

**NSLPP MEETING HELD ON 05/04/2023****Attachments:**

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Height of Buildings
4. SEE (Existing Use Rights Extract)
5. Plan of Management

ADDRESS/WARD: 72 Kurraba Road, Neutral Bay**APPLICATION No:** DA 340/2022**PROPOSAL:** Alterations and additions to an existing boarding house, relying on existing use rights, to provide two additional rooms and amenities within boarding rooms**PLANS REF:**

Plan No.	Issue.	Title	Prepared by	Dated
DA1.00	1	Site Plan		15/08/2022
DA2.00	1	Undercroft Plan		15/08/2022
DA3.00	1	Ground Floor Plan		15/08/2022
DA3.01	1	Ground Floor Demolition Plan		15/08/2022
DA4.00	1	First Floor Plan		15/08/2022
DA4.01	1	First Floor Demolition Plan	GRAPHIO	15/08/2022
DA5.00	1	Section A-A		15/08/2022
DA5.01	1	Section B-B		15/08/2022
DA6.00	1	Northern Elevation		15/08/2022
DA6.01	1	Western Elevation		15/08/2022
DA6.02	1	Eastern & Southern Elevations		15/08/2022
Sht -1	A	Landscape Concept Plans	LibbyBirley	21/08/2022

OWNER: Robert Virgona and Kathleen Quinlivan**APPLICANT:** Thomas Virgona**AUTHOR:** Michael Stephens, Senior Assessment Officer**DATE OF REPORT:** 24 March 2023**DATE LODGED:** 8 November 2022**SUBMISSIONS:** Nil**RECOMMENDATION:** Approval

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing boarding house, relying on existing use rights, to provide two additional rooms and refurbish the existing premise at 72 Kurraba Road, Neutral Bay

The application is reported to the North Sydney Local Planning Panel for determination as the application relates to demolition, being part demolition of a heritage item and seeks a variation to a development standard by more than 10%. In accordance with the Ministers direction a public determination meeting is not required because there were less than 10 submissions received.

The subject site is zoned R2 Low Density Residential where boarding houses were prohibited following the Standard Instrument (Local Environmental Plans) Amendment (Miscellaneous) Order 2021 made 26 November 2021 which coincided with amendments to SEPP (Housing) 2021. The existing registered boarding house became prohibited at this time and the application therefore relies on the existing use rights provisions of the Environmental Planning and Assessment Act 1979 for the continuation of the use, and the incorporated provisions to undertake the proposed works. The standards and non-discretionary standards in the SEPP are not considered to apply given that consent is not sought under the SEPP, however, the proposed development would otherwise perform well against these provisions.

The existing boarding house is privately owned and provides low-rental dwellings within the wider rental market. The proposed development would likely result in a net increase in affordable housing through the addition of two additional boarding rooms and refurbishment to the current premises which has a number of vacant rooms. However, the premises is not owned by or managed on behalf of the Land and Housing Corporation or managed by a register social housing provider and therefore is not guaranteed to remain affordable. Nethertheless, the matters for consideration in Part 3 *Retention of affordable housing* in SEPP (Housing) 2021 have been considered and the development is likely to contribute to affordable housing in the LGA by providing housing choice.

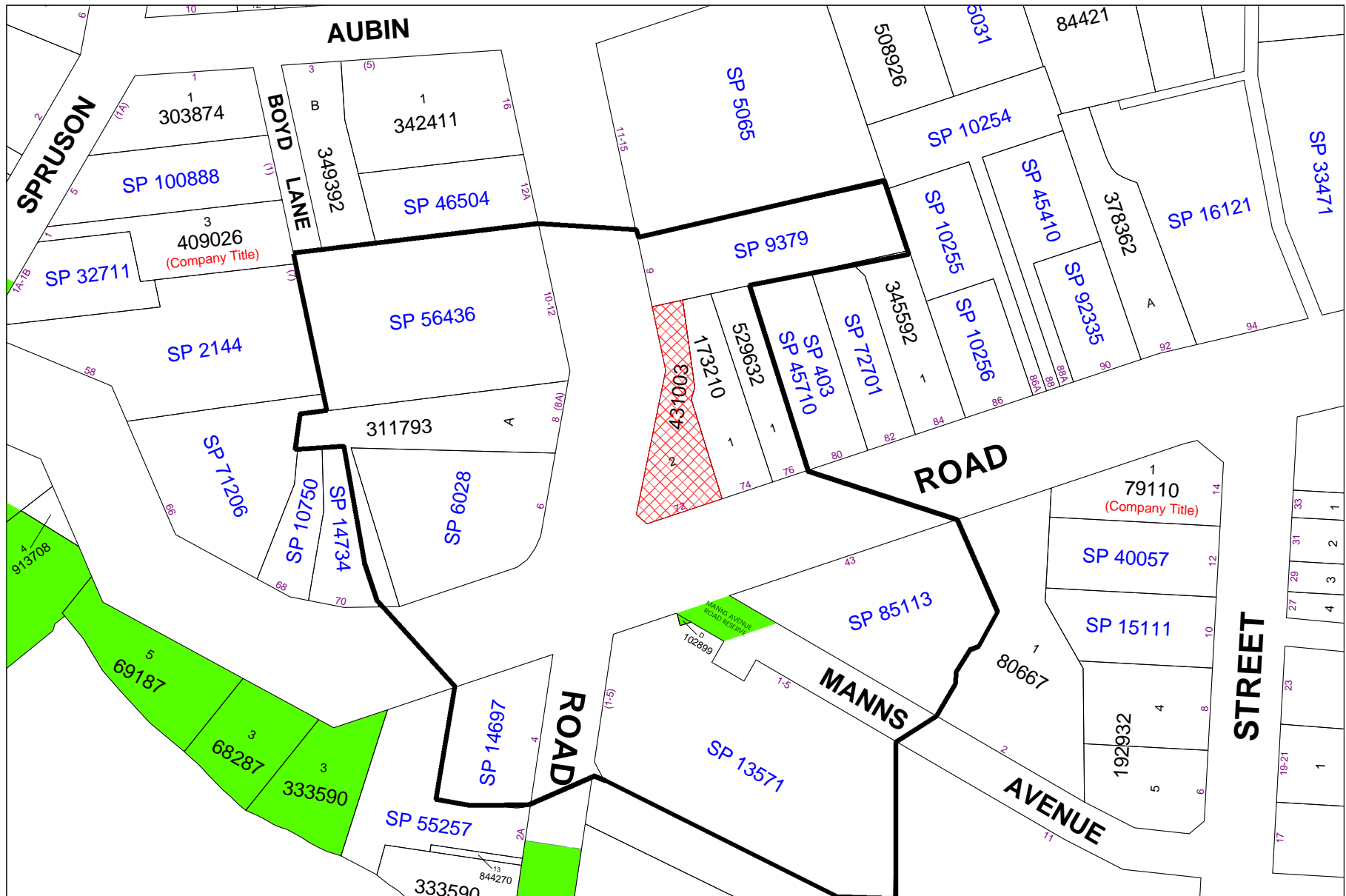
The property is listed as a heritage item "*Lucellen*" of local significance in Schedule 5 in NSLEP 2013 and the proposed works satisfy clause 5.10 in NSLEP 2013.

The proposed development generally complies with the objectives of NSDCP 2013, particularly Section 4 *Boarding Houses*. The refurbishment of the premises and provision of private facilities within each room would improve the amenity of the existing boarding house and provide greater comfort and security for the residents. A Plan of Management has been prepared, and the existing premises has historically operated without incident according to Council's Property File.

The application was notified in accordance with Council's Community Engagement Protocol and no submissions were received.

The proposed development would facilitate the refurbishment of an existing boarding house, providing valuable housing, whilst having suitable regard to the heritage significant of the existing building and is therefore recommended for approval, subject to standard conditions including conditions relation to the ongoing management of the premises.

LOCATION MAP



□ Property/Applicant ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

The development application seeks consent for alterations and additions to an existing boarding house to provide two additional boarding rooms, communal facilities and improved amenities within each boarding room.

The proposed works include:

Ground Floor

- Demolition of the rear lean to addition and some internal walls;
- Construction of a single storey rear addition containing an additional boarding room and a 30sqm communal living area. The additions are constructed of brick with a low pitched hipped sheet metal roof;
- Internal alterations to construct a private ensuite and kitchen for each boarding room; and
- Two boarding rooms are to be constructed to be accessible.

First Floor

- Demolition of some internal walls;
- Internal alteration to accommodate an additional boarding room; and
- Internal alterations to construct a private ensuite and kitchen within each boarding room.

Site

- Construction of an external lift and staircase within the northwestern corner of the site to provide access from Ben Boyd Road;
- Construction of pathways and a rear patio;
- Construction of a bicycle storage shed within the front setback area.
- Modifications to the existing side boundary fencing along Ben Boyd Road.

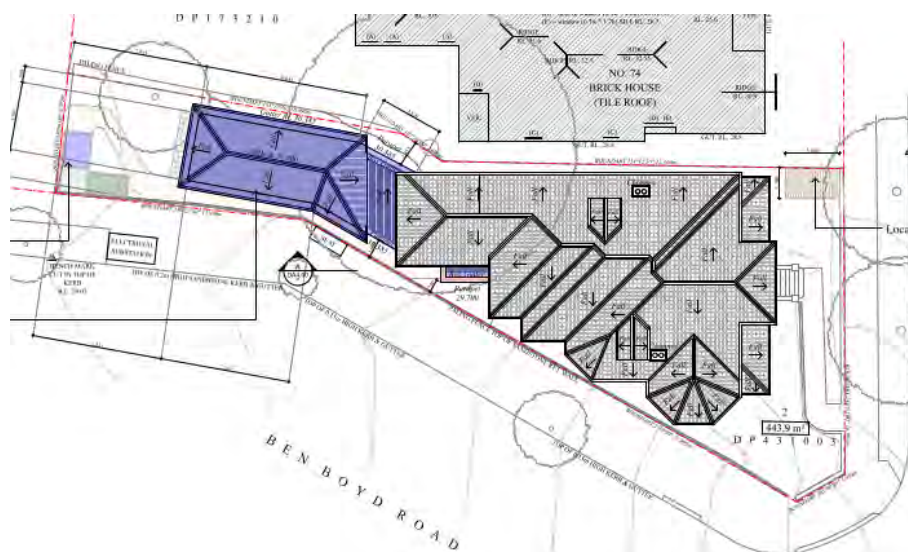
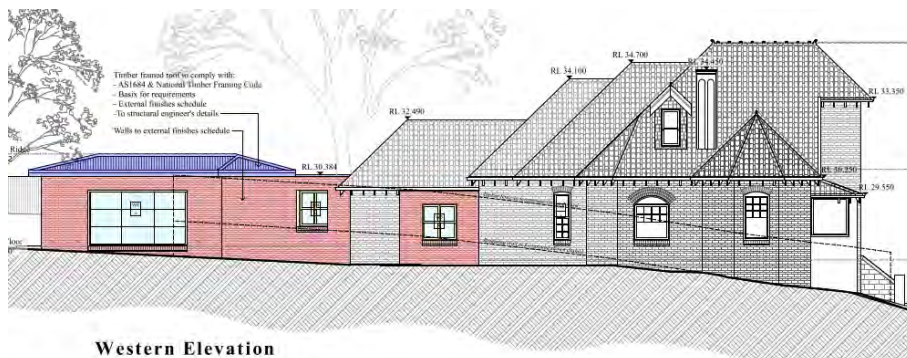


Figure 1. Proposed Site Plan



Figure 2. Proposed Southern Elevation (Kurraba Road)



Western Elevation

Figure 3. Proposed Western Elevation (Ben Boyd Road)

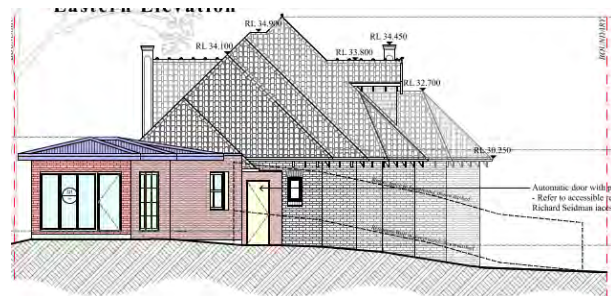


Figure 4. Proposed Northern (Rear) Elevation



Figure 5. Proposed Eastern Elevation

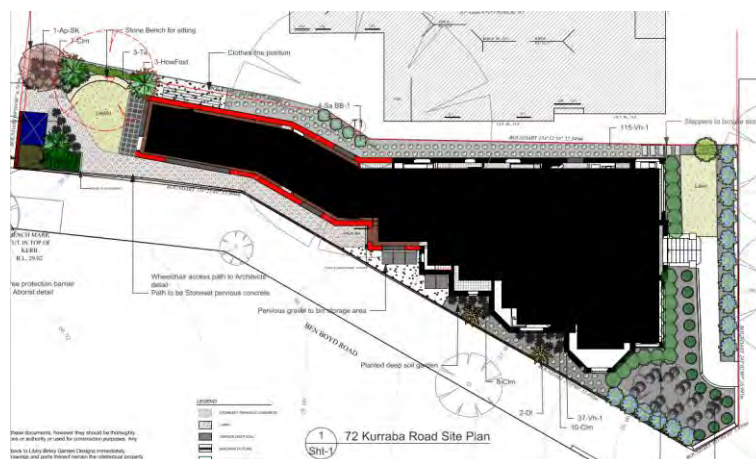


Figure 6. Proposed Landscape Plan

STATUTORY CONTROLS

North Sydney Local Environmental Plan 2013

- Zoning – R2 Low Density Residential
- Item of Heritage – Heritage Item I0656 “Lucellen” In Schedule 5
- In Vicinity of Item of Heritage - No
- Conservation Area - No

Environmental Planning and Assessment Act 1979

- s7.11/12 Infrastructure Contributions
- s7.32 Contributions for affordable housing

State Environmental Planning Policy (Biodiversity and Conservation) 2021

State Environmental Planning Policy (Housing) 2021

State Environmental Planning Policy (Reliance and Hazards) 2021

POLICY CONTROLS

North Sydney Development Control Plan 2013

North Sydney Local Infrastructure Contributions Plan 2020

DESCRIPTION OF LOCALITY

The subject site is legally described as Lot 2 in DP 431003 and is known as 72 Kurraba Road, Neutral Bay. The site is located on the northern (high) side of Kurraba Road, Neutral Bay and has a secondary frontage to Ben Boyd Road on its western side. The site is within the Neutral Neighbourhood character area.

The site is generally irregular in shape, narrowing towards the rear and has a kink aligning with the bend in Ben Boyd Road. The site has a 17m frontage to Kurraba Road and a depth of approximately 44m, equating to a site area of 433.8sqm. The land falls from the rear (northern boundary) to the front by approximately 4m and the land is 2m below Ben Boyd Road to the west with a further cross fall towards the east of approximately 1m.



Figure 7. Aerial Image of the subject site and surrounds (Nearmap 9 January 2023)

The site is zoned R2 Low Density Residential and contains an existing boarding house. The building would have originally been constructed as a single dwelling house circa 1904 and was converted to a boarding house (or for lodgings) shortly thereafter. The existing building is two storeys, constructed in Federation Queen Anne style, with face brick, a multi-dimensional hipped tiled roof and timber frame windows and doors. The property is listed as a Heritage Item “*Lucellen*” of local significance in Schedule 5 to NSLEP 2013.



Figure 8. Site Photo of Kurraba Road elevation

The existing boarding house has been registered with Council since at least 1965 and contains seven boarding rooms, some with private facilities, and communal facilities.

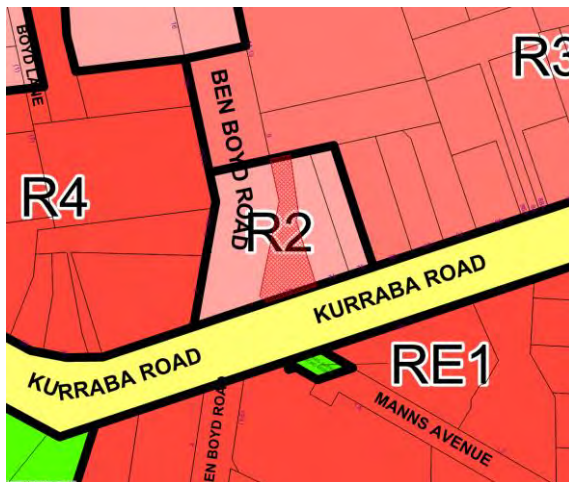


Figure 9. NSLEP 2013 Land use zoning map

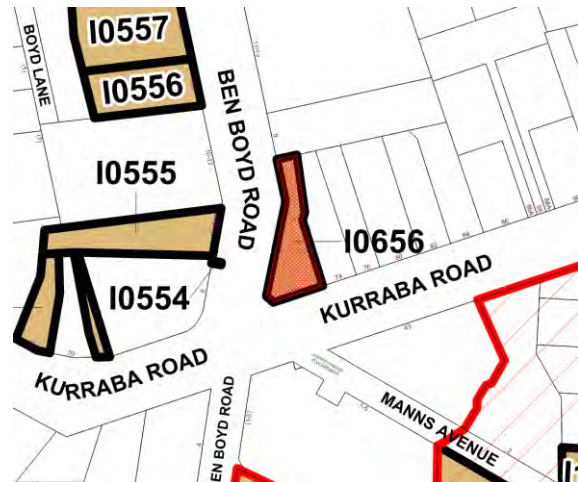


Figure 10. NSLEP 2013 Heritage map

The surrounding area includes a mixed development typology, reflecting the R3 Medium Density Residential zoning to the north R4 High Density Residential zoning to the west. The surrounding development includes a mix of dwelling houses, multi dwelling housing and residential flat buildings.

There is an existing *Jacaranda mimosifolia* located within the rear setback area of the adjoining property to the east (No. 74 Kurraba Road) in proximity to the proposed rear addition. There are three street trees in the verges of the Kurraba Road and Ben Boyd Road frontages.

Additional photos of the subject site are provided below.



Figure 11. Site photo of existing internal staircase and features



Figure 12. Site photo of existing internal hallway and features from the rear



Figure 13. Site photo of rear of Nos. 72 & 74 Kurraba Road



Figure 14. Site photo of Ben Boyd Road frontage of the subject site

RELEVANT DEVELOPMENT HISTORY

Development Application **DA276/2022** was rejected by DRP because insufficient information was submitted to assess the application.

RELEVANT APPLICATION HISTORY

A pre-lodgement meeting was held with the applicant on 29 October 2021

Date	Assessment
8 November 2022	The application was lodged with Council via the NSW Planning Portal
16 November 2022	The application was notified in accordance with Council's Community Engagement Protocol from 25 November 2022 until 9 December 2022
25 January 2023	A site inspection was undertaken by Council assessment staff.
27 January 2023	Additional information was requested regarding the proposed interventions to existing heritage fabric.
7 February 2023	Additional information was requested regarding Part 3 of SEPP (Housing) 2021.
24 February 2023	An amended SEE was submitted addressing Part 3 of SEPP (Housing) 2021.
March 2023	Additional information was provided regarding the proposed works to heritage fabric, fire safety measures and specification of materials and finishes.

REFERRALS

Building

The application was referred to Council's Building Surveyors and the following advice was provided:

The building is classified by the NCC BCA 2019 as a class 3 building of Type A construction.

The premises forms part of Council's Annual Fire Safety Statement Register and submission of AFSS is up to date.

The application is supported by a Building Code of Australia Assessment Report dated 12 September 2022 prepared by MBC Group (“the BCA Report”). The BCA Report contains information that the proposed development can comply with the NCC BCA via a combination of satisfying the Deemed to Satisfy provisions of the BCA and use of Performance Based Solutions.

The application is also supported by an Access Report dated 12 August 2022 prepared by I-Access Consultants which concludes that the proposed development can comply with the NCC BCA via a combination of satisfying the Deemed to Satisfy provisions of the BCA and use of Performance Based Solutions.

Given the scale of the proposed building works, including proposed works to fire safety measures and the nature of the building use, the building is required to be brought into conformity with the NCC – BCA 2019 pursuant to Clause 64 of the Environmental Planning & Assessment Regulations 2021.

A detailed assessment of compliance with the Building Code of Australia 2019 will be undertaken by an appropriately registered certifier at the Construction Certificate Stage of the proposed development. Additionally, a Fire Safety Schedule is to be prepared by the certifier and accompany the Construction Certificate.

Generally, the proposed development is able to comply with the NCC BCA 2019, Volume 1.

Conditions F1, C11 and C26 were recommended. It is noted that condition C11 is recommended to be further amended below in consultation with Council’s Conservation Planner.

Heritage

The application was referred to Council’s Heritage Conservation Planner as the subject site is listed as a Heritage Item “Lucellen” in Schedule 5 to NSLEP 2013. The following advice was provided:

Clause 5.10 of NSLEP 2013 is considered to be satisfied because the front façade and primary form would remain intact. The works to the interior will have an impact however, given the use as a boarding house, it is understood that each boarding room would ideally have private facilities including a bathroom. These have been designed so that the works can be readily reversed should any future owners intend to return the building to a single dwelling. The proposed new plumbing from the first floor level would be located in the void between the floor and ceiling and there would be a vertical stack located within the south-eastern enclosed verandah within the existing cabinetry so that its impact is minimised. There would be no additional impacts to the original remnant tessellated floor tiles. The new ceilings and walls for the proposed bathrooms on the ground level for Units 1 and 3 would be inserted below the existing ceilings and cornices to ensure that the original decorative features are retained. The original mantle piece and original coloured glazing would also be retained in the two front primary rooms.

The proposed development will have low impact to Units 2, 4,5 and 9 because these units would use existing bathrooms or would have new bathrooms inserted into spaces without heritage significant decorative features.

The proposed works would have negligible impact upon the heritage items located to the west at 6 Ben Boyd Road (Plaque about historical figure Ben Boyd) and 8 Ben Boyd Road (an Italianate villa) as the exterior character and primary form of the subject building would be retained.

The following controls in Section 13 of Part B in NSDCP 2013 are assessed below:

13.5.2 Form, Massing, Scale

P1 Locate alterations and additions away from principal elevations and primary behind and below the main ridge line – *Compliant. The additions will be visible from the public domain, however, the existing building is set below the road level and the existing high fence on the western boundary would obscure the majority of the addition.*

P2 Ensure that alterations and additions are smaller in scale, height and massing than the existing building – *Compliant. The bicycle store within the front setback, the rear addition and the proposed platform lift at the rear would all be submissive in massing and scale to the original building.*

P3 Locate additions with characteristic setbacks – *Compliant. The existing front and side setbacks will be retained. The rear setback will be reduced. No objection is raised however, as there is no consistent pattern of setbacks amongst the nearby heritage items.*

13.5.5 Interiors

P2 Minimise change to the original or significant internal room configuration/layout (as appropriate) so that the evolution of the building remains discernible. This can be achieved by retaining wall nibs, decorative ceilings, joinery and original features such as fire places - *The proposed works would retain the remnant features such as the original room configuration, patterned ceilings, decorative ceilings, fire places, mantle pieces and coloured glazing to ensure that the works are reversible.*

P3 Kitchens or bathrooms must not be located within primary rooms of significance, unless all of the following are achieved:

- (a) all of the original interior detailing is retained** – *Compliant.*
- (b) the volume of the room can still be appreciated** – *Compliant. The bathrooms would occupy only the corner of the primary rooms in Units 1 and 3.*
- (c) the original use of the room is still interpretable** – *Compliant*
- (d) new services do not adversely impact on significant fabric** – *The plumbing and wiring will generally utilise existing service stacks and voids or are sensitively located.*
- (e) the works can be fully reversed, such that the room may reverted to its original purpose** – *Compliant. The original fabric such as the ceilings and cornices would be retained (although unlikely to occur unless the original use as a dwelling house is reinstated).*

13.5.6 Upgrading for Fire Safety, NCC and Other Matters

P3 Fire and other upgrading works need to balance the fire safety and other compliance needs with protecting heritage significance. In order to achieve the most appropriate outcome, applicants may need to utilise alternate solutions to NCC compliance issues-

The submitted fire safety schedule includes generic upgrade requirements and does not sufficiently outline the how significant heritage fabric is to be retained. The applicant has identified the need for some performance based solutions and has identified a number of potential measures to be incorporated in consultation with a heritage consultant and fires safety engineer although a completed schedule has not been finalised. Condition C11 Upgrade to existing buildings, recommended by Council's Building Surveyors and further amended in consultation with Council's Conservation Planners provides a further opportunity for Council to consider the schedule of works prior to the issue of the construction certificate. This process is regularly undertaken between Council's Conservations Planner and Building Surveyors to address Annual Fire Safety Schedule upgrade measures and associated works to heritage items.

Engineering

The amended application was referred to Council's Development Engineers who raised no objection to the proposed development. Standard and site specific engineering conditions were recommended.

Landscape

The amended application was referred to Council's Landscape Development Officer who raised no objection to the proposed development. The Tree Protection Management Plan is to be strictly adhered to ensure that the proposed additions do not adversely impact T1 *Jacaranda mimosifolia* (10x22m) located adjacent to the proposed addition on the adjoining property to the east adjacent to the proposed works (**Refer to condition No. C13**).

SUBMISSIONS

The development application was notified in accordance with Council's Community Engagement Protocol from 25 November 2022 until 9 December 2022. No submissions were received by Council.

CONSIDERATION

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

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural area

Section 2.6 of the Policy specifies that a person must not clear declared vegetation in a non-rural area of the State without consent of Council. The Policy confers the ability for Council to declare vegetation that consent is required in a Development Control Plan. Section 16 of Part B in NSDCP 2013 specifies declared trees for the purpose of the SEPP which includes trees over 5m in height or canopy.

The proposed development does not seek to remove any protected trees and the potential impact to *Jacaranda mimosifolia* (10x22m) located adjacent to the proposed addition is considered acceptable subject to the tree protection measures recommended by Council's Landscape Development Officer. The objectives of the Policy are considered to be satisfied.

Chapter 6 Sydney Harbour Catchment

The subject site is not located within the Foreshores and Waterways area mapped in the Sydney Harbour Foreshores and Waterways DCP 2005 and is not overly visible from Sydney Harbour or its foreshores and therefore would not adversely impact the scenic quality of the foreshore or impact the natural processes of the waterway.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The proposed development is not a *BASIX building* in accordance with Schedule 7 of the Environmental Planning and Assessment Regulation 2021.

***BASIX building** means a building that contains at least 1 dwelling, but does not include the following:-*

- (a) hotel or motel accommodation,*
- (b) a boarding house, hostel or co-living housing that—*
 - (i) accommodates more than 12 residents, or*
 - (ii) has a gross floor area exceeding 300 square metres.*

A BASIX Certificate is not required because the boarding house would accommodate more than 12 residents, having six double rooms (12 residents) and three single rooms (3 residents) which accommodates 15 residents in total.

State Environmental Planning Policy (Housing) 2021

Part 2 Development for affordable housing

Division 2 Boarding houses

Section 23 Boarding houses permitted with consent

- (1) Development for the purposes of boarding houses may be carried out with consent on land on which development for the purposes of boarding houses is permitted with consent under another environmental planning instrument.*

Boarding houses are not a permitted use in the R2 Low Density Residential zoned under NSLEP 2013 or any other environmental planning instrument. The permissibility of the proposed development is addressed under NSLEP 2013 below and relies on the existing use rights provision of the Act.

Section 24 Non-discretionary development standards—the Act, s 4.15

- (2) The following are non-discretionary development standards in relation to the carrying out of development to which this Division applies—*

...

The applicant submits that because the proposed development is not made under this division of the SEPP because the development is not permitted under Section 23 of the SEPP, then the non-discretionary development standard would not apply.

With respect to the non-discretionary development standards, if the above is an incorrect interpretation and these should apply, compliance with the standards would not form a precondition to the consent authority granting development consent and are not relevant as the application is recommended for approval. Notwithstanding, the proposed development would not result in any non-compliances with the non-discretionary standards that would warrant refusal of the application.

Section 25 Standards for boarding houses

(1) Development consent must not be granted under this Division unless the consent authority is satisfied that—

The applicant submits that because the proposed development is not made under this division of the SEPP, because the development is not permitted under section 23 of the SEPP, then the standards for boarding houses would not apply. However, the following assessment is provided as a benchmarking exercise and where a non-compliance occurs, a Clause 4.6 is not considered to be required.

Standard	Proposal	Compliance
(a) no boarding room will have a gross floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, of more than 25m ² , and	The existing and proposed boarding rooms vary in size from 15.3sqm to 24.8sqm.	Yes
(b) no boarding room will be occupied by more than 2 adult residents	The submitted Plan of Management satisfies this standard.	Yes
(c) adequate bathroom, kitchen and laundry facilities will be available within the boarding house for the use of each resident, and	Each boarding rooms is provided with private kitchen and bathroom amenities and a communal laundry is located on the ground level.	Yes
(d) for a boarding house on land in Zone R2 Low Density Residential or an equivalent land use zone—the boarding house will not have more than 12 boarding rooms, and	The proposed boarding house would have only 9 rooms.	Yes
(e) N/A		
(f) for a boarding house containing at least 6 boarding rooms—the boarding house will have at least 1 communal living area, and	An internal communal living area measuring 30sqm is located towards the rear of the building.	Yes
(g) the minimum lot size for the boarding house is not less than— (i) for development on land in Zone R2 Low Density Residential—600m ² , or	The subject site has a site area of 443.84sqm and would not meet the minimum lot size requirement of 600sqm for boarding houses in the R2 zone. It is noted that, where permitted under another EPI, boarding rooms within the R2 Low Density Residential zone are permitted to have up to 12 boarding rooms. The proposed boarding house has 9 rooms and therefore the boarding house is proportional to the lot size.	No

<p>(h) each boarding room has a floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, of at least the following—</p> <p>(i) for a boarding room intended to be used by a single resident—12m²,</p> <p>(ii) otherwise—16m², and</p>	<p>The existing and proposed boarding rooms vary in size from 15.3sqm to 24.8sqm.</p>	<p>Yes</p>
<p>(i) the boarding house will include adequate bicycle and motorcycle parking spaces.</p>	<p>Adequate provision for bicycle parking is made.</p> <p>It is not considered feasible to provided on-site motorcycle parking because of the topographical changes between the road and the internal land levels. The land within the rear of the site is approximately 2m below the adjoining road (Ben Boyd Road) and the land within the front setback area is higher than the adjoining road (Kurraba Road) and would require excavations and further instructions into the setting of the building which would not be supported from a heritage perspective given this is the primary façade of the Heritage Item.</p> <p>The location is well serviced by public transport with bus services from Ben Boyd Road and Kurraba Road and ferry services from the Hayes Street wharf.</p> <p>Furthermore, Section 10.2 of Part B in NSDCP 2013 does not require motorcycle parking for boarding houses.</p>	<p>Yes</p>

Section 26 Must be used for affordable housing in perpetuity

- (1) *Development consent must not be granted under this Division unless the consent authority is satisfied that from the date of the issue of the occupation certificate and continuing in perpetuity—*
- (a) *the boarding house will be used for affordable housing, and*
 - (b) *the boarding house will be managed by a registered community housing provider.*
- (2) *Subsection (1) does not apply to development on land owned by a relevant authority or to a development application made by a public authority.*

The applicant submits that because the proposed development is not made under this division of the SEPP, because the development is not permitted under Section 23 of the SEPP, then this requirement for boarding houses would not apply.

Concern is also raised that the application of this provision would derogate from the incorporated provisions for existing use rights as this requirement would be inconsistent with the definition of a boarding house prior to its prohibition on the land. The former definition did not require the boarding house to be carried out on or on behalf of the Land and Housing Corporation or managed by a registered community housing provider which was introduced under the amended SEPP. It is therefore considered unnecessary to require the existing boarding house to meet these sections which is further addressed under the existing use rights provisions below.

Part 3 Retention of Existing Affordable Housing

The policy requires a consent authority to consider whether there would be a loss of affordable rental housing as a consequence of the proposed development. An assessment is provided.

Section 47 Reduction of availability of affordable housing

(1) Development for the following purposes, in relation to a building to which this Part applies, is permitted with development consent:-

(b) altering or adding to the structure or fabric of the inside or outside of the building,

Part 3 of the SEPP applies in accordance with sections 46 and 47 because the existing boarding house is *low-rental residential building* in the Greater Sydney Area.

(2) In determining whether to grant development consent, the consent authority must take into account the guidelines and the following:-

(a) whether the development will reduce the amount of affordable housing in the area,

The proposed development would likely result in a net increase in affordable housing in the area by refurbishing the existing boarding rooms and providing two additional rooms. The premises is not owned by the Land and Housing Corporation or proposed to be managed by a registered community housing provider and therefore the rental rates are subject to market demands. The proposed alterations may increase the rental yields, however, given the nature of the housing typology, being a boarding house with relatively small rooms and communal facilities, the premises is likely to still be rented below the medium rental rate and therefore would continue to provide affordable rental housing.

(b) whether there is available sufficient comparable accommodation to satisfy the demand for the accommodation,

The current vacancy rate for comparable accommodation is less than 3% and therefore in accordance with subsection 47(3) comparable accommodation is conclusively taken not to be available.

(c) whether the development is likely to result in adverse social and economic effects on the general community,

Whilst the existing boarding houses provides some low cost rental accommodation, the existing building is no longer considered desirable given the aging state of the property with shared facilities and ongoing maintenance requirements. The advantage of retaining the housing in its current form is considered to be outweighed by the need to improve the quality of the facilities.

(d) whether adequate arrangements have been made to assist the residents who are likely to be displaced to find comparable accommodation,

The proposed development would result in the displacement of the remaining tenants. The applicant has made undertaking to assist with the relocation of the existing tenants. **Condition C28 Resident Relocation Plan** is recommended to formalise the assistance for the residents.

(e) the extent to which the development will contribute to a cumulative loss of affordable housing in the local government area,

The proposed alterations and additions may not necessarily cause the building to no longer provide affordable rental housing, although there is no guarantee that the boarding house would continue to provide affordable rental housing as the premises is not proposed to be managed by a registered social housing provider. The nature and amenity of the rooms would be improved but may well still only achieve modest rental rates in comparison to the medium rental rates within the LGA. The current medium rental rate for bedsits in the North Sydney LGA is \$438 per week.

The existing boarding house is no longer considered to be fit for purpose and without the proposed refurbishment works would likely result in a loss of affordable housing as more and more rooms become vacant and unable to be tenanted.

- (f) *whether the building is structurally sound, including—*
 - (i) *the extent to which the building complies with relevant fire safety requirements, and*
 - (ii) *the estimated cost of carrying out work necessary to ensure the building is structurally sound and complies with relevant fire safety requirements,*

Whilst it is not argued that the existing building is structurally unsound, there is need for significant maintenance and refurbishment work to bring the existing building in line with current standards to provide quality housing.

- (g) *whether the imposition of an affordable housing condition requiring the payment of a monetary contribution would adequately mitigate the reduction of affordable housing resulting from the development,*

As calculated in accordance with subsection 48(3), the consent authority may not seek a contribution because the rental yield is less than 3%.

- (h) *for a boarding house—the financial viability of the continued use of the boarding house.*

In accordance with subsection 47(4), the existing boarding house is likely not financially viable because the rental yield is less than 6%.

State Environmental Planning Policy (Resilience and Hazards) 2021

Section 4.6 of the SEPP requires the consent authority to consider whether the land is contaminated, and if so whether the land is suitable for the intended use or any remediations measures required. Council's records indicate that the site has historically been used for residential development and as such is unlikely to contain any contamination. The subject site is therefore considered suitable for the proposed use.

North Sydney Local Environmental Plan 2013

Objectives of the zone

R2 Low Density Residential zone

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

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *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.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposed development is consistent with the objectives of the zone. The proposed refurbishment of the existing boarding house would support the provision of housing choice within the area and is compatible with the low density residential environment in which the boarding house is located. The proposed works have adequate regard to the heritage significance of the existing building and would retain the cultural heritage of the area. The proposed works would improve the existing amenity of the boarding house and would not have an unreasonable impact on the amenity of the surrounding properties.

Permissibility

The subject site is zoned R2 Low Density Residential. At the time of lodgement, the proposed development for the purpose of a boarding house is prohibited in the R2 Low Density Residential zone.

Boarding houses were permitted in the R2 Low Density Residential zone up until 1 December 2021 when NSLEP 2013 was amended by Standard Instrument (Local Environmental Plans) Amendment (Miscellaneous) Order 2021 which omitted "*Boarding houses*" from the land use table for the R2 Low Density Residential zone.

The application therefore relies on the existing use rights provisions of the Act.

Section 4.65 – Definition of "existing use"

In order for an application to rely on existing use rights it needs to be established that the use was formally granted development consent and that since that time the respective use has become prohibited on the land.

Section 4.66 of the Act – Continuance of and limitations on existing use

The development application seeks to rely upon the established existing use rights as defined in section 4.66 of the Act to continue the use of the site as a boarding house.

An original approval for the building, or its later use as a boarding house, has not been found and likely does not exist given that consent was not required at that time it was established, however, the subject site has been registered with Council as a boarding house since at least 1965. Furthermore, Council wrote to the property owner in 1995 recognising the use of the subject premise as a boarding housing within the meaning of NSLEP 1989. A copy of these documents has been provided in the submitted Statement of Environmental Effects and have been located in Council's property file (Refer to attachment 4).

Over the years the definition of a boarding house has changed, but notable, the definition of a *boarding house* in NSLEP 2013 prior to prohibition within the R2 zone was as follows:

boarding house means a building that:-

- (a) *is wholly or partly let in lodgings, and*
- (b) *provides lodgers with a principal place of residence for 3 months or more, and*
- (c) *may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
- (d) *has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.

Note

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

The existing development conforms with this definition and is considered to benefit from existing use rights.

The current definition of a *boarding house* following the Standard Instrument (Local Environmental Plans) Amendment (Miscellaneous) Order 2021 is as follows:

boarding house means a building or place:-

- (a) *that provides residents with a principal place of residence for at least 3 months, and*
- (b) *that contains shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
- (c) *that contains rooms, some or all of which may have private kitchen and bathroom facilities, and*
- (d) *used to provide affordable housing, and*
- (e) *if not carried out by or on behalf of the Land and Housing Corporation—managed by a registered community housing provider,*

but does not include backpackers' accommodation, co-living housing, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.

The existing boarding house is privately owned and is not carried out by or on behalf of the NSW Land and Housing Corporation or managed by a registered community housing provider and therefore would also not conform with the current boarding house meaning.

Given that the existing boarding house benefits from existing use rights, conformity with the definition prior to prohibition is considered satisfactory. Consistent with the judgement on appeal in *Jojeni Investments Pty Ltd vs Mosman Municipal Council [2015] NSWCA 147* the characterisation of the existing use should be done as liberally as the statutory language allows and should have regard to the definition of the use at the time it commenced, or in this case it is suggested, the definition prior to the use becoming prohibited. There would be no basis to apply the narrower meaning under the current environmental planning instruments and therefore the requirement for the boarding house to be carried out by or on behalf of the Land and Housing Corporation or managed by a registered community housing provider should not apply to the continuation of the existing use.

The existing use has not been abandoned in accordance with section 4.46(3) of the Act.

Section 4.67 of the Act – Regulations respecting existing use

- (1) *The regulations may make provision for or with respect to existing use and, in particular, for or with respect to—*
- (a) *the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and...*

Environmental Planning and Assessment Regulations 2021

The proposed development seeks to engage section 165 of the Regulations, known as the incorporated provisions, for the proposed alterations and extensions to the existing use. Under the provision, alteration of a building or work for an existing use may be permitted with development consent.

The proposed alterations and additions are assessed below with respect to the planning principle established at paragraph 17 in the judgment for *Fodor Investments v Hornsby Shire Council* [2005] NSWLEC 71. The planning principles outlines the questions that usually arise in the assessment of proposals on land with existing use rights.

- *How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?*

The existing building was constructed as a dwelling houses and still presents as such. The proposed additions generally comply with the maximum permitted site coverage and minimum required landscaped area for boarding houses and dwelling houses within the zone. There is no change to the existing building height.

- *What is the relevance of the building in which the existing takes place?*

The existing building was constructed as a dwelling house and was soon thereafter converted to a boarding house. The continued appearance as a dwelling house ensures the boarding house sits comfortably within the surrounding area, particularly given the R2 Low Density Residential zoning of the site and adjoining properties in Kurraba Road. The proposed alterations and additions are well accommodated primarily within the existing building form or sympathetic additions towards the rear.

- *What are the impacts on adjoining land?*

The proposed development would have an acceptable impact on the adjoining property and has been assessed with regards to the built form anticipated within the R2 Low Density Residential zone having regard to the existing building typology, being originally constructed as a dwelling house. The proposed single storey rear addition would not cause unreasonable overlooking or overshadowing impacts.

- *What is the internal amenity?*

The proposed development would improve the internal amenity of the boarding house by facilitating necessary maintenance and repairs, providing private kitchen and bathroom facilities within each boarding room, providing a communal living area and improving the access arrangements.

Further, the more recent judgment of Commissioner Chilcott in *Saffioti v Kiama Municipal Council [2018]* NSW LEC 1426 confirmed that any development standards may apply where they do not derogate, or have the effect of derogating, from the incorporated provisions of the Act. Additionally, the provisions of a DCP cannot derogate from the incorporated provisions because when applied flexibility in accordance with subsection 4.15(3) of the Act cannot prevent a development application being made. The development standards in NSLEP 2013 and controls in NSDCP 2013 are therefore assessed below.

Clause 4.3 - Height of buildings

The subject site has a maximum permitted building height of 8.5m pursuant to clause 4.3(2) in NSLEP 2013. The existing building has a maximum height of 9.7m and exceeds the maximum permitted building height. All proposed works are contained either below the maximum permitted building height or within the existing roof cavity where the building exceeds the maximum permitted building height. The variation is considered to be a technical variation and would be imperceptible and have no material impact.

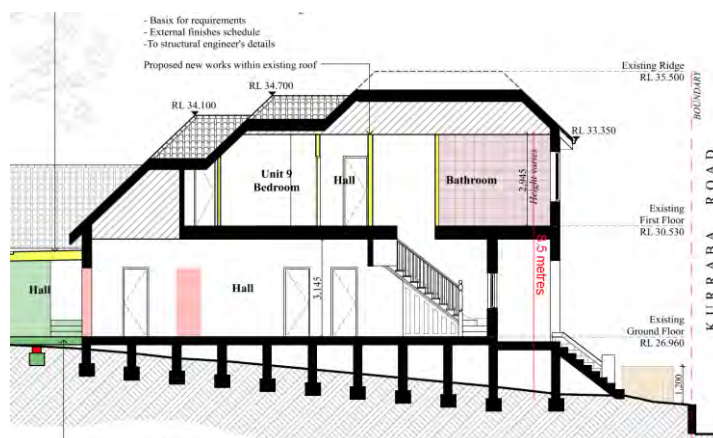


Figure 15. Building Section

Clause 4.6 - Contravention of a Development Standard

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,*

There is no change to the existing building envelope.

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

There would be no impact to views given the alterations occur within the existing roof form.

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

There would be no solar access impact given the alterations occur within the existing roof form.

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

There would be no privacy impacts given the alterations occur within the existing roof form and do not include any additional windows or balconies above the maximum permitted building height.

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

There would be no change to the existing scale of the development which is considered compatible with the surrounding development.

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

There would be no change to the existing scale of the development.

(1)(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.

The existing building is located in the R2 Low Density Residential zone would retain a two storey appearance which is consistent with the desired built form.

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 resultant encroachment to the development standard relates to internal works within an existing roof cavity which is an existing non-compliance. There is no increase to the established height of the building. As such, there is no amenity, visual or streetscape impacts associated with the area of non-compliance.”

The environmental planning grounds put forward are considered satisfactory to justify the contravention. The proposed alterations would be inconsequential with respect to the overall height, bulk and scale of the existing built form and any associated amenity impacts. Approval of the variation would facilitate the continued use of the building as a boarding house which provides affordable housing within the North Sydney LGA.

Concurrence with Minister

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

Whether the proposed development will be in the public interest?

The proposed variation is considered to be in the public interest given 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

The subject site is listed as a Heritage Items of local significance in Schedule 5 to NSLEP 2013. The proposed development would have an acceptable effect on the heritage significance of the heritage item and is considered to satisfy clause 5.10(4) in NSLEP 2013.

North Sydney Development Control Plan 2013

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013 PART B - SECTION 1 - Residential Development		
	<i>Complies</i>	<i>Comments</i>
1.2 Function		
Maintaining residential accommodation	Yes	The proposed development would maintain the existing residential density on the site and would provide two additional boarding rooms.
Maintaining affordable housing	Yes	The proposed development is unlikely to result in a reduction in affordable rental housing as addressed in detail with respect to SEPP (Housing) 2021 above.
1.3 Environmental criteria		
Topography	Yes	The proposed rear addition is constructed on piers and the internal floor level is a between 100mm - 800mm above the existing ground level. The proposed excavation for footings can be accommodated without adversely impacting the health and stability of the <i>Jacaranda misforma</i> located adjacent on the adjoining property to the east (No. 74 Kurraba Road), provided that the location of the footings are informed by the project arborist.
Views	Yes	The subject site is located on land sloping towards Sydney Harbour to the south. The proposed alterations are contained within the existing building envelope and the proposed rear addition is single storey and therefore the proposed works would not materially impact views over the property from the adjoining buildings to the north.
Solar access	Yes	The proposed alterations are contained within the existing building envelope and the proposed rear addition is single storey. The rear addition would extend beyond the rear building line of the adjoining property to the east and would result in some additional overshadowing to the rear elevation and private open space of the adjoining property. The proposed addition is single storey with a low pitched hipped roof and is setback from the side boundary. Sufficient solar access would be maintained to living areas and private open space, despite

		the additional overshadowing, because the properties have a favourable northern aspect.																		
Acoustic privacy	Acceptable	The proposed layout and use of the boarding house is consistent with the existing premises. The proposed additions would increase the size of the boarding house by two rooms, however, is unlikely to have any substantial impact. The design of the proposed communal living area includes a blank wall adjacent to the adjoining dwelling house to minimise any noise impacts. Furthermore, the Plan of Management includes restrictions on the hours of use for the communal open space and communal living room which would limit any potential untoward impacts.																		
Visual privacy	Yes, subject to condition	<p>The proposed alterations to the existing building largely retain the existing layout of the boarding house and would not result in any additional overlooking to the adjoining property.</p> <p>The proposed windows and doors for the communal living area are orientated towards the rear and western (street) side and would not overlook the adjoining properties. There is a blank wall along the eastern side adjacent to the private open space of the adjoining property.</p> <p>Proposed widow W2 within the eastern elevation of Unit 6 would overlook the adjoining dwelling house to the east (No. 74 Kurraba Road). Condition C26(a) is recommended requiring this window to be obscure glazed to retain the privacy of the adjoining dwelling.</p>																		
1.4 Quality Built Form																				
Siting	Yes	There is no change to the existing siting of the building. The site is located on a prominent corner at the intersection of Kurraba Road and Ben Boyd Road. The proposed rear addition addresses the irregular shape of the site and would not be overly visible from Ben Boyd Road given the fall of the land from street level.																		
Front Setback	Yes	There is no change proposed to the existing front setback.																		
Setbacks (Side and Rear)	Yes	<p>The proposed setbacks are assessed against the provisions in Section 1.4.6 of Part B in NSDCP 2013 in the table below.</p> <table border="1" data-bbox="826 1346 1433 1563"> <thead> <tr> <th>Side</th> <th>Control</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td rowspan="2">East</td> <td>GF – 0.9m</td> <td>0.9-1.4m</td> <td>Complies</td> </tr> <tr> <td>FF – 1.5m</td> <td>Unchanged</td> <td>Complies</td> </tr> <tr> <td rowspan="2">West</td> <td>GF – 0.9m</td> <td>0.75m-1.5m</td> <td>No, however acceptable</td> </tr> <tr> <td>FF –1.5m</td> <td>Unchanged</td> <td>Complies</td> </tr> </tbody> </table> <p>The proposed rear addition complies with the relevant setback requirements, with the exception of the corner of the rear hallway which is set back 0.75m from the boundary. The western side of the building is indented by the stepping of the building form to address the irregular alignment of the Ben Boyd Road boundary. The nominal variation would be inconsequential to the amenity of surrounding properties.</p>	Side	Control	Proposed	Compliance	East	GF – 0.9m	0.9-1.4m	Complies	FF – 1.5m	Unchanged	Complies	West	GF – 0.9m	0.75m-1.5m	No, however acceptable	FF –1.5m	Unchanged	Complies
Side	Control	Proposed	Compliance																	
East	GF – 0.9m	0.9-1.4m	Complies																	
	FF – 1.5m	Unchanged	Complies																	
West	GF – 0.9m	0.75m-1.5m	No, however acceptable																	
	FF –1.5m	Unchanged	Complies																	
Front fences	Yes	There are no changes proposed to the existing fencing.																		
Form, massing and scale	Yes	The proposed rear addition is single storey and steps down the scale of the building towards the rear, being a subservient building mass in comparison to the massing and scale of the existing building.																		
Built form character	Yes	The proposed alterations to the existing building are sympathetic to the existing character of the building. It would be ideal to reinstate the original front verandas of the building, but the balcony enclosures are existing and provide internal amenity for the front rooms. The proposed rear addition is constructed of brick with a low pitched sheet metal roof. The external fenestration is also consistent with the existing																		

		building. The proposed glazed doors for the communal living area are reasonably proportioned and would not dominate the western or rear elevations of the proposed addition.																												
Dwelling entry	Yes	The existing front building entry is to be retained and is a significant element of the existing heritage listed building, however, does not provide accessible access. Therefore, a secondary accessible entry is proposed to be constructed from Ben Boyd Road utilising a lift and DDA compliant ramps to provide access throughout the communal areas of the site and into the two proposed accessible boarding rooms.																												
Roofs	Yes	The existing multi-dimensional roof of the existing building is proposed to be retained. The proposed rear addition has a low pitched hipped roof and would be subservient to the more complex and visually interesting roof of the existing heritage listed building. The proposed use of sheet metal roofing is acceptable for the rear addition to further delineate from the existing roof form.																												
Colours and materials	Yes	The proposed materials and finishes schedule is considered acceptable having regard to the heritage significance of the building.																												
1.5 Quality urban environment																														
Safety and security	Yes	The proposed development would improve the safety and security of the premises by providing private facilities within each boarding room.																												
Car parking rates - Section 10.2.1	Acceptable	Section 10.2 of Part B in NSDCP 2013 establishes the maximum permitted parking rates for residential development. Boarding house are permitted to have a maximum of 1 space per 12 beds. The proposed boarding house has 9 rooms and could accommodate up to 15 residents, therefore permitting a maximum of 1 parking space. The existing boarding house does not have any on-site parking and the proposed development does not seek to include any parking. The absence of any on-site parking is considered acceptable because, the provision is a maximum rate and not a requirements, and the proposed development is not a significant intensification of the existing use and would not warrant the introduction of on-site parking given the site constraints. The subject site is also well serviced by public transport with bus stops located along Ben Boyd Road and Kurraba Road and ferries from the nearby Hayes Street Wharf.																												
Location of car parking and Vehicle Access	Yes	The existing premises does not have any on-site car parking and the proposed development does not seek in include any parking.																												
Site Coverage, Unbuilt Area and Landscaped Area	Yes	The site has an area of 443.84sqm. The relevant site coverage, unbuilt upon area and landscape area provisions for boarding houses in the R2 Low Density Residential zone are assessed in the table below. <table border="1" data-bbox="826 1697 1428 1892"> <thead> <tr> <th></th> <th>Existing</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td>Site Coverage</td> <td>189.1sqm</td> <td>234.7sqm</td> <td>No, 2.88% variation.</td> </tr> <tr> <td>50%</td> <td>42.61%</td> <td>52.88%</td> <td></td> </tr> <tr> <td>Unbuilt-upon Area</td> <td>44.1sqm</td> <td>57.25sqm</td> <td>Yes</td> </tr> <tr> <td>20%</td> <td>9.9%</td> <td>12.9%</td> <td></td> </tr> <tr> <td>Landscape Area</td> <td>210.65sqm</td> <td>151.9sqm</td> <td>Yes</td> </tr> <tr> <td>30%</td> <td>47.45%</td> <td>34.22%</td> <td></td> </tr> </tbody> </table> <p>The proposed additions would result in a minor exceedance of the maximum permitted site coverage of 50% by 2.88%. The variation is caused in part by the length of the proposed communal living room at the rear. Condition C25 is recommended to reduce the length of the communal living room by 1.5m (equating to a 6sqm reduction) to minimise the extent of the variation. The communal living area still would</p>		Existing	Proposed	Compliance	Site Coverage	189.1sqm	234.7sqm	No, 2.88% variation.	50%	42.61%	52.88%		Unbuilt-upon Area	44.1sqm	57.25sqm	Yes	20%	9.9%	12.9%		Landscape Area	210.65sqm	151.9sqm	Yes	30%	47.45%	34.22%	
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		<p>provide sufficient space for the residents, complying with Section 4.2 of Part B in NSDCP 2013.</p> <p>Subject to the recommended conditions, the resulting built form would have a variation of only 1.5% and remains subservient to the form, massing and scale of the original building. The proposed development also complies with and exceeds the minimum required landscaped area.</p>
Front gardens	Yes	The existing front garden is proposed to be refurbished. The existing entry pathway and front staircase to the building entry are to be retained. The existing garden is largely retained with some additional shrubs included in the proposed landscaping.
Garbage storage	Yes	A waste bin storage area is provided within the western side set back area and provides an adequate area to store bins out of sight from the public domain.
1.6 Efficient use of resources		
BASIX	N/A	The proposed development does not require a BASIX Certificate.
PART B - SECTION 4 – Boarding Houses		
	Complies	Comments
4.2 Internal Building Design		
Communal living areas	Yes	<p>The proposed development incorporates a new communal living area at the rear of the premises. The communal living area is 30sqm in size, although is recommended to be reduced to 24sqm in size due to the site coverage non-compliance addressed above. The smaller communal living area would comply with the size requirements in Section 4.2 of Part B in NSDCP 2013 and is located on the ground level close to the rear external communal open space.</p> <p>Whilst the boarding house is two storey, it is not considered necessary to provide a separate communal living area on the first floor level given the relatively small size of the boarding house and the confined nature of the first floor level which is primarily contained within the existing roof form and only contains three rooms.</p>
Boarding rooms	Yes	Each proposed boarding room has a floor area, excluding bathrooms and kitchen, between 15.3sqm and 24.8sqm in size and complies with the minimum and maximum size requirements.
Shared facilities	Yes	A shared kitchen has not been provided because each boarding room includes a separate kitchen which is considered adequate. Communal laundry facilities have been provided for use by the residents.
Internal circulation	Yes	The proposed hallway and communal areas are well designed given the existing layout of the heritage listed building.
Management office design	Acceptable	An onsite manager's room or office is not warranted given the small scale of the existing boarding house with the proposed additions increasing this to only 9 boarding rooms. The communal living area would be provided with appropriate furniture, as described in the Plan of Management, that may be utilised by the boarding house managers to undertake occasional meetings and administrative tasks with residents.
Personal security	Yes	The existing building entryway and lobby are located at the front of the building and would be highly visible from the street. All rooms are accessed off the central hallway and there is appropriate delineation between private rooms and communal spaces is provided.

Fire Safety	Yes, subject to condition	The existing building is listed on Council's Annual Fire Safety Register. Council's Building Surveyors have recommended Condition C11 requiring an upgrade to the existing building in accordance with Section 64 of the EP&A Regulations 2021 because the proposed works effect more than 50% of the floor space and the existing facilities would be considered insufficient.
Accessibility	Acceptable	<p>The proposed alterations would facilitate accessible access into the building and throughout the ground floor level of the premises. Access to the building is provided via an external lift from Ben Boyd Road and through an accessible graded path into the rear of the building.</p> <p>It is not considered feasible to provide accessible access via the main entry fronting Kurraba Road because of the topographical and heritage constraints. The proposed access arrangements from Ben Boyd Road are considered equitable given Ben Boyd Road is also a major road. Access is not provided to the first floor level because similar accessible facilities are provided elsewhere within the premises.</p> <p>The proposed alterations would also provide two adaptable rooms for residence by people with a disability.</p>
4.3 Landscaped Area		
Landscaped area	Yes	The proposed development includes compliant landscaped area.
Private space	Yes	The proposed development includes a landscaped communal open space area directly accessible from the rear of the proposed internal communal living room for use by the residents.
4.4 Management and Registration		
Management	Yes	<p>The applicant has submitted a Plan of Management. Condition 14 requires the ongoing operation of the premises to be in accordance with the submitted Plan.</p> <p>The Operation Plan of Management details the roles and responsibilities of the offsite manager. The plan of management also seeks to appoint a resident manager who would assist in the day-to-day management of the premise.</p> <p>The Operation Plan of Management also outlines the intended measures to manage the occupancy of the boarding house, any complaints or incidents, and noise limitations including the permitted access hours for communal areas and visitors.</p> <p>The boarding house management would also engage professional maintenance and cleaning services to ensure upkeep of the premise.</p>
Registration	Yes	The existing boarding house is register with Council and would be required to remain on the register. (Refer to Condition G2)

Part C - Section 7 Neutral Bay Planning Area

The subject site is located in the Neutral Neighbourhood of the Neutral Bay Planning Area.

The proposed development is consistent with the generally low density residential character of the Neutral Neighbourhood.

Section 7.2.3 Desired Future Character

Form, massing and scale

P1 Development should be carefully designed to follow the topography of the land, with buildings on sloping sites.

The proposed rear addition in single storey and follows the topography of the land, being at grade at the rear where the communal living areas opens onto the communal open space.

SECTION 7.11 CONTRIBUTIONS

The proposed development would increase the number of residents within the locality and therefore a contribution levied under section 7.11 the Act is required in accordance with Council’s Infrastructure Contributions Plan 2020. The proposed development is no exempt because the development does not meet the definition of affordable housing under the Act or is not operated by a social housing provider.

s7.11 net population increase summary

Development Type	Existing	Proposed	Resident Increase
<i>Boarding rooms</i>	7	9	2.8

The proposed development includes two additional boarding rooms and would increase the number of residents by 2.8.

The levy would provide a contribution for the public amenities or services detailed in column A below, for the amount detailed in column B below:

A	B (\$)
Open space and recreation facilities	\$15,690.50
Public domain	\$8,734.44
Active transport	\$498.53
Community facilities	\$3,151.51
Plan administration and management	\$419.81
The total contribution is	\$28,494.79

The total contribution payable is \$28,494.79. **Condition C21** is recommended which would require the payment to be made prior to the issue of the construction certificate.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

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	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

SUBMITTERS CONCERNS

The application was notified in accordance with Council Community Engagement Protocol from 25 November 2022 until 9 December 2022. Council did not receive any submissions.

SITE SUITABILITY

The subject site contains an existing boarding house. Whilst the boarding houses are a prohibited use within the R2 Low Density Residential zone, the continued use of the premises, and proposed alterations and additions, is considered acceptable having regard to the existing use rights provisions of the Act, and on merit given that the existing premises provides housing for those on very low-to-moderate incomes and has historically been well managed.

PUBLIC INTEREST

There are no matters raised in which approval of the application would not be in the public interest. The proposed refurbishment of the existing boarding house would improve the quality of the existing residential accommodations would ensure that the boarding house continues to provide a mix of housing typologies within the North Sydney area.

HOW THE COMMUNITY VIEWS WERE TAKEN INTO CONSIDERATION

The application was notified in accordance with Council Community Engagement Protocol from 25 November 2022 until 9 December 2022. Council did not receive any submissions.

CONCLUSION + REASONS

The matters for consideration in section 4.15(1) of the environmental Planning and Assessment Act 1979 have been satisfied. Development for the purpose of a boarding house became prohibited in the R2 Low Density Residential zone following amendments to SEPP (Housing) 2021. However, the proposed development is considered to benefit from the existing use rights provisions of the Environmental Planning and Assessment Act 1979 for the continuation of the existing use and the incorporated provisions to undertake the proposed works. The proposed development does not seek consent under SEPP (Housing) 2021, because of the prohibition, and therefore the standards in the policy are not considered to apply, however, the proposed development would generally perform well with the standards.

The proposed development results in a technical breach to the height of buildings development standard in clause 4.3 in NSLEP 2013 where some of the works within the existing roof form would be above the maximum permitted building height. The application is supported by a written request made pursuant to clause 4.6 in NSLEP 2013. The written request demonstrates that strict compliance with the development standard is both unreasonable and unnecessary because the proposed development would be consistent with the objectives of the height of buildings development standard, and there are sufficient environmental planning grounds to justify the variation in the circumstances. The proposed development would be in the public interest because it is consistent with the objectives of the zone and the standard to be varied.

The existing boarding house constitutes a low-rental building under SEPP (Housing) 2021, however, the proposed development is unlikely to result in a loss of affordable rental housing because the proposed development would increase the number of rooms within the premises and improve the existing facilities and would likely remain affordable. A contribution for the loss of affordable rental housing is not required because the proposed alterations and additions is unlikely to result in a loss of affordable housing.

The property is listed as a Heritage Item "*Lucellen*" of local significance in Schedule 5 in NSLEP 2013 and the proposed works are considered to satisfy Clause 5.10 in NSLEP 2013. Further consultation is required with Council's Conservation Planner during the preparation of construction certificate documentation to ensure that any associated NCC matters allow retention of significant heritage fabric (Refer to **Condition C11**).

The proposed development complies with Section 1 *Residential Development* and Section 4 *Boarding houses* in Part B of NSDCP 2013, except for the site coverage provision where a 2.8% variation occurs. **Condition C25** is recommended requiring the length of the rear additions to be nominally reduced to comply with the site coverage provision.

The application was notified in accordance with Council's Community Engagement Protocol and no submissions were received.

On balance, the application is considered reasonable and is recommended for approval.

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. 340/2022 for alterations and additions to an existing boarding house on land at No 72 Kurraba Road, Neutral Bay subject to the following site specific and attached standard conditions.

Upgrade of Existing Building - Fire Spread and Safe Egress

C11. Pursuant to clause 64 of the EP&A Regulation 2021, aspects of the existing building must be brought into conformity with the National Construction Code.

Work must be carried out as part of the development so as to upgrade the building to bring it into compliance with the following provisions of the NCC:

(a) Sections C, D, & E of the NCC BCA 2019, Volume 1.

The Fire Upgrade Schedule to satisfy this condition is to be prepared in consultation with a heritage consultant and submitted to Council for approval by Council's Conservation Planner prior to the issue of any construction certificate. The schedule submitted to satisfy this condition is to ensure that the upgrade works do not materially affect any significant heritage fabric. Where any exception is sought an appropriate performance based solution or appropriate justification is required.

Plans and specifications showing the upgrading works which must be carried out under this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

Notes:

1. The Certifying Authority must be satisfied that the plans and specifications submitted prior to the issue of any Construction Certificate comply with the requirements of this condition.
2. The Certifying Authority issuing the Construction Certificate has no power to remove the requirements to upgrade the existing building as required by this condition.
3. Where this condition specifies compliance with the performance requirements of the NCC, the Certifying Authority, subject to their level of accreditation, may be satisfied as to such matters.

(Reason: Application of Regulations relating to Fire and Life Safety with respect to Heritage Item)

Reduction in length of Rear Addition

- C25. The length of the communal living area at the rear of the ground floor level (DA3.00) is to be reduced by 1.5m, measured from the rear (northern) elevation of the room. The associated external patio is to be shifted to the south by the corresponding distance so that it remain no greater in depth than 0.9m measured perpendicular from the rear elevation and the rear turf area extended accordingly. The Landscape Plans are to be amended accordingly.

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 minimise the site coverage non-compliance with Provision P1 in Section 1.5.5 of Part B in NSDCP 2013.)

Privacy

- C26. The following privacy devices are to be provided:

- a) Fixed obscure or frosted glazing shall be installed to the window W2 in the eastern elevation of room 6 on the ground floor level (DA3.00) to a minimum height of 1.5m above internal finished floor level of the room.

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. 74 Kurraba Road, Neutral Bay)

Heritage requirements

- C27. The following heritage requirements are to be met:

- a) All patterned ceilings, decorative cornices, mantle pieces, fireplaces, skirtings and the original staircase are to be retained as detailed in the drawing titled Sections DA 6.03 Revision 2 by Graphio dated 3 February 2023 and received by Council on 6 February 2023.
- b) Wastewater plumbing for the new bathrooms and kitchens on the first floor level is to be routed from the proposed bathrooms horizontally between the flooring and ceilings into an existing wastewater pipe or through a new services void located in the corner of the southeastern enclosed ground floor level balcony to minimise any loss of significant heritage fabric.

(Reason: To retain the heritage significance of the building.)

Boarding house - Operational Plan of Management

14. The management of the boarding house shall be conducted in accordance with the Operational Plan of Management prepared for 72 Kurraba Road by Firstland and received by Council on 8 November 2022 and must comply with the requirements of the following relevant legislation:
- a) Schedule 2 (Standards for Places of Shared Accommodation) to the Local Government (General) Regulation 2005;
 - b) the Public Health Act, 1991;
 - c) Boarding Houses Act 2012; and
 - d) North Sydney Council's Boarding House controls under Section 4 of Development Control Plan 2013.

except where otherwise amended by the conditions of this consent.

(Reason: To ensure the ongoing operation of the boarding house is in accordance with the terms of this consent)

MICHAEL STEPHENS
SENIOR ASSESSMENT OFFICER

ROBYN PEARSON
TEAM LEADER ASSESSMENTS

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
72 KURRABA ROAD, NEUTRAL BAY
DEVELOPMENT APPLICATION NO. 340/22

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	Prepared by	Dated
DA1.00	1	Site Plan	GRAPHIO	15/08/2022
DA2.00	1	Undercroft Plan		15/08/2022
DA3.00	1	Ground Floor Plan		15/08/2022
DA3.01	1	Ground Floor Demolition Plan		15/08/2022
DA4.00	1	First Floor Plan		15/08/2022
DA4.01	1	First Floor Demolition Plan		15/08/2022
DA5.00	1	Section A-A		15/08/2022
DA5.01	1	Section B-B		15/08/2022
DA6.00	1	Northern Elevation		15/08/2022
DA6.01	1	Western Elevation		15/08/2022
DA6.02	1	Eastern & Southern Elevations		15/08/2022
Sht -1	A	Landscape Concept Plans		LibbyBirley

(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)

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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 the External Finishes Schedule prepared by Graphio dated 21 March 2023 and received by Council on 24 March 2023 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)

C. *Prior to the Issue of a Construction Certificate (and ongoing, where indicated)***Dilapidation Report Damage to Public Infrastructure**

- C1. 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 Survey Private Property (Neighbouring Buildings)

- C2. A photographic survey and dilapidation report of adjoining property No.74 Kurraba Road, Neutral Bay detailing the physical condition of the property, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Certifying Authority, prior to the issue of any Construction Certificate.

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 photographic survey and dilapidation report 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.

Note: This documentation is for record keeping purposes only and may be used by an applicant 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: Proper management of records)

Structural Adequacy of Existing Building

- C3. A report prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction shall be submitted to the Certifying Authority for approval prior to issue of any Construction Certificate. The certified report must also include all details of the methodology to be employed in construction phases to achieve the above requirements. The methodology in the certified report must be complied with at all times.

(Reason: To ensure the structural integrity of the building is maintained)

Sediment Control

- C4. 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.

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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

C5. 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
- 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)

Colours, Finishes and Materials (Heritage Items)

- C6. A traditional palette of finishes, materials and colour schemes must be selected for the new building works appropriate to the architectural style of the original building and 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 prior to the release of the Construction Certificate.

(Reason: To ensure that exterior colours, finishes and materials are sympathetic to the significance of the heritage item.)

Roofing Materials - Reflectivity

- C7. All new 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)

No External Service Ducts

- C8. Service ducts must be provided within the building to keep external walls free of plumbing, or any other utility installations. 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 quality built form of the development)

Bicycle Storage and Parking

- C9. The bicycle storage area must accommodate a minimum of 6 bicycles. The bicycle storage shall be designed in accordance with the applicable Australian Standards. 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, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To promote and provide facilities for alternative forms of transport)

Stormwater Disposal

C10. Stormwater runoff generated by the approved development must be conveyed by gravity to the existing site stormwater drainage disposal system. A licensed tradesman shall install plumbing components to achieve this requirement in accordance with the BCA and current plumbing standards and guidelines. 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 appropriate provision for disposal and stormwater management arising from the development)

Upgrade of Existing Building - Fire Spread and Safe Egress

C11. Pursuant to clause 64 of the EP&A Regulation 2021, aspects of the existing building must be brought into conformity with the National Construction Code.

Work must be carried out as part of the development so as to upgrade the building to bring it into compliance with the following provisions of the NCC:

(a) Sections C, D, & E of the NCC BCA 2019, Volume 1.

The Fire Upgrade Schedule to satisfy this condition is to be prepared in consultation with a heritage consultant and submitted to Council for approval by Council's Conservation Planner prior to the issue of any construction certificate. The schedule submitted to satisfy this condition is to ensure that the upgrade works do not materially affect any significant heritage fabric. Where any exception is sought an appropriate performance based solution or appropriate justification is required.

Plans and specifications showing the upgrading works which must be carried out under this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

Notes:

1. The Certifying Authority must be satisfied that the plans and specifications submitted prior to the issue of any Construction Certificate comply with the requirements of this condition.
2. The Certifying Authority issuing the Construction Certificate has no power to remove the requirements to upgrade the existing building as required by this condition.
3. Where this condition specifies compliance with the performance requirements of the NCC, the Certifying Authority, subject to their level of accreditation, may be satisfied as to such matters.

(Reason: Application of Regulations relating to Fire and Life Safety with respect to Heritage Item)

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

- C12. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$3,000.00 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;
- 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)

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Tree Protection

- C13. To ensure the protection of all trees to be retained, the following measures are to be undertaken:
- (a) All documentation for the Construction Certificate application must show the site trees to be retained, and retention of the adjoining trees, with their positions and diameters of trunks and crowns (canopies) to be clearly and accurately shown in relation to all levels of the proposed development.
 - (b) All plans and correspondences must refer to the required compliance with the approved Tree Protection and Management Plan, and clearly show the assigned number of each tree on site, adjoining and Council land.
 - (c) A Consulting Arboriculturist (“the project arboriculturist”), who holds a minimum Australian Qualification Framework Level 5 in Arboriculture, is a registered consulting member of a nationally recognised arboricultural organisation or association, shall be engaged before work commences for the duration of site preparation, demolition, construction and landscaping.
 - (d) The project arboriculturist shall inspect, monitor, supervise, provide recommendations and written reports and certification relating to protection of the trees and compliance with the conditions of consent.
 - (e) The contact details of the project arboriculturist shall be advised to council before work commences and maintained up to date for the duration of works. If a new project arborist is appointed details of the new project arborist shall be notified to council within 7 days.
 - (f) The project arboriculturist is to prepare a list of critical stages where site inspections may be required, with the adopted schedule to be complied with during works.

(Reason: To ensure that appropriate tree protection measures are implemented)

Tree Bond for Public Trees

- C14. Prior to the issue of any construction certificate, security in the sum of \$33,000.00 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.

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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

Tree Species	Location	Bond
2 x <i>Melaleuca quinquenervia</i> - 7m	Kurraba Road frontage - 72 Kurraba Road	\$14,000
1 x <i>Callistemon viminalis</i> – 6m	Ben Boyd Road frontage - 72 Kurraba Road	\$6,000
1 x Magnolia ‘Little Gem’ 5m	Ben Boyd Road frontage - 72 Kurraba Road	\$6,000
1 x <i>Callistemon viminalis</i> – 6m	Ben Boyd Road frontage - 9 Ben Boyd Road & 72 Kurraba Road	\$7,000

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

Tree Protection Measures to be shown on Construction Drawings

C15. The tree protection measures contained in the arborist report prepared by Dr Treegood dated August 2022, 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

C16. 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
2 x <i>Melaleuca quinquenervia</i> - (pruned around wires)	Kurraba Road frontage - 72 Kurraba Road	7x8m
1 x <i>Callistemon viminalis</i>	Ben Boyd Road frontage - 72 Kurraba Road	6m
1 x Magnolia ‘Little Gem’	Ben Boyd Road frontage - 72 Kurraba Road	5m
1 x <i>Callistemon viminalis</i>	Ben Boyd Road frontage - 9 Ben Boyd Rd & 72 Kurraba Road	6x5m
<i>T1 Jacaranda mimosifolia</i>	Western boundary, rear setback - 74 Kurraba Road	10x22m
1 x <i>Melia azederach</i>	Rear setback - 74 Kurraba Road	18m
1 x <i>Liquidambar styraciflua</i>	Southern boundary - 9 Ben Boyd Road	13m
All trees & vegetation	Southern boundary - 9 Ben Boyd Road	var
All trees & vegetation	Front setback - 72 Kurraba Road	var

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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.

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

C17. The following tree(s) are approved for removal in accordance with the development consent:

Trees that are acceptable to remove	Location	Height
1 x <i>Syagrus romanzoffiana</i>	Rear setback - 72 Kurraba Road	7m
1 x <i>Ligustrum sinense</i>	Rear setback - 72 Kurraba Road	5x4m
1 x <i>Syagrus romanzoffiana</i>	Rear setback - 72 Kurraba Road	7m
1 x <i>Ligustrum sinense</i>	Rear setback - 72 Kurraba Road	5x4m

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)

Pruning of Trees

C18. All pruning works shall to the following tree(s) shall be undertaken under the guidance of an appropriately qualified arborist/tree surgeon in accordance with Australian Standard AS 4373-2007 - Pruning of Amenity Trees:

Trees that may require pruning	Location	Height
T1 <i>Jacaranda mimosifolia</i> - Branches B1 & B2 only	Western boundary, rear setback area - 74 Kurraba Road	7m

Branches B1 & B2 may be pruned as per the annotated pictures in the arborist report prepared by Dr Treegood dated August 2022. No other canopy pruning shall be permitted.

A report detailing the measures to be employed during construction shall be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

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All measures required by the said report must be complied with at all times in the carrying out of the development.

(Reason: To ensure the protection and longevity of existing significant trees)

Asbestos Material Survey

- C19. 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)

Adaptable Housing

- C20. Proposed Rooms 2 and 4 on the ground floor are to be designed with accessible features for disabled persons and must incorporate level entries and wider doorways and corridors, slip resistant surfaces, reachable power points, disabled toilet, and lever door handles and taps. These features are to be designed generally in accordance with the relevant Australian Standard 4299-1995. 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 equity of access and availability of accommodation in the future for an ageing population)

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Section 7.11 Contributions

- C21. A monetary contribution pursuant to the provisions of Section 7.11 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 **\$28,494.79**.

A	B (\$)
Open space and recreation facilities	\$15,690.50
Public domain	\$8,734.44
Active transport	\$498.53
Community facilities	\$3,151.51
Plan administration and management	\$419.81
The total contribution is	\$28,494.79

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.

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

Security Deposit/Guarantee Schedule

- C22. 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:

Security Deposit/Guarantee	Amount (\$)
Street Tree Bond (on Council Property)	\$33,000.00
Engineering Construction Bond	\$3,000.00
TOTAL BONDS	\$36,000.00

Note: The following fees applicable

Fees	
Section 7.11 Contributions	\$28,494.79
TOTAL FEES	\$28,494.79

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)

Amendments to the Landscape Plan

C23. The landscape plan must be amended as follows to provide an appropriate landscaped setting:

- 1 x Acer Palmatum 'Sengu kaki' (45l) shown on landscape plan shall be replaced with 1 x Tristaniopsis laurina (75l)

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)

Root Mapping

C24. Non-invasive/non- destructive root mapping is to be undertaken within the tree protection zone (TPZ) (identified as per AS4970-2009) of all protected trees to determine the size and depth of the tree roots prior to the design of the required piers/footings for all construction works.

Root mapping is to be undertaken under the direct supervision of an AQF level 5 arborist. The said consulting/ project arborist is to prepare a written report, with images, addressing the following:

- (a) describing the results of the root mapping;
- (b) providing an assessment of potential tree impacts of the excavation; and
- (c) making recommendations of protection measures to be implemented for the duration of excavation and construction activity to ensure the ongoing health and viability of the tree.

The report is to be provided to the Certifying Authority for approval (with a copy provided to Council) prior to the issue of any Construction Certificate. Plans and Specifications submitted to the Certifier for approval must comply with the recommendations of the arborist report referred to in this condition, and the development must be carried out in accordance with the said report.

(Reason: To ensure the protection of significant trees)

Reduction in length of Rear Addition

C25. The length of the communal living area at the rear of the ground floor level (DA3.00) is to be reduced by 1.5m, measured from the rear (northern) elevation of the room. The associated external patio is to be shifted to the south by the corresponding distance so that it remain no greater in depth than 0.9m measured perpendicular from the rear elevation and the rear turf area extended accordingly. The Landscape Plans are to be amended accordingly.

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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 minimise the site coverage non-compliance with Provision P1 in Section 1.5.5 of Part B in NSDCP 2013.)

Privacy

C26. The following privacy devices are to be provided:

- a) Fixed obscure or frosted glazing shall be installed to the window W2 in the eastern elevation of room 6 on the ground floor level (DA3.00) to a minimum height of 1.5m above internal finished floor level of the room.

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. 74 Kurraba Road, Neutral Bay)

Heritage requirements

C27. The following heritage requirements are to be met:

- a) All patterned ceilings, decorative cornices, mantle pieces, fireplaces, skirtings and the original staircase are to be retained as detailed in the drawing titled Sections DA 6.03 Revision 2 by Graphio dated 3 February 2023 and received by Council on 6 February 2023.
- b) Wastewater plumbing for the new bathrooms and kitchens on the first floor level is to be routed from the proposed bathrooms horizontally between the flooring and ceilings into an existing wastewater pipe or through a new services void located in the corner of the southeastern enclosed ground floor level balcony to minimise any loss of significant heritage fabric.

(Reason: To retain the heritage significance of the building.)

Resident Relocation Plan

C28. Prior to the issue of any Construction Certificate, all tenants of 66 Ernest Street are required to be notified in writing by way of an additional term on their lease agreements that they would be entitled to relocation in general accordance with the terms of Council's Resident Relocation Plan, as set out below:

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Council's Resident Relocation Plan is as follows:

- a) Minimum 12 weeks' notice to vacate to residents; notice to provide full details of support mechanisms, including professional assistance to those determined to require it.
- b) (Needs assessment to be carried out by a qualified social worker with experience in housing issues (Assuming a vulnerable tenant(s) are identified, estimate 4 weeks part time for a typical boarding house in North Sydney, inclusive of liaising with relevant agencies); social worker to be engaged 5 working days prior to notice being given (to allow them to commence work on the day that notice is advertised).
- c) Application of the Plan to all residents who apply, with provision of assistance based on individual needs as assessed;
- d) (Liaison with the Department of Housing and LINK Housing Lower North Shore, or similar in support of residents experiencing difficulties in relocating, and use of a social worker to provide or coordinate such assistance;
- e) Liaison between the social worker and the NSW Tenants Advice and Advocacy Service to provide assistance to residents for whom the first language is not English;
- f) Information to residents, including lists of comparable accommodation, and assistance in negotiations with real estate agents where reasonably possible, and supportive references;
- g) Practical assistance to be given to those residents who have been assessed as not requiring any support from other agencies to manage but who may require practical assistance such as transport, bond assistance, and the like;
- h) Payment of removal costs and bonds for new accommodation and the first months' rent for vulnerable tenants (up to \$940 per couple); may be waived if costs for Social Worker exceed \$5,000
- i) Commencement, interim progress, and completion dates for implementation of the Plan, in relation to estimated site preparation or construction start date;
- j) Advising Council's Community Development Department of commencement, interim progress, and final advice on the implementation of the Plan.

The Relocation Plan must be implemented to the written satisfaction of the Manager of Council's Development Services Department. No relocation shall commence until Council's Community Development Department has provided written confirmation that the Resident Relocation Plan is satisfactory.

The preparation and implementation of a Resident Relocation Plan for any tenant/s displaced through the sale of any unit is to be at no cost to Council. Any costs associated with the engagement/employment of a recruitment consultant and/or social worker, and any financial/monetary assistance to residents provided under the Plan, is to be at no cost to Council.

(Reason: Pursuant to section 47(2)(d) of SEPP (Housing) 2021 to assist any displaced tenants in finding suitable comparable accommodation and to ensure the costs of mitigating the loss of affordable housing supply resulting from the development is at no cost to Council.)

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

Protection of Trees

- D1. All trees that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be maintained and protected during demolition, excavation and construction on the site in accordance with AS4970-2009 (Protection of trees on development sites). A report containing recommendations, and methods of tree protection prepared by an appropriately qualified person must be provided to the Certifying Authority for approval by an appropriately qualified person prior to commencement of any works on the site. Any recommendations must be undertaken for the duration of works on the site.

Sensitive construction techniques including hand excavation, pier & beam construction & flexible location of piers/footings shall be used within the TPZ of any protected tree. No roots greater than 40mm shall be cut.

(Reason: To ensure compliance with the requirement to retain significant planting on the site)

Tree Protection Measures

- D2. The tree protection measures detailed in the approved Tree Protection and Management Plan, and as directed by the project arboriculturist shall be established before work commences.

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

Project Arborist to be Engaged

- D3.
- The project arboriculturist shall inspect tree protection measures and certify in writing to the Principal Certifying Authority the measures comply with the approved Tree Protection Plan and as directed by the project arboriculturist before work commences.
 - The project arboriculturist shall provide guidance and oversight of tree protection and management to ensure that the stability and ongoing viability of trees being retained is not compromised.
 - The project arboriculturist must contact the tree pruning contractor and Council's Tree Management Officer (giving at least two working days' notice) to arrange a joint site meeting, prior to commencing any pruning, to determine the exact location and extent of pruning that is permissible, with the tree pruning contractor to comply with any instructions issued by Council, acting reasonably.
 - Any pruning must be undertaken by a practicing arborist with a minimum Australian Qualification Framework Level 3 in arboriculture, in accordance with the principles of the Australian Standard AS 4373-2007 'Pruning of Amenity Trees,' and the NSW Work Cover Code of Practice for the Amenity Tree Industry (1998), as well as any instructions issued on site by Council, acting reasonably.

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- The practicing arborist must keep a log of dates and times of when they attended the site, the type of works that were performed, and must form part of the certification required prior to Occupation.

(Reason: Tree protection measures)

Protection of Public Trees

- D4. 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
2 x <i>Melaleuca quinquenervia</i> - (pruned around wires)	Kurraba Road frontage - 72 Kurraba Road	Trunk, branch & root protection
1 x <i>Callistemon viminalis</i>	Ben Boyd Road frontage - 72 Kurraba Road	Trunk, branch & root protection
1 x Magnolia 'Little Gem'	Ben Boyd Road frontage - 72 Kurraba Road	Trunk, branch & root protection
1 x <i>Callistemon viminalis</i>	Ben Boyd Road frontage - 9 Ben Boyd Rd & 72 Kurraba Road	Trunk, branch & root protection

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 2000 mm, width 75 mm and depth 50 mm 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)

Temporary Fences and Tree Protection

- D5. All protected trees on-site that are specifically nominated as per Condition C16 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 builders' 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)

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Public Liability Insurance - Works on Public Land

- D6. 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)

Notification of New Addresses

- D7. Prior to the commencement of any building works, an application must be made and written confirmation received from North Sydney Council of the allocated street address (house number) and/or unit numbers of the completed project.

To assist Council, a plan for unit numbering should be submitted for concurrence. These details will be recorded in Council records and must be displayed at the property in accordance with the provisions of the applicable Australian Standard relating to rural and urban addressing. A copy of the allocation confirmation must be submitted to the Certifying Authority with the application for a Construction Certificate.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of Council's House Numbering Policy. Proper house numbering also assists emergency services in readily locating properties)

Sydney Water Approvals

- D8. 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.

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

- D9. 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

- D10. 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.

(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**Parking Restrictions**

- E1. 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.

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

Road Reserve Safety

- E2. 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

- E3. 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)

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Removal of Extra Fabric

- E4. 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)

Dust Emission and Air Quality

- E5. 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

- E6. 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

- E7. 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

- E8. 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

- E9. 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

- E10. 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 Dr Treegood dated 11 August 2022 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 4.55 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

- E11. All trees on the site must be protected and retained save for those expressly identified below as being approved for removal:

Trees that are acceptable to remove	Location	Height
1 x <i>Syagrus romanzoffiana</i>	Rear setback - 72 Kurraba Road	7m
1 x <i>Ligustrum sinense</i>	Rear setback - 72 Kurraba Road	5x4m
1 x <i>Syagrus romanzoffiana</i>	Rear setback - 72 Kurraba Road	7m
1 x <i>Ligustrum sinense</i>	Rear setback - 72 Kurraba Road	5x4m

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

Special Permits

- E12. 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)

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)

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Construction Hours

- E13. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

Location	Standard Construction Hours	
	Day	Hours
Residential zones	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)

Installation and Maintenance of Sediment Control

- E14. Erosion and sediment controls must be installed and maintained at all times in accordance with the Sediment and erosion control plan submitted and approved with the Construction Certificate.

Erosion and sediment measures must be maintained in accordance with the publication Managing Urban Stormwater: Soils and Construction (4th edition, Landcom, 2004), commonly referred to as the "Blue Book" and can only be removed when development activities have been completed and the site fully stabilised.

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

Sediment and Erosion Control Signage

- E15. 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

- E16. 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.

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

Health and Safety

- E17. 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.

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

Prohibition on Use of Pavements

- E18. 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

- E19. 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.

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.

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

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Waste Disposal

E20. 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

E21. 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)

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:

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- (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.
- 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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Mandatory 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.

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)

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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)

Access to Premises

- G2. Prior to the issue of any Occupation Certificate, a certificate must be prepared an appropriately qualified person certifying that access and facilities for persons with a disability in accordance with the Building Code of Australia and AS Disability (Access to Premises - buildings) Standards 2010 (Premises Standards) has been provided. This certificate must be submitted to, and approved by, the Certifying Authority prior to issue of the Occupation Certificate.

(Reason: Equitable access and facilities for people with a disability)

operation of mechanical plant)

Damage to Adjoining Properties

- G3. 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)

Notification of New Address Developments

- G4. Prior to any Occupation Certificate being issued, the person acting upon this consent must comply with the following:

- (a) Notify Australia Post of the address(es) as issued by Council and the location in plan form of any secondary, internal addresses, in relation to built public roads. Check Australia Post Website (www.auspost.com.au) to find your nearest Australia Post Delivery Facility.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of Council's House Numbering Policy. Proper house numbering also assists emergency services in readily locating properties)

Asbestos Clearance Certificate

- G5. 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.

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

**72 KURRABA ROAD, NEUTRAL BAY
DEVELOPMENT APPLICATION NO. 340/22**

Page 31 of 33

Certification of Tree Condition

- G6. 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
2 x <i>Melaleuca quinquenervia</i> - (pruned around wires)	Kurraba Road frontage - 72 Kurraba Road	7x8m
1 x <i>Callistemon viminalis</i>	Ben Boyd Road frontage - 72 Kurraba Road	6m
1 x Magnolia 'Little Gem'	Ben Boyd Road frontage - 72 Kurraba Road	5m
1 x <i>Callistemon viminalis</i>	Ben Boyd Road frontage - 9 Ben Boyd Rd & 72 Kurraba Road	6x5m
T1 <i>Jacaranda mimosifolia</i>	Western boundary, rear setback - 74 Kurraba Road	10x22m
1 x <i>Melia azederach</i>	Rear setback - 74 Kurraba Road	18m
1 x <i>Liquidambar styraciflua</i>	Southern boundary - 9 Ben Boyd Road	13m

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)

House Numbering (Dwellings)

- G7. Prior to any Occupation Certificate being issued an application must be made to North Sydney Council for written confirmation, or allocation, of the street address(es) or room number(s) for the completed project in accordance with Council's Property Addressing Policy. These are the numbers that will be recorded in Council records and must be displayed at the property in accordance with the provisions of AS/NZS 4819:2011.

Note: If apartments are to be sold off the plan, the applicant must have written confirmation from Council of the address and apartment numbering if the apartment number is to be identified on the contract.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of Council's House Numbering Policy. Proper house numbering also assists emergency services in readily locating properties.)

Landscaping

- G8. The landscaping shown in the approved Landscape Concept Plan Sheets 1 & 2 prepared by Libby Birely Garden Designs, dated and received by Council on 21 August 2022 as modified by Condition C23 must be completed prior to the issue of any Occupation Certificate.

(Reason: To ensure compliance)

Compliance with Certain Conditions

- G9. Prior to the issue of any Occupation Certificate, Condition C26 Privacy 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**Communal Areas – Hours of Use**

- I1. The use of the external communal open space is to be restricted to:

Monday to Sunday – 7:00am to 10:00pm

Upon expiry of the permitted hours:

- (a) all persons are required to vacate the communal open space area.

Use of amplified music or the like within the communal open space area is not permitted.

The door and windows of the communal living area are to be closed when any noisy activities are ongoing with no noisy activities permitted after 10pm or before 7am the following day.

(Reason: to ensure that amenity of the surrounding locality is maintained)

Maintenance of Approved Landscaping

- I2. The owner of the premises at 72 Kurraba Road, Neutral Bay is to maintain the landscaping approved by this consent generally in accordance with Landscape Plans Sheets 1 & 2 prepared by Libby Birely, Garden Designs, dated 21 August 2022 and received by Council 7 April 2021, as modified by Condition C23.

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)

Maximum Occupancy of Boarding House

- I3. Accommodation for a maximum of 15 persons is to be provided. No more than one (1) person per single room and two (2) persons per nominated double room are permitted to occupy rooms. A sign is to be erected adjacent to the main entry/entries to the building detailing the maximum capacity of the boarding house.

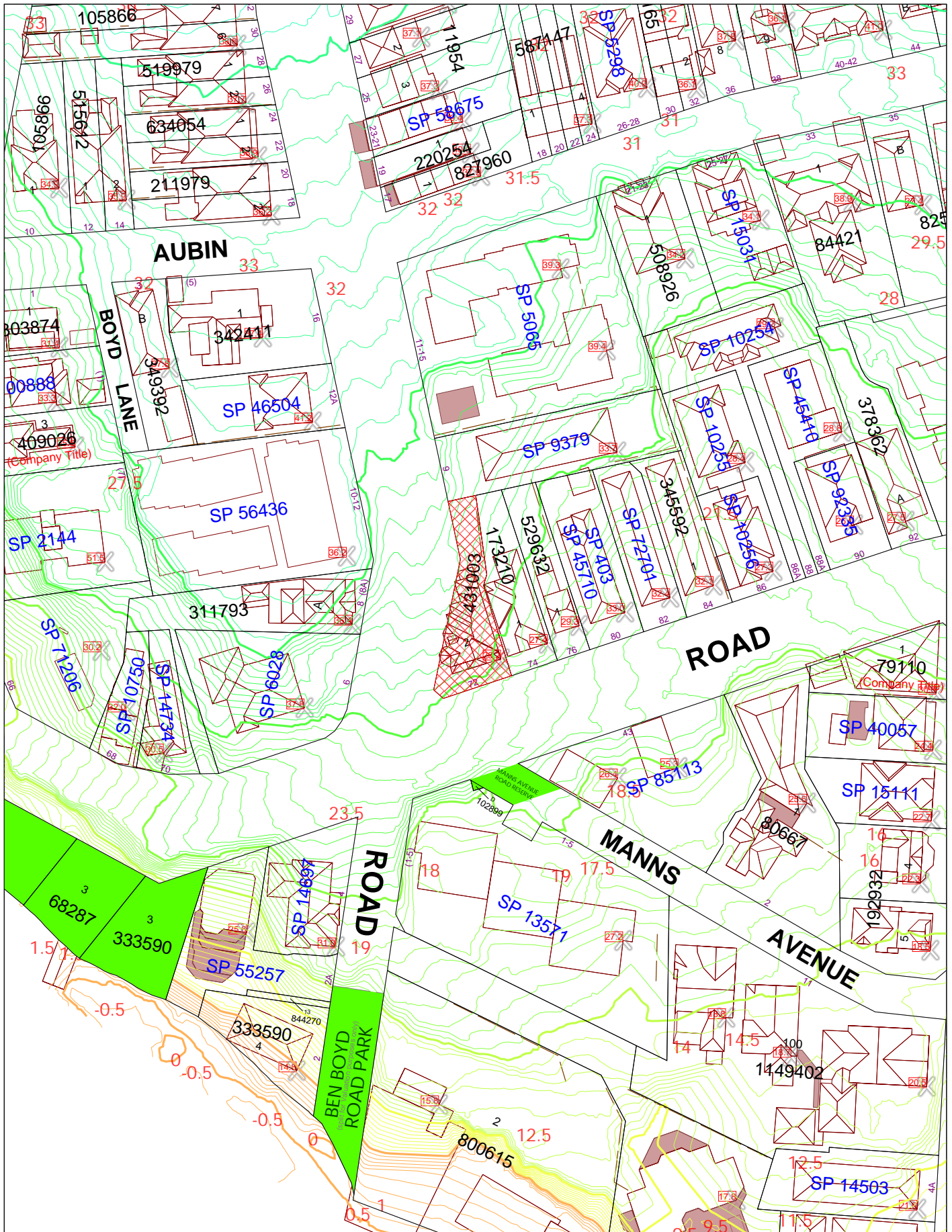
(Reason: To ensure the occupancy and use of the premises is in accordance with the terms of the consent)

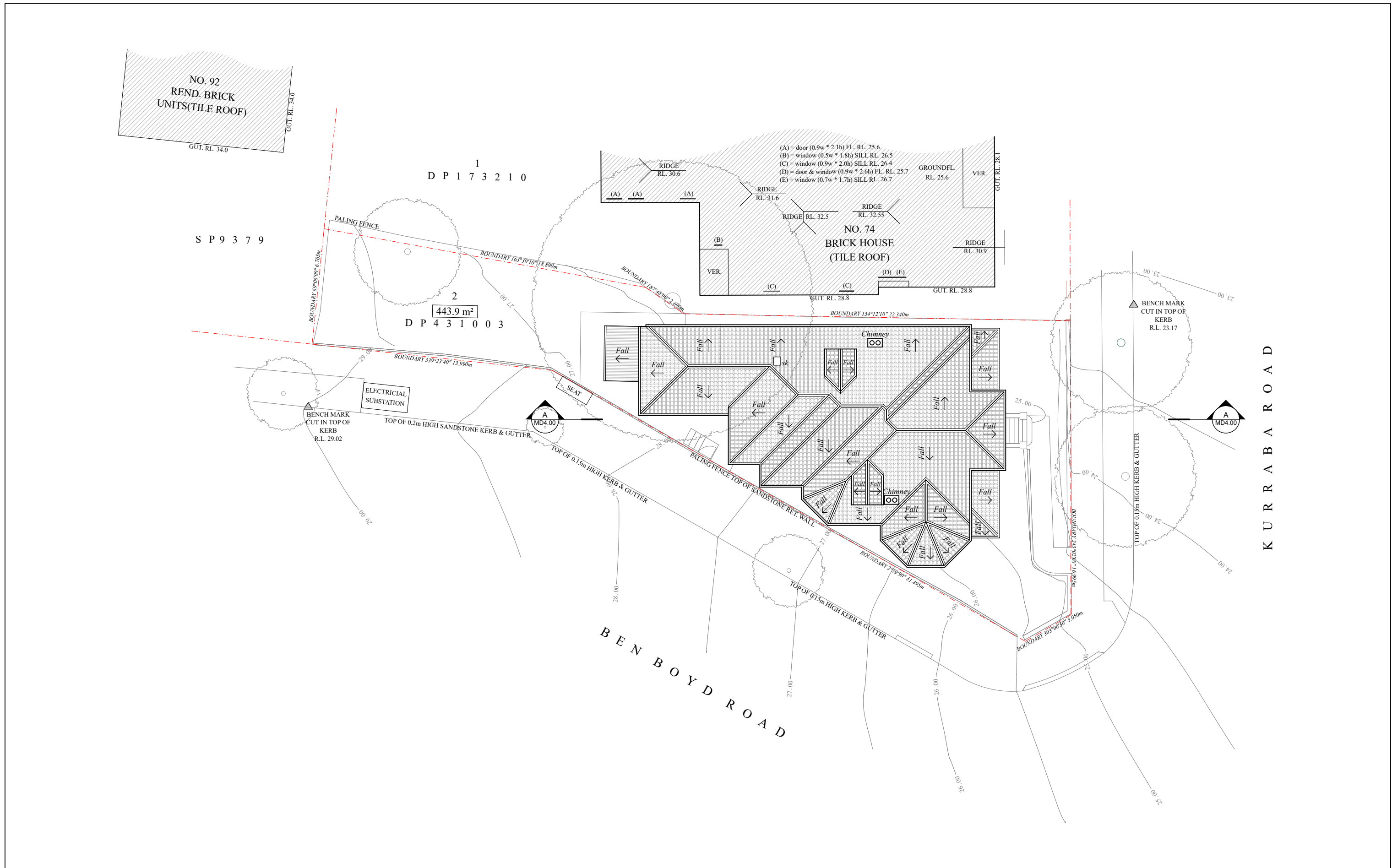
Boarding house - Operational Plan of Management

14. The management of the boarding house shall be conducted in accordance with the Operational Plan of Management prepared for 72 Kurraba Road by Firstland and received by Council on 8 November 2022 and must comply with the requirements of the following relevant legislation:
- a) Schedule 2 (Standards for Places of Shared Accommodation) to the Local Government (General) Regulation 2005;
 - b) the Public Health Act, 1991;
 - c) Boarding Houses Act 2012; and
 - d) North Sydney Council's Boarding House controls under Section 4 of Development Control Plan 2013.

except where otherwise amended by the conditions of this consent.

(Reason: To ensure the ongoing operation of the boarding house is in accordance with the terms of this consent)





SCALE IN METRES

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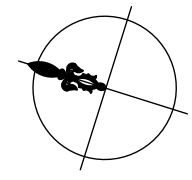
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KEY

AC	Air conditioning	PL	Plaster
BG	Box gutter	R	Refrigerator
CM	Cement render	RC	Reinforced concrete
CP	Carpet	RL	Relative level
CPD	Cupboard	RP	Recessed panel
CR	Copper roofing	S	Sink
CT	Cooktop	SD	Slot drain
DP	Downpipe	SK	Skylight
ED	Eastern door	SW	Shower waste
EW	Eastern window	TB	Timber buttons
FW	Floor waste	TF	Timber flooring
HWS	Hot water system	WD	Western door
J	Construction joint	WW	Western window
OF	Overflow	CB	Concrete block
PB	Plasterboard		

REVISION	ISSUE	DATE
1	EXISTING DRAWINGS	23/02/2021

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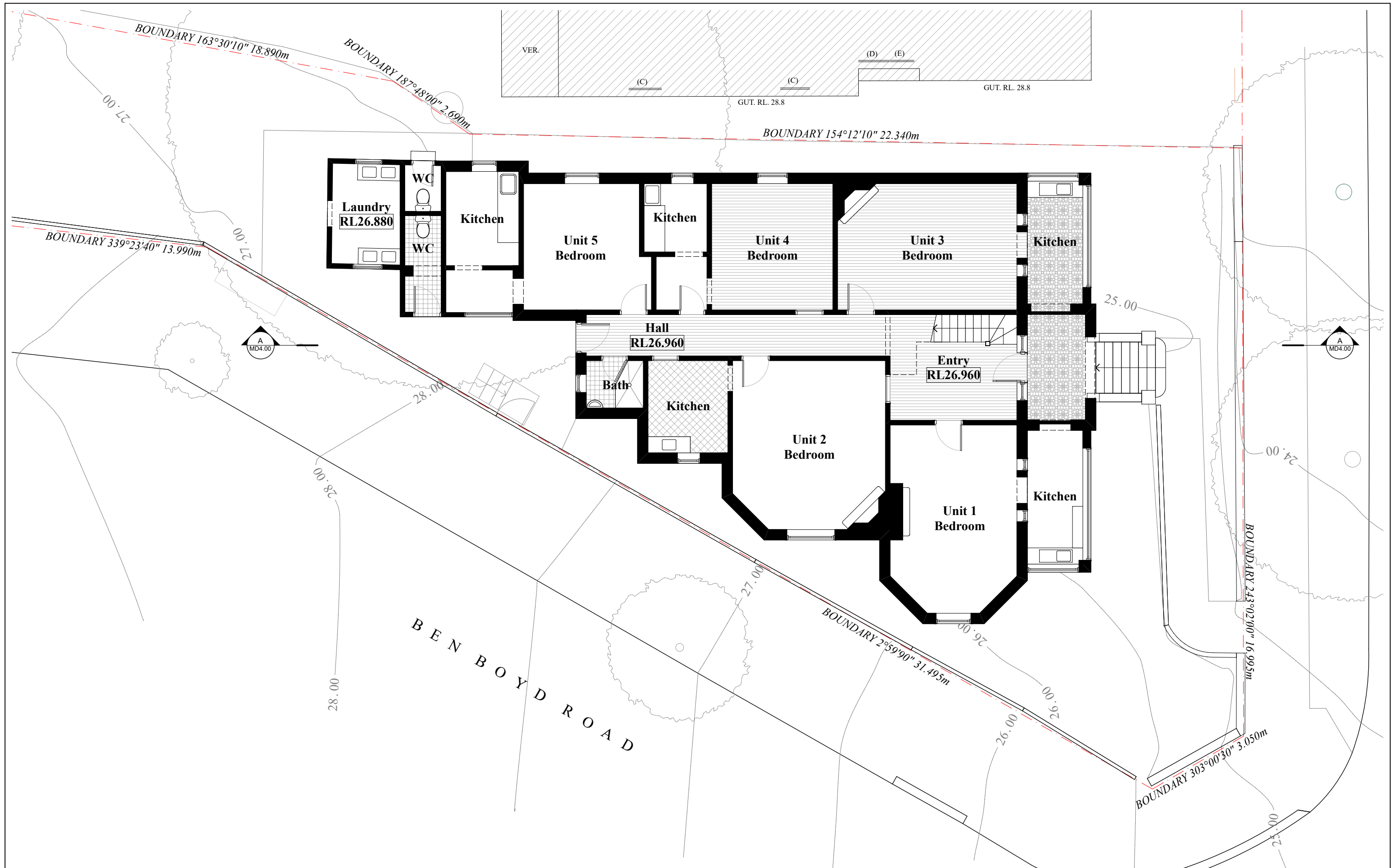
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72 KURRABA ROAD, NEUTRAL BAY
 FOR R VIRGONA & K QUINLIVAN

SITE / ROOF PLAN
 SCALE 1:200@A3

MD1.00 | 1
 FEBRUARY 2021



SCALE IN METRES

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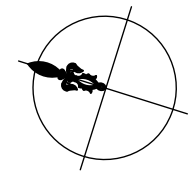
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KEY	REVISION	ISSUE	DATE
AC Air conditioning	1	EXISTING DRAWINGS	23/02/2021
BG Box gutter			
CM Cement render			
CP Carpet			
CPD Cupboard			
CR Copper roofing			
CT Cooktop			
DP Downpipe			
ED Eastern door			
EW Eastern window			
FW Floor waste			
HWS Hot water system			
J Construction joint			
OF Overflow			
PB Plasterboard			
PL Planter			
R Refrigerator			
RC Reinforced concrete			
RL Relative level			
RP Recessed panel			
S Sink			
SD Slot drain			
SK Skylight			
SW Shower waste			
TB Timber battens			
TF Timber flooring			
WD Western door			
WW Western window			
CB Concrete block			

REVISION	ISSUE	DATE
1	EXISTING DRAWINGS	23/02/2021

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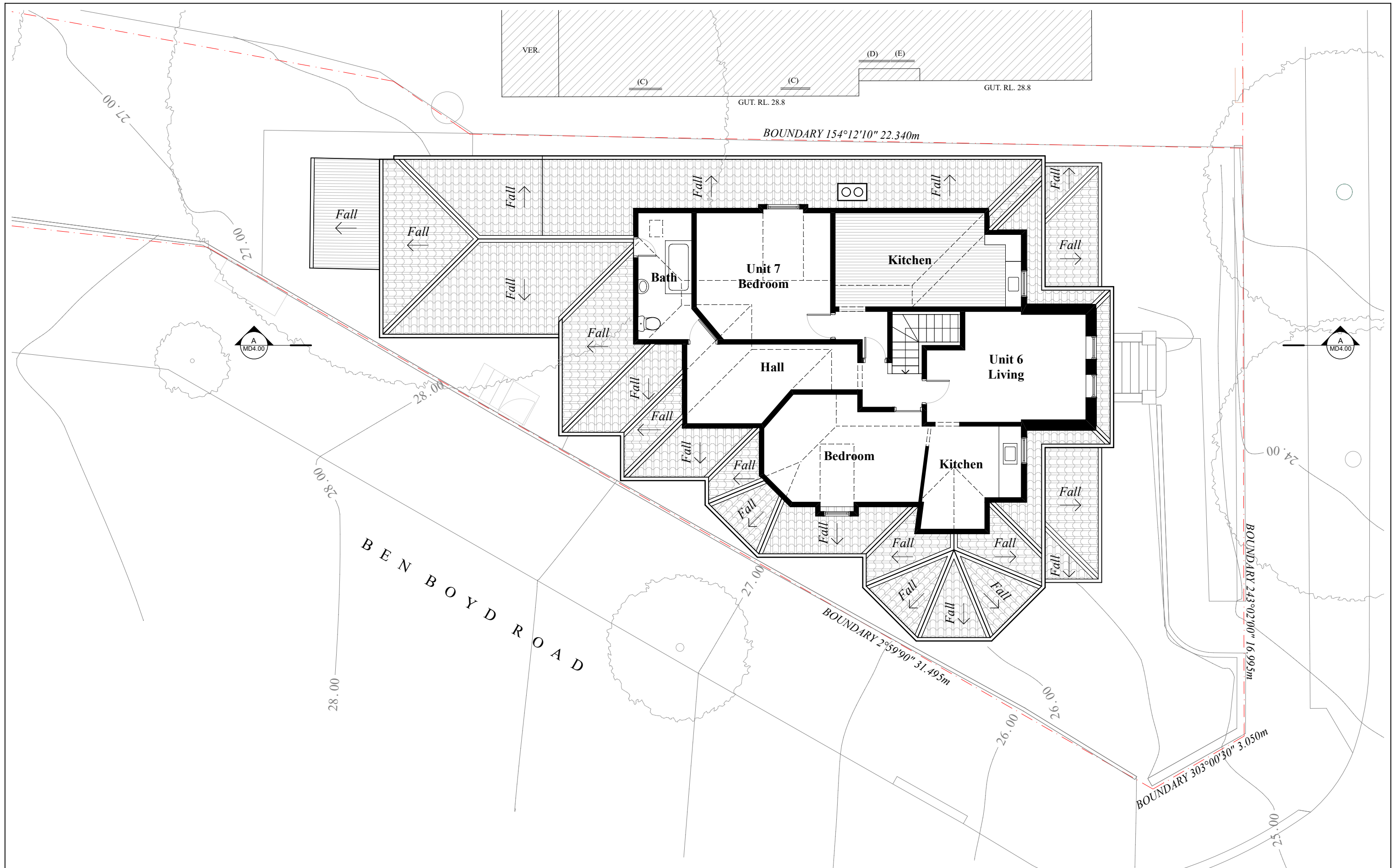


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72 KURRABA ROAD, NEUTRAL BAY
FOR R VIRGONA & K QUINLIVAN

GROUND FLOOR PLAN **MD2.00**
 SCALE 1:100 @ A3 FEBRUARY 2021



SCALE IN METRES

1 2 3 4 5

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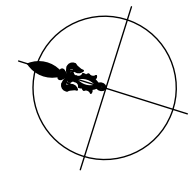
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KEY

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BG	Box gutter	R	Refrigerator
CM	Cement render	RC	Reinforced concrete
CP	Carpet	RL	Relative level
CPD	Cupboard	RP	Recessed panel
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EW	Eastern window	TB	Timber buttons
FW	Floor waste	TF	Timber flooring
HWS	Hot water system	WD	Western door
J	Construction joint	WW	Western window
OF	Overflow	CB	Concrete block
PB	Plasterboard		

REVISION	ISSUE	DATE
1	EXISTING DRAWINGS	23/02/2021

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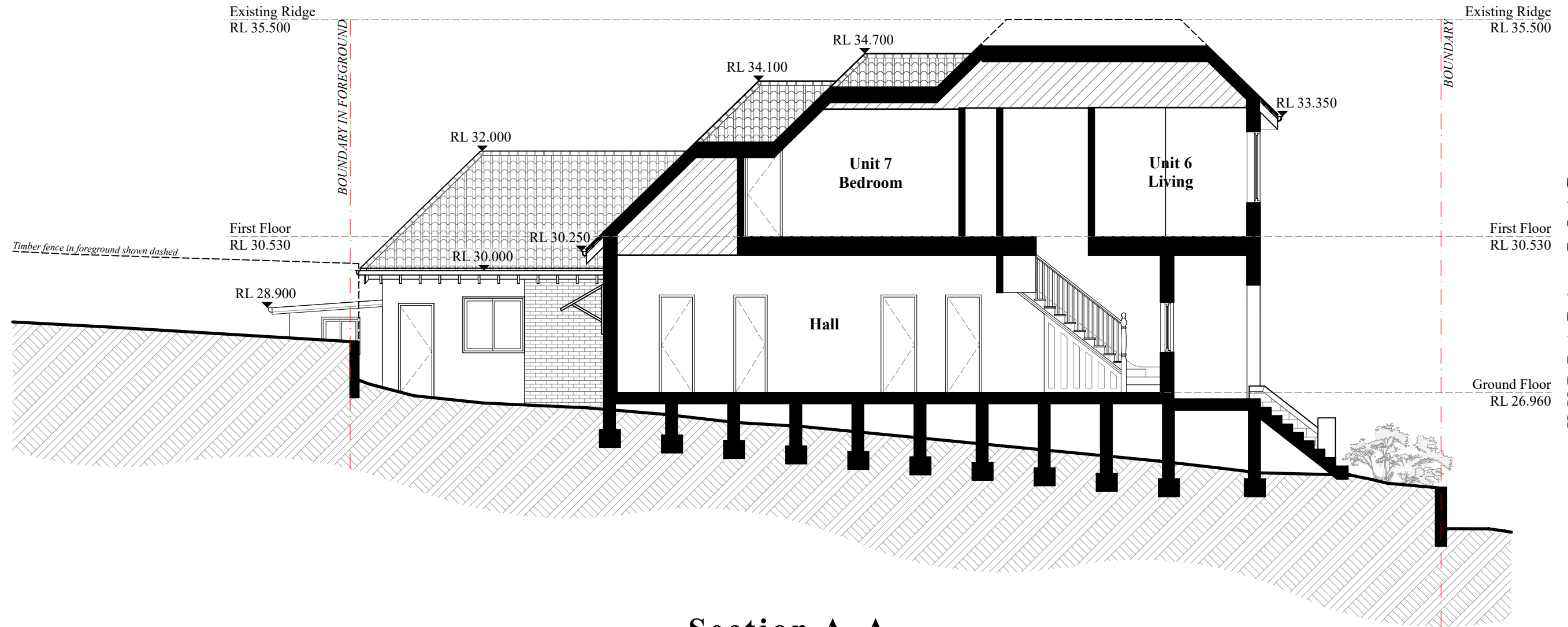


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72 KURRABA ROAD, NEUTRAL BAY
FOR R VIRGONA & K QUINLIVAN

FIRST FLOOR PLAN **MD3.00** 1
 SCALE 1:100 @ A3 FEBRUARY 2021



Section A-A

0 1 2 3 4 5
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 FOR R VIRGONA & K QUINLIVAN
 SECTION MD4.00 1
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Northern Elevation

Kurraba Road Streetscape

0 1 2 3 4 5
SCALE IN METRES

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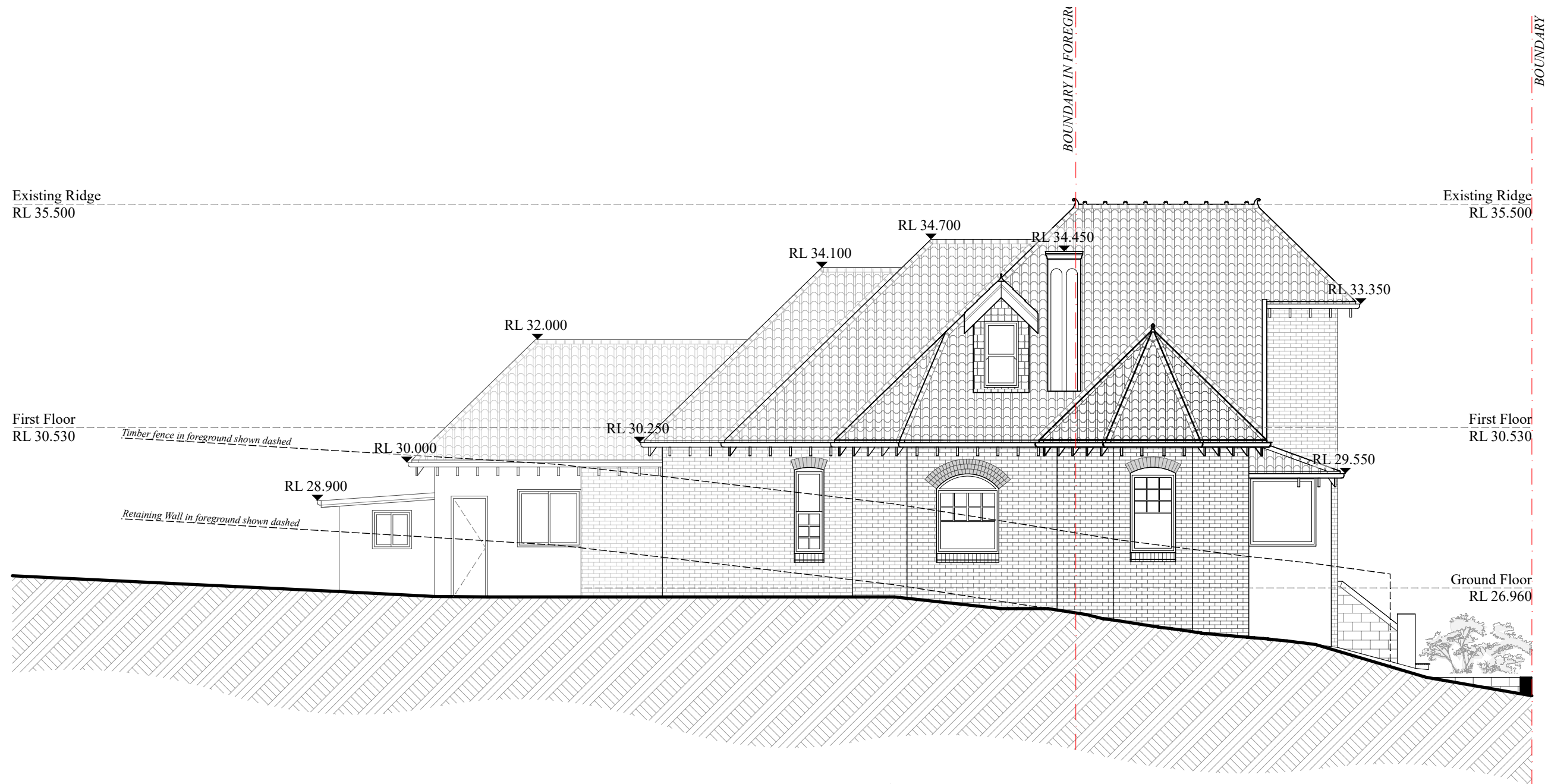
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 FOR R VIRGONA & K QUINLIVAN
 NORTHERN STREETScape ELEVATION MD5.00 1
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Western Elevation

SCALE IN METRES

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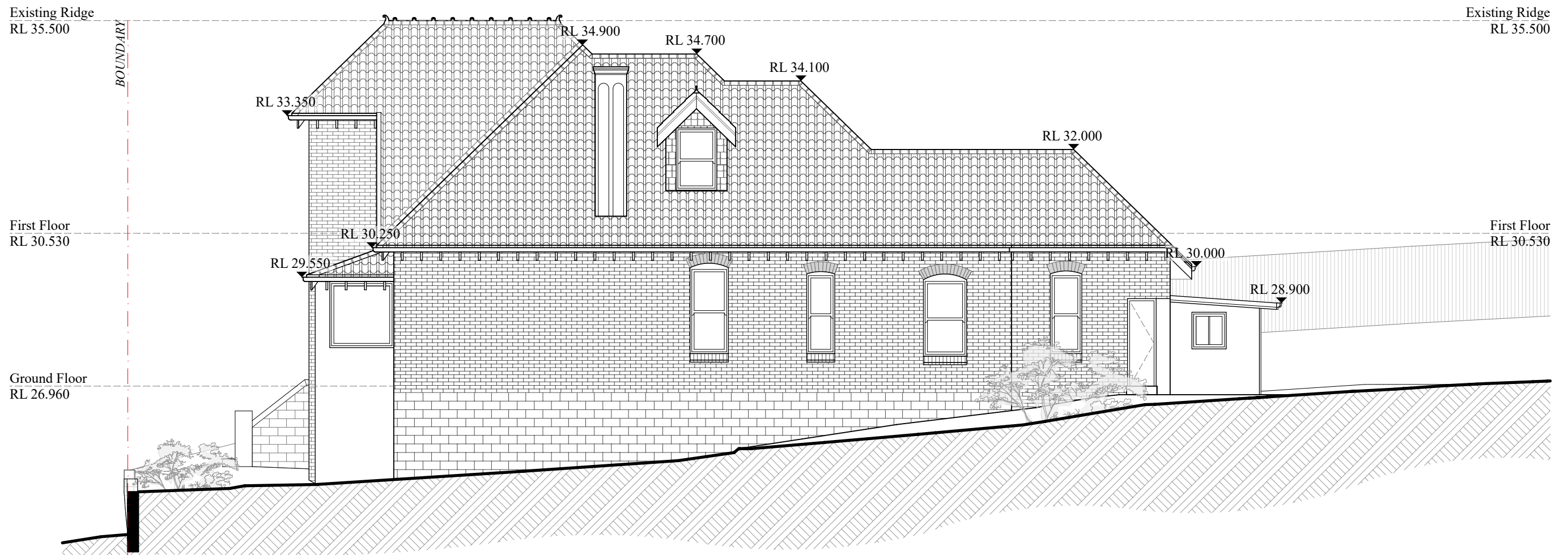
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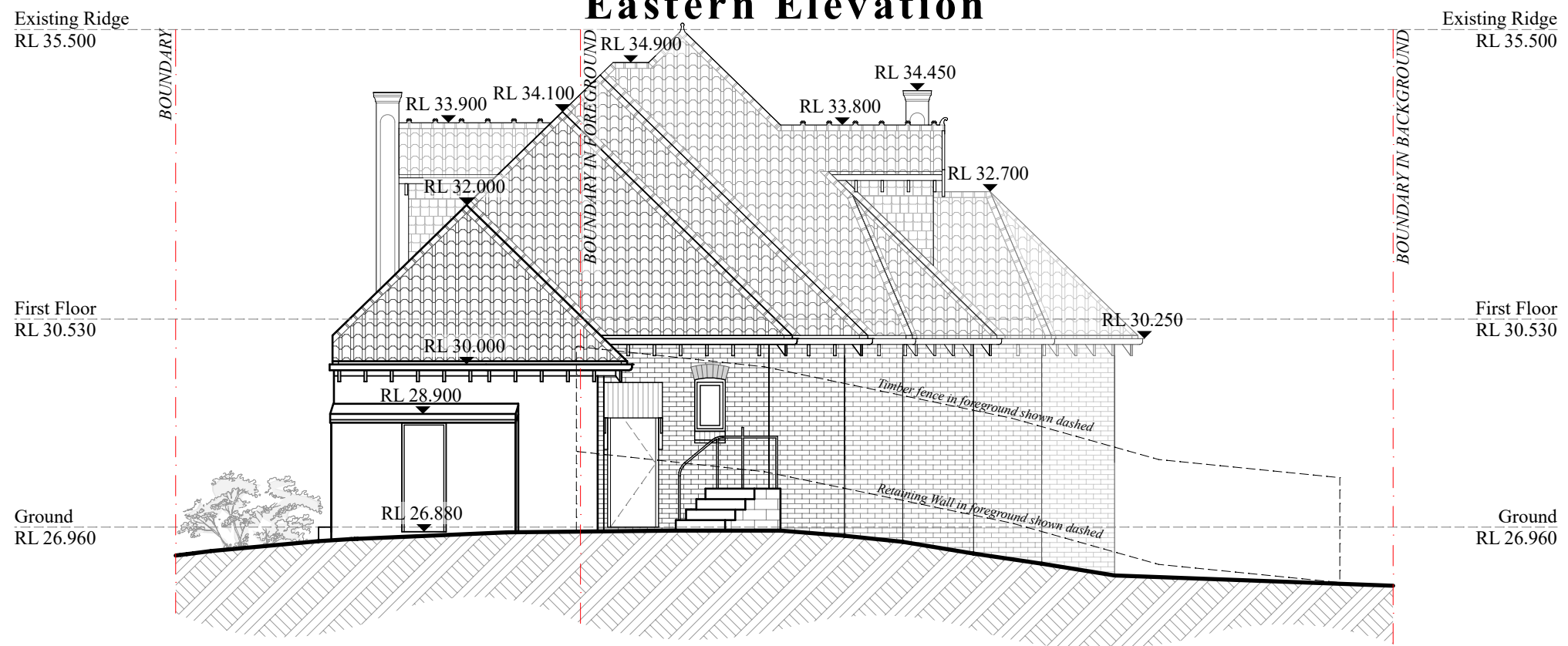
72 KURRABA ROAD, NEUTRAL BAY
 FOR R VIRGONA & K QUINLIVAN

WESTERN ELEVATION

MD5.01 | 1
 FEBRUARY 2021



Eastern Elevation



Southern Elevation

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REVISION	ISSUE	DATE
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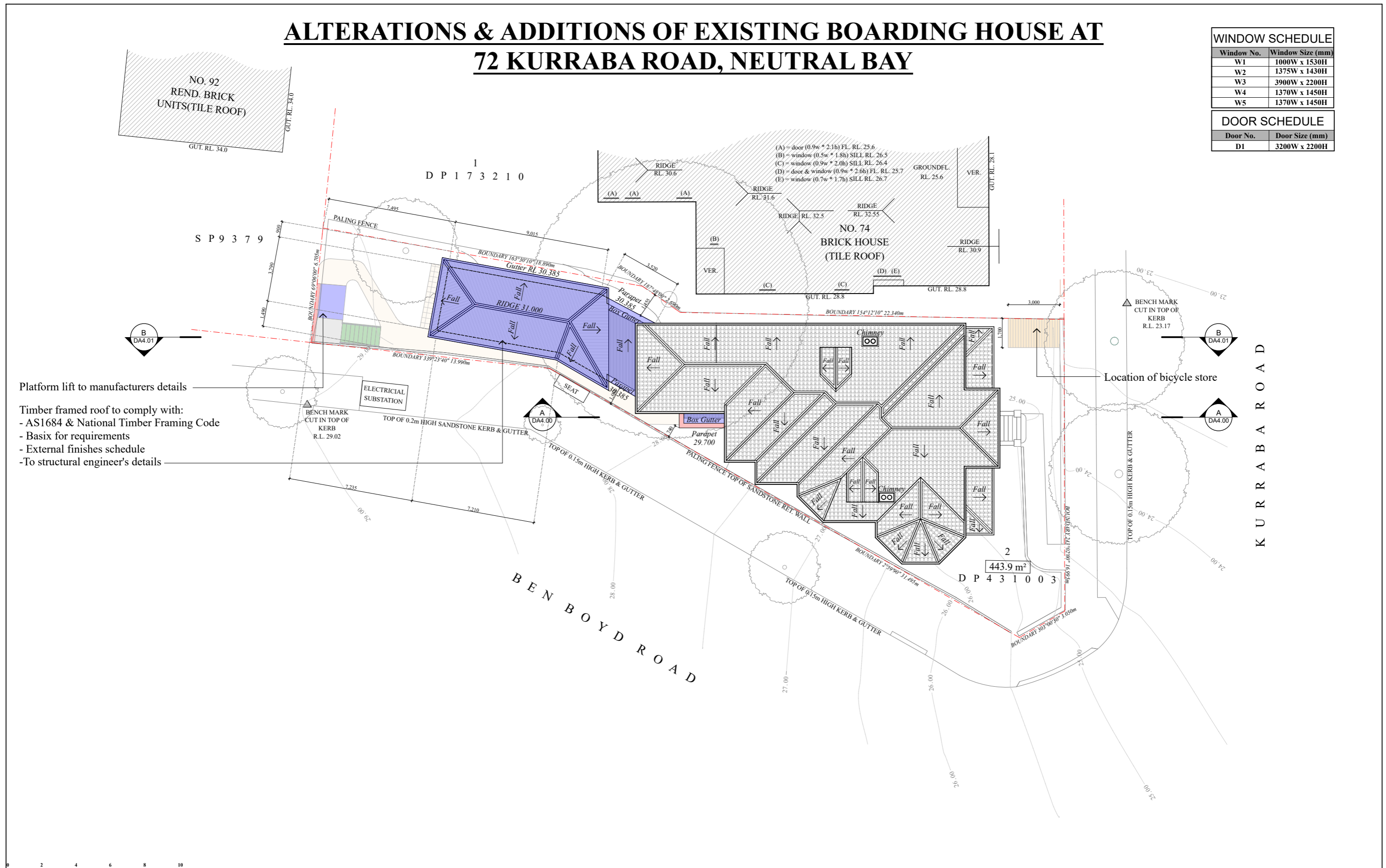
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 72 KURRABA ROAD, NEUTRAL BAY
 FOR R VIRGONA & K QUINLIVAN
 ELEVATIONS CONT.
 SCALE 1:100 @ A3
MD5.02 1
 FEBRUARY 2021

ALTERATIONS & ADDITIONS OF EXISTING BOARDING HOUSE AT 72 KURRABA ROAD, NEUTRAL BAY

WINDOW SCHEDULE	
Window No.	Window Size (mm)
W1	1000W x 1530H
W2	1375W x 1430H
W3	3900W x 2200H
W4	1370W x 1450H
W5	1370W x 1450H

DOOR SCHEDULE	
Door No.	Door Size (mm)
D1	3200W x 2200H



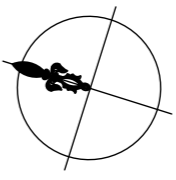
Platform lift to manufacturers details
 Timber framed roof to comply with:
 - AS1684 & National Timber Framing Code
 - Basix for requirements
 - External finishes schedule
 - To structural engineer's details

SCALE IN METRES
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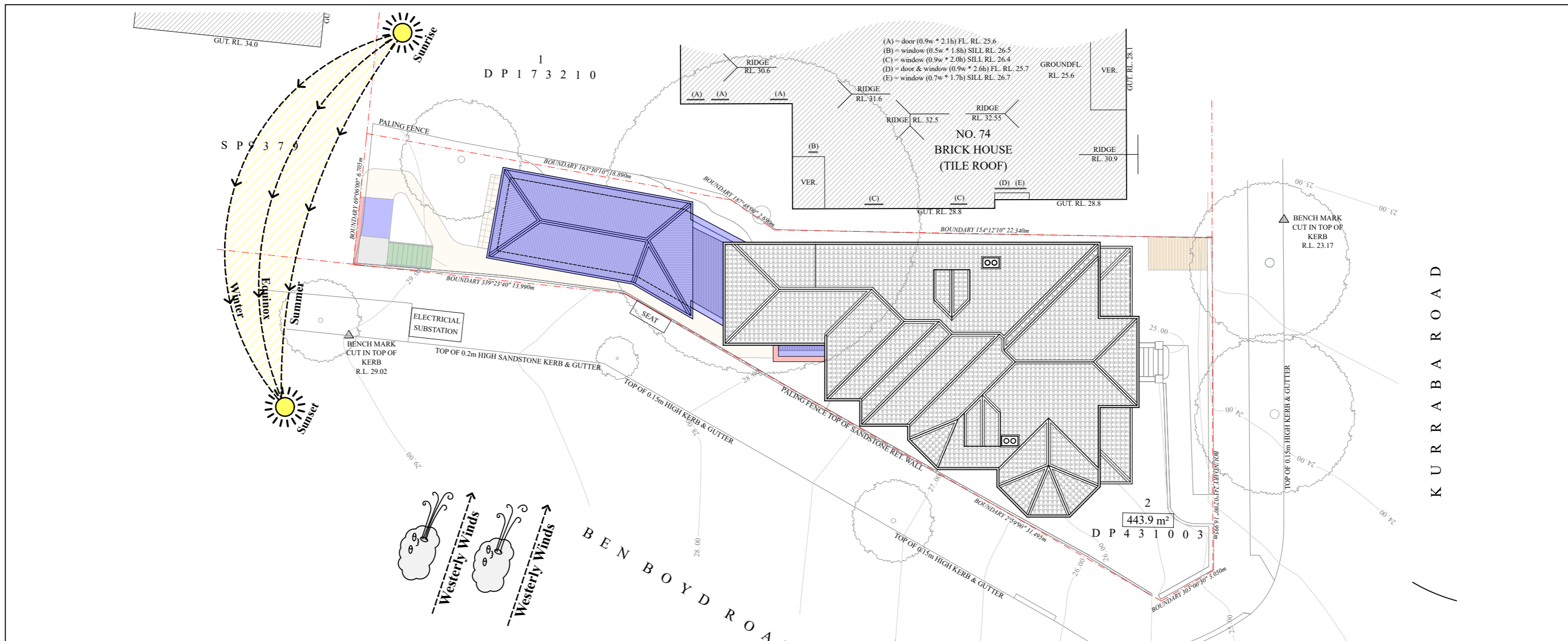
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CB	Concrete block

REVISION	ISSUE	DATE
1	FOR DEVELOPMENT APPLICATION	15/08/2022
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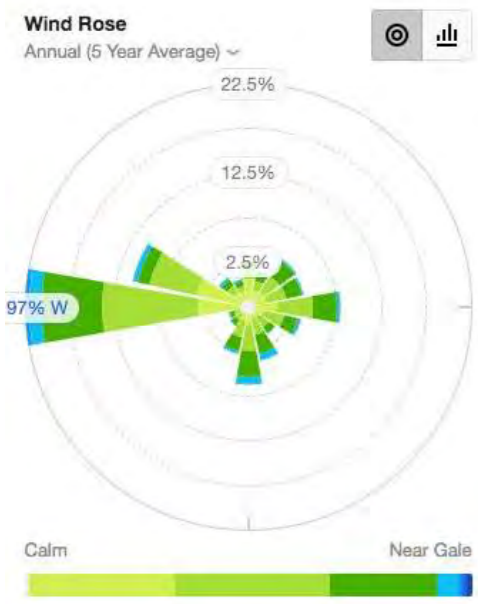
FOR DEVELOPMENT APPLICATION
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 FOR R VIRGONA & K QUINLIVAN
 SITE / ROOF PLAN
 SCALE 1:200@A3
 DA1.00 | 1
 AUGUST 2022



WEATHER DATA



LOCAL CHARACTER / STREETScape



74 Kurraba Road



76 Kurraba Road



78 Kurraba Road



80 Kurraba Road



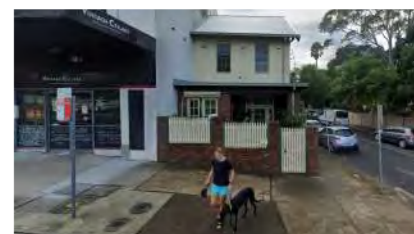
9 Ben Boyd Road



11-15 Ben Boyd Road



11-15 John Dykes Ave



17 John Dykes Ave

SCALE IN METRES
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KEY

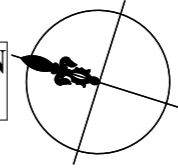
AC	Air conditioning	PL	Plaster
BG	Box gutter	R	Refrigerator
CM	Cement render	RC	Reinforced concrete
CP	Carpet	RL	Relative level
CPD	Cupboard	RP	Recessed panel
CR	Copper roofing	SK	Skink
CT	Cooktop	SD	Slot drain
DP	Downpipe	SK	Skylight
ED	Eastern door	SW	Shower waste
EW	Eastern window	TB	Timber battens
FW	Floor waste	TF	Timber flooring
HWS	Hot water system	WD	Western door
J	Construction joint	WW	Western window
OF	Overflow	CB	Concrete block
PB	Plasterboard		

REVISION	ISSUE	DATE
1	FOR DEVELOPMENT APPLICATION	15/08/2022

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Climatic Data Sourced at :
<https://www.willyweather.com.au/nsw/sydney/neutralbay.html>

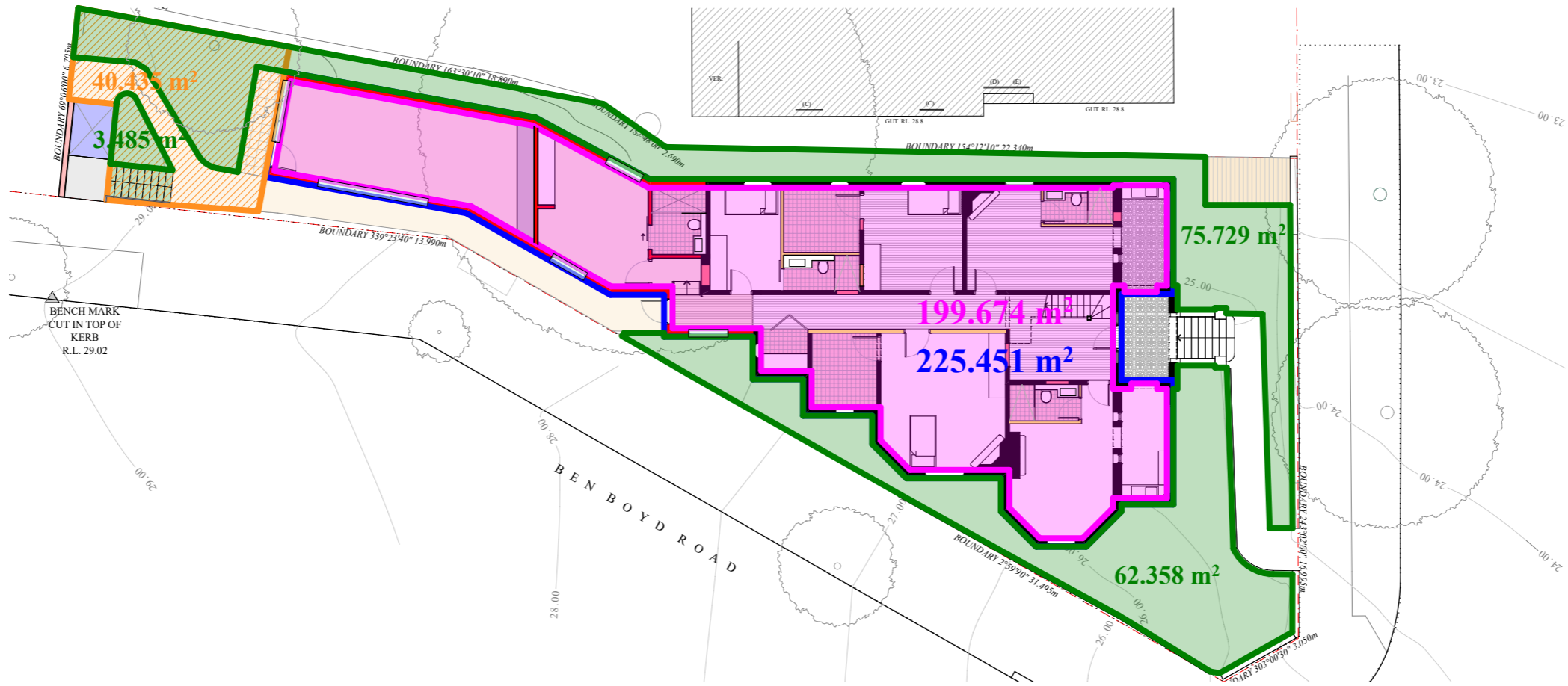
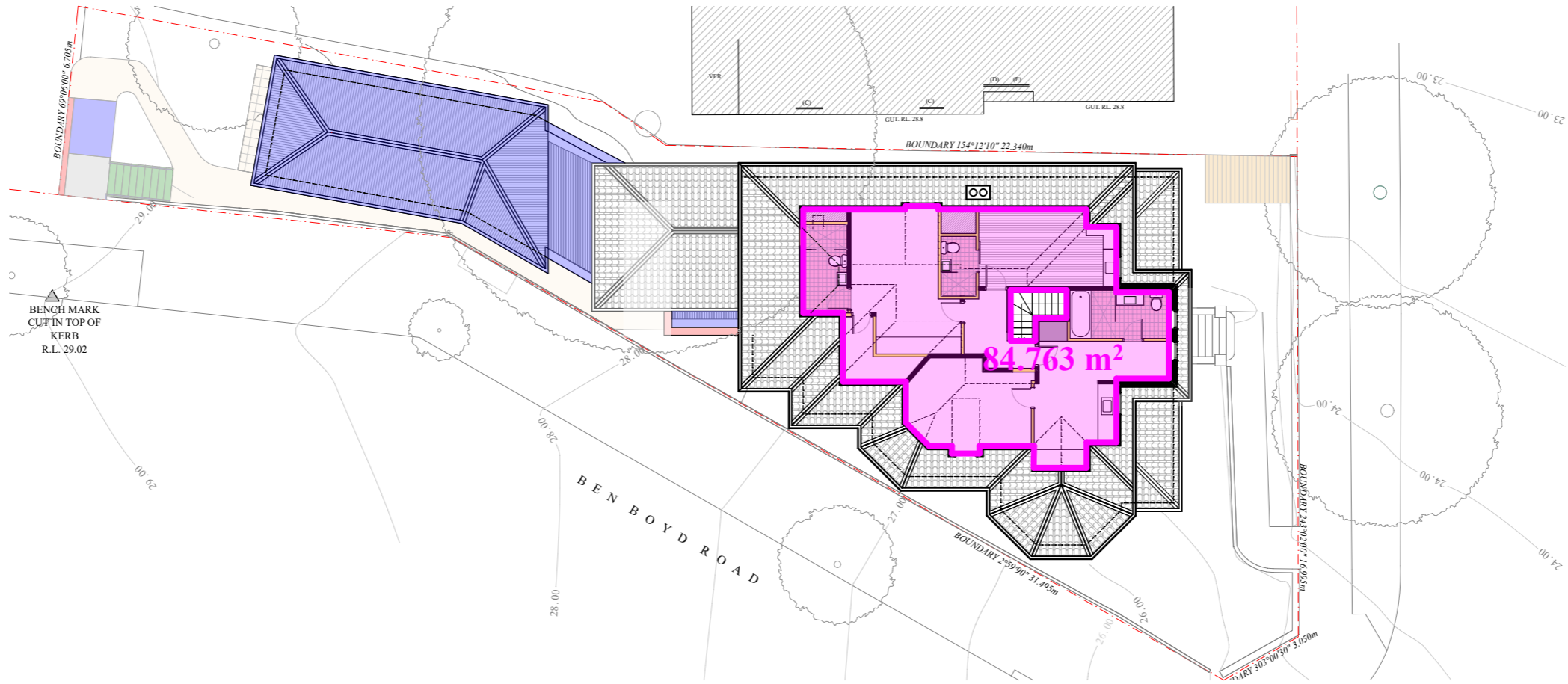
**FOR DEVELOPMENT APPLICATION
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GRAPHIO AM
 SUITE 3.04, 56 BOWMAN STREET, PYRMONT NSW 2009
 TELEPHONE +61 2 9660 0628 EMAIL contact@graphioam.com.au
 72 KURRABA ROAD, NEUTRAL BAY
 FOR R VIRGONA & K QUINLIVAN
 SITE ANALYSIS DA1.01
 SCALE 1:200@A3 AUGUST 2022

CALCULATIONS

Site	
Area (sq/m)	443.9
FSR Proposed	
Area (sq/m)	284.437
Area (FSR)	0.640 : 1
Landscape Proposed	
Proposed (sq/m)	141.572
Proposed (%)	31.89%
Required (%)	20%
Site Coverage	
Site Coverage	225.451
Area (%)	50.79%
Max Allowable (%)	50%
Private Open Space	
Area	40.435



SCALE IN METRES

0 2 4 6 8 10

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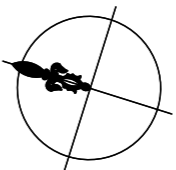
KEY

AC	Air conditioning	PL	Plaster
BG	Box gutter	R	Refrigerator
CM	Cement render	RC	Reinforced concrete
CP	Carpet	RL	Relative level
CPD	Cupboard	RP	Recessed panel
CR	Copper roofing	S	Sink
CT	Cooktop	SD	Slot drain
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EW	Eastern window	SW	Shower waste
FW	Floor waste	TB	Timber battens
HWS	Hot water system	TF	Timber flooring
J	Construction joint	WD	Western door
OF	Overflow	WW	Western window
PB	Plasterboard	CB	Concrete block

REVISION	ISSUE	DATE
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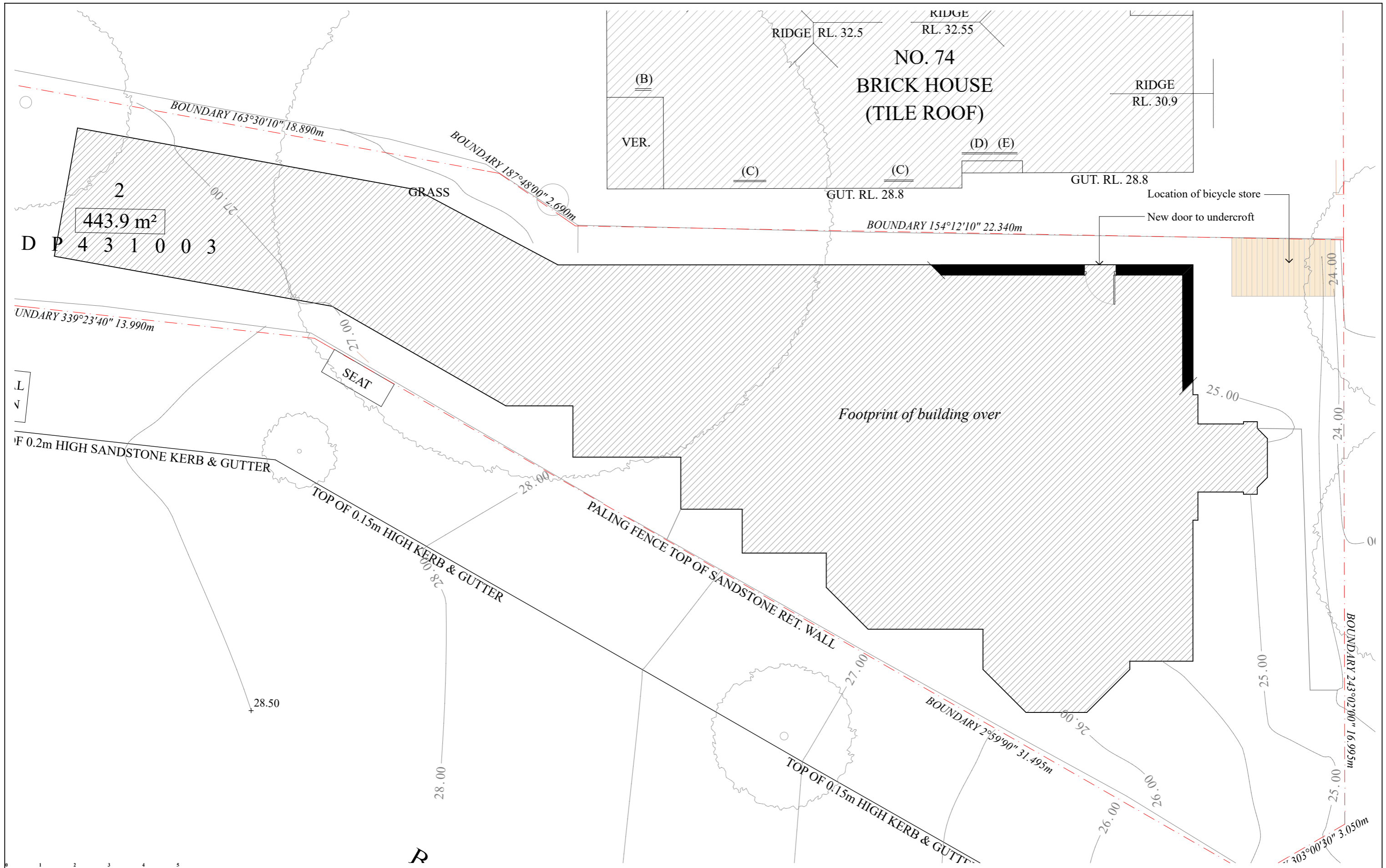
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FOR R VIRGONA & K QUINLIVAN
 CALCULATIONS PLAN **DA1.03**
 SCALE 1:200@A3
 AUGUST 2022

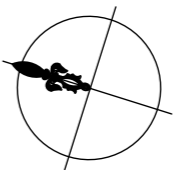


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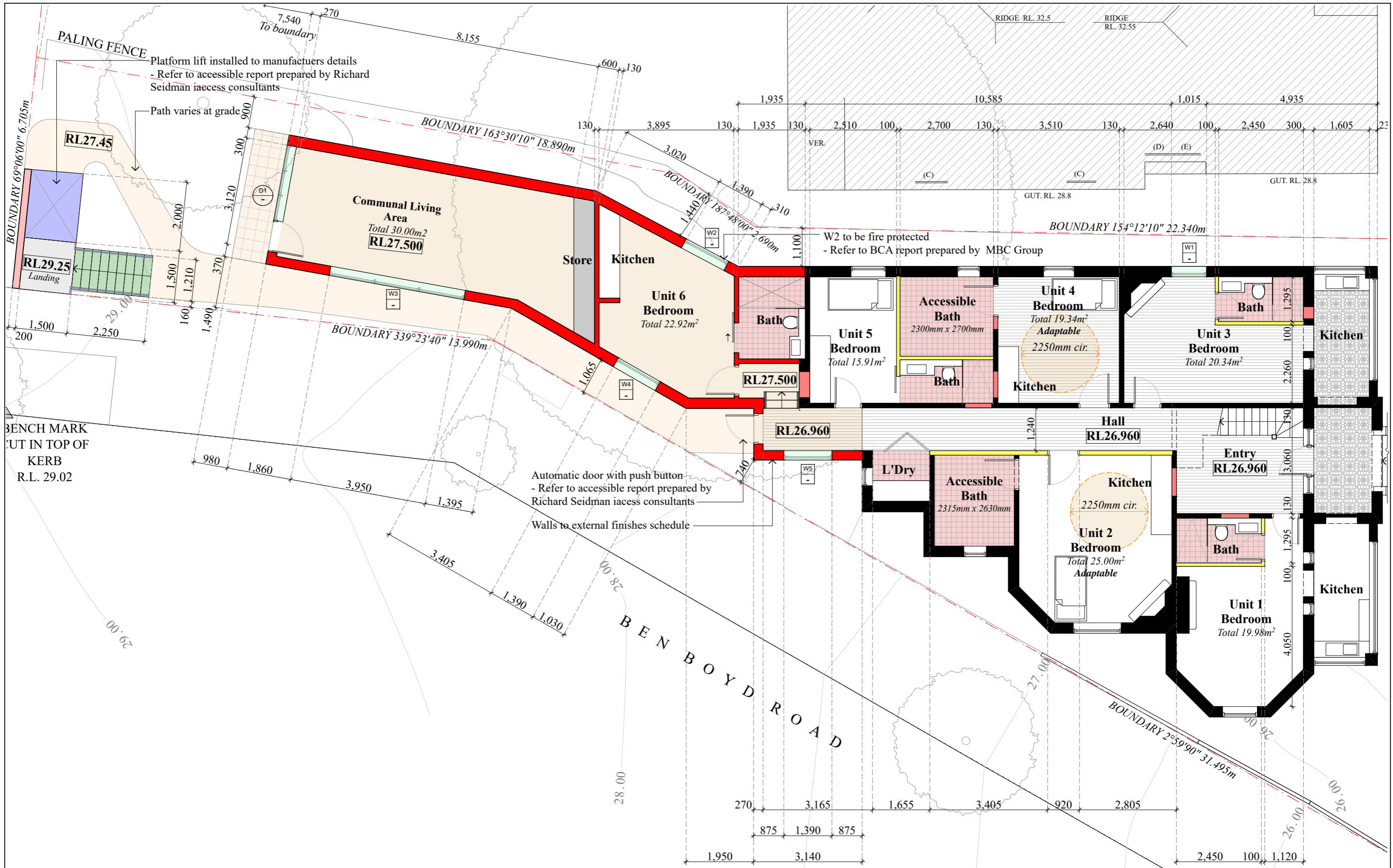
KEY	KEY	KEY	
AC	Air conditioning	PL	Plaster
BG	Box gutter	R	Refrigerator
CM	Cement render	RC	Reinforced concrete
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J	Construction joint	WD	Western door
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REVISION	ISSUE	DATE
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72 KURRABA ROAD, NEUTRAL BAY
FOR R VIRGONA & K QUINLIVAN
UNDERCROFT PLAN **DA2.00**
 SCALE 1:100 @ A3 AUGUST 2022



SCALE IN METRES

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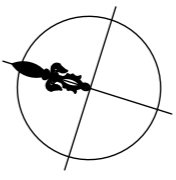
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KEY	REVISION	ISSUE	DATE
AC	1	FOR DEVELOPMENT APPLICATION	15/08/2022
AG			
CM			
CP			
CR			
CT			
ED			
EW			
FW			
HW			
J			
OF			
PB			
PL			
R			
RC			
RL			
RP			
S			
SD			
SK			
SW			
TB			
TF			
WD			
WW			
CB			

REVISION	ISSUE	DATE
1	FOR DEVELOPMENT APPLICATION	15/08/2022

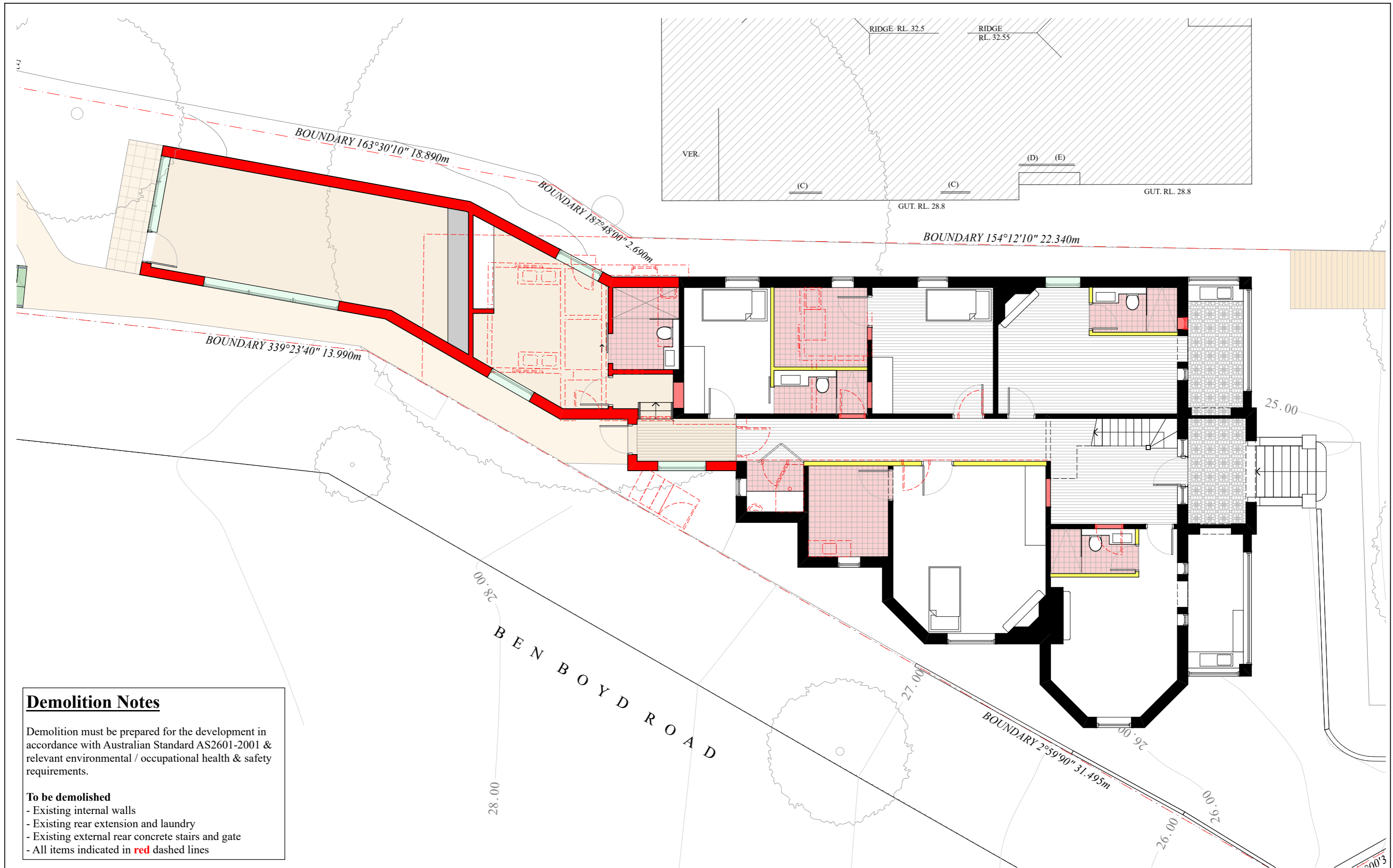
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 72 KURRABA ROAD, NEUTRAL BAY
 FOR R VIRGONA & K QUINLIVAN
 GROUND FLOOR PLAN DA3.00
 SCALE 1:100 @ A3 AUGUST 2022



Demolition Notes

Demolition must be prepared for the development in accordance with Australian Standard AS2601-2001 & relevant environmental / occupational health & safety requirements.

To be demolished

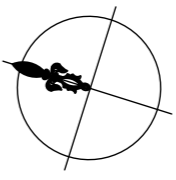
- Existing internal walls
- Existing rear extension and laundry
- Existing external rear concrete stairs and gate
- All items indicated in red dashed lines

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KEY	
AC	Air conditioning
BG	Box gutter
CM	Cement render
CP	Carpet
CPD	Cupboard
CR	Copper roofing
CT	Cooktop
DP	Downpipe
ED	Eastern door
EW	Eastern window
FW	Floor waste
HWS	Hot water system
OF	Overflow
PB	Plasterboard
PL	Plaster
R	Refrigerator
RC	Reinforced concrete
RL	Relative level
RP	Recessed panel
S	Sink
SD	Slot drain
SK	Skylight
SW	Shower waste
TB	Timber battens
TF	Timber flooring
WD	Western door
WW	Western window
CB	Concrete block

REVISION	ISSUE	DATE
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FOR DA / CC / TENDER ISSUE ONLY		

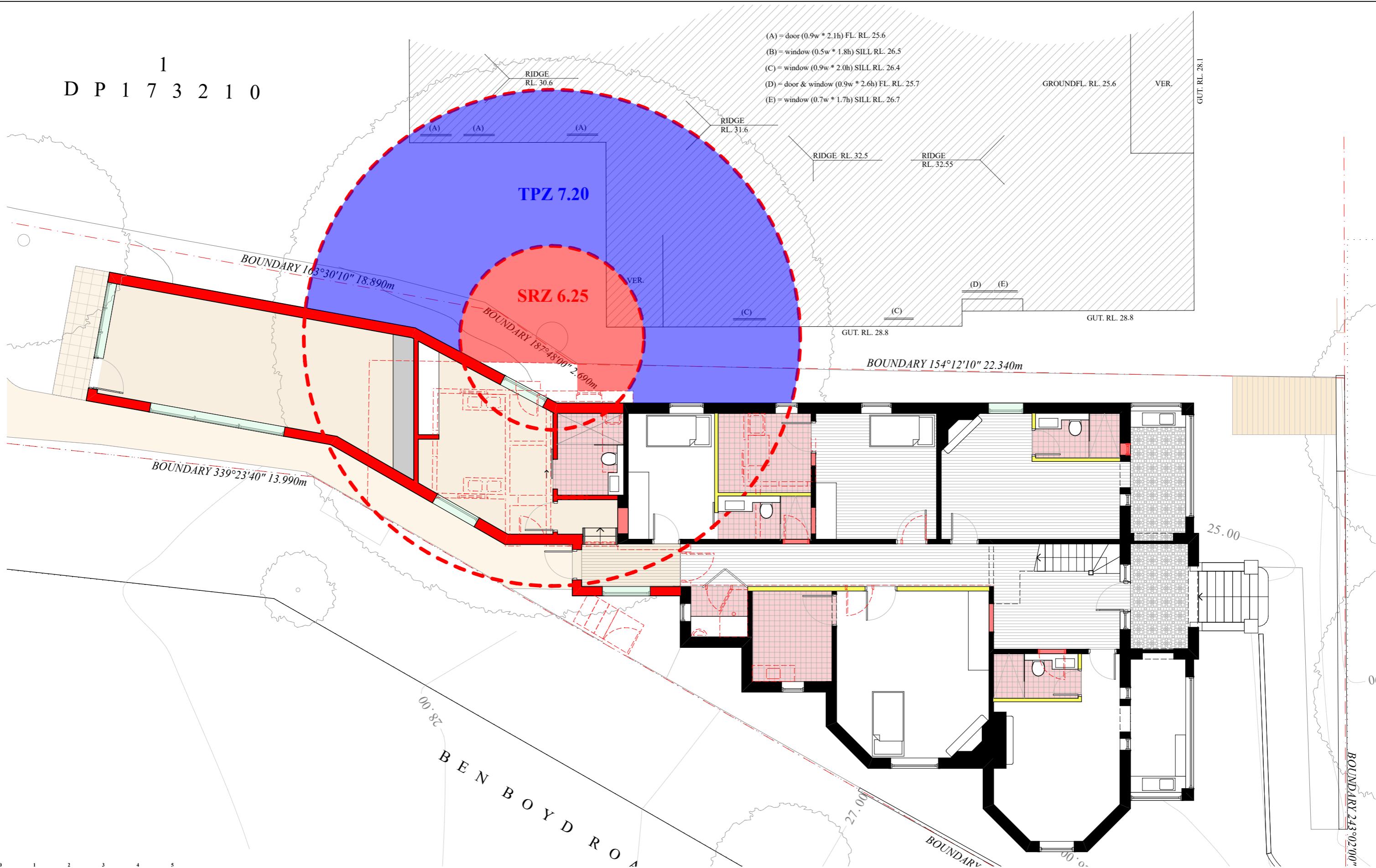
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 72 KURRABA ROAD, NEUTRAL BAY
 FOR R VIRGONA & K QUINLIVAN
 GROUND FLOOR DEMO PLAN
 SCALE 1:100 @ A3
 DA3.01 | 1
 AUGUST 2022

1
D P 1 7 3 2 1 0

- (A) = door (0.9w * 2.1h) FL. RL. 25.6
- (B) = window (0.5w * 1.8h) SILL RL. 26.5
- (C) = window (0.9w * 2.0h) SILL RL. 26.4
- (D) = door & window (0.9w * 2.6h) FL. RL. 25.7
- (E) = window (0.7w * 1.7h) SILL RL. 26.7



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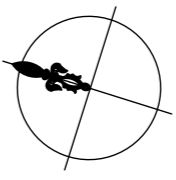
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KEY	REVISION	ISSUE	DATE
AC Air conditioning	1	FOR DEVELOPMENT APPLICATION	15/08/2022
BG Box gable			
CM Cement render			
CP Carpet			
CR Copper roofing			
CT Cooktop			
DP Downpipe			
ED Eastern door			
EW Eastern window			
FW Floor waste			
HW Hot water system			
OF Overflow			
PB Plasterboard			
PL Plaster			
R Refrigerator			
RC Reinforced concrete			
RL Relative level			
RP Recessed panel			
S Sink			
SD Slot drain			
SK Skylight			
SW Shower waste			
TB Timber battens			
TF Timber flooring			
WD Western door			
WW Western window			
CB Concrete block			

REVISION	ISSUE	DATE
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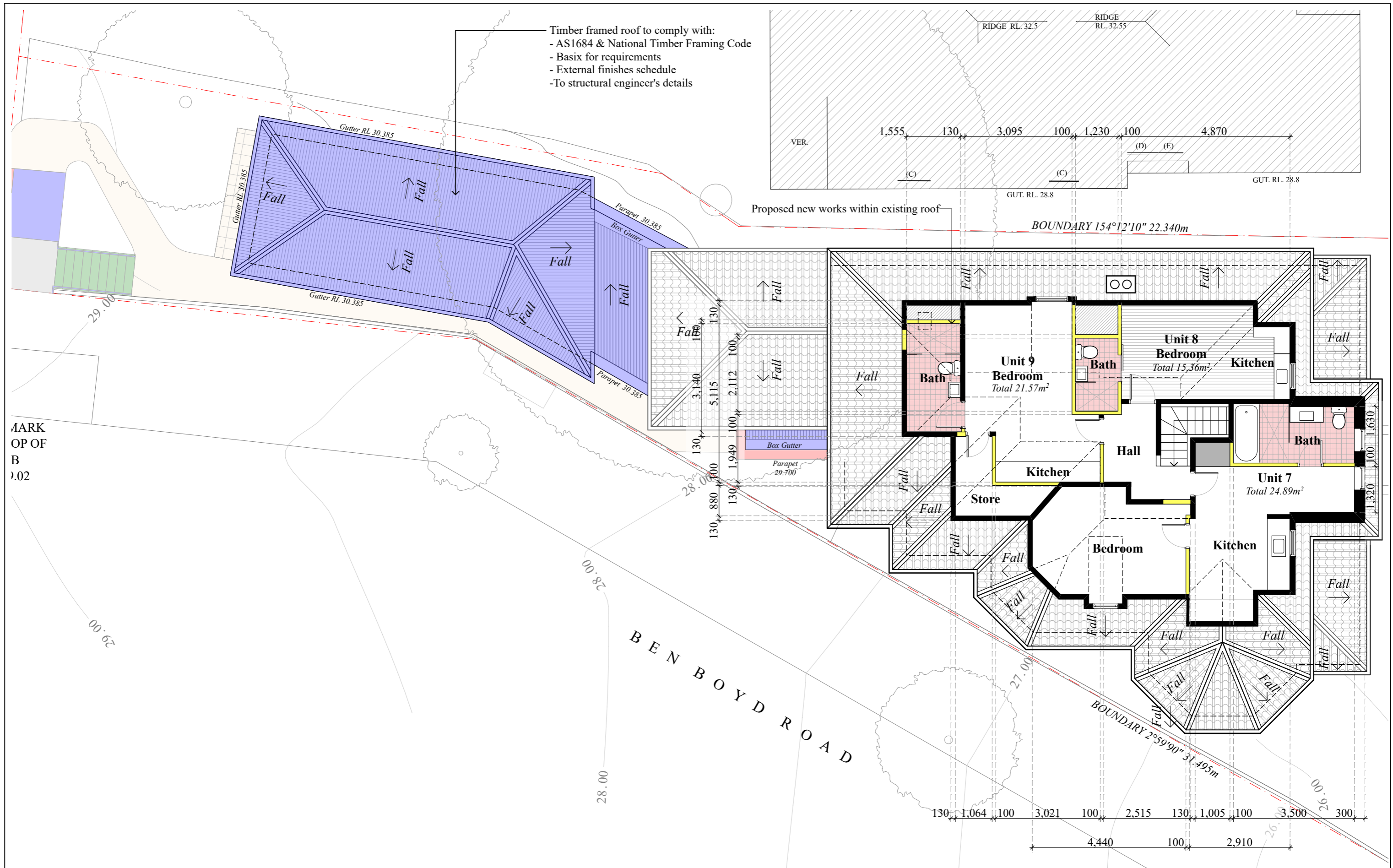
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72 KURRABA ROAD, NEUTRAL BAY
 FOR R VIRGONA & K QUINLIVAN
 GROUND FLOOR TREE PROTECTION DA3.02 1
 SCALE 1:100 @ A3 AUGUST 2022



REVISION	ISSUE	DATE
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SCALE IN METRES

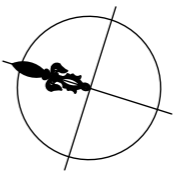
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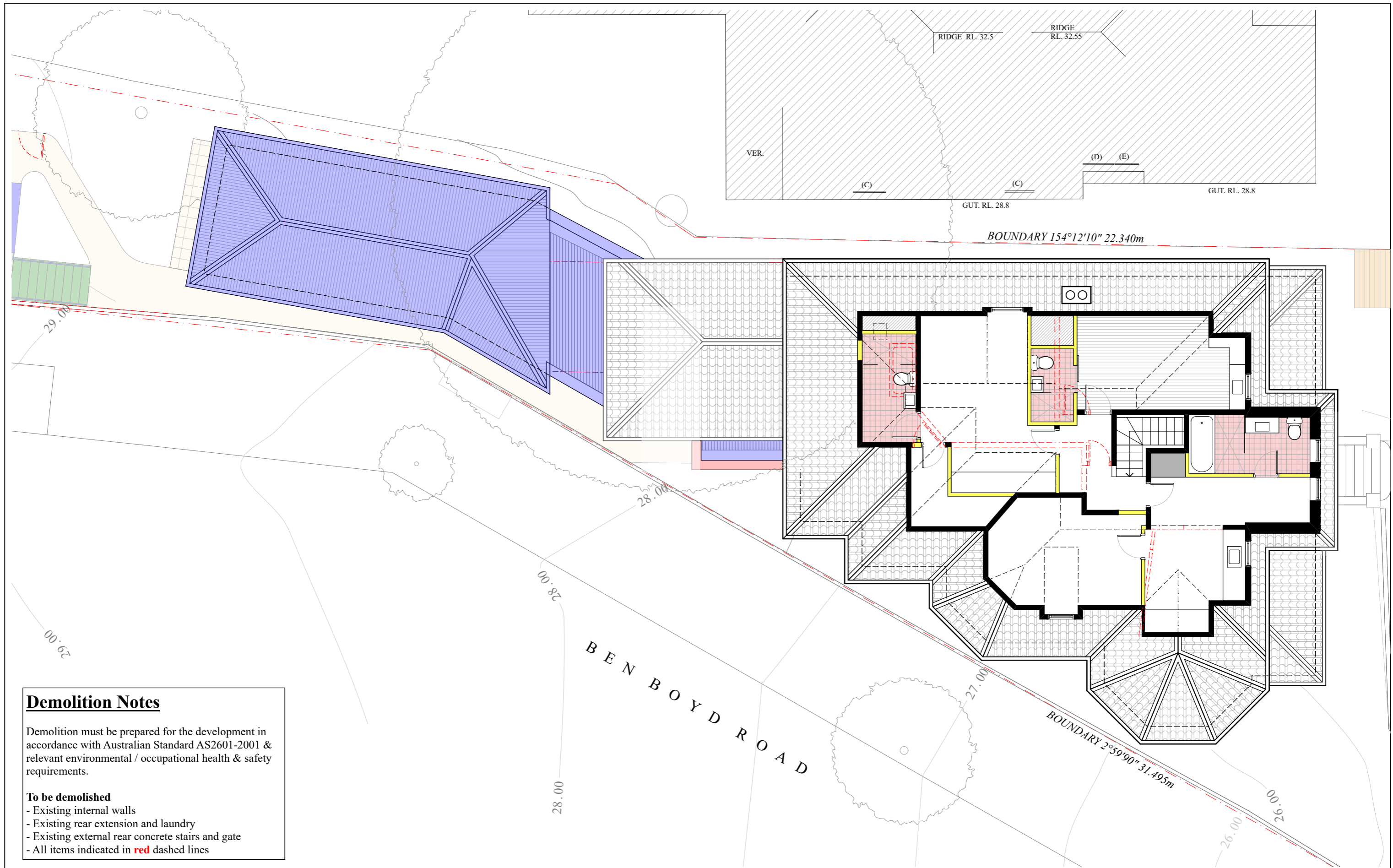
KEY	DESCRIPTION
AC	Air conditioning
BG	Box gutter
CM	Cement render
CP	Carpet
CPD	Cupboard
CR	Copper roofing
CT	Cooktop
DP	Downpipe
ED	Eastern door
EW	Eastern window
FW	Floor waste
HWS	Hot water system
J	Construction joint
OF	Overflow
PB	Plasterboard
PL	Plaster
R	Refrigerator
RC	Reinforced concrete
RL	Relative level
RP	Recessed panel
S	Sink
SD	Slot drain
SK	Skylight
SW	Shower waste
TB	Timber battens
TF	Timber flooring
WD	Western door
WW	Western window
CB	Concrete block

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 72 KURRABA ROAD, NEUTRAL BAY
 FOR R VIRGONA & K QUINLIVAN
FIRST FLOOR PLAN DA4.00 |
 SCALE 1:100 @ A3 AUGUST 2022



Demolition Notes

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To be demolished

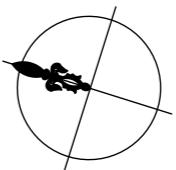
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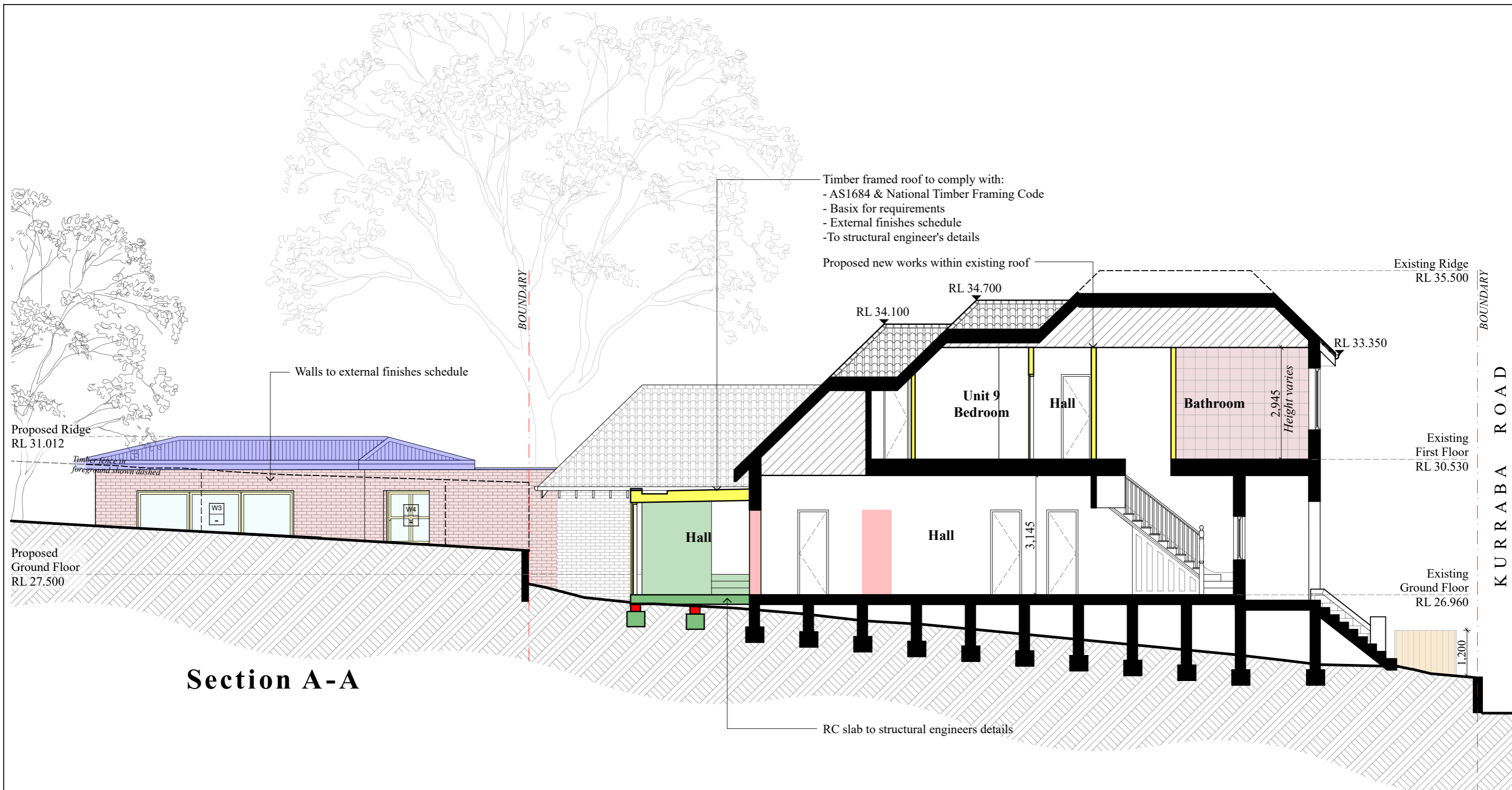
KEY	
AC	Air conditioning
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 FOR R VIRGONA & K QUINLIVAN
FIRST FLOOR DEMO PLAN DA4.01 | 1
 SCALE 1:100 @ A3 AUGUST 2022



Section A-A

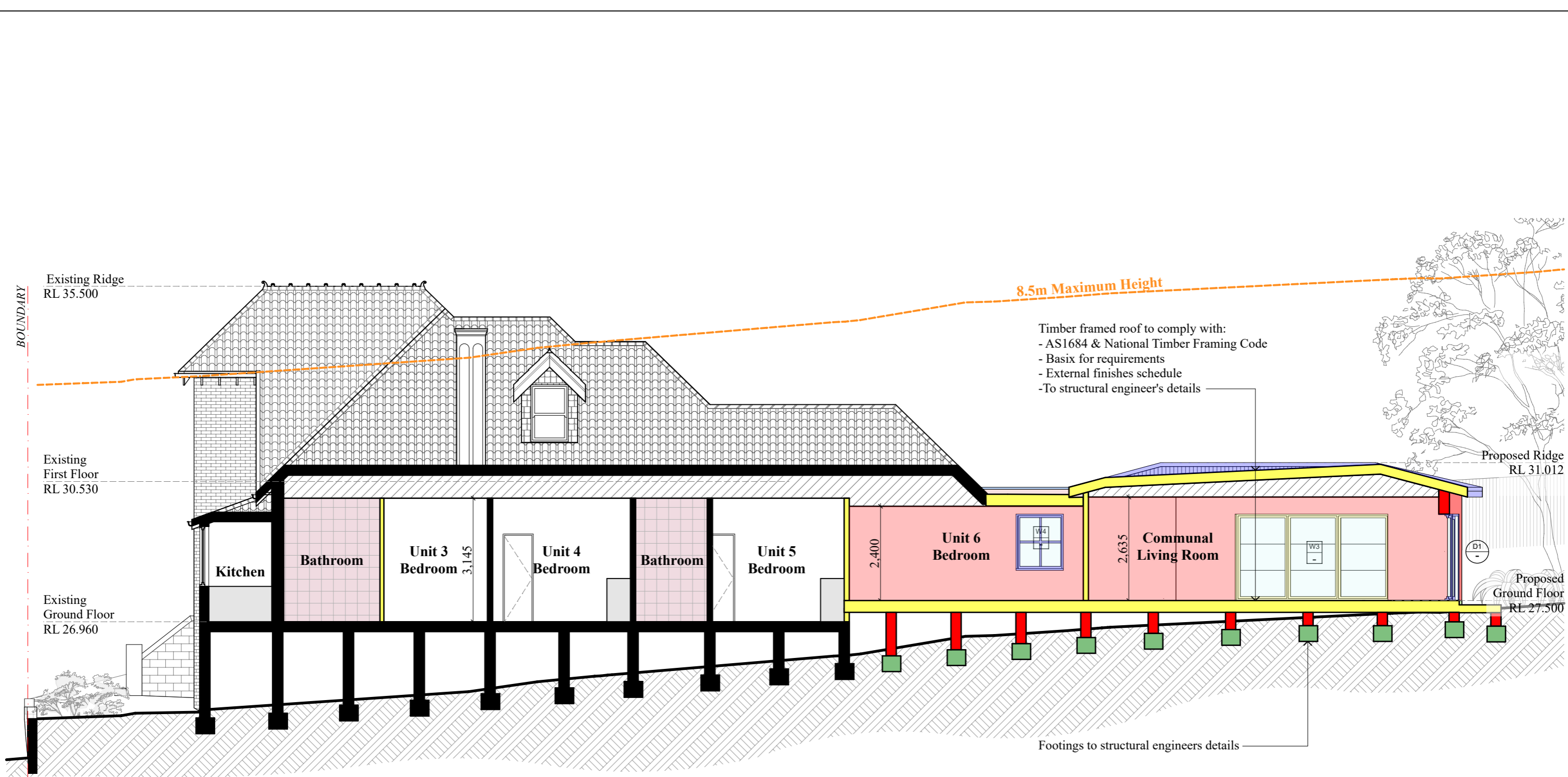
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REVISION	ISSUE	DATE
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72 KURRABA ROAD, NEUTRAL BAY
FOR R VIRGONA & K QUINLIVAN
SECTION A-A DA5.00
 SCALE 1:100 @ A3 AUGUST 2022



Section B-B

SCALE IN METRES

0 1 2 3 4 5

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KEY

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BG	Box gutter	R	Refrigerator
CM	Cement render	RC	Reinforced concrete
CP	Carpet	RL	Relative level
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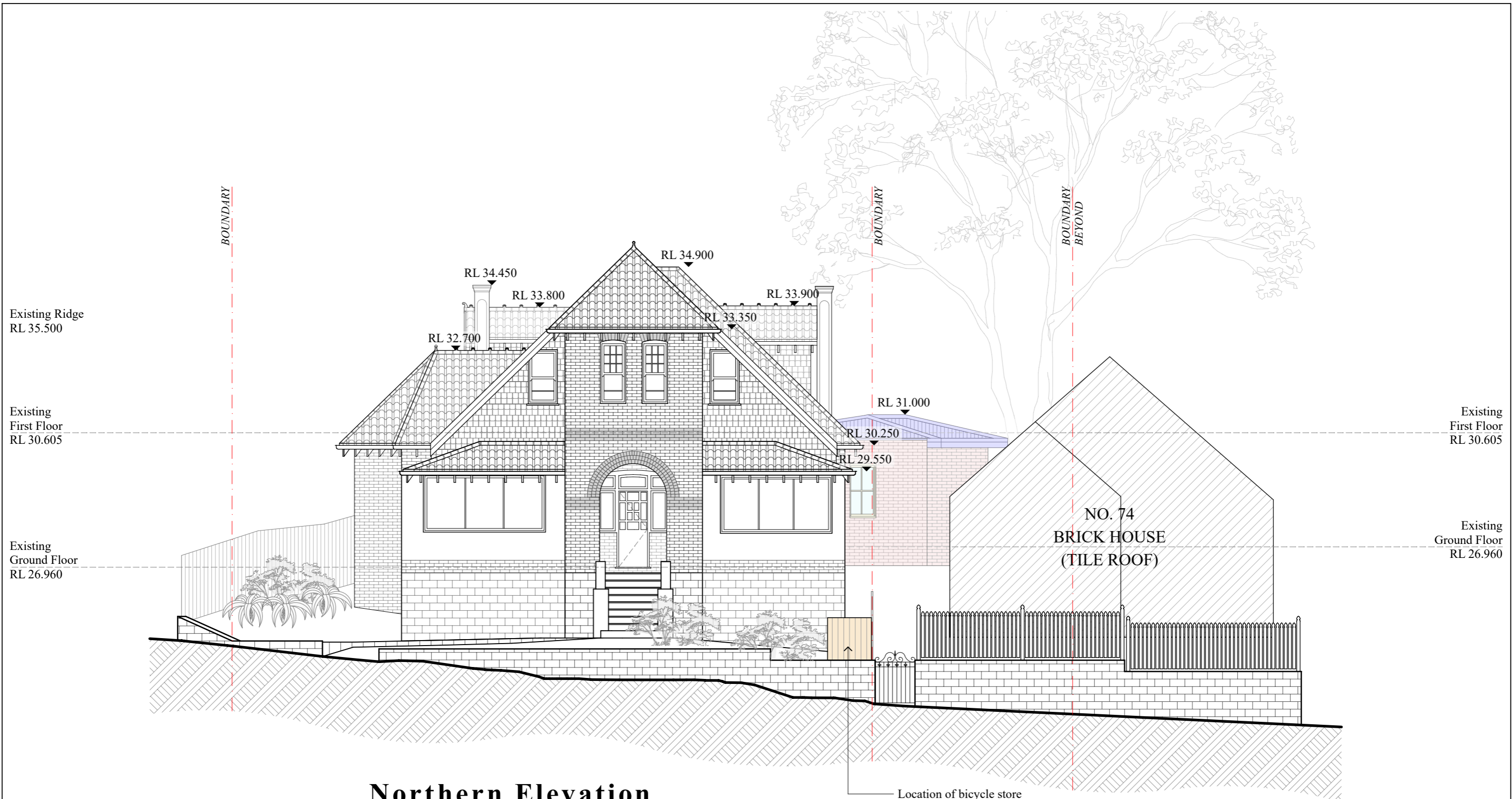
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 72 KURRABA ROAD, NEUTRAL BAY
 FOR R VIRGONA & K QUINLIVAN
SECTION B-B **DA5.01**
 SCALE 1:100 @ A3 AUGUST 2022



Northern Elevation
Kurraba Road Streetscape

SCALE IN METRES
0 1 2 3 4 5

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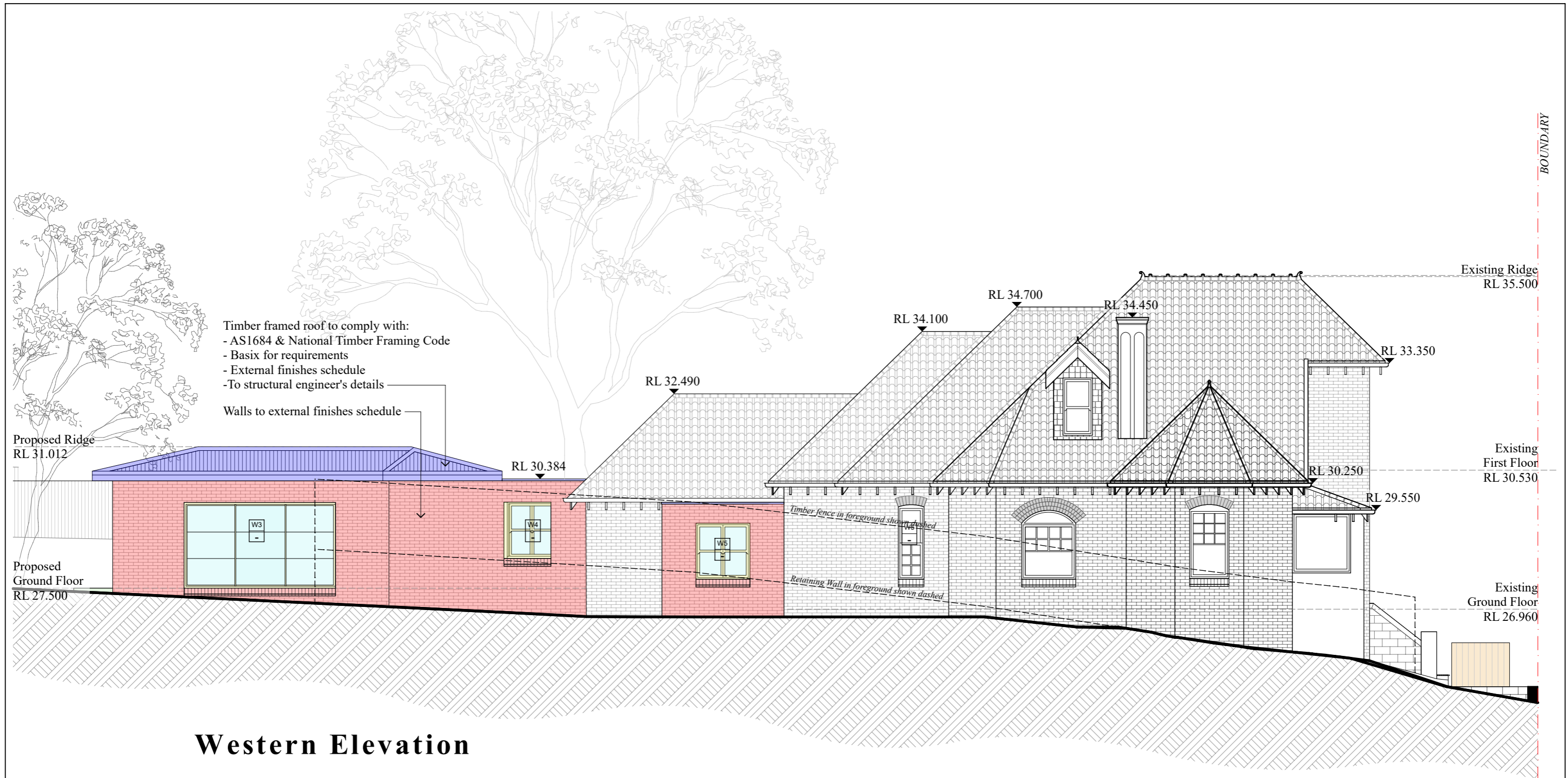
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S	Sink
SD	Slot drain
SK	Skylight
SW	Shower waste
TB	Timber battens
TF	Timber flooring
WD	Western door
WW	Western window
CB	Concrete block

REVISION	ISSUE	DATE
1	FOR DEVELOPMENT APPLICATION	15/08/2022
FOR DA / CC / TENDER ISSUE ONLY		

**FOR DEVELOPMENT APPLICATION
ISSUE ONLY**

GRAPHIO^{AM}
 SUITE 3.04, 56 BOWMAN STREET, PYRMONT NSW 2009
 TELEPHONE +61 2 9660 0628 EMAIL contact@graphioam.com.au
72 KURRABA ROAD, NEUTRAL BAY
FOR R VIRGONA & K QUINLIVAN
NORTHERN STREETScape ELEVATION DA6.00
 SCALE 1:100 @ A3 AUGUST 2022



Western Elevation

SCALE IN METRES

THESE DRAWINGS ARE DESIGN INTENT DRAWINGS ONLY. NOT USED DURING CONSTRUCTION. IT IS NOT A DETAILED CONSTRUCTION DRAWING AND SHOULD NOT BE USED AS SUCH. IF THIS DRAWING DESCRIBES A COMPONENT TO BE MANUFACTURED, THE BUILDER SHOULD SEEK AND CHECK SHOP DRAWINGS FOR THAT COMPONENT, PREPARED BY THE MANUFACTURER.

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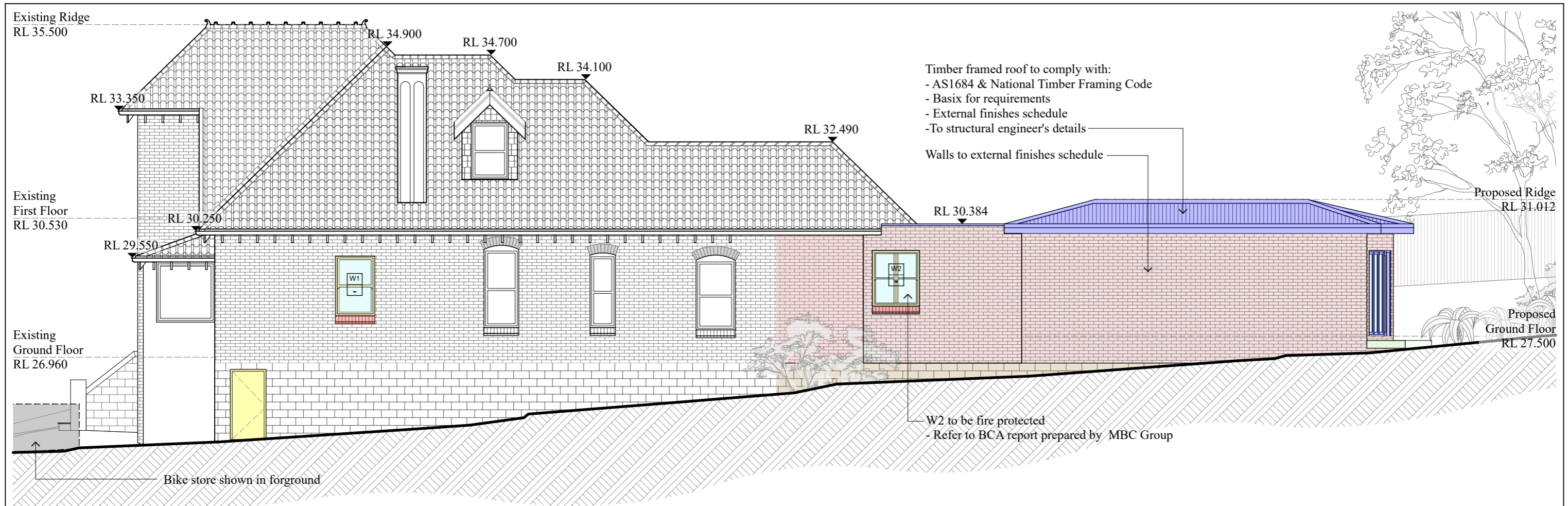
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KEY	
AC	Air conditioning
BG	Box gutter
CM	Cement render
CP	Carpet
CFD	Cupboard
CR	Copper roofing
CT	Cooktop
DP	Downpipe
ED	Eastern door
EW	Eastern window
FW	Floor waste
HWS	Hot water system
J	Construction joint
OF	Overflow
PB	Plasterboard
PL	Plaster
R	Refrigerator
RC	Reinforced concrete
RL	Relative level
RP	Recessed panel
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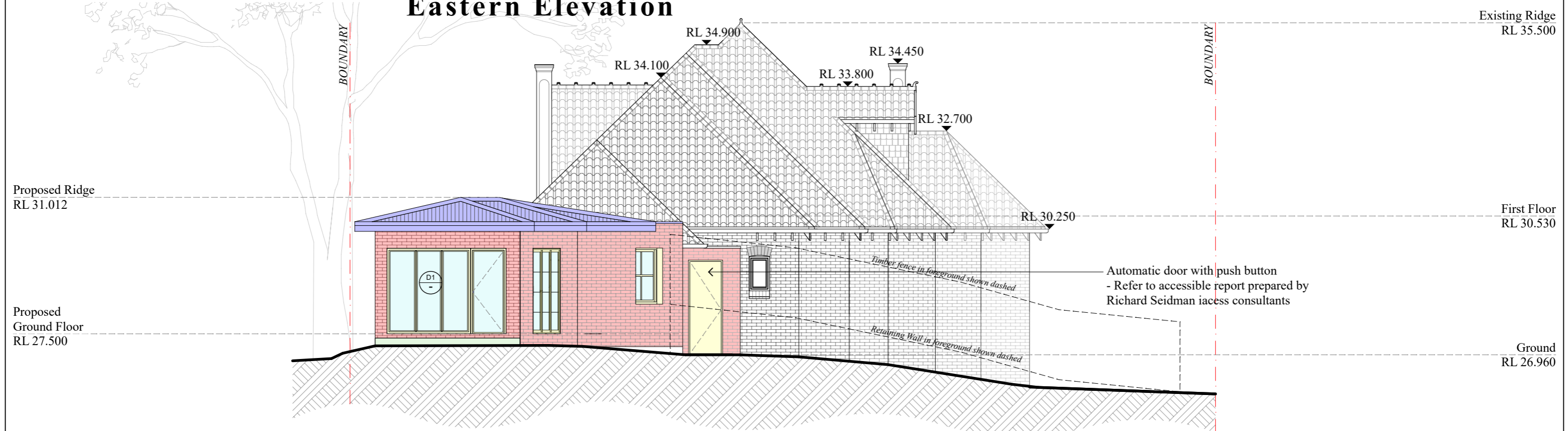
REVISION	ISSUE	DATE
1	FOR DEVELOPMENT APPLICATION	15/08/2022
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 FOR R VIRGONA & K QUINLIVAN
 WESTERN ELEVATION **DA6.01**
 AUGUST 2022



Eastern Elevation



Southern Elevation

REVISION	ISSUE	DATE
1	FOR DEVELOPMENT APPLICATION	15/08/2022
FOR DA / CC / TENDER ISSUE ONLY		

SCALE IN METRES

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KEY	KEY	KEY	
AC	Air conditioning	PL	Plaster
BG	Box gutter	R	Refrigerator
CM	Cement render	RC	Reinforced concrete
CP	Carpet	RL	Relative level
CPD	Cupboard	RP	Recessed panel
CR	Copper roofing	S	Sink
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HWS	Hot water system	WD	Western door
J	Construction joint	WW	Western window
OF	Overflow	CB	Concrete block
PB	Plasterboard		

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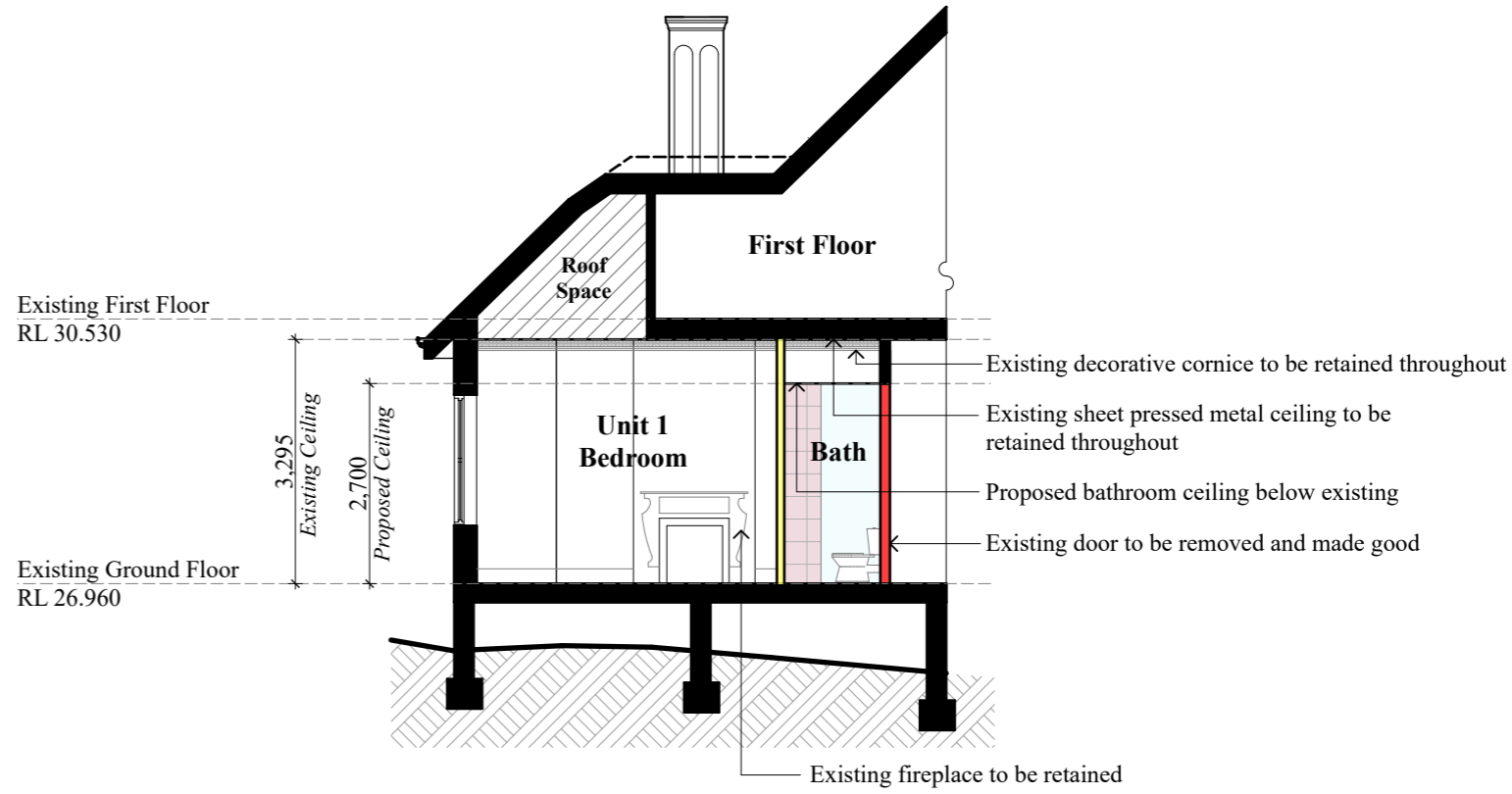
72 KURRABA ROAD, NEUTRAL BAY
 FOR R VIRGONA & K QUINLIVAN

ELEVATIONS CONT. **DA6.02** | AUGUST 2022

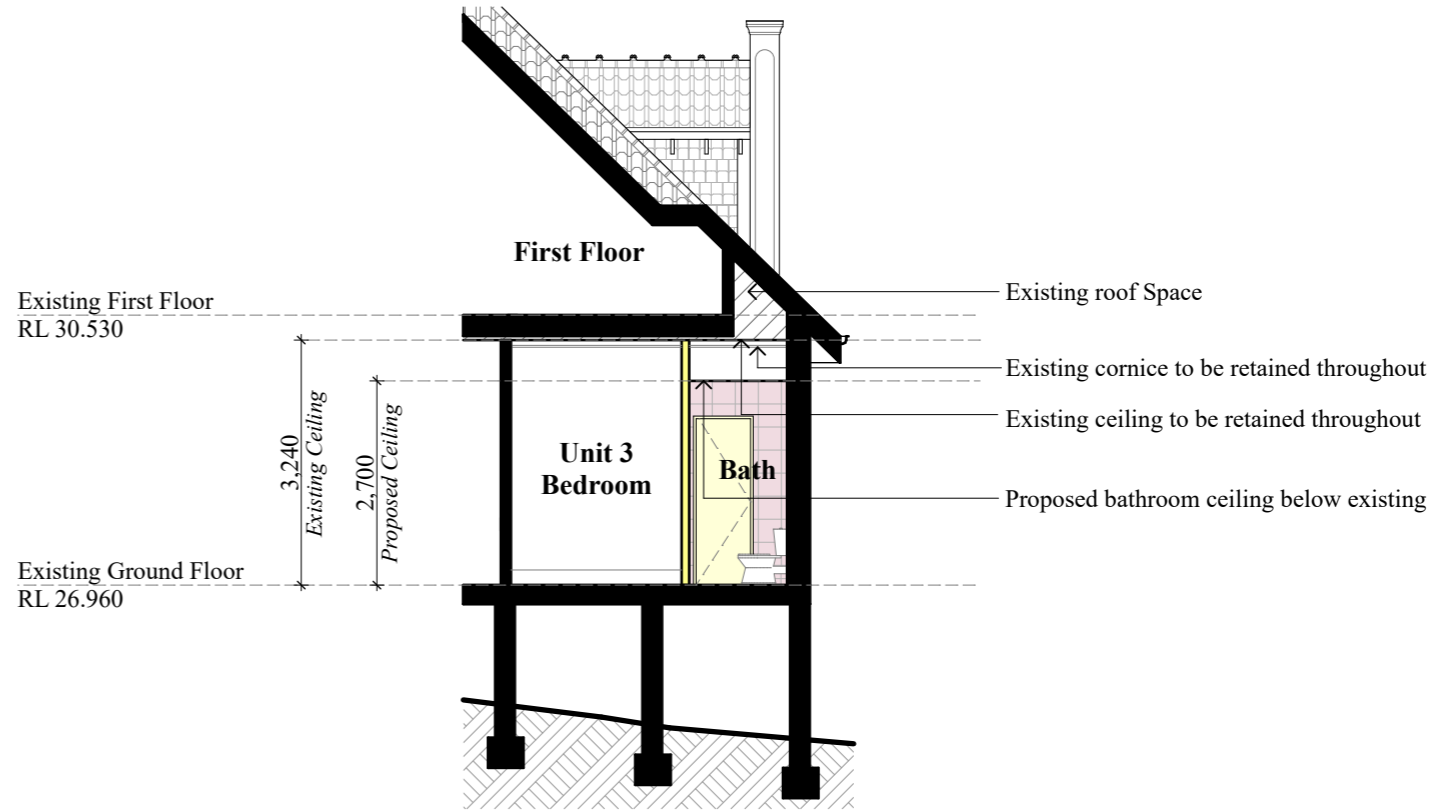
SCALE 1:100 @ A3



Ground Floor Plan
Unit 1 & 3



Section C-C
Unit 1



Section D-D
Unit 3

SCALE IN METRES
0 1 2 3 4 5

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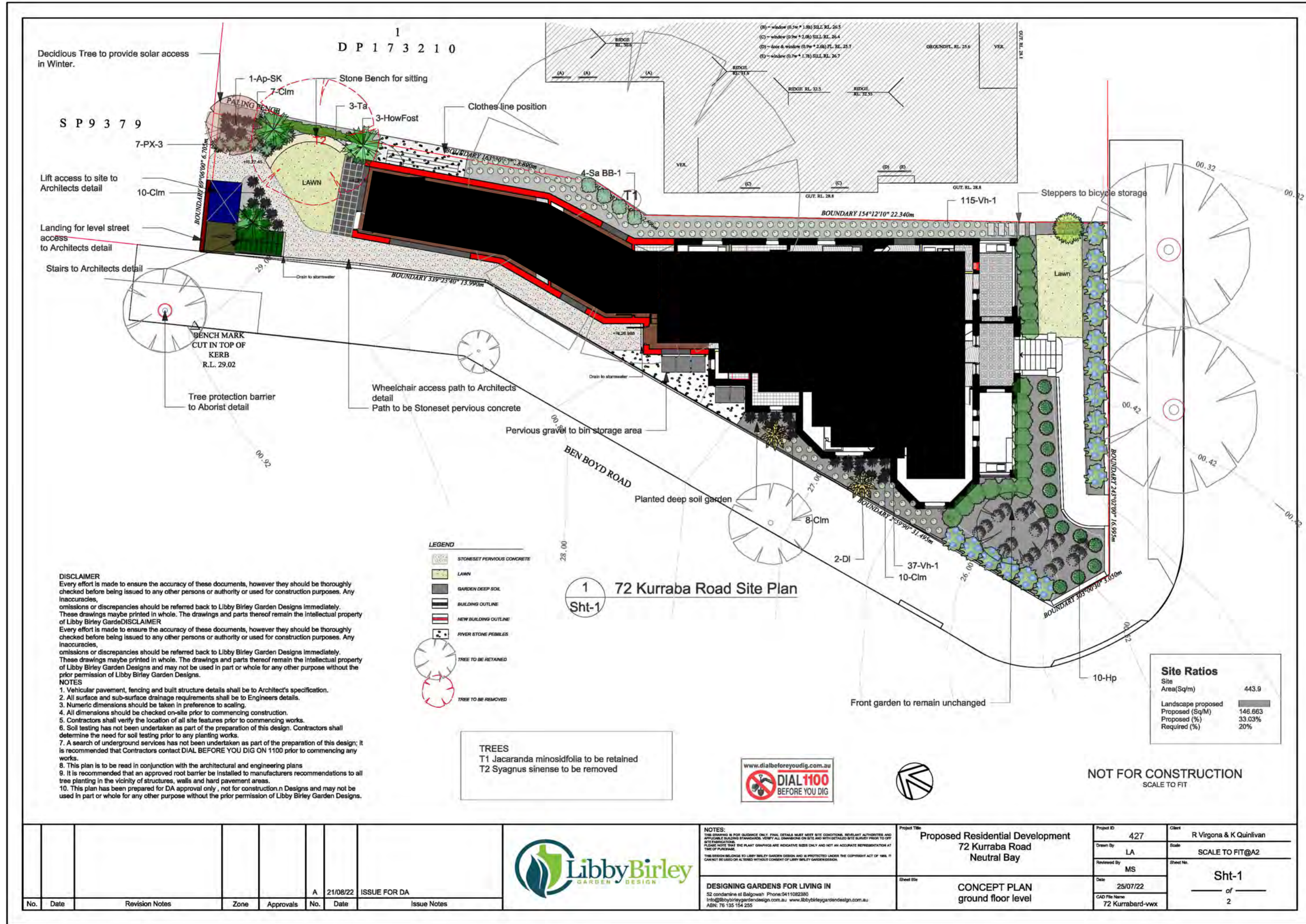
KEY	PL	PL
AC	Air conditioning	Plaster
BG	Box gutter	R
CM	Cement render	RC
CP	Carpet	concrete
CPC	Cupboard	RL
CR	Copper roofing	RP
CT	Cooktop	S
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OF	Overflow	WW
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		Concrete block

REVISION	ISSUE	DATE
1	FOR DEVELOPMENT APPLICATION	15/08/2022
2	DA - ADDITIONAL INFORMATION	03/02/2023

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72 KURRABA ROAD, NEUTRAL BAY
FOR R VIRGONA & K QUINLIVAN
SECTIONS CONT. DA6.03 2
SCALE 1:100 @ A3 FEBRUARY 2023



ID	Qty	Common Name	Botanical Name	Scheduled Size	Mature Height	Mature Spread	Remarks
Plant Schedule							
Trees							
Ap-SK	1	Sango kaku	Acer Palmatum Sengu kaki	45ltr	5.0m	5.0	
DI	2	Golden Cane Palm	Dypsis lutescens	400mm	5 - 10m	3.5 - 6m	
HowFost	3	Kentia Palm	Howea fosteriana		5 - 10m	3.5 - 6m	
Shrubs							
Hp	10	Everlasting, Licorice Plant	Helichrysum petiolare	140mm	0.30 - 0.45m	0.6 - 0.9m	
Sa BB-1	4	Straight and Narrow	Syzygium australe	200MM	3.0-4.0m	Mature Spread	
Ground Covers							
Vh-1	152	Native Violet	Viola hederacea	25Ltr	0.0 - 0.3m	1.2 - 2.0m	
Climbers							
Ta	3	Star Jasmine	Trachelospermum jasminoides	200MM	3.0m	3.0m	
Perennials							
Clim	35	Bush Lily	Clivia miniata	200mm	0.45 - 0.6m	0.3 - 0.6m	
PX-3	7	Philodendron Xanadu	Philodendron 'Xanadu'	200mm	0.60m	0.60m	
Total	217						



Clivia miniata



Philodendron Xanadu



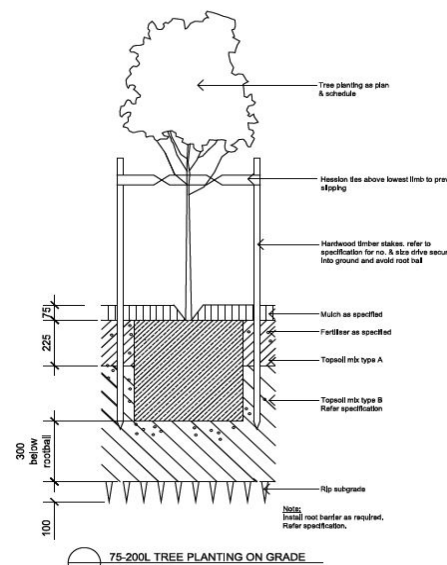
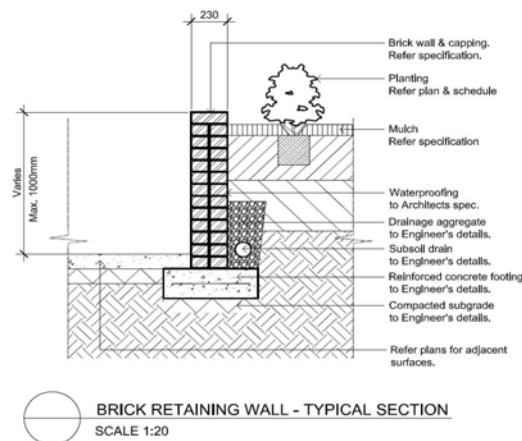
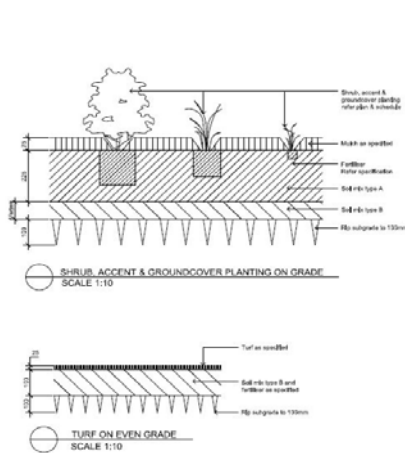
Acer Palmatum Sango Kaku



Howea fosteriana



Stone Set Permeable paving



LANDSCAPE GUIDELINES

1. GENERAL

- 1.1 The Contractor shall familiarise themselves with the site prior to tender.
- 1.2 The Contractor will be held responsible for any damage to utility services, pipes, building structures, paving surfaces, fencing, footways, kerbs, roads and existing plant material.
- 1.3 The site is to be left in a clean and tidy condition at the completion of works to the satisfaction of the Superintendent.
- 1.4 No work involving an extra shall be undertaken unless approval is first obtained from the Superintendent.
- 1.5 No substitute of material shall be made unless approval is given by the Superintendent.
- 1.6 The Contractor shall continuously maintain all areas of the Contract during progress of the works specified.

2. SITE PREPARATION

- 2.1 Prepared sub-grade is to be free of stones larger than 100mm diameter, cement, rubbish and any other foreign matter that could hinder plant growth.
- 2.2 MASS PLANTED AREAS
- 3.1 Once clear of weed growth, grass and debris, sub-grade should be cultivated to a minimum depth of 150mm incorporating 'Dynamic Lifter' or equivalent at the manufacturers recommended rates.
- 3.2 Weeds shall be controlled by a combination of chemical and hand removal techniques.

4. PLANTING

- 4.1 All plant material is to be hardened off, disease and insect free and true to species, type and variety. Plants are to be well grown but not root bound and shall comply with Natspec - "Guide to Purchasing Landscape Trees".
- 4.2 All plants are to be removed from their containers prior to planting with as little disturbance to the root system as possible.
- 4.3 Planting shall not be carried out in dry soil or extreme weather conditions.
- 4.4 Plants should be planted at the same depth as the plants were in the containers and allow for a shallow saucer of soil to be formed around the plant to aid the penetration of water.
- 4.5 All plant material should be watered thoroughly immediately after planting.
- 4.6 The Contractor shall be responsible for the failure of plants during construction, except for acts of vandalism.
- 4.7 Labels shall be removed entirely from the plants.

5. PAVING

- 5.1 Paving to be STONE SET to manufactures specifications.

6. TURF AREAS

- 6.1 Turf areas should be cultivated before turfing by ripping or harrowing.
- 6.2 At the completion of turfing the whole area shall be thoroughly soaked and kept moist till the completion of landscape works.

7. MULCH

- 7.1 Mulch for all general mass planted beds shall be 'Droughtmaster' mulch as supplied by A.N.L. or similar.

8. SOIL

- 8.1 Site topsoil is to be clean and free of unwanted matter such as gravel, clay lumps, grass, weeds, tree roots, sticks, rubbish and plastics, and any deleterious materials and materials toxic to plants. The topsoil must have a pH of between 5.5 and 7. Use 100% imported soil mixed when site topsoil runs out.
- TOP SOIL SHOULD BE NO LESS THAN MINIMUM REQUIRED IN ALL PLANTED AREAS. New gardens & proposed Planting New garden and planting areas shall consist of a 50/50 mix of clean site soil (refer d) below) and imported soil if required. All mixes are to comply with AS4419-2016 Soils for Landscaping and garden use, & AS 4454 Composts, Soil conditioners & mulches. Specified Soil Mix - Turf The specified soil mix for all turf areas shall be a min 75mm layer of imported soil mix consisting of 80% washed river sand (reasonably coarse), and 20% composted organic matter equivalent to mushroom compost or soil conditioner, or other approved lawn top dress.
- Roof garden The A Horizon (the top 300mm) of a Roof garden Soil Profile needs a free draining, non-slumping material that has a level of organic matter to improve nutrient levels in the soil.

MAINTENANCE SCHEDULE

- 1. Maintenance shall mean the care and maintenance of the landscape works by accepted horticultural practice as rectifying any defects that become apparent in the landscape works under normal use.
- 2. Weed Eradication
Weed growth that may occur in grassed, planted or mulched areas is to be removed using environmentally acceptable methods i.e. non-residual glyphosate herbicide (e.g. 'Roundup', applied in accordance with the manufacturer's direction).
- 3. Tree Replacement
Trees and plants shall show signs of healthy vigorous growth and be free from disease and not exhibit signs of stress prior to installation. Any trees or plant that die or fail to thrive, or are damaged or stolen prior to handover will be replaced. Replacement material shall have the initial maintenance period extended in accordance with the landscape contract conditions.
- 4. Stakes
Adjust and/or replace stakes and ties where required. Remove staking and guying when trees and plants are established.
- 5. Pruning
Selective pruning may be required during the establishment period to promote a balanced canopy structure. These activities shall be carried out to the best horticultural and industry practice. All pruned material is to be removed from site.
- 6. Mulched Surfaces
All planter beds and garden areas shall have a minimum depth of 50mm organic mulch. All mulch is to be free of deleterious matter such as soil, weeds, sticks and should conform to AS 4454. Mulched surfaces are to be kept clean and tidy and free of any deleterious material and foreign matter. Top up mulch levels prior to handover to client if required.
- 7. Watering
Implement an appropriate hand watering regime in areas not irrigated in association with current watering programme to maintain plant health and vigour. The program shall reflect seasonal conditions and plant species.
Frequency: Weekly or as required until plants are established.
- 8. Pest and Disease Control
The Landscape Contractor shall spray for pests and disease infestations when the pest and fungal attack has been positively identified and when their populations have increased to a point that will become detrimental to plant growth. Apply all pesticides to manufacturer's directions.
Frequency: weekly inspection until handover to client.
- 9. Fertilising
Generally check for signs of nutrient deficiencies (yellowing of leaves, failure to thrive), and adapt fertiliser regime to suit. Fertiliser should be applied at the beginning and the end of the (summer) growing season.
- 10. Irrigation
A sub surface dripper style, electrically automated self timed irrigation system is recommended to be supplied to all garden bed areas and planter container. Regular checks are to be made to ensure continued successful operation. The Landscape Contractor shall be responsible for coordination and engagement of a specialist irrigation designer and installation contractor to design, supply and install an automatic subterranean drip irrigation system to all raised planter beds. The irrigation system will need to provide designated landscaped areas with enough water for vigorous healthy plant growth. As a general rule landscaped areas will need 20-25mm, species dependant, of water per week. The landscape Contractor will need to monitor natural rainfall using a rain switch in order to set irrigation flow rates accordingly on a monthly basis.
- 11. Standards
All grown or purchased plant stock must conform to all the conditions and requirements given in NATSPEC Guide: Specifying Trees. Soils to be in accordance with AS4419, mulching composts and conditioners to be in accordance with AS4454. Soils should conform to best practice specifications as listed in the Landscape Soils Handbook (Simon Leake & Elke Haeg 2017).

No.	Date	Revision Notes	Zone	Approvals	No.	Date	Issue Notes
					A	21/08/22	ISSUE FOR DA



NOTES:
THIS DRAWING IS FOR GUIDANCE ONLY. FINAL DETAILS MUST MEET SITE CONDITIONS, RELEVANT AUTHORITIES AND APPLICABLE BUILDING STANDARDS. VERIFY ALL DIMENSIONS ON SITE AND WITH DETAILED SITE SURVEY PRIOR TO OFF SITE FABRICATION.
PLEASE NOTE THAT THE PLANT GRAPHICS ARE INDICATIVE SIZES ONLY AND NOT AN ACCURATE REPRESENTATION AT TIME OF PURCHASE.
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DESIGNING GARDENS FOR LIVING IN
52 condamine st Balgowah Phone: 0411082380
Info@libbybirleygardendesign.com.au www.libbybirleygardendesign.com.au
ABN: 76 135 154 255

Project Title
**Proposed Residential Development
72 Kurraba Road
Neutral Bay**

Project ID
Client
R Virgona & K Quinlivan

Scale
A3

Sheet No.
Sht-2
of
2

Sheet Title
Specification & Planting Detail

Date
20/08/22

CAD File Name
72 Kurrabard-vwx

Drawn By
LA

Reviewed By
MS

4 Environmental Assessment

4.1 Section 4.15 of the Environmental Planning & Assessment Act, 1979

The following section of the report assesses the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 4.15 of the Environmental Planning & Assessment Act, 1979 as amended.

Under the provisions of the Environmental Planning and Assessment Act 1979 (the Act), the key applicable planning considerations, relevant to the assessment of the application are:

- State Environmental Planning Policy (Housing) 2021 (Although the SEPP does not apply in this instance as the site is zoned R2, considerations have been made with regard to these controls to demonstrate the reasonableness of what is being proposed)
- Other State Environmental Planning Policies – as relevant
- North Sydney Local Environmental Plan
- North Sydney Development Control Plan

The application of the above plans and policies is discussed in the following section of this report.

The application has been assessed against the relevant heads of consideration under Section 4.15 of the Act; a summary of these matters are addressed within Section 7 of this report, and the town planning justifications are discussed below.

4.2 Existing Use Rights

The subject property is zoned R2 Low Density pursuant to LEP. Boarding Houses are prohibited in the zone and is no longer a permissible use under the new Housing SEPP 2021. Boarding houses are defined below:

boarding house means a building or place—

- (a) that provides residents with a principal place of residence for at least 3 months, and*
- (b) that contains shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
- (c) that contains rooms, some or all of which may have private kitchen and bathroom facilities, and*
- (d) used to provide affordable housing, and*
- (e) if not carried out by or on behalf of the Land and Housing Corporation—managed by a registered community housing provider,*

ENVIRONMENTAL ASSESSMENT

but does not include backpackers' accommodation, co-living housing, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.

The application proposes alterations and additions to the existing boarding house with the use to be retained and continued.

To that extent, it is necessary to establish that the property benefits from existing use rights in accordance with section 4.65 of the Environmental Planning and Assessment Act 1979, as amended. Pursuant to the Act an "existing use" means:

- (a) *the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and*
- (b) *the use of a building, work or land:*
 - (i) *for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
 - (ii) *that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.*

Clause 4.66 of the Act deals with the continuance of and limitations on existing use and indicates that:

- (1) *Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.*
- (2) *Nothing in subsection (1) authorises:*
 - (a) *any alteration or extension to or rebuilding of a building or work, or*
 - (b) *any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or*
 - (c) *without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or*
 - (d) *the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 4.17(1)(b), or*

ENVIRONMENTAL ASSESSMENT

- (e) *the continuance of the use therein mentioned where that use is abandoned.*
- (3) *Without limiting the generality of subsection (2)(e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.*

Clause 41(1) of the Environmental Planning and Assessment Regulation 2000 (the Regs) states that:

- (1) *An existing use may, subject to this Division:*
- (a) *be enlarged, expanded or intensified, or*
 (b) *be altered or extended, or*
 (c) *be rebuilt, or*
 (d) *be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act,*

In this regard, we have undertaken a review of available Council records and can confirm that the site has been used as a boarding house or equivalent throughout its life. The history of the site and its use is detailed in the heritage impact statement provided with this application. The history of the site can be summarised by the following:

- The exact construction of 'Lucellen' is unknown however likely to be early 20th Century (c. 1904)
- Throughout the life of the property it has been used as a boarding house. Rental advertisements have been provided which demonstrates its use. The inter-war period and great depression saw advertisements targeted towards lower income persons.

ENVIRONMENTAL ASSESSMENT

NEUTRAL Bay.—"Lucellen," Detached Residence, contg. 10 rms., all convs., 3min. Hayes-st. ferry, corner Ben Boyd and Kurraba roads.

Figure 9. Rental Advertisement 1907 (Source: Trove, <http://nla.gov.au/nla.news-article238080828>).

NEUTRAL BAY. Lucellen, 82 Kurraba-rd.—Gent.'s Room vacant, 2 minutes ferry. Telephone, 640 N.S.

Figure 10. Rental Advertisement 1910 (Source: Trove, <http://nla.gov.au/nla.news-article15088723>).

NEUTRAL BAY.—Lucellen, 82 Kurraba-rd, Dble. and Sgle. Room vacant; harb. view. 'Ph., 646 N.S.

Figure 11. Rental Advertisement 1915 (Source: Trove, <http://nla.gov.au/nla.news-article28109664>).

NEUTRAL BAY.—furn. Rooms, 'phone, heater, 2 mins. ferry. Lucellen, 82 Kurraba-rd.

Figure 12. Rental Advertisement 1923 (Source: Trove, <http://nla.gov.au/nla.news-article16069777>).

SYDNEY.
I know what you want to know—where to find reasonable, comfortable, and convenient ACCOMMODATION on your arrival in Sydney. Write or wire H. JAMES, 82 Kurraba Road, Neutral Bay, Sydney. Telephone A3373.

Figure 13. Rental Advertisement 1929 (Source: Trove, <http://nla.gov.au/nla.news-article4007641>).

NEUTRAL BAY, 82 Kurraba-rd (top Mann's-ave).
—Two Furnished Flats, 35/ 20/

Figure 14. Rental Advertisement 1931 (Source: Trove, <http://nla.gov.au/nla.news-article16823947>).

NEUTRAL BAY, 72 Kurraba-rd (corner Ben Boyd-rd).—Brick Villa, 8 rooms, kitchen, 50/. Excellent position, near wharf. Key at No. 74. H. W. HORNING and CO., LTD., 15 Martin-place.

Figure 15. Rental Advertisement 1936 (Source: Trove, <http://nla.gov.au/nla.news-article17339479>).

Image 3: Rental advertisements dating back to 1907 – The property was previously known as 82 Kurraba Road

- From 1965 onward the property has been licensed and registered as a boarding house with North Sydney Council. Evidence is provided below and included in the HIS as well

ENVIRONMENTAL ASSESSMENT

THE COUNCIL OF THE MUNICIPALITY OF NORTH SYDNEY

BOARDING HOUSES AND HOUSES LET IN LODGINGS

APPLICATION FOR RENEWAL OF LICENCE

LOCAL GOVERNMENT ACT, 1919, ORDINANCE No. 42.

NORTH SYDNEY MUNICIPALITY
REGISTRATION No. A
DATE RECEIVED 15 JUL 1965
FILE No. 2919

I/We the undersigned proprietor/s hereby apply to the Council of the Municipality of North Sydney for a license to keep, manage or control premises as:

(i) A Boarding House or (ii) A House Let in Lodgings

For which I/We enclose the prescribed fee of £2.

1. Full Name/s of Applicant/s and Residential Addresses for Service of Notices

2. Address of Premises for which License is required *72 KURRABA RD Neutral Bay*

3. State number of rooms in the premises and give description thereof as per schedule:

(i) Bedrooms for use by Boarders or Lodgers
(ii) Number of Bathrooms
(iii) Number of Shower Recesses
(iv) Number of Toilets
(v) Other Rooms, (Lounge, Dining, etc.)

4. State the maximum number of Boarders and/or Lodgers which it is proposed to accommodate:

(i) Males (Over five years of age)
(ii) Females

5. If this Application relates to a house let in lodgings, give description of conditions of lettings:

(i) Are lettings furnished or unfurnished?
(ii) Does the proprietor contract to supply each lodger with:
(a) Bed linen?
(b) Towels?
(c) Soap?

6. If the proprietor/s is/are intending to reside on the premises with members of family, Give names of such members of family and relationship to proprietor/s, in accordance with the definition of "Family" under Ordinance No. 42.

NAME OF PERSON	RELATIONSHIP TO PROPRIETOR

If the applicant intends to keep, control or manage the premises on behalf of some other person, the Name and Address of such other person must be stated:

Signature of Witness: _____ Signature of Intending Proprietor: *[Signature]*

Occupation: _____ Date of Application: *1 July 1965*

Address: _____

FOR OFFICE USE ONLY

Fee Paid: £. *2/0/0* Receipt No. *18397* Date *15/7/65* License No. _____

INSPECTORS REPORT

Signature of Inspector: _____ DATE: _____

HEALTH INSPECTOR
15 JUL 1965

Image 5: Renewal of licence for Boarding house in 1965

ENVIRONMENTAL ASSESSMENT

- In 1995 Council wrote to the owners confirming that the site is recognised as a boarding house.

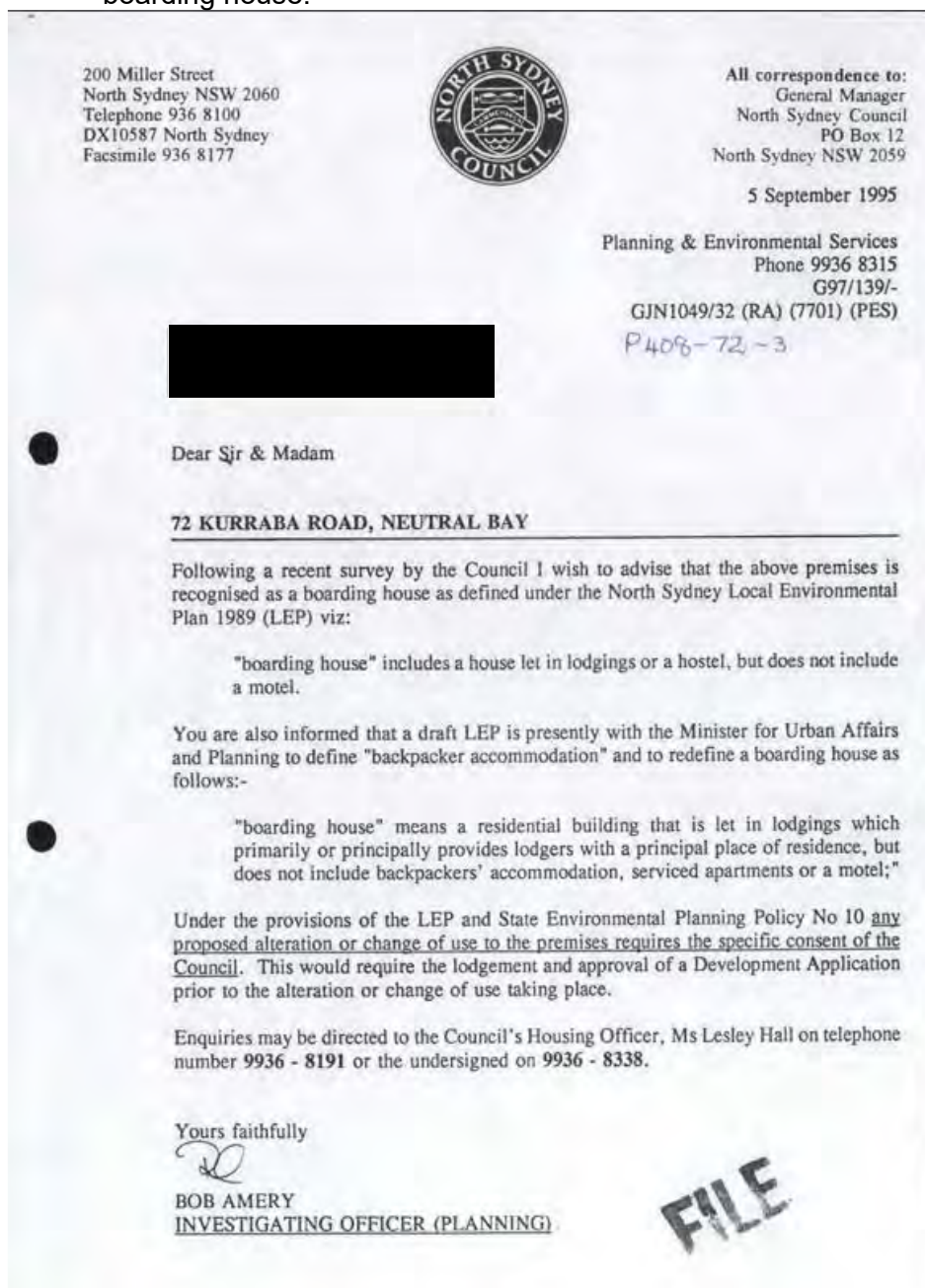


Image 6: Letter from Council confirming the use as a 'boarding house' from 1995

The use as a boarding house has continued to this day and is registered as such with North Sydney Council.

It is evident that the building use has been continuously occupied and used as a boarding house throughout its life and will continue the use with the proposed alterations and additions.

ENVIRONMENTAL ASSESSMENT

Under such circumstances, we have formed the considered opinion that the existing boarding house benefits from existing use rights pursuant to section 4.65 of the Act. We have also formed the considered opinion that such existing use rights have not been abandoned with the proposed development providing for alterations and additions to the existing boarding house.

With regards to the relevant matters for consideration in the assessment of the application, Clause 4.67 of the Act provides, through the applicable Regulations, for the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use. It also states that an environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force.

In this regard, any provision of an environmental planning instrument, including an LEP or DCP must not derogate from the Regulations and to that extent no numerical controls strictly apply to the assessment of the proposed development.

Notwithstanding it is accepted that as identified in *Fodor Investments v Hornsby Shire Council* (Proceedings 10882 of 2004) that the Section 4.15(1) matters for consideration pursuant to the Act are still relevant so far as they do not serve to derogate from the Regulation with more recent case law establishing that a clause 4.6 variation request is still required for any variation to a development standard.

The Land and Environment Court of NSW has adopted planning principles relating to the assessment of applications where existing use rights have been established. These assessment criteria are detailed in *Fodor Investments v Hornsby Shire Council* [2005] NSWLEC 71 (*Fodor*) and further defined in *Stromness Pty Ltd v Woollahra Municipal Council* [2006] NSWLEC 587. Notwithstanding, under recent caselaw in *Saffioti vs Kiama Municipal Council* [2018] NSWLEC 1426, it was recognised that LEP and DCP controls should still be considered.

An assessment of the application against the planning principles is undertaken below:

1. *How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?*

With respect to the first principle, *Fodor* establishes that:

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessment.

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Response: The site is heritage listed and efforts have been made to ensure the heritage value of the item is not diminished with the proposed alterations and additions. A pre-lodgement meeting was undertaken which provided feedback on the built form which has been incorporated into the design. Most notably the rear extension is confined to a single storey with appropriate side setbacks for what is an irregular shaped allotment. In this regard, the built form is reflective of the scale of development on adjoining R2 zoned properties.

2. *What is the relevance of the building in which the existing use takes place?*

With regard to the second principle, *Fodor* establishes that:

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Response: No change of use is proposed and the heritage listed building is to be preserved. The works to the heritage listed building involve internal reconfigurations and retains areas of significance within the building where appropriate. The single storey addition to the rear does not raise any concerns with regard to bulk and scale. A single storey addition was proposed to ensure the heritage listed building remains the dominant character within the streetscape.

3. *What are the impacts on adjoining land?*

With respect to the third principle, *Fodor* establishes that:

The impact on adjoining land should be assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Response: No unreasonable amenity impacts are anticipated with the proposed works. The rear extension is confined to a single storey to ensure amenity impacts are minimised to adjoining dwellings with regard to privacy, overshadowing or view loss.

4. *What is the internal amenity?*

With respect to the fourth principle, *Fodor* establishes that:

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above

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suggests that development on sites with existing use rights have lower amenity than development generally.

Response: The desire to proceed with the development is to improve the quality of the existing rooms and increase the amenity for occupants. The works will bring the building into greater compliance with the BCA and Accessibility standards however is made challenging with the site being a heritage item. Each boarding room will have a kitchen and bathroom providing excellent levels of amenity for occupants. The internal amenity will be vastly improved with the works.



CLAUSE 4.6 REQUEST TO VARY HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

72 Kurraba Road,
Neutral Bay

Suite 1, 9 Narabang Way Belrose NSW 2085

Phone: (02) 9986 2535 | Fax: (02) 9986 3050 |

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4.6 Request to Vary Development Standard

Alterations and Additions to Existing Boarding House

72 Kurraba Road, Neutral Bay

William Fleming

BS, MPLAN (UTS)

Suite 1/9 Narabang Way
Belrose NSW 2085

Tel: (02) 99862535

October 2022

1.0 Introduction

This clause 4.6 variation request has been prepared in support of a building height variation associated with a development application proposing alterations and additions to an existing boarding house on the subject site.

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130. *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582

2.0 North Sydney Local Environmental Plan 2014 (NSLEP)

2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3 of NSLEP the height of a buildings permissible on the site is a maximum of 8.5 metres. The objectives of this control are as follows:

(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.*

Building height is defined as follows:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

Ground level existing is defined as follows:

ground level (existing) means the existing level of a site at any point.

We note that the interpretation of ground level (existing) as that established in the matter of *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582* where at paragraphs 73 and 74 O'Neill C found:

73. The existing level of the site at a point beneath the existing building is the level of the land at that point. I agree with Mr McIntyre that the ground level (existing) within the footprint of the existing building is the extant excavated ground level on the site and the proposal exceeds the height of buildings development standard in those locations where the vertical distance, measured from the excavated ground level within the footprint of the existing building, to the highest point of the proposal directly above, is greater than 10.5m. The maximum exceedance is 2.01m at the north-eastern corner of the Level 3 balcony awning.

74. The prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.

The breach to the 8.5m development standard is considered to be technical as the offending works are confined within an existing roof cavity. The existing maximum height of the building, which is measured at approximately 9.7m, will not change. The works proposed above the 8.5m are located within the existing roof and will not be seen. The section drawing below details the works in question.

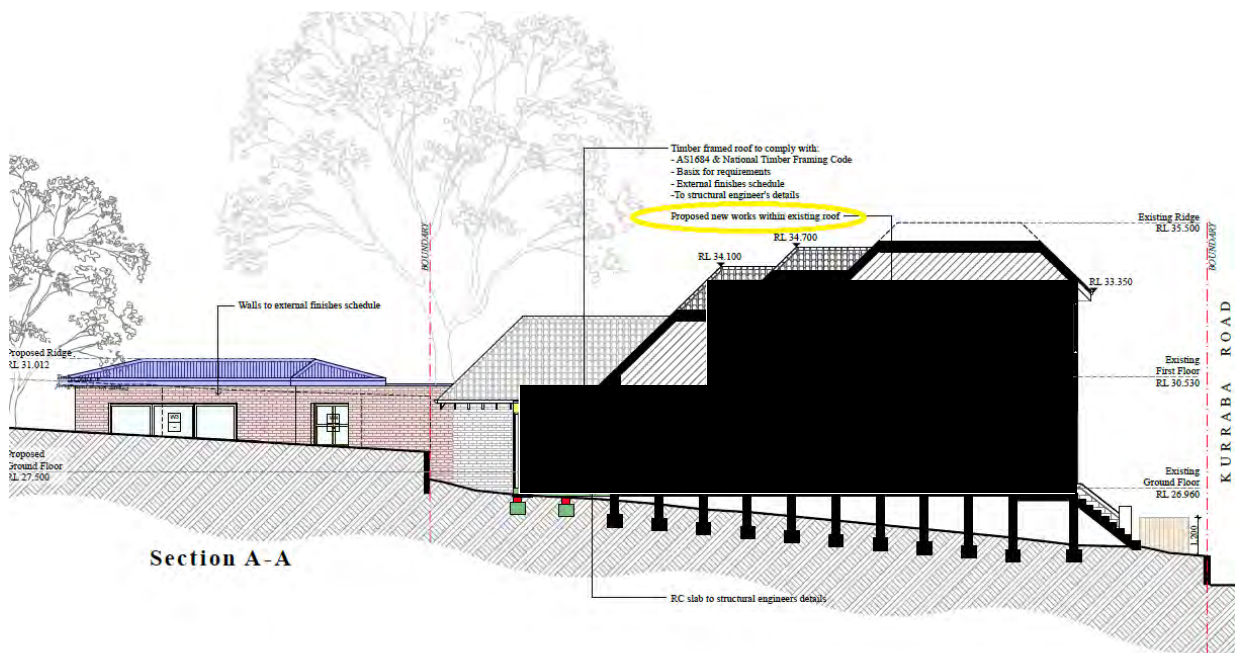


Image 1: Section drawing with internal works to the existing roof proposed.

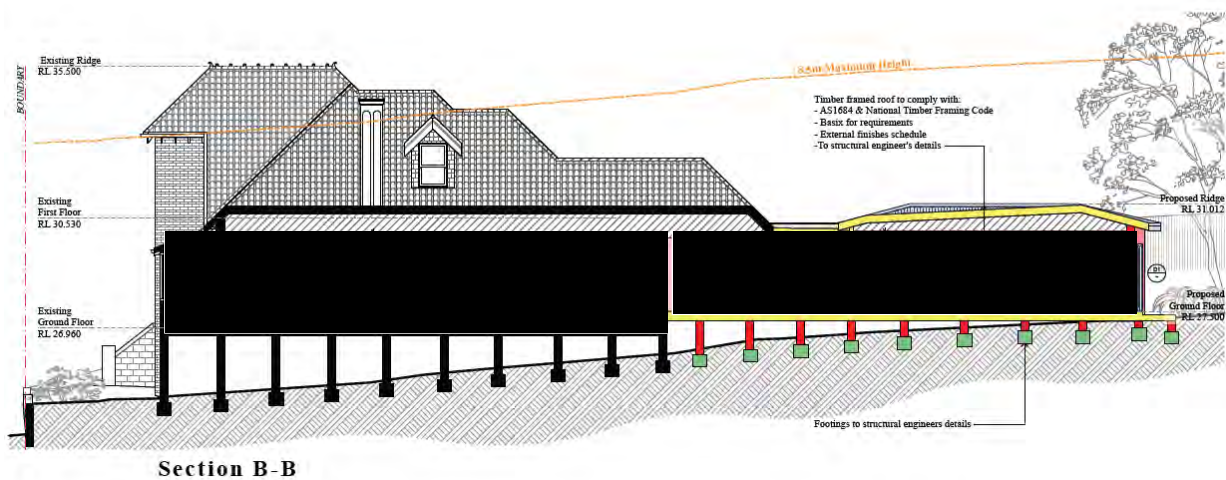


Image 2: Section drawing showing the 8.5m height plane.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of NSLEP provides:

(1) *The objectives of this clause are:*

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of NSLEP provides:

- (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.*

This clause applies to the clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) of NSLEP provides:

- (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.*

The proposed development does not comply with the height of buildings provision at 4.3 of NSLEP which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of NSLEP provides:

(4) Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Director-General has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development 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 (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 5th May 2020, attached to the Planning Circular PS 18-003 issued on 5th May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of NSLEP provides:

- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of NSLEP from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance*

with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of NSLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of NSLEP?

4.0 Request for variation

4.1 Is clause 4.3 of NSLEP a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 4.3 NSLEP Prescribes a fixed building height provision that seeks to control the height of certain development. Accordingly, clause 4.3 NSLEP is a development standard.

4.2A Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Response: The height breach occurs within the existing roof cavity of the heritage listed development. Not considered relevant to the proposal.

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

Response: No impact on views

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

Response: The non-compliance is internal and will not result in any overshadowing impacts.

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

Response: The area of non-compliance does not impact on privacy of adjoining residents

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

Response: The existing scale of development is unchanged.

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

Response: The existing scale and the character of the heritage item is to be preserved.

(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.

Response: Achieved. 2 storeys in an R2 zone.

Consistency with zone objectives

The subject site is zoned R2 low density residential pursuant to NSLEP. The stated objectives of the zone are as follows:

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

Response: The works relate to alterations and additions to an existing boarding house that benefits from existing use rights. The works will improve the quality of the boarding rooms as well as increasing the stock of affordable rental housing in the area.

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

Response: N/A

- *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.*

Response: The works relate to an existing boarding house. The works have been sensitively designed to preserve the value of the heritage item and also provide affordable rental housing options within the North Sydney LGA.

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

Response: The works proposed will retain a high level of amenity for adjoining properties. The single storey addition to the rear does mitigate unreasonable impacts with regard to overshadowing, privacy and view impacts.

4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening 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].*

Sufficient environmental planning grounds

The resultant encroachment to the development standard relates to internal works within an existing roof cavity which is an existing non-compliance. There is no increase to the established height of the building. As such, there is no amenity, visual or streetscape impacts associated with the area of non-compliance.

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the R2 Low Density Residential

The consent authority needs to 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.

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 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 development is proposed to be carried out.

Accordingly, the consent authority 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.

4.4 Secretary’s concurrence

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determinations are subject to, compared with decisions made under delegation by Council staff. Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- (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.*

As such, I have formed the considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.



“LUCELLEN”

Operational Plan of
Management

Boarding House

72 Kurraba Road

Neutral Bay

November 2022

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9. Cleaning & Maintenance
10. Safety & Security

1. Introduction

This Plan of Management is for the operation of the boarding house at 72 Kurraba Road Neutral Bay. The primary purpose of this plan is to ensure the boarding house maintains a high level of amenity for neighboring properties and for all boarders residing in the premises.

2. Definitions

In this Plan of Management, the following definitions apply:

- Building: means the Heritage Listed building known as Lucellen located at 72 Kurraba Road Neutral Bay
- SOU: means self-occupied unit.
- Business: means the operation of the building as a boarding house.
- Common areas: means the common room, laundry, the stairs and external communal area identified on the approved plans.
- Common open space means the external communal area
- Council: means North Sydney Council.
- Boarder, Lodger means a person having the benefit to use a nominated bedroom and the common areas within the building.
- Manager: means the Manager engaged by the business proprietor.
- Owner: means the registered proprietor/s of the building; &
- Room: means that sole part of the building occupied and used by a boarder/lodger.

3. Location

3.1 Location

This Operational Plan of Management was prepared for a boarding house at 72 Kurraba Road Neutral Bay. The location of the premises is shown on the google map below on the corner of Ben Boyd and Kurraba Roads.



3.2 Consent

The boarding house was approved on [INSERT DATE OF DA CONSENT] and is subject to compliance with the Conditions of Consent [INSERT DA CONSENT NUMBER].

4. Management

The boarding house will have an offsite Manager. The Manager will have a range of responsibilities including:

- Be contactable between business hours of 9am to 5pm Monday to Saturday inclusive.
- Selection of tenants, assessment of tenant eligibility and administration of the tenancy agreement.
- Oversee all residential concerns regarding the operation and management of the premises.
- Administer and maintain the House Rules.
- Organise the cleaning and maintenance of the common areas and common open space areas.
- Enforce the maximum occupancy levels.
- Provide boarders with the appropriate information prior to the commencement of occupation including a hard copy of this Plan.
- Carry out inspections on a regular basis at a minimum of once every 3 months to ensure that the building is maintained in a clean and tidy condition and that all facilities and fittings are appropriately maintained.
- Record all inspections in a logbook which must be made available to Council upon request.
- Organise the waste collection and facilities need for the site, and the ongoing storage and collection of waste on-site including transfer of waste to and from collection points for the waste collection service as required and regular cleaning of bins/waste storage areas/rooms.
- Maintain an accommodation register.
- Maintain a complaints and incident report register.
- Ensure fire safety inspections are undertaken annually and that the fire safety equipment is working.
- Notify the Council in writing within 1 month of any change in the management and provide contact details for the new management; &
- Maintain effective ongoing contact with neighbors and the local community.

4.1 Complaints & Incidents

The Resident Manager is responsible for recording any complaints in a Complaints Register and Incident Report Register which are to be available to surrounding neighbors, Council and Police upon request. The registers shall detail how and when any complaints and incidents are dealt with.

The registers will contain:

- Complaint/incident date and time
- Name of person/police/Council making the complaint/incident
- Contact details
- Nature of the complaint/incident
- Action taken (by whom and when)
- Outcome and/or further action required

All complaints/incidents shall be dealt with by management within 24 hours of notification.

4.2 Public Liability Insurance

The owners will maintain a public liability cover of \$20 million.

4.3 Noise Management

The Resident Manager will ensure the following measures are complied with:

- No live or amplified music is permitted in the communal open space.
- No music or television sounds are to be audible beyond individual rooms.
- Access to the outdoor communal areas should be restricted to no later than 10pm and no earlier than 7am.
- When noisy activities are occurring in the indoor communal living areas, doors and windows must be closed.

5. Boarder Information & Accommodation

5.1 Maximum Number of Lodgers

The boarding house will comprise a total of 9 SOUs, made up of 6 doubles and 3 single rooms. As a result, the boarding has the capacity to accommodate up to a maximum of 15 people.

No more than two adult boarders shall be permitted in the rooms. It is the Manager's responsibility to ensure that these numbers are not exceeded. Greater occupancy than those registered shall result in cessation of occupancy.

5.2 Record of Residents Special Needs

To be completed by every person and includes but is not limited to emergency contacts, disability access and any other information volunteered by resident in initial consultation in relation to special needs or personal information.

5.3 Accommodation Registration

A hard copy of this Plan is to be provided to each new boarder upon arrival. Failure to adhere to this Plan will result in cessation of occupation. In addition, a full copy of this Plan of Management will be permanently displayed in each boarding room and each common area and available upon request.

Each boarder is to be registered by the Resident Manager and a copy of this Plan is to be signed by the boarder.

An Accommodation Register will be maintained providing details of all occupants, length of stay and payment details.

The occupant will view the accommodation prior to entering into the tenancy agreement to ascertain suitability of the accommodation.

The boarding house incorporates two (2) accessible SOUs for use by persons with disability. The accessible SOUs are in the pre adaptable configuration and will be modified by the operator according to the specific needs of the occupant.

Each lodger is to sign an Occupancy Agreement and House Rules Agreement

5.4 Boarder/Lodger Information

Upon arrival, boarders are to be issued with an information sheet providing general details about the premises as well as pointing out that boarders need to take the neighbors interests into account when leaving and entering the property. Information on boarder/lodger roles and responsibilities be provided to all as part of orientation to the boarding house and to be prominently displayed in a communal space within the premises.

Upon signing the Occupancy Agreement, each boarder will be provided with a printed copy of the relevant publications from Fair Trading for boarders and lodgers as required by law. A duplicate copy of the relevant publications will be signed by the boarder as acknowledgement that they have received the publications is to be kept with the Occupancy Agreement held by the boarding house operator to verify that the materials has been issued.

5.5 Boarder Identification

The Resident Manager will require a photo ID (egg: typically, either passport or drivers license) from each boarder. Where the person is an Australian and does not hold a driver's license then alternative ID which may not hold a photo may be accepted.

5.6 Visitors

Visitors to the premises are only permitted in the property until 10pm and not before 7am. Any boarder inviting visitors to the premises must accept full responsibility for them and their behavior. Visitors are permitted to access the rooms and common areas only if they are in the company of the boarder.

6. Boarding House Furniture and Facilities

6.1 Boarding Rooms

All rooms are to be fully furnished and no boarder may bring their own furniture to the premises.

Each room shall be provided with:

- Bed including base and mattress
- Wardrobe
- Mirror
- Table and chair
- Sofa
- Suitable lighting
- Waste receptacles including recyclables
- Curtains/blinds
- Kitchenette to include sink, bench, storage, bar fridge and microwave
- Bathroom (shower, toilet, basin and mirror)

6.2 Laundry

The laundry will include the required provision of energy efficient washer and dryer.

Access to the laundry will be secure and available to residents only.

A broom, bucket and mop to be kept in the laundry for use by boarders.

6.3 Common Areas

There is a common area located on the ground floor at the rear of the building.

The common area will be provided with tables, chairs, lounges and television.

There is also a common garden area located at the rear of the building.

7. House Rules

The house rules detail the following:

1. The property aims to provide a community based, safe and friendly environment for all boarders.
2. All boarders are encouraged to treat other boarders with respect and not undertake any anti-social or unsafe actions.
3. Zero tolerance policy on all illegal drug use or possession with immediate termination of any boarder in possession or under the influence of any illegal drugs.
4. No alcohol is permitted to be consumed in the communal rooms or in the communal open spaces outside the hours of 12:00-10:00pm with noise to be kept to a minimum.
5. No smoking is permitted throughout the building or room and in areas which may affect the amenity of other residents of the boarding house or of residents of neighboring properties.
6. No live or amplified music is permitted in the communal open space area nor is music to be audible beyond individual rooms.
7. The occupants shall use no additional furniture or appliances without prior consulting the Manager.
8. No visitors are permitted on the premises after 10pm or before 7am. No keys are to be provided to visitors without the permission of management.
9. Access to the outdoor communal areas should be restricted to no later than 10pm and no earlier than 7am.
10. No live or amplified music is permitted in the communal open space.
11. Boarders shall not contribute to excessive noise or unruly behavior.
12. Rooms and common areas shall be kept clean at all times.
13. No pets are permitted on the premises or rooms without written approval of management.

8. Fire Safety

A copy of the annual fires safety compliance statement shall be displayed in a prominent location. Essential fire safety measures to comply with the Environmental Planning and Assessment Regulation 2000.

Mattresses, curtains and furniture will be of materials that resist the spread of fire and limit the generation of smoke and heat.

An evacuation plan must be clearly displayed in each room and common room. A floor plan must be permanently fixed to the inside of the door of each sleeping room to indicate the available emergency egress routes from the respective sleeping room. All residents are to be made aware of the fire safety features of the building and what do in the event of an emergency.

The Manager's contact phone number must be clearly displayed at the entrance of the premises whilst also being available in each room. Other emergency contact details (police, fire, ambulance) as well as utility information (gas, electricity, plumbing) are to also be clearly visible in each room.

Annual certification of Fires Safety Equipment and preparation of the Form 15a is carried out by a fire safety consultant. Annual certification required of any of the equipment is overseen by the owners.

9. Cleaning and Maintenance

9.1 Site Cleaning

The Manager will ensure that the premises are at all times maintained in a safe and healthy condition.

The common open space areas are to be maintained in a neat and orderly manner with regular mowing and garden maintenance. The common areas are to be professionally cleaned by a contractor at least once a week. Pest control by a professional contractor shall be carried out at least once a year.

9.2 Waste Management and Recycling

All boarders shall be responsible for disposing their waste to the garbage bins and are to utilise the general waste, paper/cupboard and bottle/can recycling provisions. Each boarder is responsible to ensure that the bins are emptied in the waste storage area.

The Manager is to be responsible for the collection arrangements, including making sure that the waste containers are placed appropriately at the curbside on the day of collection and removed back promptly after collection.

9.3 Management of Outdoor Areas

The Manager will ensure that the outdoor areas remain clean and that any damaged furniture or property is immediately fixed or replaced. The Manager will also ensure that the trees and landscaping are regularly maintained.

10. Safety and Security

A key will be issued to all boarders with no additional cards to be issued to visitors.

Any boarder failing to observe the rules and any cases of serious misconduct will be dealt with by the Manager who may require a boarder to leave the premises. Examples of serious misconduct include, but are not limited to drug or alcohol abuse, sexual, racial or religious harassment, theft or violence. Boarders are to advise the Manager if another boarder is performing illegal acts on the property. The Manager shall call the police in such instance.

The following matters are to be provided within the property:

- Internal signage indicating the Manager's details and contact numbers.
- Emergency contact numbers for essential services including fire, ambulance, police and utilities such as gas, electricity, plumbing and the like.
- Individual room keys (a master key is to be maintained by the manager and made available to the fire brigade).
- Landline telephone within a common area available for use by residents in the event of an emergency.