintaining strict compliance with the development standard in this instance. Doing so would require the removal or roof features that result in a minor non-compliance with the development standard and do not significantly impede on the privacy and views of neighbouring dwellings.

### **Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

There are no additional matters that need to be considered in exercising the assumed concurrence of the Secretary.



## 9 Conclusion

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from development in particular circumstances.

This Clause 4.6 variation is necessary to provide the required flexibility in the height development standard to enable the development of the proposed residential dwelling.

The request concludes that strict compliance with the numerical standard of the height control is unnecessary and unreasonable, and satisfies the tests under Clause 4.6 for the following reasons:

- Strict compliance with the NSLEP 2013 maximum height development standard would be unreasonable and unnecessary in the circumstances as the objectives of the standard are achieved notwithstanding non-compliance with the numerical control (Clause 4.6(3)(a) and Wehbe test 1).
- There are sufficient environmental planning grounds to justify the minor contravention of the development standard. Specifically, the variation is minor in nature and will not impede on the amenity and character of the surrounding area.
- The matters required to be demonstrated by sub-clause (3) are adequately addressed (Clause 4.6(4)(a)(ii));
- The proposal is in the public interest (Clause 4.6(4)(a)(ii)) because it will deliver a high-quality design that is compatible with the character of the area and:
  - the proposed development will be consistent with objectives relating to the maximum height development standard; and
  - the proposal is consistent with the objectives stated in the NSLEP 2013 Land Use Table for the R3 Medium Density Residential Zone. There would be no public benefit in maintaining strict compliance with the development standard.

More particularly:

- The proposed development is generally contained within the building envelope of the existing dwelling to be demolished.
- The minor variation to the height standard will not create any significant additional impact on the amenity of the surrounding developments in regard to overshadowing, privacy or views compared to that currently experienced as a result of the existing approved dwelling on the site.
- Despite the breach of the numerical height controls, the proposed development is appropriate for its context in that it has been appropriately designed to accommodate the sloping topography of the site.

Overall, the objectives of Clause 4.6(1) are to provide an appropriate degree of flexibility to achieve a better outcome for and from development. Strict compliance with the maximum height standard would prevent the proposed development proceeding and delivering the benefits and enhancements described. The proposal will have minimal impacts of the community and is compatible with the local character of the area.

The relevant tests under Clause 4.6 are satisfied and there are sufficient environmental planning grounds to justify the minor non-compliance with the height standard.

URBIS

# 1 BADEN ROAD PRELIMINARY VIEW SHARING ADVICE

PREPARED FOR

**REVELOP PROPERTY GROUP**

01 APRIL 2021

FINAL - FOR SUBMISSION

**URBIS STAFF RESPONSIBLE FOR THIS REPORT:**

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Urbis acknowledges the important contribution that Aboriginal and Torres Strait Islander people make in creating a strong and vibrant Australian society.

We acknowledge, in each of our offices, the Traditional Owners on whose land we stand.

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### SUMMARY AND CONCLUSION

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# PURPOSE OF ADVICE

**Urbis has been engaged by Anthony El-Hazouri on behalf of his client to provide preliminary view sharing advice in relation to a proposed DA for 1 Baden Road.**

This advice has been prepared to provide Council with a more detailed assessment of the likely visual effects of the proposed built form on public and private domain views from within the immediate visual context of the site. In particular the report assesses the potential visual effects and impacts of the proposed development on views from dwellings at 3 Baden Road and 200 Kurraba Road, as well as the views from Hodgsons Lookout Park and Kurraba Point Reserve. This advice has been informed by a review of architectural plans prepared by Luigi Rosselli Architects (dated March 2021), fieldwork observations and an analysis of real estate imagery from neighbouring dwellings available via on-line.

In this regard the advice is 'preliminary' in that it is based on the resources currently available and not on private domain view inspections or photomontages.

**The report addresses concerns raised by North Sydney Council in Pre-DA meeting minutes with I dated Thursday 3rd December 2020. Issues relevant to private domain view sharing are quoted as follows:**

*"A detailed view assessment is to be carried out to demonstrate that the proposed development would contribute to reasonable view sharing between developments and from public areas. The assessment is to specifically address No. 3 Baden Road directly to the east, No. 200 Kurraba Road located opposite and the public domain including Hodgsons Lookout Park to the north west. The rear setback should align with the adjoining dwellings to the east as significant views are available towards the west."*

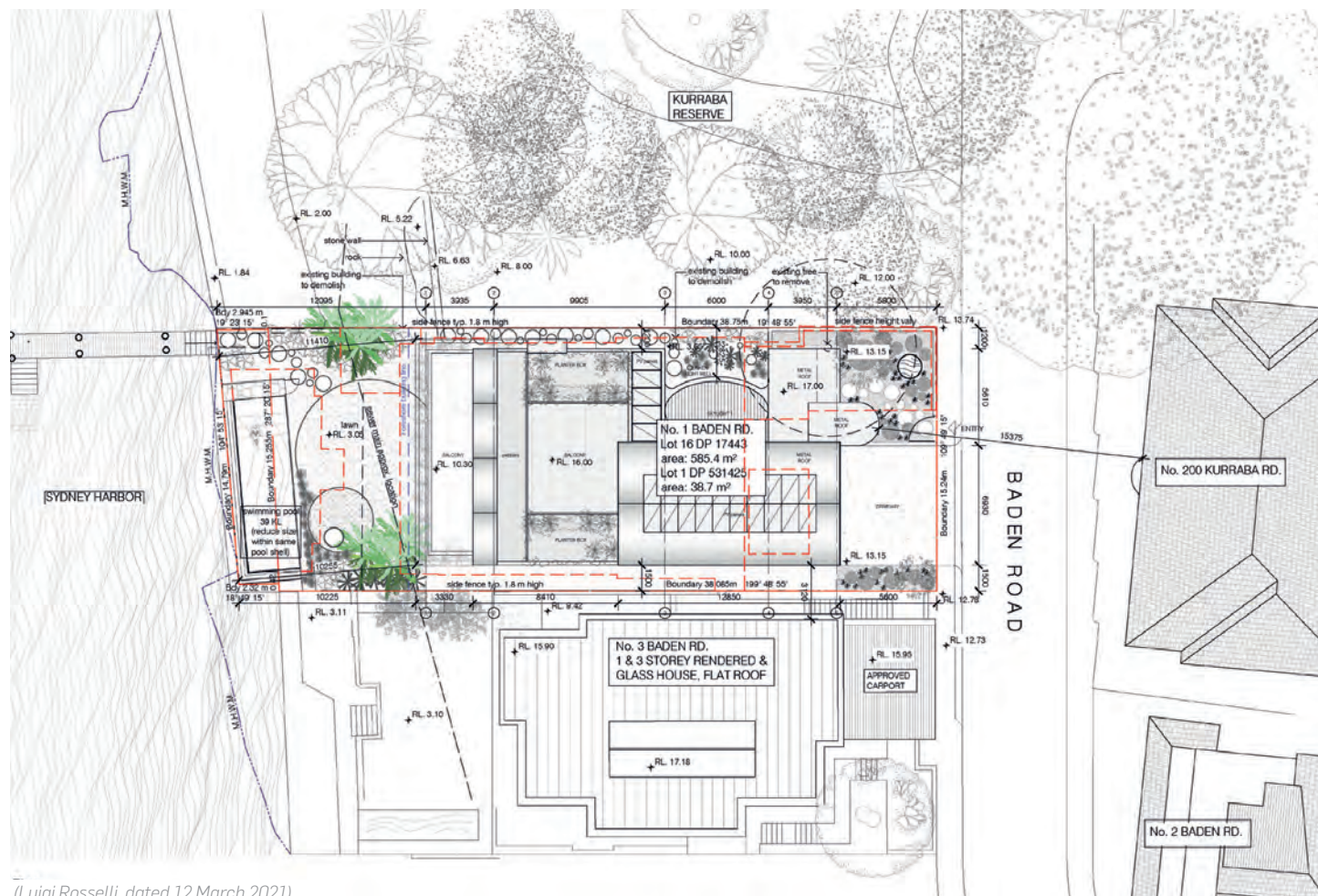


# 1.0 PROJECT DESCRIPTION

The Development Application (DA) is for the demolition of the existing dwelling on the site, bulk excavation and construction of a new dwelling with a two-car garage and reduced sized swimming pool within the foreshore area. Part of the works to the pool concourse would affect existing structures that are subject to the Maritime lease. Due to the steep topography on the site which falls from street level towards Sydney Harbour, the existing dwelling presents to Baden Road as a one-storey dwelling and from the foreshore as four storeys, albeit stepped in two storey sections.

The drawings show that the dwelling will present to Baden Road as a two-storey dwelling where the single storey garages include a curved roof form and the western end of the dwelling adjacent to the park is elevated approximately half a storey above street level. The second storey as viewed from the Road also includes a double curved roof form with an apex height of RL 19.19, which appears to be approximately 400mm higher compared to the parts of the existing dwelling's ridgeline. The western part of the roof form is significantly lower in height compared to the existing situation. We note that architectural sections indicate that all parts of the built form proposed sit below the height control of 8.5m.

We note that the proposed curved roof forms are lower than the height of the existing chimney structure and both end walls and that the proposed chimney located at the west end of the building is of the same height and is directly aligned with an existing end wall. In this regard the proposed tall narrow feature essentially replaces the existing built form.



(Luigi Rosselli, dated 12 March 2021)

Figure 1 Site Plan



When considering the proposed development from the east for example from 3 Baden Road, the proposed development is stepped so that levels 1 and 2 from one mass, the southern extent of the which sits approximately 1m north of and inside the location of the existing dwelling which occupies the site.

In other words the existing proposed floorplates at levels 1 and 2 are set back to the north compared to the existing built form. The same situation occurs in relation to levels 3 and 4 above, which are set back significantly to the north behind an open terrace that is characterised by glazed balustrades. The plans show that the south-east edge at levels 4 and 5 sits approximately 3m further back (north) compared to the existing built forms on the site. Further, the single level simply massed form at level 5 is setback 7m to the north compared to the existing dwelling on the site, the sloping roof of which currently occupies this space.

In this regard overall the mass of the proposed development is reduced compared to the existing built form on the site. The site coverage will decrease from 442m<sup>2</sup> to 323m<sup>2</sup>, while landscape area will increase from 80m<sup>2</sup> to 248m<sup>2</sup> as shown in drawing DA16.

In terms of streetscape presentation and character the form proposed is consistent with others present in the local visual context. The local visual context is considered below in section 2.0

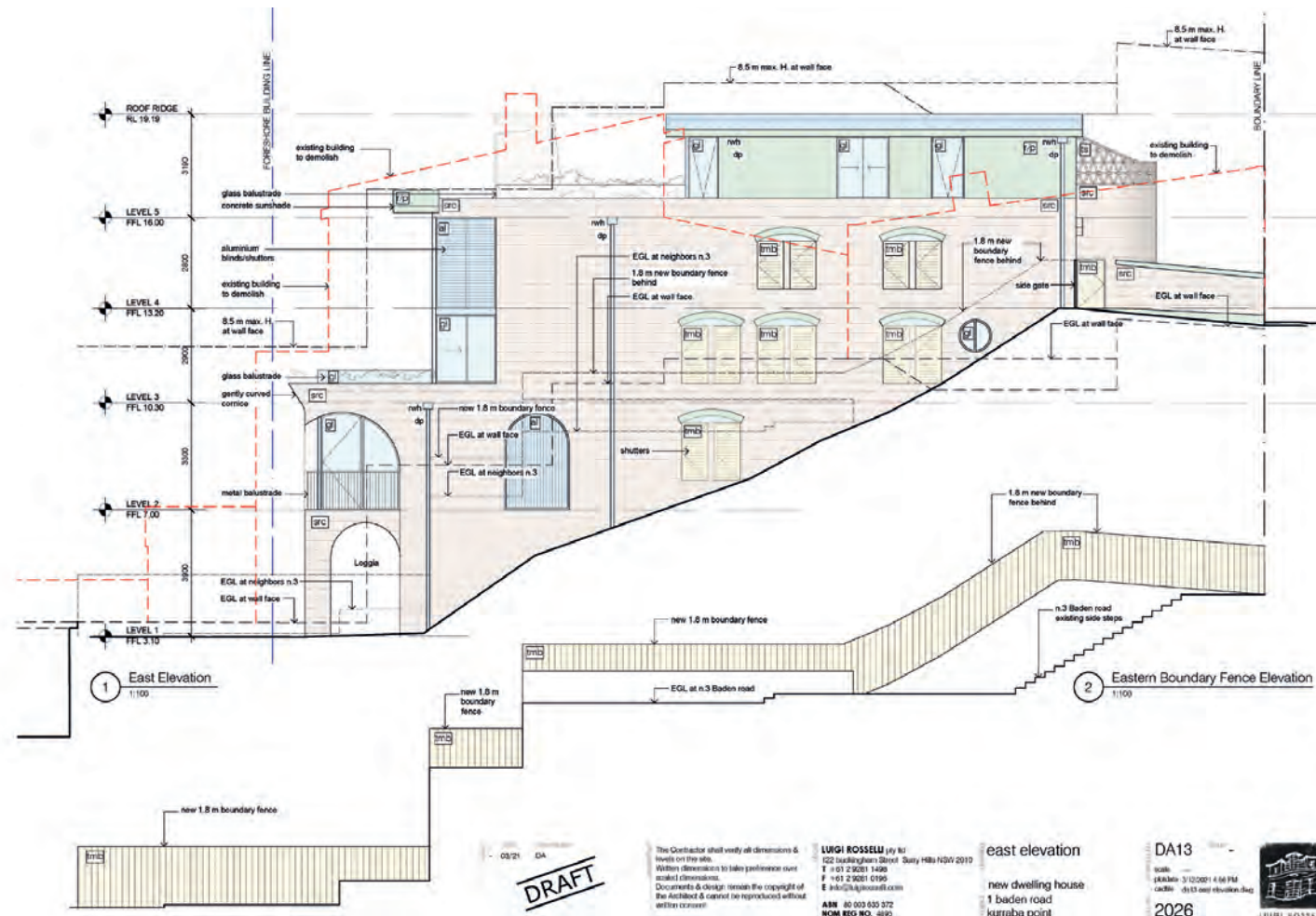


Figure 2 Eastern Elevation of Proposed Development

(Luigi Rosselli, dated 12 March 2021)

## 2.0 LOCAL VISUAL CONTEXT



Urbis conducted fieldwork on 10 March 2021 and observed the existing visual setting of the site, its spatial arrangement in relation to neighbouring development and public spaces. We considered the external visibility of the subject site and the proposed development from public and private domain locations.

### Hodgsons Lookout

Hodgsons Lookout is located north-west of the subject site on an elevated knoll that is encircled by Kurraba Road. Its upper level is relatively flat and includes public open space and play equipment. The east side of the reserve includes dense mature vegetation which screen easterly views to adjoining residential development. Views from the south edge of Hodgsons lookout are elevated and less constrained by foreground vegetation which along the south edge of the space, springs from lower, sloping topography. Dense evergreen vegetation that exists within and along the east boundary of the reserve is such that the western wall and built form present on the subject site is heavily screened and barely visible (refer to photo 1 to 4).



Figure 3 Aerial Site Plan



### Kurraba Point Reserve

This is an extension of open space south of Kurraba Road. The area is characterised by gentle south-facing slopes which fall in elevation to meet the harbour and vegetation including a continuous group of trees located along the east side of the reserve adjacent to the subject site's boundary. The vegetation includes a mix of Ficus and Pinus species, Phoenix Canariensis and Pittosporums all of which are evergreen so that the dense vegetative screen will be present year-round. The lower reaches of the park are characterised by more open turfed areas which meet the sea wall and timber post and rail fence

#### LEGEND

- Subject Site
- All View Locations
- ⓧ Photo Location Reference



Figure 4 View Location Plan





**Photo. 1** View south-south-east towards the subject site from Hodgsons Lookout. The existing dwelling is blocked from view by evergreen fig trees (*Ficus Hillii* sp.).



**Photo. 3** View east to existing dwelling from the lower reaches of Kurraba Point Reserve near Spains Lookout. From this location, we expect that the focus of views would be to the south-east, south and south-west towards scenic and iconic views across Sydney Harbour.



**Photo. 2** View south-south-east towards the subject site from the south edge of the elevated knoll at Hodgsons Lookout



**Photo. 4** View east towards the site's boundary wall from the edge of Sydney Harbour.

## 2.1 EXISTING BUILT FORM ON THE SITE

The existing dwelling on the site appears to be a post-modern simply massed building including split floor-levels with sloping skillion-style roof forms. The dwelling is not highly visible from the road as a result of the existing open carport structure occupying the majority of the street frontage. From elevated locations along Kurraba Road parts of the roof and the wide chimney structure are visible. The dwelling appears to include two main roof forms, the northern section of which is visible above the carport and slopes down towards the road. The southern and larger section of the roof slopes down towards the harbour from its north and highest edge. This north edge which presents to Baden Road above the carport sits broadly in an east-west alignment and is the tallest built form on the site. In this regard this feature constrains potential views from neighbouring dwellings to the south.

The majority of the dwelling including its 4 storeys of accommodation that are stacked upon each other, are visible only in views from the south (Harbour) or from the closest and isolated section of Kurraba Point Reserve.

## 2.2 BUILT FORM IN THE IMMEDIATE CONTEXT

The built form along Baden Road and Kurraba Road could be described as medium density, with the majority of dwellings being between two and four storeys with street level garaging and carports. In this regard the ground floor of dwellings along the north side of the road are elevated a part-storey above the carriageway. For example both 200 Kurraba Rad and 2 Baden Road are residential flat buildings which include multiple units. Dwellings located in Baden Road are of mixed age and architectural style and are predominantly characterised by sandstone, timber, steel and glass materials and by hipped and gabled pitched roofs, while some apartment buildings have flat or skillion roofing including for example 3 Baden Road. We observed that lots along the south and east side of Baden Road are arrayed about the curved carriageway so that frontages are narrower than rear boundaries and other lots including 1 and 3 Baden Road are narrow and long.

The wider visual context of Kurraba Point is characterised by medium density residential developments with some pockets of the South Cremorne Planning Area being designated for high rise residential development. The built form around Kurraba Point is built with setbacks from the street and neighbouring properties to allow for the character of the area to be maintained. This character prioritises being sympathetic to the natural landscape and maintain its green and leafy setting.

New developments in the area are expected to complement the existing building forms in respect to massing, composition, materials, colours and maintaining the original subdivision pattern. The natural character of the Kurraba Point area includes mature trees and steep topography including a highpoint at Hodgsons Lookout. Dwellings in the area are predominantly medium to large Federation and Edwardian homes with some earlier Victorian development, interwar dwelling houses and residential flat buildings.





**LEGEND**

- Subject Site
- All View Locations
- ⓧ Photo Location Reference

VIEW LOCATION REFERENCE MAP



Photo. 5 Detail of south elevation of 1 Baden Road from the south-east edge of Kurraba Point Reserve



Photo. 6 View from Pool north-east corner to bridge



## HARBOUR VIEWS FROM EAST TO WEST



**Photo. 7** View east from the south-east edge of the subject site, adjacent to 3 Baden Road



**Photo. 8** View south-east from the south-east edge of the subject site



**Photo. 9** View south from the south-east edge of the subject site



**Photo. 10** View south-west from the south-east edge of the subject site





VIEW LOCATION REFERENCE MAP



Photo. 11 Detail of south elevation of 3 Baden Road from an external balcony at 1 Baden Road





**Photo. 12** Detail of the south elevation at 1 Baden Road



**Photo. 13** Detail of south elevation at 3 Baden Road



**Photo. 14** Detail view of the south elevation at 2 Baden Road



**Photo. 15** Detail of the south and east elevation of 200 Kurraba Road





VIEW LOCATION REFERENCE MAP



**Photo. 16** Detail of the south elevation at 200 Kurraba Road showing the symmetrical layout of windows etc.



**Photo. 17** Existing carport entry and roof form at 1 Baden Road





**Photo. 18** Detail of 3-3a Baden Road Garage



**Photo. 20** Streetscape view west along Baden Road including 2 Baden Road in the foreground



**Photo. 19** Neighbouring residential development at 5 Baden Road east of the subject site



**Photo. 21** Streetscape view west towards the site





VIEW LOCATION REFERENCE MAP



Photo. 22 Detail view of 9 Baden Road



Photo. 23 View of existing dwelling on the site

## 3.0 EXISTING VIEW ACCESS

This analysis is constrained to those views closest and potentially most affected by the likely visual effects of the proposed development.

### 3.1 HODGSONS LOOKOUT PARK & KURRABA POINT RESERVE

Views to the site from the upper elevated knoll and southern stairs of Hodgsons Lookout Park are limited and constrained by intervening vegetation. Views from these locations to the south and south-west are expansive and iconic including the Sydney Harbour Bridge to the south-west, Sydney Opera House, Royal Botanic Gardens, parts of Sydney Harbour and Sydney CBD.

The western boundary wall of the site and a small portion of the dwelling is partly visible from Spain's Lookout at Kurraba Reserve. However, due to its neutral colour and significant vegetative screen the site and existing dwelling are of low external visibility.

The dense vegetation along the western boundary of the site which runs from Kurraba Road to the foreshore contributes to the low visibility of the existing development from the lower reaches of Kurraba Point Reserve including from the water edge. Views from south of Kurraba Road are expansive and iconic as described above.

### 3.2 3 BADEN ROAD

This dwelling is located immediately east of the subject site and includes 4 storeys of accommodation. Assumptions made about potential views available are based on observations made of the south elevation from the subject site and a review of real estate images found online.

The south elevation of this dwelling includes four levels of accommodation which are characterised by floor to ceiling glazing and a narrow external balcony is included at level 1 and Juliette balconies at level 2 and 3.

Real estate views show that views are available from windows located at each level. View compositions include a wide arc from the south-east to the south-west. The views are expansive approximately from Vaucluse in the east, include many iconic features such as parts of the Sydney Harbour, sections of land-water interface and islands, the Royal Botanic Gardens, Sydney Opera House, Sydney CBD skyline and parts of the Sydney Harbour Bridge.

Floorplans show that the ground, second and third levels include living and dining areas whilst the first floor is occupied by a large master bedroom. It is likely therefore that potential views available from those rooms and areas are expansive and include the features listed above.

We note further that aside from these views, that additional and more expansive views to the east and west would be available from the external level 2 balcony, outdoor ground level areas and pool deck.





VIEW LOCATION REFERENCE MAP

FLOOR PLANS OF 3 BADEN ROAD



GROUND LEVEL

GROUND PLAN



LEVEL ONE

LEVEL ONE



FLOOR PLANS OF 3 BADEN ROAD



LEVEL 2



LEVEL THREE

**REAL ESTATE IMAGES OF VIEWS FROM  
3 BADEN ROAD**



**View 1.** Elevated living room view south-east towards the royal botanic gardens which will be unaffected by the proposed development



**View 2.** Ground Floor View West



**View 3.** Formal Dining at level 2 view south-west



**View 4.** Enclosed balcony second level. The proposed development is not visible in this view. The drawn curtains provide privacy from 1 Baden Road and were drawn on the day of inspection.



**View 5.** Bedroom views south



**View 6.** Bedroom view south



**View 7.** View south-west from the east side of the main living area at Level 2 as per the day time view below.



**View 8.** View from the pool deck at the east side of the ground floor area.



**View 9.** View from the south-east edge of the site

We note that a minor amount of the existing dwelling on the subject site is located to the west and is partly visible in some views, for example in View 4, from the level 2 living and dining room. Based on the real estate imagery reviewed, the built form at 1 Baden Road occupies only a minor to negligible part of existing wide and expansive view composition available from all levels at 3 Baden Road.



### 3.3 200 KURRABA ROAD

200 Kurraba Road is a part three and part four storey residential flat building which is massed simply in one rectangular block directly north and opposite the subject site. The front elevation includes street level parking so that the ground level (first floor of accommodation) is elevated above the street level. The front elevation of 200 Kurraba Road is symmetrical in that it is divided by a central vertical window which appears to be associated with a stairwell. The vertical stacks and layouts of bay and other windows either side of the central stairwell are symmetrical, which suggests that the internal floorplate includes two south-facing units per floor which are likely to have mirror-image internal layouts

This is corroborated upon review of real estate images and floor plans for some units within the residential flat building. Existing views from the ground level (above garaging) are likely to be blocked by the existing roof form on the subject site however above this, as shown in views from unit 1 at 200 Kurraba Road (which we assume is located at the elevated ground level of the development ) views to towards the harbour and icons are visible. The existing chimney on the subject site is also visible but does not obfuscate views to any iconic features. Real estate images for the first floor dwelling for example 3/200 Kurraba Road have expansive views of the harbour from Potts Point in the south-east the Royal Botanic Gardens, Sydney CBD and parts of the Sydney Opera House to the south-west.

Other real estate images from levels 1 and 2 at 200 Kurraba Road show that dwellings have views to the south over the existing roof form at 1 Baden Road which include a composition of open undifferentiated water in Sydney Harbour, the Royal Botanic Gardens, Sydney CBD and Sydney Opera House. Views toward the Harbour Bridge to the southwest are blocked by vegetation.

In summary therefore likely views access to the south and south east from mid and upper level dwellings are potentially expansive but more constrained to the south-west by evergreen fig trees which line the western boundary of 200 Kurraba Road and the subject site. In this regard, in all views assessed including from the elevated ground level, the existing dwelling on the site occupies only a minor foreground part of the view composition



**UNIT 1, 200 KURRABA ROAD****UNIT 1 - 200 KURRABA ROAD VIEW FROM LIVING ROOM****UNIT 1 - 200 KURRABA ROAD VIEW****UNIT 1 - 200 KURRABA ROAD VIEW**

This appears to be a horizontal standing view from the front balcony of the western elevated ground floor unit. The removal of this chimney feature will be beneficial. We anticipate that no part of the lower roof form proposed, will be visible in this view.

**UNIT 4 - 200 KURRABA ROAD VIEW****UNIT 3 - 200 KURRABA ROAD VIEW****UNIT 3 - 200 KURRABA ROAD VIEW**

The height of the proposed roof form is similar to the existing south facing horizontal edge. The western end of the built form is significantly lower and the wide chimney form is removed, which combined will reveal additional areas of open areas of water. The low curved roof form may block a minor extent of open water, whilst the proposed narrow chimney aligns directly with the western end wall effectively replacing this built form. It is highly unlikely that access to any scenic, iconic or highly valued features as defined in Tenacity will be affected by the proposed development.

**UNIT 3 AND UNIT 4, 200 KURRABA ROAD**



**Unit 3 View 1.** View to Opera House includes chimney



**View 3 View 2.** Bay window to South



**View 3 View 3.** Corner View to park vegetation



**Unit 4 View 1.** View from Living Room



**View 4 View 2.** View from 200 Kurraba Road

### 3.4 2 BADEN ROAD

2 Baden Road is a Federation style multi-dwelling house located northeast of the subject site. The street level of this property is also occupied by garages so that the first level of accommodation is elevated approximately one residential storey above street level. Real estate images found for 5/2 Baden Road show that from the upper storeys of the building a wide arc of views composition is available extending from the south-east to south-west including most of the scenic and iconic elements described above in relation to 200 Kurraba Road.

Similarly to some views from 200 Kurraba Road, oblique views towards the subject site from dwellings at 2 Baden Road may include parts of the existing built form and dense evergreen vegetation located in Kurraba Point Reserve. In views from 2 Baden Road the subject site and existing dwelling occupy only a minor part of the composition.



5-2 BADEN ROAD TOP DECK VIEW EAST

The subject site roof is visible in this oblique view to the south-west. The height and roof of the built form proposed is unlikely to cause any significant change to the view composition that is available.



**REAL ESTATE IMAGES OF VIEWS FROM  
2 BADEN ROAD**



**5-2 BADEN ROAD TOP DECK VIEW EAST**



**5-2 BADEN ROAD VIEW FROM DINING ROOM**



**5-2 BADEN ROAD VIEW FROM KITCHEN**



**5-2 BADEN ROAD VIEW**



## 3.5 VISUAL EFFECTS OF THE PROPOSAL ON EXISTING VIEWS

The potentially most affected private domain views are located at 3 Baden Road and 200 Kurraba Road.

### 3 Baden Road

Given the location of the proposed development within and setback from the south edge of existing building footprint, the extent of the eastern walls at level 1 and 2, the proposed built form is likely to occupy a minor to negligible part of the south-westerly views from this dwelling.

As the proposed massing steps back further to the north at levels 3 and 4 and again at level 5, the built form proposed will occupy even less of potential oblique south-westerly views from the upper levels at 3 Baden Road. In this regard there is likely to be a net-benefit to the extent of the south-westerly views currently available due to this stepped design.

All views to the south and south-east will be unaffected by the proposed development. No views which include scenic items, icons and highly valued features as described in Tenacity would be lost. In southerly or south-easterly views.

### 200 Kurraba Road

The unit most affected by potential loss would be the elevated ground level units. The western unit may experience an expanded view across the lower western roof form proposed for the site. Both elevated ground floor units are likely to experience similar or more view compared to the existing situation, given that the wide chimney feature has been removed and western half of the built form is significantly lower than currently exists and includes a narrow chimney feature which replaces and existing vertical end wall. We anticipate that these features combined, are likely to generate a net benefit revealing more of the background view to parts of Sydney Harbour.

The narrow horizontal extent of view that may be lost as a result of the low curved roof forms proposed, will block open areas of undifferentiated water in Sydney Harbour. It is most unlikely that in any access to scenic features, icons and highly valued views as defined in Tenacity will be blocked. All views from these dwellings to the south-east and east will be unaffected by the proposed development.

It is unlikely that access to any scenic items, icons and highly valued features as described in Tenacity would be lost. Due to their elevation above the subject site, south-facing units at the first and second floors at 200 Kurraba Road are unlikely to be affected by the proposed development. All views from these locations to the south-east and east will be unaffected by the proposed development.

### 2 Baden Road

The proposed development is unlikely to create any significant view blocking effects in highly oblique west-south-westerly views from ground level or first floor units at 2 Baden Road. Views from top floor units are unlikely to be affected by potential view loss.

# 4.0 RELEVANT PLANNING PRINCIPLE

## 4.1 ASSESSMENT AGAINST TENACITY

The extent and reasonableness of private domain view loss is typically assessed against the Land and Environment Court of New South Wales planning principle *Tenacity Consulting v Warringah [2004] NSWLEC 140 - Principles of view sharing: the impact on neighbours (Tenacity)*. This is the most widely used and referenced planning principle in relation to the assessment of view sharing.

The planning principle is described by the Court as a statement of a 'desirable outcome' aimed at reaching a planning decision and defines a number of appropriate matters to be considered in making the planning decision. Therefore, the importance of the principle is in outlining all relevant matters and or the relationships of factors to be considered throughout the process and is not simply to list features that could be lost. In other words Tenacity is a recipe designed to guide decision making so that an equitable view sharing arrangement can be met.

View loss or blocking effects refers to the extent to which a proposal is responsible for blocking access to an existing view or part of the composition of a view. The principle also describes the extent of view loss using a qualitative scale and takes into consideration the value of features in the composition and from where the views are available. Photomontages are frequently used as objective aids to assist in modelling and therefore quantifying the extent of visual change that would occur.

Roseth SC in *Tenacity* defines a four-step process to assist in the determination of the impacts of a development on views from the private domain. The steps are sequential and conditional, meaning that proceeding to further steps may not be required if the conditions for satisfying the preceding threshold are not met in each view considered. Prior to undertaking the assessment however Roseth discusses the notion of view sharing as quoted below.

"The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. (Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable.) To decide whether or not view sharing is reasonable, I have adopted a four step assessment".

*Tenacity* includes descriptions of highly valued features, iconic views and whole views which refer to the particulars of that matter, for example water and areas of land-water interface. By describing the nature and composition of the views and rating the value of the composition *Tenacity* suggests that if there is no substantive view loss in qualitative or quantitative terms, then the threshold to proceed to Step 1 may not be met and continuing with other steps in the process may not be justified

## 4.2 SUMMARY STATEMENT

At this time a detailed *Tenacity* assessment cannot be undertaken.

Without the benefit of views inspections and based on the information available, fieldwork observations and our experience, potential view loss for units at 200 Kurraba Road and 3 Baden Road is unlikely to meet the threshold test to proceed to Step 1 in *Tenacity*.

Units most affected by potential view loss would be elevated ground level units at 200 Kurraba Road. I comment that in the context of height controls that are applicable it would be an unreasonable expectation to be able to protect views from a ground floor unit.

In other words the potential quantum or extent of view loss is likely to be negligible to minor such that there is no utility in proceeding to Step 1 of the *Tenacity* assessment.

As a conservative measure and for completeness, if Step 1 was applied, in all cases the minor amount of view to be lost associated with the proposed chimney feature or solid arched eastern wall at level 1, is likely only to include areas of undifferentiated water. There would be no loss of iconic or scenic features that are described as being highly valued in *Tenacity*. In all cases in our opinion the extent of view loss would be likely to be rated in *Tenacity*, as *be minor to negligible*.

# 5.0 REGULATORY CONTEXT RELEVANT TO VIEWS

The North Sydney Development Control Plan 2013 (NSDCP 2013) provides some objectives relevant to views.

Table 1 below outlines the relevant controls to the site.

Section/Clause	Provisions
<b>Part B – Development Controls</b>	
<b>Section 1 – Residential Development</b>	
<b>1.3.6 Views</b>	<p><b>P1</b> Development should be designed such that views from streets and other public places, as identified in the relevant area character statement (refer to Part C of the DCP), are not unreasonably obstructed.</p> <p><b>P2</b> Development should be designed to maximise the sharing of views from surrounding properties and public places.</p> <p><b>P3</b> Ensure that existing and proposed dwellings will have an outlook onto trees and sky.</p> <p><b>P4</b> Where a proposal is likely to adversely affect views from either public or private land, Council will give consideration to the Land and Environment Court's Planning Principles for view sharing established in <i>Rose Bay Marina Pty Ltd v Woollahra Municipal Council and anor</i> [2013] NSWLEC 1046 and <i>Tenacity Consulting v Warringah Council</i> [2004] NSWLEC 140. The Planning Principles are available to view on the Land and Environment Court's website <a href="http://www.lec.justice.nsw.gov.au/planning_principles">http://www.lec.justice.nsw.gov.au/planning_principles</a>).</p>
<b>6.1.1 Significant Elements</b>	Views and vistas from local streets and reserves, as well as Hodgsons Lookout, Spains Lookout and Kurraba Wharf lookout should be preserved and enhanced where possible

## Urbis Comment In relation to P1,

We comment that the subject site is of low external visibility to all parts of Kurraba Point Reserve and Hodgsons Lookout. The only direct view to the existing and proposed dwelling would be from the eastern most point of the reserve adjacent to the property boundary. The existing and proposed dwelling do not unreasonably block any public domain views. Observations made from that location suggest that this isolated part of the reserve is not highly used except by made from this vicinity are that this small section of public space is visually and physically separated from the more open and publicly accessible parts of the reserve to the west, by vegetation close to the subject site and sea wall. In other words the eastern extent of the reserve does not appear to be well used except by the occasional dog walker.

## Urbis Comment In relation to P2,

Based on the analysis of real estate images, and fieldwork observation the level of view sharing achieved in relation to the proposed development and neighbouring dwellings would be reasonable and acceptable.

## Urbis Comment in relation to P3,

All existing outlooks from neighbouring dwellings will be virtually unchanged.

## Urbis Comment in relation to P4,

It is highly unlikely that the proposed development will cause any adverse affects on existing views to scenic and iconic features from either public or private land.

## Urbis Comment in relation to 6.6.1

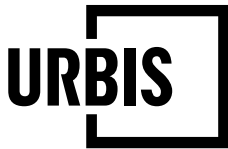
Views and vistas from local streets and reserves, as well as Hodgsons Lookout, Spains Lookout and Kurraba Wharf lookout will be preserved and virtually unaffected by the proposed development.

# SUMMARY AND CONCLUSION

- The site and existing and proposed dwelling are of low external visibility to important public domain locations including to Hodgson Lookout Park and to the majority of open spaces within Kurraba Point Reserve and Spains Lookout.
- Visibility to the site is constrained from the public domain locations by intervening dense vegetation such that photomontages could not be prepared, given the low visibility of all existing built forms on the site. Some visibility of existing built forms is required to be able to insert and align the 3D architectural model of the proposed development in order to prepare photomontages.
- Expansive views are available from 4 areas inspected at Hodgsons Lookout Park and Kurraba Point Reserve to the south-west, south and south-east. The existing dwelling and therefore built form proposed will occupy only a minor to negligible part of the south-easterly view notwithstanding that the subject site is heavily screened by existing dense vegetation.
- The proposed built form is fully compliant with height and setback controls and occupies the same location but less extent compared to the existing dwelling on the site.
- Private domain views potentially most affected include elevated ground floor level units at 200 Kurraba Road and to a lesser extent in oblique south-westerly views from 3 Baden Road.
- We anticipate that due to the relative heights of elevated units at 200 Kurraba Road compared to the built form proposed, the reduced bulk in the western part of the site and the removal of the existing wide chimney feature, that there would be a net benefit to the existing views available. In other words more view would be revealed.
- When considering the spatial arrangement and orientation of those dwellings in relation to the subject site and proposed development in our opinion view loss is unlikely to be significant.
- The stepped nature and setback of the built form proposed to the north, is likely to improve south-westerly views access from the second, third and fourth floor at 3 Baden Road.
- If considered in the context of relevant Planning Principles such as Tenacity, the threshold to proceed to Step 1 of the assessment, is unlikely to be met, so that further steps in the assessment would not be required.
- If Tenacity was applied, based on the information available and considered in this report, the quantum of views to be lost (ie the extent of likely view blocking) is likely to be rated as minor to negligible).
- The proposed development if constructed is unlikely to generate any significant visual effects or potential visual impacts on public or private domain views.
- In this regard in our opinion, no further views analysis or the preparation of photomontages for analysis is warranted.
- The proposed development can be supported on view sharing grounds.







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[20 September 2021](#)

North Sydney Council  
Attention: Robyn Pearson  
Team Leader (Assessments)  
200 Miller Street  
North Sydney 2059

Dear Robyn Pearson,

## **RE: 1 BADEN ROAD, KURRABA POINT – VIEW SHARING ADVICE**

Urbis has been engaged by Anthony El-Hazouri to provide View Sharing Advice in relation to a proposed DA122/21 at 1 Baden Road, Kurraba Point. This letter responds to concerns raised by North Sydney Council in a letter dated 29<sup>th</sup> July 2021 which identified concerns regarding effects on views over the subject site at 1 Baden Road towards Fort Denison on Sydney Harbour from the dwelling at 1/200 Kurraba Road. This letter provides analysis of the extent of visual effects that are visible in an elevated ground floor view supplied by the resident from this dwelling.

### **PROJECT BACKGROUND**

The Development Application (DA) is for the demolition of the existing dwelling on the site and construction of a new dwelling with a two-car garage. The architectural drawings show that the dwelling will present to Baden Road as a two-storey dwelling where the single storey garages and second storey roof include curved roof forms.

The subject site is at the southern end of Kurraba Point adjacent to Kurraba Reserve (refer to Figure 1). A residential flat building at 200 Kurraba Road is located directly north of and opposite the subject site and includes ground floor units that are partially elevated above street level. Unit 1/200 Kurraba Road occupies the south-west corner of the RFB and as such has potential views to the south over and across part of the subject site.

### **UNIT 1/200 KURRABA ROAD**

200 Kurraba Road is a part three and part four storey residential flat building which appears to include two south facing units per floor. Fieldwork observations and a review of real estate images and floor plans show that existing views from the elevated ground level units (above garaging) are likely to be available over part of the subject site. In our previous advice for this project we noted that existing views access from the eastern and western south-facing units at 200 Kurraba Road would be likely to differ, in that views from the eastern unit would be more expansive in relation to Harbour Views and less constrained by intervening vegetation and built form, compared to views from the western unit.

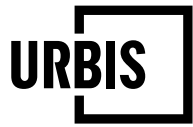


Figure 1 Location Aerial





## VIEW ANALYSIS FROM 1/200 KURRABA ROAD

A photograph documenting a view from the western ground level unit at 200 Kurraba Road was provided by Council to the applicants and subsequently has been used to prepare a photomontage (refer to Figure 4). Luigi Rosselli architects superimposed the 3D architectural model of the proposed development on the supplied photograph (the image) using existing visual features such as the existing dwelling on the subject site, to guide the location and alignment of the proposed development. The photomontage shows that the built form proposed closely aligns with the height and form of existing dwelling on the site. We note that the proposed development is not dissimilar in height and scale to the built form that currently exists on the site.

The photograph supplied appears to be a standing view taken from the west side of a south facing living room, via a curved bay window. The orientation is oblique to the street towards Fort Denison and Sydney Harbour.



**Figure 1** Detail of southern elevation of 200 Baden Road

As Urbis have not had the opportunity to conduct fieldwork and inspect views, our analysis is based on the information available.

### **Relevance and Intent of Tenacity**

The extent and reasonableness of private domain view loss is typically assessed against the Land and Environment Court of New South Wales planning principle *Tenacity Consulting v Warringah [2004] NSWLEC 140 - Principles of view sharing: the impact on neighbours (Tenacity)*. This is the most widely used and referenced planning principle in relation to the assessment of development on private views.





The planning principle is described by the Land and Environment Court of NSW as a statement of a 'desirable outcome' aimed at reaching a planning decision and defines a number of appropriate matters to be considered in making the planning decision. Therefore, the importance of the principle is in outlining all relevant matters and or the relationships of factors to be considered throughout the process and is not simply to list features that could be lost. In other words *Tenacity* is a recipe designed to guide decision making in relation to being able to achieve an equitable view sharing outcome.

Roseth SC in *Tenacity* defines a four-step process to assist in the determination of the impacts of a development on views from the private domain. The steps are sequential and conditional, meaning that proceeding to further steps may not be required if the conditions for satisfying the preceding threshold are not met in each view considered.

*Tenacity* includes descriptions of highly valued features, iconic views and whole views which refer to the particulars of that matter, for example water and areas of land-water interface. We note that the pre-step threshold described in paragraph 25 of the principle suggests that if there is no substantive view loss in qualitative or quantitative terms, then the threshold to proceed to Step 1 may not be met and continuing with other steps in the process may not be justified.

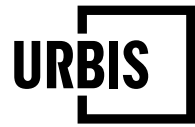
#### Assessment against *Tenacity*

The image shows that an existing view is available from the window on the southern elevation of 1/200 Kurraba Road to the south. The foreground of the view is characterised by the low existing built form on the subject site. The background composition includes parts of Sydney Harbour, parts of Sydney Botanic Gardens and Fort Denison. The image indicates that the proposal will essentially replace the existing built form in the view and will introduce only a minor amount of additional height above that existing built form. The additional height falls within the upper part of two low arched roof forms and blocks only a minor portion of open and undifferentiated water. In other words, no individual items, iconic features or sections of land-water interface are blocked or affected by the proposed development.

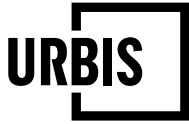
As the proposed form will block only a minor amount of undifferentiated open water, in our opinion, an assessment against *Tenacity* is not warranted as the view loss is neither substantive quantitatively nor qualitatively. For example, the proposal does not block items that would be considered highly valued or iconic in *Tenacity*, such as whole views, icons or scenic features.

Notwithstanding, in our opinion that the threshold to proceed to Step 1 in *Tenacity* is not met, as a conservative measure we have considered the extent of view loss shown in the photograph and broadly considered other relevant steps in the principle as follows; the view is gained from a living area in the dwelling and across the front boundary of a ground floor dwelling. The proposed development is fully compliant with controls that are relevant to view loss including heights and FSR. Protection of views from a ground floor dwelling are difficult to protect given that view loss associated with a two story compliant dwelling are contemplated by the applicable controls.

Further the negligible extent of view loss does not affect features in the view that would be considered highly valued or iconic in *Tenacity*, such as the Botanic Gardens or the land water interface of Fort Denison, which remain unaffected by the proposed development.



*Figure 4 Superimposed image of proposed development on a photograph from 1/200 Kurraba Road*



## CONCLUSION

- Urbis have analysed the extent of visual effects that are visible in the elevated ground floor view from 1/200 Kurraba Road supplied by the resident from this dwelling.
- In our opinion the potential view loss is negligible in both quantitative and qualitative terms in the view analysed, and therefore an assessment against *Tenacity* is not required.
- If, as a conservative measure, a *Tenacity* Assessment were undertaken it would find that view loss is negligible, the composition blocked would not be considered highly valued or iconic as in *Tenacity*.
- The image shows that the proposed development would not generate any significant visual effects or impacts on view sharing.
- In our opinion, the view sharing outcome subsequent to the approval and construction of the Development Application is considered to be reasonable and acceptable on views from 1/200 Kurraba Road.
- The Development Application can be supported on visual impacts grounds.

Kind regards,

A handwritten signature in black ink, appearing to read "Jane Maze-Riley". The signature is fluid and cursive, with a prominent flourish at the end.

Jane Maze-Riley  
Associate Director  
02 8233 9908  
jmazeriley@urbis.com.au