

NORTH SYDNEY COUNCIL REPORTS

NSLPP MEETING HELD ON 07/12/2022 (SECTION 4.55 MODIFICATION)

Attachments: 1. Site Plan 2. Architectural Plans 3. Shadow Diagrams

ADDRESS/WARD:	29 Churchill Crescent, Cammeray (T)
APPLICATION No:	386/09/4
PROPOSAL:	To modify Development Consent DA 386/09 for

To modify Development Consent DA 386/09 for a new dwelling – addition of retractable shade structures

PLANS REF:

Plan	Rev	Title	Dated	Prepared by	Received
DA01	С	Site and Roof	12/12/2019	Site Specific Designs	18/12/2019
DA02	С	Ground floor plan	12/12/2019	Site Specific Designs	18/12/2019
DA03	С	First Floor Plan	12/12/2019	Site Specific Designs	18/12/2019
DA04	С	Lower Ground Floor	12/12/2019	Site Specific Designs	18/12/2019
DA05	С	Basement and storage plans	12/12/2019	Site Specific Designs	18/12/2019
DA06	С	Section and Basix	12/12/2019	Site Specific Designs	18/12/2019
DA07	С	South West, North West (Street) elevation	12/12/2019	Site Specific Designs	18/12/2019
D 4 0 9	6		12/12/2010	Site Specific Designs	10/12/2010
DA08	С	South East Elevation	12/12/2019	Site Specific Designs	18/12/2019
DA09	С	North East Elevation	12/12/2019	Site Specific Designs	18/12/2019

OWNER:	Nicola Caliguri
APPLICANT:	Matthew Davis
AUTHOR:	George Youhanna, Executive Planner
DATE OF REPORT:	31 August 2022
DATE LODGED:	19 July 2021
AMENDED:	3 March 2022, 15 June 2022, 21 October 2022
RECOMMENDATION :	Approval

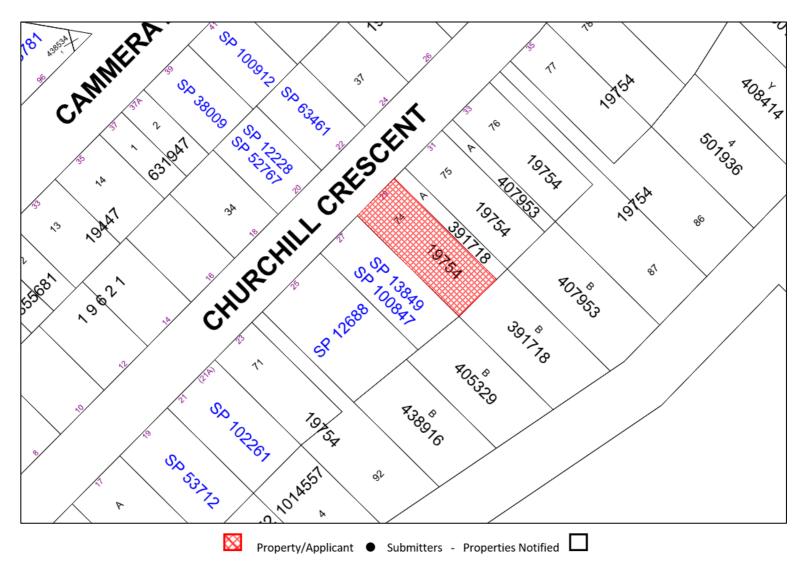
EXECUTIVE SUMMARY

This application under s.4.55(2) seeks approval for modification of consent for a new dwelling including the addition of three (3) retractable shade structures to the eastern side of the dwelling, and is reported to North Sydney Local Planning Panel for determination as the building height exceeds the 8.5m height limit by more than 10%.

Notification of the proposal has attracted nil (0) submissions. The assessment has considered the performance of the application against Council's planning requirements.

Following this assessment the modification application is considered to be reasonable in the circumstances and is recommended for **approval** subject to amended conditions.

LOCATION MAP



DESCRIPTION OF PROPOSAL

The proposal involves the modification of Development Application DA386/09, for the demolition of the existing building and construction of a new dwelling over 4 levels on the subject site. The proposed amendments sought under this modification generally comprise retrospective works and include the following modifications:

• to regularise the "as built" retractable awning structures located on the lower ground, ground and first floor terraces at the rear of the subject property.

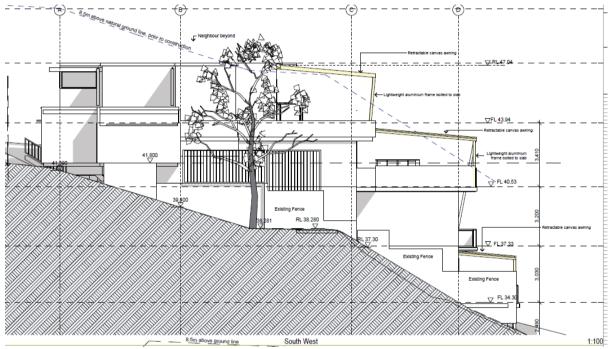


Figure 1 : South Elevation

The application essentially seeks to modify the consent by way of regularising the three installed pergolas with retractable canvas awnings.

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning Residential R2 low density residential
- Item of Heritage Yes (Primrose Park)
- In Vicinity of Item of Heritage No
- Conservation Area No
- FSBL No

Environmental Planning & Assessment Act 1979 SEPP (Resilience and Hazards) 2021 SEPP (Biodiversity and Conservation) 2021 Local Development

POLICY CONTROLS

DCP 2013

DESCRIPTION OF LOCALITY

The subject site is Lot 74 in DP19754 and Lot A in DP391718. Both lots are zoned residential R2. The combined site has an area of 687sqm. The site slopes from the street frontage to the rear of the site by up to 14m. The rear of the site immediately adjoins bushland, with Primrose Park located to the east of this bushland.

Existing on the site is a dwelling that was approved under Development Application 386/09.



Figure 2: Aerial Photo of Site

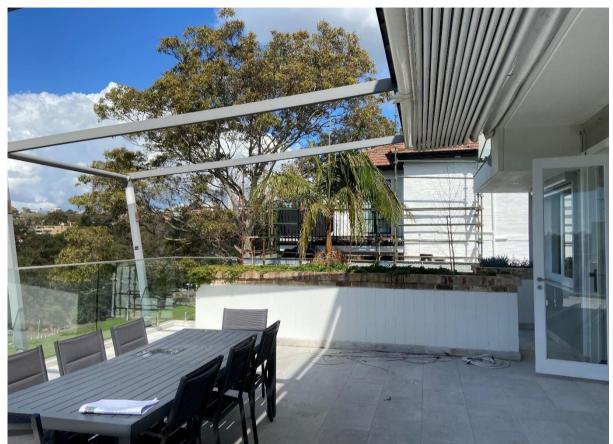


Figure 3: Ground Floor



Figure 4: First Floor



Figure 5: Basement Floor

RELEVANT HISTORY

Development Application DA74/09 was refused by Council at its meeting held on 28 September 2009. This development proposal was for the demolition of a dwelling over 3 levels at No.29 Churchill Crescent and was refused on the basis of:

- Overshadowing
- Inconsistencies on drawings
- Public interest

Development Application DA386/09 was approved by Council at its meeting held on 22 March 2010. This development application approved the demolition of the existing dwelling and construction of a new dwelling over 3 levels.

DA386/09/2 was approved by Council at its meeting held on 5 December 2011. The modifications involved:

- Retrospective approval of a series of three (3) retaining walls within the rear garden (note: no works were approved within the rear garden under the original development consent)
- Glass balustrading on the retaining walls
- Stairs along the northern site boundary
- Plunge pool and extension of lower deck
- Landscape works

DA386/09/3 was approved under delegation on 6 March 2020. The modifications include: a new external lift within the western setback, green roof structures, various alterations and additions, as well as retrospective approval for various works that have been undertaken, outlined in the description of the assessment report.

DA386/09/4 (The Current Application) was originally allocated to a different assessment officer in July 2021 and reallocated to the current assessment officer in February 2022.

A stop the clock letter was issued on 26/7/21 requesting:

- Certification from a qualified structural engineer to confirm that the awning structures, supports and electronics have been constructed and installed in accordance with the National Construction Code and all relevant Australian Standards.
- Details to demonstrate that the lighting within the awning structures has been appropriately removed and cannot be used.

Following several requests and responses in relation to the above information, a satisfactory response in relation to structural engineering was eventually provided to Council on 15 June 2022:

We, Consulting Design and Inspection engineers Pty. Ltd., confirm our inspection of the pergola installed at the rear of the property for structural adequacy and safety. It was confirmed that the pergola was installed in accordance with the supply and installation manual supplied by the manufacturers "Corradi". The structure is connected to concrete slab at bottom and the other end is connected to roof at top. Both connections and the member sizes are in accordance with the manufacturer's instruction. It was a power operated roof covering pergola. The roof sheet is to be at closed position only when the wind speed is lower than 20km/h. When the wind speed is greater than 20km/h the roof cover should be kept at open position. The owner of the property should make sure that there is no ponding on roof sheet during rain. Those pergolas were installed and in use for more than 6 years. At the time of our inspection the pergola structural members and connections were in good condition Since the structure was installed over 6 years ago regular inspection and maintenance is required to confirm the connections are structurally safe. In our opinion, at the time of our inspection the above pergola is structurally adequate and safe. As defined above, we confirm that the pergola installation is in accordance with NCC and relevant Australian standard AS4100 and AS1170.2

Compliance history

There is a long history of compliance matters on the site. On 27/9/2019 Council forwarded the owner of the site a Notice of Intention to issue a Development Order, with the terms of the proposed Order No.11 as 'Remove the retractable awnings that have been constructed at first and ground level of the rear south-eastern elevation'. Further notices have been issued as detailed in the property file. Compliance file photos below:



SUBMISSIONS

Adjoining properties and the Bay Precinct were notified of the proposed development between 30 July 2021 – 13 August 2021. No submissions were received.

CONSENT AUTHORITY

With regard to the Local Planning Panels Direction, the application exceeds the 8.5m height limit by more than 10% and as such the consent authority is the Local Planning Panel.

CONSIDERATION

Section 4.55(2) of the Environmental Planning and Assessment Act 1979 enables a consent authority to modify a development consent upon application being sought by the applicant or any person entitled to act on the consent, provided that the consent authority:

- is satisfied that the development to which the consent as modified relates is substantially the same development
- has consulted the relevant Minister, public authority or approval body in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent
- has notified the application in accordance with the regulations and has considered any submissions made concerning the proposed modification; and
- in determining the application for modification, has taken into consideration such matters referred to under Section 4.15 as are relevant. Is it consistent with the reasons given by the consent authority for the grant of the consent that is sought to be modified.

As such, Council's assessment of the application to modify the subject development consent must consider the following issues:

Is the proposed development as modified substantially the same development approved originally?

The proposed modification seeks consent for three existing, unauthorised, pergolas with retractable canvas awnings. The proposed development as modified, with regard to environmental impact, the character of the development and quantitative and qualitative considerations, is considered to be substantially the same development approved by the Council, being for demolition of an existing dwelling and construction of a new (substantial) dwelling over multiple levels.

Whether the application required the concurrence of the relevant Minister, public authority or approval body and any comments submitted by these bodies?

No concurrence is required.

Whether any submissions were made concerning the proposed modification.

No submissions were received.

Any relevant considerations under Section 4.15(1) of the Environmental Planning and Assessment Act 1979.

The relevant matters for consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act* 1979, are assessed under the following headings:

The application has been assessed against the relevant numeric controls in NSLEP 2013 and DCP 2013 as indicated in the following compliance tables. More detailed comments with regard to the major issues are provided later in this report.

Is it consistent with the reasons given by the consent authority for the grant of the consent that is sought to be modified.

The proposal is consistent with the reasons given by the consent authority for the grant of consent.

NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2013 (NSLEP 2013)

The following provisions of the North Sydney Local Environment Plan 2013 (NSLEP 2013) are relevant to the subject Section 4.55(2) modification:

NSLEP 2013 Compliance Table

Principal Development Standards – North Sydney Local Environmental Plan 2013				
Site Area - 687m ²	Approved	Proposed	Control	Complies
Clause 4.2 – Heights of	9.7m (building)	11.7m	8.5m	NO*
Building	10.5m (eave)			

* A Clause 4.6 request is not required for a modification application.

Permissibility

The site is zoned R2 low density residential development. Development for the purpose of alterations and additions to a dwelling is permissible with development consent.

Objectives of the R2 zone:

The proposal is considered to be consistent with the objectives of the R2 zone, which is to:

- To provide for the housing needs of the community within a low density residential environment The modifications continue to provide for a single dwelling on the site.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents No land uses other than a dwelling house is proposed.
- To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area The modifications do not compromise the amenity of the surrounding locality, subject to conditions. The modifications continue to be contextual with regards to adjoining buildings and the building is appropriately stepped. There is no change proposed to the building footprint with adequate setback and an appropriate built form provided to protect the natural heritage of the bushland within the adjacent E2 zone.
- To ensure that a high level of residential amenity is achieved and maintained the proposed modifications continue to result in reasonable impacts with regards to views, solar access and amenity (subject to conditions) and continue to ensure a high level of residential amenity is provided in the locality. The submitted shadow diagrams indicate satisfactory solar access at mid-winter to the adjoining property to the south.

The proposed building height is consistent with the objectives of the R2 zone and can be supported.

Clause 4.2 Height of building

The approved building height (as previously modified) is 9.7m and 10.5m to the eaves. The proposed shade structures are up to 11.7m in height.

A Clause 4.6 Objection is not required for a modification application. Notwithstanding this, the proposed modifications are considered against the objectives of Clause 4.3 (Height of buildings) to determine its acceptability.

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

The proposed development is considered to conform to and reflect natural landform. Despite an increase in building height, the overall building height is compatible in the streetscape and with regard to adjoining dwellings.

(b) To promote the retention and, if appropriate, sharing of existing views.

The proposal promotes the retention of existing views and is consistent with this objective.

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

Shadow diagrams have been submitted which detail that the proposed modifications result in minor overshadowing to No.27 Churchill Street. The shadow diagrams demonstrate that both balconies within No.27 Churchill Crescent would receive at least 2 hours of sunlight between 9am and 11am. Whilst some additional overshadowing occurs prior to 12midday, at least 50% of each balcony would receive sunlight up until this time. As such, the proposed retained solar access to these balconies is considered to be acceptable, particularly given their location at the rear of the site, enjoying solar access across the side boundary. The key elements of the approved development within No.29 Churchill Crescent involving generous side setbacks to No.27 Churchill Crescent, are retained by the modified development.

It is noted that the shadow diagrams depict the retractable awnings in the retracted position. When open, the awnings would give rise to an unacceptable level of impact and a suitable condition will be applied requiring removal of the awnings to the southern pergola bays on the two uppermost levels.





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

The shade structure are satisfactory with regard to privacy.

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

The building is considered to suitably step with the existing topography over each level, with the approved rear alignment generally retained. The development is considered to meet the objectives of the height control and zone, and is consistent with the character of the locality. For these reasons, despite the additional building height breach, the proposal is considered to be compatible with adjoining development and the adjacent E2 zoning.

(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 maintains a 2 storey building height at the Churchill Crescent frontage. The building continues to be stepped down the site and continues to be of appropriate scale and density of development, promoting the character of the area.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013 (NSDCP 2013)

DCP 2013 Compliance Table

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development				
	Complies	Comments		
1.3 Environmental Criteria				
Views	Yes	The modifications are considered to result in the reasonable retention of views from adjoining properties and public places. Refer to view loss discussion in 'Building Height' section.		
Solar Access	Yes	The modifications are considered to result in the reasonable retention of solar access to adjoining properties, subject to conditions.		
Visual Privacy	Yes	No change to existing.		
Context	Yes	The proposed modifications continue to result in a development that is contextual with adjoining buildings and within the locality.		
Streetscape	Yes	No change is proposed to the approved streetscape elements.		
Siting	Yes	The approved siting remains unchanged.		
Form Massing Scale	Yes	The form, massing and scale of the development is considered to be generally consistent with the approved development on the site. The building continues to be stepped down the site to align with the site's topography and is considered to be generally consistent with the approved development adjoining development.		
Built Form Character	Yes	The locality contains an eclectic mix of built forms. The character of the development remains generally unchanged compared to the approved development. The in-built lighting in the shade structure frames is considered to be undesirable and intrusive to the locality and will be required to be inoperative by condition of consent. The applicant by way of email received 6 December 2021 has indicated agreement to this requirement.		
Materials	Yes	The proposed materials are appropriate and suitable for the existing development and site.		

Relevant Planning Area (Cammeray)

The application has been assessed against the relevant controls in DCP 2013 Cammeray Planning Area and the Cammeray Neighbourhood. The proposed modifications will be generally consistent with the desired character of the locality.

SECTION 7.11 CONTRIBUTIONS

Section 94 Contributions were charged for the original development application given that it involved complete demolition of the existing building on the site. The proposed modifications do not propose additional bedrooms. No additional Section 7.11 Contributions are required.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

ENVIR	CONMENTAL 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	Yes
5.	Traffic generation and Carparking provision	Yes
6.	Loading and Servicing facilities	Yes
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
10.	Section 89 LGA 93 including Clause 12 Consideration of Local Government (Approvals) Regulation 1993	Yes

HOW COMMUNITY VIEWS HAVE BEEN CONSIDERED

No submissions were received.

CONCLUSION AND REASONS

The proposed modifications have been considered against the relevant provisions of the Environmental Planning and Assessment Act 1979, North Sydney Local Environmental Plan 2013 and Development Control Plan 2013 and all other relevant statutory Instruments and is considered to satisfactorily address those requirements.

The modifications involve the addition of three retractable shade structures. The modifications have been undertaken and retrospective approval is sought. The dwelling is substantially the same as approved by Council and the amendments are considered to result in minimal and acceptable environmental impacts. The modifications do not result in any material adverse amenity impacts to adjoining properties or the surrounding area, subject to conditions of consent. The modifications are therefore considered to be acceptable notwithstanding the fact the works were completed prior to consent, approval may be given based on the decision Windy Dropdown v Warringah Council NSWLEC 240. The applicant should be advised to seek a building information certificate.

Having regard to the provisions of section 4.55(2) & 4.15(1) of the Environmental Planning and Assessment Act 1979, the proposed development as modified is substantially the same development as originally approved. The application is therefore recommended for **approval**.

RECOMMENDATION

PURSUANT TO SECTION 4.55(2) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the NSLPP as the Consent Authority, resolve to grant consent to modify Development Consent DA386/09/4 dated 26/3/2010, in respect of a proposal for the construction of a new dwelling at 29 Churchill Crescent, Cammeray under the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act only insofar as will provide for the following:

1. To Modify Condition A1 as follows:

Development in Accordance with Plans

- A1. The development being carried out in accordance with drawings numbered DA01-DA12 (inclusive), dated 20/10/09, drawn by In and Out Architects Pty Ltd, and received by Council on 2 November 2009 and endorsed by Council's approval stamp, except as amended in highlighting as follows:-
 - 1) Drawings titled 'Montage Image' including plan detailing approved house and 3 x plans detailing landscaping, all drawn by undated and dated 29 July 2011, Section drawing, unnumbered dated 20/10/2009 and drawn by In & Out Architecture Pty Ltd and Drawing DA10 (Section 96 Retaining walls application new), undated and drawn by unknown. All plans received by Council on 1 August 2011. Drawing DA05A dated 20/10/2009 and prepared by In & Out Architecture Pty Ltd and received by Council on 1 August 2011.

Plan	Rev	Title	Dated	Prepared by	Received
DA01	С	Site and Roof	12/12/2019	Site Specific Designs	18/12/2019
DA02	С	Ground floor plan	12/12/2019	Site Specific Designs	18/12/2019
DA03	С	First Floor Plan	12/12/2019	Site Specific Designs	18/12/2019
DA04	С	Lower Ground Floor	12/12/2019	Site Specific Designs	18/12/2019
DA05	С	Basement and storage plans	12/12/2019	Site Specific Designs	18/12/2019
DA06	С	Section and Basix	12/12/2019	Site Specific Designs	18/12/2019
DA07	С	South West, North West	12/12/2019	Site Specific Designs	18/12/2019
		(Street) elevation			
DA08	С	South East Elevation	12/12/2019	Site Specific Designs	18/12/2019
DA09	С	North East Elevation	12/12/2019	Site Specific Designs	18/12/2019

2) Drawings as follows (only in so far as outlined in Condition A7 and G9):

All as amended by the plans approved under s.4.55 application 386/09/4, but only in relation to the shade structures with retractable awnings, as follows:

Plan	Rev	Title	Dated	Prepared by
DA01	С	Site and Roof	20/10/22	Site Specific
				Designs
DA02	С	Ground floor plan	20/10/22	Site Specific
				Designs
DA03	С	First Floor Plan	20/10/22	Site Specific
				Designs
DA04	С	Lower Ground Floor	20/10/22	Site Specific
				Designs
DA05	С	Basement and storage plans	20/10/22	Site Specific
				Designs
DA06	С	Section and Basix	20/10/22	Site Specific
				Designs
DA07	С	South West, North West (Street)	20/10/22	Site Specific
		elevation		Designs
DA08	С	South East Elevation	20/10/22	Site Specific
				Designs
DA09	С	North East Elevation	20/10/22	Site Specific
				Designs

Except where amended by the following conditions.

- (Reason: To ensure the form of the development undertaken is in accordance with the determination of Council, Public Information)
- (Note: The applicant is advised to seek a building information certificate in regard to the works which were constructed prior to development consent)

2. To Add New Condition A8 as follows:

No use of in-built lighting in shade structures

- A8. The in-built lighting in the shade structures is to be permanently disconnected and is not to be used at any time.
 - (Reason: Residential amenity and visual impact)

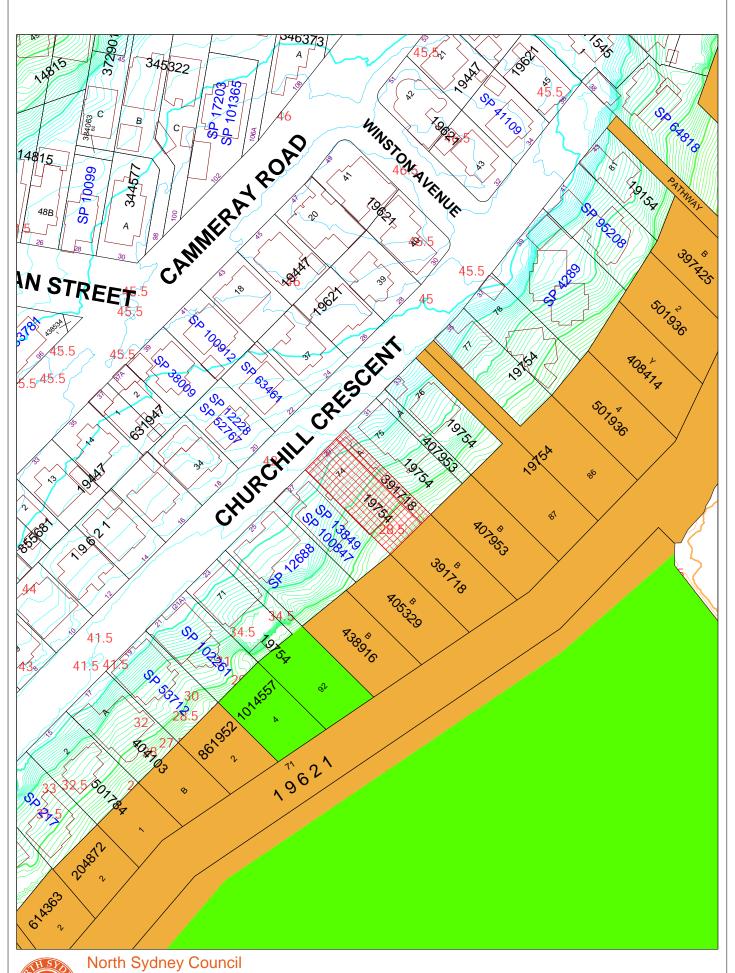
Southernmost bays not approved

A9. The southernmost bays of the pergolas serving the two upper most balconies are not approved and are to be removed or disabled from closing on a permanent basis.

(Reason: Reduction in overshadowing)

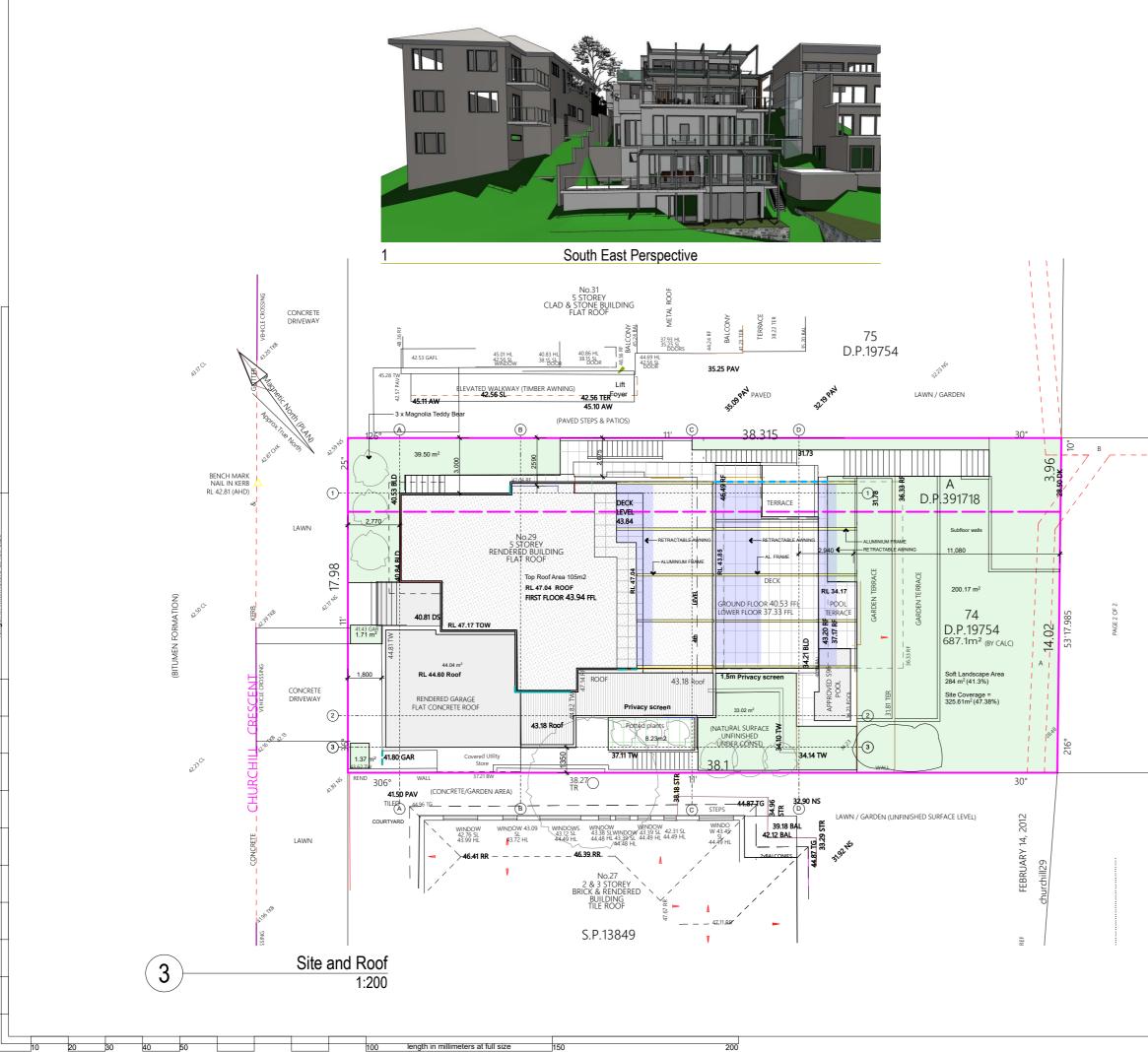
George Youhanna			
EXECUTIVE PLANNER			

Stephen Beattie
MANAGER DEVELOPMENT SERVICES



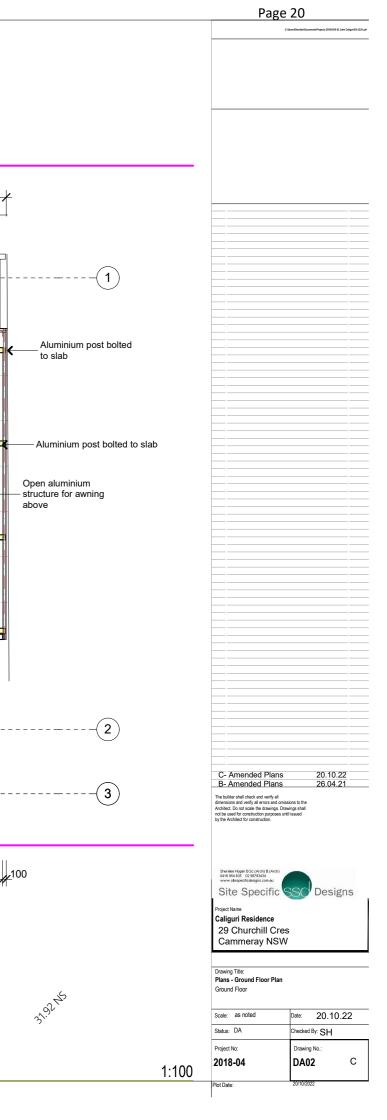
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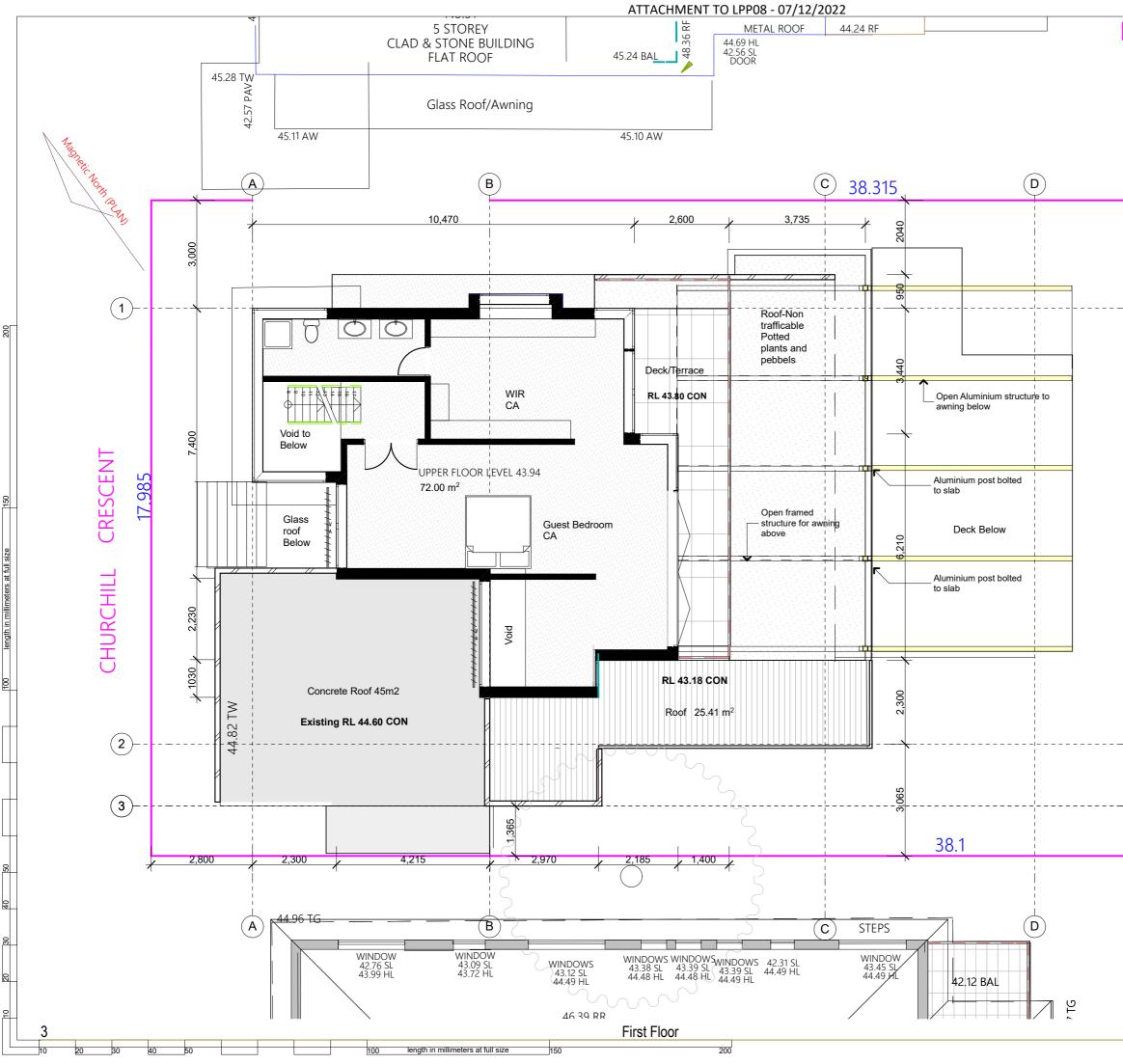
Further details can be obtained by calling (02) 9936 8100 or e-mail mapping@northsydney.nsw.gov.au.



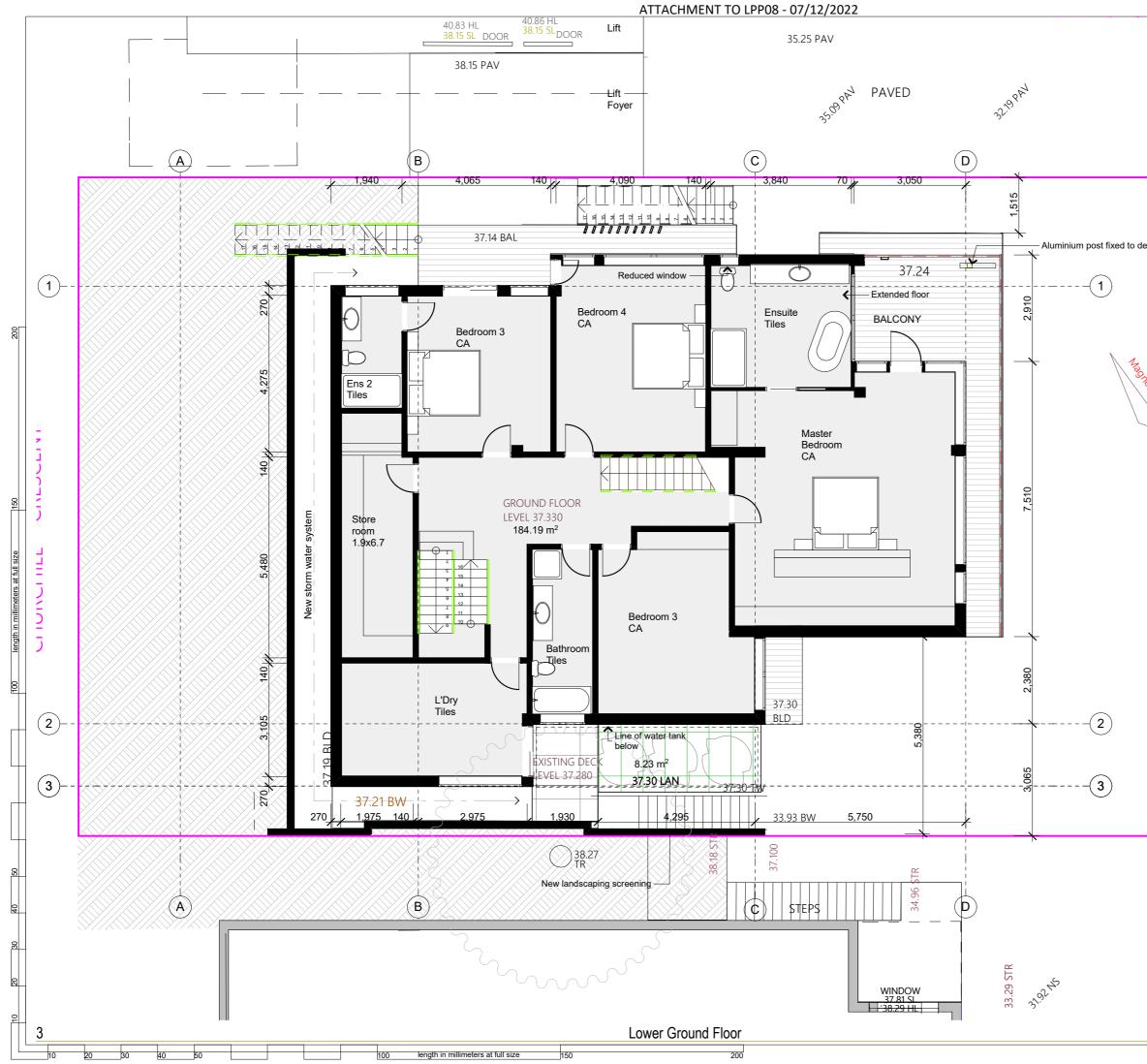
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ATTACHMENT TO LPP08 - 07/12/2022 GUITER 45.28 TW No.31 42.56 TER Foyer ELEVATED WALKWAY (TIMBER AWNING) Lift Magnetic North RUAM SS NA 57 42 45.11 AW (B) (\mathbf{C}) (\mathbf{A}) 126° 140 22.87 CH 3,155 140 1,620 4,320 270 6,225 000 3400 3080 ¦₩ 40.42 BAL 0 0 0 0 0 0 0 0 0 0 0 (1)(Walls removed Cloak Music Space 4.2x5.2 Powder room LAWN 4,750 DECKLEVEL .985 40.43 Living/Dining 940 148.61 m² room ~ ~ ~ ~ ~ Ţ. . E Tiles ENTRY LEVEL A2.71 NS ENTRY 40.73 ⁴00 FOYER A2.39 TH8 LIVING LEVEL 40.53 =Garage at full size extended to accommodate access around cars ╲ Planter box CROSSING $\equiv \square$ GARAGE LEVEL 41.81 47.72 m² 6,500 Kitchen 000 CONCRETE 6.0x2.8 Ш DRIVEWAY Ψ Pantry 100 (2) AA 1 2. 6 2. 1.3 -+ Covered Utility 2.31 m² Store Existing walls and screens A1.03 1,015 100 90 1,800 1,000 6,485 6350 2,990 6,395 38.27 TR 34.96 STR 41.50 PAV (39.40) 41.50 PAV A (¢) (D)\$TEP\$ 39.18 BAL DOOR 40.31 HL WINDOWSWINDOWS 40.31 SL 40.31 SL 40.32 SL 41.44 HL 41.43 HL 41.42 HL WINDOWS 40.05 SL 41.43 HL WINDOW 39.27 SL 41.46 HL No.27 2xDOORS 41,47 HL 44,46 HL 2 & 3 STOREY BRICK & RENDERED BUILDING Ground Floor length in millimeters at full size 150 200



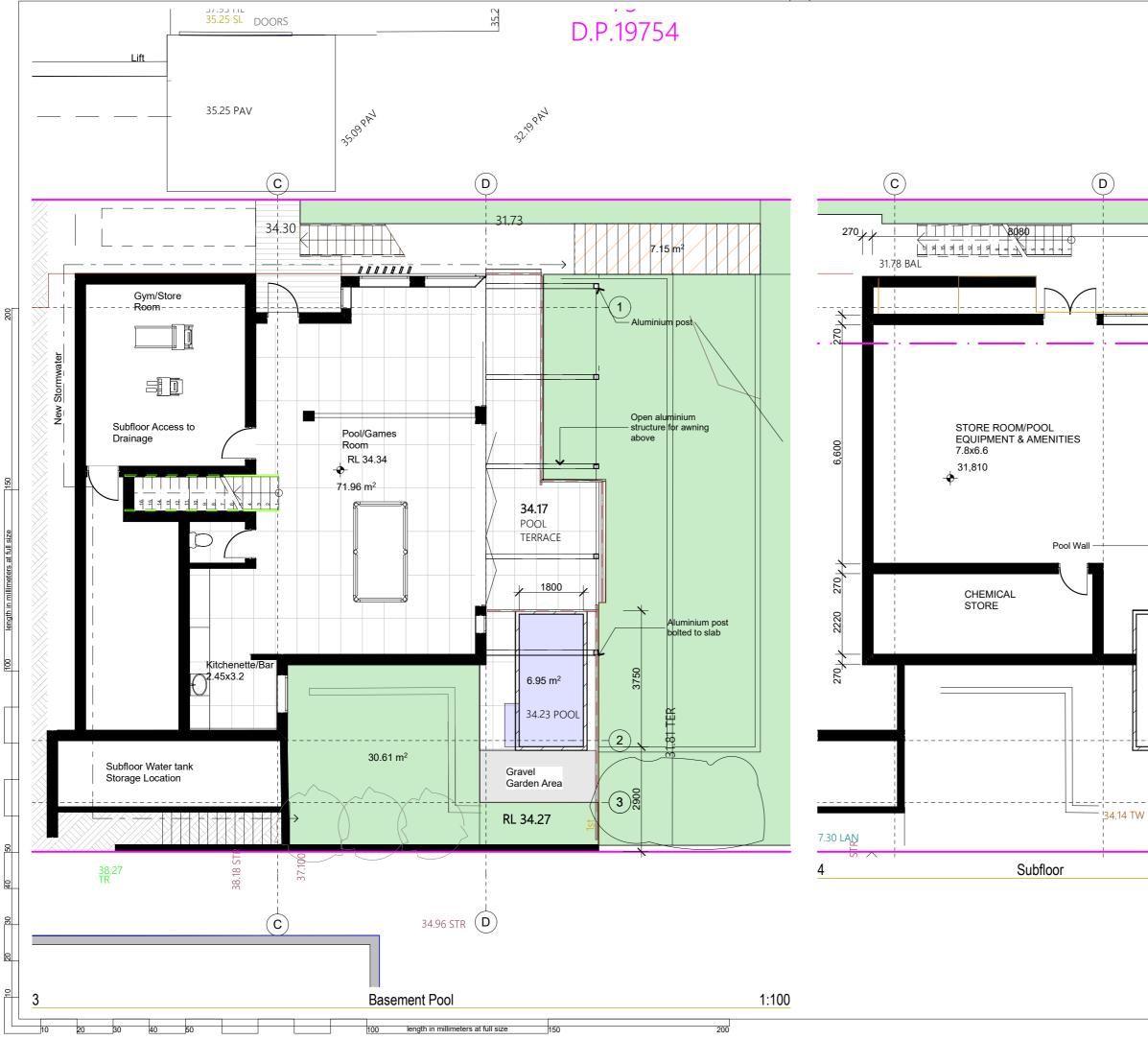


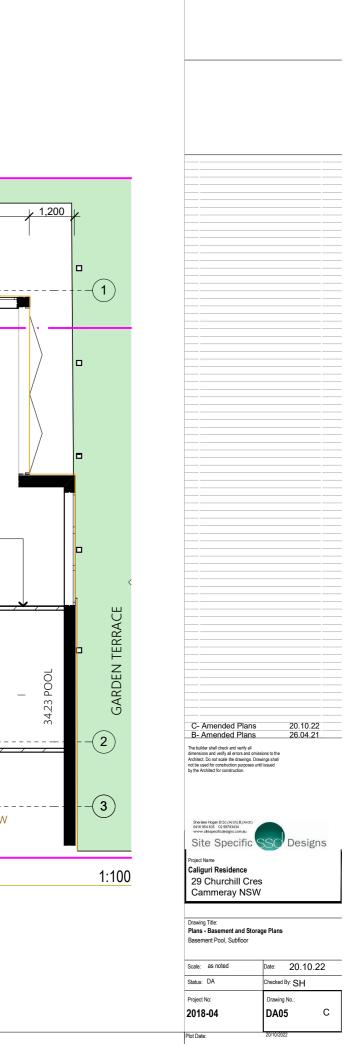
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	Cammeray NSW	
	Drawing Title: Plans - First Floor Plan First Floor	
	Scale: as noted	Date: 20.10.22
	Status: DA	Checked By: SH
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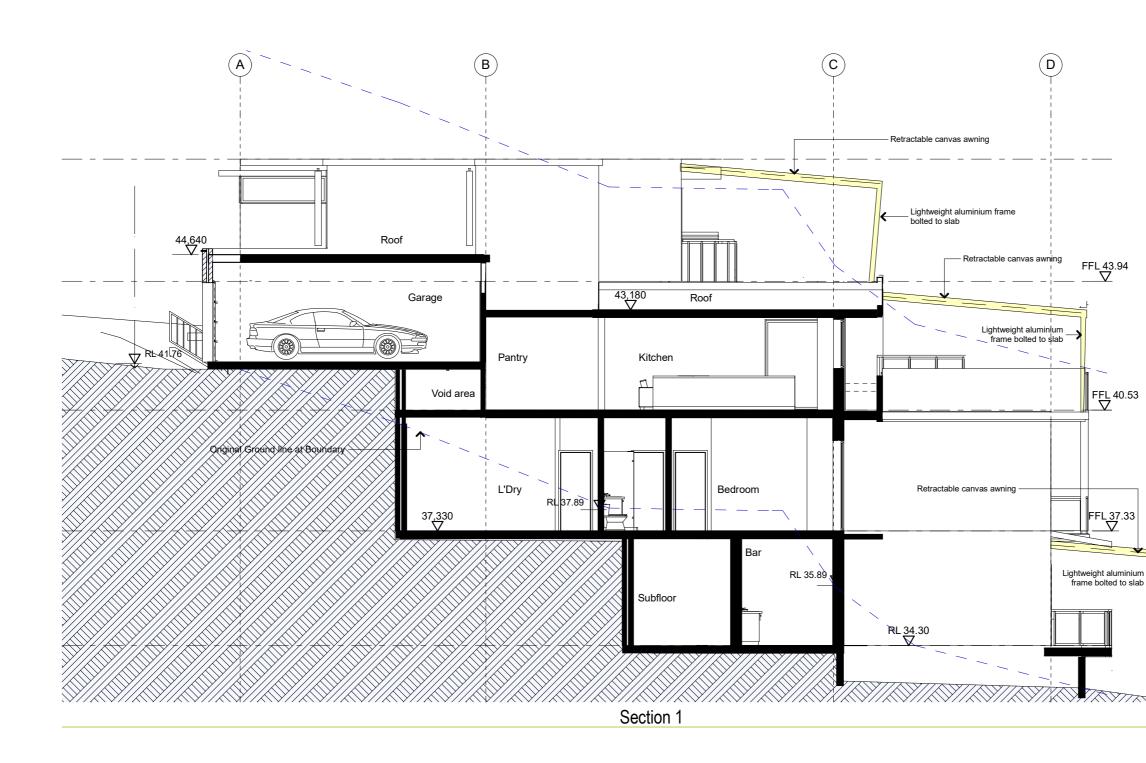
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ATTACHMENT TO LPP08 - 07/12/2022





C:Users/Sheralee/C



BASIX COMMITMENTS APPROVED DA

200m2	Low	water	usage	plan	ts
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2000Ltr Rainwater Tank

rs at full siz

Brick walls - R1.9 incl construction

Flat Roof - R1.08 imin with 100mm foil backed blanket

Windows- Standard Aluminium, clear or low e

Natural light- Kitchen and 5 bathrooms

150

length in millimeters at full size

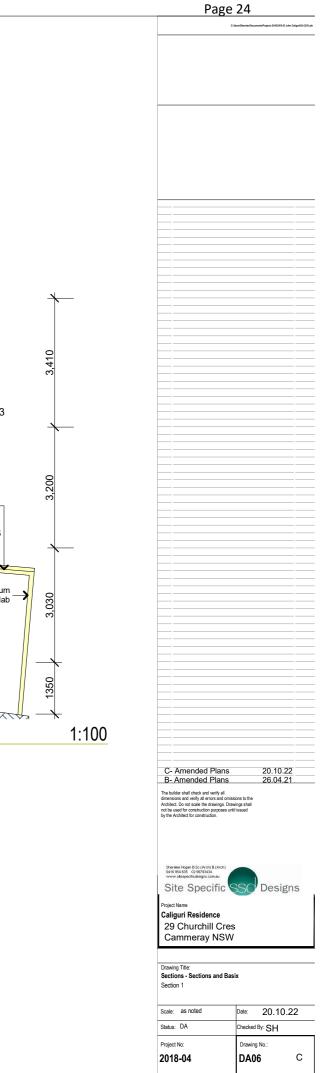
Lighting - 40% new or altered to have LED lamps

Fixtures - Shower heads, 9ltrs/min 3 star Toilet, 4 Ltrs/flush 3 Star Taps, 9Ltrs/min, 3 Star

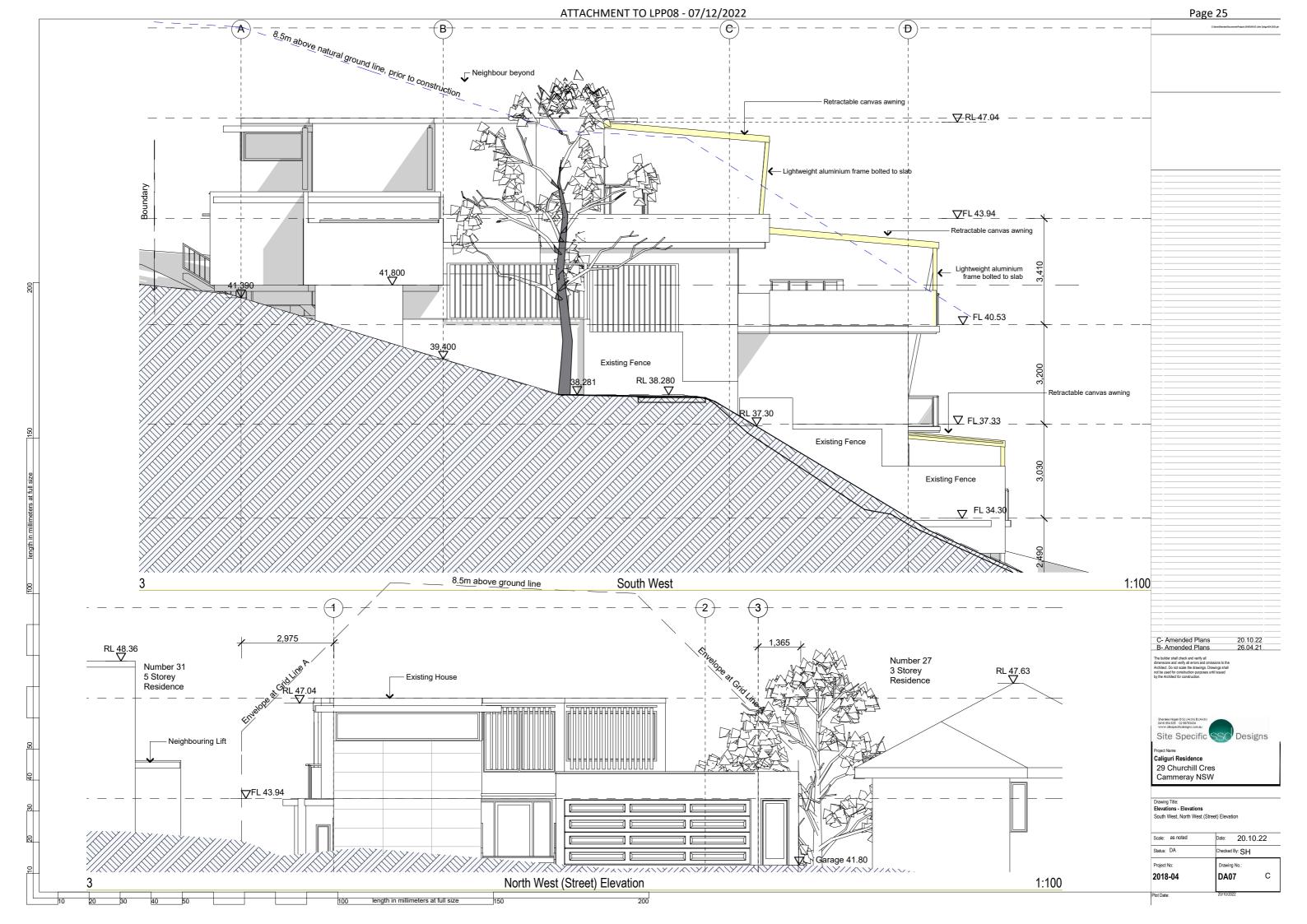
Brick walls - Nil

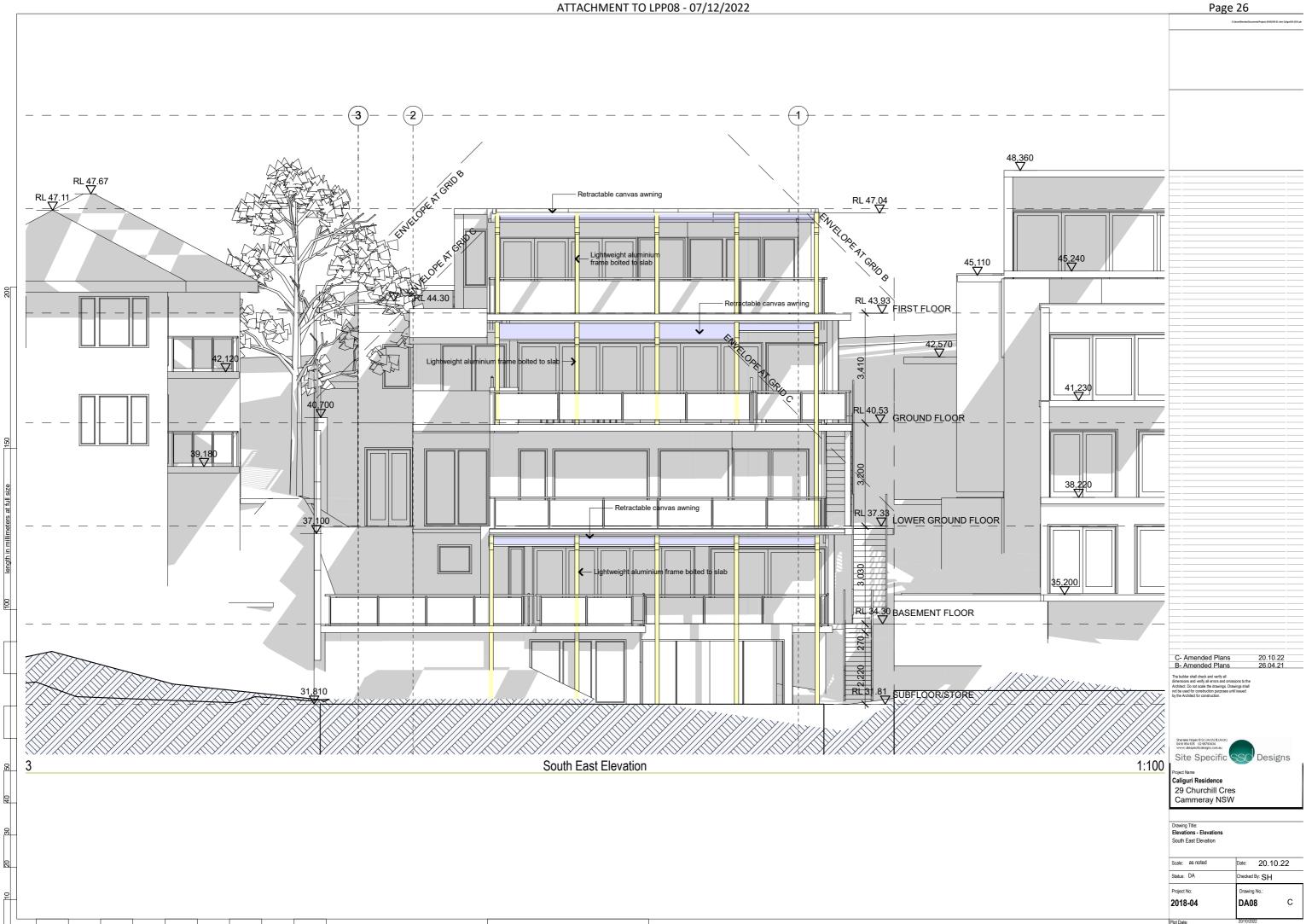
200

Flat Roof - Nil



Plot Date

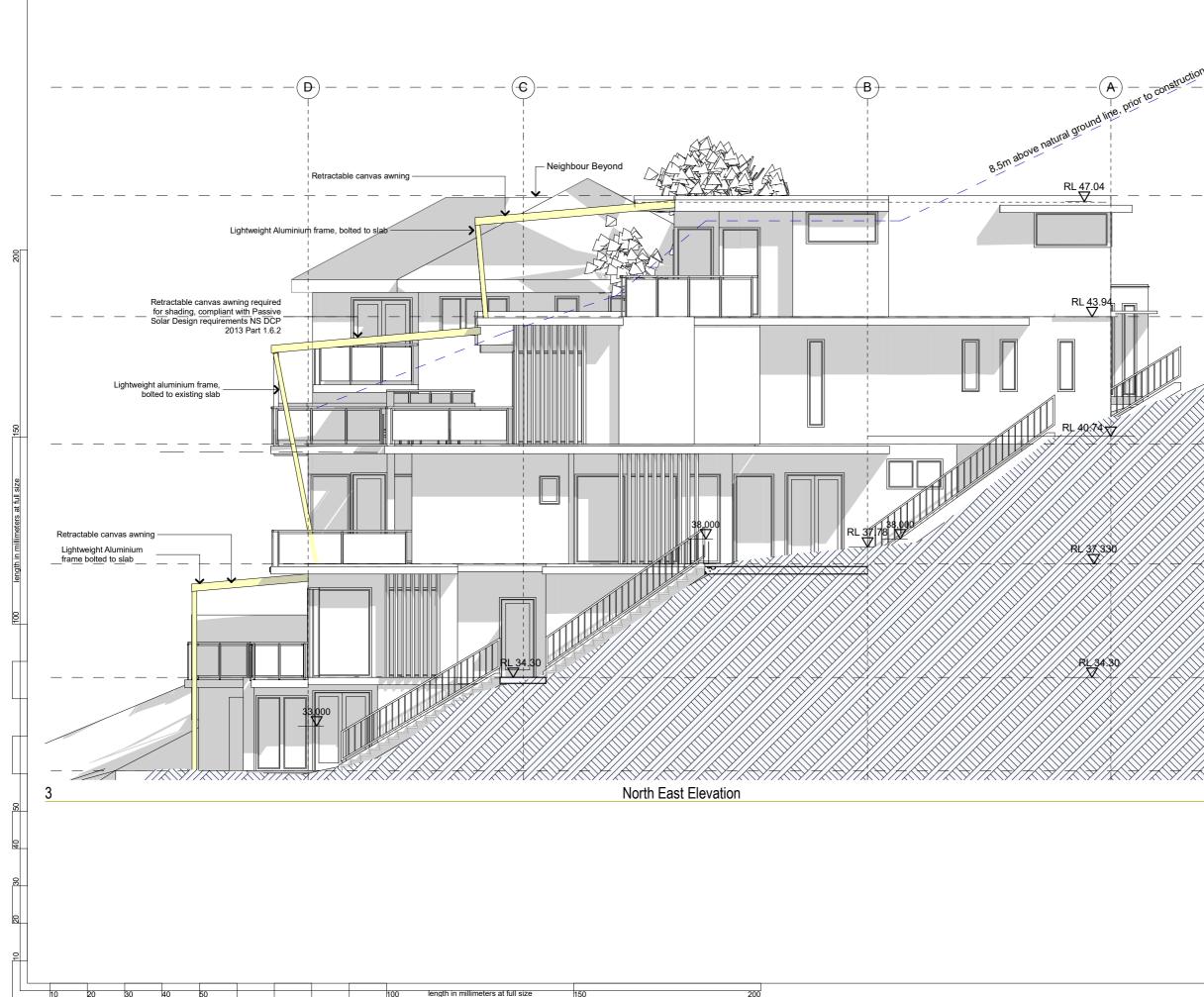




200

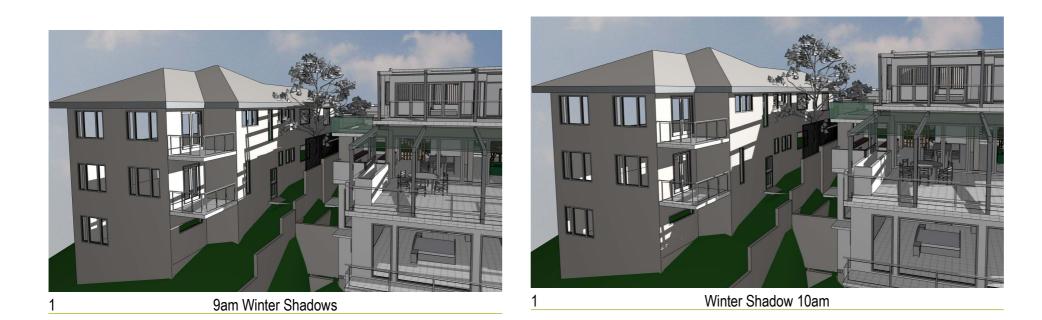
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length in millimeters at full size

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Winter Sun at 11am



Midday Winter Sun



200

8

Drawing Title: Sunstudy - Winter Shadow Diagrams Winter Shadow 10am, Winter Sun at 11am, Midday Winter Sun, 2pm Winter Shadow, 3pm Winter Shadows, 9am Winte Shadowas Hote Winter Shadow Date: 20.10.22 Status: DA ecked By: SH Project No: Drawing No.: 2018-04 DA10 С Plot Date



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