

**NSLPP MEETING HELD ON 03/05/2023****Attachments:**

1. Site Plan
2. Engineering Methodology
3. Architectural Plan Set
4. Clause 4.6 Variation Request

**ADDRESS/WARD:** 58 Cowdroy Avenue, Cammeray**APPLICATION No:** 60/22**PROPOSAL:** Demolition of existing dwelling and ancillary structures and construction of a dwelling house and associated works including a guest suite and a swimming pool.**PLANS REF:**

Plan No.	Issue date/Rev	Description	Prepared by	Dated
MD01	January 2020	Existing site plan	COSO Architecture	January 2020
MD02	January 2020	Existing North Elevation	COSO Architecture	January 2020
MD03	January 2020	Existing South Elevation	COSO Architecture	January 2020
MD04	January 2020	Existing East Elevation	COSO Architecture	January 2020
MD05	January 2020	Existing West Elevation	COSO Architecture	January 2020
MD06	January 2020	Existing Section A-A	COSO Architecture	January 2020
DA 00a	December 2021	Proposed Demolition Plan	COSO Architecture	December 2021
DA 00b	December 2021	Bulk Excavation Diagram	COSO Architecture	December 2021
DA 01	March 2023	Site Plan	COSO Architecture	March 2023
DA 02	October 2022	Lower level floor plan	COSO Architecture	October 2022
DA 03	October 2022	Mid-level Floor Plan	COSO Architecture	October 2022
DA 04	October 2022	Upper level Floor Plan	COSO Architecture	October 2022
DA 05	March 2023	Entry level Floor Plan	COSO Architecture	March 2023
DA 06	March 2023	Section A-A	COSO Architecture	March 2023
DA 07	October 2022	Section B-B and C-C	COSO Architecture	October 2022
DA 08	March 2023	Section D-D	COSO Architecture	March 2023
DA 09	October 2022	West Elevation	COSO Architecture	October 2022
DA 10	March 2023	North Elevation and South Elevation	COSO Architecture	March 2023
DA 11	October 2022	East Elevation	COSO Architecture	October 2022
DA 12	October 2022	9am Winter Solstice Shadow Diagram	COSO Architecture	October 2022
DA 13	October 2022	12pm Winter Solstice Shadow Diagram	COSO Architecture	October 2022
DA 14	October 2022	3pm winter Solstice Shadow Diagram	COSO Architecture	October 2022
DA 15	October 2022	Winter Solstice Elevational Shadow Diagram	COSO Architecture	October 2022
DA16	October 2022	Site Calculations Diagram	COSO Architecture	October 2022
DA 17	October 2022	External Materials / Finishes Palette	COSO Architecture	October 2022
DA 18	December 2021	Height Blanket Diagram	COSO Architecture	December 2021
DA 19	December 2021	Height Blanket Plan	COSO Architecture	December 2021
DA 20	December 2021	Concept Hydraulic and Sedimentation Plan	COSO Architecture	December 2021
DA 21	December 2021	Evolution Diagram	COSO Architecture	December 2021
DA 22	December 2021	56 Cowdroy Ave View Loss	COSO Architecture	December 2021

Sheet 1 Project Ref. S15124VP	Rev A	Plan showing view impact from adjoining property	P.S. Graham and Associates Registered Surveyors	3 July 2020
RFI 01	March 2023	View Loss Reduction	Urbaine Architecture and COSO Architecture	March 2023
RFI 02	March 2023	Block diagram oblique views	COSO Architecture	March 2023
Ref. No. S 15124C Sheets 1 to 4		Detail Survey and Sections AA, BB and CC	P.S. Graham and Associates Pty Ltd	24 August 2018
	4 November 2022	Amended Statement of Environmental Effects	LJB Urban Planning	4 November 2022
		Clause 4.6 Variation Request	LJB Urban Planning	7 February 2022
	4 November 2022	Response to Request for Additional Information	LJB Urban Planning	4 November 2022
Ref. S7723 S.1.01 and S.1.02	Issue B	Driveway Crossing Plan and Sections	D'Ambrosio Consulting Structural Engineers	No date
Project Ref. S7723 Issue 01 Drawings S.2.01, S.2.02, S.3.01, S.3.02, S.3.03	Issue 02	Excavation and Demolition Methodology Plan and Engineers Details	D'Ambrosio Consulting Structural Engineers	22 March 2023
		Statement of Approximate Excavation Quantities	D'Ambrosio Consulting Structural Engineers	29 April 2021
Project No. 2019-174		Geotechnical Investigation	Crozier Geotechnical Consultants	October 2019
Ref. No 220639 01 FB	26 October 2022	Construction Traffic Management Plan	McLaren Traffic Engineers	26 October 2022
Project No.HB-19036 Drawings No L-01, L-02, L03, L04, L05, L2001, L2002		Amended Landscape Plan	HABIT8 Landscape Architecture and Urbanism	18 November 2022
		Arborists Report	Jacksons Nature Works	8 March 2021
		Waste Management Plan	Anthony Solomon	4 December 2019

**OWNER:** Renata Etherington and Paul Etherington

**APPLICANT:** Paul Etherington

**AUTHOR:** Sophie Perry, Planning Ingenuity, Town Planning Consultants

**DATE OF REPORT:** 23 March 2023

**DATE LODGED:** 22 February 2023

**DATE AMENDED:** 17 November 2022 and 3 April 2023

**RECOMMENDATION:** Approval

## EXECUTIVE SUMMARY

This development application seeks approval for demolition of the existing dwelling and ancillary structures and construction of a dwelling house and associated works including a guest suite and a swimming pool at No.58 Cowdroy Avenue, Cammeray.

The application is reported to North Sydney Local Planning Panel for determination in accordance with the directive of the Ministry for Planning, Industry and Environment as it involves a variation to the North Sydney Local Environmental Plan 2013 (NSLEP 2013) in excess of 10%. The maximum proposed variation to the height of buildings control is 2.25m which is a variation of 26.7%.

Notification of the original proposal as lodged with the Development Application resulted in a total of ten (10) unique submissions of which seven (7) were in support and three (3) were objections.

Notification of the amended application resulted in six (6) unique submissions objecting to the proposal.

The issues raised in objection to the proposal are summarised as follows:

- Non-compliance with LEP and DCP controls, primarily the height of buildings control
- Visual impact, bulk and scale
- View loss and view sharing
- Overlooking and loss of privacy
- Inaccuracies in plans

This assessment has considered the issues raised in submissions as well as the performance of the amended proposal against the relevant planning requirements and the suitability of the site and its context and setting. The proposed development has been assessed in accordance with the matters for consideration as outlined in section 4.15(1) of the Environmental Planning and Assessment Act, 1979 (EP&A Act) and is found to be satisfactory subject to recommended conditions.

Demolition is permitted only with development consent.

Dwelling houses are permitted only with development consent in Zone C4 – Environmental Living.

The proposal meets the relevant provisions of NSLEP 2013 with the exception of the northern edges of the entry level roof and part of the roof to the upper floor level which exceed the maximum permitted building height. A written request pursuant to Clause 4.6 of NSLEP 2013 has been submitted to address the variation. The clause 4.6 request is considered to be well founded because the Clause 4.6 variation request:

- Demonstrates the proposal achieves the relevant objectives of Clause 4.3 Height of Buildings to NSLEP 2013 despite numeric non-compliance;
- Demonstrates the proposal is consistent with the objectives for development in Zone C4 – Environmental Living; and
- Identifies satisfactory environmental planning grounds that justify some sections of the dwelling exceeding the numeric height control that are specific to the site and the proposed development.

The development is generally in accordance with the relevant objectives and requirements of the applicable State Environmental Planning Policies and with North Sydney Development Control Plan 2013 (NSDCP 2013) and where variations are proposed, the objectives are satisfied in the specific circumstances of this case.

Recommended conditions include:

- Privacy screens to parts of the upper level balcony and to the outdoor kitchen
- Additional planting within the foreshore area and setback to the western side boundary
- Minor changes to roof materials and external finishes to reduce reflectivity and visual impact
- Specific management plans during construction for traffic and pedestrian management, geotechnical risk management plan, tree protection and retention, vibration calibration and management, dilapidation reports for neighbouring assets including Council's road and footpath and retaining walls

The new dwelling has a built form, scale, layout and character which is compatible with the wide diversity of neighbouring and nearby dwellings oriented to the waterway and along the local foreshore. The construction and the use of the new dwelling and ancillary garage and swimming pool will not result in unreasonable impacts to neighbouring properties and the adjoining foreshore and public domain with consideration to construction impacts, traffic impacts, solar access, view sharing, privacy, tree and vegetation management, landscaping, materials, colours and finishes, on-site parking and vehicle access subject to recommended conditions.

The proposed development is considered a reasonable and appropriate outcome for the application of planning controls and objectives to the specific features and context of the site and its setting.

It is recommended the application be approved subject to conditions of consent.

LOCATION MAP



Property/Applicant

Properties Notified

★ Submitters

## DESCRIPTION OF PROPOSAL

The applicant is seeking development consent for the following works: Demolition of existing dwelling and ancillary structures and construction of a dwelling house and associated works including a guest suite and a swimming pool.

The final amended plan set and supporting information in response to a request for additional information were uploaded to the Planning Portal on 17 January 2023 and re-notification occurred in February 2023. Further additional information was provided to Council on 3 April 2023. This latest additional information did not change the nature of the proposal but provided additional information to assist in the development assessment process.

The works are described in detail as follows:

- Demolition of existing carport, stairs and two storey dwelling
- Tree protection works for Trees numbered:
  - T4, T5 and T6 within the public road and footpath reserve
  - T7 adjacent to the front boundary of the site
  - T12 on the neighbouring property No.2 Folly Point
- Removal of the following trees: T1, T2, T3, T8, T9, T10, T11 and T13
- Site preparation, cut and fill including:
  - Maximum cut to 7m in the location of the future stair and lift well (directly north of the proposed garage)
  - Excavation footprint for the future dwelling to expose competent sandstone bedrock and rock excavation for concrete-engaged pier footings
  - Redistribution of excavated material within the site for fill at lower levels
  - Total estimated volume of excavated material (soil and rock) 350m<sup>3</sup> (650 tonnes)
  - Total estimated volume of fill material (soil and rock sourced within the site) 100m<sup>3</sup>
  - Net total estimated volume of material to be removed from site (soil and rock) 250m<sup>3</sup> (460 tonnes)
  - Removal of material from site to require 6 to 7 truck loads per day over 8 or 9 days
  - Excavation machinery to include rock hammers, rock saws and cranes
- Works within the public road reserve including:
  - Demolition of part of existing sandstone clad retaining wall and construction of new retaining wall to match which extends to enclose a larger area of road pavement fronting the site
  - Construct additional road pavement and associated drainage, kerb and gutter adjacent to the site's front boundary
- Construction of a new dwelling and ancillary swimming pool, retaining walls and outdoor terrace areas and double garage including:
  - Lower level with finished floor level of RL11
  - Mid-level with finished floor level of RL14
  - Upper level with finished floor level of RL17
  - Entry level with finished floor level of RL22.56

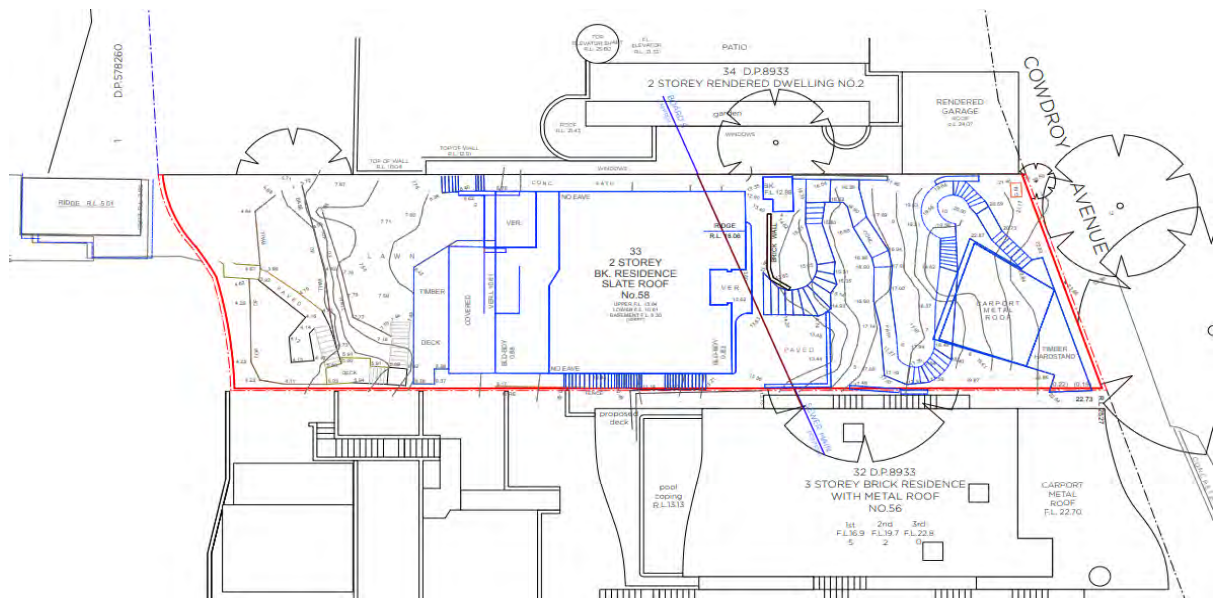
- Floor plans contain the following:
  - Lower level – swimming pool and pool room, bedroom with ensuite, laundry, bathroom, gym and cellar. Balcony adjacent to swimming pool with outdoor kitchen
  - Mid-Level – three (3) bedrooms each with an ensuite, study/home office, balcony to man bedroom
  - Upper level – open floor plan kitchen, dining and living room with terrace for private open space, WC
  - Entry level – carport for two cars and a turntable for vehicle manoeuvring, entry pathway, entry foyer
  - A stair and lift core connect to all levels

NOTE: The development description in the Statement of Environmental Effects and Development Application form and labels on plans indicate the lower level bedroom as a “guest suite”. However, this room can only be accessed from other parts of the dwelling and is not a self-contained dwelling. Therefore the lower level bedroom is considered, for the purposes of this assessment, to be a bedroom within the dwelling and not for separate occupation or use.

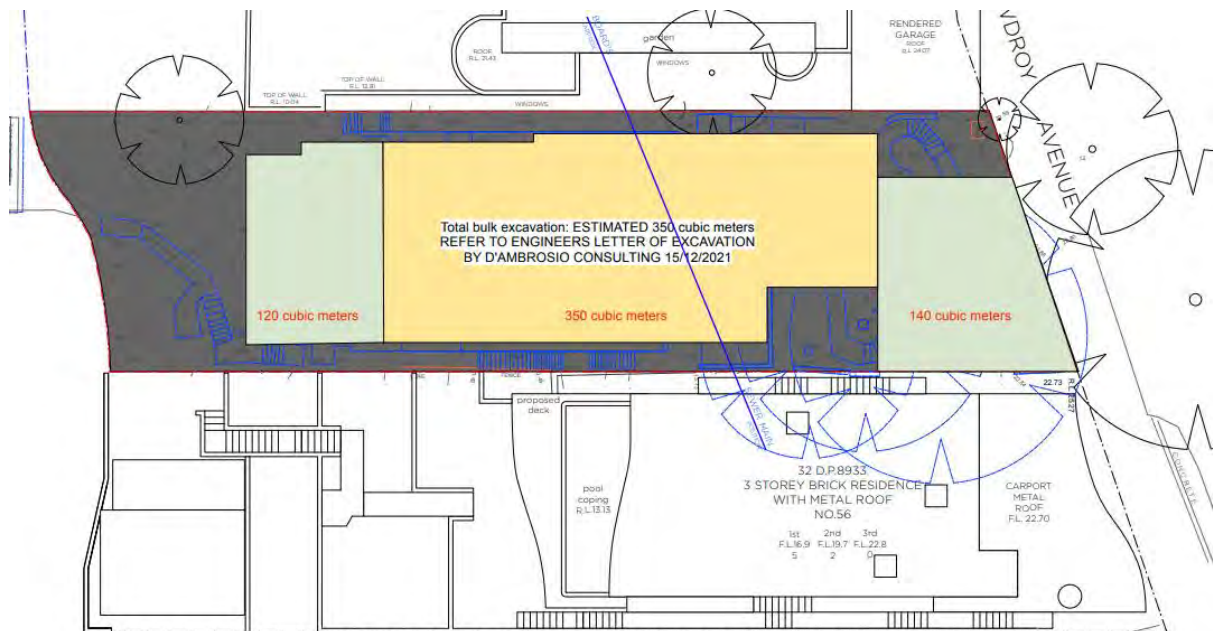
The development proposal the subject of this assessment report is depicted in the following images:



***Figure 1: Photomontage as viewed from the waterway***



**Figure 2: Demolition Plan**



**Figure 3: Bulk Excavation Plan**



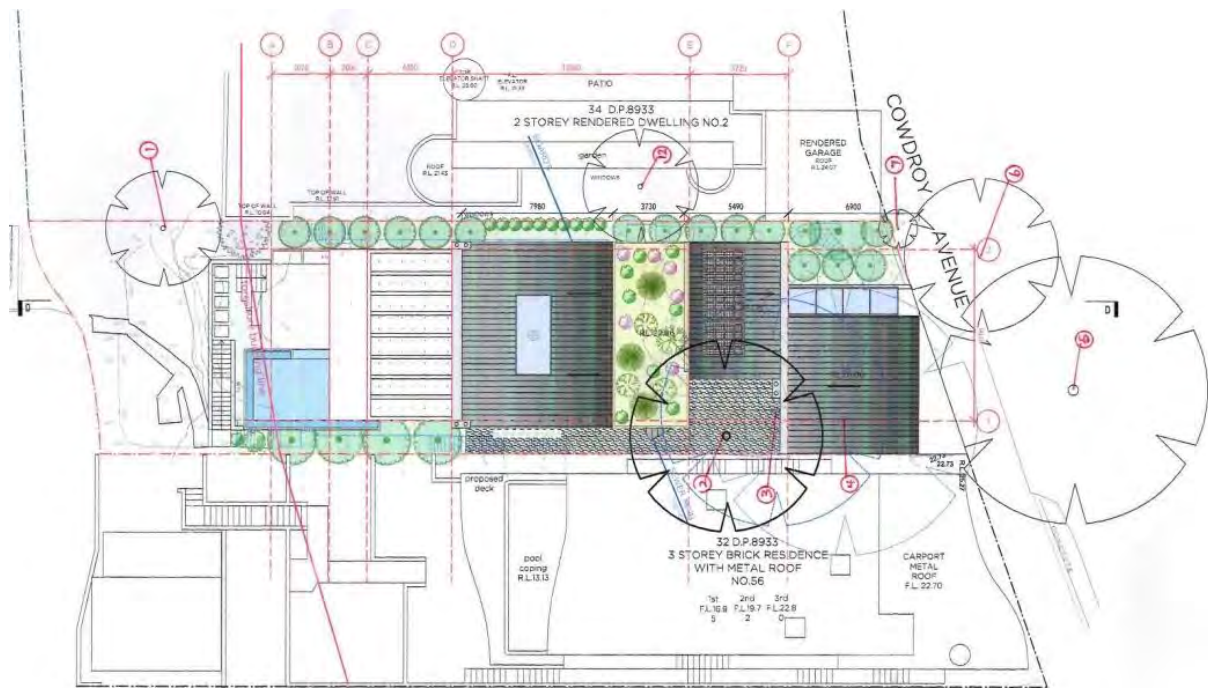


Figure 4: Tree Removal and Retention Plan

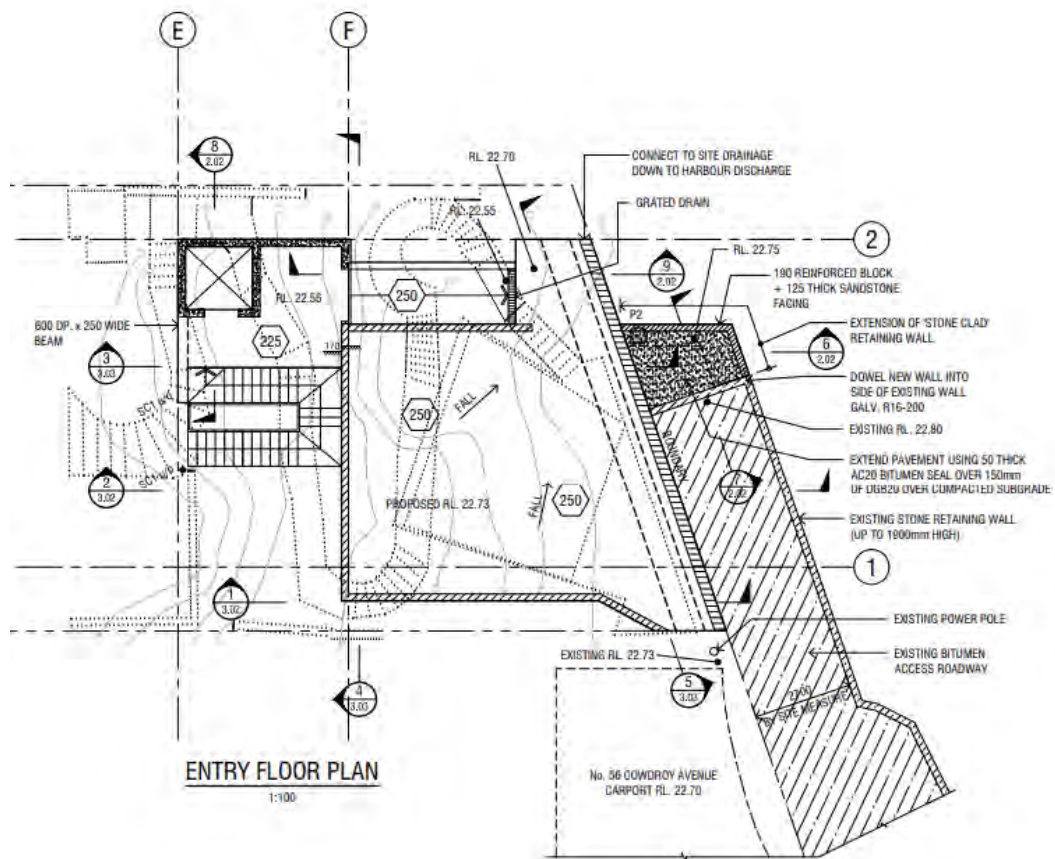


Figure 5: Site preparation works plan view for construction access including works within the adjoining public road reserve

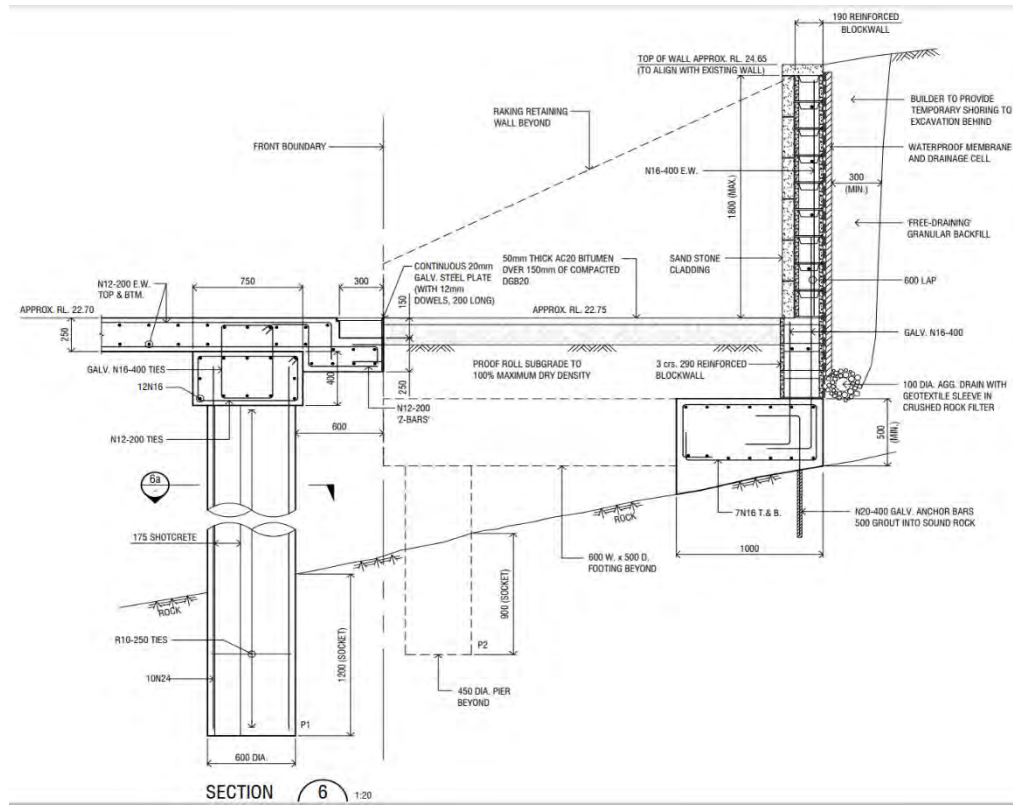


Figure 6: Site preparation works section view for construction access including works within the adjoining public road reserve

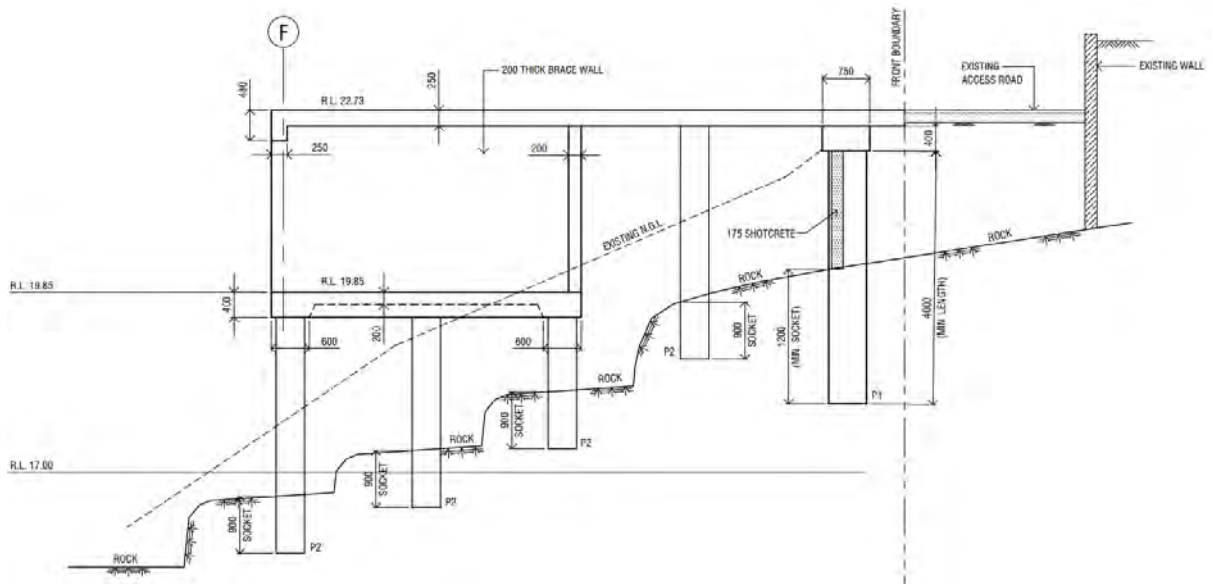
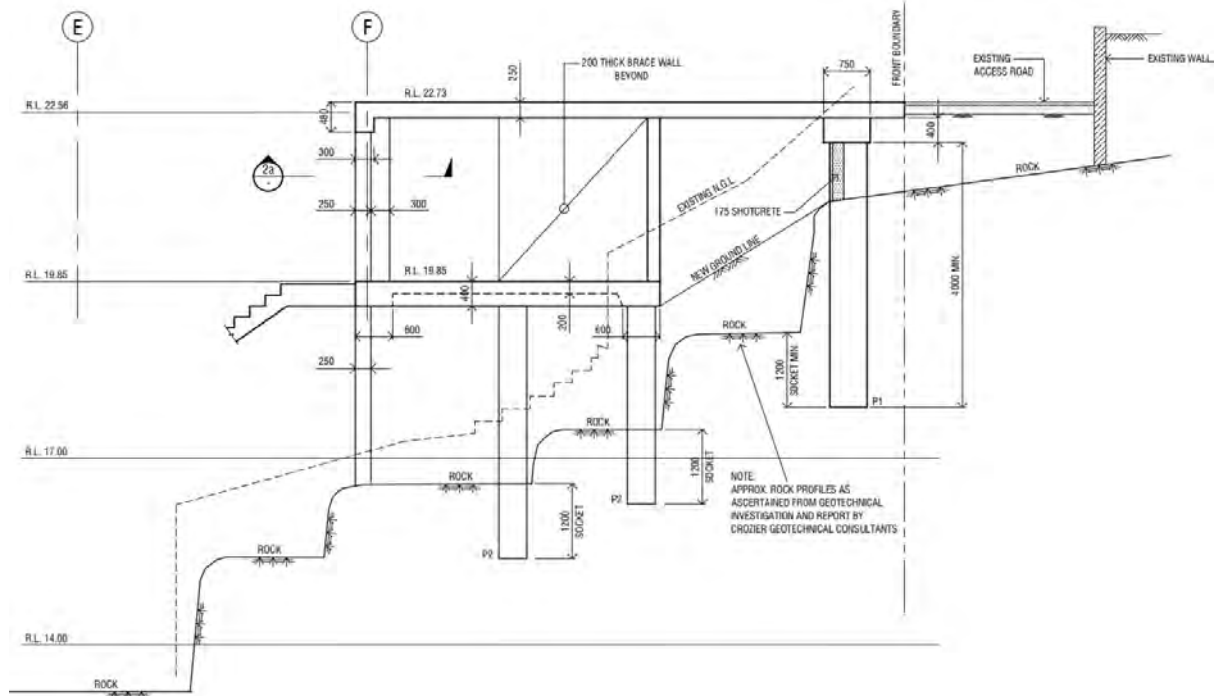
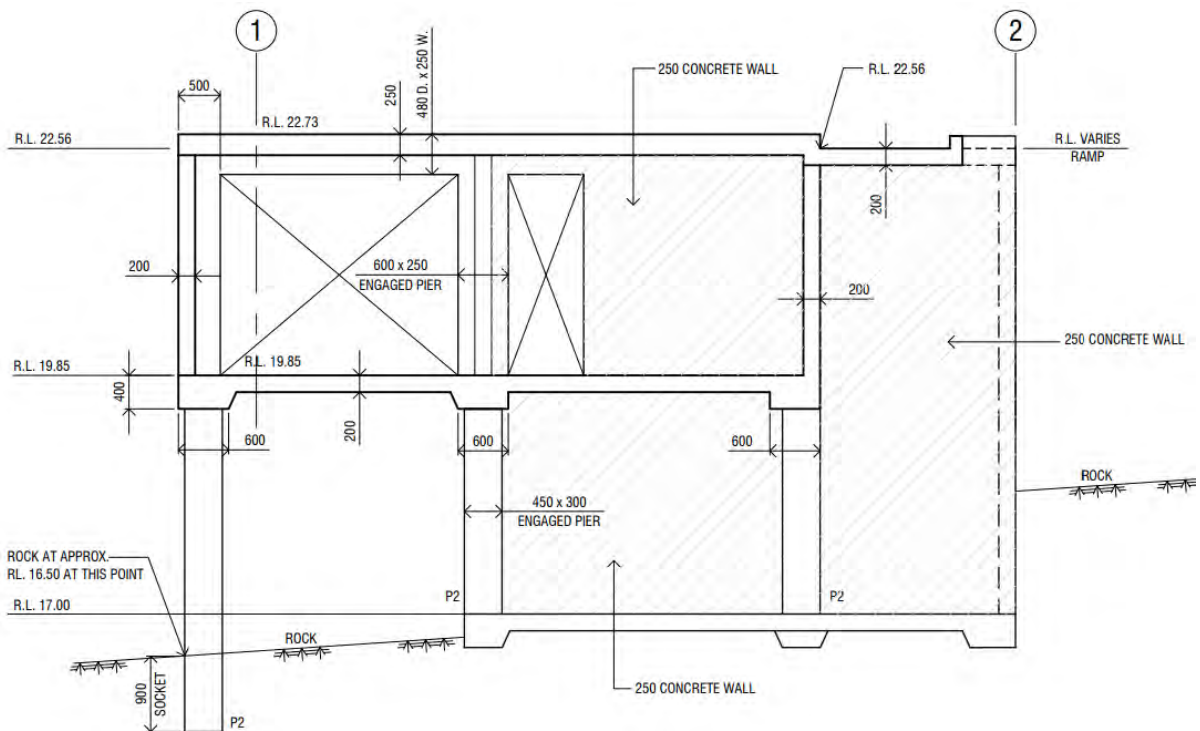


Figure 7: Footings and slab section 1 (Entry level RL22.73, upper level RL19.85 and mid-level RL17.00)



**Figure 8: Footings and slab section 2 (Entry level RL22.73 and upper level RL19.85)**



**Figure 9: Footings and slab section 4 (Entry level RL22.73, upper level RL19.85 and mid-level RL17.00) with lift shaft to right of diagram**

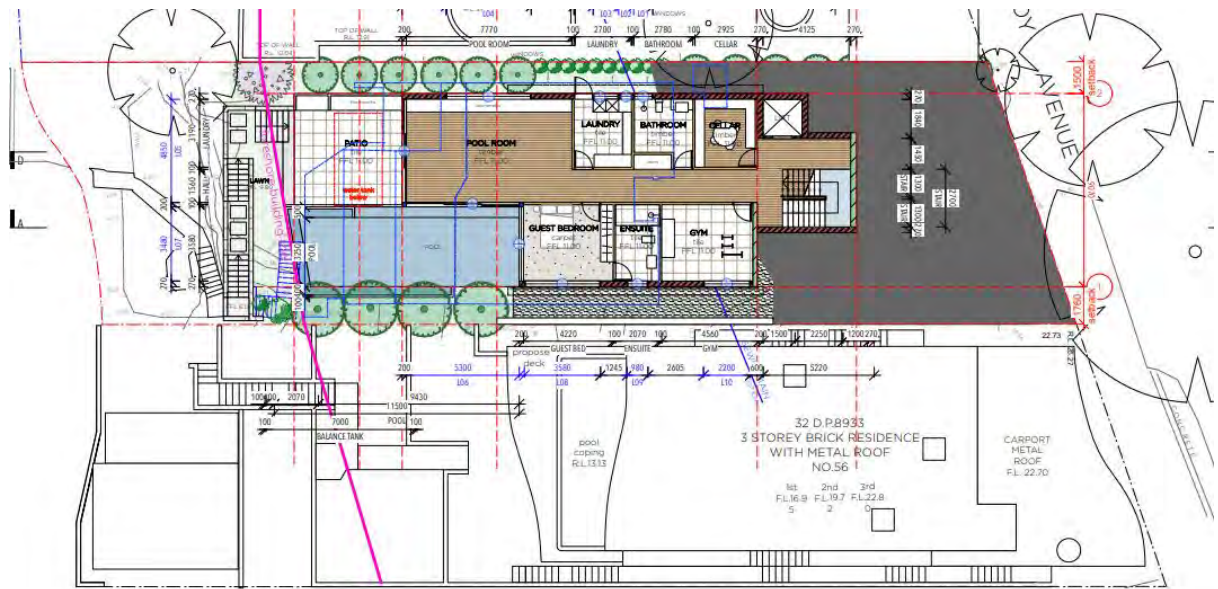


Figure 10: Lower Level Floor Plan

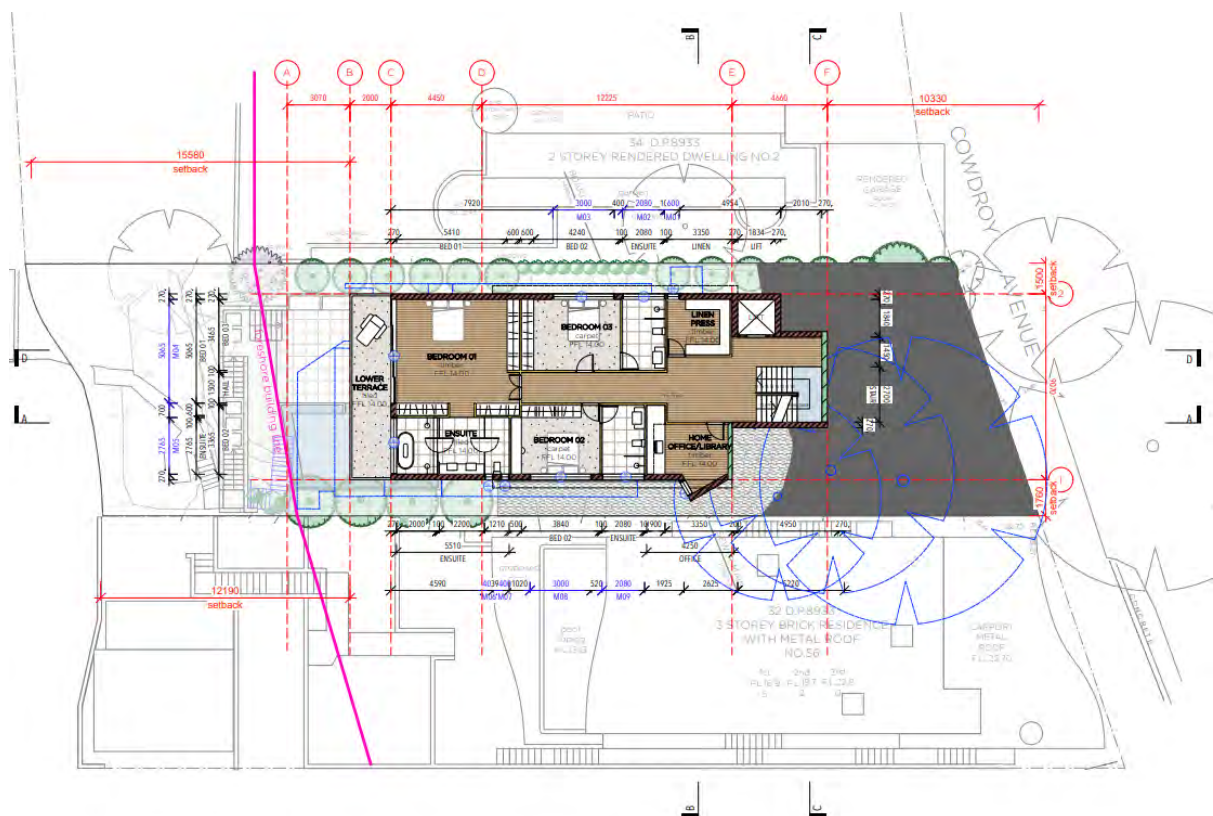


Figure 11: Mid-level floor Plan

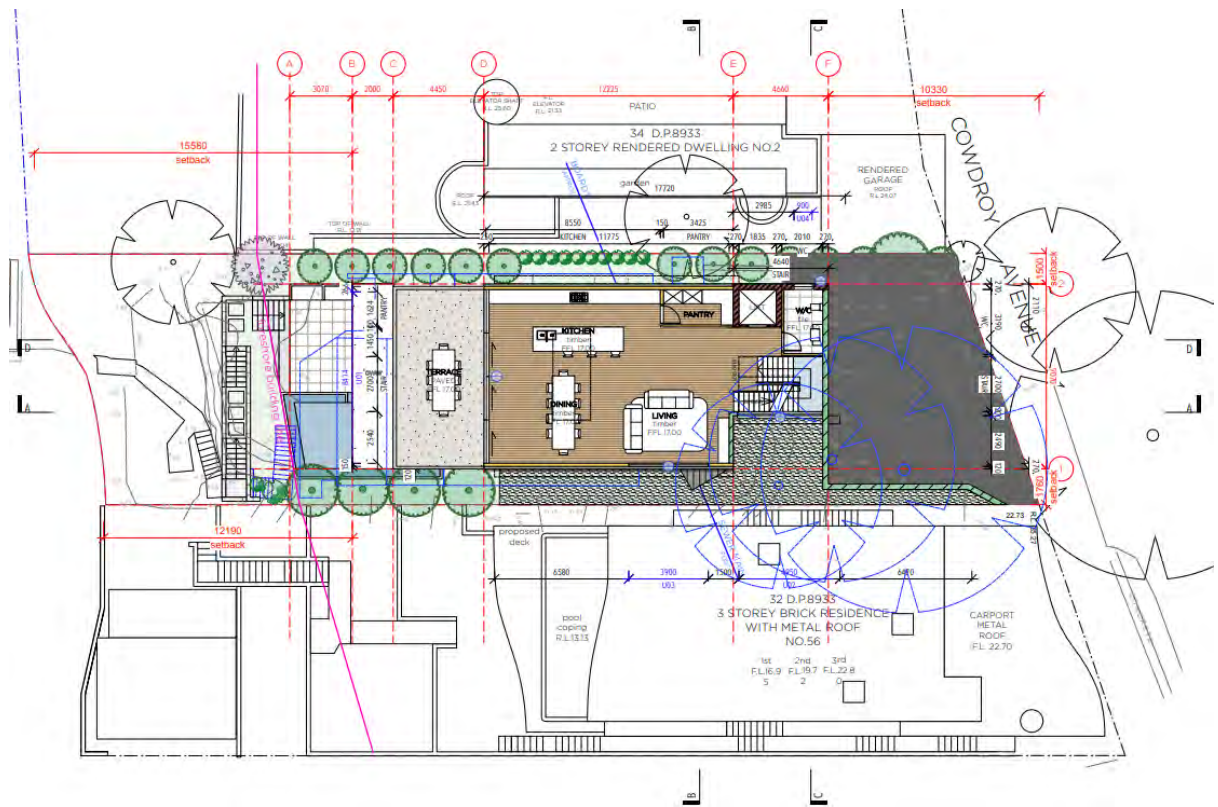


Figure 12: Upper Level Floor Plan

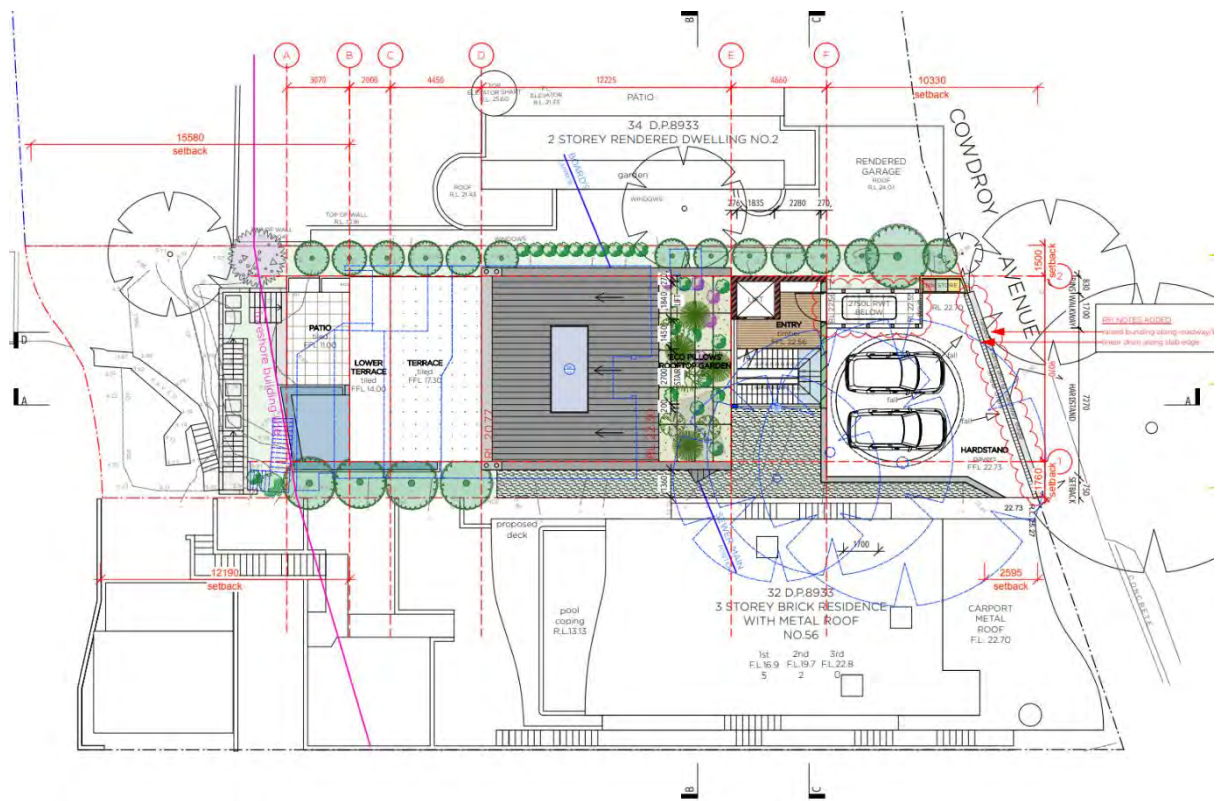


Figure 13: Entry Level Floor Plan

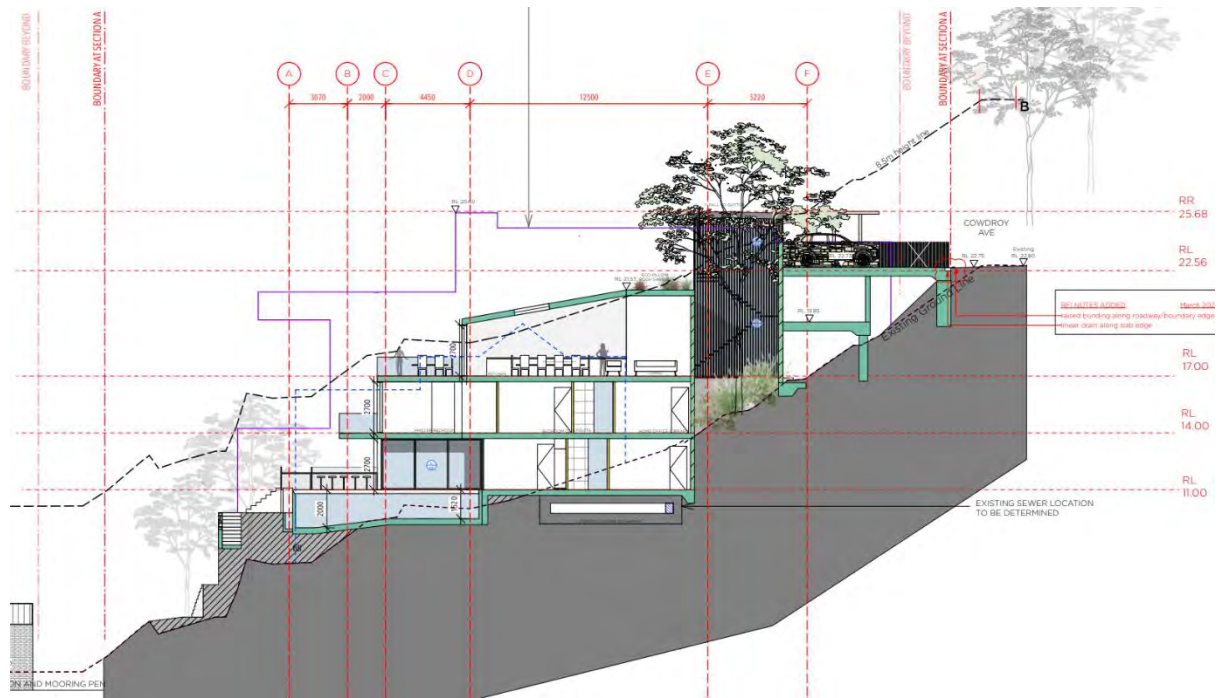


Figure 14: Section A-A

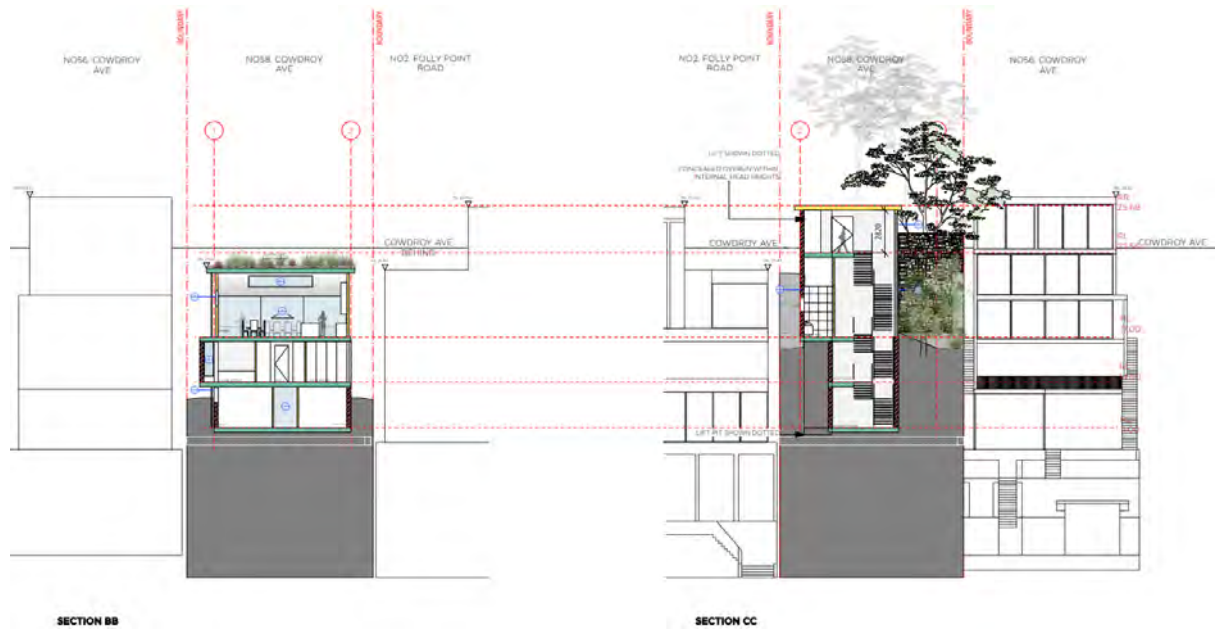


Figure 15: Sections B-B and C-C

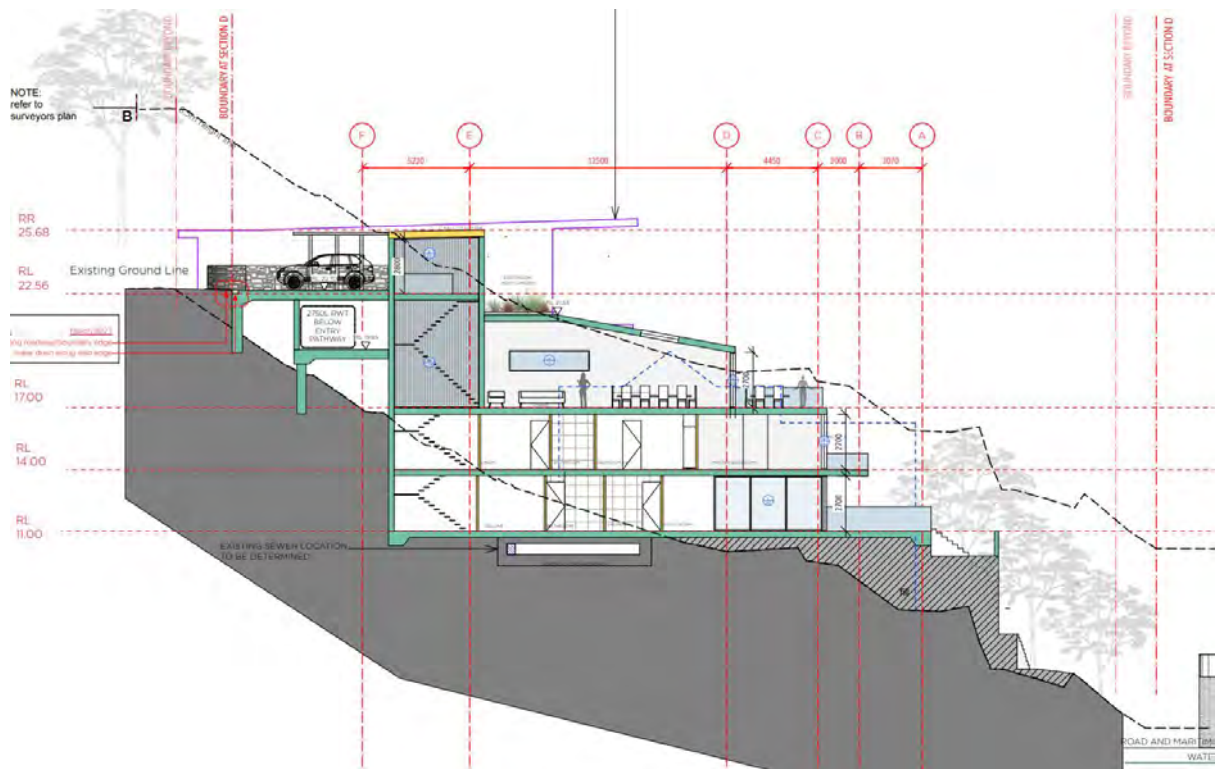


Figure 16: Section D-D

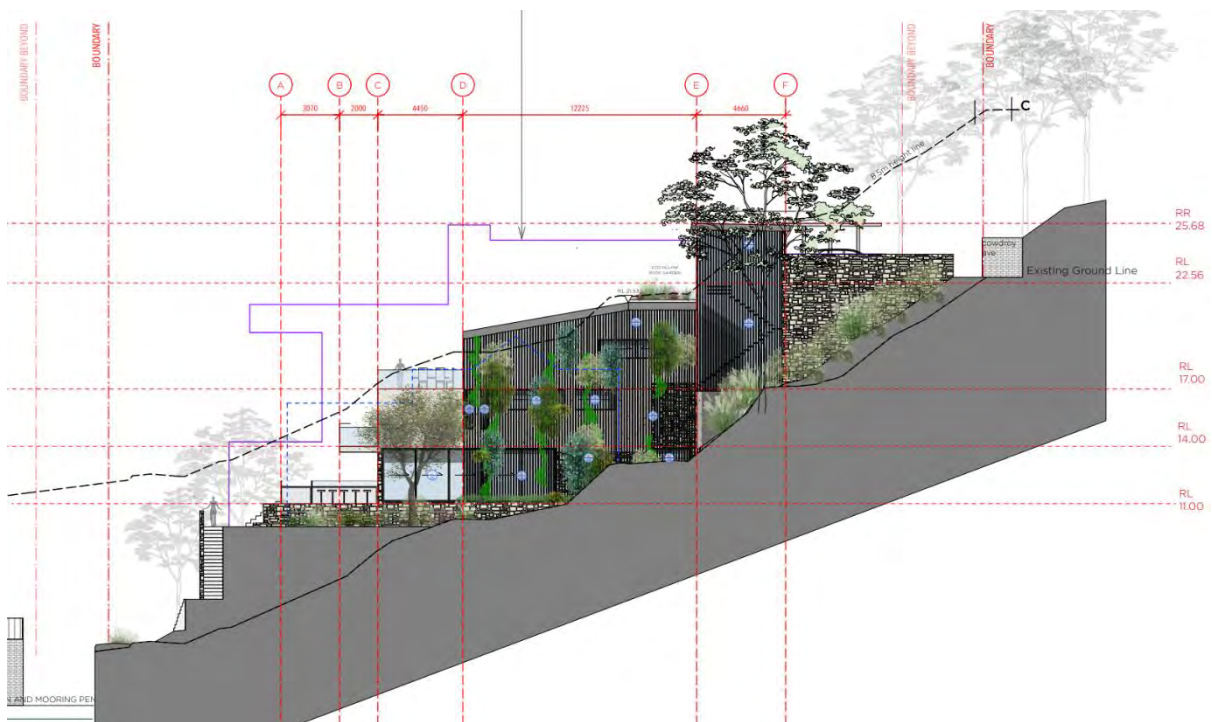


Figure 12: West Elevation

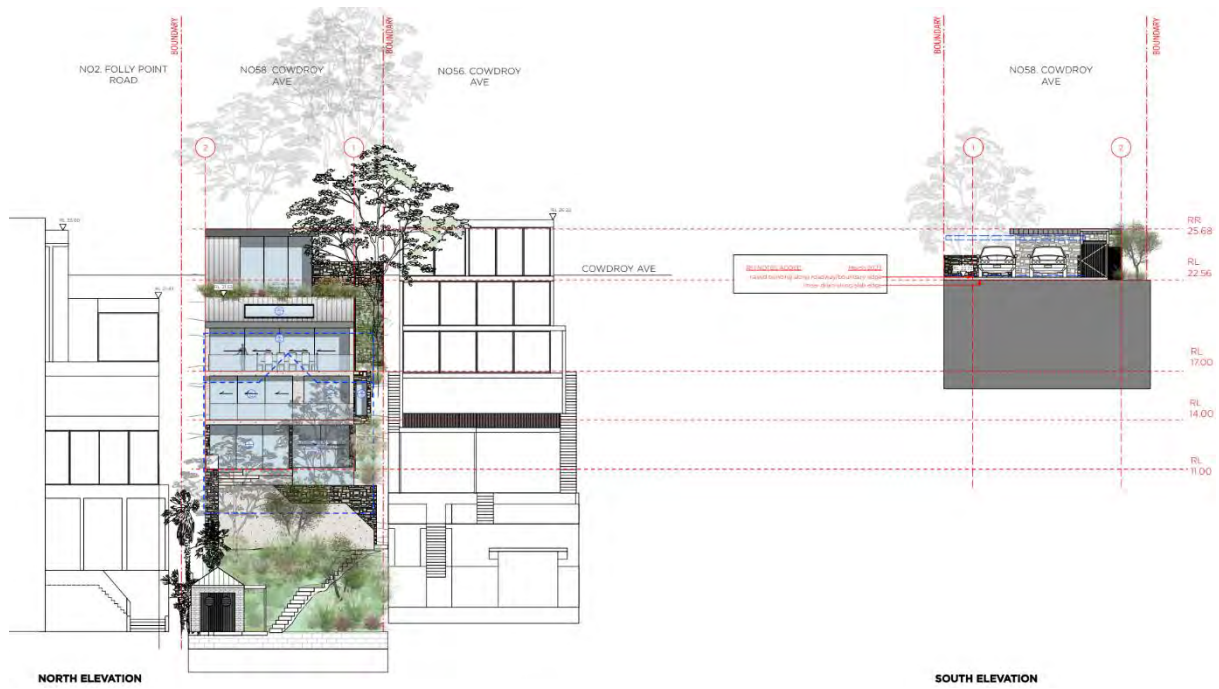


Figure 13: North Elevation and South Elevation

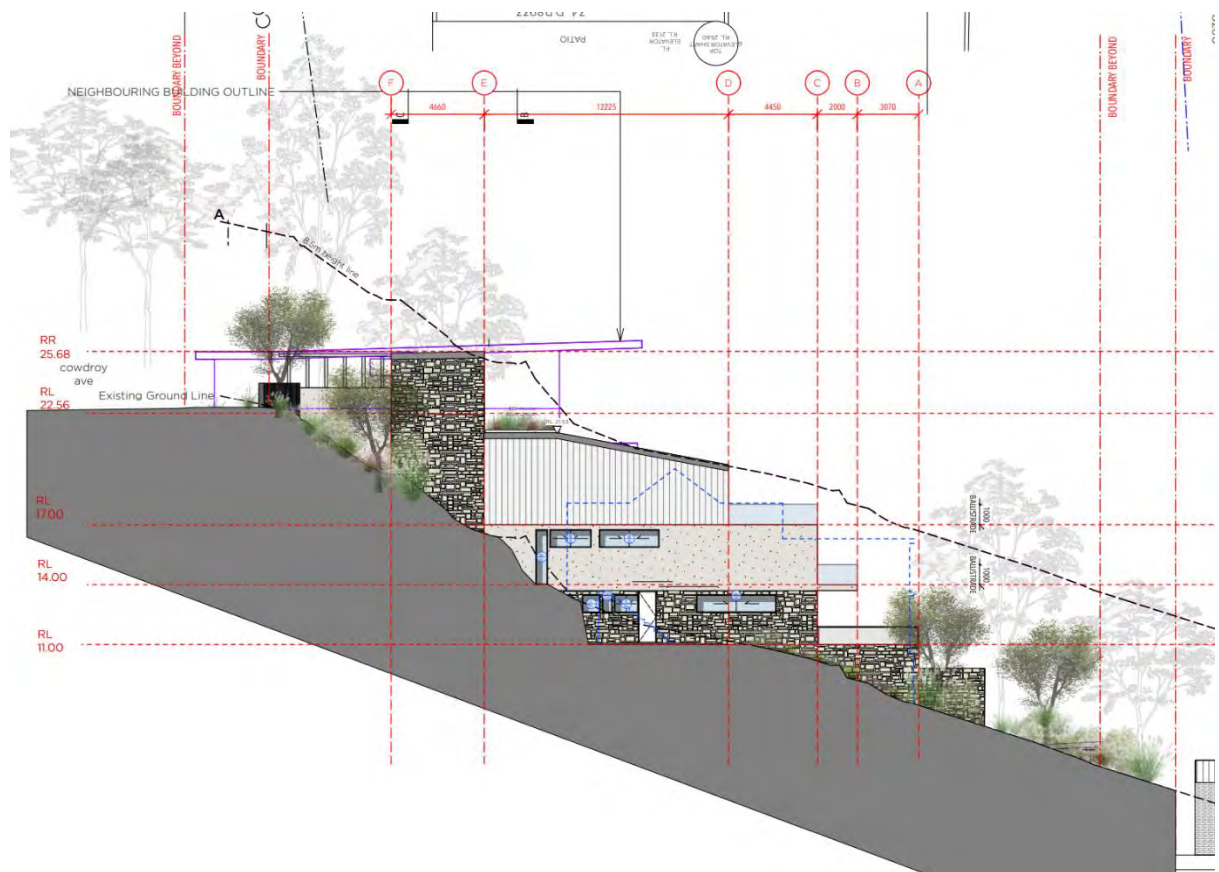


Figure 14: East Elevation



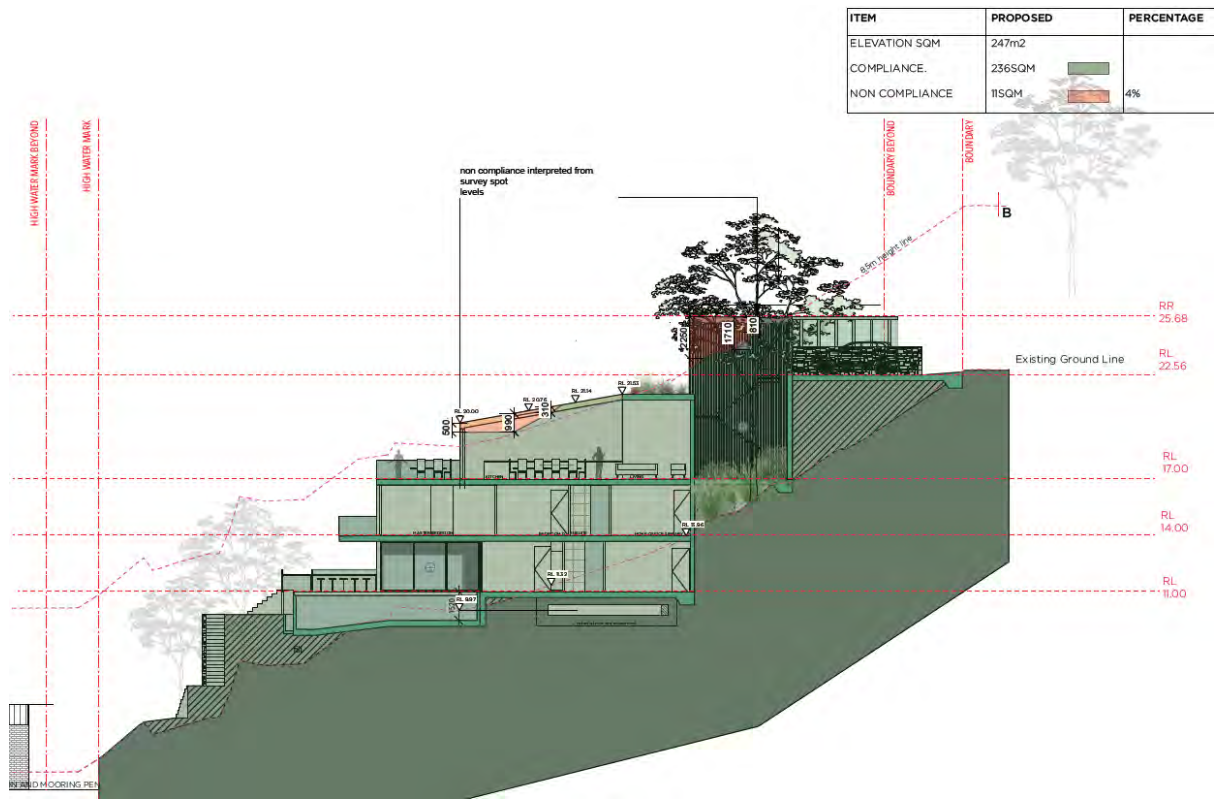


Figure 15: Height Blanket Diagram

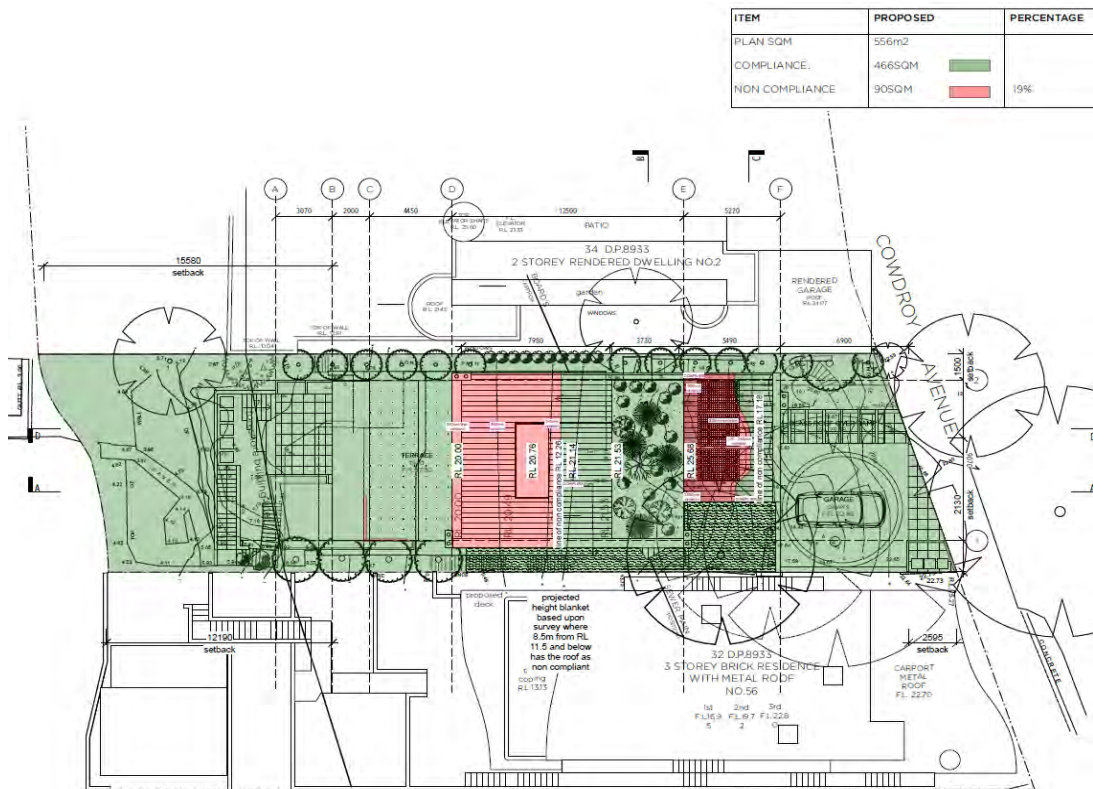


Figure 16: Height Blanket Plan

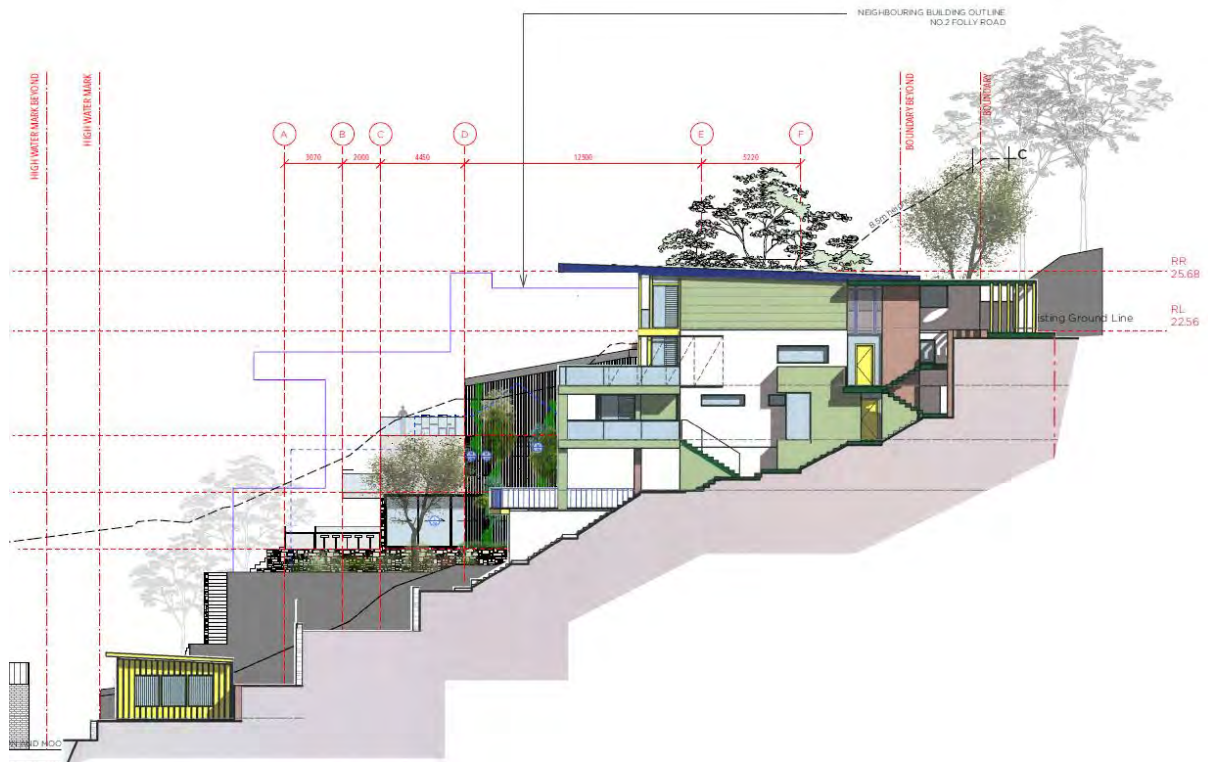


Figure 17: 56 Cowdroy Ave View Loss Diagram

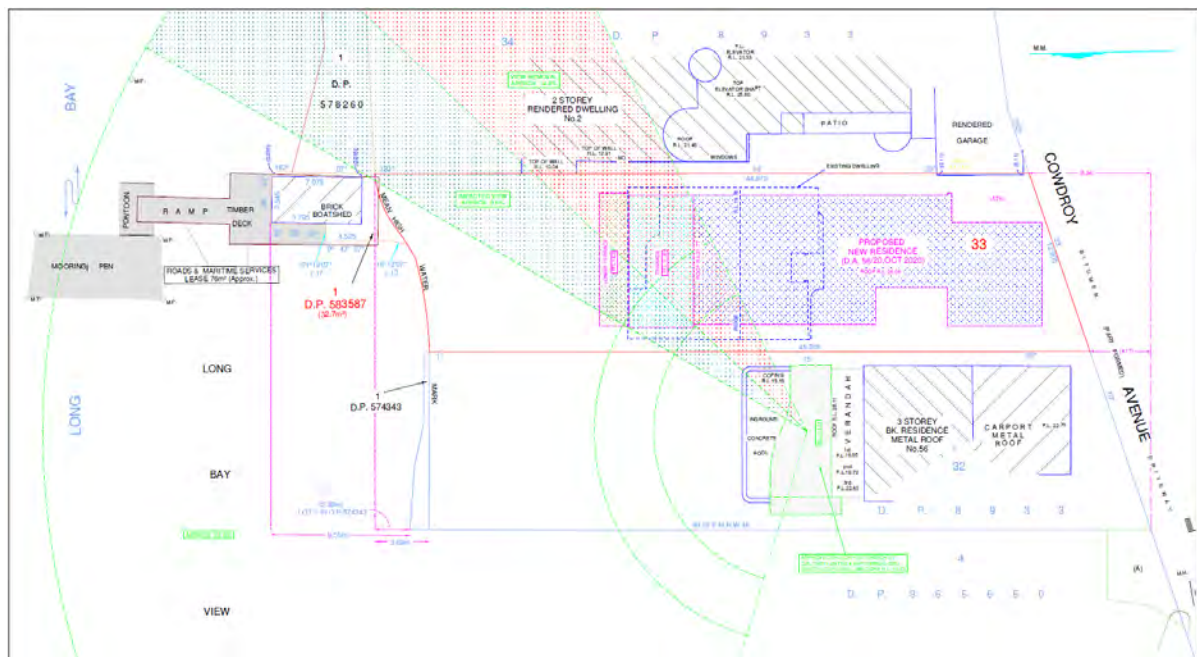


Figure 18: Projected view lines by Registered Surveyor

## **STATUTORY CONTROLS**

North Sydney LEP 2013

- Zoning C4 Environmental Living
- Item of Heritage – No
- In Vicinity of Item of Heritage – No
- Conservation Area – No
- In Vicinity of a Heritage Conservation Area or Heritage Item – No

Environmental Planning & Assessment Act 1979

SEPP (Biodiversity and Conservation) 2021

SEPP (Resilience and Hazards) 2021

SEPP (BASIX) 2004

Foreshore Development

Local Development

## **POLICY CONTROLS**

NORTH SYDNEY DCP 2013

North Sydney Local Infrastructure Contributions Plan 2020

Sydney Harbour Foreshores & Waterways Area DCP 2005

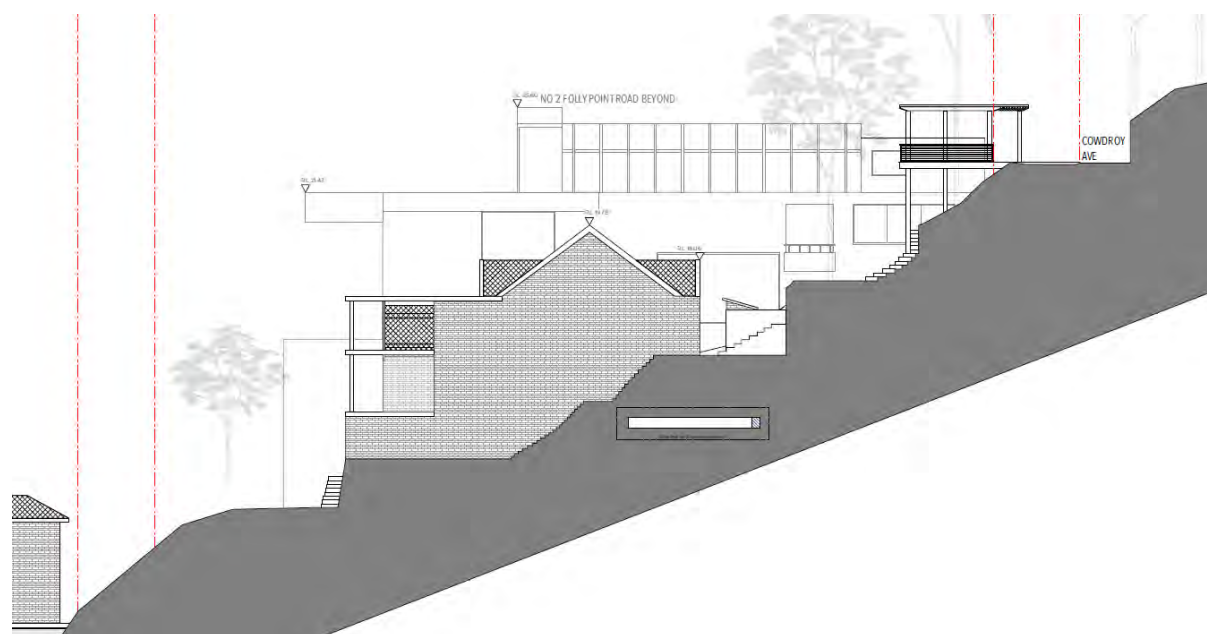
## **DESCRIPTION OF SITE AND LOCALITY**

The street address of the site is No.58 Cowdroy Avenue, Cammeray. The legal identification of the site is Lot 33 DP 8933.

The site extends between the waterway of Long Bay and the road frontage with Cowdroy Avenue. The site has an irregular shape with the side boundaries parallel. The foreshore boundary is partly defined by a seawall and waterfront structures and a boundary with Lot 1 DP 583587 (which is also part of No.58 Cowdroy Ave although no works are proposed on Lot 1).

The registered survey submitted with the development application indicates Lot 33 has an area of 556m<sup>2</sup>. The front boundary is not perpendicular to the side boundaries and is 12.905m long. The eastern side boundary shared with No.2 Folly Point is 44.875m. The western side boundary shared with No.56 Cowdroy Avenue is 45.305m. The site is 12.06m wide.

The site slopes steeply down from the road to the foreshore. The fall from street to shoreline is approximately 22m with the seawall height varying from 1 to 1.5m above Mean High Water Mark (MHW). The site has been significantly altered from its natural surface contours. There are retaining walls and paths throughout the setbacks and on site boundaries as well as significant cut and fill and retaining walls within the building footprint as indicated in the existing west elevation diagram included in Figure 19.



**Figure 19: Existing west elevation showing significant alterations to the natural topography and slope of the site and the boards sewer.**

The existing dwelling is positioned in the centre of the site and set back between 13m and 17m from the street boundary and between 10m and 16m from the top of the seawall. The dwelling is setback approximately 1.5m from both side boundaries and the side setbacks are occupied by paved pathways and steps on both sides of the dwelling. The dwelling is two storeys with a pitched roof.

The setback between the dwelling and the MHWL is currently mostly deep soil area with a stepped pathway. There is one canopy tree within the foreshore landscaping. This tree is a *Jacaranda mimosifolia*. The arborist's report submitted with the DA proposes this tree can be retained and requires the removal of ivy from its trunk. However, the tree is proposed to be removed and replaced with a new canopy tree (*Cupaniopsis* spp Tuckeroo) to be planted in the northeast corner of the site.

The setback to Cowdroy Avenue contains stepped paths, retaining walls and a carport close to the front boundary. There are ornamental small trees including Rhododendrons and Camelias and three large trees *Grevillea robusta*, *Liquidambar* and *Eucalyptus pilularis*. These trees are all within the proposed works footprint and are to be removed.

There are three (3) trees within the adjoining road reserve of Cowdroy Avenue. The arborist's report recommends Council investigate the health and vitality of these trees as they show signs of questionable structural integrity and longevity. The DA proposes works within the road reserve and these trees are proposed to be retained and protected (unless otherwise determined by Council independent of this DA assessment and determination).

Photos of the site are included in Figures 20 to 23.



**Figure 20: Photo of the site as viewed from Cowdroy Avenue. Asphalt surface is the public road pavement of Cowdroy Ave. Bins are placed in the Council road reserve. Existing retaining wall is proposed to be demolished and the road extended further along the street boundary.**



**Figure 21: Photo of the site as viewed from front boundary. Structure to the right of the photo is the garage to No.2 Folly Point . Arrow indicates lift shaft at No.2 Folly Point. To the left of the photo is the neighbouring dwelling No.56 Cowdroy Ave**



**Figure 22: View from south east corner of subject site with neighbouring dwelling No.56 Cowdroy Avenue in the background**



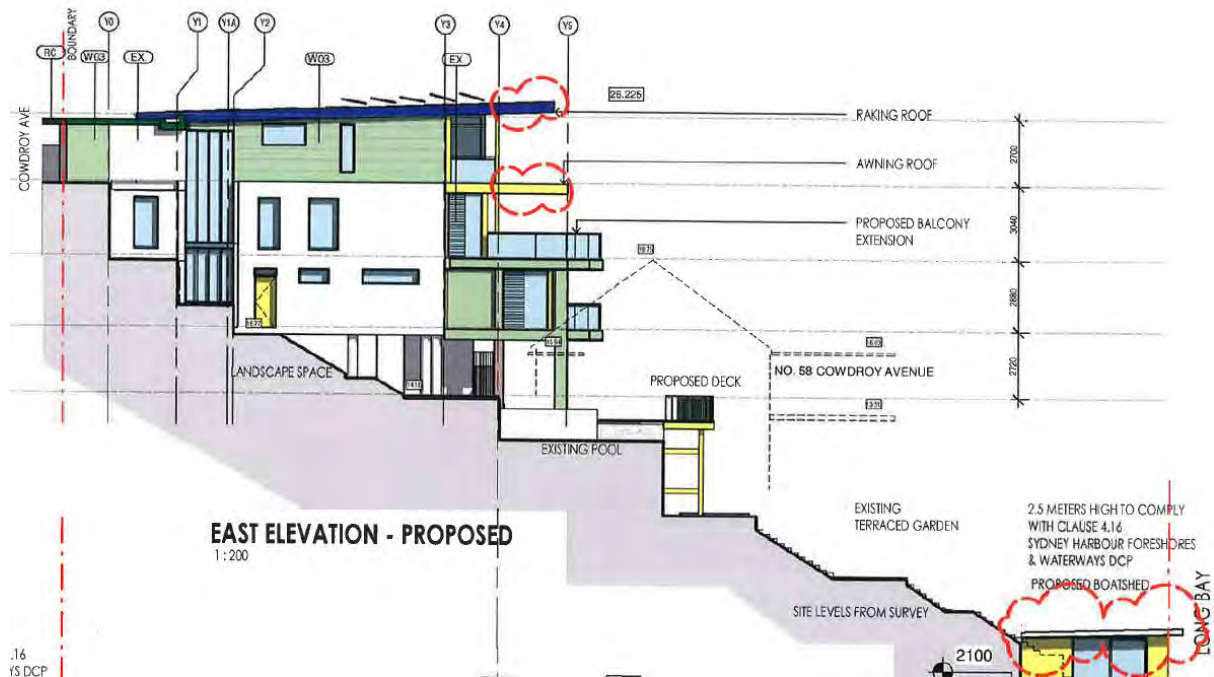
**Figure 23: Site as viewed from the ancillary jetty**

The section of public road reserve that fronts the site is a single lane pavement width narrowing to 2.7m wide and bordered on the southern side by a sandstone block retaining wall. The retaining wall and a landscaped slope separates this narrow section of Cowdroy Avenue from the main roadway further south. There is no footpath fronting the site.

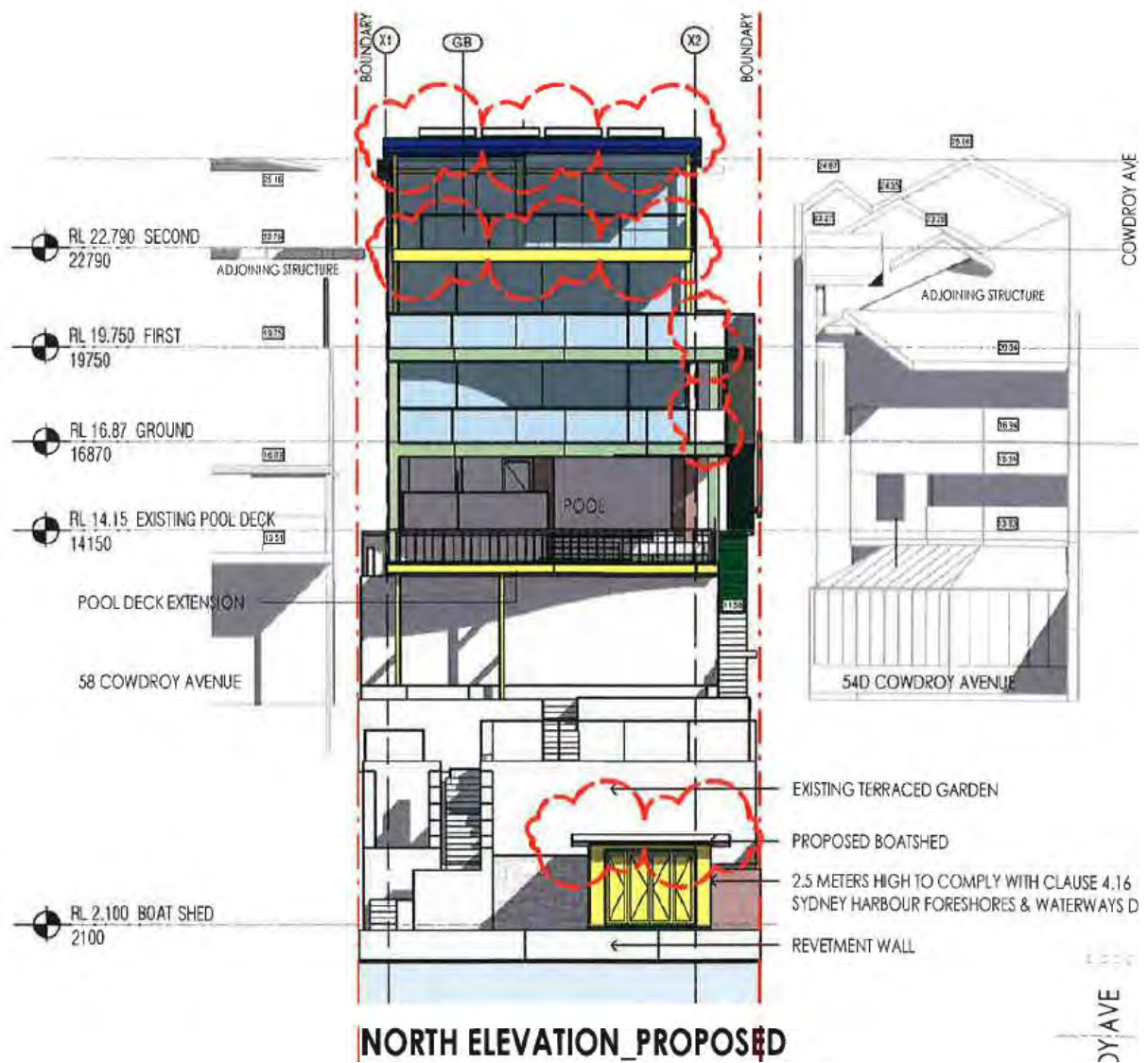
Adjoining the site to the west is No.56 Cowdroy Avenue. This neighbouring property has similar area and dimensions and slope to the subject site. The dwelling on this neighbouring property has four levels and incorporates a swimming pool at the lowest level. A seawall defines the MHW. The dwelling has an attached double garage at zero setback to Cowdroy Avenue. The dwelling footprint extends to slightly more than 50% of the lot depth and the setback to the MHW is between 25 and 20m. The side setback from the boundary shared with the subject site is 800mm. The western side setback is 1m. Neither side facades step in with the height of the building. There are open and partly covered terraces and balconies to all levels on the northern façade of this dwelling. Due to the natural topography and the need for foundations extending to competent bedrock, the natural topography of the site has been significantly altered (see Figure 24).

DA 153/19 was approved by the Local Planning Panel on 4 September 2019 and modified on 20 December 2019 for alterations and additions to the dwelling, garage and boatshed at No.56 Cowdroy Avenue. Extracts of the approved plans are included in Figures 24 and 25. DA153/19 approved breaches of the height of building control. The uppermost roof level of the existing building exceeded the height limit by 4.62m (a 54.4% variation) and the new roof exceeds the height control by 4.675m (a 55% variation) at the highest level and by 3.33m (a 39.2% variation) at Level 3. The approved works are currently under construction and include works to extend the dwelling and balconies further north towards the waterway.

A photo of No.56 Cowdroy Avenue is included in Figure 26.



**Figure 24: Approved eastern elevation of DA153/19 as modified for No.56 Cowdroy Avenue (which is oriented to the boundary shared with the subject site)**



**Figure 25: Approved northern elevation of DA153/19 as modified for No.56 Cowdroy Avenue (oriented to the waterway)**



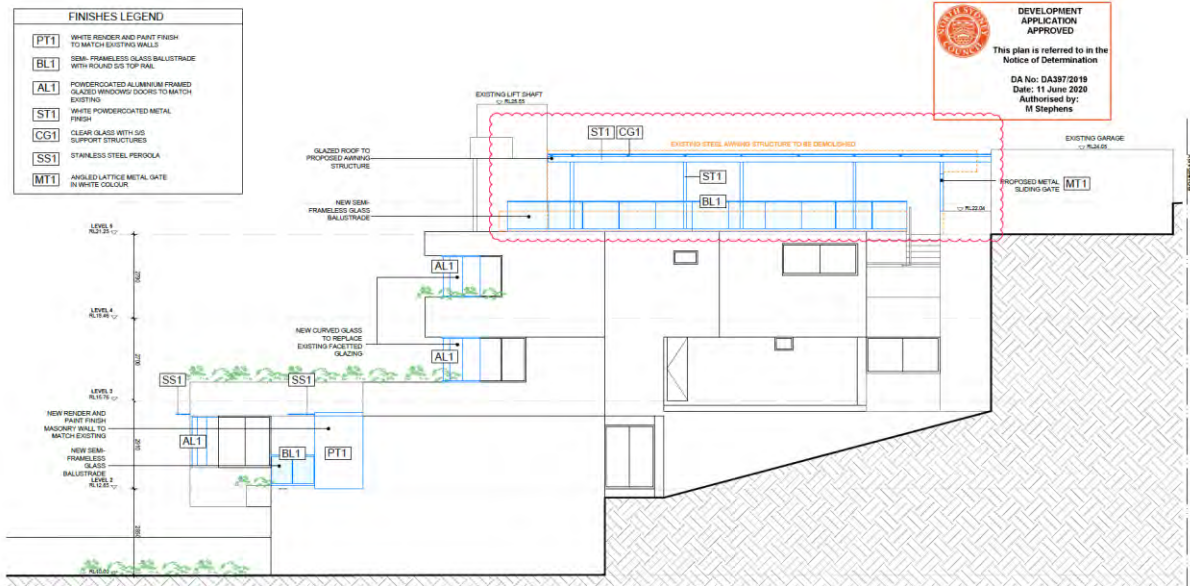


**Figure 26: View of front to No.56 Cowdroy Ave adjacent to the public road reserve (works under construction in accordance with DA153/19)**

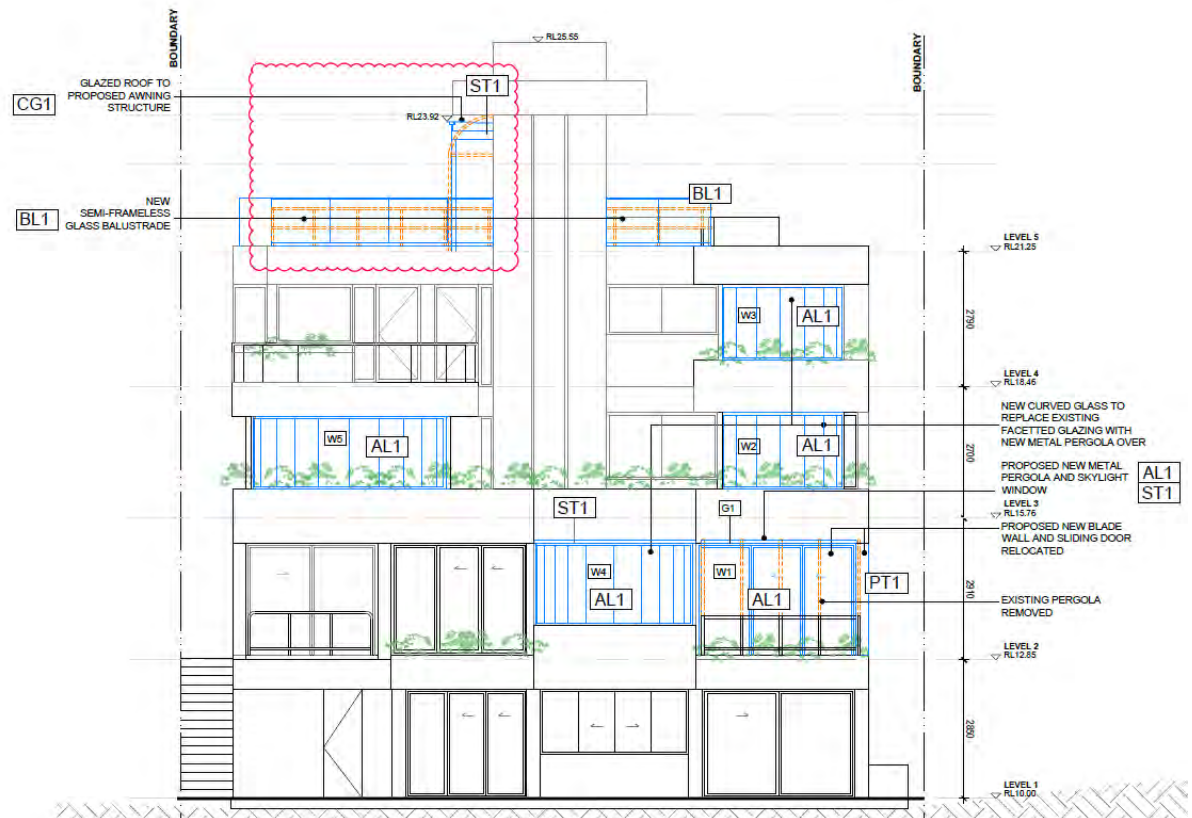
Adjoining the site to the east is No.2 Folly Point. This neighbouring property contains a dwelling with 5 levels and has a swimming pool and retaining walls which extend close to the MHW. The property is accessed via Folly Point which is connected to Cowdroy Avenue by a narrow path. A double garage is located in the southwest corner of the property immediately abutting No.58 Cowdroy Avenue and encroaching on the subject site by 0.11m. The garage also partly encroaches on the public road reserve of Folly Point. The east side setback is 1.5m for all levels. The west side setback varies from 1m to 4m. The side facades do not step in with the height of the building. There are open and partly covered terraces and balconies to all levels on the northern façade of this dwelling. Due to the steep natural topography and the need for foundations to extend to competent bedrock, the natural topography of the site has been significantly altered (see Figure 27).

DA397/19 was approved on 12 December 2019 and modified on 1 March 2021 for alterations to the dwelling at No.2 Folly Point. Extracts of the approved plans are included in Figures 27 and 28. DA397/19 approved breaches of the height of buildings control with the existing lift structure exceeding the height control by 4.8m (a 56.5% variation) and the new awning to the uppermost (fifth) storey exceeding the height control by 2.67m (31.4%). Extracts from the approved plans are included in Figures 27 and 28.

Photos of No.2 Folly Point are included in Figures 29, 30 and 31.



**Figure 27: Approved western elevation of DA397/19 as modified for No.2 Folly Point (which is oriented to the boundary shared with the subject site)**



**Figure 28: Approved northern elevation of DA397/19 as modified for No.2 Folly Point (oriented to the waterway)**



***Figure 29: View of No.2 Folly Point as viewed from the road reserve looking north towards the waterway of Long Bay***



***Figure 30: View across the frontage of No.2 Folly Point in the direction of the subject site***



***Figure 31: View of the top (entry) level of the dwelling at No.2 Folly Point***

Figure 32 is an aerial photo showing the subject site between No.56 Cowdroy Avenue and No.2 Folly Point.



**Figure 32: Aerial photo of No.56 and No.58 Cowdroy Avenue and No.2 Folly Point (Source:NEARMAP aerial photo date 9 January 2023)**

The section of Cowdroy Avenue fronting the site is very narrow and constrained by a sandstone block wall on the southern side as shown in Figures 33, 34, 35 and 36.



**Figure 33: View of Cowdroy Avenue road reserve fronting No.56 and No.58 Cowdroy Avenue**



**Figure 34: View of Cowdroy Avenue fronting properties No.54D, No.56 and No.58**



**Figure 35: View of Cowdroy Avenue fronting properties No.54C and No.54D to the left of the photo  
(access via a shared driveway)**



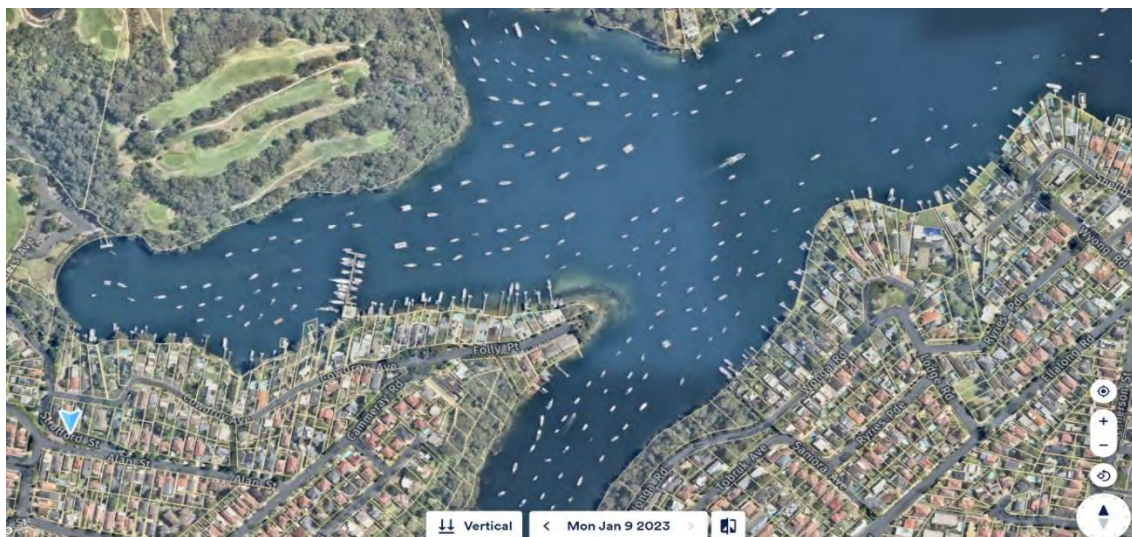
**Figure 36: View of Cowdroy Avenue fronting properties No.54A and No.54B to the left of the photo  
(access via a shared driveway)**

The properties in the immediate vicinity have water frontages to Long Bay. The foreshore is mostly defined by seawalls and some properties include reclamation and fill, retaining walls and swimming pools within the area below the foreshore building line. Every property has a fixed jetty extending into the waterway (Nos. 54A and B and Nos. 54C and D share jetties). There is no consistent pattern of setbacks from the MHWL and no consistent pattern of landscaped areas within the foreshore setbacks. All dwellings have open and partly roofed balconies and terraces on their northern facades at multiple levels. All dwellings have at least two storeys with most having more than two storeys. See Figure 37 which shows the dwellings along the immediate foreshore area.



**Figure 37: Aerial photo of waterfront properties east and west of the subject site (outlined red)  
(Source:NEARMAP aerial photo date 9 January 2023)**

On a broader geographical scale, the locality is part of Folly Point which includes a small foreshore public reserve at the easternmost point. Cammeray Marina is approximately 100m west of the site and further north west of the site is a foreshore reserve and golf course. There are views to across the bay to the foreshore reserve and golf course from the subject site and other waterfront properties in the immediate vicinity along Folly Point and Cowdroy Avenue. See Figure 38



**Figure 38: Locality scale aerial photo (Source Nearmap aerial photo dated 9 January 2023)**



## RELEVANT DEVELOPMENT HISTORY OF THE SITE

### DA 2/20 for demolition of the existing dwelling and construction of a new dwelling

Maximum proposed building height 9.2m (a variation of 8.2%)  
Site coverage 48%  
Landscaped area 43%  
Unbuilt upon area 10%  
Lodged 6 January 2020  
Rejected by North Sydney Development Review Panel.

### DA 56/20 for demolition of existing structures and construction of a new dwelling, landscaping and retaining walls

Maximum proposed building height 10.995m (a variation of 36%)  
Site coverage 48%  
Landscaped area 40.8%  
Unbuilt upon area 10.2%  
Lodged 17 March 2020  
Refused by North Sydney Local Planning Panel on 5 August 2020  
Reasons for refusal:

*"1. Inadequate written request pursuant to Clause 4.6 in North Sydney Local Environmental Plan 2013."*

Most of the proposed building breached the height control of 8.5m.

The request seeking a variation to the height control did not correctly identify the full extent of non-compliance.

The request for variation did not address Clause 4.6(3) and did not demonstrate that compliance was unreasonable or unnecessary or that there were sufficient environmental planning grounds to justify the variation.

*"2. The proposed development is not appropriate in its waterfront context and is incompatible with the built form and landscape character of the area."*

The development was considered incompatible with the existing or future character of the Cammeray foreshore because of excessive height, bulk and scale, excessive footprint, inadequate landscaped area, incongruous form and materiality and failure to respond to the natural topography.

Floor to ceiling heights up to 7.74m were considered unacceptable.

The building did not step with the slope.

The site coverage of 60% was considered excessive.

The landscaped area of 22% was considered inadequate.

The setback to the MHWL was not compatible with neighbouring setbacks.

The clearing of vegetation within the foreshore was considered excessive.

The side setbacks did not step in at upper levels.

Excessive bulk and scale and removal of foreshore vegetation was considered to detract from the visual qualities of Sydney Harbour.

- “3. *The proposed development will adversely impact on existing views and result in an unreasonable level of view sharing for surrounding properties.*”

View impacts were considered unacceptable as the majority of view loss was the result of built form exceeding the height of buildings control.

View impacts were considered moderate to severe from the living areas of the western neighbour.

Occupants of the new dwelling would obtain unobstructed views at the expense of view loss to neighbours.

- “4. *The excessive excavation and fill and building footprint for the proposed development would result in the unjustified removal of significant trees and natural features of the site and may affect the structural integrity of neighbouring land and buildings.*”

Cut and fill, tree removal and removal of vegetation within the foreshore was considered excessive to accommodate a building which exceeded the site coverage controls.

Insufficient information was provided regarding location and construction details of retaining walls and any potential impacts to neighbouring properties.

- “5. *Unreasonable privacy impacts to neighbouring properties.*”

Terraces on the northern side of the proposed dwelling were considered to potentially result in overlooking, loss of privacy and generation of noise nuisance to neighbouring properties.

- “6. *Unreasonable loss of sky outlook and ambient light for the neighbouring properties.*”

The non-compliant building bulk was considered to potentially result in a loss of sky outlook and ambient light to neighbouring properties.

- “7. *Contrary to the public interest and not suitable to the subject site*”

The refused application was subject to a Review of Determination application pursuant to Section 8.2 to the EP&A Act, 1979 (Application Reference RD3/20). The Review application proposed amendments to the original application to:

- Reduce the height and footprint of the garage
- Remove a pergola from the living room deck
- Change finished floor levels
- Create a courtyard for compensatory deep soil planting.

The Review upheld the notice of refusal detailed above.

The applicant appealed to the Land and Environment Court. The appeal was dismissed on 12 June 2021. Relevant comments and findings in the Judgement are as follows:

- the site does not feature any special ecological, scientific or aesthetic value (at par.28),
- matters relating to earthworks as required by Clause 6.10(3)(a) to NSLEP 2013 can be addressed by conditions of consent,
- the Court did not accept that strict compliance with the height control would prevent “reasonable” floor space being achieved or prevent orderly and economic development of the land. There was no evidence presented to suggest floor to ceiling heights of less than 3.2m to 5.2m would result in a lower level of amenity or unreasonable floor space,
- the environmental planning grounds (i) that the height, bulk and scale are consistent with the likely future character of the area and compatible with adjoining development and development along the foreshore and (ii) that the development represents good design and facilitates the proper construction of buildings, do not demonstrate a specific link between these stated generic benefits and the contravention of the development standard.

Fundamentally the Court was unable to approve the development because the request for variation to the building height development standard pursuant to Clause 4.6:

- Did not accurately identify the nature, numeric and three-dimensional extent of the height breach;
- Did not identify sufficient environmental planning grounds specific to the case and specific to the elements of the building which breached the height control;
- And hence did not meet the jurisdictional test of Clause 4.6.

### **Current Application**

- 22 February 2022 – The subject application was lodged
- 23 June 2022 – Council issued a request for additional information
- 17 November 2022 and 23 March 2023 – The applicant provided amended documents on 17 November 2022 including the following:
  - Updated architectural plans
  - Amended Statement of Environmental Effects (SEE)
  - Confirmation that the lift overrun is concealed within the building envelope and does not change the proposed building height
  - Confirmation of the landscaping details to the rooftop as prefabricated planting pods requiring 6 monthly maintenance
  - Additional justification for proposed side setbacks contained in the amended SEE
  - Driveway crossing plans and sections demonstrating the proposed works in and adjacent to the public road reserve
  - Swept path analysis and adjustments to the carport design and bin enclosure to achieve manoeuvring to and from the public road reserve
  - Provision of two (2) on-site parking spaces with a vehicle turntable
  - Retaining wall plans and sections prepared by engineers
  - Amended Plan DA03 to remove storage
  - Amended plan DA16 to revise site calculations
  - Amended shadow diagrams to compare existing and proposed shadows
  - Updated Construction Traffic Management Plan by McLaren Traffic Engineers

- Updated external materials, colours and finishes
- Cut and fill and retaining walls below the foreshore building line revised to split the run of steps and reduce the proposed fill and reduce the height of some retaining walls
- Amendment to the Landscape Plan to add 3 x *Corymbia maculata* as compensatory planting
- Provide a photomontage as viewed from the waterway.

**The photomontage provided has not been supported by the verification documentation required by the NSW Land and Environment Court Policy and is therefore not relied upon in this assessment.**

The view impact analysis prepared by Urbaine Architecture was originally prepared for the Class 1 appeal against the refusal of DA56/20 and was required to be prepared in accordance with the NSW Land and Environment Court Policy. The 3D block diagram and view impact photomontage submitted by the applicant on 3 April 2023 and discussed later in this report are relied upon in this assessment.

On 3 April 2023 the applicant provided the following additional documents to clarify features of the development and ensure consistency between documents:

- Updated architectural plans DA01, DA05, DA06, DA08 and DA10 with finished floor levels at Entry level matching the Engineering Plans
- Updated Excavation and Demolition Methodology Plan and Engineers Details by D’Ambrosio Consulting Structural Engineers Issue 02 dated 22 March 2023
- View Loss Reduction photomontage by Urbaine Architecture and COSO Architecture dated March 2023
- Block Diagram Oblique Views by COSO Architecture dated March 2023

## REFERRALS

### BUILDING

The proposed works the subject of this application have not been assessed in accordance with compliance with the National Construction Code of Australia. Standard conditions are recommended to demonstrate compliance prior to the issue of a Construction Certificate. Should significant changes be required to achieve compliance with NCC standards, a Section 4.55 application would be necessary.

### ENGINEERING

The application was referred to Council’s Development Engineer who advised the application can be supported subject to conditions.

Council’s Development Engineer considered the following aspects of the proposal:

- Traffic Management, vehicle access and egress during construction and operation
- Stormwater
- Parking and vehicle access
- Sediment and erosion controls during construction

- Construction Environmental Management
- Excavation, cut and fill and earthworks
- Works proposed within the adjoining public road reserve

In assessing the application, Council's Development Engineer considered the following DCP sections, Council's Codes and Policies and Infrastructure Guidelines as relevant to the proposal.

Recommended conditions address the following:

- A Construction Management Plan prior to the issue of a Construction Certificate which addresses standard requirements plus:
  - Potential use of council property and the required approvals
  - Measures for safe management of construction vehicles on site and on public roads
  - Safe management for pedestrian access and access to neighbouring properties at all times
  - Hoardings, crane stands, loading and unloading, waste management and materials storage, vehicle wash down and parking for all construction related traffic
  - Timing and duration of work phases
  - No standing or queuing of construction vehicles in the public road network
  - Support for all excavations
- A Waste Management Plan
- A Traffic Control Plan
- Dilapidation reports for all public infrastructure and associated bonds to be held during construction
- Geotechnical and Civil Engineering reports on:
  - the substrate and methods of excavation and shoring
  - monitoring the impacts of vibration and excavation on nearby structures
  - existing groundwater conditions and potential impacts and management during construction including potential drawdown from surrounding properties
  - management of stormwater during construction
  - supervision of excavation by a geotechnical engineer
- Dilapidation reports (including structural and cosmetic elements) and monitoring reports on the impacts of construction on neighbouring properties and structures

## LANDSCAPE

Council's Landscape Development officer recommended conditions of consent subject to amendments to the original DA documents as follows:

- The bulk and scale when viewed from the water is excessive – an amended proposal set back further within the foreshore building line, at a reduced ground level requiring less/no fill and presenting a more subtle and gradually articulated appearance from the water shall be required
- An amended landscape plan including extensive vegetation and canopy trees from the foreshore boundary to the proposed building line, and successfully reducing the bulk and scale of same shall be required.
- The amended landscape plan shall replace the 1 x proposed *Eucalyptus haemastoma* within the void adjacent to the proposed garage (created by removal of T2-T4) with 3 x *Corymbia maculata* (100l), and the understorey shall be heavily planted with suitable species of native shrubs (in addition to the 3 x proposed *Cyathea australis*)

Subject to satisfactory amendments as detailed above, the following conditions are recommended:

- No objection raised to the removal of T2-4, 8,9,10,11.
- T1 *Jacaranda mimosifolia* (8m), T5 *Eucalyptus pilularis* (18m), T6 *Jacaranda mimosifolia* (8m), T7 *Chamaecyparis obtusa* 'Crippsii' (6m), T12 *Schefflera actinophylla* (5m), and all other neighbouring and public trees shall be protected in accordance with AS4970.
- A project arborist (AQ5) shall be appointed to oversee all works within the TPZ of any protected tree.
- All tree protection measures contained within the approved arborist report shall be strictly adhered to
- Sensitive construction techniques including hand excavation, pier and beam construction and flexible location of piers/footings shall be carried out within the TPZ of any protected tree. No roots greater than 40mm shall be cut, no pruning shall be permitted.
- No stormwater or other services shall be directed through the TPZ of any protected tree.
- 1.8m high steel mesh tree protection fencing shall be erected along the entire length of the Cowdroy Ave slip road (northern boundary), and all trees and vegetation located within, including but not limited to 1 x *Grevillea robusta* (13m) 1 x *Eucalyptus pilularis* , 1 x *Pittosporum undulatum* (9m), 3 x *Ficus rubiginosa*, 1 x *Eucalyptus pilularis* & T5,T6 shall be protected in accordance with AS4970, shall have additional trunk and branch protection installed as required, no pruning shall be permitted. A collective tree bond of **\$98,000** shall be applied. It should be noted that the use of this slip road for heavy vehicles and machinery is considered to pose a high risk of mechanical damage to these trees if not carefully protected.

Council's Landscape Development officer made the following comments in response to the amended DA documents:

*"The amended Landscape Plan prepared by Habit 8 dated 22/8/22 is not considered to have adequately addressed concerns raised in LDO's earlier comments dated 26/4/22 (see bold text below). The amended plans show 3 x *Corymbia maculata* (100l), as requested, but no low understorey planting.*

*The Planting schedule does not accurately reflect plants depicted on plans (e.g. *Eucalyptus haemastoma* & *Eucalyptus punctata*)."*

*Should a suitably amended proposal be lodged, original conditions shall apply."*

*While the updated and more extensive arborist report, and visual inspection now made possible by demolition of adjacent dwelling at 56 Cowdroy now suggest that objection may not be raised to the removal of T2-T4 along the western boundary (front setback) of the subject site, subject to suitable replacement planting, the proposal cannot be supported in its current form and amendments/conditions detailed below shall be required:*

- ***The bulk and scale when viewed from the water is excessive – an amended proposal set back further within the foreshore building line, at a reduced ground level requiring less/no fill and presenting a more subtle and gradually articulated appearance from the water shall be required.***

- ***An amended landscape plan including extensive vegetation including canopy trees from the foreshore to the newly proposed building line, and successfully reducing the bulk and scale of same shall be required.***
- ***The amended landscape plan shall replace the 1 x proposed Eucalyptus haemastoma within the void adjacent to the proposed garage (created by removal of T2-T4) with 3 x Corymbia maculata (100l), and the understorey shall be heavily planted with suitable species of native shrubs (in addition to the 3 x proposed Cyathea australis***

The abovementioned comments have been incorporated into conditions of consent for amendments to the Landscape Plan prior to the issue of the Construction Certificate.

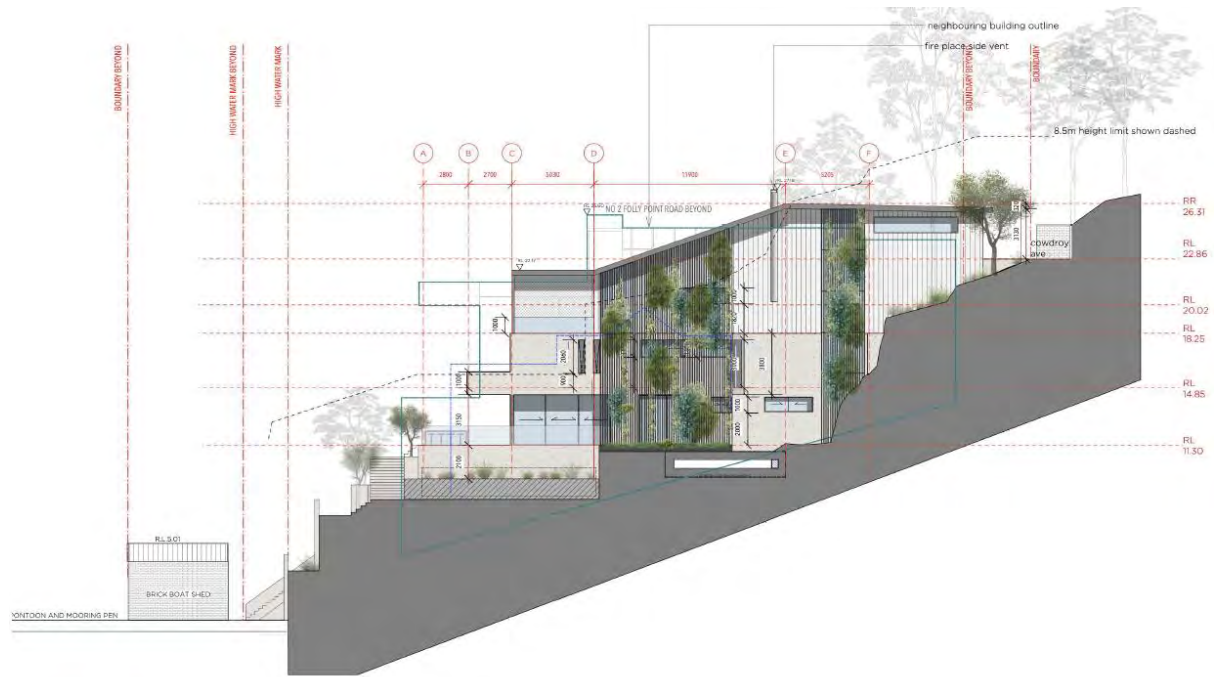
### **Planner's Comments**

The proposed amendments to the development and additional information particularly with regard to essential site works, cut and fill and design of retaining walls, footings and slabs, have clarified the particular conditions of the site and the necessary methods of construction and set out.

The development history demonstrates that the design has undergone several iterations since the original DA2/20 through DA56/20 and amendments to DA60/22. The evolution of the design has resulted in changes including:

- Reduction in the maximum building height by 3.4m
- Reduction in the site coverage from 60% to 44%
- Increase in the unbuilt upon area from 10% to 16%
- Increase in the setback from the MHWM
- Increase in the deep soil landscaped area below the FSBL
- Increase in the setback to the boundary with the waterway
- Confined all built elements to that part of the site above the foreshore building line (FSBL)
- Reduced the footprint of the dwelling to increase the separation and setback from the MHWM and FSBL
- Increase the number of compensatory canopy trees to be included in the new landscaping of the site

The design iterations (not including the final amended design for DA60/22) are shown in Figures 39 to 43.



DA 2/20 06/01/2020

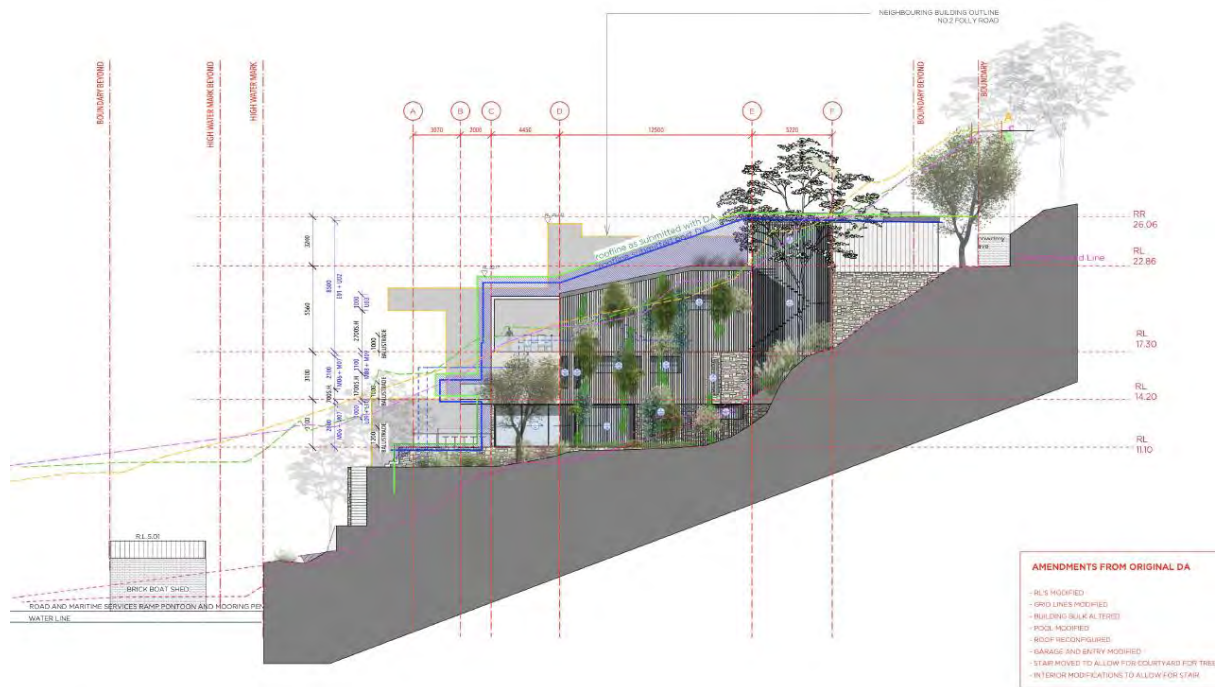
**Figure 39: Design evolution DA2/20 dated 6/01/2020**



DA 56/20 17/03/2020

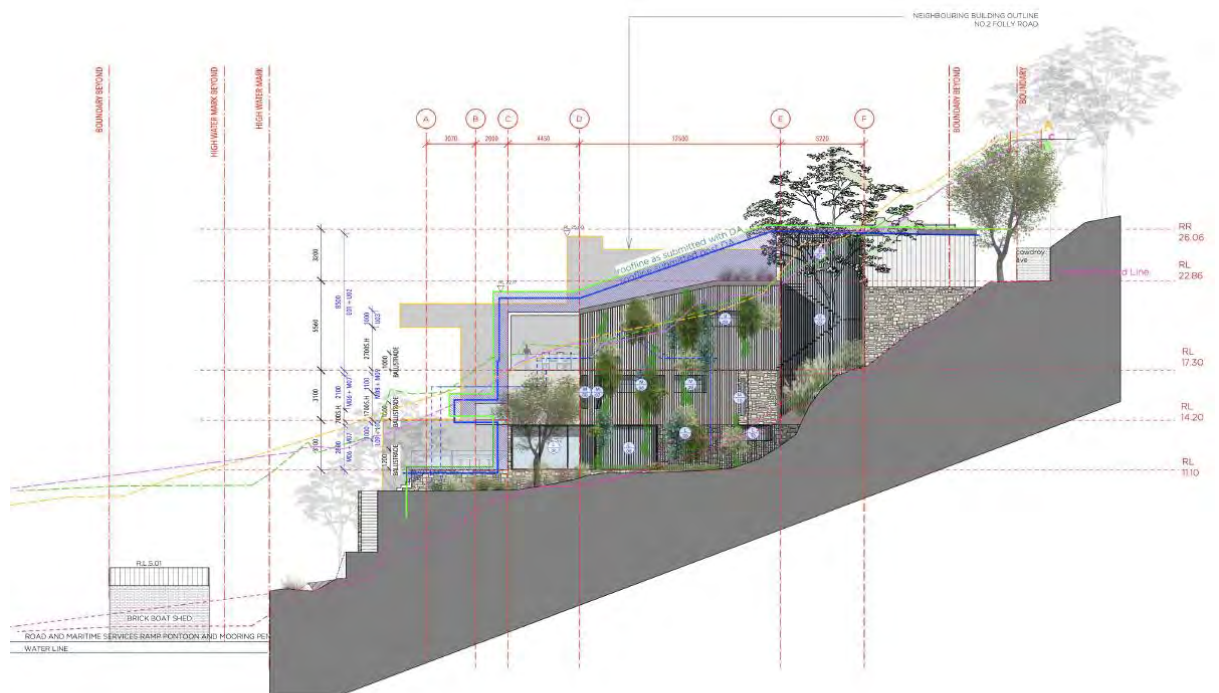
**Figure 40: Design evolution DA56/20 dated 17/03/2020**





AP 56/20 15/10/2020

**Figure 41: Design evolution DA56/20 dated 15/10/2020**



RD 3/20 19/11/2020

**Figure 42: Design evolution Review of Determination of DA56/20 dated 19/11/2020**



20/2021

**Figure 43: Design evolution DA20/2021**

The geotechnical conditions of the site require excavation to competent sandstone bedrock and substantial shoring, footings and engaged concrete piers and engineered concrete slabs. This is typical of dwelling construction in this foreshore location.

The final amended dwelling design is the outcome of:

- geotechnical recommendations,
- engineering design detail for footings and slabs,
- stepping with the slope whilst achieving at-grade parking for two cars off a narrow public road,
- accommodating a single combined access “shaft” which places a lift and stairwell adjacent to each other in a location which allows for tree retention,
- sufficient depth of piers and clearance of slabs from the ground surface for long term structural integrity and building health,
- sufficient floor plate at each level to accommodate (i) an open plan living area (ii) bedrooms and (iii) recreational and ‘other use’ rooms adjacent to the pool area and indoor/outdoor transition space,
- side setbacks consistent with the pattern of built form in the immediate area,
- window arrangements that respect neighbour privacy, and
- outdoor terraces and large areas of glazing that optimise the northerly aspect and the views in a similar way as other contemporary dwellings along the waterfront.

The final design the subject of this assessment report meets the requirements of the relevant provisions of NSLEP 2013 with the exception of the maximum building height and meets the requirements of NSDCP 2013 with the exception that side facades are not stepped in with increasing height of the building. The detailed assessment and evaluation against the relevant objectives and controls are included below.

### **ABORIGINAL HERITAGE**

No sites or places of Aboriginal heritage significance are recorded within 50m of the site on the NPWS Aboriginal Heritage Information Management System as confirmed by a search dated 21 March 2023.

The site and surrounding area have been subject to long term disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.

Given the above, it is considered that there are no Aboriginal heritage constraints known for the proposed development.

Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the potential item be examined in situ by an Aboriginal heritage advisor. Under Section 89a of the NPW Act should any objects be found to be of Aboriginal significance, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) shall be contacted.

### **OTHER**

The application was not considered to raise any environmental health, heritage or traffic matters requiring responses from other assessment staff.

### **EXTERNAL REFERRALS**

The proposed development does not require any external referrals.

### **SUBMISSIONS**

The owners of surrounding and nearby properties were notified of the proposed development for a 14-day period, between **11 March 2022** and **25 March 2022**, in accordance with the North Sydney Community Engagement Protocol 2019.

The notification area map is included in the Location Map in the Executive Summary. A total of ten (10) submissions were received of which seven (7) were in support of the application and three (3) objected to the development. The objections were from residents of Cowdroy Avenue. Letters of support were from residents of properties 300m or more from the site.

The amended application was subject to a second period of notification between 11 January and 25 January 2023. A total of six (6) submissions were received all of which objected to the proposal. The notification area map for the amended DA is combined with the Location Map in the Executive Summary of this report.

The original submissions may be viewed by way of DA tracking on Council's website [https://www.northsydney.nsw.gov.au/Building\\_Development/Current\\_DAs](https://www.northsydney.nsw.gov.au/Building_Development/Current_DAs) and are available for review by NSLPP members.

The issues raised in the submissions that are relevant to the assessment of the application are listed in the table below:

### **Basis of Submissions:**

#### **Issues in support**

- Modifications represented by the current proposal have addressed previous issues of bulk, scale, height and stepping with the natural landform
- Potential positive aesthetic contribution as viewed from the waterway

#### **Issues in objection**

- Questioned accuracy of information in DA documents and requested independent verification of survey levels, existing and proposed finished levels of proposed dwelling in relation to neighbouring dwellings
- Requested clarification of plan detail regarding side setbacks and proposed works including retaining walls adjacent to side boundaries
- Requested details of external materials, colours and finishes
- Plans are unclear as to the works proposed within the setback area to the western side boundary. Plans show unidentified hatching pattern in the side setback area
- Proposal has not adequately addressed, or responded to, the reasons for refusal of previous application for the same site
- Excessive excavation is proposed
- Inconsistent with the objectives for development in Zone C4 particularly that:
  - (i) The development proposal is not low impact
  - (ii) The development will have negative impacts on residential amenity
  - (iii) The development will have negative impacts on aesthetic values of the locality with respect to bulk, scale, site coverage and inadequate landscaped area
- Non-compliance with the height of buildings development standard in NSLEP 2013 and the negative consequences for:
  - (i) Views
  - (ii) Excessive bulk and scale
  - (iii) Incompatibility with the built form and siting of waterfront dwellings in the immediate vicinity
  - (iv) Negative impacts on the aesthetic quality of the established pattern of foreshore dwellings and landscaping of the foreshore area
- New dwellings to exceed the height of the existing dwelling
- Building design and height is an inadequate response to the natural slope of the site
- Non-compliance with the objectives and controls of DCP Clause 1.3 Environmental Criteria because the proposal:
  - (i) Does not maintain the natural topography
  - (ii) Removes vegetation
  - (iii) Proposes excessive excavation with negative impacts to neighbouring properties
  - (iv) Retaining walls and fill within the foreshore building line exceeds the DCP limit of 500mm
- Non-compliance with objectives and controls of DCP Section 1.3.4 because the proposal:
  - (i) Is excessive in bulk and scale
  - (ii) Proposes tree removal
  - (iii) Could create potential glare from external building materials and finishes
  - (iv) Does not respond to the natural topography
- Non-compliance with the objectives and controls of DCP Section 1.3.5 because the proposal:
  - (i) Does not allow for adequate view sharing with neighbouring properties specifically No.56, No.54C and No.54D Cowdroy Avenue

- (ii) Is not compatible with the adopted pattern of built form and orientation for waterfront dwellings in the immediate vicinity which allows for views to the northeast
- Non-compliance with the objectives and controls of DCP Section 1.3.7 Solar Access because the proposal will overshadow living areas, primary open space, kitchen, swimming pool and gardens of No.56 Cowdroy Avenue on mornings through winter
- Non-compliance with objectives and controls of DCP Section 1.3.8 Acoustic Privacy and Section 1.3.10 Visual Privacy because:
  - (i) the proposed dwelling is sited further towards the foreshore than adjoining dwellings and allows for lines of sight 'upslope' and across the site into neighbouring property private open space, balconies and living rooms
  - (ii) The proposed guest accommodation room has a window with direct line of sight to the neighbouring property at No,56 Cowdroy Avenue
- Non-compliance with DCP Section 1.4. Quality of Built Form.
- The proposal is not aligned with the established pattern of building envelopes along the foreshore with negative impacts to the amenity of neighbours and scenic quality of the locality
- Non-compliance with DCP Section 1.4.6 Setbacks because:
  - (i) The proposal is not aligned with the pattern of surrounding waterfront dwellings
  - (ii) The Folly Point waterfront dwellings are closer to the foreshore because the lots are smaller
  - (iii) No.2 Folly Point should not be used as a precedent because it was constructed prior to the current controls for setbacks and foreshore building lines
  - (iv) Non-compliance with the side setback controls to the western side boundary and consequent negative impacts to the western neighbouring property including excessive bulk and scale as viewed from the neighbouring property
  - (v) Inadequate boundary setbacks leave no space for landscaping
- Non-compliance with DCP Section 1.4.7 Form. Mass and Scale because the proposed dwelling is:
  - (i) larger than surrounding dwellings
  - (ii) does not respond to the natural topography
  - (iii) proposes excessive cut and fill
- Non-compliance with all of the objectives of DCP Section 1.4.8 Built Form and Character
- Non-compliance with DCP Section 1.5.5 Site Coverage and Section 1.5.6 Landscaped Areas because the areas indicated in the architectural plans do not match the requirements of the DCP and the inadequate landscaped areas detract from the aesthetic and scenic quality of the streetscape and foreshore.
- Non-compliance with DCP Part C Character Statement.
- Other development applications in the neighbourhood were required to comply with planning controls for building height, landscaped area and view sharing. Non-compliance will set an undesirable precedent
- Not compatible with the character, bulk, scale and built form of other dwellings along the foreshore
- Overdevelopment
- Inadequate view sharing and unreasonable view loss
- Request independent view impact analysis as insufficient information has been provided to demonstrate potential view impacts
- Overlooking and loss of privacy to No.56 Cowdroy Avenue and No.2 Folly Point
- Request 1.5m high solid form privacy screens to the eastern edge of all terrace and outdoor areas on of new dwelling
- Potential overlooking of neighbouring swimming pool areas
- Potential privacy and amenity impacts of small terrace area adjacent to proposed laundry
- Noise generation from outdoor terraces and swimming pool area and loss of amenity for neighbouring properties

- Building extends closer to the foreshore than neighbouring dwellings with negative impacts to visual bulk and scale and lack of landscaping
- Existing traffic problems due to narrow public road reserve and heavy vehicles have difficulty accessing the site and bin collection needs to occur adjacent to No.54 Cowdroy because road is too narrow
- Change in microclimatic conditions resulting in loss of north easterly breezes and overshadowing of landscaping and swimming pools

## **CONSIDERATION**

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

### **SEPP (Biodiversity and Conservation) 2021**

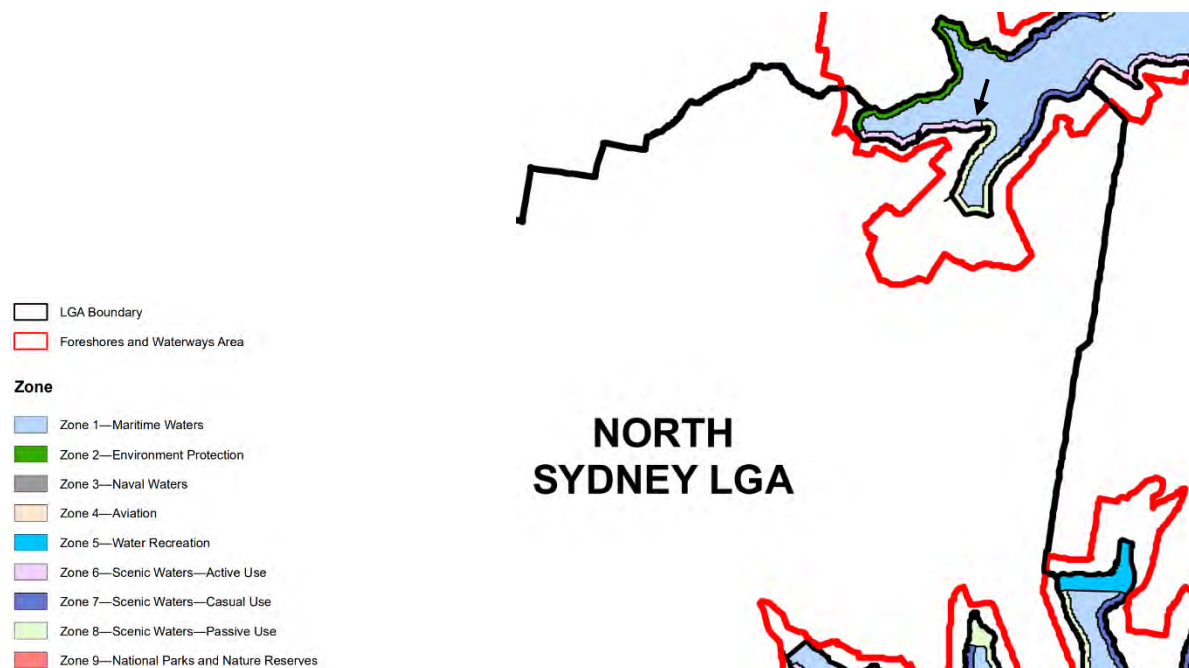
#### **Chapter 2 – Vegetation in Non-Rural Areas**

The proposal meets the objectives of the SEPP because there would be no clearance of native vegetation nor any detrimental impacts on bushland in the vicinity of the subject site.

#### **Chapter 6 – Water catchments**

With consideration of the Sydney Harbour Catchment and the Sydney Harbour Foreshores and Waterways Area DCP 2005, the proposed development is not considered to be detrimental to the Harbour and will not unduly impose upon the character of the foreshore.

Chapter 6 to this SEPP applies to land mapped as Foreshores and Waterways. The site is within the mapped Foreshores and Waterways Area as shown in Figure 44 and the site location is indicated with the arrow.



**Figure 44: Extract from the Foreshore and Waterways Map to SEPP (Biodiversity and Conservation) 2021**

Section 6.28 applies to all development in the Foreshores and Waterways area. Section 6.28(1) requires that the consent authority consider the matters listed below in italics in deciding whether to grant development consent.

*(a) Whether the development is consistent with the following principles:*

- (i) Sydney Harbour is a public resource , owned by the public, to be protected for the public good,*
- (ii) The public good has precedence over the private good,*
- (iii) The protection of the natural assets of Sydney Harbour has precedence over all other interests*

The proposal will not change the areas of the harbour that are accessible to the public. Conditions are recommended with regard to stormwater management and compensatory planting which will enhance the natural assets of the harbour.

*(b) Whether the development will promote the equitable use of the Foreshores and Waterways area including use by passive recreation craft.*

The development will not change current uses of the foreshores and waterways or access by passive recreation craft.

*(c) whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,*

The development is not considered to have adverse impacts on the Foreshores and Waterways Area subject to recommended conditions.

*(d) whether the development promotes water-dependent land uses over other land uses,*

The development will have no impact on water-dependent land uses.

*(e) whether the development will minimise risk to the development from rising sea levels or changing flood patterns as a result of climate change,*

The proposed works are above the predicted sea level rise anticipated within the lifetime of the structures and the site is not affected by flooding.

*(f) whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,*

The proposed landscaping as well as recommended conditions of consent will result in an increase in the number and density of native vegetation within the site.

*(g) whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,*

The development will have no impact on terrestrial and aquatic species and habitat.

*(h) whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.*

The development will have no impact on watercourses, wetlands, riparian lands, remnant vegetation or ecological connectivity.

Section 2.68(2) requires that development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied as to certain matters. Those matters relevant to the proposal are listed (in italics) and commented on below.

*(d) if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,*

Conditions are recommended to ensure traffic management during construction will not result in excessive traffic congestion. Once operational, the traffic generation from the site will be compatible with the local road network capacity.

*(e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—*  
*(i) the Foreshores and Waterways Area, and*  
*(ii) public places, landmarks and heritage items.*

The visual qualities of the foreshore in the immediate vicinity of the site are dominated by urban development. As established in the Class 1 Appeal against the refusal of DA56/20, the Judgement noted the site does not feature any special ecological, scientific or aesthetic value (at par.28) and the Experts agreed the waterfront area in this location is visually and spatially dominated by urban development.



The development will maintain the visual qualities of the site and improve the visual qualities of the land below the FSBL subject to recommended conditions including:

- additional planting
- design changes to reduce the roof height and bulk of the upper storey
- changes to the materials and finishes of the proposed roof of the upper storey and the colour of the proposed rendered surfaces to ensure all colours, materials and finishes are non-reflective and blend with the colours of the natural landscape.

No works other than landscaping and new steps and retaining walls are proposed within the foreshore area that would adversely impact views of the land below the FSBL from the waterway.

The proposed building works are sufficiently separated from the MHWL by a deep soil landscaped area and conditions are recommended to optimise canopy and large shrub planting in the area below the FSBL to reduce the visual impact, bulk and scale of built features as viewed from the waterway.

The development will have no impact to views to and from public places, heritage items and landmarks.

View impacts to the waterway are discussed separately in this report and are considered reasonable in the context and setting.

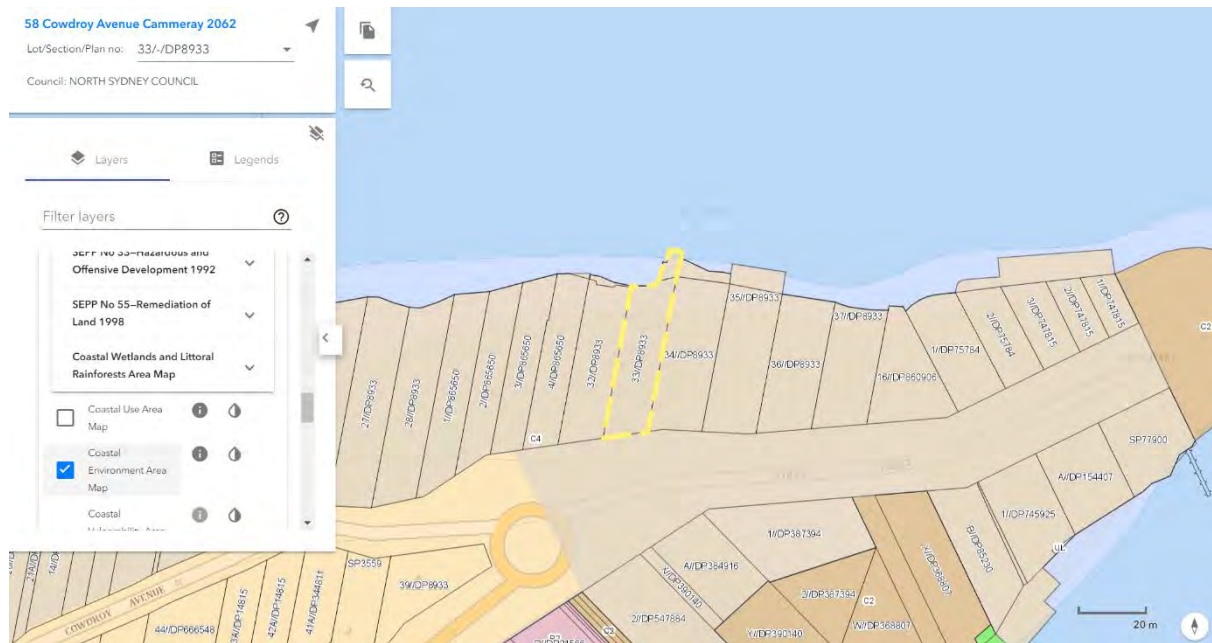
As such, the development is acceptable having regard to the relevant provisions contained within the SEPP (Biodiversity and Conservation) 2021 and the attendant DCP.

### **SEPP (Resilience and Hazards) 2021**

The provisions of Chapter 2 to SEPP (Resilience and Hazards) 2021 applies to Coastal Management and aims for:

- managing development in the coastal zone and protecting environmental assets;
- providing a framework to guide land use decisions; and
- mapping coastal management areas.

The site is mapped as being within the Coastal Environment Area as shown in Figure 45. However, the provisions of Section 2.10 to this SEPP do not apply to land in the Foreshores and Waterways area of the SEPP (Biodiversity and Conservation) 2021 (the provisions of which are addressed above).



**Figure 45: Extract from the mapped Coastal Environment Area showing the site outlined dashed yellow (Source: NSW Spatial Viewer)**

The site is mapped as being within the Coastal Use Area as shown in Figure 46. However, the provisions of Section 2.11 to this SEPP do not apply to land in the Foreshores and Waterways area of the SEPP (Biodiversity and Conservation) 2021 (the provisions of which are addressed above).



**Figure 46: Extract from the mapped Coastal Use Area showing the site outlined dashed yellow (Source: NSW Spatial Viewer)**

Division 5 of Chapter 2 apply general considerations to all development in the coastal zone. Section 2.12 requires that development consent must not be granted to development on land in the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The proposal will not cause or increase the risk of coastal hazards at the site or on other land.

Section 2.13 requires that development consent must not be granted to development in the coastal zone unless the consent authority has considered the provisions of a certified coastal management program that applies to the land. The Greater Sydney Harbour Coastal Management Program is under preparation and is not yet certified. The scoping studies undertaken to date have identified urban stormwater discharge and coastal inundation by sea level rise as the major factors to consider with assessment of new development. Council's Development Engineer has recommended conditions of consent to ensure appropriate stormwater infrastructure is installed and monitored during construction and prior to the issue of a Construction Certificate. The proposed works are well above the sea level rise impacts predicted for the life expectancy of the building.

The proposal is consistent with the relevant provisions of Chapter 2 to the SEPP (Resilience and Hazards) 2021.

The provisions of Chapter 4 to SEPP (Resilience and Hazards) 2021 require Council to consider the likelihood that the site is contaminated and to address methods necessary to remediate the site. The subject site has previously been used only for residential purposes and as such is unlikely to contain any contaminants. Therefore, the site is considered suitable for the continued residential use and the requirements of the SEPP have been satisfactorily addressed.

#### **SEPP (Building Sustainability Index: BASIX) 2004**

A valid BASIX Certificate (*No. 10658355\_04 dated 20 December 2021*) for the proposed dwelling has been submitted with the application to satisfy the Aims of the SEPP. The amendments made to the dwelling design during assessment have not changed the parameters of the development that relate to the BASIX Certificate commitments. The changes to the design recommended in conditions of consent will result in minor changes to the data on which the BASIX certificate was based. Therefore, conditions of consent are recommended for an amended BASIX Certificate prior to the issue of a Construction Certificate.

#### **NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)**

##### **Aims of the Plan**

The overall aims of NSLEP 2013 relevant to the development application are listed below:

- (a) *to promote development that is appropriate to its context and enhances the amenity of the North Sydney community and environment,*
- (b) *in relation to the character of North Sydney's neighbourhoods—*
  - (i) *to ensure that new development is compatible with the desired future character of an area in terms of bulk, scale and appearance, and*
  - (ii) *to ensure that new development on foreshore land does not adversely affect the visual qualities of that foreshore land when viewed from Sydney Harbour and its tributaries,*
- (c) *in relation to residential development—*
  - (i) *to ensure that new development does not adversely affect residential amenity in terms of visual and acoustic privacy, solar access and view sharing, and*
  - (ii) *to maintain and provide for an increase in dwelling stock, where appropriate,*
- (e) *in relation to environmental quality—*
  - (i) *to maintain and protect natural landscapes, topographic features and existing ground levels, and*

- (ii) *to minimise stormwater run-off and its adverse effects and improve the quality of local waterways,*
- (g) *to provide for the growth of a permanent resident population and encourage the provision of a full range of housing, including affordable housing.*

The context and setting of the site are highly relevant with elements of existing development and scenic qualities not consistent with some of the objectives and intentions of the NSLEP 2013 and NSDCP 2013 as explained below. Residential amenity, scenic quality and environmental management are considered in more detail and have been addressed with recommended conditions of consent where appropriate.

### **Permissibility**

The proposed development seeks consent for demolition of existing structures and construction of a new dwelling house and ancillary parking and swimming pool. Dwelling houses are a permissible form of development in Zone C4 Environmental Living zone, and as such the proposal is permissible in the zone with development consent.

Clause 2.7 to NSLEP 2013 allows demolition only with development consent.

### **Objectives of the zone**

The objectives for the C4 Environmental Living zone are stated below:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.
- To ensure that a high level of residential amenity is achieved and maintained.

As noted previously in this report, in the Class 1 Appeal against the refusal of DA56/20, the Judgement noted the site does not feature any special ecological, scientific or aesthetic values (at par.28) and the Experts agreed the waterfront area in this location is visually and spatially dominated by urban development.

The Excavation and Demolition Methodology Plan and Engineering Details by D'Ambrosio Consulting Engineers Project Ref. S7723 March 2023 in combination with the Geotechnical Assessment by Crozier Geotechnical Consultants Project No.2019-174 dated October 2019 demonstrate that all footings are to be founded in competent sandstone bedrock. This requires excavation of sandy soil and clay overlay and rock cutting of weathered sandstone. The footings required are engaged concrete piers. This demonstrates that construction of a dwelling on the site cannot be "low impact" in terms of the site preparation works. It is important to note that the same geotechnical requirements applied to dwellings approved on neighbouring and nearby sites. Waterfront properties to the east and west of the site all demonstrate substantial site works and significant changes to the natural slope and contours of the land with terracing and retaining walls and cut and fill very typical of the development along this section of the waterfront.

Conditions are recommended for additional planting throughout the site and for external colours, materials and finishes to be non-reflective and natural tones and colours to reduce the visual impact of building structures in the foreshore scenic landscape and to improve on the aesthetic values of the site.

The proposed dwelling and ancillary features including the swimming pool and parking with turntable will have improved amenity for future occupants in comparison to the existing dwelling.

Design changes are recommended to the roofline, roof materials and floor to ceiling height of the upper storey (Level 3) and the installation of privacy screens for the proposed dwelling which are considered appropriate to maintain a reasonable level of amenity between the new dwelling and neighbouring properties to the east and west.

For the reasons identified above, the proposal is considered to be consistent with the objectives for development in Zone C4.

#### Part 4 – Principal Development Standards

Principal Development Standards – North Sydney Local Environmental Plan 2013				
Site Area – 855.97m <sup>2</sup>	Existing	Proposed	Control	Complies
Clause 4.3 – Heights of Building	8.6m	10.75m	8.5m	NO

#### Height of Buildings

The height of buildings development control is 8.5m pursuant to clause 4.3 in NSLEP 2013.

Building height is defined in NSLEP 2013 as follows:

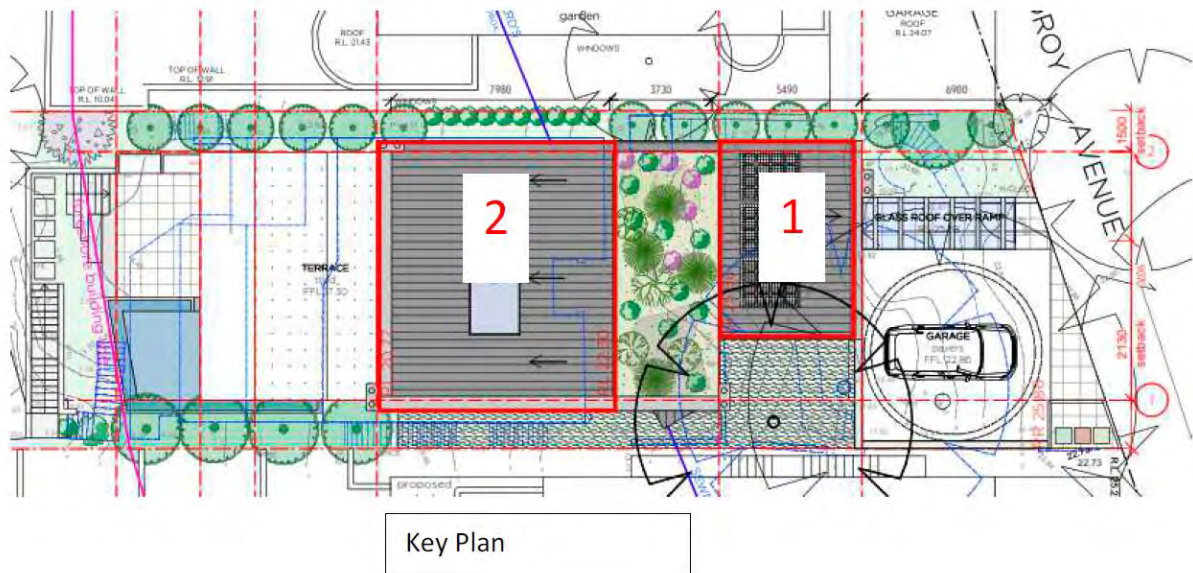
***“building height (or height of building) means—***

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to 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.”*

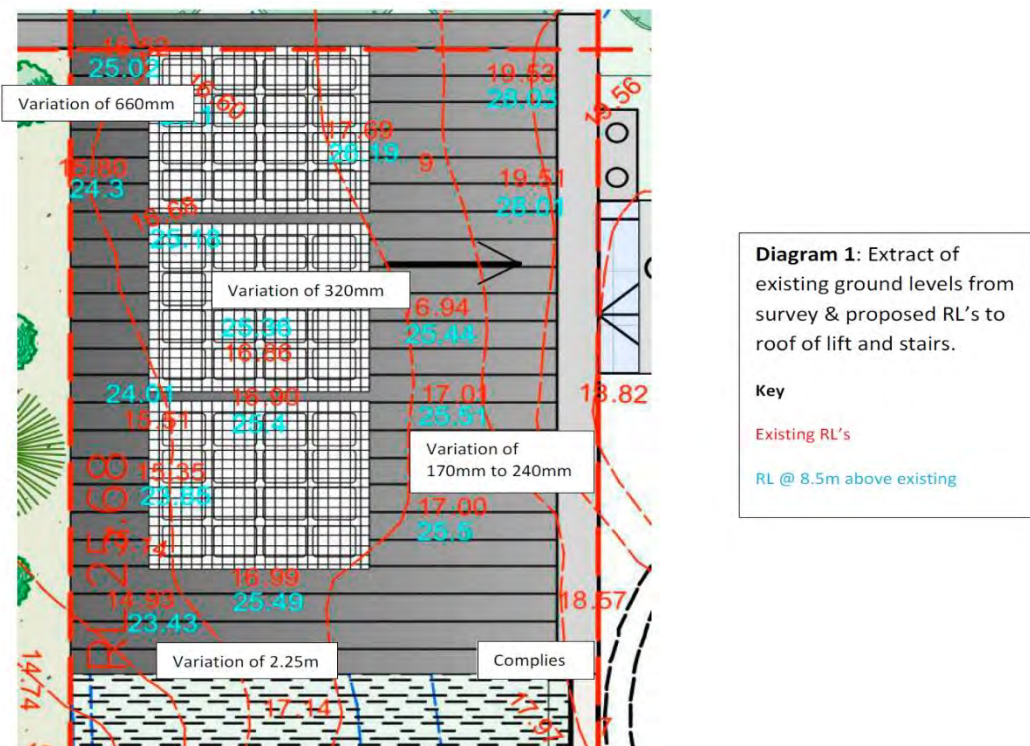
Building height is measured from the existing ground level. The ground levels within the subject site have been altered significantly with a variety of retaining walls and earthworks to accommodate the existing dwelling. The detailed site survey by P.S. Graham and Associates Ref. No.S15124C dated 24 August 2018 includes 1m contours and a series of sections AA (Sheet 2), BB (Sheet 3) and CC (Sheet 4) which provide data on existing ground levels. No “ground levels” are available beneath the existing dwelling footprint. For levels beneath the existing dwelling footprint, the ground levels adjacent to the footprint have been extrapolated as this gives a reasonable estimation of ground level in terms of the comparison to the height of the existing dwellings as well as relative to neighbouring properties. The data has been combined with the most recent architectural plan set to indicate the maximum height points of the proposed building and the portions of the building which exceed the maximum building height control. These are described in the applicant’s request for variation and the architectural plans as follows:

#### **Clause 4.6 Request Plans**

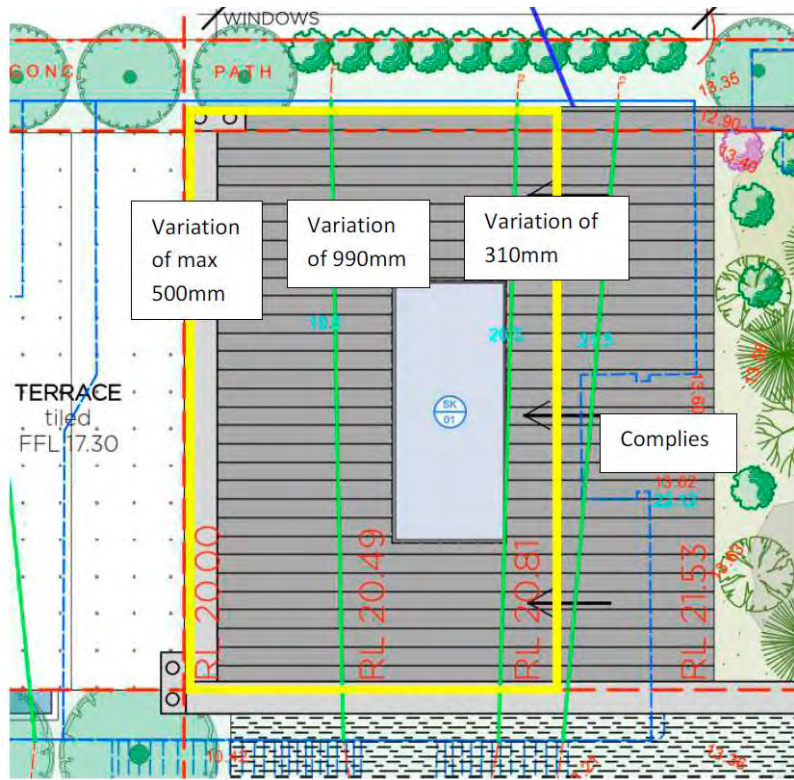
The plans in Figures 47, 48 and 49 were included in the applicant’s Clause 4.6 variation request. Figure 50 is the height exceedance diagram from the architectural plan set.



**Figure 47: Key Diagram showing the two roof sections of the proposed dwelling which exceed the height control of 8.5m. Roof area 1 is above the lift and stair well (see detail in Figure 48). Roof Area 2 is above Level 03 the upper level open plan living area (see detail in Figure 49).**



**Figure 48: Plan of roof to lift and stair well showing existing ground levels (red) and proposed building height (blue) and maximum exceedence measures as "variation"**

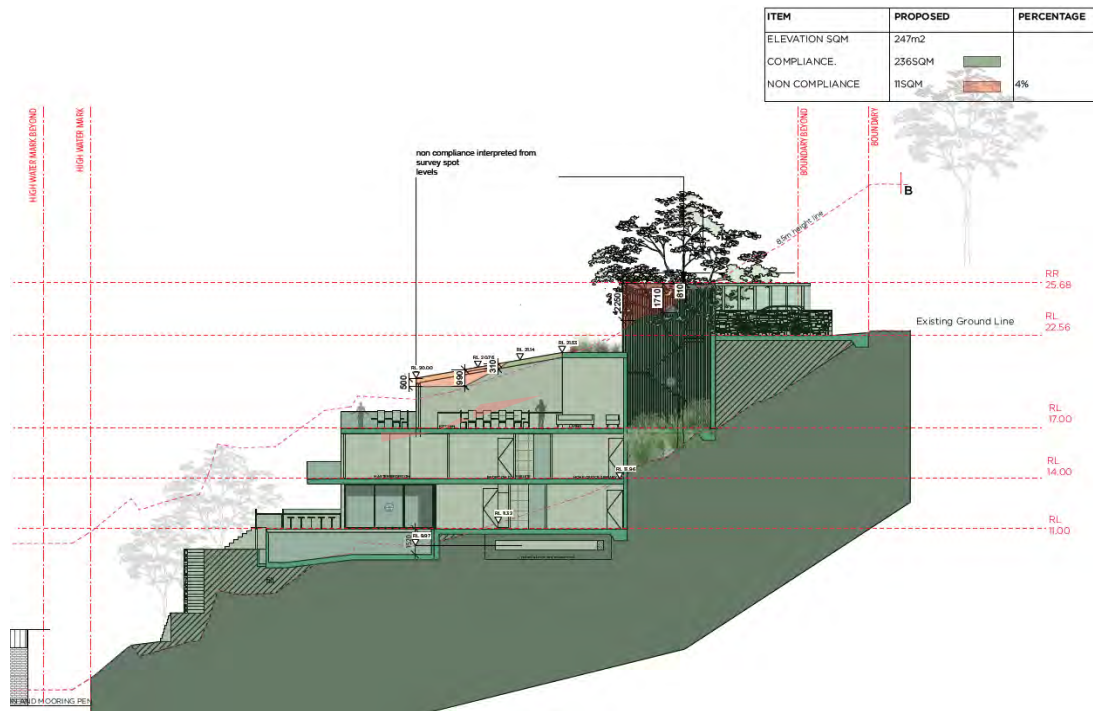


**Diagram 2:** Extract of existing contours, extrapolated across the site & proposed RL's to living room & kitchen.

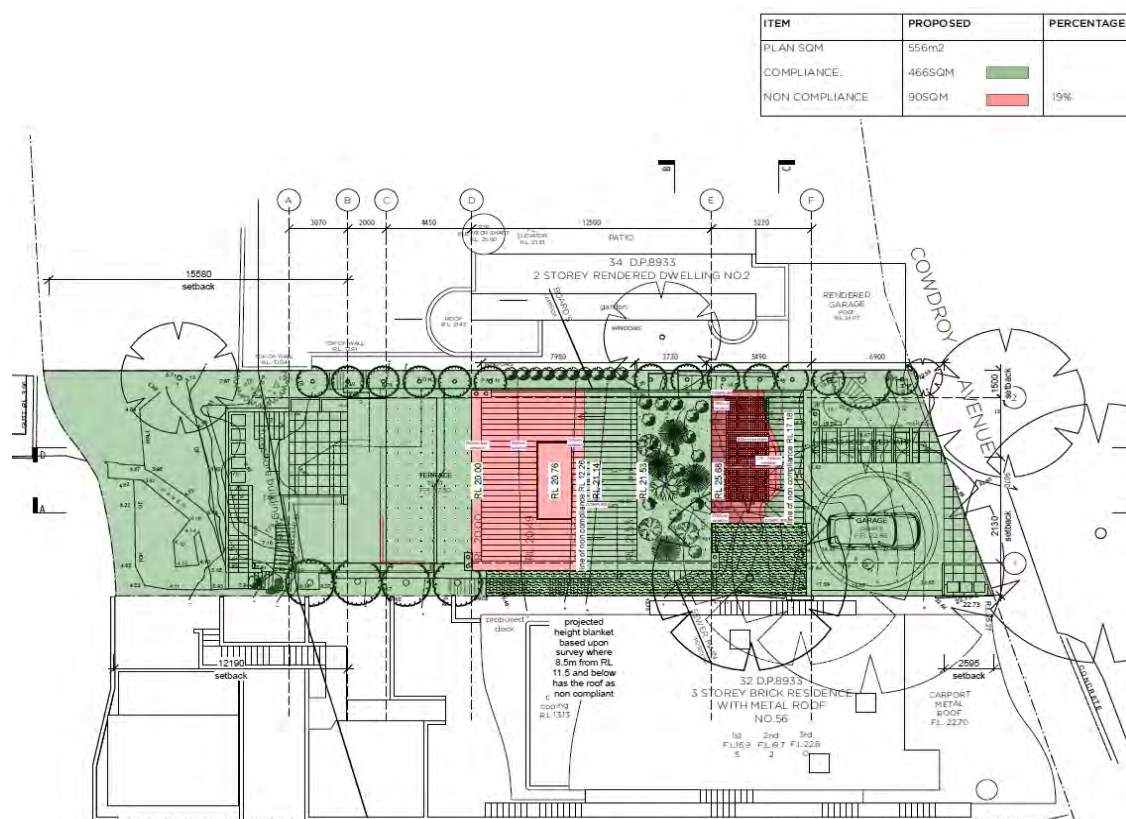
Key  
 Extrapolation of contours

**Figure 49:** Plan of roof to Level 03 Upper level living room showing existing ground levels (red) and proposed building height (blue) and maximum exceedence measures as "variation"

**Architectural Plans**



**Figure 50:** Height Section Diagram showing the sections of the proposed dwelling that exceed the height control (shaded orange)



**Figure 51: Height Exceedance Plan showing the areas of the roof above Level 03 (Upper level living area) and the areas of the roof above the lift and stair well that are above the 8.5m height standard (shaded orange)**

The points of maximum building height where the proposed dwelling is above the 8.5m height control are:

- Lift and stair core – maximum building height 10.75m (exceedance of 2.25m and variation of 26.4%) on the northwestern edge reducing to 9.160m (exceedance of 0.66m and variation of 7.8%) on the eastern edge.
- Level 03 Upper Level (living area level) roof 9.49m (exceedance of 0.99m and variation of 11.9%) near the centre of the roof reducing to 9.0m (exceedance of 0.5m and variation of 5.9%) on the northern edge of the roof and reducing to compliance where the roof meets the rooftop planting area
- Part of the northwest corner of the transparent glass balustrade at Level 03 Upper Level (living area level) height at is a maximum 9.3m (exceedance of 0.8m) (a variation of 9.4%)

The objectives for the height of buildings control in Clause 4.3 to NSLEP 2013 are stated below:

- to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- to promote the retention and, if appropriate, sharing of existing views,*
- to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- 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.

In accordance with the requirements of Clause 4.6 in NSLEP 2013 the applicant's written submission is assessed below.

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

The applicant's request relies, in part, on demonstrating that strict compliance with the numeric height control of 8.5m is unreasonable or unnecessary.

In *Wehbe V Pittwater Council (2007) NSW LEC 827*, Preston CJ sets out ways considered to be well-founded of establishing compliance is unreasonable or unnecessary. The list includes demonstrating that the objectives of a development standard are achieved notwithstanding numeric non-compliance.

In the case of *Initial Action Pty Ltd V Woollahra Municipal Council [2018] NSWLEC 2018*, Preston CJ sates that an applicant does not need to establish all ways in which compliance is unreasonable or unnecessary and that demonstration of only one way may be sufficient.

Compliance may be unreasonable if no purpose would be served by insisting on numeric compliance and instead demonstrating objectives are met. Compliance may be unnecessary if the objectives are achieved to serve the intended environmental planning outcomes as prescribed by the objectives.

The applicant's request makes the following statements to explain how the proposal meets the objectives of the height control and thereby numeric compliance is unnecessary:

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

*Applicant: "The form of the dwelling considers and adapts to the natural fall of the land. The dwelling has been designed over multiple levels to work with the natural topography and steps down to follow this natural gradient."*

Assessment comment: The "natural landform" and "natural gradient" does not exist on this site. The "natural landform" and "natural gradient" does not exist on neighbouring sites. This is the result of significant terracing, retaining walls and excavation for dwellings and ancillary residential development along this section of the foreshore.

The overall "natural fall" of the land is a steep slope down from Cowdroy Avenue (southern boundary) to the MHWL (northern boundary). The proposed dwelling steps down with the slope. The design also stacks floors above each other at the northern side of the footprint such that the "bulkiest" portion of the building is partly excavated below existing ground level and will not be visible as building "bulk". The stacked floor arrangement also allows minimal building envelope space being occupied by a single stair and lift shaft which provides access to all levels.

It is considered that the combined stepped and stacked form of the dwelling is a reasonable and considered response to the existing conditions of the site levels, the layout (particularly access between levels) and the external appearance of the dwelling. Acknowledging that “natural topography” and “natural gradient” are not particularly relevant to this case, the proposal is considered to be suitably consistent with Objective (a).

The reasons provided by the applicant are valid.

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

*Applicant: “The dwelling has been designed to ensure high levels of view sharing for adjacent dwellings. The form of the dwelling considers and adapts to the natural fall of the land. The accompanying view assessment confirms that view sharing is achieved to surrounding dwellings.”*

Assessment comment: Compared to the existing dwelling, the proposed new dwelling will benefit from improved views to the waterway.

It was agreed by experts in *Etherington v North Sydney Council [2021] NSWLEC 1324* that view impacts were primarily relevant to the neighbouring property at No.56 Cowdroy Avenue. This is considered to be the case for this DA.

In the time since the Judgement on that matter, there have been alterations and additions approved at No.56 Cowdroy Avenue in accordance with DA153/19. The approved works are currently under construction and are described in detail above. The works will extend the dwelling and balconies further north towards the waterway which will increase the angle and scope for waterway views from No.56 Cowdroy Avenue. Extracts from the approved plans to DA153/19 are included in Figures 52 and 53. DA153/19 also approved breaches of the height of buildings control. The uppermost roof level of the existing building exceeds the height limit by 4.62m (a 54.4% variation) and the new roof exceeds the height control by 4.675m (a 55% variation) at the highest level and by 3.33m (a 39.2% variation) at Level 3. Views from the uppermost level and Level 3 are from sections of the dwelling that significantly exceed the height of buildings control.

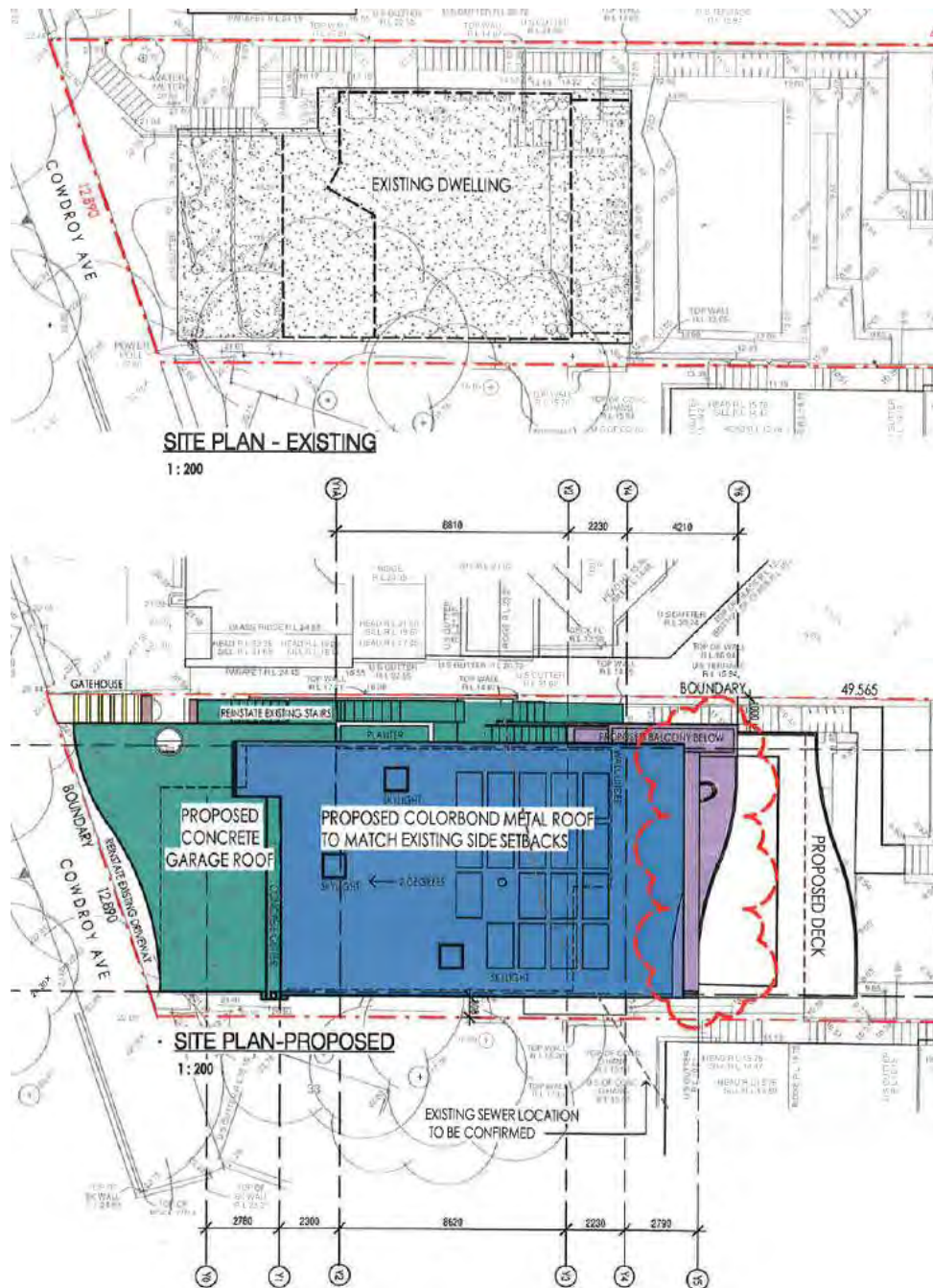
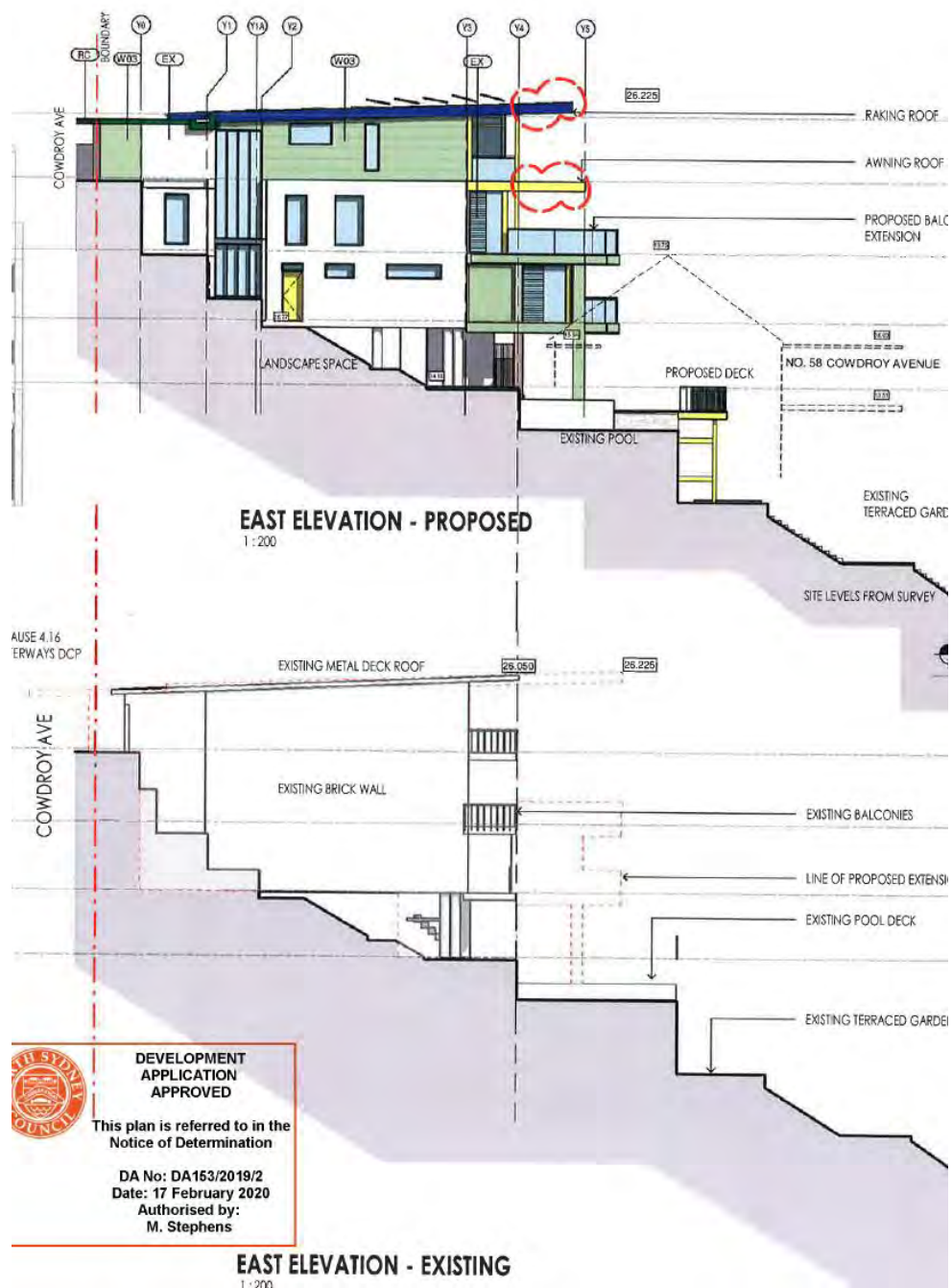
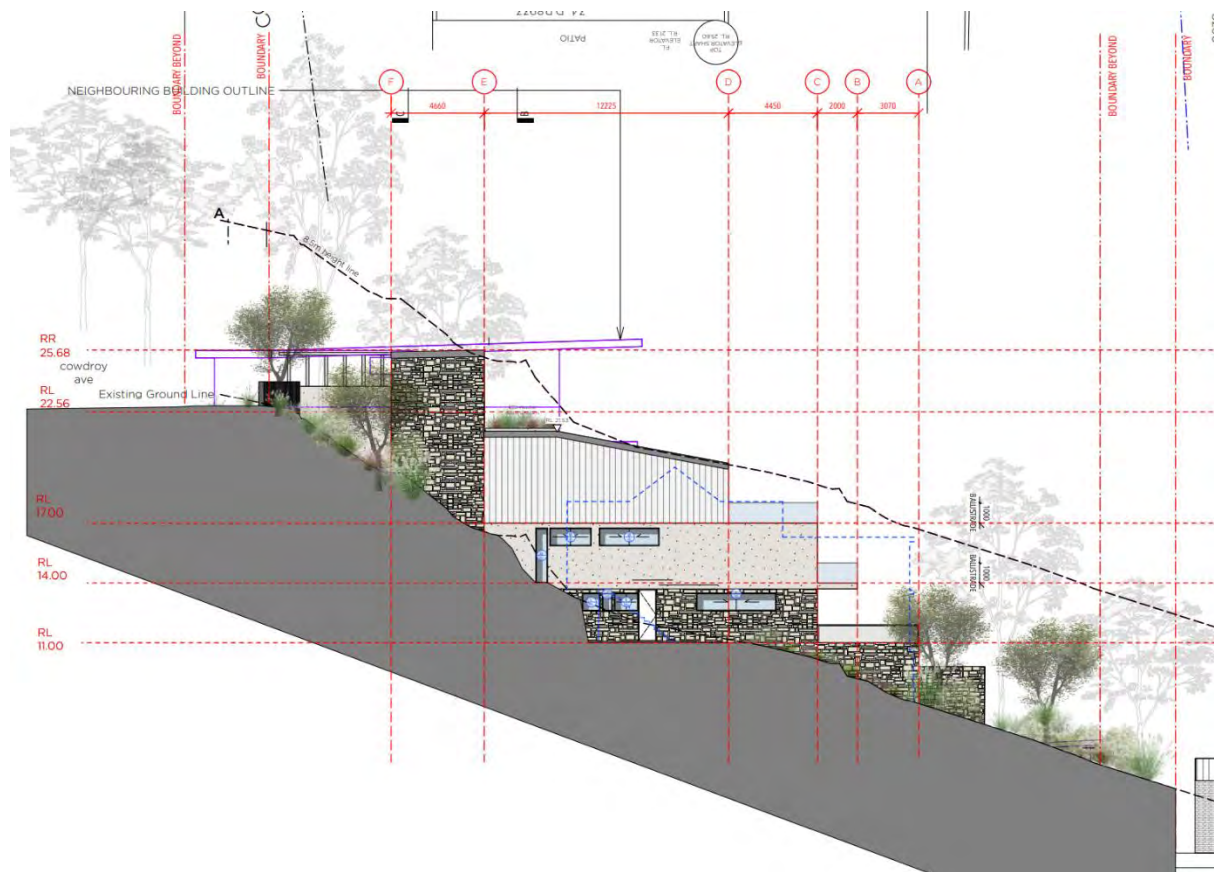


Figure 52: Extract from approved plans for DA153/19 as amended showing the pre-approval (existing) dwelling footprint and approved extension of the dwelling and balconies and terraces further north



**Figure 53: Extract from approved plans for DA153/19 as amended showing the pre-approval (existing) dwelling east elevation (as presented to the subject site) and approved extension of the dwelling and balconies and terraces further north**

The roof peak of the existing dwelling at No.58 Cowdroy Avenue is RL19.78. At present, the view obtained from the uppermost level (Level 04) at No.56 Cowdroy Avenue includes sight lines across the roof of the existing dwelling and across the shared side boundary. As can be seen from Figure 54, the internal floor and balcony floor of Level 04 of No.56 Cowdroy remains higher (at RL22.79) than the proposed maximum roofline of the Level 03 living room roof proposed for No.58 (at RL21.53).



**Figure 54: East elevation of the proposed development which shows the outline of the existing dwelling at No.58 Cowdroy (dashed blue), the profile of the proposed dwelling at No.58 and the pre-DA153/19 outline of No.56 Cowdroy (purple)**

The objective specifically seeks development which promotes retention of existing views. The objective also seeks, if appropriate, sharing of existing views. This objective arguably lacks clarity and measures by which an impact could be assessed as satisfactory or not. Moore SC in a paper titled ‘The Relevance of the Court’s Planning Principles to the DA Process’ dated May 2009 advised as follows:

*“Planning principles assist when making a planning decision – including:*

- *where there is a void in policy; or*
- *where policies expressed in qualitative terms allow for more than one interpretation; or*
- *where policies lack clarity.”*

The NSW Land and Environment Court planning principles on views as set out in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140 (Tenacity)* is an appropriate method for assessment of view retention and sharing.

The proposal achieves reasonable sharing of views which is a clear principle as set out in *Tenacity*. The impact on views and view sharing is examined in detail later in this report, in relation to the DCP.

The reasons provided by the applicant are valid and the proposal is consistent with this objective.

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

*Applicant: "The shadow diagrams demonstrate that notwithstanding the variation to the height control, the adjacent properties receive the required 3 hours of solar access between the hours of 9am to 3pm to the main living areas and open space. In addition, given the orientation of the subdivision pattern, both adjacent dwellings have north facing living areas that will receive high levels of direct solar access throughout the majority of the day.*

*The dwelling will have no shadow impact on public reserves or streets."*

Assessment: The proposal will have no unreasonable impacts to solar access to existing dwellings and will have no impacts to solar access to public streets and public spaces. All properties along the waterway to the east and west of the site have northerly aspects and adjoin the waterfront which maintains year-round solar access to living room windows, balconies and private open space areas on the northern sides of dwellings.

The reasons provided by the applicant are valid.

The proposal meets Objective (c).

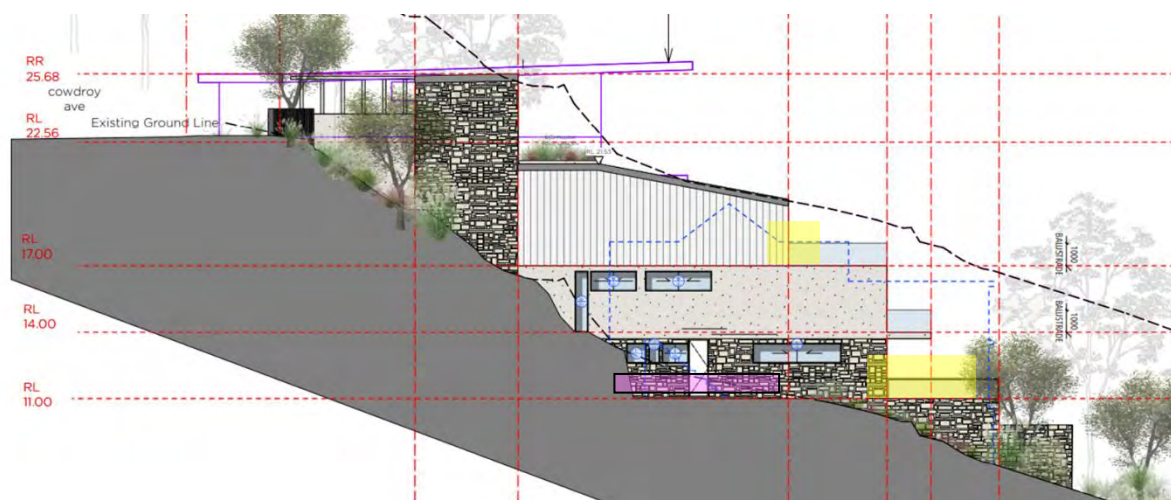
*Objective (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*

*Applicant: "The dwelling has been designed with its primary orientation to the north towards the water which assists in minimising potential impacts to neighbouring dwellings. The side elevations have been treated with a combination of features to ensure a high level of privacy including highlight windows to the eastern elevation and the incorporation of timber louvres to the western elevation."*

Assessment: The window placement, dimensions and orientations to the side elevations of the new dwelling will achieve an appropriate degree of privacy between neighbours.

Windows to the eastern external wall are shown in Figure 55 and are limited to:

- a narrow window to the linen press on Level 02
- a high sill window to an ensuite on Level 02
- a high sill window to Bedroom 3 on Level 02
- high sill small windows to a bathroom and laundry on Level 01
- a high sill window to the pool room on Level 01



**Figure 55: Eastern elevation of proposed dwelling indicating window arrangements and balcony edges where slatted/louvre screens are recommended (highlighted yellow)**

The adjoining neighbour to the east (No.2 Folly Place) has raised concerns regarding potential for overlooking and loss of privacy between:

- the balconies of the proposed dwelling and
- the Level 04 and Level 03 outdoor terraces and swimming pool and pool room Level 01 at No.2 Folly Point.

The side setbacks have limited screen planting opportunities.

Conditions are recommended for a louvred / slatted privacy screen to the eastern edges of the balconies at Level 03 (adjacent to the open plan living room) and Level 01 (adjacent to the outdoor kitchen) to increase privacy without adding significantly to the bulk of the new dwelling. These screens will obscure the line of sight across the shared boundary between areas of private open space where people (including non-residents) are likely to congregate. The privacy screens are to be 1.6m high and permanently fixed.

A privacy screen is considered unnecessary to the Level 02 balcony of the new dwelling. The new balcony is only 2m wide and will be used for passive purposes by the residents of the new dwelling ancillary to the use of the main bedroom. The balcony will not be used for outdoor entertaining. The external wall of No.2 Folly Point in proximity to the bedroom balcony is a blank wall. There is no risk to the privacy of the interior bedroom space to the new dwelling from its proximity with No.2 Folly Point. For these reasons a privacy screen is not considered necessary.

Windows to the western external wall are shown in Figure 56 and are limited to:

- a high sill window to the open plan living room on Level 03
- high sill windows to Bedroom 2 and ensuite on Level 02
- floor to ceiling windows and glass sliding doors to the pool room on Level 01 which are inset 12m from the shared boundary

As shown in Figure 56, the western wall is to be treated with a planting fence and climbing plants for additional screening and planting.



**Figure 56: Western elevation of proposed dwelling indicating window arrangements and metal louvre screen proposed to support climbing plants as shown in the extract from the schedule of materials and finishes. Yellow shading indicates recommended location of slatted / louvred privacy screen.**

The adjoining neighbour to the west at No.56 Cowdroy Avenue has raised concerns regarding privacy impacts from the balconies on all levels of the new dwelling. Conditions are recommended for a slatted / louvred privacy screen to the western edge of the balcony to Level 03 (adjacent to the open plan living room). No screening of the Level 02 balcony is considered necessary because it is adjacent to a Bedroom and will not be used for outdoor entertaining. No screening is recommended for the western side of the swimming pool because there is space for effective screening planting within the setback area.

Subject to the recommended conditions, it is considered that the proposal meets Objective (d).

The reasons provided by the applicant are valid and the proposal is consistent with this objective.

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

*Applicant: "The site is not located at the zone boundary. It is compatible with the scale and height of the surrounding dwellings."*

Assessment: The proposed development is compatible with the use of adjoining development. All adjoining and surrounding properties are used for residential purposes. The height and site coverage of adjoining and nearby residential buildings as detailed below.



The proposed dwelling has four (4) levels with Level 3 recessed from the northern edge of the footprint and Level 4 on the southern edge of the footprint. The levels are proposed as follows:

- RL11 Pool and lowest level 1
- RL14 Mid-level 2 containing bedrooms
- RL17 Upper level 3 containing open plan living room
- RL22.56 Entry level 4
- 9.49m Maximum building height at Level 3 (exceedance of 0.99m and variation of 11.9%)
- 10.75m Maximum building height at Level 4 (exceedance of 2.25m and variation of 26.4%)

No.56 Cowdroy Avenue contains a dwelling with four (4) stacked levels as follows:

- RL 14.15 Pool room floor level
- RL16.87 Ground floor level
- RL19.75 First floor level
- RL22.79 Second floor level
- RL26.225 Maximum roof level
- 13.175m Maximum building height (exceedance of 4.675m and variation of 55%)

No.2 Folly Point contains a dwelling with five (5) stacked levels as follows:

- RL10 Level 1
- RL12.85 Level 2
- RL15.76 Level 3
- RL18.46 Level 4
- RL21.25 Level 5
- RL23.92 Roof level
- RL25.85 Top of lift shaft
- 11.17m Maximum building height (not including lift) (exceedance of 2.67m and variation of 31.4%)
- 13.3m Maximum height of lift (exceedance of 4.8m and variation of 56.5%)

No.54C and No.54D contain a dual occupancy with a shared central party wall. Both dwellings have five (5) stacked levels with the topmost level being recessed from the northern edge of the footprint.

The proposed building footprint is similar to that of adjoining properties. The proposed site coverage is 44%. The site coverage at No.56 Cowdroy Avenue is 60.2%. The site coverage at No.2 Folly Point is approximately 55% (excluding the swimming pool).

The reasons provided by the applicant are valid.

The proposal is considered to meet Objective (e).

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

*Applicant: "The desired future character of the Cammeray Neighbourhood is to maintain the low-density residential living with lower density along the foreshore. Buildings near the foreshore areas should address the waterway and be designed to follow the slope of land. The form, scale and density of the proposed dwelling conforms with the desired future character of the area. The building is of an appropriate scale to ensure the low density character of the area is maintained."*

Assessment: The data identified with consideration to Objective (e) above demonstrates the proposal is compatible with the scale and density of adjoining and nearby existing residential dwellings along this section of the waterfront.

The existing character of the area is dominated by large, multi-storey detached dwellings most of which have their storeys stacked directly above each other. There is high variability in the setbacks from the MHWL with some dwellings having structures immediately adjacent to the MHWL and little to no landscaping of the foreshore area. Terracing and retaining walls within all setbacks are common. Side boundary setbacks are rarely more than 1m. There is no consistency in design and architectural styles. Older dwellings mostly have pitched roofs. Newer dwellings tend to have flat roofs.

Compliance with the North Sydney DCP 2013 Area Character Statements Section 4 Cammeray Planning Area is examined in detail in . In summary, the desired future character of the Cammeray locality is:

- Low density
- No obstruction of views
- Dwellings that address the waterway
- Buildings that follow the slope

The density of the proposal is considered to be similar to, and compatible with, surrounding existing dwellings.

The impact on views is considered reasonable as examined in detail below.

The dwelling will address the waterway.

The dwelling steps with the slope.

The reasons provided by the applicant are valid and the proposal is consistent with objective (f).

*Objective (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.*

*Applicant: "The dwelling achieves a built form that is complimentary to the slope of the land. The central portion of the dwelling sits over three storeys; however, this maintains a consistent built form that steps down towards the north. The built form presents as a one storey dwelling to Cowdroy Avenue."*

Assessment: This objective applies collectively to development in Zones R2, R3 and C4. The majority of built form across the entire geographical coverage of these zones throughout (as opposed to localities within) the North Sydney LGA will not be influenced by the built form on one site. The proposal is considered to be consistent with Objective (g) for this reason.

Furthermore, the parts of the proposed dwelling that exceed the height of buildings control do not, of themselves, result in additional storeys or levels. That is, the non-compliant sections of the building are minor parts of storeys that are mostly compliant with the height control.

The applicant's reason is valid because the proposal is not antipathetic to Objective (g).

In summary, the reasons provided by the applicant have demonstrated that the proposal is consistent with the objectives of Clause 4.3(1) to NSLEP 2013. It is unnecessary to insist on strict numeric compliance when the proposal contributes to or satisfies the outcomes sought by the objectives.

The request for variation satisfies the requirements of Clause 4.6(3)(a).

**Clause 4.6(3)(b) - Whether there are sufficient environmental planning grounds to justify contravening the development standard?**

The principles guiding decisions on whether sufficient environmental planning grounds justify variations to development standards are set out in *Initial Action Pty Ltd V Woollahra Municipal Council [2018] NSWLEC 2018* and *Four2Five Pty Ltd v Ashfield Council [205] NSWLEC 90 at (31)*. These principles require that the environmental planning grounds are:

- specific to the non-compliant elements; and
- achieve the objectives of Clause 4.6(1) to justify an appropriate degree of flexibility in the specific circumstances.

The environmental planning grounds presented by the applicant's request are examined below.

*Applicant: "The breach of the control results primarily from the slope of the land. The lift and stairs are appropriately positioned in this part of the site to enable the provision of access to the various levels of the dwelling. These elements are housed in a modest single storey structure and only trigger a variation as the land falls away steeply. It is important to provide off street parking and therefore the lift and stairs sit beyond triggering the variation. Access from the street and the parking spaces to the dwelling is a critical component of providing a level of amenity for the residents. The design effectively achieves this. Given the location of the lift and stairs they will not impact on the opportunity for view sharing to the neighbouring properties."*

Assessment: The existing ground level includes areas of significant cut and fill. Applying the height of buildings control over the entire building footprint results in a building envelope of irregular proportions which do not "fit" with the necessary location of:

- onsite parking immediately adjacent to the front boundary; and
- a single lift and stair shaft than links the parking level with all other levels.

The necessary set out of parking, lift and stairs combined with the existing variable ground levels and the limited building footprint consequently result in the height breach.

There are positive consequences being:

- the provision of two on-site parking spaces
- an efficient building envelope with a single vertical access shaft (lift and stair).

This is specific to the circumstances of the case and parts of the building that are numerically non-compliant.

This is considered to be reasonable environmental planning grounds.

*Applicant: "Notwithstanding the breach, the dwelling presents as a single storey dwelling to Cowdroy Avenue. The non-compliant portions of the lift and stair, although exceeding the height control are a compatible and complementary building presentation. If measured from street level, these elements have a height of approximately 3.1 metres which is a good planning outcome."*

Assessment: As viewed from the public realm and in the context of the streetscape, the height of the roof over the lift and stairs will not be perceived as exceeding a height control of 8.5m (typically two storeys).

This justification is specific to the circumstances of the case and to parts of the building that are numerically non-compliant, also supporting a suitable degree of flexibility in applying the development standard.

This is considered to be reasonable environmental planning grounds.

*Applicant: "Part of the roof to the living area also breaches the height control. The variation ranges from approximately 310mm to 990mm. The internal height of the space reduces in this location to 2.7 metres. The architectural design reduces the extent of variation by sloping the roof generally consistent with the fall of the land. The internal height of the kitchen and living area reduces from 4.2 metres to 2.7 metres. The slope of the roof, consistent with the fall of the site, ensures the height is reduced without compromising the internal amenity for the residents. The variation to the height control at this part of the site enables the retention of minimum floor to ceiling heights of 2.7 metres which is considered desirable in contemporary dwellings. Given the roof rakes towards the north, any further reduction at the northern end will reduce the amount of natural light penetrating the kitchen area."*

Assessment: The sloping roof to Level 3 is a low pitch of approximately 14 degrees. Floor to ceiling height at the lowest point within Level 3 is 2.7m at the northern edge. This is considered appropriate for the open plan living area and consistent with the proportions of levels below and also the minimum recommended for achieving adequate natural light into internal rooms with deep interior dimensions (e.g. Control 1.4.7 in Part 4 of the NSDCP 2013 requires a minimum floor to ceiling height of 2.7m).

Natural light to the kitchen via skylights is a reasonable design feature and supported for its use of year-round natural light from the north.

To insist on strict compliance would require reduced floor to ceiling height at Level 3 and at least one other level within the dwelling and a flat roof. This is not recommended. The neighbouring dwellings are multi-level buildings with approximately 1m setbacks which limits opportunities for natural light and outlook to the northern façade. Therefore 2.7m floor to ceiling heights are supported at all levels – particularly for Level 1 and Level 2. The proposed roof material is medium reflectivity Zinc. The reflectivity should be low despite its northern orientation, due to the low slope of the roof and in any case will be visible largely only from the waterway. Conditions are recommended that the roof material and finish be changed to a non-reflective surface in natural colours and tones.

This justification is specific to the circumstances of the case and to parts of the building that are numerically non-compliant.

It is considered reasonable environmental planning grounds and justifies numeric non-compliance for the roof area of Level 3.

*Applicant: "The balustrade which results in a minor breach is a glazed element and therefore will not result in an adverse impact."*

Assessment: The northwest corner of the balustrade exceeds the numeric height control. It is a minor portion of the balcony at Level 3. The balcony is ancillary to the open plan living/dining/kitchen area and the balcony will be used for outdoor entertaining. It is typical of balconies on neighbouring and nearby dwellings. Conditions are recommended for a louvred/slatted privacy screen to parts of the eastern and western edges of the balcony to establish privacy and focus views and outlooks in a northerly direction rather than across neighbouring properties. To achieve numeric compliance would require the northwest corner of the balcony to be deleted. In this case insisting on strict numeric compliance is considered unreasonable.

This justification is specific to the circumstances of the case and to parts of the building that are numerically non-compliant.

This is considered to be reasonable environmental planning grounds subject to the installation of a privacy screen.

*Applicant: "The components that exceed the height control do not cause an adverse impact by way of overshadowing, loss of privacy or view loss that would support a further reduction to the internal heights."*

Assessment: The non-compliant roof to Level 3 contributes to shadows being cast onto neighbouring properties No.2 Folly Point and No.56 Cowdroy Ave. However, the shadow cast is not unreasonable in the circumstances and setting. Both No.56 Cowdroy and No.2 Folly Point have large main living room windows and large outdoor spaces on multiple levels, all oriented to the north which receive year-round direct sunlight. The shadows cast by the proposed dwelling will not detract from the reasonable amenity of both neighbours in terms of solar access. The non-compliant roof to Level 3 will obscure parts of the existing view from No.56 Cowdroy Ave (which currently enjoys views above and across the roof of the existing dwelling). However, the view impact is considered to be reasonable with regard to the principles of *Tenacity*, as discussed later in this report.

This justification is specific to the circumstances of the case and to parts of the building that are numerically non-compliant.

These grounds justify numeric non-compliance for sections of the roof area of Level 3 because the impacts are minimal in the specific circumstances.

*Applicant: "The proposed development achieves the objectives of the control and the C4 Environmental Living zoning."*

Assessment: The proposal achieves the objectives of the height control as confirmed above.

The applicant has provided the following reasons as to how the proposal complies with the objective for development in Zone C4:

*Applicant: "The objectives of the C4 Environmental Living zone under North Sydney LEP 2013 are as follows:*

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

*The development satisfies the objectives in the following ways:*

- *The proposed dwelling will replace an existing dwelling on the site, maintaining the low-impact residential use.*
- *The area has high aesthetic values and the form and design of the new dwelling respects this. The stepping form of the dwelling, use of a simple palette of materials and proposed landscaping will enable the dwelling to minimise its visual impact. The modest architecture of the dwelling will complement the surrounding buildings and provide an improved presentation to the foreshore.*
- *The dwelling will achieve a high level of residential amenity for its residents. While respecting the slope of the land, the dwelling steps down the hill providing all living areas and the primary bedroom facing the foreshore and achieving an abundance of natural light and ventilation.*
- *The orientation of the subdivision pattern will ensure a high level of amenity is maintained to the adjacent properties with complaint solar access and view sharing."*

Assessment: The site does not have special ecological or scientific value. The site has aesthetic value because it is in a location with high scenic value and is readily visible from the waterway. The dwellings along this section of the foreshore visually dominate the landscape and the character of development is typically low density, large, multi-storey dwellings with minimal side setbacks with terracing and retaining walls surrounding the dwelling footprints. The proposal is consistent with these aesthetic values and character. The locality is a high amenity area. The proposal will improve the amenity of the residential use of the site with additional on-site parking and a more contemporary dwelling design with swimming pool and high quality indoor and outdoor spaces. Conditions are recommended for improvements to landscaping. Subject to conditions, the proposal is considered to be consistent with the objectives for development in Zone C4.

*Applicant: "The proposed development meets the objectives of the development standard notwithstanding the breach of the height control."*

Assessment: It has been established above that the development meets the objectives of Clause 4.3(1) to NSLEP 2013.

The applicant's request meets the requirements of Clause 4.6(3)(b).

**Clause 4.6(4)(a)(i) – the consent authority is satisfied that the applicant's request has adequately addressed Clause 4.6(3)**

The consent authority can be satisfied that the applicant's request has adequately addressed Clause 4.6(3)(a) and Clause 4.6(3)(b).

**Clause 4.6(4)(a)(ii) – the consent authority is satisfied that the development will be in the public interest**

The consent authority can be satisfied that the development is in the public interest because it is consistent with the objectives of Clause 4.3(1) and with the objectives for development in Zone C4 subject to the recommended conditions of consent as detailed above.

**Clause 4.6(5) – concurrence of the Planning Secretary**

Concurrence to grant consent to the maximum variation of 26.4% is available to the North Sydney Local Planning Panel under Planning Circular PS 20-002 'Variations to Development Standards' dated 5 May 2020.

**Clause 4.6(5)(a) – whether contravention of the standard raises matters of State or Regional significance**

The proposed variations do not raise matters of State or Regional planning significance.

**Clause 4.6(5)(b) – the public benefit of maintaining the development standard**

As detailed above, there is public benefit in maintaining the integrity of the objectives to Clause 4.3(1) and in this regard specific conditions are recommended to reduce the extent and impacts of numeric non-compliance. Subject to these conditions, the granting of consent will also maintain the public benefit of the height control by achieving a development where strict numeric non-compliance will still achieve the intended planning outcomes of the objectives in the specific circumstances of this case.

**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 subject to conditions. The proposed development is considered to be in the public interest in conjunction with the recommended conditions. It is recommended that the variation be supported in these circumstances.

## Part 6 – Additional Local Provisions

### Division 2 – General Provisions

#### Clause 6.9 - Limited development on foreshore area

The subject site is located on the foreshores of Sydney Harbour where a foreshore building line applies as shown in Figure 57.



**Figure 57: Map of foreshore building line (red) and the foreshore area (shaded red) as it applies to the site (outlined dashed yellow) (Source: NSW Spatial Viewer)**

The proposal has been assessed under clause 6.9 in NSLEP 2013 which states as follows:

*“Development consent must not be granted for development on land in the foreshore area except for the following purposes:*

- (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,*
- (b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,*
- (c) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

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

- (a) the development will contribute to achieving the objectives for the zone in which the land is located, and*
- (b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*



- (c) *the development will not cause environmental harm such as:*
- (i) *pollution or siltation of the waterway, or*
  - (ii) *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
  - (iii) *an adverse effect on drainage patterns, and*
- (d) *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- (e) *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- (f) *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- (g) *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- (h) *sea level rise or change of flooding patterns as a result of climate change has been considered.”*

The proposed site works and new structures are entirely above the FSBL. Only landscaping is proposed below the FSBL. The proposal is compliant with Clause 6.9.

#### **Clause 6.10 – Earthworks**

The objective of Clause 6.10 to NSLEP 2013 is to ensure earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The proposal requires extensive earthworks as described in the Geotechnical Assessment by Crozier Geotechnical Consultants Project ref. 2019-174 dated October 2019 and the Excavation and Demolition Methodology Plans and Engineering Details by D’Ambrosio Consulting Project Ref. S7723. In summary, site preparation, cut and fill include:

- Maximum cut to 7m in the location of the future stair and lift well (directly north of the proposed garage)
- Excavation footprint for the future dwelling to expose competent sandstone bedrock and rock excavation for concrete engaged piers and footings
- Redistribution of excavated material within the site for fill at lower levels
- Total estimated volume of excavated material (soil and rock) 350m<sup>3</sup> (650 tonnes)
- Total estimated volume of fill material (soil and rock sourced within the site) 100m<sup>3</sup>
- Net total estimated volume of material to be removed from site (soil and rock) 250m<sup>3</sup> (460 tonnes)
- Removal of material from site to require 6 to 7 truckloads per day over 8 or 9 days
- Excavation machinery to include rock hammers, rock saws and cranes.

This extent of site preparation is typical for the types of multi-level dwellings in this steeply sloping foreshore location.

Clause 6.10 requires that the following matters are considered by the consent authority prior to determination:

- “(a) the likely disruption of, or any detrimental effect on—
- (i) drainage patterns and soil stability in the locality of the development, and
  - (ii) natural features of, and vegetation on, the site and adjoining land,
- (b) the effect of the development on the likely future use or redevelopment of the land,
- (c) the quality of the fill or the soil to be excavated, or both,
- (d) the effect of the development on the existing and likely amenity of adjoining properties,
- (e) the source of any fill material and the destination of any excavated material,
- (f) the likelihood of disturbing Aboriginal objects or relics,
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.”

The excavation and site work footprint are limited to that necessary to achieve the works. There will be no site disturbance below the FSBL. The full impacts of the site works have been assessed by Council’s Development Engineer and Landscape Development Officer and conditions are recommended for:

- Stormwater management and erosion controls
- Protection of trees
- Construction traffic management
- Shoring, support and monitoring of assets on adjoining land
- Unexpected finds protocol.

These conditions will ensure that the development is consistent with the matters in Clause 6.10 and the specific circumstances of the site.

## POLICY CONTROLS

### NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

The proposal has been assessment under the following headings within NSDCP 2013:

<b>DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development</b>		
	<b>Complies</b>	<b>Comments</b>
<b>1.2 Social Amenity</b>		
	Yes	The proposed dwelling has a lift which is connected to the on-site parking area and provides access to all levels within the dwelling. This meets the Silver level performance requirements of the Liveable Housing Design Guidelines.
<b>1.3 Environmental Criteria</b>		
<b>1.3.1 Topography</b>	Supported on merit specific to the site context	The natural topography of the site and surrounds has been altered significantly from their natural topography. All residential properties in the immediate vicinity have multiple retaining walls and terraces and significant excavation beneath the building footprint necessary for structural soundness.  As described in response to Clause 6.10 to NSLEP 2013 above – significant earthworks and structural works are essential to support the proposed development.  Sandstone must be excavated to competent bedrock.

		<p>The lowest floor level is a function of minimising the total site coverage, connectivity of engaged piers and concrete slabs and the amount of bedrock excavation required.</p> <p>Conditions are recommended to ensure appropriate shoring and support for excavation and for monitoring of the impacts to adjoining assets.</p>
<b>1.3.2 Properties in Proximity to Bushland</b>	Yes	See comments Part B Section 15
<b>1.3.4 Properties with a Foreshore Frontage</b>	Yes subject to conditions	<p>The proposed works are above the foreshore area. The building works are well clear of anticipated sea level rise for the life of the structures and the foreshore is protected from high wave energy impacts.</p> <p>There will be no change to public access.</p> <p>Additional landscaping in the foreshore area is required by recommended conditions of consent.</p> <p>Conditions are recommended to reduce the visual impact of built structures including cascading landscaping, open form handrails and colours, materials and finishes that are non-reflective and natural tones and colours.</p>
<b>1.3.5 Visual Impact - Access</b>	Yes subject to conditions	Conditions are recommended for open form handrails and cascading planting to screen retaining walls and reduce the visual impact of new steps.
<b>1.3.6 Views</b>	Yes	<p>The proposal will not impact on views to the waterway from public places.</p> <p>A detailed view impact analysis in accordance with the <i>Tenacity</i> principles is below.</p>
<b>1.3.7 Solar Access</b>	Yes	<p>The additional overshadowing which results from the proposal will have some impact on No.56 Cowdroy Avenue in mid-winter prior to 10am and No.2 Folly Point after 2pm. However, all dwellings along this section of the foreshore have unobstructed year-round direct solar access resulting from their northerly aspect and orientation to the waterway. All dwellings have large living room windows and multiple areas of private outdoor space at multiple levels and the additional shadowing is considered to be minimal in the full context and setting of these indoor and outdoor living spaces.</p> <p>Shadowing of the public domain is minimal and will have no amenity impacts.</p>

<p><b>1.3.8 Acoustic Privacy</b></p>	<p>Yes</p>	<p>The proposed works do not increase the intensity of use on the site with a single dwelling replacing a single dwelling. All dwellings along this section of the foreshore have large living rooms and large outdoor terraces and balconies and terraced rear yard areas which are variously used for private recreation (including swimming pools). Side setbacks for existing dwellings are typically 1m to 2m and fencing within rear yards is minimal in order to optimise sight lines to the waterway.</p> <p>The noise anticipated from the new dwelling is not anticipated to be any different to the typical noise generated from the use of nearby large dwellings and their indoor and outdoor areas on multiple levels.</p> <p>No additional acoustic treatments are considered necessary.</p>
<p><b>1.3.9 Vibration</b></p>	<p>Yes subject to conditions</p>	<p>Excavation to competent sandstone bedrock is required. Construction methods are expected to result in vibration. Conditions of consent require a pre-construction vibration report, monitoring and post-construction review to appropriately manage construction-related vibration impacts.</p>
<p><b>1.3.10 Visual Privacy</b></p>	<p>Yes</p>	<p>The dwellings along this section of the foreshore are all multiple levels with minimal side setbacks (typically 1m). All dwellings have large living room windows and large balconies and terraces at multiple levels oriented to the north towards the waterway. There are very few privacy screens on balconies of nearby dwellings.</p> <p>Conditions are recommended for louvred/slatted privacy screens to parts of the eastern and western edges of the balcony adjacent to the open plan living room. This will minimise additional bulk and scale and shade cast by the screens and focus the outlook from Level 3 living and entertaining spaces towards the north rather than towards neighbouring properties. A privacy screen is also recommended to the eastern side of the proposed outdoor kitchen at Level 1 to screen this high activity outdoor living space from No.2 Folly Point.</p> <p>Screens are not considered necessary for the balcony to Level 02 bedroom because the balcony space is narrow and is anticipated to only have passive use by the future residents and there is no risk of loss of privacy to the interior bedroom space from neighbouring properties.</p> <p>A degree of overlooking across neighbouring sites is inevitable in this environment.</p> <p>Other window arrangements and screening proposed in the architectural plans are considered satisfactory in the specific context and setting.</p>
<p><b>1.4 Quality built form</b></p>		
<p><b>1.4.1 Context</b></p>	<p>Yes</p>	<p>Topography – see above.</p> <p>The dwelling design and layout has been informed by the Site Analysis and optimises northerly aspect and views, solar access and microclimate (both natural climatic conditions and those affected by the built environment).</p>

		<p>The dwellings along this section of the foreshore visually dominate the landscape and the character of existing development is typically low density, large, multi-storey dwellings with minimal side setbacks with terracing and retaining walls surrounding the dwelling footprints. The proposal is consistent with these aesthetic values and character. The locality is a high amenity area. The proposal will improve the amenity of the residential use of the site with additional on-site parking and a more contemporary dwelling design with swimming pool and high quality indoor and outdoor spaces.</p>
<b>1.4.3 Streetscape</b>	Yes	<p>The proposed on-site parking is an improvement to the existing and the only feasible arrangement for the site to provide two on-site spaces, pedestrian access and bin storage.</p> <p>The works as viewed from the limited vantage points in the street are compatible with adjoining existing street elevations in this section of Cowdroy Avenue.</p>
<b>1.4.5 Siting</b>	Yes and on merit for Level 3	<p>The proposed siting is constrained by:</p> <ul style="list-style-type: none"> <li>- Onsite parking for two cars with a turntable immediately adjacent to the street boundary due to the slope of the site;</li> <li>- A single stair and lift shaft is the best outcome for the site enabling connection to all levels via one point of access to minimise the building envelope and connect with the only possible location for parking and pedestrian access; and</li> <li>- The siting is a combination of connectivity with the lift and stairs, providing sufficient floor plate sizes to separate bedrooms, living area and recreation spaces on different levels and achieving a setback from the FSBL.</li> </ul>
<b>1.4.6 Setback</b>  <b>Side setbacks</b>	Acceptable on merit and subject to conditions	<p>The front setback is nil and matches the front setback of No.56 Cowdroy Ave.</p> <p>Proposed side setbacks are consistent with the pattern established by other dwellings in the immediate locality including neighbouring dwellings.</p> <ul style="list-style-type: none"> <li>- The side setbacks are 1.5m to the eastern side and 1.76m to the western side (with a minor variation for the angled window to the study/home office at Level 1 for natural light); and</li> <li>- Noting that the DCP requires side setbacks to step in with the building height as follows:            Level 1 = 900mm            Level 2 = 1.5m            Level 3 (and above) = 2.5m</li> </ul> <p>The proposal complies with side setbacks for Level 1 and Level 2. The DCP side setbacks are considered inappropriate for Level 3 in the context of the site. The site is narrow (12.33m wide) and a compliant, 7m wide floorplate at Level 3 would be unreasonable, being inconsistent with the pattern and rhythm of development established by other dwellings along the foreshore, which typically have 1m to 1.5m side setbacks at all levels. The variation for Level 3 is considered appropriate in this case</p>

<b>Rear setback</b>		There is no consistency in the setback from the northern (rear) boundary along the waterway. Setbacks vary from zero to approximately 12m with a variety of structures, swimming pools, retaining walls, boatsheds and the like within setback areas. The proposed setback is considered appropriate to the site subject to conditions for additional landscaping and canopy tree planting.																
<b>1.4.7 Form Massing Scale</b>	Yes	The size and external dimensions of the proposed building envelope do not exceed the size of adjoining and surrounding dwellings. The dwelling massing is three levels partly stepped and partly stacked plus an access and parking level stepped to the southern edge of the dwelling. Neighbouring dwellings are four and five levels, which are mostly stacked and partly stepped.																
<b>1.4.8 Built Form Character</b>	Yes	There is little uniformity and consistency in architectural style in the immediate neighbourhood along this section of the foreshore. However, all dwellings in the locality have multiple levels stacked and stepped and large areas of glazing, with balconies and terraces oriented to the north towards the waterway. Proposed landscaped areas and site coverage are compliant.																
<b>1.4.9 Dwelling Entry</b>	Yes	The dwelling entry will be clearly visible from the street. The steep slope prevents visibility from a habitable window but there will be clear lines of sight at the entry.																
<b>1.4.10 Roofs</b>	Yes	There is no characteristic roof typology in the vicinity of the site. The proposed roof is low pitch and low profile and conditions are recommended to ensure that roof materials are non-reflective and use natural tones and colours.																
<b>1.4.12 Materials</b>	Yes	There is no consistency in the materials and finishes of dwellings along the foreshore. Conditions are recommended that the zinc roofing and off-white render painted finish be replaced with non-reflective natural tones and colours.																
<b>1.4.14 Front Fences</b>	Yes	Front fencing is not compatible with the need to optimise vehicle manoeuvring space.																
<b>1.5 Quality Urban Environment</b>																		
<b>1.5.3 Safety and Security</b>	Yes	There is no through pedestrian or vehicle traffic. The limitations to the slope of the site do not allow for direct surveillance of Cowdroy Avenue.																
<b>1.5.4 Vehicle Access and Parking</b>	Yes	Two off street parking spaces can be achieved in combination with a turntable which will improve safe parking and manoeuvring of vehicles to and from the site.																
<b>1.5.6 Site coverage, Unbuilt Area and Landscaped Area</b>	Yes and acceptable on merit	<table border="1"> <thead> <tr> <th>Control</th> <th>Required</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td><b>Site coverage</b></td> <td>40% max.</td> <td>44%</td> <td>No</td> </tr> <tr> <td><b>Landscaped area</b></td> <td>40% min.</td> <td>40%</td> <td>Yes</td> </tr> <tr> <td><b>Unbuilt-upon area</b></td> <td>20% max.</td> <td>16%</td> <td>Yes</td> </tr> </tbody> </table>	Control	Required	Proposed	Compliance	<b>Site coverage</b>	40% max.	44%	No	<b>Landscaped area</b>	40% min.	40%	Yes	<b>Unbuilt-upon area</b>	20% max.	16%	Yes
		Control	Required	Proposed	Compliance													
		<b>Site coverage</b>	40% max.	44%	No													
		<b>Landscaped area</b>	40% min.	40%	Yes													
<b>Unbuilt-upon area</b>	20% max.	16%	Yes															
The proposed un-built upon area is greater than that for both neighbouring properties. The quality and quantity of deep soil planting below the FSBL is greater than for the majority of waterfront properties in the immediate locality. Conditions are recommended for deep soil, dense and canopy tree planting to be improved.																		
<b>1.5.6 Landscaped Area</b>	Yes	See above.																

<b>1.5.7 Landscaping</b>	Yes	See above. Existing trees are required to be removed to accommodate the essential site works as explained above. Conditions are recommended for compensatory planting of trees and shrubs suited to the new development.
<b>1.5.8 Front Gardens</b>	Yes	There are no front gardens along this section of Cowdroy Avenue (see site photos above).
<b>1.5.9 Private open space</b>	Yes	A minimum 50m <sup>2</sup> is required at ground level.  The foreshore area exceeds 50m <sup>2</sup> . The terrace at Level 1 adjacent to the pool is approximately 23m <sup>2</sup> at the upper level and 12m <sup>2</sup> at the lower level. These areas in combination with the swimming pool provide adequate outdoor recreation space at ground level.
<b>1.5.11 Swimming Pools</b>	Acceptable on merit	The changes in existing ground level do not provide a sufficient footprint for a pool to comply with the DCP limits for pool height above ground level. The pool complies with the minimum setback and separation requirements. It is suitably integrated with the indoor and outdoor spaces of Level 1 and will be screened on the western side by planting.
<b>1.5.12 Garbage storage</b>	Acceptable on Merit	The bin enclosure must be located adjacent to the front boundary in order to optimise vehicle manoeuvring space and clear access to the dwelling and deep soil planting in the southeast corner of the site.
<b>1.6 Efficient Use of Resources</b>		
<b>1.6.1 Energy efficiency and BASIX</b>	Yes	A valid BASIX certificate has been provided. The design changes during assessment and as recommended by conditions of consent will require minor adjustment to the BASIX certificate that can be resolved prior to the issue of the Construction Certificate
<b>1.6.2 Passive solar design</b>	Yes	North orientation is optimised. Natural light will be available to all living room spaces and habitable rooms. Skylights are included to Level 3
<b>1.6.3 Thermal mass and insulation</b>	Yes	See BASIX
<b>1.6.4 Natural Ventilation</b>	Yes	Window arrangements and floor plan allow for natural cross ventilation to all levels
<b>1.6.5 Colours and Materials</b>	Yes subject to conditions	Materials and colours will be appropriate for heat management subject to conditions
<b>1.6.6 Hot water systems</b>	Yes	See BASIX.
<b>1.6.7 Water conservation</b>	Yes	See BASIX.
<b>1.6.8 Stormwater Management</b>	Yes	Council's Development Engineer has recommended appropriate conditions.
<b>1.6.9 Waste Minimisation and Management</b>	Yes	See recommended conditions for a detailed waste minimisation and management strategy during demolition and construction.
<b>1.6.10 Green roofs</b>	Yes	Part of the Level 3 roof includes planting in prefabricated beds.
<b>DEVELOPMENT CONTROL PLAN 2013 – Part B Section 10- Car Parking and Transport</b>		
	<b>Complies</b>	<b>Comments</b>
<b>10.1 General objectives</b>		
	Yes	Onsite parking is as safe as possible in the constrained circumstances of this case.
<b>10.2 Parking provision</b>	Yes	Two on-site spaces are proposed

<b>DEVELOPMENT CONTROL PLAN 2013 – Part B Section 11 – Construction Management</b>		
	<i>Complies</i>	<i>Comments</i>
<b>11.1 General objectives</b>		
	Yes	Conditions of consent specify construction days and hours.  The site conditions are challenging for construction management.  Conditions of consent require Construction Management Plans and any hoardings and loading zones etc to be finalised prior to the issue of the Construction Certificate.
<b>11.2 Operation hours, noise and vibration</b>	Yes subject to conditions	Conditions will limit construction hours and days. Conditions require a vibration impact monitoring report and dilapidation reports prior to the issue of a Construction Certificate to protect neighbouring assets and amenity.
<b>11.3 Public safety, amenity and security</b>	Yes subject to conditions	Conditions are recommended for appropriately securing the site during construction and allowing for safe and unobstructed ongoing access for pedestrians and vehicles in the public road network.
<b>11.4 Air and dust management</b>	Yes subject to conditions	Conditions are recommended for environmental site management plans prior to the Construction Certificate.
<b>11.5 Erosion and Sediment control</b>	Yes subject to conditions	Conditions are recommended for erosion and sediment controls to be included in the Construction Site Management Plan.
<b>11.6 Waste Management</b>	Yes subject to conditions	Conditions require a waste minimisation and management plan prior to the Construction Certificate.
<b>11.7 Traffic Management</b>	Yes subject to conditions	Conditions require a Construction Traffic Management plan with details specific to the conditions of the site and its context.
<b>11.8 Community Information</b>	Yes subject to conditions	Site Manager and PCA contact details must be displayed on the site for the duration of the construction project
<b>DEVELOPMENT CONTROL PLAN 2013 – Part B Section 14 – Contamination and Hazardous Building Materials</b>		
	<i>Complies</i>	<i>Comments</i>
<b>14.2 Contaminated land</b>	Yes	The site is continuing a residential use. There is no evidence of previous contaminating uses.
<b>14.3 Hazardous building materials</b>	Yes subject to conditions	Conditions are recommended for a Hazardous Materials Inventory prior to the demolition.
<b>DEVELOPMENT CONTROL PLAN 2013 – Part B Section 16 – Tree and Vegetation Management</b>		
	<i>Complies</i>	<i>Comments</i>
<b>16.2 Management of Trees and Vegetation</b>	Yes subject to conditions	Council's Landscape Development officer has recommended conditions regarding tree retention and management.
<b>16.3 Trees and Vegetation on Adjoining Properties</b>	Yes subject to conditions	See above
<b>16.4 Protection of Trees during construction</b>	Yes subject to conditions	See above



16.5 New Tree Planting	Yes subject to conditions	Conditions are recommended for additional dense understorey planting and canopy trees
<b>DEVELOPMENT CONTROL PLAN 2013 – Part B Section 17 – Erosion and Sedimentation Control</b>		
	<b>Complies</b>	<b>Comments</b>
17.2 Requirements	Yes subject to conditions	Conditions require soil erosion and sediment control plans prior to the Construction Certificate.
<b>DEVELOPMENT CONTROL PLAN 2013 – Part B Section 18 – Stormwater Management</b>		
	<b>Complies</b>	<b>Comments</b>
18.2 Requirements	Yes subject to conditions	Conditions require a detailed stormwater management plan during and post construction to be finalised prior to the Construction certificate.
<b>DEVELOPMENT CONTROL PLAN 2013 – Part B Section 19 – Waste Minimisation and Management</b>		
	<b>Complies</b>	<b>Comments</b>
19.2 Requirements	Yes subject to conditions	Conditions require a Waste Minimisation and Management Plan for demolition and construction prior to the Construction Certificate.
<b>DEVELOPMENT CONTROL PLAN 2013 – Part B Section 20 – Public Infrastructure</b>		
	<b>Complies</b>	<b>Comments</b>
20.2 Requirements	Yes subject to conditions	Various conditions as recommended by Council's Development Engineer require further details and plans to be approved in accordance with Section 138 to the Local Government Act prior to the Construction Certificate.
<b>DEVELOPMENT CONTROL PLAN 2013 – Part C Section 1 – Area Character Statements</b>		
	<b>Complies</b>	<b>Comments</b>
1.2 Planning Areas	Yes	The site is part of the Cammeray Planning Area.
<b>Section 4</b>		
	<b>Complies</b>	<b>Comments</b>
4. Cammeray Planning Area Local Character Statement	Acceptable for the context and setting	<p>The proposal will not change the diversity and density of the residential neighbourhood.</p> <p>This area of the foreshore has no natural features remaining and no public access to or along the foreshore. Foreshore development in the immediate locality is large, multi-level detached dwellings with urban development visually dominating the foreshore and minimal natural features evident within private properties.</p> <p>The development requires tree removal and conditions are recommended for compensatory planting.</p> <p>The development will not significantly impact views from public places and landmarks.</p> <p>There will be no impacts to heritage items.                      There are no changes to pedestrian routes.                      There is no space within the road reserve for street tree planting.</p>

		The materials of the existing dwelling are not suitable for re-use. Some excavated material will be used as fill within the site.
<b>4.2 Cammeray Neighbourhood</b>	Acceptable in the context and setting	The proposed dwelling: <ul style="list-style-type: none"> <li>- is consistent with predominant residential development,</li> <li>- maintains steep slope adjacent to foreshore,</li> <li>- does not impact natural vegetation and natural rock outcrops prominent in this section of the foreshore,</li> <li>- does not impact views from important public spaces and landmarks, and</li> <li>- has frontage to a narrow road and nil setbacks for parking are maintained.</li> </ul>
<b>4.2.2 Desired future character</b>	Acceptable in the context and setting	Consistent with the existing low density neighbourhood.
<b>4.2.3 Desired built form</b>	Acceptable in the context and setting	<p>Provides acceptable separation to the foreshore and complies with the FSBL.</p> <p>View sharing is reasonably achieved in accordance with the principles established in <i>Tenacity</i> (see below).</p> <p>No obstruction of views from the waterway and from public places is caused.</p> <p>The new dwelling addresses the waterway in a similar manner to neighbouring and surrounding dwellings.</p> <p>Substantial cut and fill are necessary for structurally sound construction. Cut and fill was required for the dwelling that is being replaced. A similar scale of cut and fill has been implemented for neighbouring and nearby dwellings.</p> <p>The dwelling is partly stacked and partly stepped with the slope.</p>

#### LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The subject application has been assessed against the North Sydney Local Infrastructure Contribution Plan 2020 and is subject to payment of contributions towards the provision of local infrastructure. The contribution payable is \$29,000.00, levied in accordance with s7.12 of the Act.

A condition requiring the payment of contributions at the appropriate time is included in the attached conditions.

#### ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

## **View Impacts – assessment in accordance with the Planning Principles of *Tenacity***

### ***Step 1: assessment of views to be affected.***

The viewpoints selected for more detailed examination have been considered in the context of the issues raised in submissions, inspection of the site and surrounds, consideration of the approved plans for No.2 Folly Point and No.56 Cowdroy Avenue and comments made in the judgment of *Etherington v North Sydney Council [2021] NSWLEC 1324*. As a result of this consideration, the assessment of impacts is limited to the open plan living area and ancillary balcony at Level 04 at No.56 Cowdroy Avenue. Due to the orientation, aspect, floor plan layout, window and balcony arrangements, finished floor levels and boundary alignments of No.2 Folly Point Road, it is considered that the existing views from No.2 Folly Point will not be obstructed.

The viewpoints are the static, private, internal and external viewpoints primarily from Level 4 living room and Level 4 balcony at No.56 Cowdroy Avenue. There are also views to the waterway from every other lower level of No.56 Cowdroy Avenue. The view from Level 4 is the most expansive view because it is currently gained by looking across the subject site, across the side boundary and across the roof of the existing dwelling to be demolished. Parts of the view from Level 4 are gained from sections of the dwelling at No.56 Cowdroy Avenue which significantly exceed the height of buildings control.

The dwelling at No.56 Cowdroy Avenue is currently a construction site and access to No.56 Cowdroy Avenue was not possible for the purposes of this DA assessment. However, it is considered reasonable this view impact assessment be guided by the View Impact Analysis by Urbaine Architecture prepared for *Etherington v North Sydney Council [2021] NSWLEC 1324* at which time data was based on Pre-DA153/19 and the understanding that views will be significantly improved as a result of the alterations and additions currently under construction. That is, if the view impact analysis based on the Pre-DA153/19 status of No.56 Cowdroy Avenue is found to be reasonable then the impacts on Post-DA153/19 No.56 Cowdroy Avenue would also be reasonable.

### ***Step 2: consider from what part of the property the views are obtained.***

From No.56 Cowdroy Ave, views of the waterway are obtained from the northern (rear) façade at every level of the dwelling including:

- Living rooms and balcony at Level 4
- Bedrooms and balcony at Level 3
- Habitable rooms at Level 2
- Pool area and private open space at Level 1
- 

The greatest expanse of views to the waterway are obtained from Level 4.

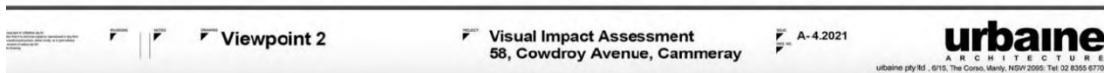
Note that some points of the dwelling at No.56 Cowdroy Avenue from which waterway views are obtained include sections of built form which exceed the height of buildings control by more than 4m on Level 4 and more than 3m on Level 3.

**Step 3: assess the extent of the impact.**

The applicant has provided an updated photomontage from the View Impact Analysis by Urbaine Architecture prepared for *Etherington v North Sydney Council [2021] NSWLEC 1324*. The photomontage is included in Figures 58 (being the previous DA56/20) and 59 (being the current DA60/22).



Viewpoint 2 - visual impact shown in red overlay.



**Figure 58: Extract from View Impact Analysis by Urbaine Architecture prepared for previous DA56/20 with previous proposed dwelling shaded red**



Viewpoint 2 - visual impact shown in red overlay.

**Figure 59: Updated View Impact Analysis by COSO Architecture prepared for DA60/22 with proposed dwelling shaded blue**

**Step 4: assess the reasonableness of the proposal that is causing the impact.**

The proposed new dwelling exceeds the height of buildings control for part of the roof profile to the upper level and part of that non-compliant roof will obscure a small portion of the view from the pre-DA153/19 version of No.56 Cowdroy Avenue as shown by Figure 59. The glass balustrade and the lift and stair core of the proposed new dwelling will not obstruct the water views from No.56 Cowdroy Avenue.

However, some of the views from No.56 Cowdroy Avenue, including the views depicted in Figures 58 and 59 are gained from parts of the dwelling which exceed the height of buildings control. The views under consideration also rely on lines of sight across side boundaries and, as specifically stated in *Tenacity* by Roseth SC "The expectation to retain side views ... is often unrealistic".

The views to the waterway are highly valuable. The majority of existing views to the waterway from every level of the dwelling at No.56 Cowdroy Avenue will be retained with the construction of the proposed dwelling at No.58. The additions approved with DA153/19 will further improve on the views depicted in Figures 58 and 59.

The completion of the works approved with DA153/19 will further reduce the portion of views that are potentially obscured by the proposed dwelling at No.58.

The roof pitch for the proposed dwelling at No.58 is already low at approximately 14 degrees. The roof incorporates a skylight recessed below the roof profile and the skylight does not add to the height or profile of the roof.

The gain to views is considered negligible from a change in the roof profile and pitch.

The anticipated impacts to views from No.56 Cowdroy Avenue are considered acceptable and the sharing of views in this context is reasonable.

<b>ENVIRONMENTAL APPRAISAL</b>	<b>CONSIDERED</b>
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 (during construction)	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 considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

### **SUBMITTER CONCERNS**

The issues raised in the submission are addressed below:

***Issue:***

*Modifications represented by the current proposal have addressed previous issues of bulk, scale, height and stepping with the natural landform.*

***Response:***

The evolution of the proposed new dwelling from DA2/20, DA56/20 and DA60/22 has resulted in reductions to bulk, scale and height and a reduction in the building footprint and 3D envelope. The building is appropriately stepped and stacked in response to the slope and structural engineering requirements for the building.

***Issue:***

*Potential positive aesthetic contribution to the streetscape and as viewed from the waterway*

**Response:**

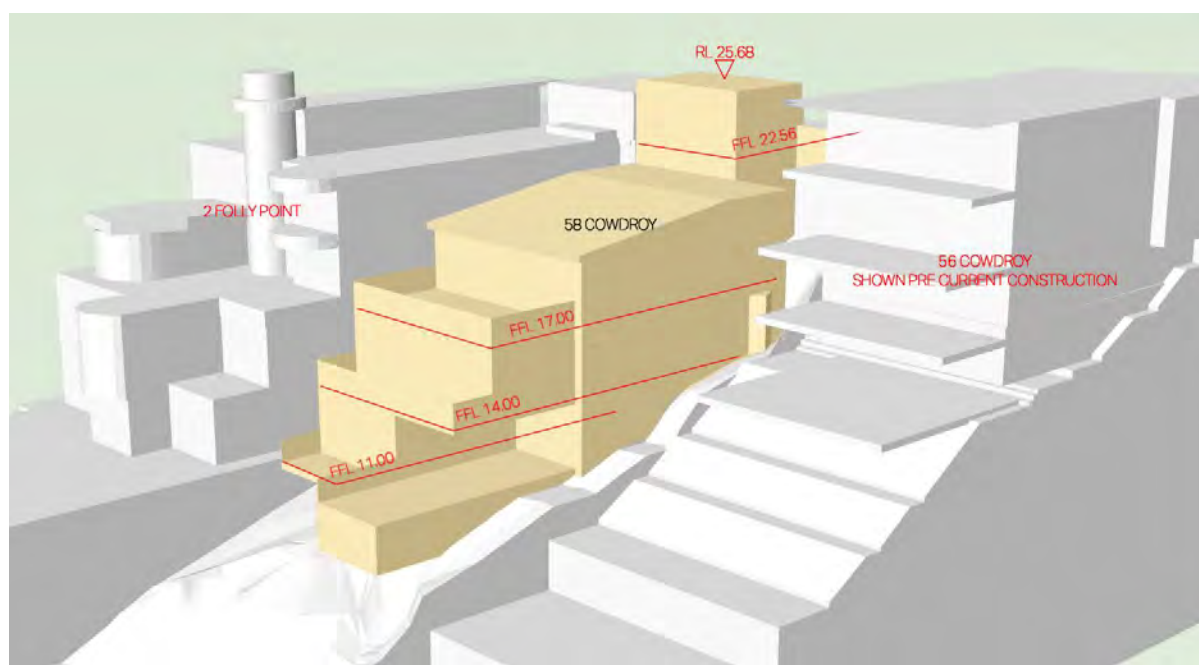
The proposal is consistent and compatible with the streetscape of Cowdroy Avenue with nil setback to the proposed parking and limited landscaping which is necessary due to the very narrow public road reserve. The dwelling is multi-level and partly stacked and partly stepped in a manner consistent with other neighbouring and nearby dwellings fronting this section of the waterfront. The new dwelling is considered to be compatible with the existing character and scenic qualities of this section of the foreshore and waterfront. Conditions are recommended for an additional canopy tree below the foreshore building line and additional cascading planting over structures within the setback to the waterfront boundary to reduce the visual impact of built structures as viewed from the waterway.

**Issue:**

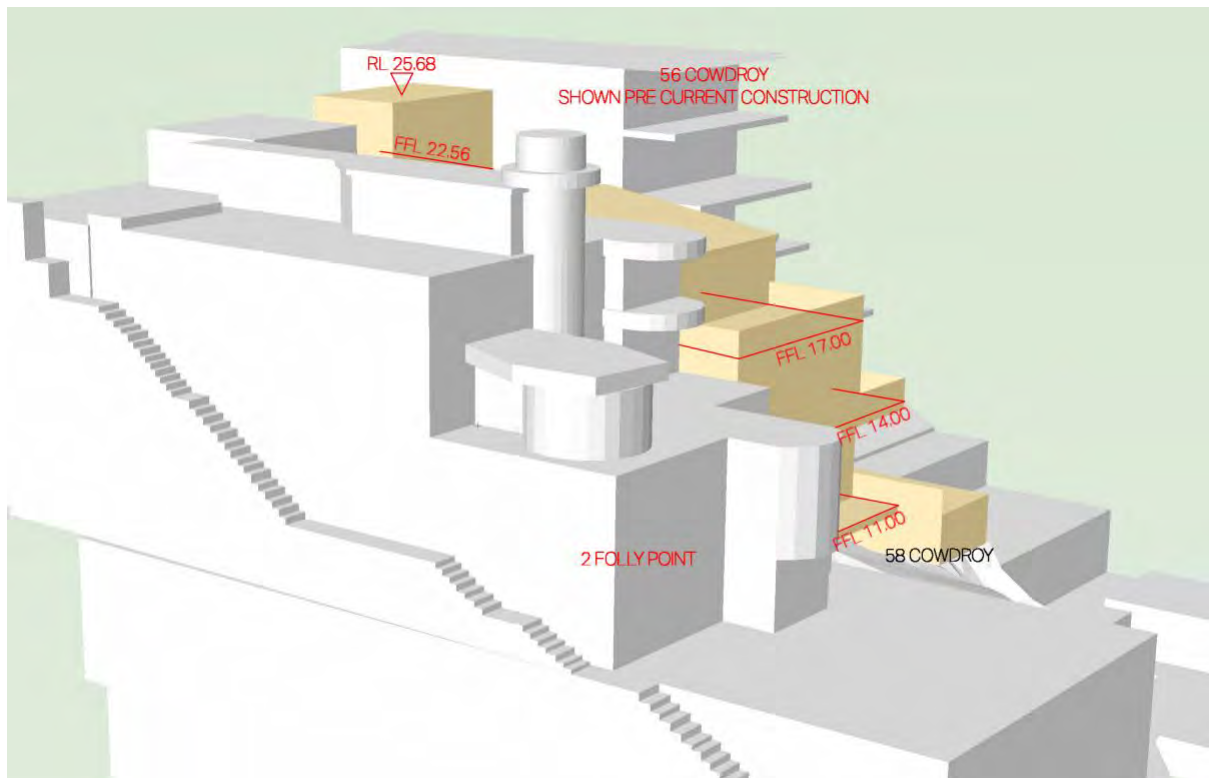
*Questioned accuracy of information in DA documents and request independent verification of survey levels, existing and proposed finished levels of proposed dwelling in relation to neighbouring dwellings*

**Response:**

This DA assessment has included references to approved plans and surveys for No.56 Cowdroy Avenue and No.2 Folly Point. The applicant provided a 3D block diagrams (see Figures 60 and 61) prepared using the approved plans for DA153/19 (No.56 Cowdroy Avenue) and DA397/19 (No.2 Folly Point). These diagrams confirm the information in the architectural plan set have been cross referenced with the data for adjoining dwellings for assessment purposes and sufficiently accurate information has been used to assess this development application as detailed throughout the assessment report.



**Figure 60: Block diagram oblique view 1 (subject site shaded yellow)**



**Figure 61: Block diagram oblique view 2 (subject site shaded yellow)**

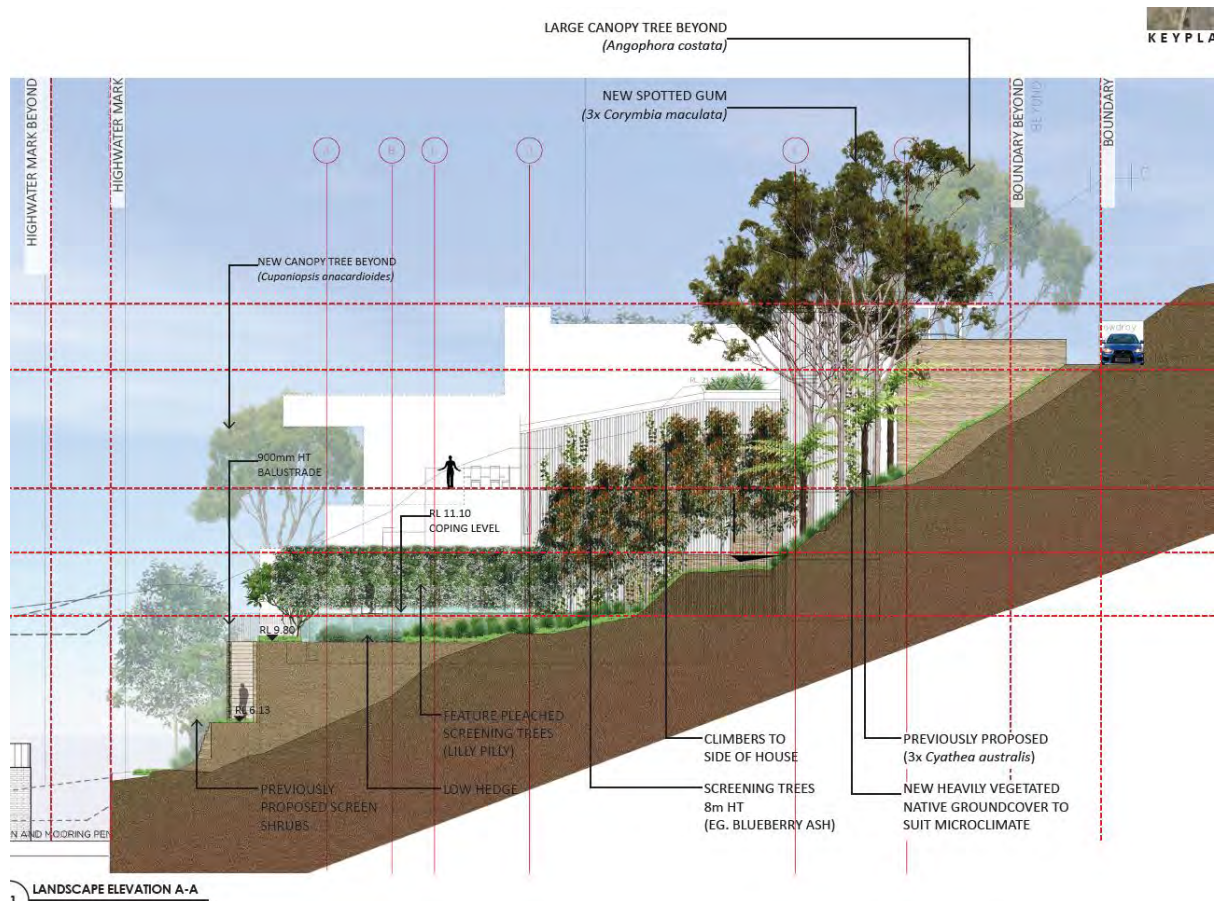
**Issue:**

*Request clarification of plan detail regarding side setbacks and proposed works including retaining walls adjacent to side boundaries.*

**Response:**

The eastern side setback is 1.5m. The western side setback is 1.76m with a minor variation to the angled window of the home office on Level 2 (which has a minimum setback of 900mm). Retaining walls will be stepped with the slope of the site and conditions of consent require all retaining structures and associated footings and drainage to be contained within the site and designed by an engineer. Final details of all retaining walls will be resolved prior to the Construction Certificate. The Landscape Plan and Architectural Plans indicate the majority of retaining walls are incorporated into the external walls of the dwelling to optimise deep soil and planting opportunities within the setback areas (see for example the extract from the Landscape Plan in Figure 62).





**Figure 62: Extract from the Landscape Plan Elevation AA (western side of the dwelling)**

**Issue:**

*Request details of external materials, colours and finishes*

**Response:**

A schedule of materials, colours and finishes is included in Drawing DA17 to the Architectural Plans prepared by COSO Architects and in Figure 63. Conditions are recommended to change the off-white rendered finished to the exterior walls of Level 2 to colours that are less reflective natural tones. Conditions are recommended to replace the zinc finish of the Level 3 roof and external walls to a finish and material with non-reflective and natural tones and colours.



**Figure 63: Extract from schedule of colours, materials and finishes Drawing DA17 from Architectural Plan set**

**Issue:**

Plans are unclear as to the works proposed within the setback area to the western side boundary. Plans show unidentified hatching pattern in the side setback area.

**Response:**

The hatching pattern refers to the 'planting fence' attached to the façade to support climbing plants as shown in Figure 63 (above).

**Issue:**

Proposal has not adequately addressed, or responded to, the reasons for refusal of previous application for the same site

**Response:**

Each development application is assessed on the merits of each case. The DA does include references to the development history in the Statement of Environmental Effects and in the Evolution Diagram within the Architectural Plan set. This assessment report takes into consideration the previous DAs and their outcomes. By comparison, DA60/22 demonstrates improved outcomes for:

- Reduced building height
- Reduced building envelope
- Improved onsite parking
- Increased setbacks from the mean high water mark and foreshore building line
- Increased landscaping
- Reduced site coverage
- Reduced impact on views.

Independent of the development history, DA60/22 is recommended for approval on its own merit.

**Issue:**

*Excessive excavation is proposed.*

**Response:**

The application has been assessed with consideration to the provisions of Clause 6.10 – Earthworks in North Sydney Local Environmental Plan 2013 which aims to ensure earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The proposal requires extensive earthworks as described in the Geotechnical Assessment by Crozier Geotechnical Consultants Project ref. 2019-174 Issue 2 dated March 2023 and the Excavation and Demolition Methodology Plans and Engineering Details by D'Ambrosio Consulting Project Ref. S7723. In summary, site preparation, cut and fill include:

- Maximum cut to 7m in the location of the future stair and lift well (directly north of the proposed garage)
- Excavation footprint for the future dwelling to expose competent sandstone bedrock and rock excavation for concrete engaged piers and footings
- Redistribution of excavated material within the site for fill at lower levels
- Total estimated volume of excavated material (soil and rock) 350m<sup>3</sup> (650 tonnes)
- Total estimated volume of fill material (soil and rock sourced within the site) 100m<sup>3</sup>
- Net total estimated volume of material to be removed from site (soil and rock) 250m<sup>3</sup> (460 tonnes)
- Removal of material from site to require 6 to 7 truckloads per day over 8 or 9 days
- Excavation machinery to include rock hammers, rock saws and cranes.

This extent of site preparation is typical, and necessary, for the types of multi-level dwellings in this steeply sloping foreshore location constructed on sandy and clay soils over weathered sandstone. Excavation is needed to ensure that piers and footings are constructed in competent bedrock which requires earthworks and rock cutting.

Clause 6.10 requires that the following matters are considered by the consent authority prior to determination:

- “(a) the likely disruption of, or any detrimental effect on—
  - (i) drainage patterns and soil stability in the locality of the development, and*
  - (ii) natural features of, and vegetation on, the site and adjoining land,**
- (b) the effect of the development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing Aboriginal objects or relics,*
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.”*

The excavation and site works footprint is limited to that necessary to achieve the works. There will be no site disturbance below the foreshore building line.

The full impacts of the site works have been assessed by Council's Development Engineer and Landscape Development Officer and conditions are recommended for:

- Stormwater management and erosion controls
- Protection of trees
- Construction traffic management
- Shoring, support and monitoring of assets on adjoining land
- Unexpected finds protocol.
- 

These conditions will ensure that the development is consistent with the matters in Clause 6.10 and the specific circumstances of the site.

**Issue:**

*Inconsistent with the objectives for development in Zone C4 particularly that:*

- (i) *The development proposal is not low impact*
- (ii) *The development will have negative impacts on residential amenity*

*The development will have negative impacts on aesthetic values of the locality with respect to bulk, scale, site coverage and inadequate landscaped area*

**Response:**

The site does not have special scientific or archaeological features. The sites in the immediate locality are dominated by built features, being very large houses with extensive terracing and retaining walls and ancillary structures. The site and the surrounding foreshore area are steeply sloping land with sandy and clay soils over weathered bedrock. Construction of dwellings in this locality have typically required substantial earthworks, rock cutting, tree and vegetation removal and changes to natural features. Low impact development in terms of construction impacts, is not possible in the circumstances of this case and the context and setting of this site.

The overall 3D building envelope and the site coverage of the proposal are smaller scale than the adjoining dwellings at No.56 Cowdroy Avenue and No.2 Folly Point and smaller scale than the buildings at No.54A, B, C and D Cowdroy Avenue. The development is anticipated to have a lesser visual impact than nearby dwellings with more natural tones and non-reflective finishes and more landscaping within the setback to the mean high water mark. In this regard it is considered to be low impact post-construction and aesthetically as viewed from the waterway.

Conditions are recommended for privacy screens to the eastern and western edges of the Level 3 balcony and to the eastern side of the outdoor kitchen on Level 1 to provide privacy between the site and both neighbouring properties.

**Issue:**

*Non-compliance with the height of buildings development standard in NSLEP 2013 and the negative consequences for:*

- (i) *Views*

- (ii) *Excessive bulk and scale*
- (iii) *Incompatibility with the built form and siting of waterfront dwellings in the immediate vicinity*

*Negative impacts on the aesthetic quality of the established pattern of foreshore dwellings and landscaping of the foreshore area*

**Response:**

The variations to the height of buildings control are considered to reflect an appropriate degree of flexibility in site-specific circumstances. The request for variation accurately identifies the parts of the dwelling which will exceed the height control as follows:

- Lift and stair core – maximum building height 10.75m (exceedance of 2.25m and variation of 26.4%) on the northwestern edge reducing to 9.160m (exceedance of 0.66m and variation of 7.8%) on the eastern edge.
- Level 03 Upper Level (living area level) roof 9.49m (exceedance of 0.99m and variation of 11.9%) near the centre of the roof reducing to 9.0m (exceedance of 0.5m and variation of 5.9%) on the northern edge of the roof and reducing to compliance where the roof meets the rooftop planting area
- Part of the northwest corner of the transparent glass balustrade at Level 03 Upper Level (living area level) height at is a maximum 9.3m (exceedance of 0.8m) (a variation of 9.4%)

The applicant has demonstrated that the proposal meets the objectives of the height control in Clause 4.3(1) to North Sydney Local Environmental Plan 2013. Numeric compliance is unreasonable where the objectives of the control are met.

There are sufficient and legitimate planning grounds for the variations including:

- The areas of the Level 3 roof and the roof to the lift and stair shaft are, in part, a consequence of the previous site works, cut and fill which create an irregular existing ground line as a reference point for the measurement of building height;
- It is essential that onsite parking be located adjacent to the road boundary and that the single stair and lift shaft be adjacent to the entry. A single stair and lift core linking to all levels minimises the overall size of the building envelope. The lift and stair core is in an appropriate location and has beneficial impacts for the overall design and function of the dwelling; and the height has no detrimental impacts;
- The small portion of the Level 3 balustrade that exceeds the height control has no detrimental impacts, and does not contribute to excessive bulk and scale;
- The shadow and view impacts are reasonable and not made unreasonable by the sections of the building that exceed the height control.

**Issue:**

*New dwelling to exceed the height of the existing dwelling*

**Response:**

The existing dwelling has a maximum height of 8.9m which exceeds the 8.5m height control. DA60/22 has been assessed on its individual merits and is recommended for approval subject to conditions.

**Issue:**

*Building design and height is an inadequate response to the natural slope of the site*

**Response:**

The slope of the site is not natural. The existing ground level is the result of historic earthworks, cut and fill. The majority of the proposed dwelling is below the 8.5m height control. The parts of the dwelling above the height control generally correspond to those parts of the site where the ground level has been excavated in the past. The design is considered an appropriate response to the existing ground levels, general slope and aspect and soil and bedrock conditions of the site.

**Issue:**

*Non-compliance with the objectives and controls of DCP Clause 1.3 Environmental Criteria because the proposal:*

- (i) Does not maintain the natural topography*
- (ii) Removes vegetation*
- (iii) Proposes excessive excavation with negative impacts to neighbouring properties*

*Retaining walls and fill within the foreshore building line exceeds the DCP limit of 500mm*

**Response:**

The natural topography of the site and surrounds no longer exists. Cut and fill, earthworks, retaining walls and other structures have altered the natural topography of the site and of adjoining and nearby properties. Proposed site preparation works are essential to support construction and are typical of the construction of dwellings in the immediate locality. No works are proposed below the foreshore building line.

**Issue:**

*Non-compliance with objectives and controls of DCP Section 1.3.4 because the proposal:*

- (i) Is excessive in bulk and scale*
- (ii) Proposes tree removal*
- (iii) Could create potential glare from external building materials and finishes*

**Response:**

The bulk and scale of the proposed dwelling is considered acceptable. The site coverage is compliant. The majority of the building is within the height control. The setbacks are consistent with the pattern and rhythm of buildings in the immediate locality. The proposed dwelling has four (4) levels with Level 3 recessed from the northern edge of the building footprint and Level 4 (the access level) stepped back to the south of the main building footprint. Adjoining dwellings are four (4) and five (5) levels stacked above each other. Dwellings at No.54 A, B, C and D are five (5) levels with the topmost level recessed. The proposed dwelling will not appear excessive in bulk and scale in the context of other existing dwellings along this section of the foreshore.

The site preparation works are necessary to achieve structurally sound building. The site works will result in tree removal. Conditions are recommended for a variety of compensatory planting throughout the site. Council's Landscape Development officer is satisfied the application can be supported subject to conditions for additional planting.

Conditions are recommended for alternative materials for the roof of Level 3, the external walls of Level 3 and the external walls of Level 2 to ensure colours and surfaces are non-reflective and natural tones and colours.

**Issue:**

*Non-compliance with the objectives and controls of DCP Section 1.3.5 because the proposal:*

- (i) *Does not allow for adequate view sharing with neighbouring properties specifically No.56, No.54C and No.54D Cowdroy Avenue*

*Is not compatible with the adopted pattern of built form and orientation for waterfront dwellings in the immediate vicinity which allows for views to the northeast*

**Response:**

The impacts on views have been assessed in accordance with the NSW Land and Environment Court *Tenacity* Principles and found to be reasonable and acceptable.

The proposed building envelope and siting is considered to be compatible with the established built form pattern and rhythm of dwellings along this section of the waterfront. Dwellings in the immediate vicinity are four (4) and five (5) levels with storeys mostly stacked above each other. Side setbacks are typically 1m to 1.5m. Front setbacks to Cowdroy Avenue are zero. The majority of the foreshore area is dominated by built structures, swimming pools, terraced areas and waterfront structures including fixed jetties and boatsheds.

The proposal is four levels including stepped and recessed Levels 3 and 4. Side setbacks are 1.5m and 1.76m. There are no works below the foreshore building line and additional deep soil planting will be required within the setback to the waterway. The proposal is considered to be compatible with the existing development along the foreshore.

**Issue:**

*Non-compliance with the objectives and controls of DCP Section 1.3.7 Solar Access because the proposal will overshadow living areas, primary open space, kitchen, swimming pool and gardens of No.56 Cowdroy Avenue on mornings through winter*

**Response:**

New shadow impacts to No.56 Cowdroy Avenue are limited to early mornings in winter. Throughout the entire year No.56 Cowdroy Avenue will receive uninterrupted direct solar access to the main living room window and private open space areas at multiple levels within the dwelling and rear yard area.

Recent works at No.56 Cowdroy Avenue have partly enclosed the existing swimming pool and extended the dwelling footprint and balconies further north which will increase direct solar access to the northern facing elements of the building.

The shadow impacts of the proposal are not considered to be unreasonably detrimental to the amenity of the interior and exterior living spaces and habitable rooms at No.56 Cowdroy Avenue.

**Issue:**

*Non-compliance with objectives and controls of DCP Section 1.3.8 Acoustic Privacy and Section 1.3.10 Visual Privacy because:*

- (i) *the proposed dwelling is sited further towards the foreshore than adjoining dwellings and allows for lines of sight 'upslope' and across the site into neighbouring property private open space, balconies and living rooms*

*The proposed guest accommodation room has a window with direct line of sight to the neighbouring property at No.56 Cowdroy Avenue*

**Response:**

Level 1 (which includes a bedroom labelled 'guest room') and all windows on the western façade will be screened with a metal mesh that supported climbing plants as well as hedge and shrub planting within the side setback.

Conditions are recommended for fixed privacy screens to the east and west edges of the Level 3 balcony adjacent to the open plan living room to direct outlooks from Level 3 towards the waterway and not towards neighbouring properties.

The use of the dwelling is not expected to generate noise that is out of character or incompatible with that of adjoining and surrounding dwellings of similar scale, size and layout.

**Issue:**

*Non-compliance with DCP Section 1.4. Quality of Built Form.*

*The proposal is not aligned with the established pattern of building envelopes along the foreshore with negative impacts to the amenity of neighbours and scenic quality of the locality*

**Response:**

The established pattern of building envelopes along the waterfront in the immediate vicinity of the subject site is:

- nil or limited setbacks to the street,
- single storey form as viewed from the street
- side setbacks of 1m to 1.5m
- multi-level dwellings (4 and 5 levels) mostly stacked
- buildings occupying the majority of the lot width
- balconies and large glazed areas oriented to the waterway on each level

Setbacks from the mean high water mark are variable and the mean high water mark is irregular including a variety of seawalls, waterfront structures and reclaimed land.

The proposal is considered to be compatible with both the established patterns and forms and the variable treatments and separations from the mean high water mark.

**Issue:**

*Non-compliance with DCP Section 1.4.6 Setbacks because:*

- (i) *The proposal is not aligned with the pattern of surrounding waterfront dwellings*
- (ii) *The Folly Point waterfront dwellings are closer to the foreshore because the lots are smaller*
- (iii) *No.2 Folly Street should not be used as a precedent because it was constructed prior to the current controls for setbacks and foreshore building lines*
- (iv) *Non-compliance with the side setback controls to the western side boundary and consequent negative impacts to the western neighbouring property including excessive bulk and scale as viewed from the neighbouring property*
- (v) *Inadequate boundary setbacks leave no space for landscaping*



**Response:**

The front setback is compliant with the DCP and the established streetscape pattern.

Levels 1 and 2 are compliant with the side setbacks of the DCP (with the minor exception of a small, angled window to the home office).

The side setbacks for Level 3 are consistent with the side setbacks of other nearby dwellings and are considered appropriate for the site and its context.

The setback from the mean high water mark is compliant with the DCP.

The lot sizes in Folly Point are variable and include reclaimed waterfront areas.

The proposed landscaped area complies with the DCP requirement of 40%.

Conditions are recommended for additional compensatory planting, dense shrub planting within the western side setback and an additional canopy tree within the foreshore area.

Overall the proposed setbacks and quality and quantity of landscaping are satisfactory.

**Issue:**

*Non-compliance with DCP Section 1.4.7 Form, Mass and Scale because the proposed dwelling is:*

- (i) larger than surrounding dwellings*
- (ii) does not respond to the natural topography proposes excessive cut and fill*

**Response:**

The 3D envelope of the proposed dwelling is considered to be similar to existing surrounding dwellings as explained above.

See above comments regarding the altered topography of the site and the necessity for earthworks to support dwelling construction in this location.

**Issue:**

*Non-compliance with all of the objectives of DCP Section 1.4.8 Built Form and Character*

**Response:**

There is little uniformity and consistency in architectural style in the immediate neighbourhood and along this section of the foreshore. As previously outlined, all dwellings along this section of the foreshore have multiple levels in stacked and stepped arrangements and large areas of glazing, balconies and terraces oriented to the north towards the waterway. The proposed dwelling is compatible in its form with four (4) levels, Level 3 being recessed from the northern edge of the building footprint and Level 4 being stepped back to the southern edge of the main building footprint.

**Issue:**

*Non-compliance with DCP Section 1.5.5 Site Coverage and Section 1.5.6 Landscaped Areas because the areas indicated in the architectural plans do not match the requirements of the DCP and the inadequate landscaped areas detract from the aesthetic and scenic quality of the streetscape and foreshore.*

**Response:**

The proposed landscaped areas and site coverage are compliant with the DCP requirements as indicated on amended Architectural Drawing No.DA16.

**Issue:**

*Non-compliance with DCP Part C Character Statement*

**Response:**

The proposal will not change the diversity and density of the residential neighbourhood.

This area of the foreshore has minimal natural features remaining and there is no public access to, or along, the foreshore.

The development requires tree removal and conditions will ensure compensatory planting is provided.

The development will not impact views from public places and landmarks.

There will be no impacts to heritage items.

There are no changes to pedestrian routes.

There is no space within the road reserve for street tree planting. The nil setback to Cowdroy Avenue is consistent with the nil setbacks at No.56 and No.54D.

The materials of the existing dwelling are not suitable for re-use. Some excavated material will be used as fill within the site.

The dwelling is considered to be compatible with the predominant form of existing residential development.

**Issue:**

*Other development applications in the neighbourhood were required to comply with planning controls for building height, landscaped area and view sharing. Non-compliance will set an undesirable precedent*

**Response:**

Development Consent DA153/19 (as modified) for No.56 Cowdroy Avenue approved alteration and additions to the dwelling which included:

- non-compliant building height of 13.175m (exceedance of 4.675m and variation of 55%)
- non-compliant landscaped area of 39.8%
- non-compliant side boundary setbacks

Development Consent DA397/19 for No.2 Folly Point approved alterations and additions to the dwelling which included:

- non-compliant building height of 13.3m (exceedance of 4.8m and variation of 56.5%)
- non-compliant landscaped area
- non-compliant side boundary setbacks

**Issue:**

*Overdevelopment*

**Response:**

The proposal is considered an appropriate scale and form and site coverage for the site and its context and setting.

**Issue:**

*Inadequate view sharing and unreasonable view loss*

**Response:**

The impact on views is considered reasonable and acceptable as evaluated according to the Planning Principles established in *Tenacity*.

**Issue:**

*Request independent view impact analysis as insufficient information has been provided to demonstrate potential view impacts*

**Response:**

The view impact analysis by Urbaine Architecture prepared for DA 56/20 and the update provided by COSO Architecture dated March 2023 has been conducted in accordance with the Planning Principles established in *Tenacity* and has been verified as part of the assessment of this development application to the extent possible and based on the Pre-DA153/19 state of No.56 Cowdroy Avenue.

**Issue:**

*Overlooking and loss of privacy to No.56 Cowdroy Avenue and No.2 Folly Point*

**Response:**

The typical layout of dwellings along this section of the foreshore is for multiple storeys with large windows and balconies oriented to the waterway. The primary outlook is towards the waterway. The slope and the irregular alignment of the foreshore (and relatively small side setbacks) also facilitates outlooks across neighbouring properties and a degree of overlooking is an inevitable consequence.

Conditions are recommended for louvred fixed privacy screens to the eastern and western edges of the Level 3 balcony adjacent to the open plan living room to direct outlooks towards the waterway.

Conditions are recommended for a privacy screen to the eastern side of the outdoor kitchen at Level 1 to provide a permanent visual screen to No.2 Folly Point.

**Issue:**

*Request 1.5m high solid form privacy screens to the eastern edge of all terrace and outdoor areas on of new dwelling*

**Response:**

See above as to privacy screens considered appropriate.

**Issue:**

*Potential overlooking of neighbouring swimming pool areas*

**Response:**

Privacy is addressed above.

**Issue:**

*Potential privacy and amenity impacts of small terrace area adjacent to proposed laundry*

**Response:**

A narrow area adjacent to the laundry door at Level 1 is not anticipated to generate uses and activities that would be unreasonably detrimental to privacy for No.2 Folly Point.

**Issue:**

*Noise generation from outdoor terraces and swimming pool area and loss of amenity for neighbouring properties*

**Response:**

Large outdoor terraces and balconies ancillary to living room areas are typical of the dwellings in this locality. The use of the proposed dwelling is anticipated to be of a nature and frequency that is similar to the residential uses of terraces and balconies on neighbouring and nearby dwellings. No additional acoustic treatments are considered necessary.

**Issue:**

*Building extends closer to the foreshore than neighbouring dwellings with negative impacts to visual bulk and scale and lack of landscaping*

**Response:**

The proposal is compliant with the foreshore building line. There is no consistent pattern to foreshore setbacks in the locality. The landscaped area is compliant and subject to conditions of consent, the landscaping within the foreshore area is supported by Council's Landscape Development Officer.

**Issue:**

*Existing traffic problems due to narrow public road reserve and heavy vehicles have difficulty accessing the site and bin collection needs to occur adjacent to No.54 Cowdroy because road is too narrow.*

**Response:**

Conditions are recommended for a Construction Traffic Management Plan prior to the Construction Certificate. The proposed bin storage area is appropriate. Bins will continue to be serviced from further west along Cowdroy Avenue where the road reserve is wider.

**Issue:**

*Change in microclimatic conditions resulting in loss of north easterly breezes and overshadowing of landscaping and swimming pools.*

**Response:**

North easterly breezes will not be unreasonably obscured to properties further east of the site.

Adjoining properties will continue to receive year-round unobstructed direct solar access for the majority of each day to large windows, balconies and terrace areas oriented to the north. DA153/19 recently approved works that are currently underway. The works include extending the balcony above the pool further north which will create more overshadowing impacts to the swimming pool on this site than the shadow projected from the proposed dwelling.

## **PUBLIC INTEREST**

The proposal is considered to be in the public interest for the reasons stated throughout this report.

## **SUITABILITY OF THE SITE**

Dwelling houses are a permissible form of development in Zone C4. The development will replace an existing dwelling house.

The site has been significantly altered from its natural state. It is a necessary and typical construction requirement in this foreshore locality to undertake substantial excavation to competent rock to provide structurally sound piers and footings.

Tree removal is necessary due to the scale of works. Compensatory planting is considered satisfactory and is supported by Council's Landscape Officer.

New on-site parking provision for two cars on a turntable is a significant improvement to the current provisions.

The road pavement and retaining wall is to be extended to accommodate construction vehicles without obstructing access to neighbouring properties.

Consequently, the proposal is considered to be suitable for the site having regard to the merits of the proposal as described in the above report and subject to recommended conditions.

## **CONCLUSION AND REASONS**

The development application has been assessed against the North Sydney Local Environmental Plan 2013, the North Sydney Development Control Plan 2013 and other applicable statutory and policy controls and is generally found to be satisfactory.

For the reasons listed above and subject to specific conditions, the proposal is unlikely to cause adverse material impacts to adjoining properties and is considered to be compatible with the low density, large multi-level dwellings along the foreshore in the immediate locality.

The amended plans and supporting materials have resulted in a more appropriate scheme with all structures behind the foreshore building line, additional deep soil landscaping and reduced building height.

The view impact analysis submitted with the application has been verified and evaluated by site inspections by the report author and Council assessment staff. The impacts to views are considered to be reasonable and will achieve an acceptable level of view sharing in the context and setting.

The proposed dwelling is of an appropriate scale, form and footprint for the site. The arrangements of on-site parking and the stair and lift access are a well-considered response to the specific conditions of the site and the relationship to the remainder of the dwelling layout.

The built form which is compatible with the diversity of architectural styles and character of residential development within the locality.

Having regard to the provisions of Section 4.15 (1) of the *Environmental Planning & Assessment Act 1979*, the proposed development will not have any unreasonable amenity or environmental impacts. The application is considered satisfactory and is recommended for approval.

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

The owners of surrounding and nearby properties were notified of the proposed development for a 14-day period, between **11 March 2022** and **25 March 2022**, in accordance with the North Sydney Community Participation Plan 2019.

A total of ten (10) submissions were received of which seven (7) were in support of the application and three (3) objected to the development. The objections were from residents of Cowdroy Avenue. Letters of support were from residents of properties 300m or more from the site.

The amended application was subject to a second period of notification between 11 January and 25 January 2023. A total of six (6) submissions were received all of which objected to the proposal.

The concerns raised by the submissions, were addressed earlier in this report. Standard and site-specific conditions also address any potential, unreasonable adverse impacts within the locality and ensure the protection of the public interest.

#### **RECOMMENDATION**

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

**THAT** the North Sydney Local Planning Panel, as the consent authority under delegation from the General Manager, grant consent to Development Application No. 60/22 for demolition of the existing dwelling and construction of a new dwelling, swimming pool and landscaping as well as construction of additional road pavement and retaining walls within Cowdroy Avenue Road reserve at No.58 Cowdroy Avenue, Cammeray, subject to the attached Standard conditions and site specific conditions.

**NORTH SYDNEY COUNCIL**  
**CONDITIONS OF DEVELOPMENT APPROVAL**  
**58 COWDROY AVENUE, CAMMERAY**  
**DEVELOPMENT APPLICATION NO. 60/22**

**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	Drawn by	Received
MD01		Existing site plan	COSO Architecture	January 2020
MD02		Existing North Elevations	COSO Architecture	January 2020
MD03		Existing South Elevations	COSO Architecture	January 2020
MD04		Existing East Elevations	COSO Architecture	January 2020
MD05		Existing West Elevations	COSO Architecture	January 2020
MD06		Existing Section A-A	COSO Architecture	January 2020
DA00a		Proposed Demolition Plan	COSO Architecture	December 2021
DA00b		Bulk Excavation Diagrams	COSO Architecture	December 2021
DA01		Site Plan	COSO Architecture	March 2023
DA02		Lower level floor plan	COSO Architecture	October 2022
DA03		Mid level floor plan	COSO Architecture	October 2022
DA04		Upper level floor plan	COSO Architecture	October 2022
DA05		Entry level floor plan	COSO Architecture	March 2023
DA06		Section A-A	COSO Architecture	March 2023
DA07		Section B-B and C-C	COSO Architecture	October 2022
DA08		Section D-D	COSO Architecture	March 2023
DA09		West Elevations	COSO Architecture	October 2022
DA10		North Elevation and South Elevation	COSO Architecture	March 2023
DA11		East Elevations	COSO Architecture	October 2022
DA17		External Materials/Finishes Palette	COSO Architecture	October 2022
DA20		Concept Hydraulic and Sedimentation Plan	COSO Architecture	December 2021
S.1.01 & S.1.02 – Ref S7723	B	Driveway Crossing Plan and Sections	D'Ambrosio Consulting Structural Engineers	
S2.01, S2.02, S3.01, S3.02 & S3.03 – Ref S7723	02	Excavation and Demolition Methodology Plan and Engineers Details	D'Ambrosio Consulting Structural Engineers	22 March 2023

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2019-174		Geotechnical Investigations	Crozier Geotechnical Consultants	October 2019
220639 - 01FB		Construction Traffic Management Plan	McLaren Traffic Engineers	26 October 2022
HB-19036 L-01, L-02, L-03, L-04, L-05, L2001 & L2002		Amended Landscape Plan	HABIT8 Landscape Architecture and Urbanism	18 November 2022
		Arborist Report	Jacksons Nature Works	8 March 2021
		Waste Management Plan	Anthony Solomon	4 December 2019

(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)

***B. Matters to be Completed before the lodgement of an Application for a Construction Certificate***

**Construction Management Program - Local Traffic Committee Approval**

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

At a minimum, the Construction Management Program must specifically address the following matters:

- a) A plan view (min 1:100 scale) of the entire site and frontage roadways indicating:
- i. Dedicated temporary construction site driveway entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways and footways;



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- ii. The proposed signage for pedestrian management to comply with the relevant Australian Standards, including pram ramps;
  - iii. Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
  - iv. The locations of any proposed Work Zones in the frontage roadways (to be approved by Council's Traffic Committee);
  - v. Locations of hoardings proposed;
  - vi. Location of any proposed crane standing areas;
  - vii. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
  - viii. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected; and
  - ix. The provision of an on-site parking area for employees, tradesperson and construction vehicles as far as possible.
- b) A detailed heavy vehicle access route map through the Council area to Arterial Roads. Provision is to be made to ensure through traffic is maintained at all times.
- c) The proposed phases of works on the site, and the expected duration of each phase.
- d) How access to neighbouring properties will be maintained at all times and the proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of process.
- e) The road is not to be used as a waiting area for trucks delivering to or awaiting pick up of materials.
- f) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising structural engineer and must not involve any permanent or temporary encroachment onto Council's property.
- g) Proposed protection for Council and adjoining properties. Details are to include site fencing and the provision of "B" class hoardings over footpaths and laneways.
- h) A Waste Management Plan. The Waste Management Plan must include, but not be limited to, the estimated volume of waste and method of disposal for the construction and operation phases of the development, design of on-site waste storage and recycling area and administrative arrangements for waste and recycling management during the construction process.

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

Notes:

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

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

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

**Design Changes**

- C1. The following design changes are to be included in plans approved with the Construction Certificate to the satisfaction of the Principal Certifier:
- a) Louvred/slatted privacy screens a minimum 1.6m high from finished floor level shall be affixed to the eastern and western edges of the balcony to the Upper Level (Level 03) adjacent to the open plan living room to obscure direct lines of sight between the balcony and the neighbouring properties;
  - b) A fixed privacy screen shall be affixed to the eastern side of the outdoor kitchen space at the Lower Level (Level 01) to obscure direct lines of sight between the outdoor kitchen space and the neighbouring property at No.2 Folly Point;

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- c) The schedule of external materials, colours and finishes shall be amended to replace the zinc roof with a roofing material that is non-reflective and is a colour and tone which matches or complements the natural features of the environment to ensure that excessive glare or reflectivity nuisance from roofing materials does not occur as a result of the development;
- d) The schedule of external materials, colours and finishes shall be amended to change the colour of the render from off-white to a colour and tone which is non-reflective and which matches or complement the tones of the natural environment to ensure a high quality finish to the development in a visually prominent location;
- e) The balustrade to the northern edge of the steps and retaining walls below the foreshore building line shall be open in form to reduce the visual impact of built structures in the foreshore area;
- f) The landscaping area immediately north of the swimming pool and patio area at approximately RL 9.8 is to include planting of cascading plants along the northern edge to screen the outer face (waterway side) of the retaining wall and reduce the visual impact of built structures in the foreshore area;
- g) All retaining walls including ancillary drainage management and footings are to be contained entirely within the site boundaries to protect the integrity of adjoining sites;
- h) One (1) additional canopy tree suitable to reach a mature height of 4 to 5m is to be planted within the foreshore area level (RL4.2 to RL4.8) to improve the quality and diversity of vegetation within the foreshore area and to visually offset the bulk and scale of built structures as viewed from the waterway. The location and species are to be nominated in the amended Landscape Plan to the satisfaction of the PCA prior to the issue of the Construction Certificate;
- i) The understorey to the 3 x *Corymbia maculata* (100l) shall be densely planted with suitable species of low maintenance native shrubs in addition to the 3 x *Cyathea australis* to optimize the variety of planting in the deep soil area to compensate for the removal of the variety of existing vegetation. Additional plantings shall be included in the amended Landscape Plan to the satisfaction of the PCA prior to the issue of a Construction Certificate;
- j) The pathway from the front boundary with Cowdroy Avenue to the front entry door within the tree root zone of the new *Angophora costata* is to be decking or pervious paving to optimize soil depth and infiltration for future growth of the tree. Details of the pathway construction are to be specified in the construction and landscape plans submitted with the Construction Certificate;

**Tree Management**

- C2. Tree protection, planting and removal shall be carried out as specified below:
- a) The tree protection measures contained in the arborist report 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 to ensure appropriate tree protection measures remain in place for the duration of demolition and construction activities.
  - b) Trees numbered T2, T3, T4, T8, T9, T10 and T11 are approved for removal with this development consent.
  - c) T1 Jacaranda mimosifolia (8m), T5 Eucalyptus pilularis (18m), T6 Jacaranda mimosifolia (8m), T7 Chamaecyparis obtusa 'Crippsii' (6m), T12 Schefflera actinophylla (5m), and all other neighbouring and public trees shall be protected in accordance with AS4970. 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.
  - d) A project arborist (AQ5) shall be appointed to oversee all works within the TPZ of any protected tree.
  - e) All tree protection measures contained within the approved arborist report shall be strictly adhered to at all times during site preparation, demolition, excavation, construction, to completion of the development.
  - f) Sensitive construction techniques including hand excavation, pier and beam construction and flexile location of piers/footings shall be carried out within the TPZ of any protected tree and only under the supervision of the project arborist. No roots greater than 40mm shall be cut, no pruning shall be permitted.
  - g) No stormwater or other services shall be directed through the Tree Protection Zone (TPZ) of any protected tree in order to suitably protect the trees to be retained.

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- h) 1.8m high steel mesh tree protection fencing shall be erected along the entire length of the Cowdroy Ave slip road (northern boundary), and all trees and vegetation located within, including but not limited to 1 x *Grevillea robusta* (13m), 1 x *Eucalyptus pilularis*, 1 x *Pittosporum undulatum* (9m), 3 x *Ficus rubiginosa*, 1 x *Eucalyptus pilularis* & T5, T6 shall be protected in accordance with AS4970, shall have additional trunk and branch protection installed as required, no pruning shall be permitted. A collective tree bond of \$98,000 shall be applied and held by North Sydney Council. The bond shall be paid prior to the commencement of any works on the site (including any demolition and tree removal). The bond will not be released until the issue of an Occupation Certificate and the written verification from the project arborist that all works have been completed in accordance with this development consent is submitted to North Sydney Council. It should be noted that the use of this slip road for heavy vehicles and machinery is considered to pose a high risk of mechanical damage to these trees if not carefully protected.

(Reason: To ensure appropriate protection, planting and removal of trees in relation to the development)

**Dilapidation Report Damage to Public Infrastructure**

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

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

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

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

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

**Dilapidation Survey Private Property (Neighbouring Buildings)**

- C4. A photographic survey and dilapidation report of adjoining properties Nos. 2 Folly Point and 56 Cowdroy Avenue detailing the physical condition of those properties, 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)

**Geotechnical Report**

- C5. Prior to issue of any Construction Certificate a Geotechnical/Civil Engineering report must be prepared which addresses at a minimum (but is not limited to) the following:
- a) the type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0 m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum;
  - b) the appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations must be discussed and mechanisms to ameliorate any such impacts recommended;

- c) the proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support must be provided within the subject site);
- d) the existing groundwater levels in relation to the basement structure, where influenced;
- e) the drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilised in controlling groundwater. Where it is considered there is the potential for the development to create a “dam” for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flow path is constructed, artificial drains such as perimeter drains and through drainage may be utilised; and
- f) recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages.

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

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

The design principles for the geotechnical report are as follows:

- a) no ground settlement or movement is to be induced which is sufficient enough to cause an adverse impact to adjoining property and/or infrastructure;
- b) no changes to the ground water level are to occur as a result of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;

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

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

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

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

### **Sediment Control**

- C6. Where construction or excavation activity requires the disturbance of the soil surface or existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication *Managing Urban Stormwater: Soils and Construction* (4th edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

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

- a) All details of drainage to protect and drain the site during the construction processes;
- b) All sediment control devices, barriers and the like;
- c) Sedimentation tanks, ponds or the like;
- d) Covering materials and methods; and



- e) A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.
- f) Methods for the temporary and controlled disposal of stormwater during construction.

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

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

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

### **Waste Management Plan**

- C7. 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)

### **Work Zone**

- C8. If a Work Zone is proposed, an application must be made to the North Sydney Local Traffic Committee to install the 'Work Zone'. A Work Zone permit is required to be issued by the Council prior to the issue of any Construction Certificate.

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

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

(Reason: Amenity and convenience during construction)

**Maintain Property Boundary Alignment Levels**

- C9. Except where otherwise approved by Council, the property boundary alignment levels must match the levels which existed prior to the commencement of works. Plans and specifications which document existing and proposed levels adjacent to the site boundaries and which comply with the requirements of 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 interface between property and public land remains uniform)

**Stormwater Management and Disposal Design Plan - Construction Issue Detail**

- C10. Prior to issue of any Construction Certificate, the applicant shall have a site drainage management plan prepared by a qualified drainage design engineer. The site drainage management plan must detail the following requirements of North Sydney Council:
- a) compliance with BCA drainage requirements, Council's Engineering Performance guide and current Australian Standards and guidelines, such as AS/NZ3500.3.2 1998, National Plumbing and Drainage Code;
  - b) stormwater runoff and subsoil drainage generated by the approved development must be conveyed in a controlled manner by gravity to the waterfront;
  - c) all sub-soil seepage drainage shall be discharged via a suitable silt arrester pit. Details of all plans certified as being adequate for their intended purpose and compliant with the provisions of AS3500.3.2 by an appropriately qualified and practising civil engineer shall be submitted with the application for a Construction Certificate.
  - d) the design and installation of the Rainwater shall comply with BASIX and Sydney Water requirements. Overflow from tank shall be connected by gravity to the stormwater disposal system.

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- e) prevent any stormwater egress into adjacent properties by creating physical barriers and surface drainage interception.

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

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

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

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

C11. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$4,000.00 to be held by Council for the payment of cost for any/all of the following:

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

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

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

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

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

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

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

**Tree Bond for Public Trees**

- C12. Prior to the issue of any construction certificate, security in the sum of \$98,000.00 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 respect of the trees required to be protected by Condition C2.

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

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

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

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

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

**Hazardous Building Materials Inventory**

- C13. Prior to the issue of a Construction Certificate, the entire site (including any structures) is to be assessed for hazardous materials, especially asbestos. A Hazardous Materials (HAZMAT) Report is to be prepared by a Type "A" Inspection body accredited by NATA. All recommendations contained within this report are to be implemented and a clearance certificate issued by an appropriately qualified Occupational Hygienist is to be submitted to Council prior to the issue of a Construction Certificate.

(Reason: Health and environmental safety)

### Section 7.12 Contributions

- C14. A monetary contribution pursuant to the provisions of Section 7.12 of the Environmental Planning and Assessment Act 1979 is to be paid to Council, in accordance with the North Sydney Council's Contribution Plan, to provide for local infrastructure improvements.

Based on the cost of development at the date of determination, the total contribution payable to Council is \$29,000.00

#### Indexation

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

#### Timing of Payment

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

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

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

### Security Deposit/Guarantee Schedule

- C15. 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 (\$)
Collective Tree Bond	\$98,000.00
Infrastructure Damage Bond	\$4,000.00
<b>TOTAL BONDS</b>	<b>\$102,000.00</b>

Note: The following fees applicable

Fees	
Section 7.12 Contributions	\$29,000.00
<b>TOTAL FEES</b>	<b>\$29,000.00</b>

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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)

**Updated BASIX Certificate**

- C16. An updated BASIX Certificate shall be submitted with the Construction Certificate matching the dwelling design as amended by the conditions of this consent. The amended BASIX Certificate shall be to the satisfaction of the PCA.

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

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

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

- D1. 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)

**Protection of Trees**

- D2. 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.

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

**Sydney Water Approvals**

- D3. 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**

- D4. 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)

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**Commencement of Works' Notice**

- D5. 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*****Cigarette Butt Receptacle**

- E1. A cigarette butt receptacle is to be provided on the site for the duration of excavation/demolition/construction process, for convenient use of site workers.

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

**Parking Restrictions**

- E2. 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**

- E3. 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.



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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)

**Service Adjustments**

- E4. Where required, the adjustment or inclusion of any new utility service facilities must be carried out by the person acting on the consent and in accordance with the requirements of the relevant utility authority. These works shall be at no cost to Council. It is the Applicant's full responsibility to make contact with the relevant utility authorities to ascertain the impacts of the proposal upon utility services at the appropriate stage of the development (including water, phone, gas and the like). Council accepts no responsibility whatsoever for any matter arising from its approval of this application involving any influence upon utility services provided by another authority.

(Reason: To ensure the service requirements are met)

**Temporary Disposal of Stormwater Runoff**

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

(Reason: Stormwater control during construction)

**Geotechnical Stability during Works**

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

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

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

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

**Council Inspection of Public Infrastructure Works**

E7. During the works on public infrastructure reverting to Council's care and control, Council's development engineer may undertake inspections of the works at the following hold points:

a) Formwork for layback, kerb/gutter, footpath, etc

All works must proceed in accordance with Roads Act 1993 approvals or other permits relating to roads issued by Council. A minimum of 48 hours' notice must be given to Council to book an inspection. Work must not proceed until the works or activity covered by the inspection is approved.

(Reason: To ensure quality of construction joints and connections in the drainage system)

**Progress Survey**

E8. In order to ensure compliance with approved plans, a Survey Certificate, to Australian Height Datum, must be prepared by a Registered Surveyor as follows:

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

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

(Reason: To ensure compliance with approved plans)

**Dust Emission and Air Quality**

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

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

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

**Noise and Vibration**

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

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

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

E11. The developer 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)

**No Removal of Trees on Public Property**

E12. 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**

E13. 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.

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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(2) 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)

**Benchmarks**

E14. All permanent survey markers must be retained, undamaged, and not relocated.

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

**Special Permits**

E15. 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)

**Construction Hours**

E16. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

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

Demolition and excavation works must be restricted to within the hours of 8.00 am to 5.00 pm Monday to Friday only. For the purposes of this condition:

- a) "Building construction" means any physical activity on the site involved in the erection of a structure, cladding, external finish, formwork, fixture, fitting of service installation and the unloading of plant, machinery, materials or the like.
- b) "Demolition works" means any physical activity to tear down or break up a structure (or part thereof) or surface, or the like, and includes the loading of demolition waste and the unloading of plant or machinery.
- c) "Excavation work" means the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders, or the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site and includes the unloading of plant or machinery associated with excavation work.

All builders, excavators must display, on-site, their twenty-four (24) hour contact telephone number, which is to be clearly visible and legible from any public place adjoining the site.

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

### **Out-of-hours' Work Permits**

E17. Where it is necessary for works to occur outside those hours allowed by these conditions, an application may be made to Council's Customer Services Centre for a permit to carry out works outside of the approved hours. If a permit is issued the works approved must be carried out in accordance with any requirements specified in the permit. Permits will only be approved if **public safety is at risk**. Applications which seek a variation to construction hours solely to benefit the developer will require the lodgement and favourable determination of a modification application pursuant to the provisions of Section 96 of the Environmental Planning and Assessment Act 1979.

#### Notes:

- 1) Failure to obtain a permit for work outside of the approved hours will result in on the spot fines being issued, or Council pursuing any action required (including legal proceedings) to have the out of hours work cease, without prior warning.
- 2) Applications for out of hour's works should be lodged with Council no later than seven (7) calendar days prior to the date of the intended works.
- 3) Examples of activities for which permits may be granted include:
  - the erection of awnings,
  - footpath, road and other infrastructure works which cannot be carried out for public convenience reasons within normal hours,
  - the erection and removal of hoardings and site cranes, and
  - craneage of materials which cannot be done for public convenience reasons within normal working hours.

- 4) Examples of activities for which permits WILL NOT be granted include;
- extended concrete pours
  - works which are solely to convenience the developer or client, and
  - catch up works required to maintain or catch up with a construction schedule.
- 5) Further information on permits can be obtained from the Council website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au).

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

### **Installation and Maintenance of Sediment Control**

- E18. 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**

- E19. 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)

### **Site Amenities and Facilities**

- E20. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of workplace determines the type of amenities required.

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

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

### Health and Safety

- E21. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number for enquiries.

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

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

### Waste Disposal

- E22. 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)

### ***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



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DEVELOPMENT APPLICATION NO. 60/22**

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- (b) in the case of work to be done by an owner-builder:
- (i) the name of the owner-builder, and
  - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- 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)

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**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)

**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)

**Commencement of Works**

- F7. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two (2) days' notice to North Sydney Council of the person's intention to commence the erection of the building.

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

**Excavation/Demolition**

- F8. 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)

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DEVELOPMENT APPLICATION NO. 60/22**

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**Protection of Public Places**

- F9. 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)

**Site Sign**

- F10. 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)

**Certification - Civil Works**

- G2. An appropriately qualified and practising Civil Engineer must certify to the Certifying Authority that the stormwater drainage system is constructed in accordance with this consent and the provisions of the applicable Australian Standard. A copy of the certificate must be submitted to Council (if it is not the Certifying Authority) upon completion of the development works and prior to the issue of an Occupation Certificate.

(Reason: Compliance with this consent)

**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)

**Utility Services**

- G4. All utility services shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of an occupation certificate. This shall be at no cost to Council.

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

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

**Air Conditioners and Swimming Pool Filters and Pumps in Residential Premises**

11. The use of any air conditioner, swimming pool filter and pump and vehicle turntable installed on the premises must comply with the requirements of the Protection of the Environment Operations (Noise Control) Regulations 2008 and State Environmental Planning Policy (Infrastructure) 2007 and must not:
- (a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
    - (i) before 8.00 am and after 8.00 pm on any Sunday or Public Holiday; or
    - (ii) before 7.00 am or after 8.00 pm on any other day
  - (b) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.

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

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

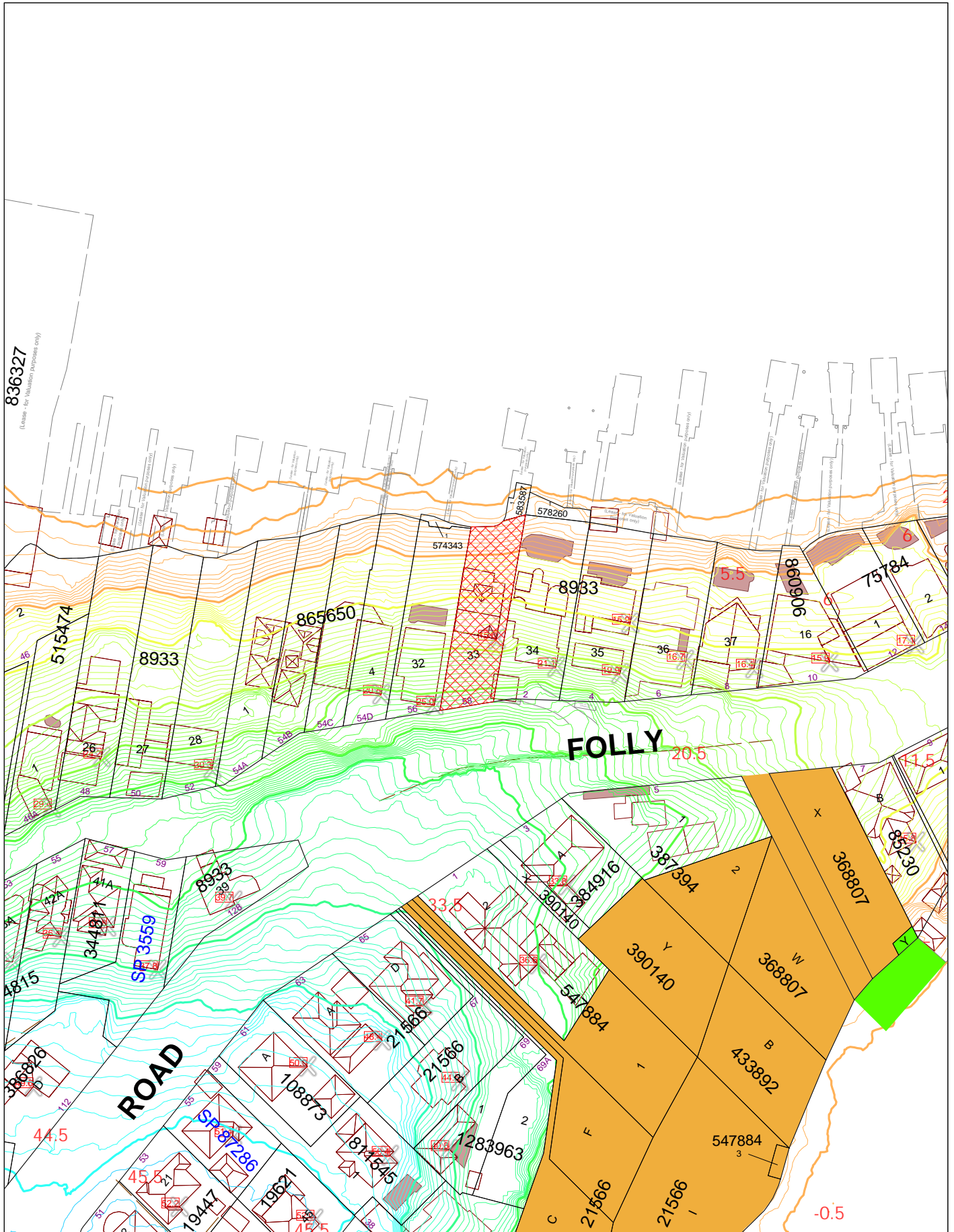
Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

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

**Vehicle Turntable**

12. The vehicle turntable shall be always maintained in good working order and used to ensure vehicles do not reverse into the public road reserve as demonstrated by the approved swept path analysis to protect the safe operation of the public road.

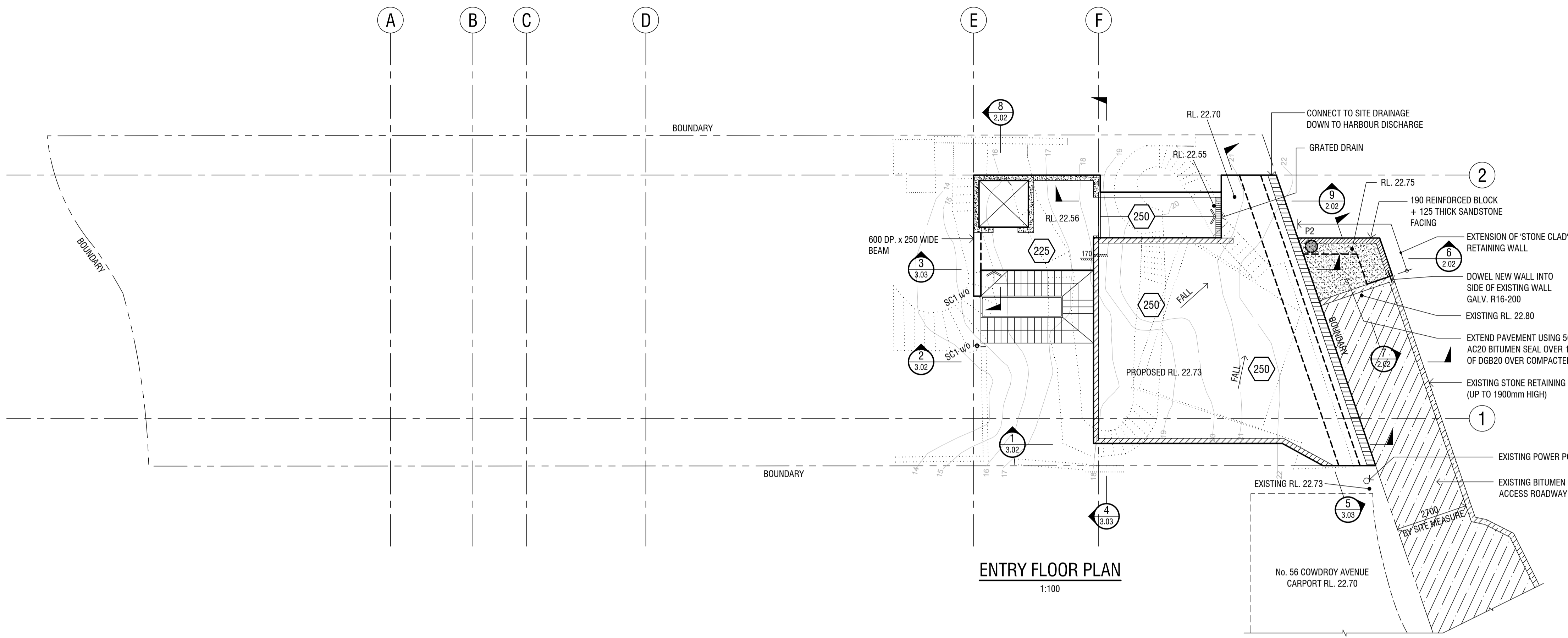
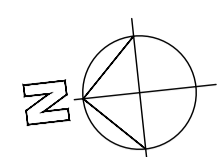
(Reason: Maintain vehicular access to and from the site)



**North Sydney Council**

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



**CONSTRUCTION NOTES:**

- General**
- Read these drawings in conjunction with all architectural and other consultants' drawings and specifications and such other written instructions as may be issued during the course of the contract. U.N.O. obtain all dimensions from the architectural drawings. Refer any discrepancies in these documents to the architect before proceeding with the work.
  - Check and be responsible for the correctness of all dimensions and report any discrepancy immediately to the architect. Do not scale dimensions from the drawings.
  - Ensure stability of the works during construction, and that of the adjacent structures, including excavations in the vicinity. Temporarily brace all structural steelwork until masonry or stud shear walls have been erected. Ensure no part of the structure is overstressed.
  - Ensure all workmanship and materials are in accordance with the requirements of the current SAA codes with amendments and the by-laws and ordinances of the relevant building authority and the specifications.
- Foundations**
- Footings have been designed for an allowable bearing pressure of 800 kPa (ROCK).
  - The builder shall obtain approval from the supervising engineer/builder inspector as to the suitability of the foundation material prior to placing concrete.
  - Any weak or defective areas of foundation soil shall be removed and replaced with sound granular material (compacted in layers, each not more than 100mm thick, to achieve a min. dry density ratio of 98% - standard compaction).
- Concrete**
- All concrete works and materials are to be in accordance with AS3600-Concrete Structures Code (current edition) & BCA Part B1.3 (b). Addition of water on site to concrete shall not be permitted. Concrete compressive strength (F<sub>c</sub>) shall be as follows:
- | Element        | Fc | slump | max. agg. |
|----------------|----|-------|-----------|
| footings       | 25 | 80    | 20        |
| slab on ground | 32 | 80    | 20        |
| suspended slab | 32 | 80    | 20        |
| piers          | 32 | 80    | 20        |
| shotcrete      | 32 | 80    | 20        |
- Reinforcement is to be fixed so as to achieved the following clear covers:
- |                                  | Formed            | Cast against ground   |
|----------------------------------|-------------------|-----------------------|
| Footings                         | 50                | 75                    |
| Columns                          | [internal] 40     | 50                    |
|                                  | [external] 40     | 65                    |
| Walls                            | [internal] 30     | 50                    |
|                                  | [external] 40     | 65                    |
| Beams                            | [internal] 30     | 50                    |
|                                  | [external] 40     | 65                    |
| Slabs/ band beams                | [internal] 20*    | 30                    |
|                                  | [external] 40     | 65                    |
| Slabs on ground with membrane    | 30 Top            | 30 8tm                |
| Slabs on ground without membrane | 30 Top            | 50 8tm                |
| Core filled block                | 65 against ground | 50 not against ground |
- \* Minimum cover within 1km of coast shall be 30mm.
- Concrete shall be moist cured for a minimum of 7 days following placement of concrete. Alternative methods of curing may be acceptable, provided approval from the supervising engineer has been obtained.
  - Sawn joints to be completed within 16 to 24 hours of placement of concrete. Typical depth of sawn joints to be D/4, where 'D' is slab depth (U.N.O.).
  - Splices in reinforcement are to be made only where shown on drawings, except where written approval has been obtained from the engineer.
  - U.N.O. provide 350mm minimum end laps to fabric and lap bars as noted below. Securely tie reinforcement at all laps and intersections with 1.25mm black annealed wire.
- Bar dia. Lap length**
- |     |      |
|-----|------|
| N12 | 400  |
| N16 | 600  |
| N20 | 800  |
| N24 | 1050 |
| N28 | 1300 |
| N32 | 1600 |
- Structural Steel**
- All workmanship and materials shall be in accordance with AS4100 & BCA Part B1.3 (c) except where varied by the contract documents.
  - Two (2) copies of fabrication drawings shall be submitted to the engineer for review at least 10 working days prior to the commencement of fabrication. Fabrication is not to commence without the engineer's approval of workshop drawings.
  - Welds shall be 6mm continuous fillet, all bolts galvanneal 20mm diameter (2 bolts per connection minimum) and all gusset plates to be 10mm thick unless noted otherwise.
  - Butt welds where shown shall be complete penetration butt welds.
  - The builder shall provide all cleats and drill all holes necessary for fixing of steelwork and ensure that the structure is kept in a stable condition during erection.
  - Structural steelwork shall have the surfaces clean and treated as follows: Unless noted otherwise, hand or tool clean AS1627-4 class 1 and provide 2 coats of a zinc phosphate primer such as Dulux ZP in accordance with manufacturers requirements.
  - All steelwork, fixings & bolts submerged under water shall be Stainless Steel Grade 316. Typical U.N.O. All steelwork, fixings & bolts in contact with ground to be hot dip galvanneal and have 2 coats of 'Omronox' applied Typ. U.N.O. Galvanneal = HOT DIPPED GALVANNEAL. Minimum coating of 600g/m<sup>2</sup>.
  - Steel shall be Grade 350 for hollow sections and Grade 300 for all rolled sections U.N.O.
- Structural Timber**
- Materials and workmanship shall comply with AS1720 Timber Engineering Code and AS1684 Light Timber Framing Code.
  - All timber used shall have been stress graded by visual or mechanical means in accordance with the appropriate Australian Standards. Holes for bolts, unless noted otherwise (U.N.O.), shall be made oversize as follows: Bolt diameter 15mm or less - 2mm oversize Bolt diameter 16mm and greater - 3mm oversize
  - Shank and thread of bolts shall be thoroughly coated with a heavy water-proof grease before inserting into the timber.
  - Specialised metal fasteners such as Gang-nail plates, Trip-L-Grip etc. shall be of proven type and shall have had working loads determined in accordance with the procedure specified in AS1684.
  - At the practical completion of the contract, and again at the end of the maintenance period and if necessary during that period, the contractor shall re-tighten all bolts to approval. Bolts that will be inaccessible after completion of the project, shall be re-tightened immediately after to being built.
  - Trusses shall be constructed only by a fabricator approved by the superintendent. Design shall be in accordance with AS1720 and to the loadings, profiles and together with requirements specified on the drawings. Design of trusses shall be by a qualified structural engineer experienced in timber design. Shop drawings of trusses, together with all necessary information for checking the strength of truss members and connectors shall be submitted not less than fourteen days prior to commencement of fabrication. Fabrication shall not commence unless permission to do so has been given. Edge distances for fasteners in timber (from ends and sides) shall be in accordance with AS1720.
- Brickwork & Blockwork**
- All workmanship and materials shall be in accordance with AS3700-Masonry Structures Code & BCA Part B1.3 (a).
  - Mortar for the masonry shall be proportioned as follows:
- In general:  
 4 part sand, 1 part cement, 1 part lime  
 Below damp proof coursing, and in retaining walls:  
 3 part sand, 1 part cement, 1 part lime
- Brickwork or blockwork supporting concrete or steel members shall be troweled smooth and separated at the bearing surface by 2 Layers of Alcor
  - Reinforced blockwalls shall be core filled with concrete compressive strength (F<sub>c</sub>) of 20 MPa, max. 10 mm. aggregate and 150 slump (typical U.N.O.) All blocks to have a minimum grade of D=15
  - Provide clean out blocks to all core filled blockwork.
  - Provide continuous vertical expansion joints in brickwalls and blockwalls at 5000mm. max. cts.
  - Use MFA 3/1 wall ties at every 6th course U.N.O. at brick vertical expansion joints.
- Excavation Precautions**
- Builder to maintain stability of adjoining buildings. Do not excavate below level of adjoining footings without written consent of engineer.
  - Builder to allow to provide temporary and/or permanent shoring to prevent collapse of ground during excavation works. If builder is unsure, contact Engineer for advice/details (at builder's cost).
  - Engineer to be advised when excavation works are underway to ensure that all our guidelines are being followed.
  - The builder must use the recommendations contained within the Geotechnical Engineer's report during all excavation works. Do not use machines or demolish buildings in a manner which will cause vibration damage to adjoining properties.

**58 Cowdroy Ave, Cammeray - Excavation & Demolition Methodology Sequence.**

- Demolish existing timber framed carport & parking deck
- Demolish northern 1.7 metres of raked retaining wall at end of council access roadway - maintain at least 1.0 metre return at end of existing wall. Excavate behind this raked wall to prepare for pouring new retaining wall extension support footings and piers off underlying sandstone bedrock.
- Build new retaining wall footings and reinforced blockwork walls to retain council land in revised wall position. Once new wall is dowelled to existing wall and has achieved design strength, remove the remaining 1.0 metre return of raked retaining wall.
- Install the 7 - 600mm dia shoring piles parallel with property boundary, including pouring of the 750x400 connecting capping beam. Once completed and capping beam has achieved it's design strength of 32MPa, create soil access ramp into site for excavator to complete demolition of existing residence. Excavator to strip soil down to sandstone bedrock level, and break out bedrock between grids E & F down to approximate RL of 10.50 in location of proposed staircase and lift.
- Complete encasement works for existing sewer main.
- Construct P2 (450mm dia) support piers and walls from rock up to underside of mid-level storage slab at RL 19.85. Note, P2 piers socketed at least 900mm into rock to provide lateral restraint to brace future structure above.
- Remove soil access ramp as excavator exits the site and progressively clear area between grid E and roadway boundary down to bedrock level.
- Complete installation of infill 175mm thick shotcrete wall and drainage between the main 7 shoring piles. Allow shotcrete to achieve it's 32MPa design strength.
- Construct the mid-level storage slab at RL19.85 and build new brace walls ip off this slab to underside of new garage parking deck.
- Construct new garage parking deck, ensuring it is locked in to boundary shoring pile capping beam. Note, garage parking deck has been designed for an applied live load of 1000kg/m<sup>2</sup> to allow for storage and general loading requirements during process of new building construction. If mobile crane to be parked onto the garage deck, suitable back-propping to mid-level slab must be installed through consultation with the structural engineer to allow for loads of crane to be adequately supported.
- Builder must provide temporary handrails around parking deck to ensure safety of all workers at all times during construction works.

02	REVISED TO SUIT COUNCIL'S COMMENTS	22.03.23
01	ISSUED FOR O.A. APPROVAL	21.10.22

Issue	Amendment	Date
Architect	COSO ARCHITECTURE STUDIO 4.04 / 56 BOWMAN ST PYRMONT, NSW P: 02 9566 2880 F: 02 9566 2889	

Project	58 COWDROY AVENUE, CAMMERAY
Title	ENTRY FLOOR PLAN

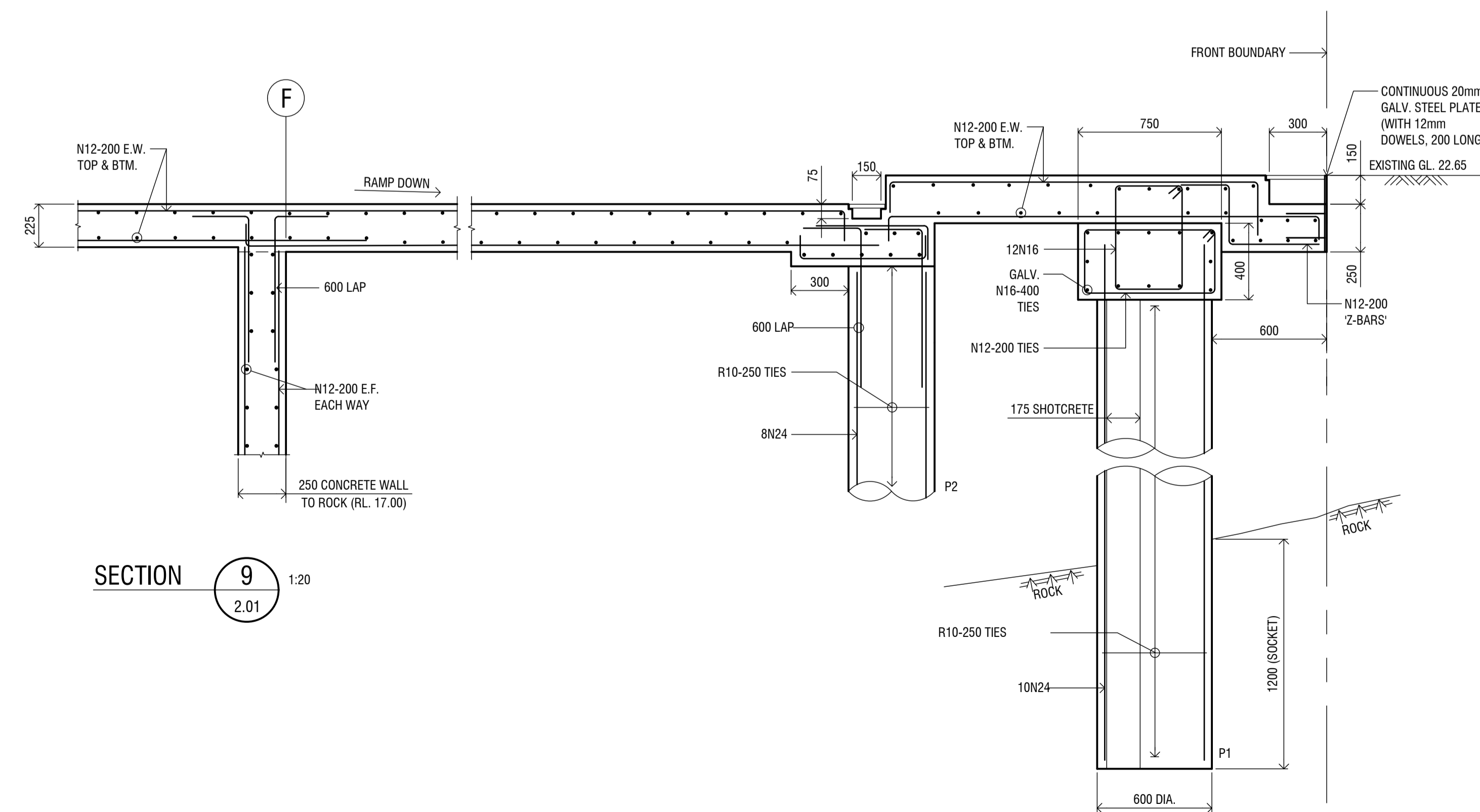
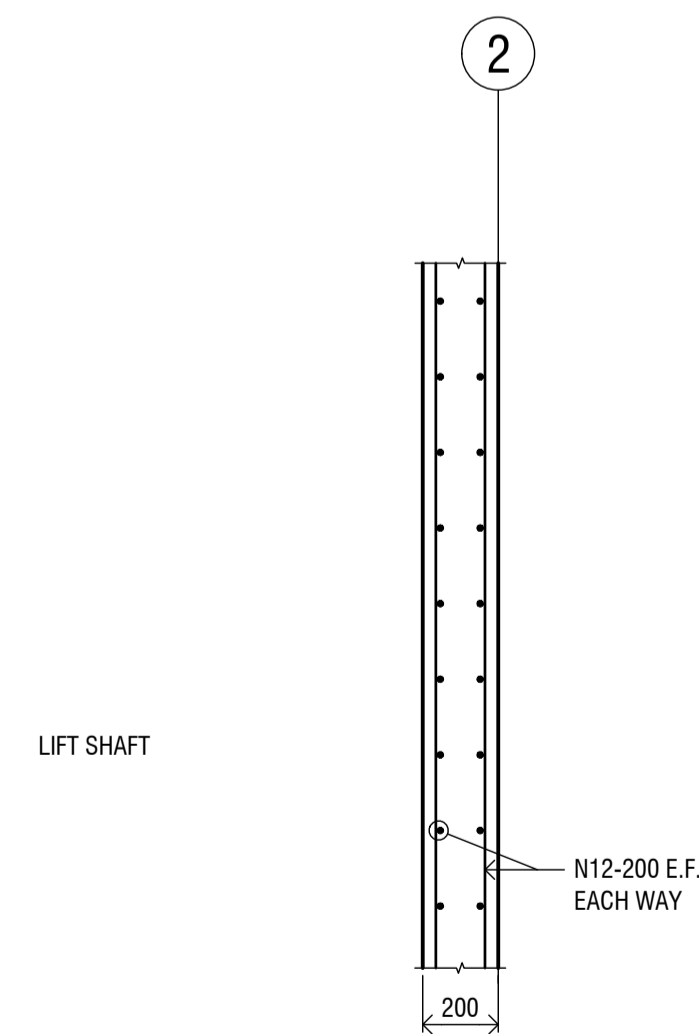
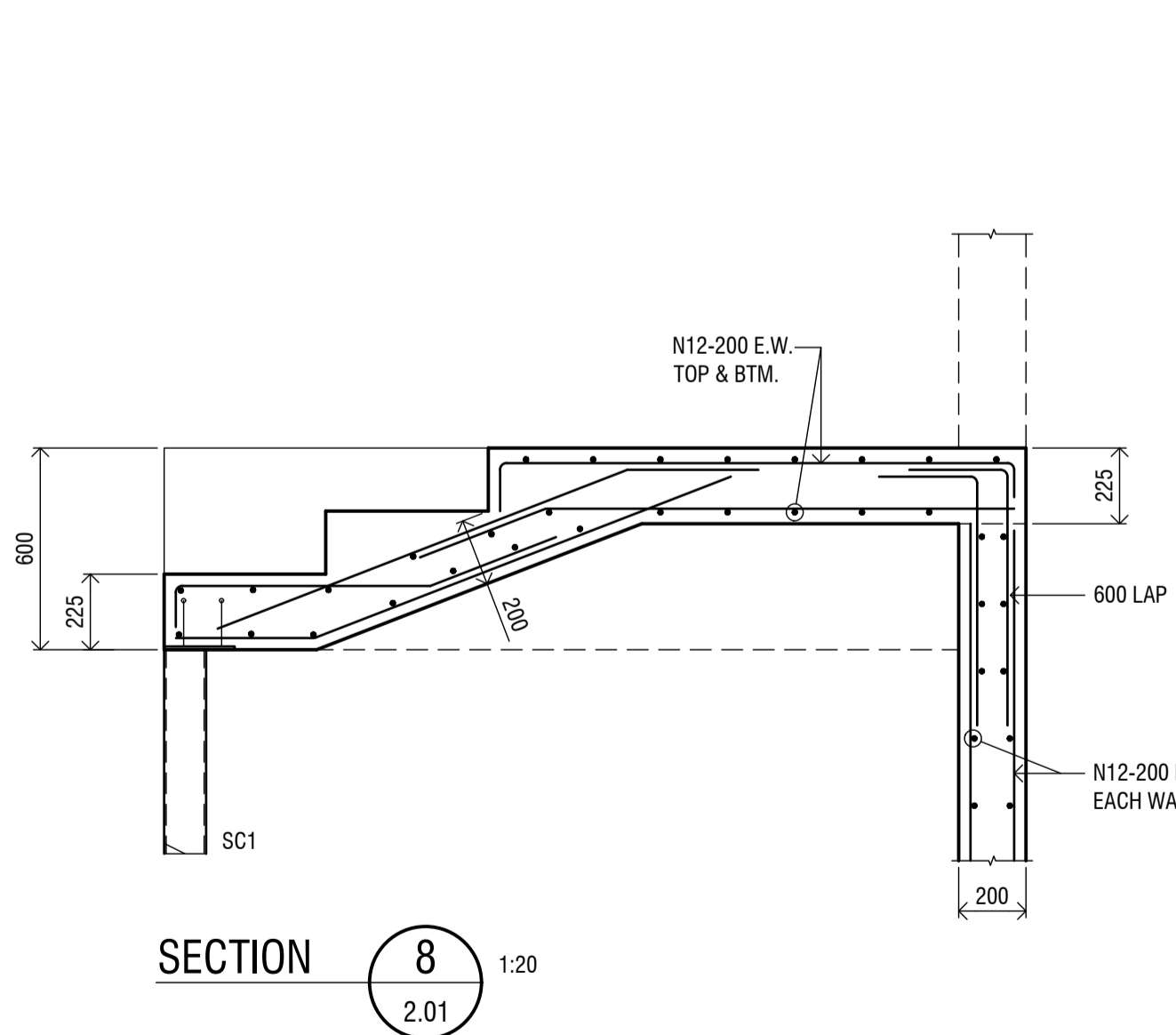
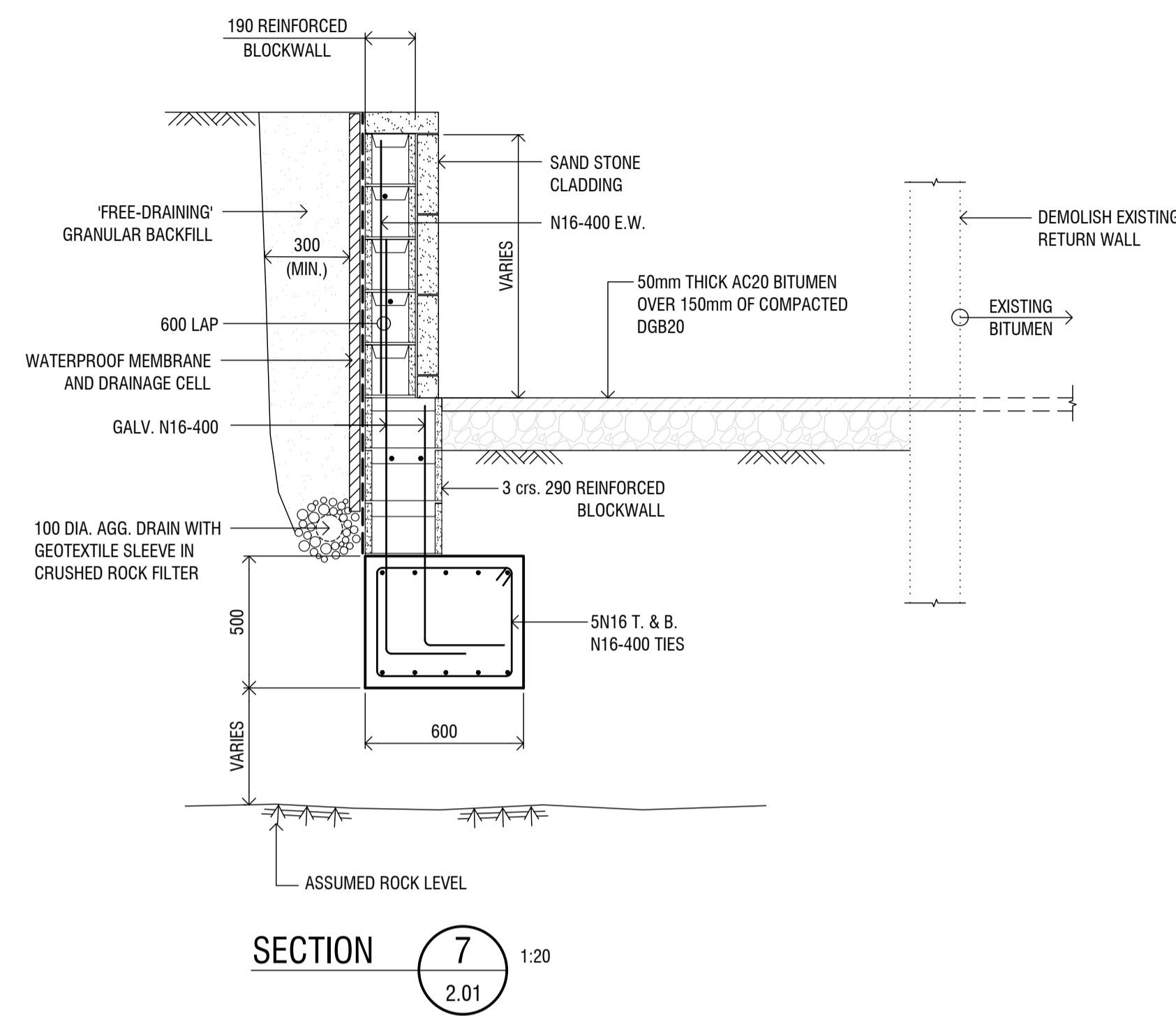
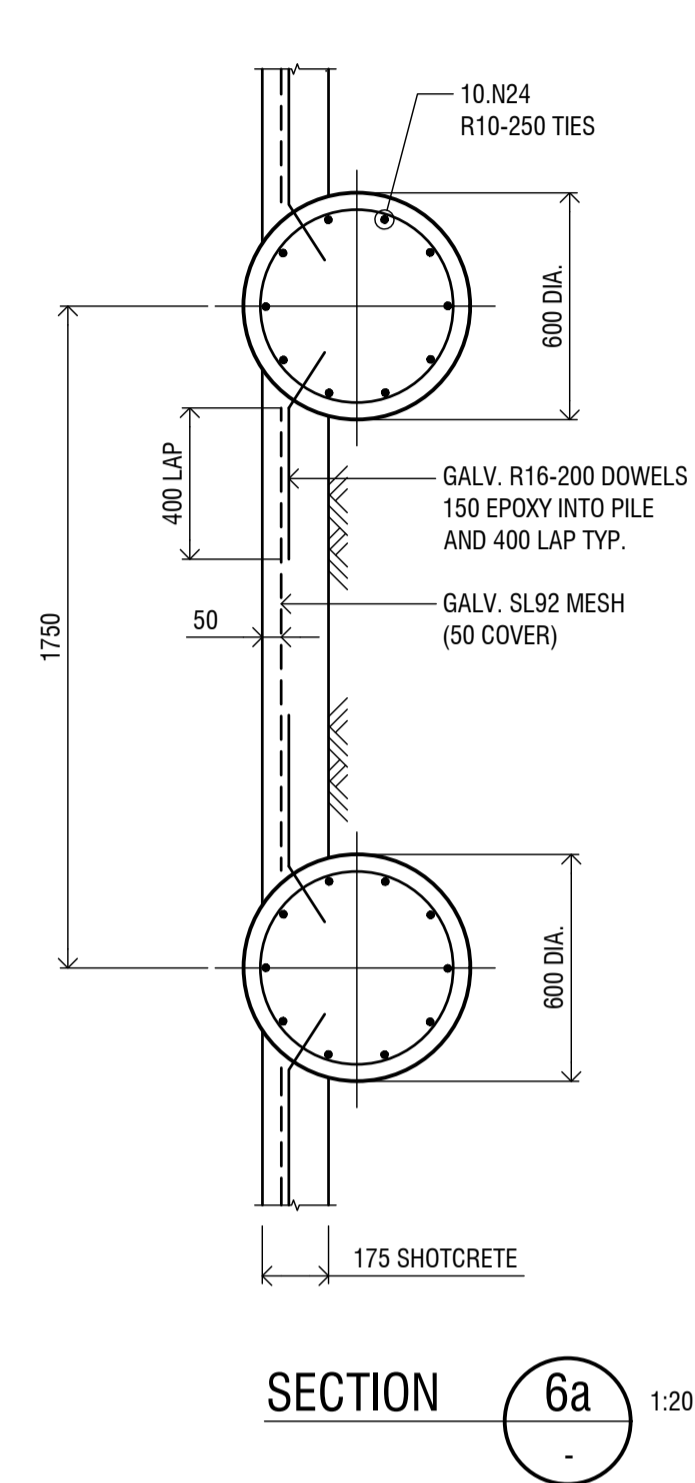
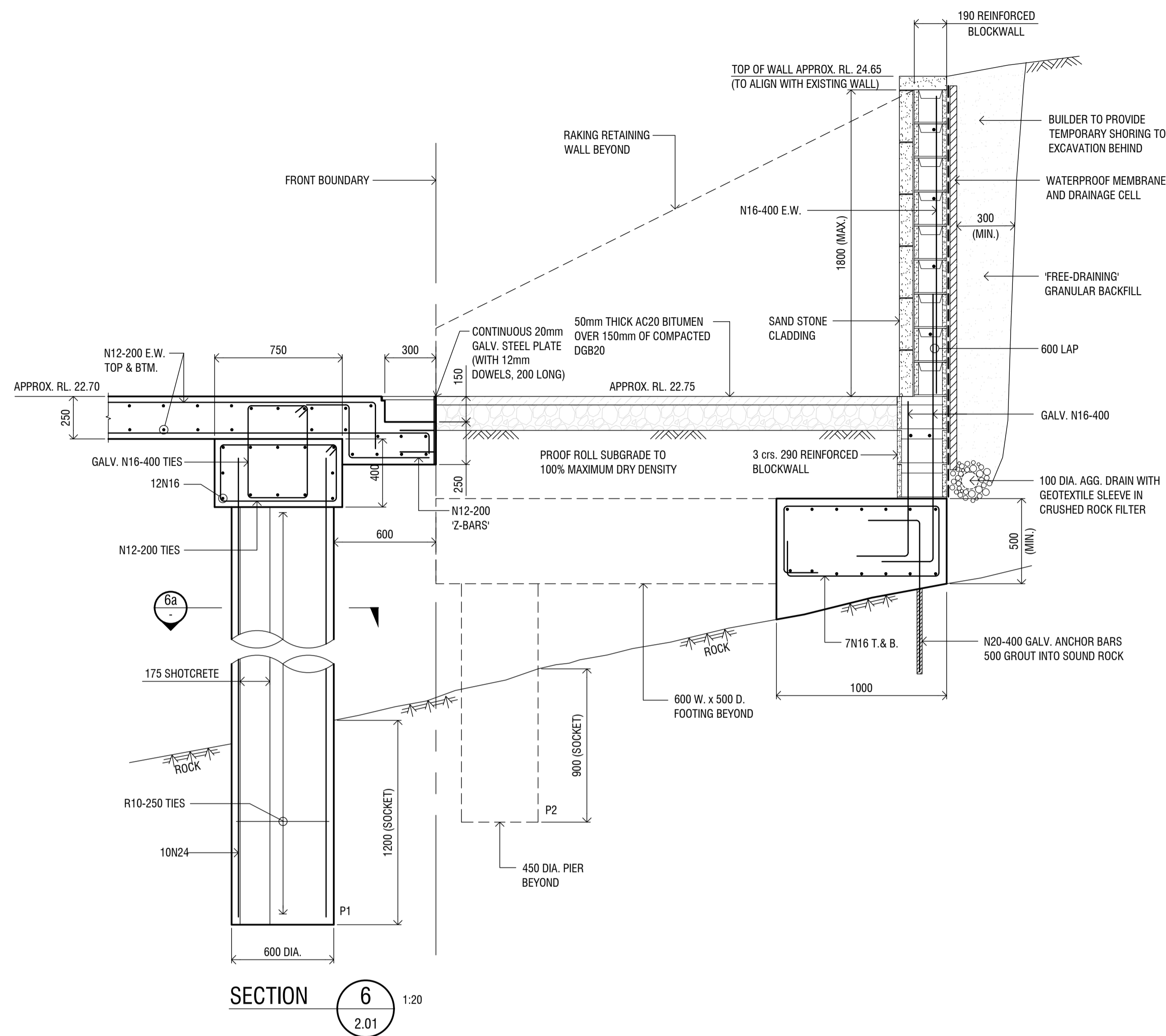
<p><b>Mbroso CONSULTING</b> STRUCTURAL ENGINEERS 4/153 Victoria Road, Gladesville NSW 2111 Phone: 9679 5577 Fax: 9679 5588 dambrosoconsulting@bigpond.com</p>
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Design	A.D.A	Drawn	R.G.H.	Scale	1:100
Certified				S.E. (Name) M.E.E. (Aut)	NPER (Structural)

S7723	02	S2.01
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THIS DRAWING TO BE READ IN CONJUNCTION WITH ALL RELEVANT NOTES ON DRAWING S2.01



02	REVISED TO SUIT COUNCIL'S COMMENTS	22.03.23
01	ISSUED FOR D.A. APPROVAL	21.10.22

Issue	Amendment	Date
Architect	<b>COSO ARCHITECTURE</b> STUDIO 4.04 / 56 BOWMAN ST PYRMONT, NSW P: 02 9566 2880 F: 02 9566 2889	

Project	<b>58 COWDROY AVENUE, CAMMERAY</b>
Title	<b>ENTRY FLOOR DETAILS</b>

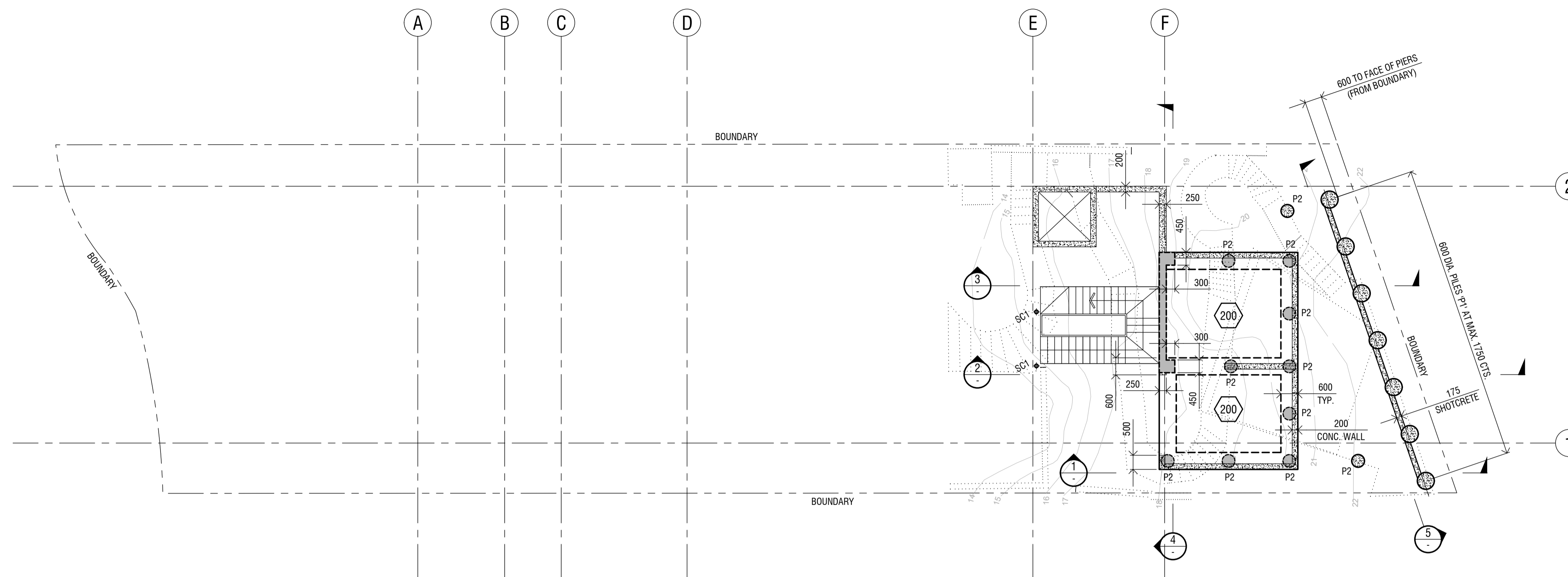
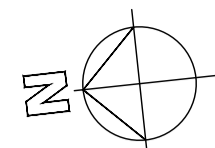
<b>MBROSIO CONSULTING</b> STRUCTURAL ENGINEERS 4/153 Victoria Road, Gladesville NSW 2111 Phone: 9679 5577 Fax: 9679 5588 dambrosoconsulting@bigpond.com

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Design	A.D.A.	Drawn	R.G.H.	Scale	1:20
Certified				S.E. (Name) M.E. (Aust) NPER (Structural)	
<b>S7723</b>		<b>02</b>		<b>S2.02</b>	



THIS DRAWING TO BE READ IN CONJUNCTION WITH ALL RELEVANT NOTES ON DRAWING S2.01



**MID LEVEL FLOOR PLAN**

1:100

MEMBER SCHEDULE		
TAG	DESCRIPTION	TYPE
P1	6000 PIERS INTO ROCK, 10N24, R10-250	CONCRETE PIERS
P2	4500 PIERS INTO ROCK 8N24, R10-250	CONCRETE PIERS
SC1	GALV. 125 x 125 x 5 SHS POST	STEEL POST

01 ISSUED FOR D.A. APPROVAL 21.10.22

Issue Amendment Date  
 Architect  
**COSO ARCHITECTURE**  
 STUDIO 4.04 / 56 BOWMAN ST PYRMONT, NSW  
 P: 02 9566 2880 F: 02 9566 2889

Project  
**58 COWDROY AVENUE,  
 CAMMERAY**

Title  
**MID LEVEL FLOOR PLAN**

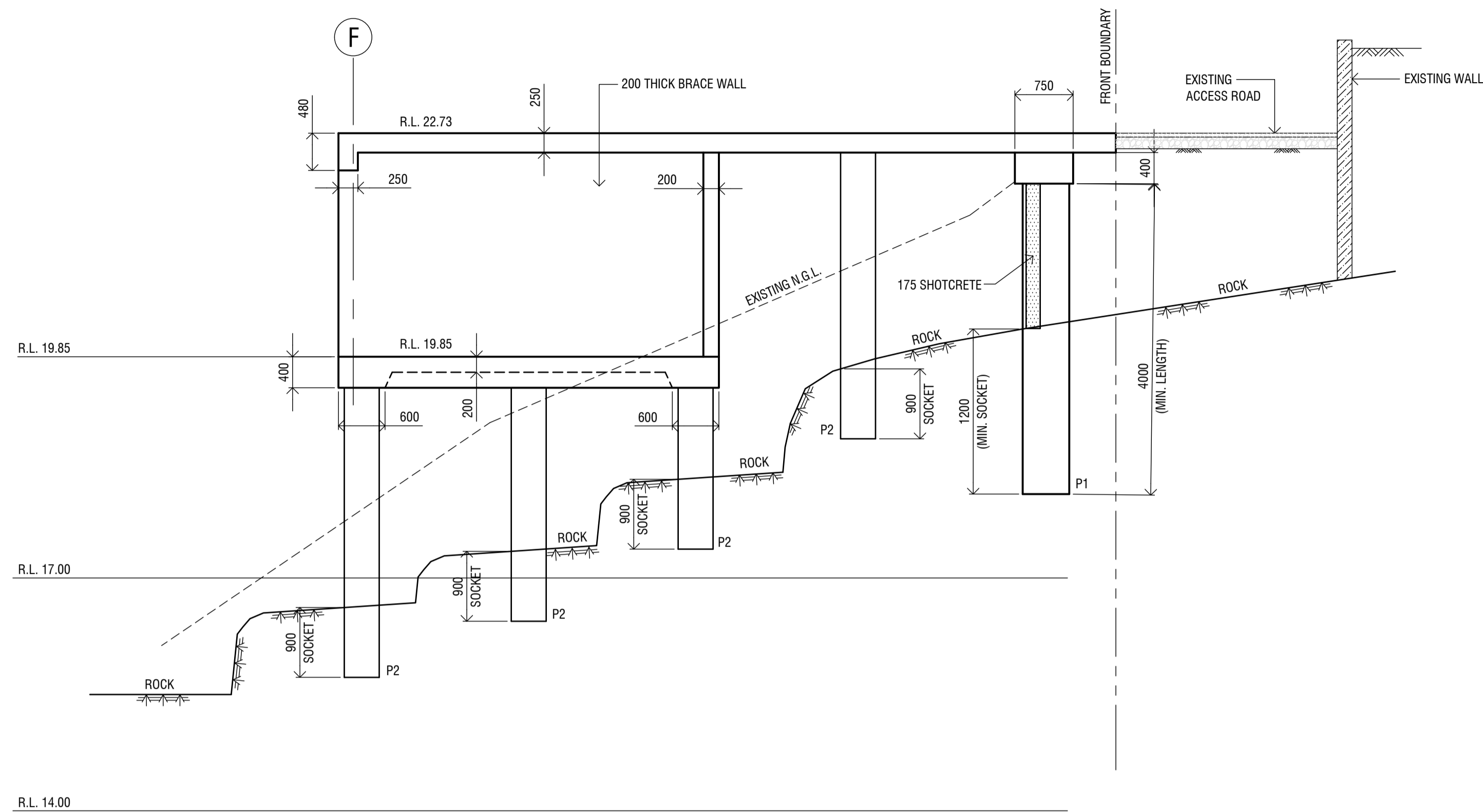
**DMBROSIO CONSULTING**  
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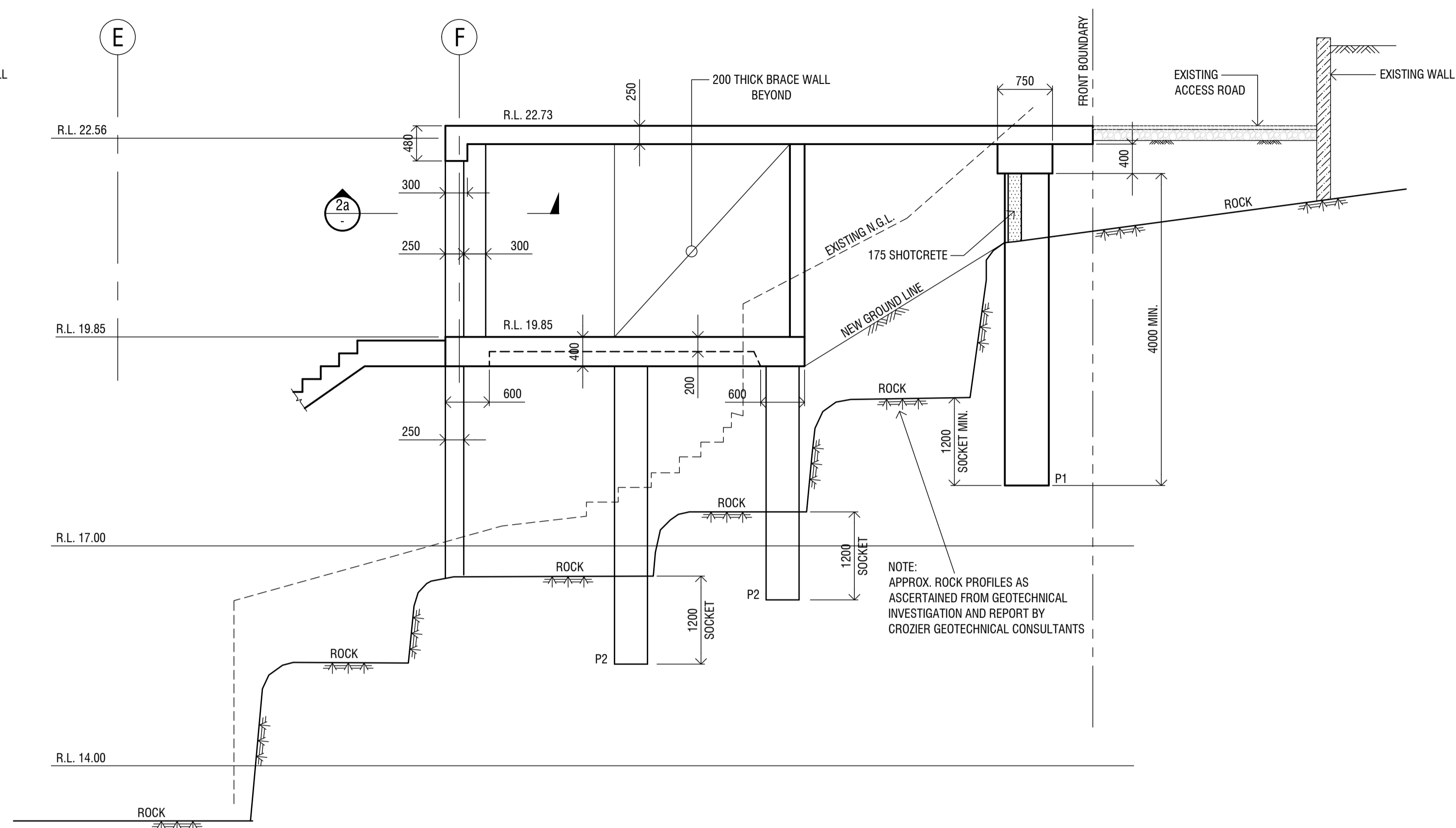
Design A.D.A. Drawn R.G.H. Scale 1:100  
 Certified S.E. (Name) M.E. (Auth) NFER (Structure)

S7723 01 S3.01

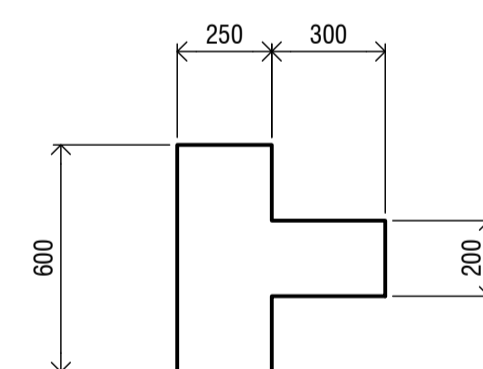
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SECTION 1  
3.01 1:50



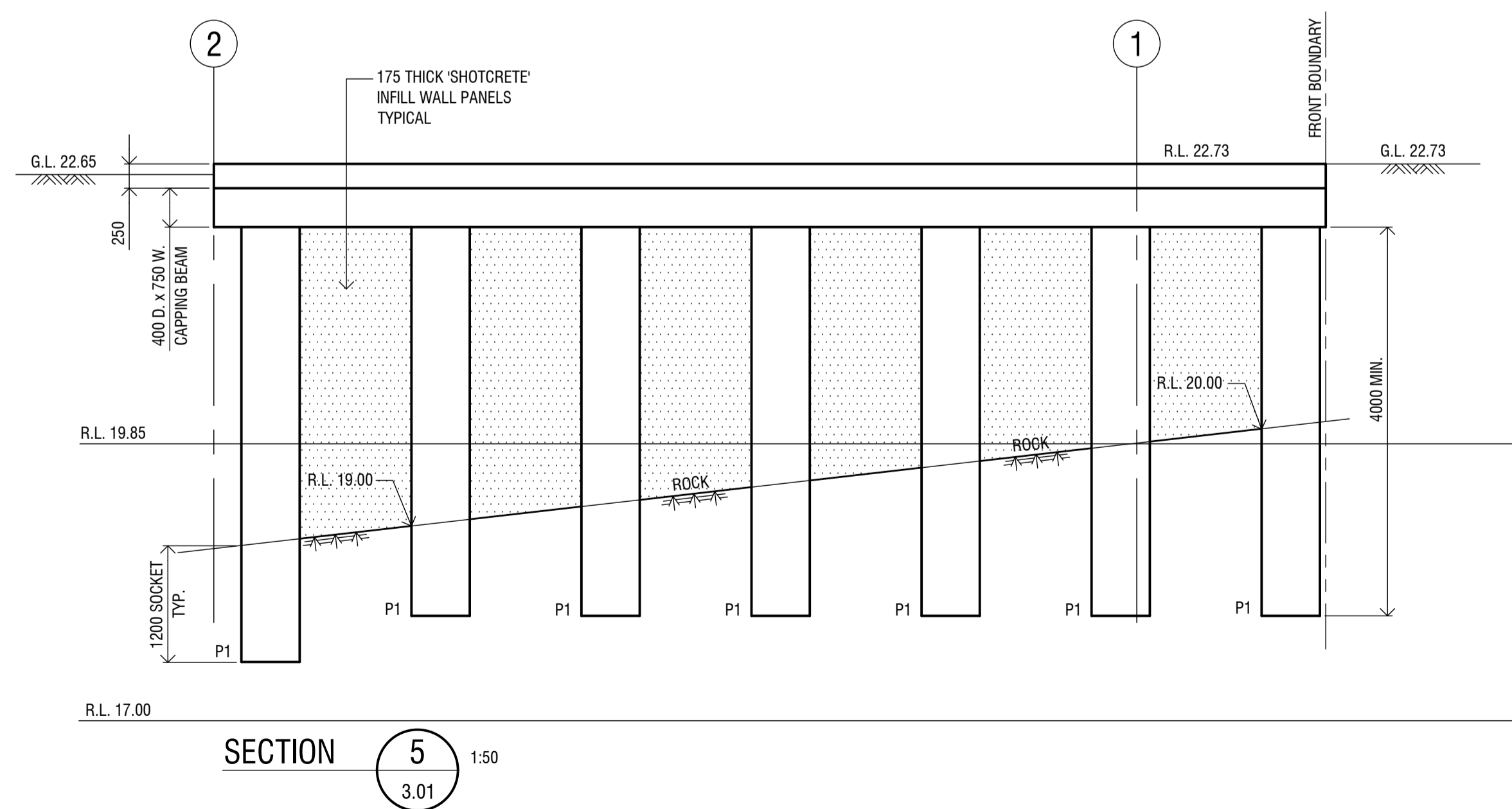
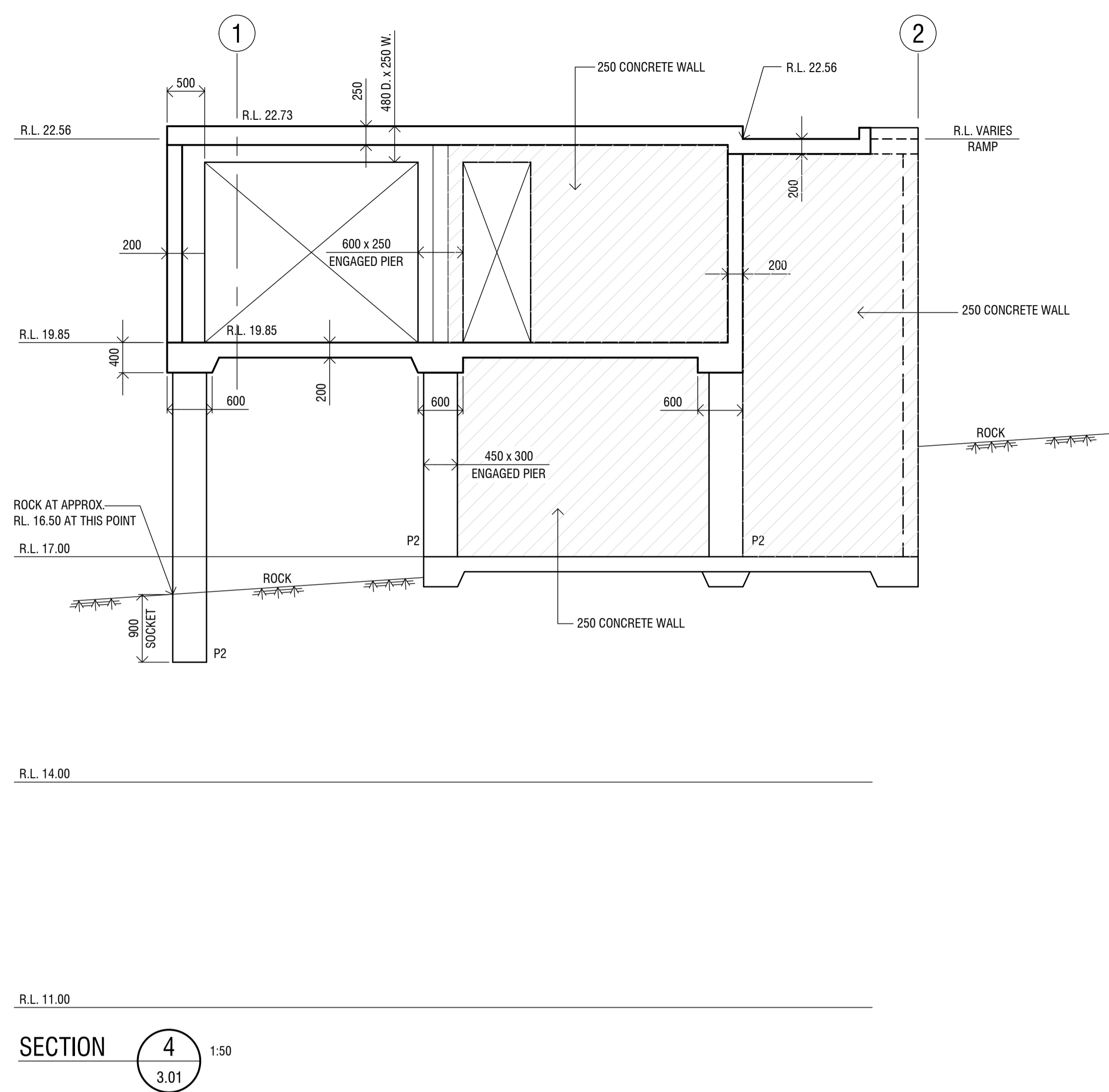
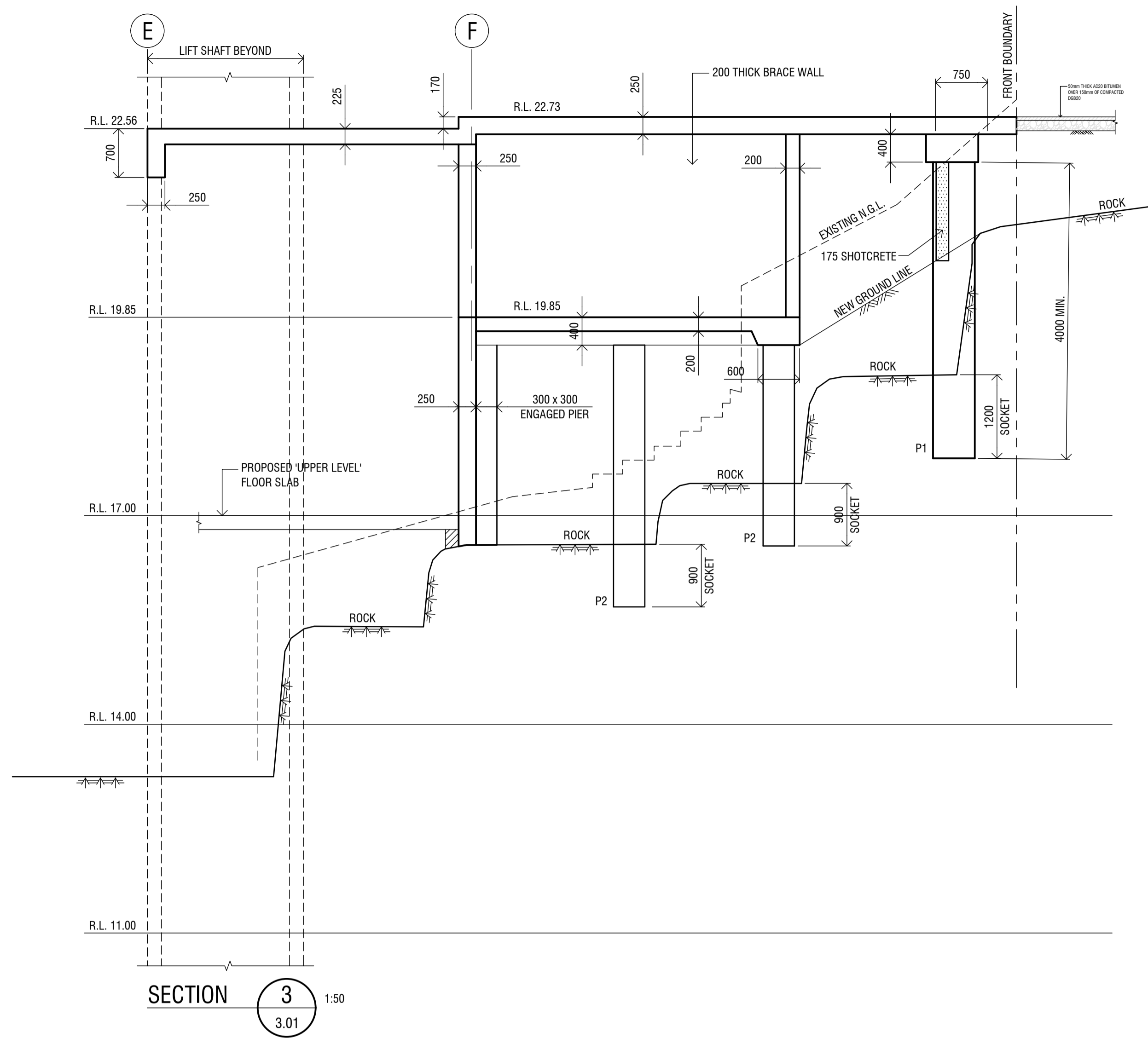
SECTION 2  
3.01 1:50



SECTION 2a  
1:20

01	ISSUED FOR D.A. APPROVAL	21.10.22
Issue	Amendment	Date
Architect	<b>COSO ARCHITECTURE</b> STUDIO 4.04 / 56 BOWMAN ST PYRMONT, NSW P: 02 9566 2880 F: 02 9566 2889	
Project	<b>58 COWDROY AVENUE, CAMMERAY</b>	
Title	<b>MID AND ENTRY FLOOR DETAILS</b>	
 <b>D'AMBROSIO CONSULTING</b> STRUCTURAL ENGINEERS 4/153 Victoria Road, Gladesville NSW 2111 Phone: 9679 5577 Fax: 9679 5588 dambrosioconsulting@bigpond.com		
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Design	A.D.A.	Scale 1:50/1:20
Drawn	R.G.H.	S.E. (Name) M.E.E. (Aust NPER) (Structural)
Certified		
S7723	01	S3.02

THIS DRAWING TO BE READ IN CONJUNCTION WITH ALL RELEVANT NOTES ON DRAWING S2.01



01	ISSUED FOR D.A. APPROVAL	21.10.22
----	--------------------------	----------

Issue	Amendment	Date
Architect	COSO ARCHITECTURE STUDIO 4.04 / 56 BOWMAN ST PYRMONT, NSW P: 02 9566 2880 F: 02 9566 2889	

Project  
**58 COWDROY AVENUE,  
CAMMERAY**

Title  
**MID AND ENTRY FLOOR DETAILS**

**DMBROSIO CONSULTING**  
STRUCTURAL ENGINEERS  
4/153 Victoria Road, Gladesville NSW 2111  
Phone: 9679 5577 Fax: 9679 5588  
dambrosioconsulting@bigpond.com

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Design	A.D.A.	Drawn	R.G.H.	Scale	1:50
Certified				S.E. (Name) M.E. (Auth) NFER (Structure)	

S7723	01	S3.03
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**DEVELOPMENT APPLICATION**

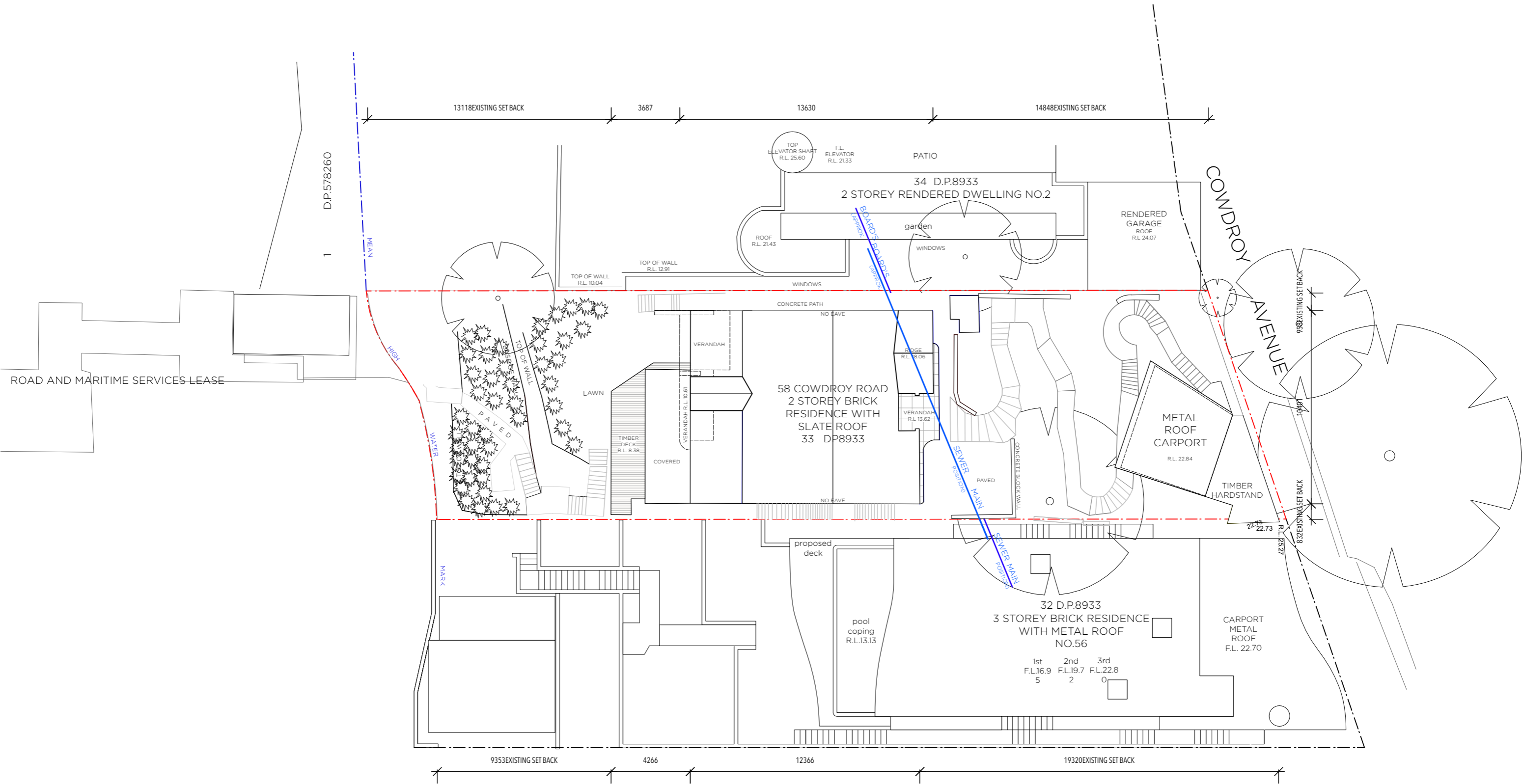
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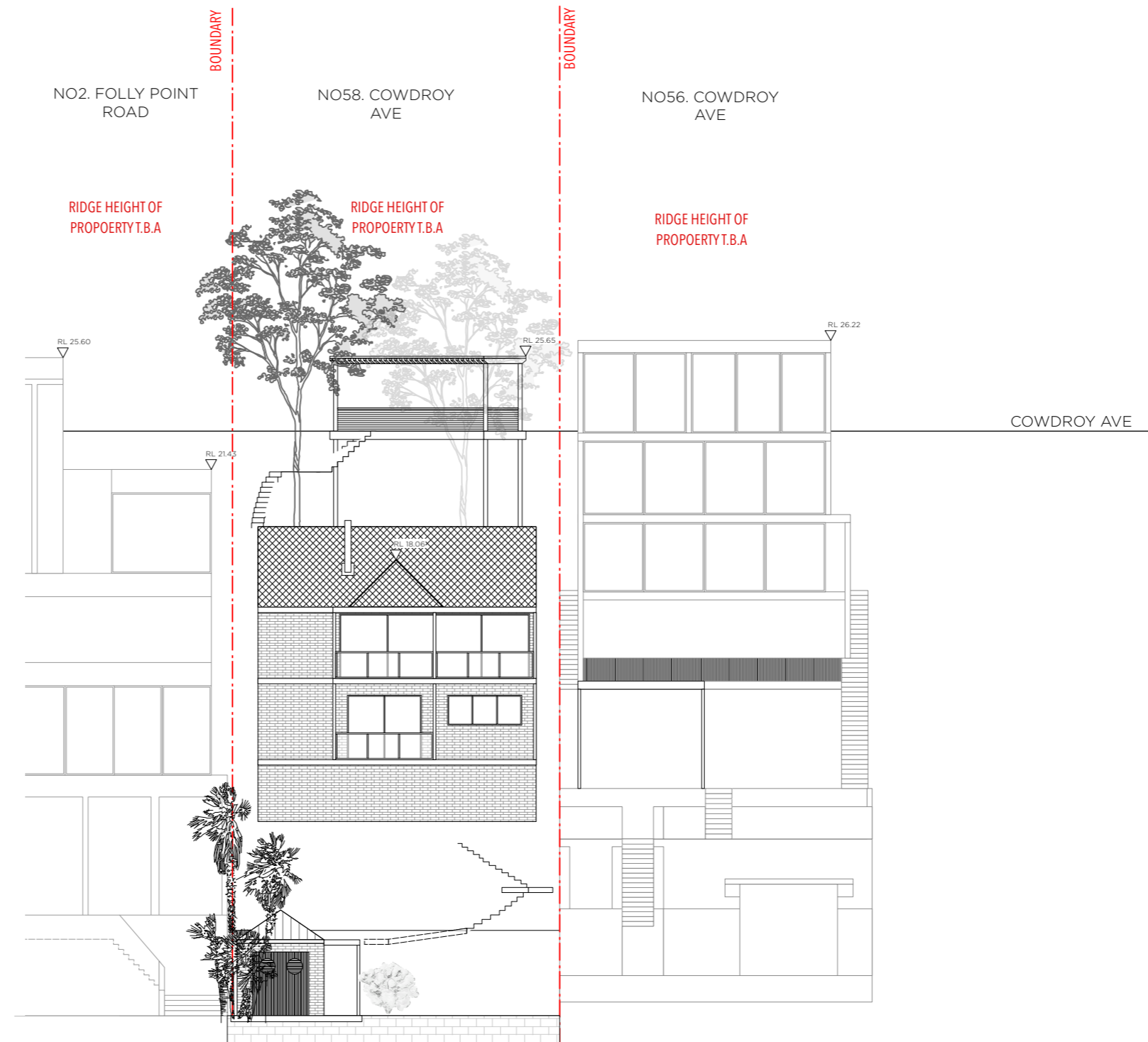
**58 COWDROY AVE, CAMMERAY 2062**

25th OCTOBER 2021

**ARCHITECTURAL DRAWINGS****DATE**

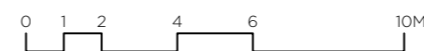
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MD02	Existing North Elevation	1:200	JANUARY 2020
MD03	Existing South Elevation	1:200	JANUARY 2020
MD04	Existing East Elevation	1:200	JANUARY 2020
MD05	Existing West Elevation	1:200	JANUARY 2020
MD06	Existing section AA	1:200	JANUARY 2020
DA 00	Proposed Demolition Plan	1:200	DECEMBER 2021
DA 00a	Bulk Excavation Diagram	1:200	DECEMBER 2021
DA 01	Proposed Site Plan / Analysis Plan	1:200	OCTOBER 2022
DA 02	Proposed Lower Floor Plan	1:200	OCTOBER 2022
DA 03	Proposed Mid Floor Plan	1:200	OCTOBER 2022
DA 04	Proposed Upper Floor Plan	1:200	OCTOBER 2022
DA 05	Proposed Entry Level	1:200	OCTOBER 2022
DA 06	Proposed Section AA	1:200	OCTOBER 2022
DA 07	Proposed Section BB & CC	1:200	OCTOBER 2022
DA 08	Proposed Section DD	1:200	OCTOBER 2022
DA 09	Proposed Western Elevation		OCTOBER 2022
DA 10	Proposed North & South Elevation	1:200	OCTOBER 2022
DA 11	Proposed Eastern Elevation	1:200	OCTOBER 2022
DA 12	9am Solstice Shadow Diagram	1:200	OCTOBER 2022
DA 13	12pm Solstice Shadow Diagram	1:200	OCTOBER 2022
DA 14	3pm Solstice Shadow Diagram	1:200	OCTOBER 2022
DA 15	Solstice Elevation Diagram	1:200	OCTOBER 2022
DA 16	Site Coverage Calculation	1:200	OCTOBER 2022
DA 17	Materials Selections	--	OCTOBER 2022





**DEVELOPMENT APPLICATION  
SUBMISSION**

58 COWDROY AVENUE CAMMERAY 2062  
PREPARED FOR RENATA + PAUL



DRAWING NAME:  
**Existing North Elevation**

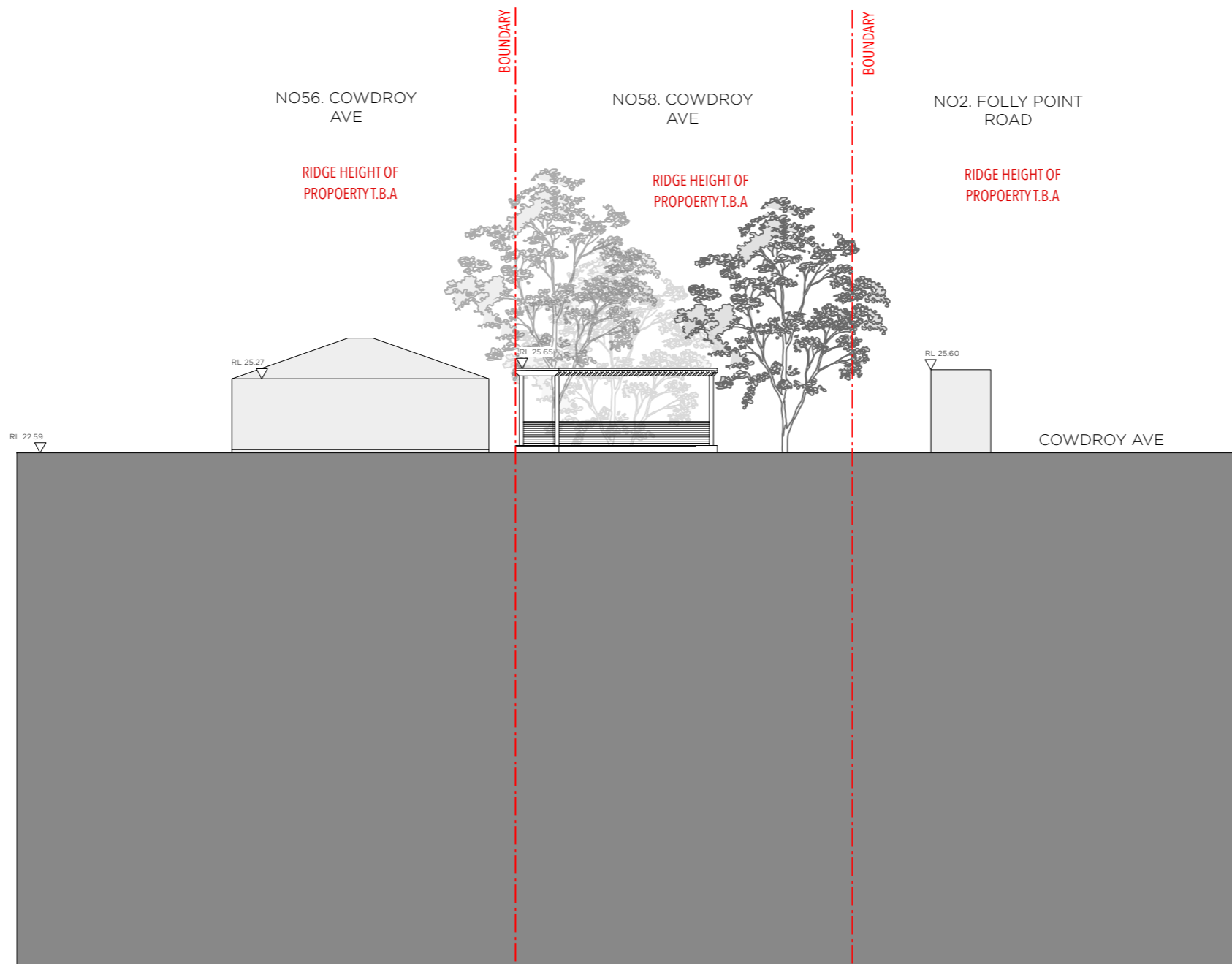
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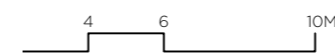
**MD 02**

REVISION.



**DEVELOPMENT APPLICATION  
SUBMISSION**

58 COWDROY AVENUE CAMMERAY 2062  
PREPARED FOR RENATA + PAUL



DRAWING NAME:  
**Existing South Elevation**

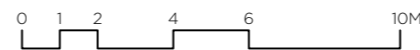
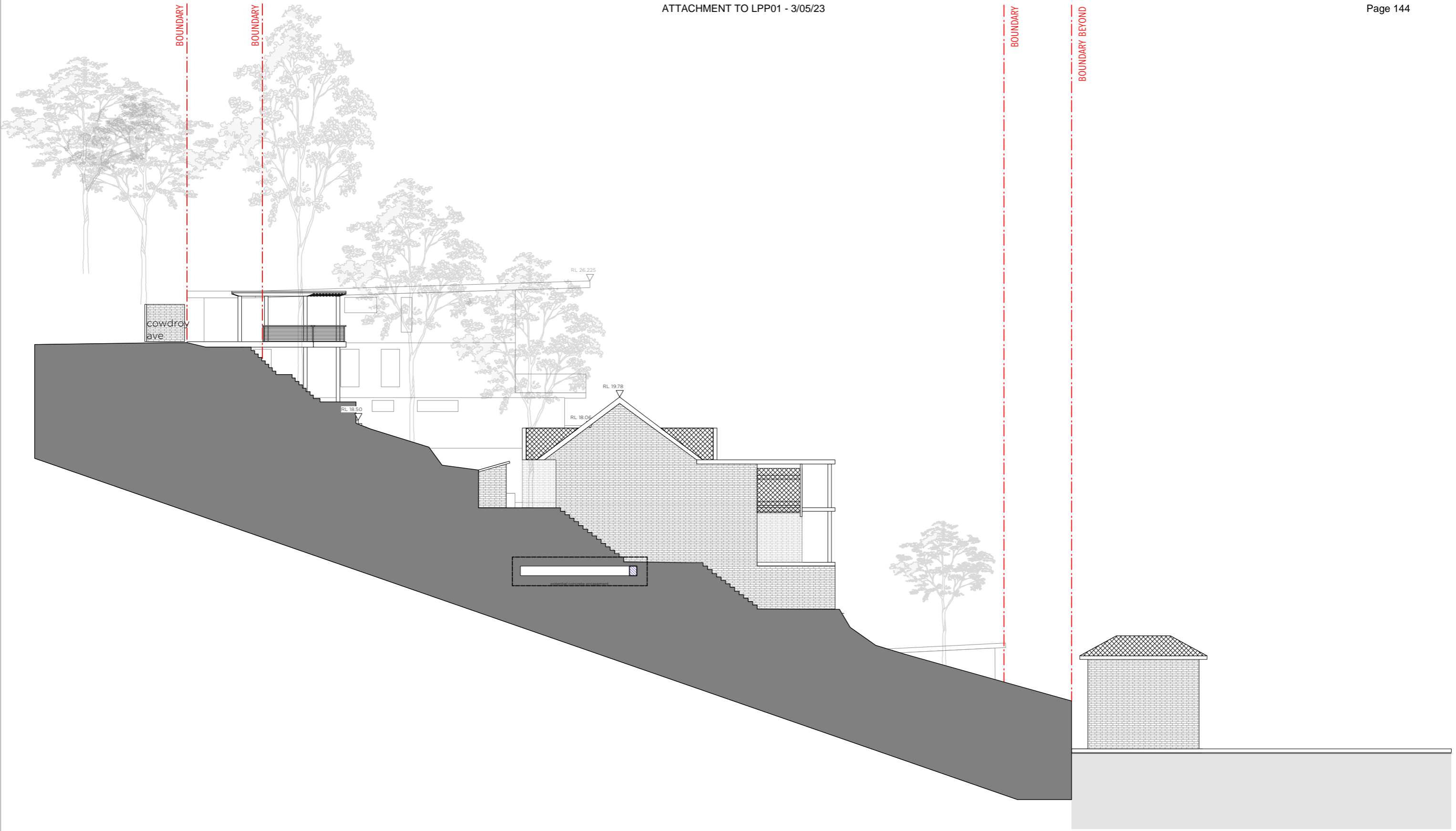
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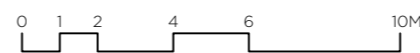
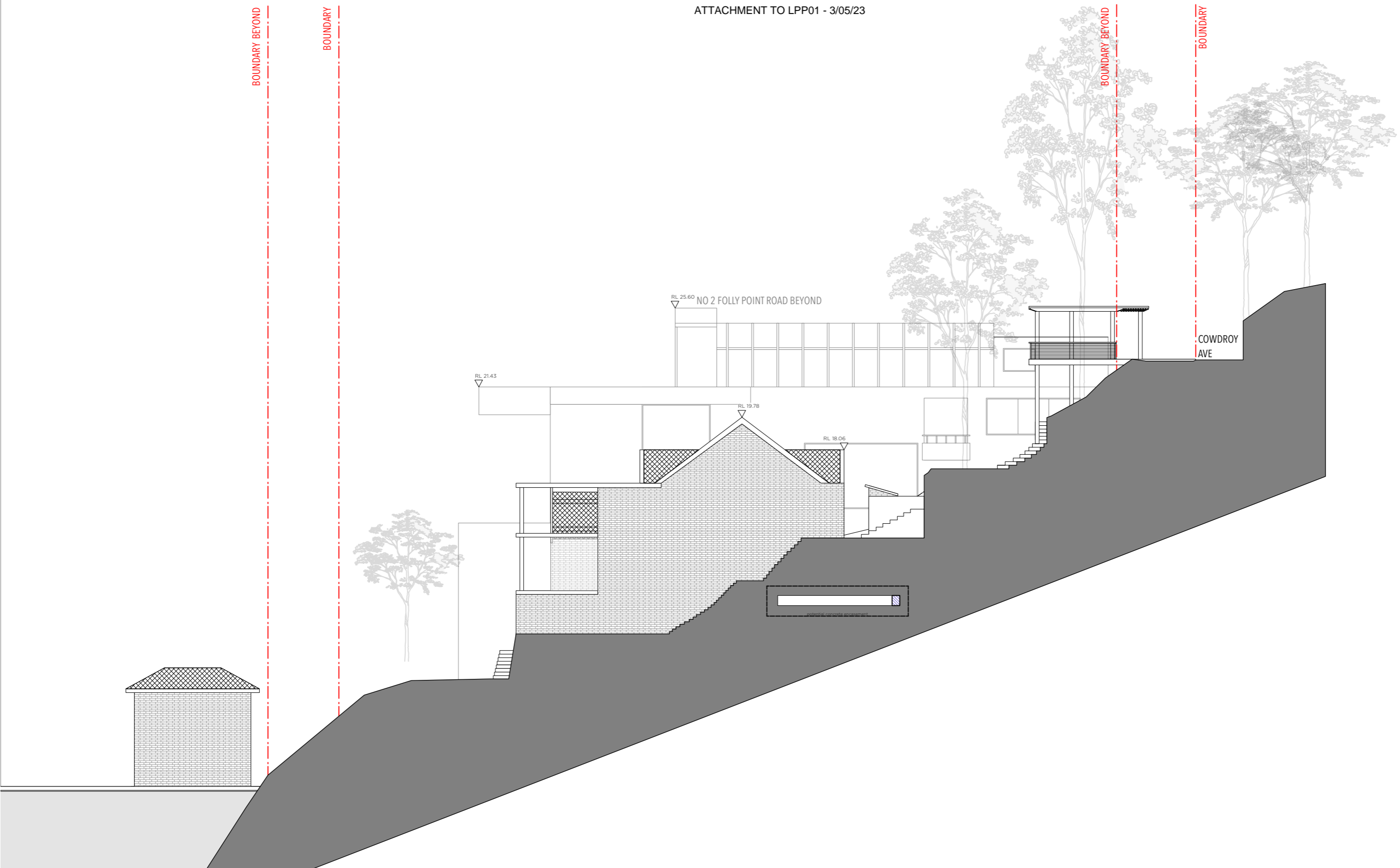
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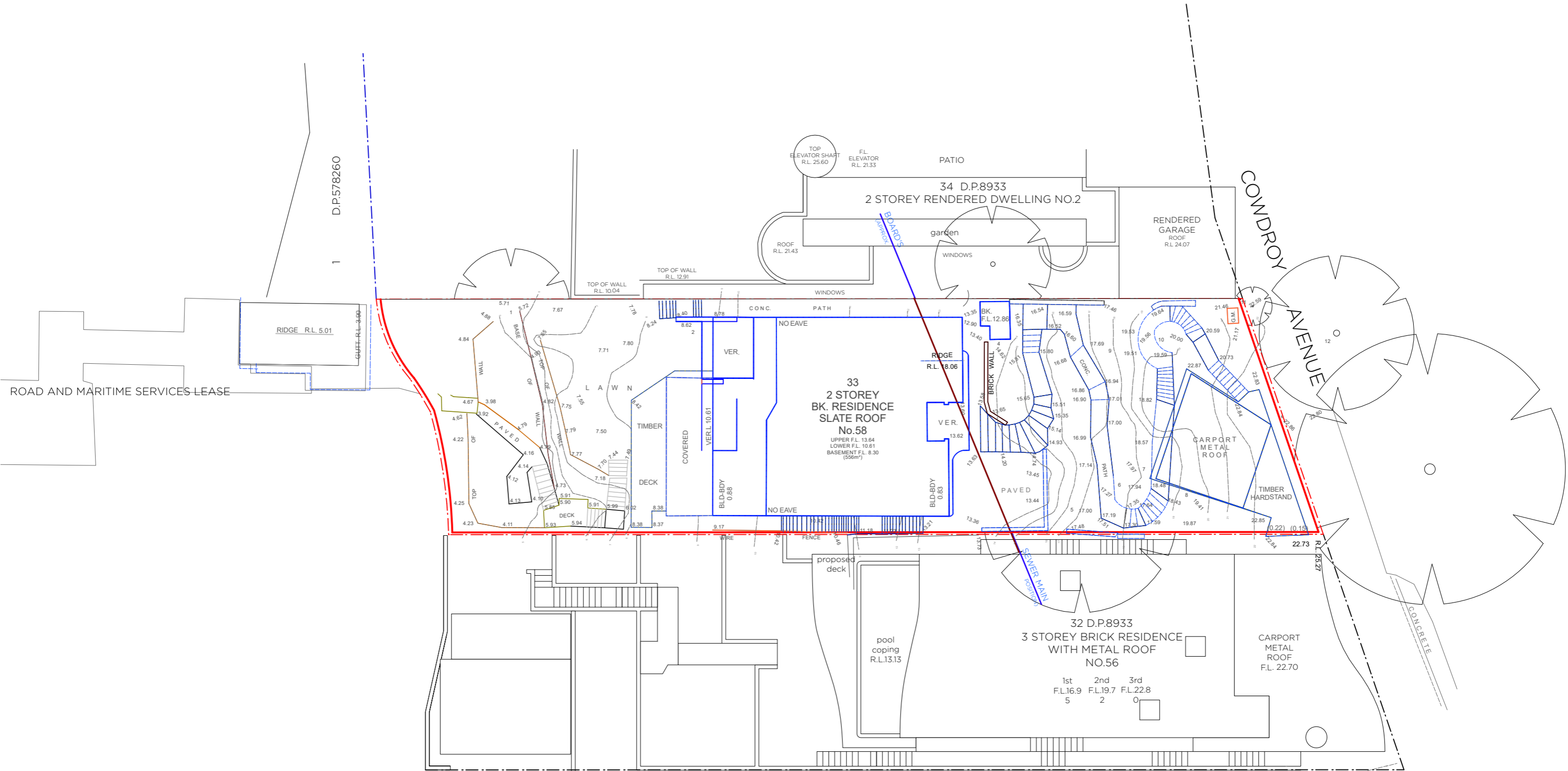
**MD 03**

REVISION.









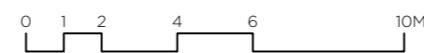
LEGEND.



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### DEVELOPMENT APPLICATION SUBMISSION

58 COWDROY AVENUE CAMMERAY 2062  
 PREPARED FOR RENATA + PAUL



DRAWING NAME.  
**DEMOLITION PLAN**

DATE: DEC 2021  
 SCALE: 1:200 AT A3/ 1:100 AT A2



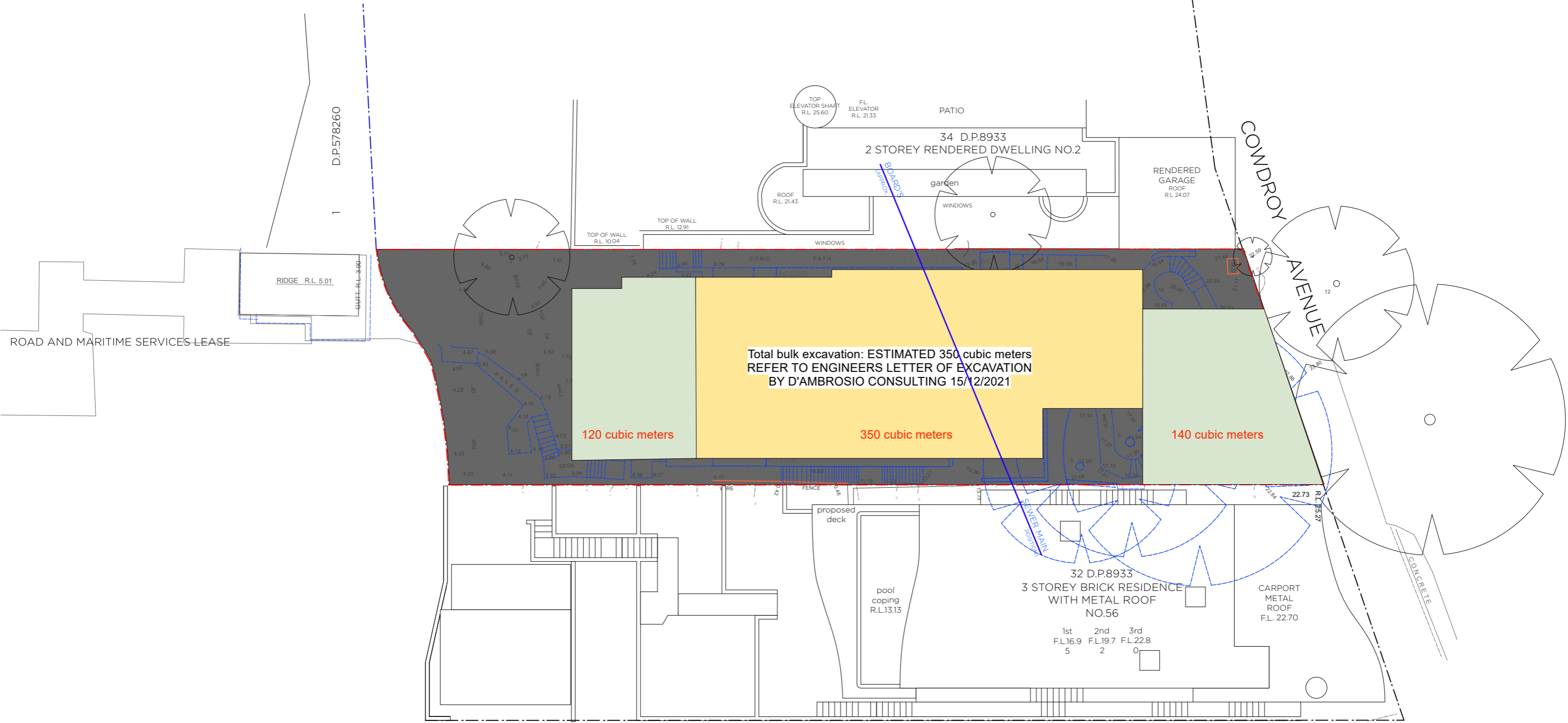
DRAWING NO.

**DA 00a**

REVISION.

Legend:

- bulk excavation
- not excavated
- detail excavation (inc. retaining walls)
- boundary
- fill



LEGEND.

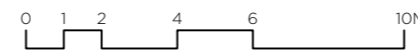
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|  | EXISTING |  | TIMBER |  | BLOCKWORK |  | CONCRETE |  | BRICK |  | CLADDING |  | ROOFING |  | RENDER |  | TIMBER FLOOR |  | TILES |  | PAVING |  | HATCH SHOWING ORIGINAL DA BULK |  | DEMOLISHED |
|--|----------|--|--------|--|-----------|--|----------|--|-------|--|----------|--|---------|--|--------|--|--------------|--|-------|--|--------|--|--------------------------------|--|------------|



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## DEVELOPMENT APPLICATION SUBMISSION

58 COWDROY AVENUE CAMMERAY 2062  
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DRAWING NAME:  
**BULK EXCAVATION PLAN**

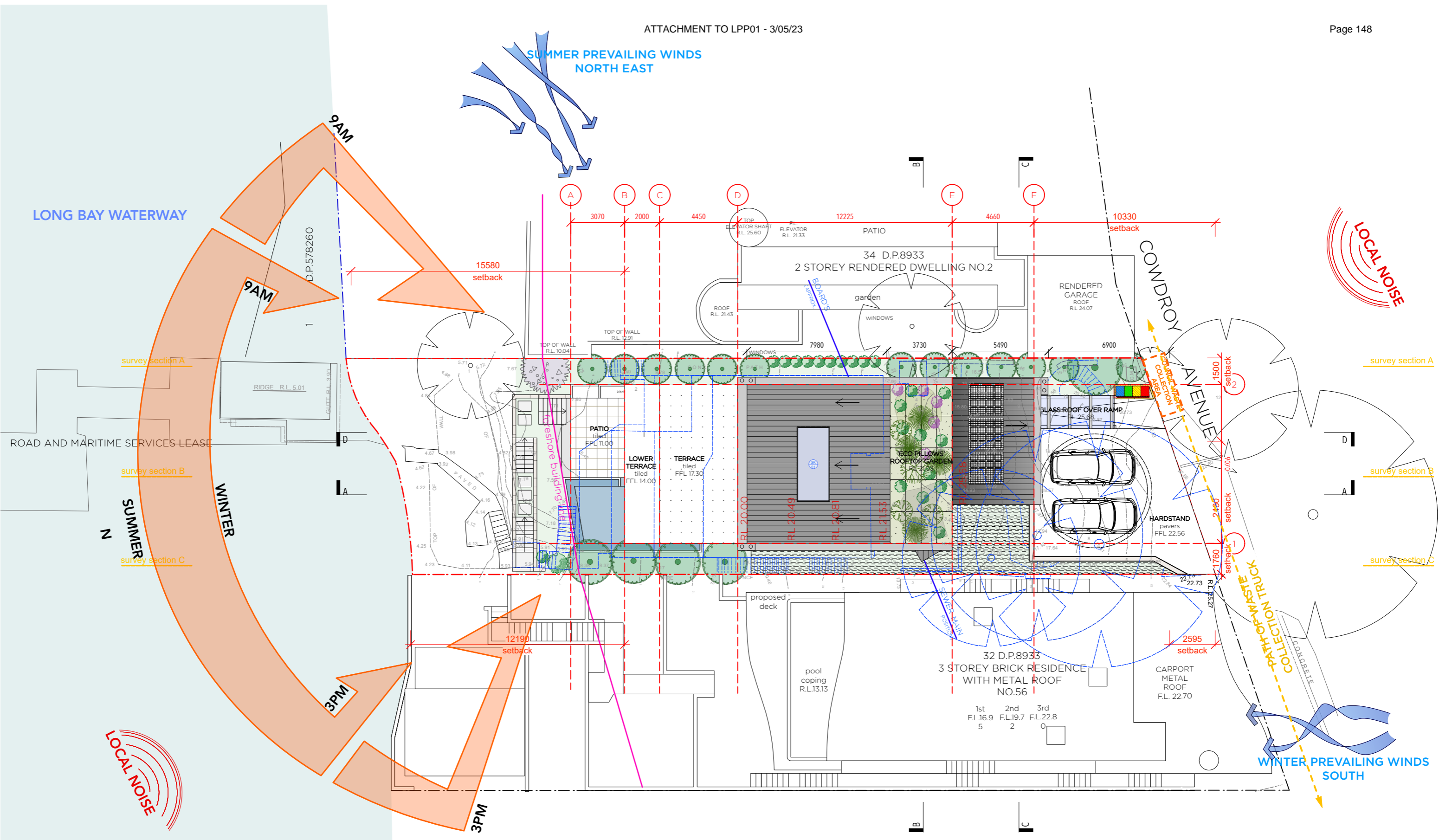
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DRAWING NO.

**DA 00b**

REVISION.



LEGEND.

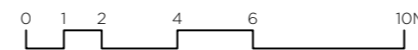
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DRAWING NAME.

**SITE PLAN**

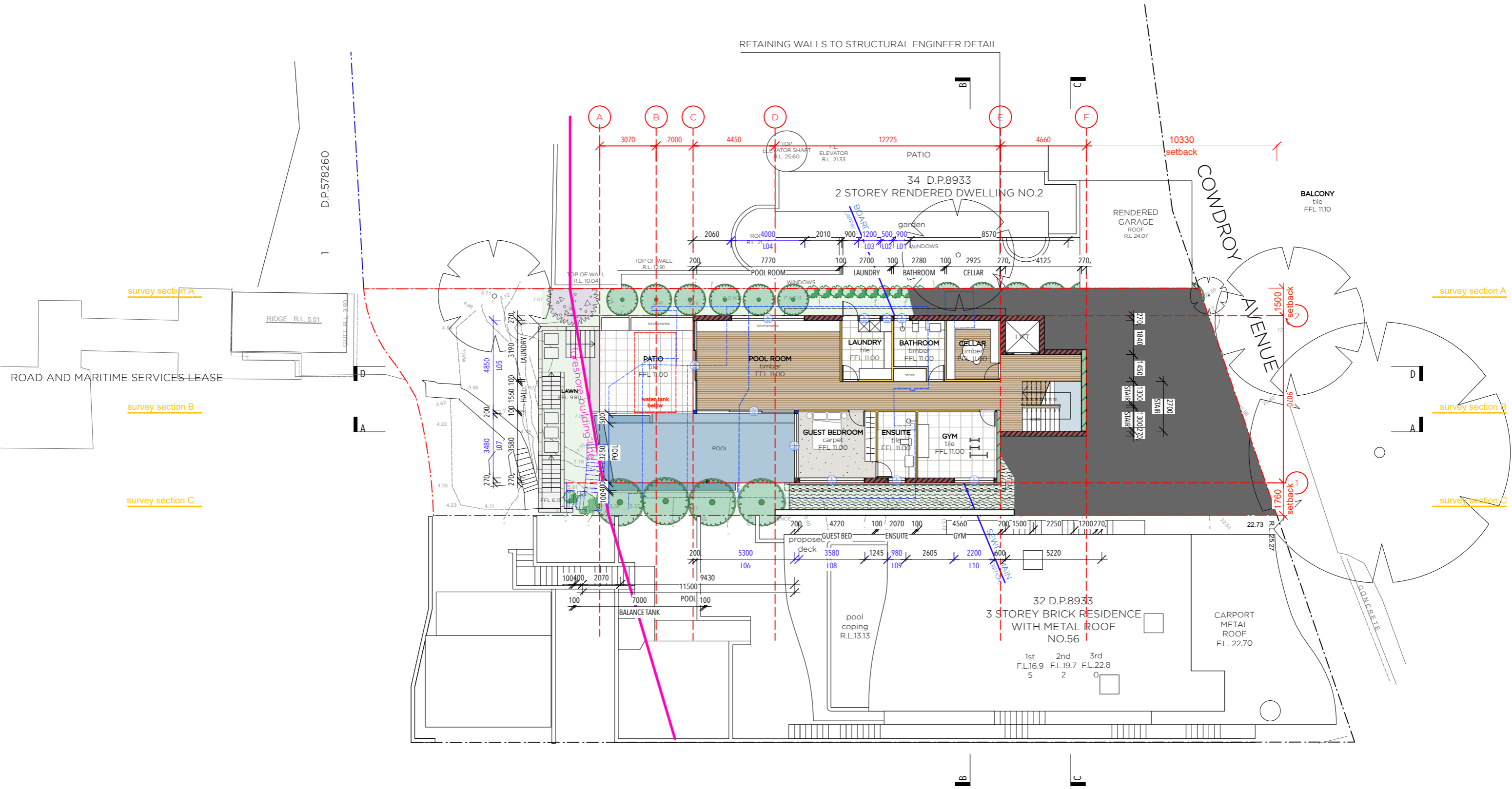
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DRAWING NO.

**DA 01**

REVISION.



LEGEND.

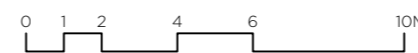
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**DEVELOPMENT APPLICATION  
 SUBMISSION**

58 COWDROY AVENUE CAMMERAY 2062  
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DRAWING NAME.  
**LOWER LEVEL FLOOR PLAN**

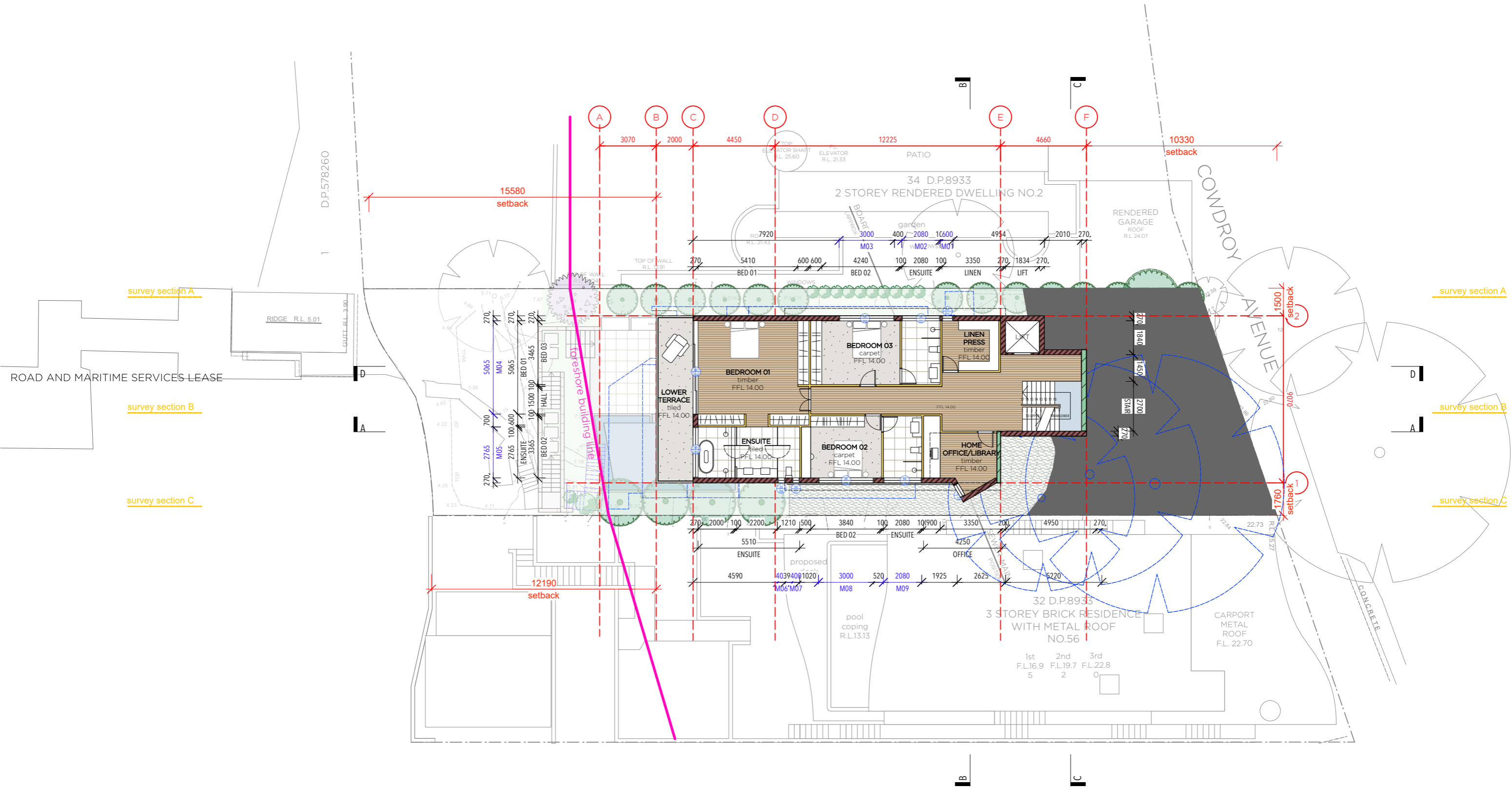
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DRAWING NO.

**DA 02**

REVISION.



LEGEND.

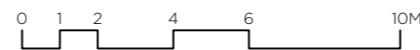
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**DEVELOPMENT APPLICATION  
 SUBMISSION**

58 COWDROY AVENUE CAMMERAY 2062  
 PREPARED FOR RENATA + PAUL



DRAWING NAME.

**MID LEVEL FLOOR PLAN**

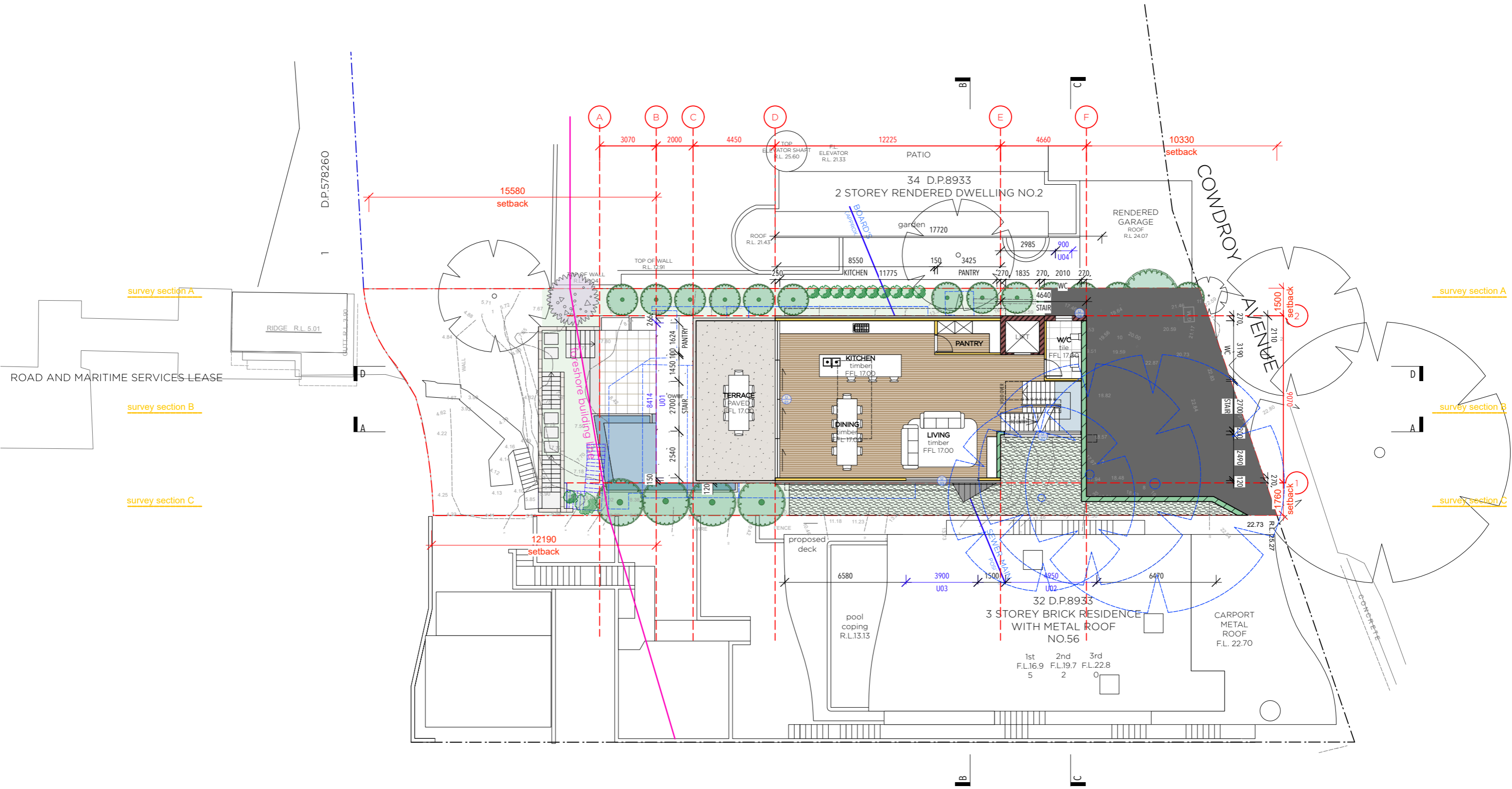
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DRAWING NO.

**DA 03**

REVISION.



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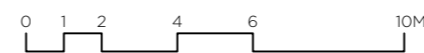
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**DEVELOPMENT APPLICATION  
 SUBMISSION**

58 COWDROY AVENUE CAMMERAY 2062  
 PREPARED FOR RENATA + PAUL



DRAWING NAME.

**UPPER LEVEL FLOOR PLAN**

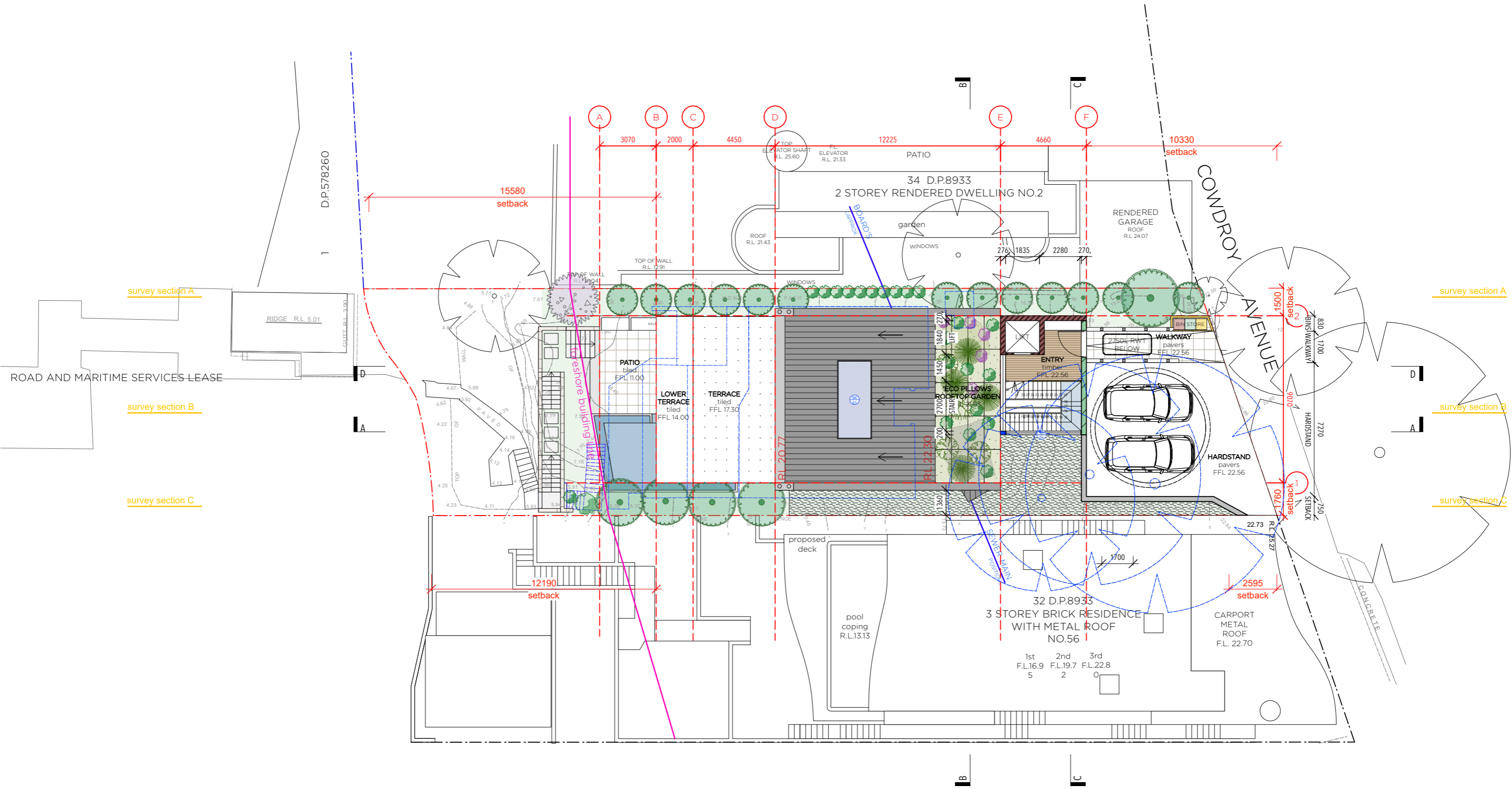
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DRAWING NO.

**DA 04**

REVISION.



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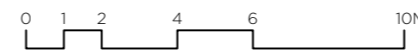
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### DEVELOPMENT APPLICATION SUBMISSION

58 COWDROY AVENUE CAMMERAY 2062  
 PREPARED FOR RENATA + PAUL



DRAWING NAME.  
**ENTRY LEVEL FLOOR PLAN**

DATE: OCT 2022  
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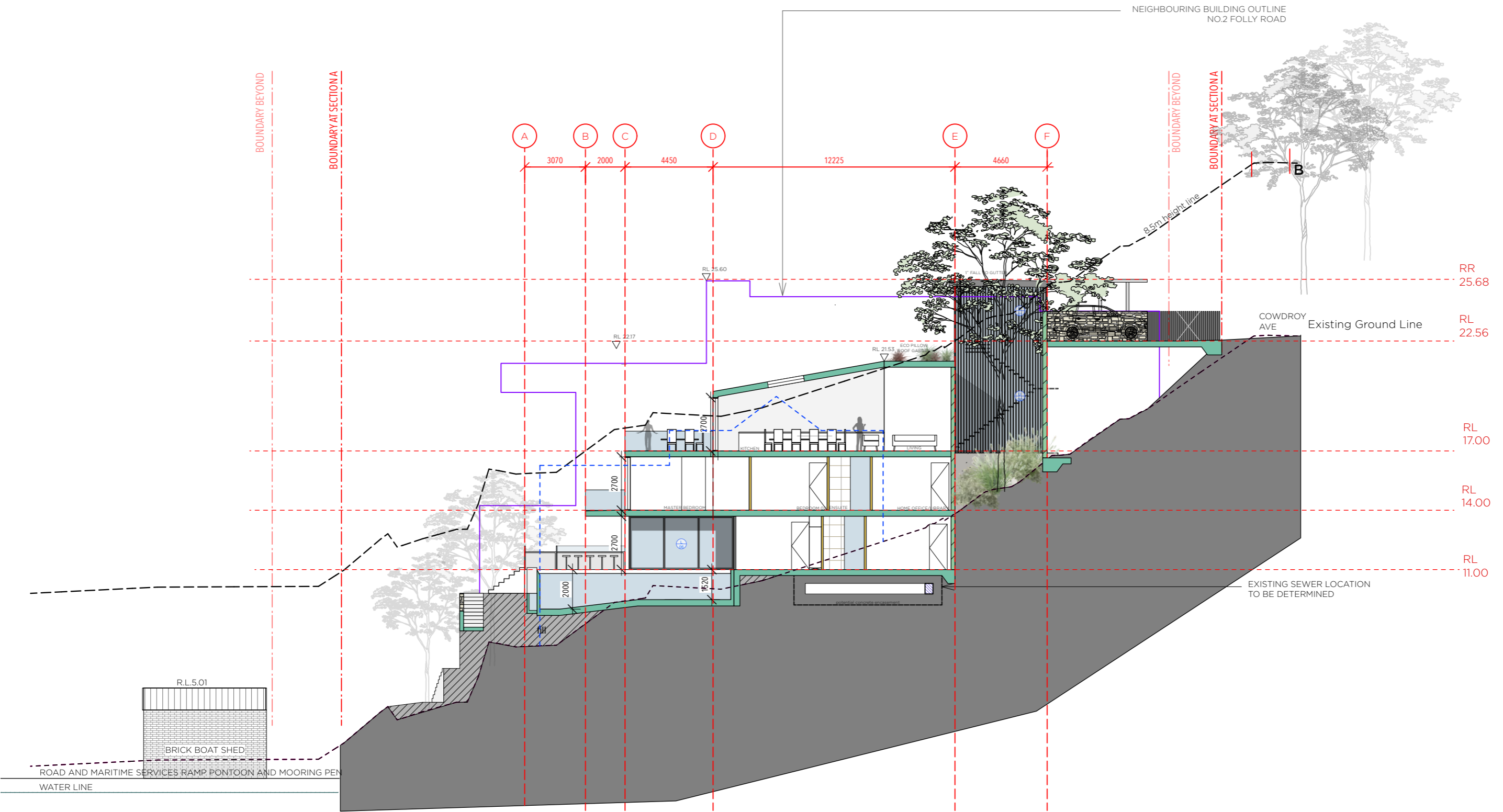


DRAWING NO.

**DA 05**

REVISION.





LEGEND.

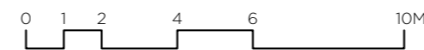
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**COSO**  
ARCHITECTURE

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**DEVELOPMENT APPLICATION  
SUBMISSION**

58 COWDROY AVENUE CAMMERAY 2062  
PREPARED FOR RENATA + PAUL



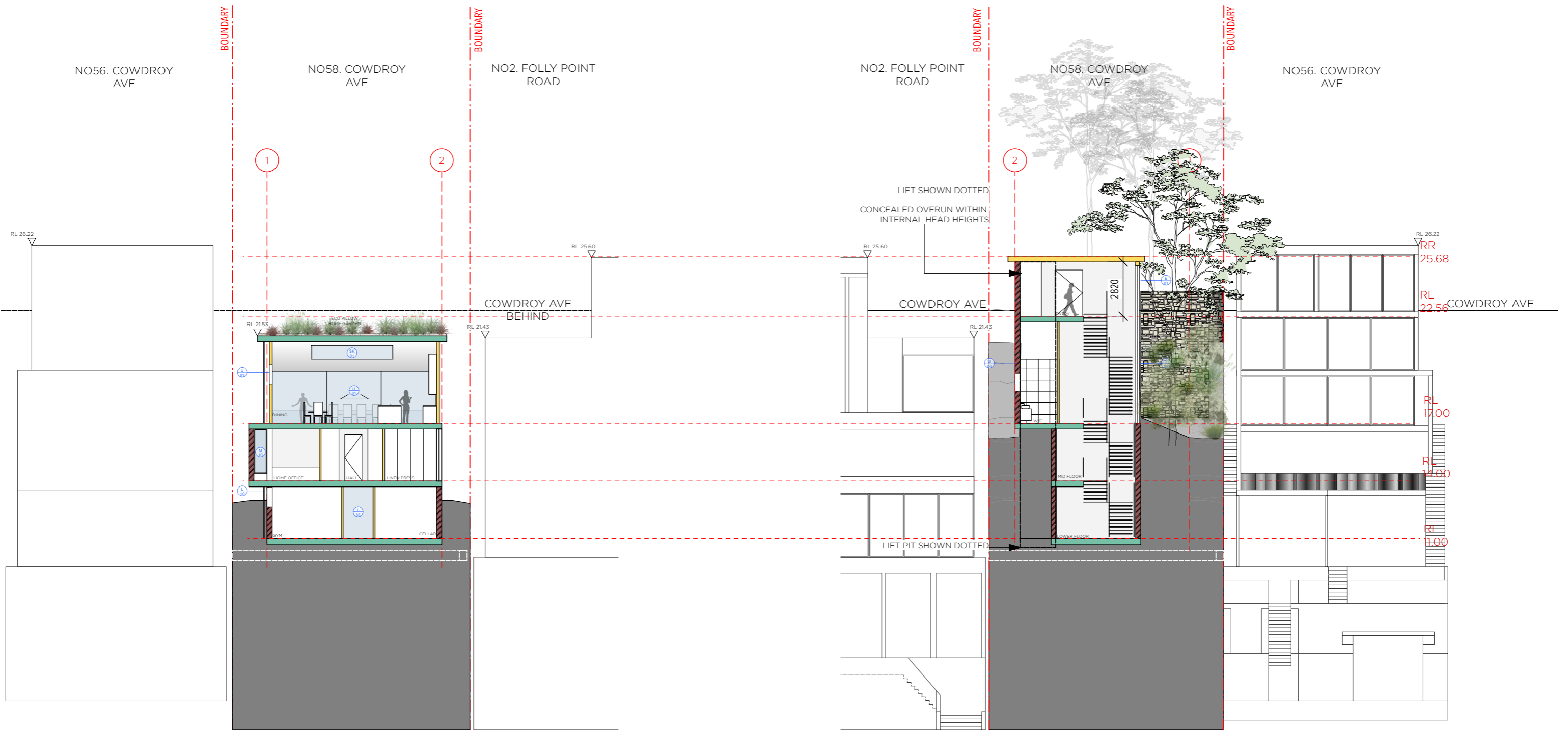
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**SECTION AA**

DATE: OCT 2022  
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DRAWING NO.

**DA 06**

REVISION.



SECTION BB

SECTION CC

LEGEND.

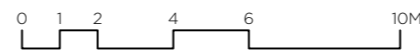
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DEVELOPMENT APPLICATION  
 SUBMISSION

58 COWDROY AVENUE CAMMERAY 2062  
 PREPARED FOR RENATA + PAUL



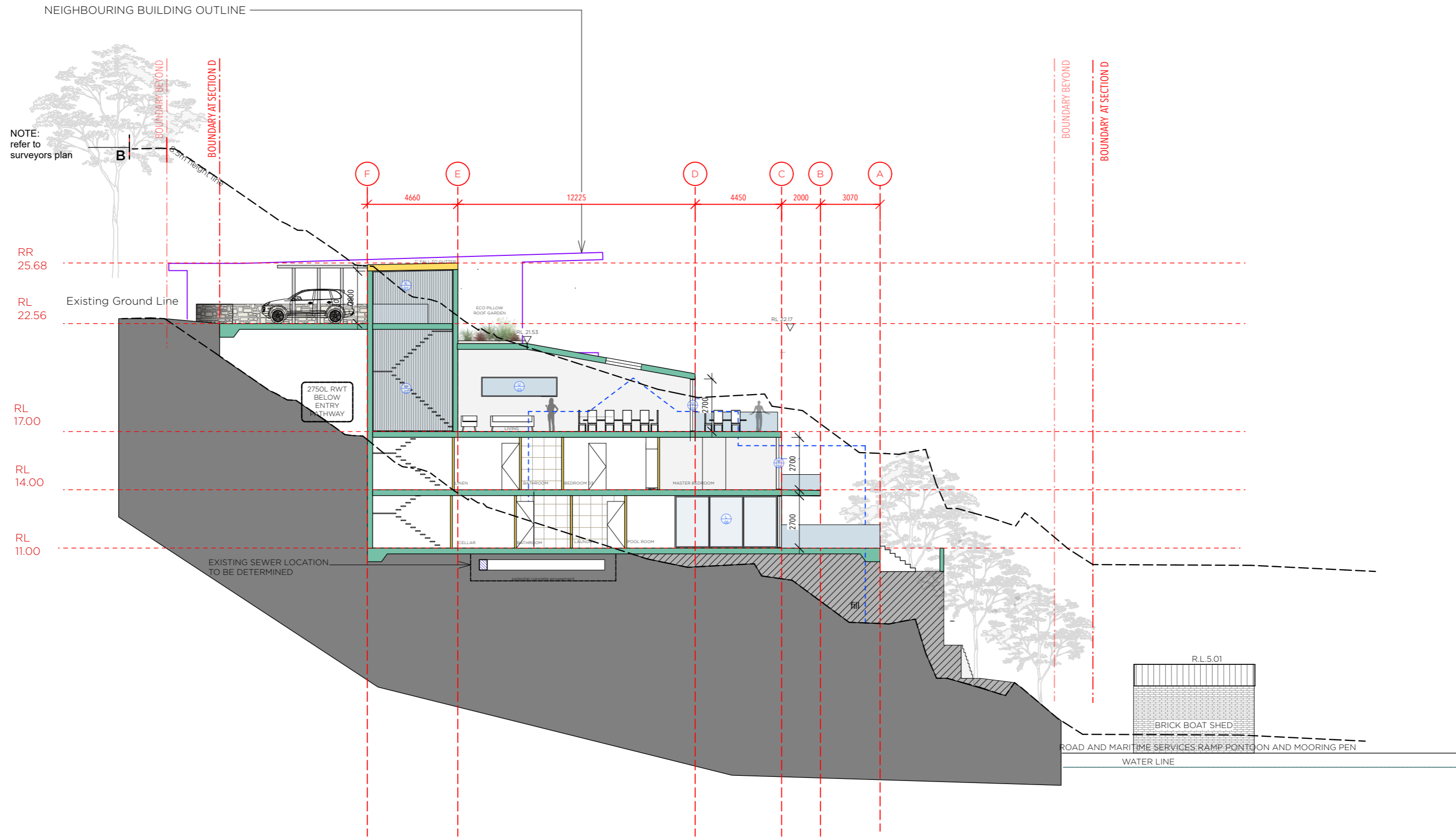
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DATE: OCT 2022  
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DRAWING NO.

**DA 07**

REVISION.



LEGEND.

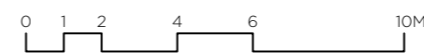
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**COSO**  
ARCHITECTURE

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**DEVELOPMENT APPLICATION  
SUBMISSION**

58 COWDROY AVENUE CAMMERAY 2062  
PREPARED FOR RENATA + PAUL



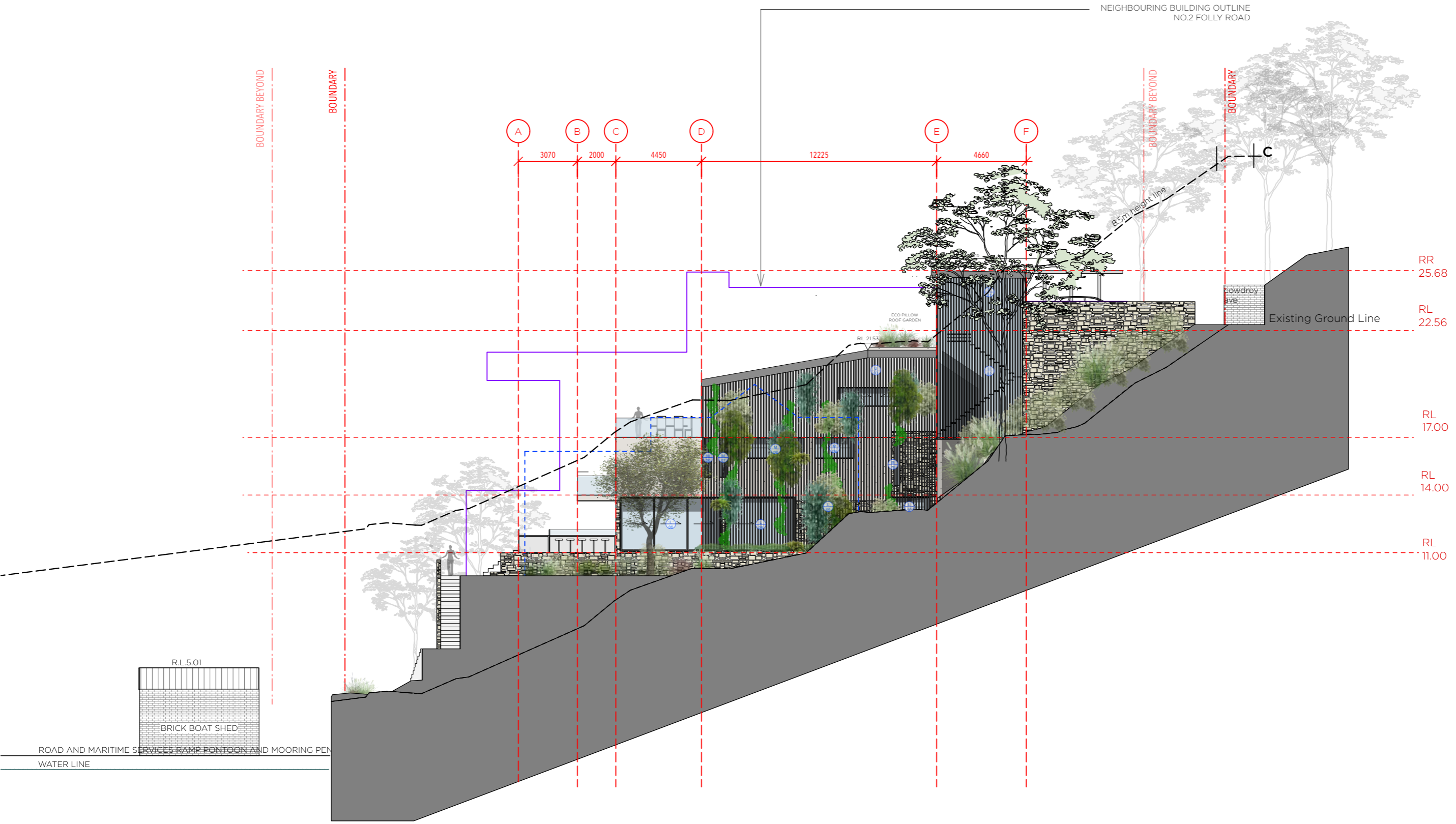
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**SECTION DD**

DATE: OCT 2022  
SCALE: 1:200 AT A3/ 1:100 AT A2

DRAWING NO.

**DA 08**

REVISION.



LEGEND.

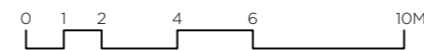
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**COSO**  
ARCHITECTURE

Paul Connor RAIA#7058 Anthony Solomon RAIA#5684  
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**DEVELOPMENT APPLICATION  
SUBMISSION**

58 COWDROY AVENUE CAMMERAY 2062  
PREPARED FOR RENATA + PAUL



DRAWING NAME.  
**WEST ELEVATION**

DATE: OCT 2022  
SCALE: 1:200 AT A3/ 1:100 AT A2

DRAWING NO.

**DA 09**

REVISION.



**NORTH ELEVATION**

**SOUTH ELEVATION**

LEGEND.

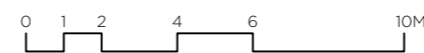
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**DEVELOPMENT APPLICATION  
SUBMISSION**

58 COWDROY AVENUE CAMMERAY 2062  
PREPARED FOR RENATA + PAUL



DRAWING NAME.

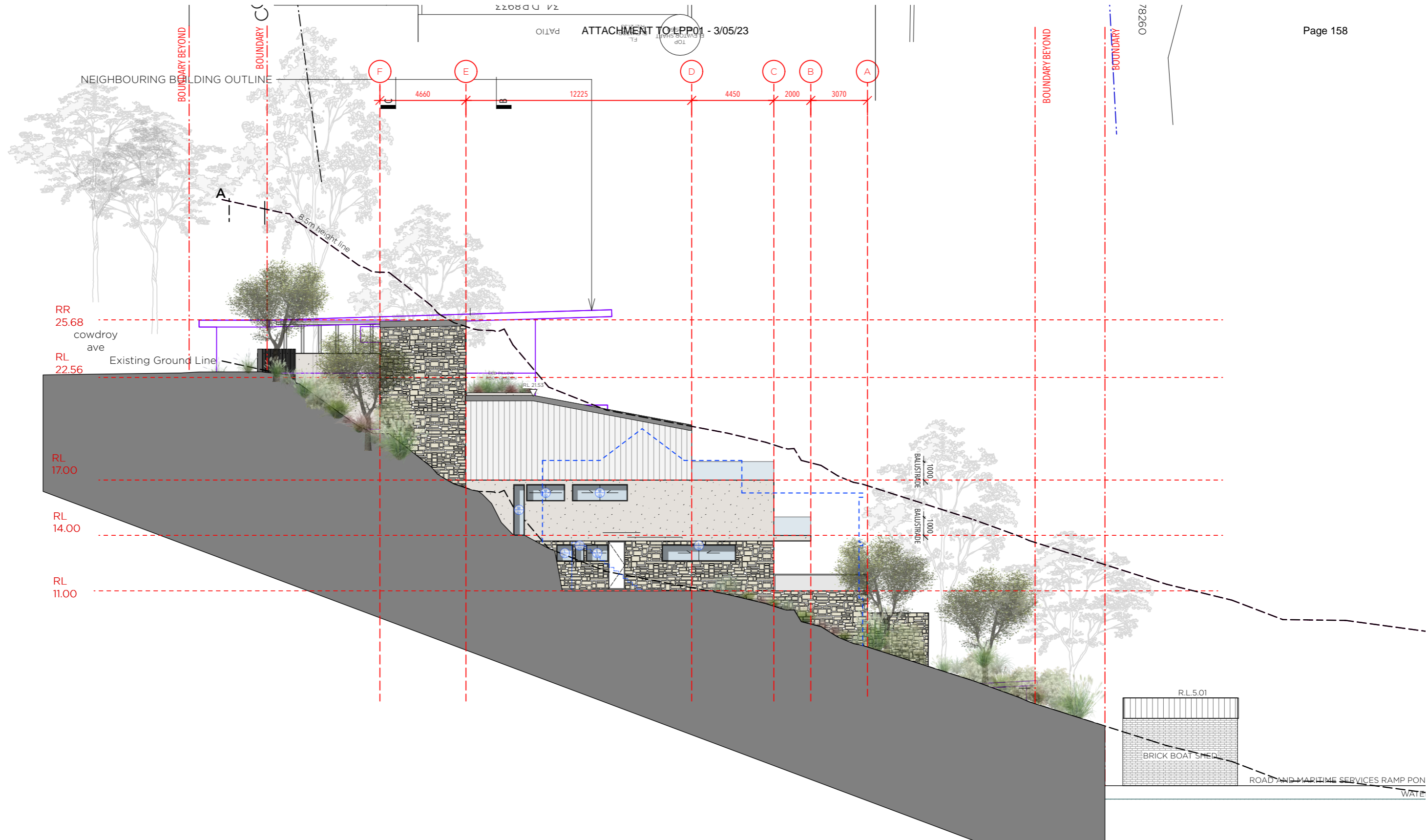
**NORTH ELEVATION AND  
SOUTH ELEVATION**

DATE: OCT 2022  
SCALE: 1:200 AT A3/ 1:100 AT A2

DRAWING NO.

**DA 10**

REVISION.



LEGEND.

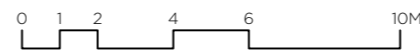
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**DEVELOPMENT APPLICATION  
SUBMISSION**

58 COWDROY AVENUE CAMMERAY 2062  
PREPARED FOR RENATA + PAUL



DRAWING NAME.  
**EAST ELEVATION**

DATE: OCT 2022  
SCALE: 1:200 AT A3/ 1:100 AT A2

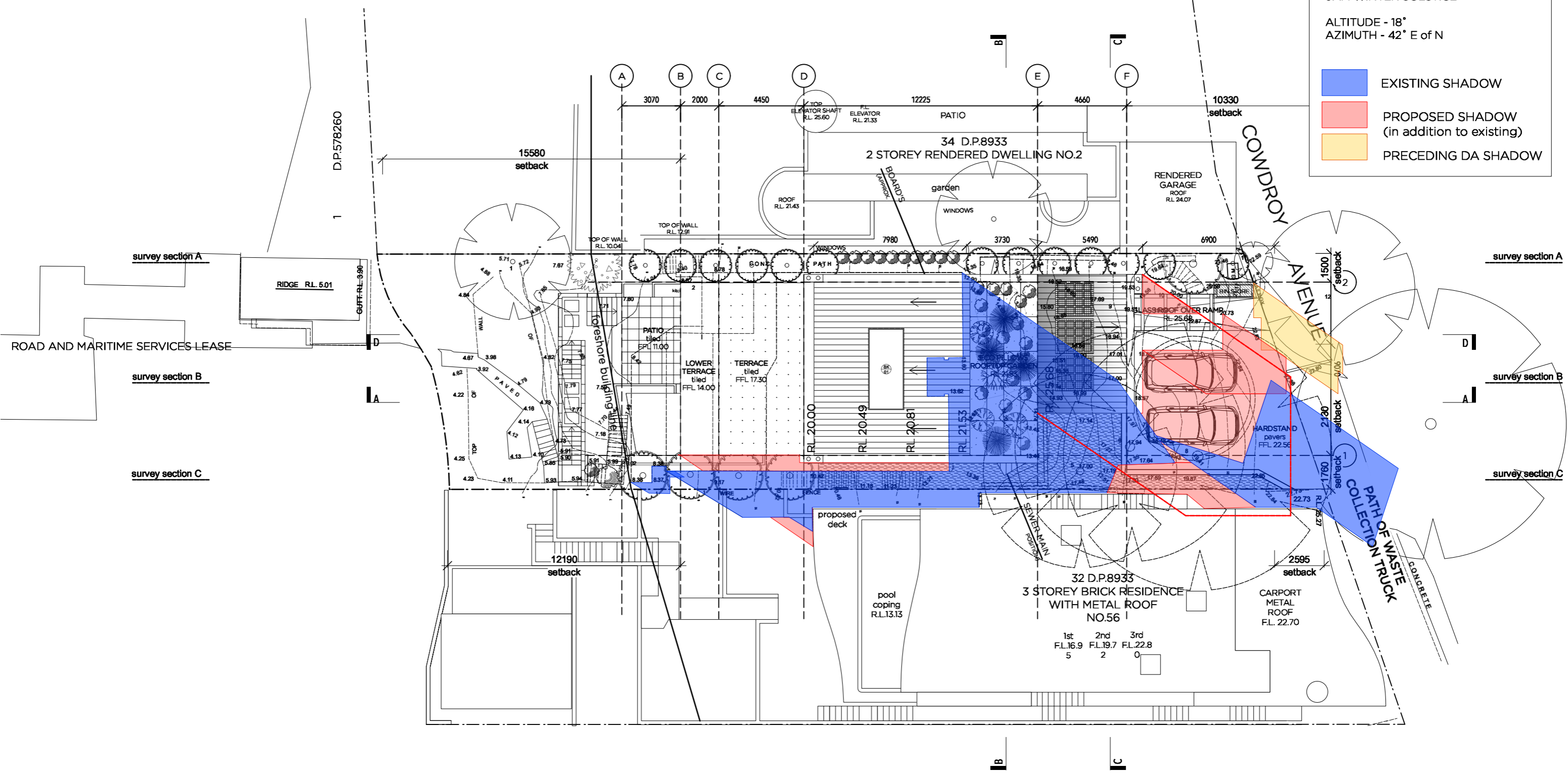
DRAWING NO.

**DA 11**

REVISION.

9AM WINTER SOLSTICE  
 ALTITUDE - 18°  
 AZIMUTH - 42° E of N

- EXISTING SHADOW
- PROPOSED SHADOW (in addition to existing)
- PRECEDING DA SHADOW



LEGEND.

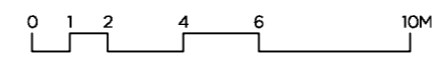
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**DEVELOPMENT APPLICATION  
 SUBMISSION**

58 COWDROY AVENUE CAMMERAY 2062  
 PREPARED FOR RENATA + PAUL



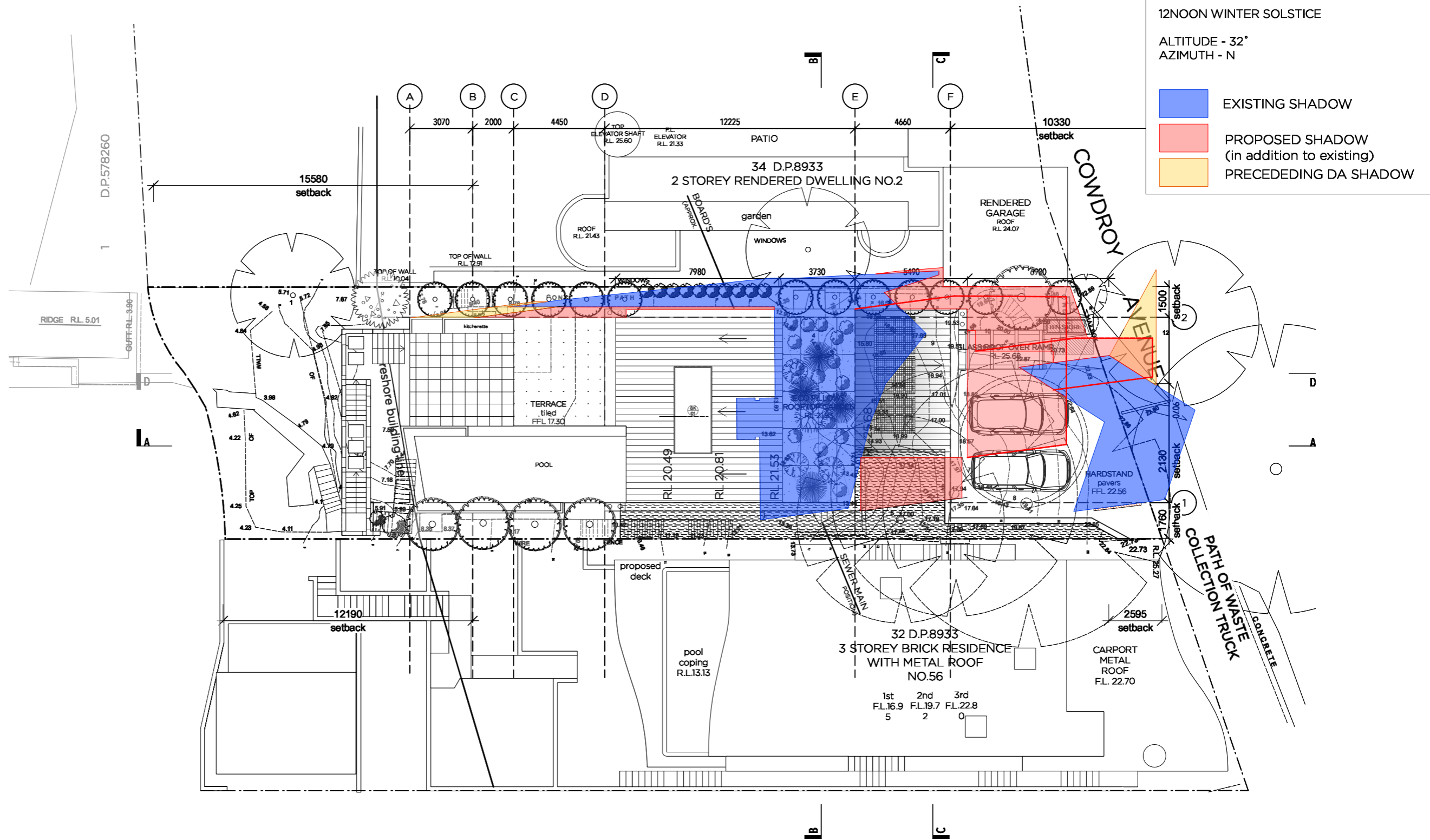
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**9AM WINTER SOLSTICE SHADOW  
 DIAGRAM**

DATE: OCT 2022  
 SCALE: 1:200 AT A3/ 1:100 AT A2



DRAWING NO.  
**DA 12**

REVISION.



LEGEND.

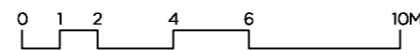


**COSO**  
ARCHITECTURE

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**DEVELOPMENT APPLICATION  
SUBMISSION**

58 COWDROY AVENUE CAMMERAY 2062  
PREPARED FOR RENATA + PAUL



DRAWING NAME.  
**12NOON WINTER SOLSTICE SHADOW  
DIAGRAM**

DATE. OCT 2022  
SCALE. 1:200 AT A3/ 1:100 AT A2



DRAWING NO.

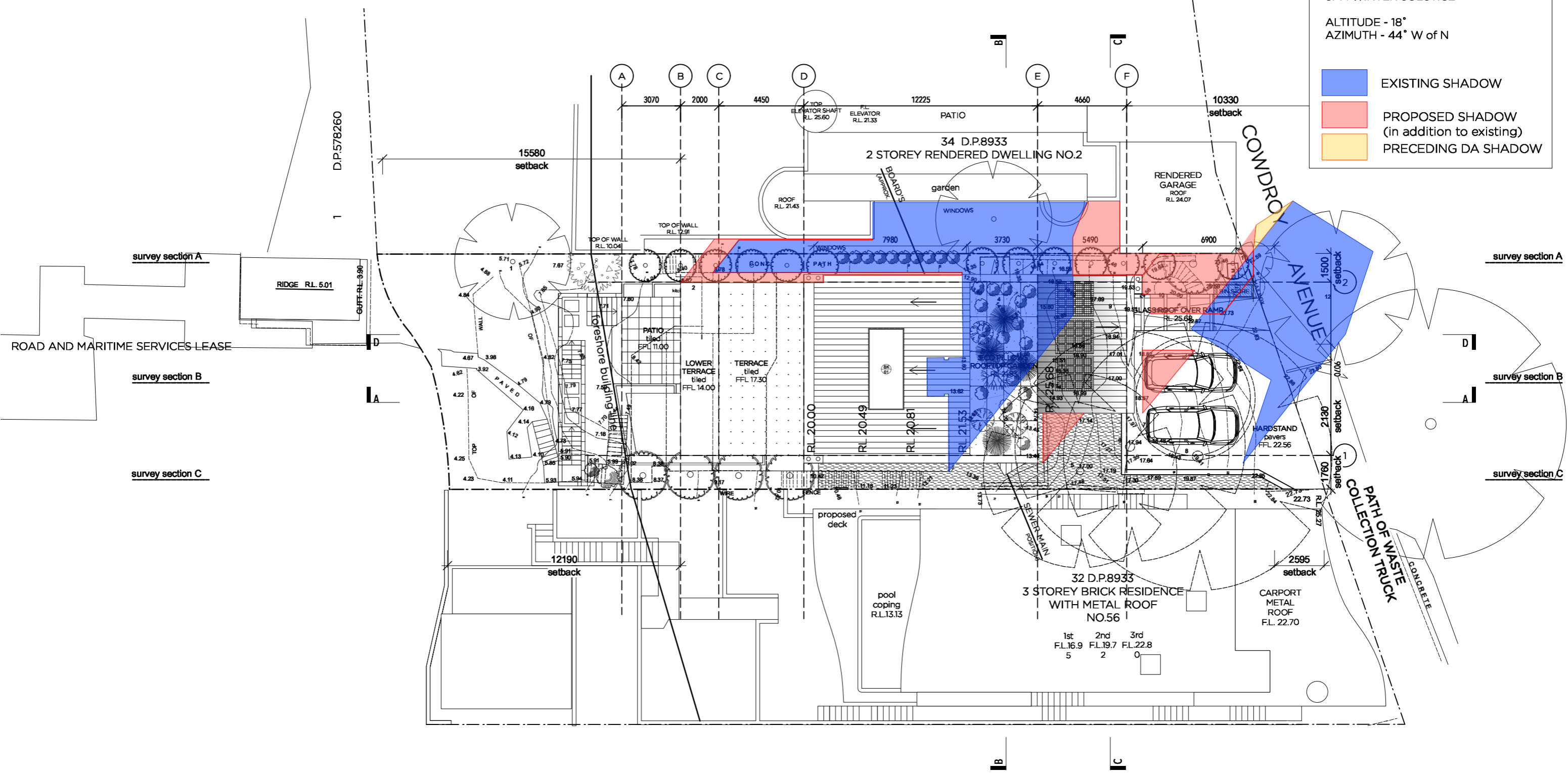
**DA 13**

REVISION.



44° W of N  
3PM WINTER SOLSTICE  
ALTITUDE - 18°  
AZIMUTH - 44° W of N

- EXISTING SHADOW
- PROPOSED SHADOW (in addition to existing)
- PRECEDING DA SHADOW



LEGEND.

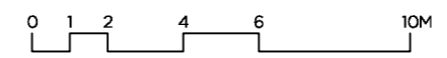
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**DEVELOPMENT APPLICATION  
SUBMISSION**

58 COWDROY AVENUE CAMMERAY 2062  
PREPARED FOR RENATA + PAUL



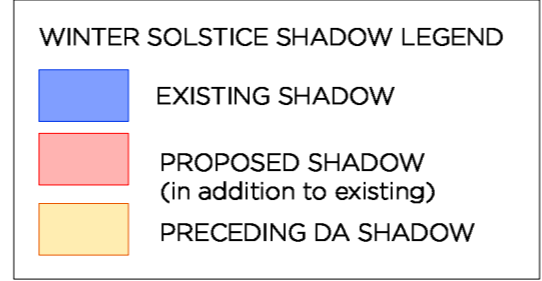
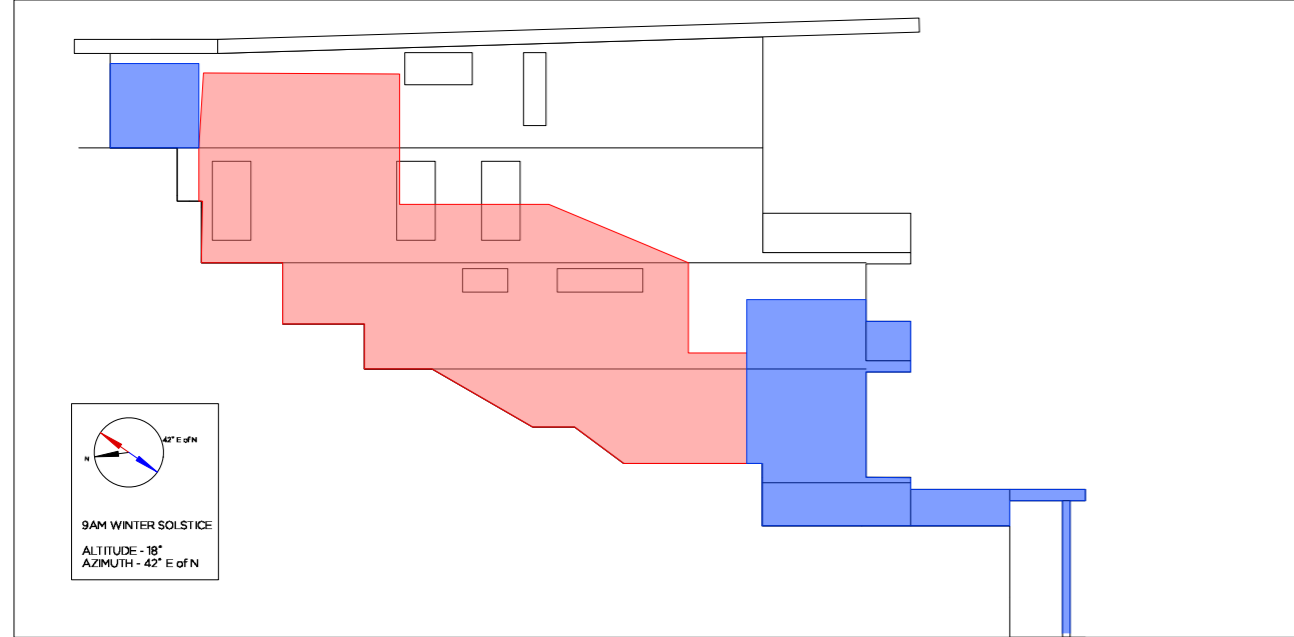
DRAWING NAME.  
**3PM WINTER SOLSTICE SHADOW  
DIAGRAM**

DATE: OCT 2022  
SCALE: 1:200 AT A3/ 1:100 AT A2

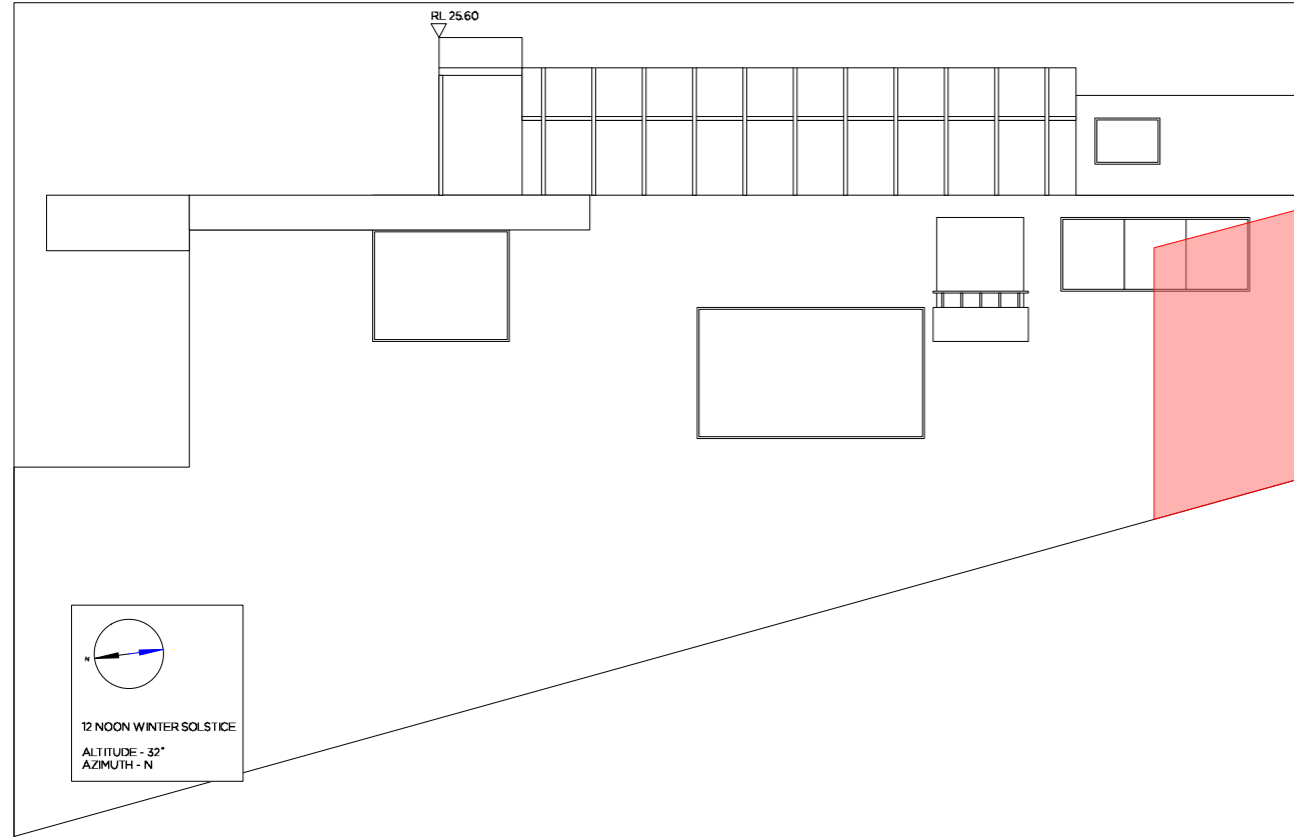


DRAWING NO.  
**DA 14**

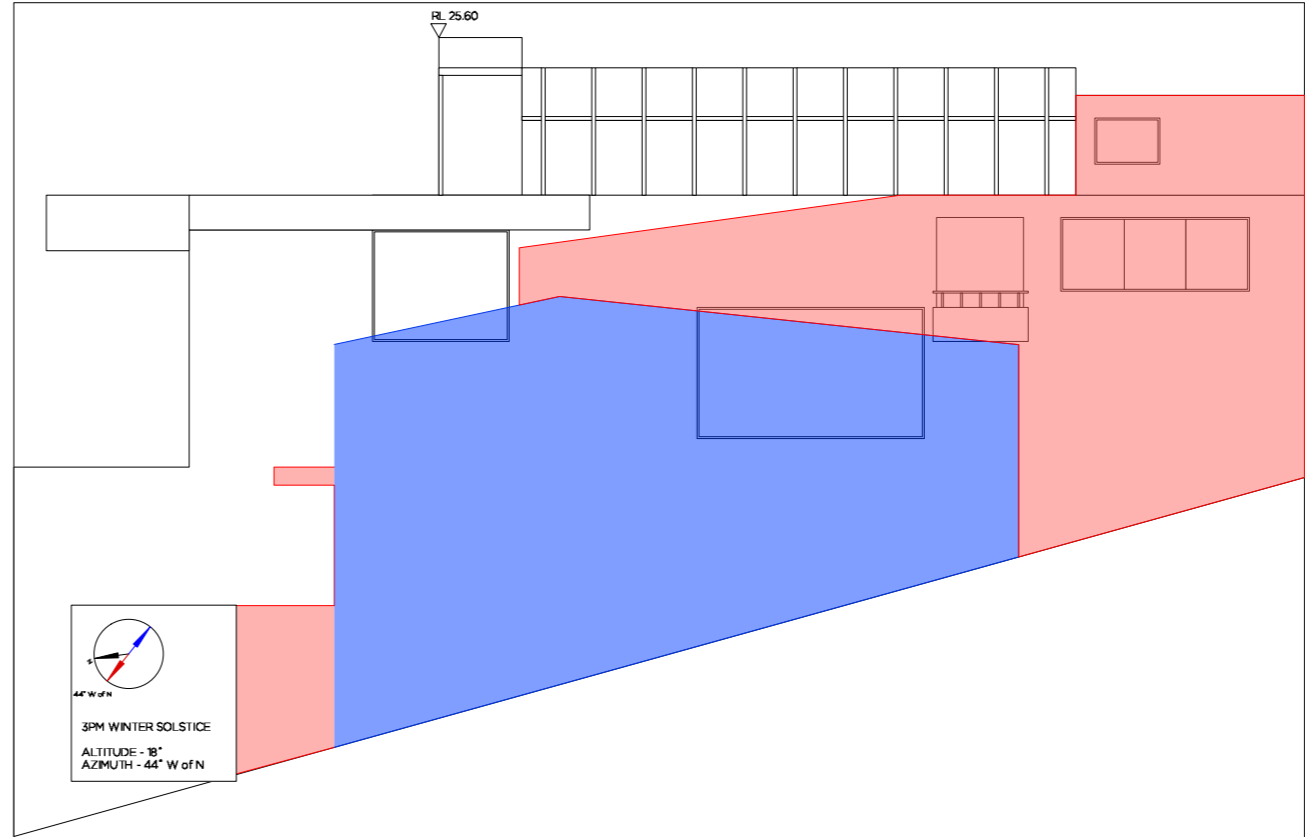
REVISION.



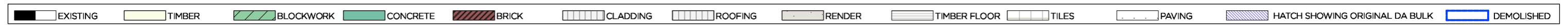
NO 2 FOLLY POINT ROAD



NO 2 FOLLY POINT ROAD

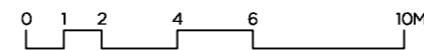


LEGEND.



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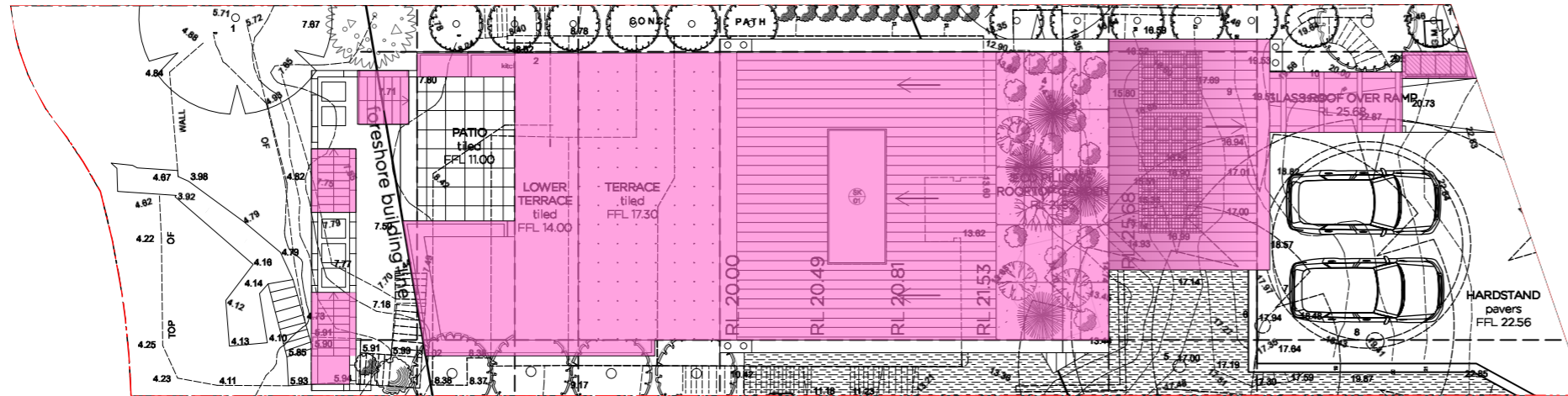
**DEVELOPMENT APPLICATION  
 SUBMISSION**  
 58 COWDROY AVENUE CAMMERAY 2062  
 PREPARED FOR RENATA + PAUL



DRAWING NAME.  
**WINTER SOLSTICE ELEVATIONAL  
 SHADOW DIAGRAMS**

DATE: OCT 2022  
 SCALE: 1:200 AT A3/ 1:100 AT A2

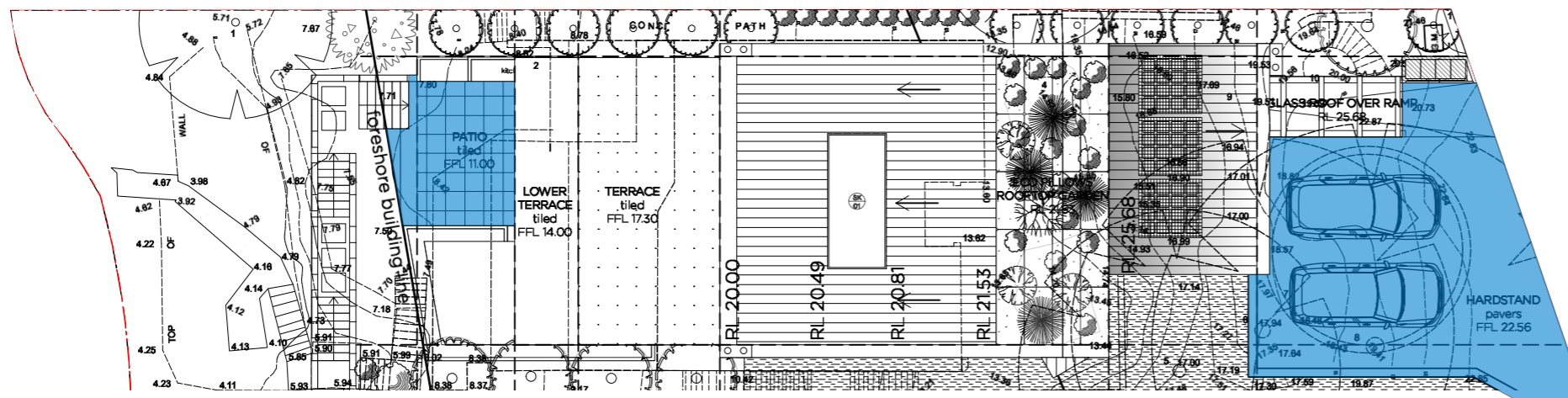
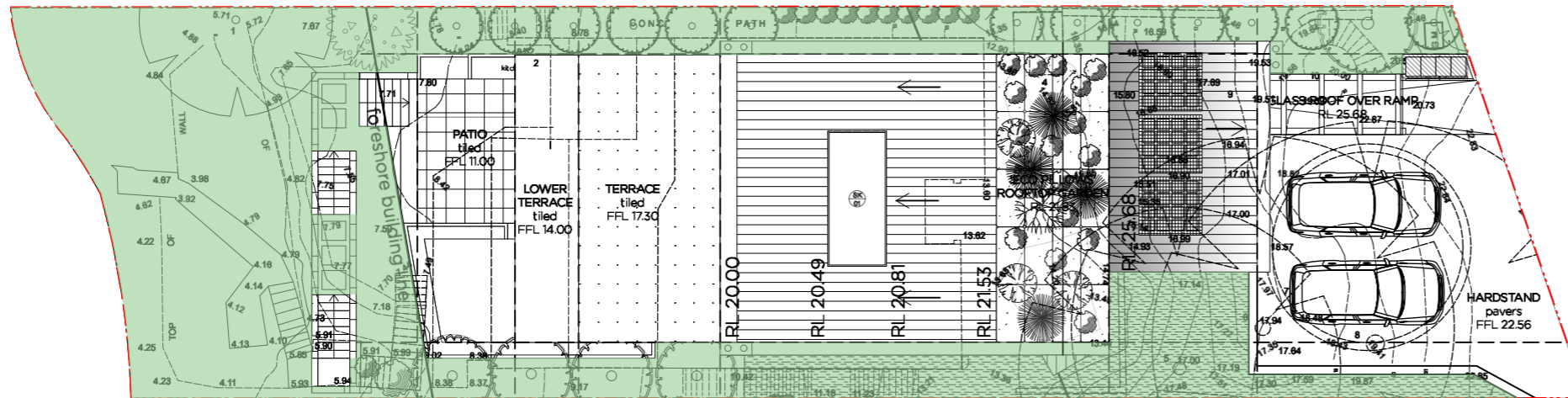
DRAWING NO.  
**DA 15**  
 REVISION.



**SITE CALCULATIONS AS PER NSDCP SECTION 1.1.5**

ITEM	COUNCIL REQUIREMENT	PROPOSED
SITE AREA	556m2	
SITE COVERAGE	MAX 40% <span style="display:inline-block; width:15px; height:10px; background-color: #FF69B4; border:1px solid black;"></span>	<b>243SQM</b> <span style="color:red">44%</span>
PRIVATE OPEN SPACE	MIN 50SQM	YES
LANDSCAPED AREA	MIN 40% <span style="display:inline-block; width:15px; height:10px; background-color: #90EE90; border:1px solid black;"></span>	<b>225SQM</b> <span style="color:green">40%</span>
UN-BUILT UPON AREA	MAX 20% <span style="display:inline-block; width:15px; height:10px; background-color: #ADD8E6; border:1px solid black;"></span>	<b>88SQM</b> <span style="color:green">16%</span>

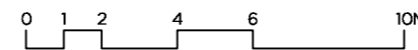
**ITEMS SEPARATED AS PER COUNCIL RFI REQUEST DATED JUNE 2022**



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**DEVELOPMENT APPLICATION  
 SUBMISSION**

58 COWDROY AVENUE CAMMERAY 2062  
 PREPARED FOR RENATA + PAUL



DRAWING NAME:  
**SITE CALCULATIONS DIAGRAM**

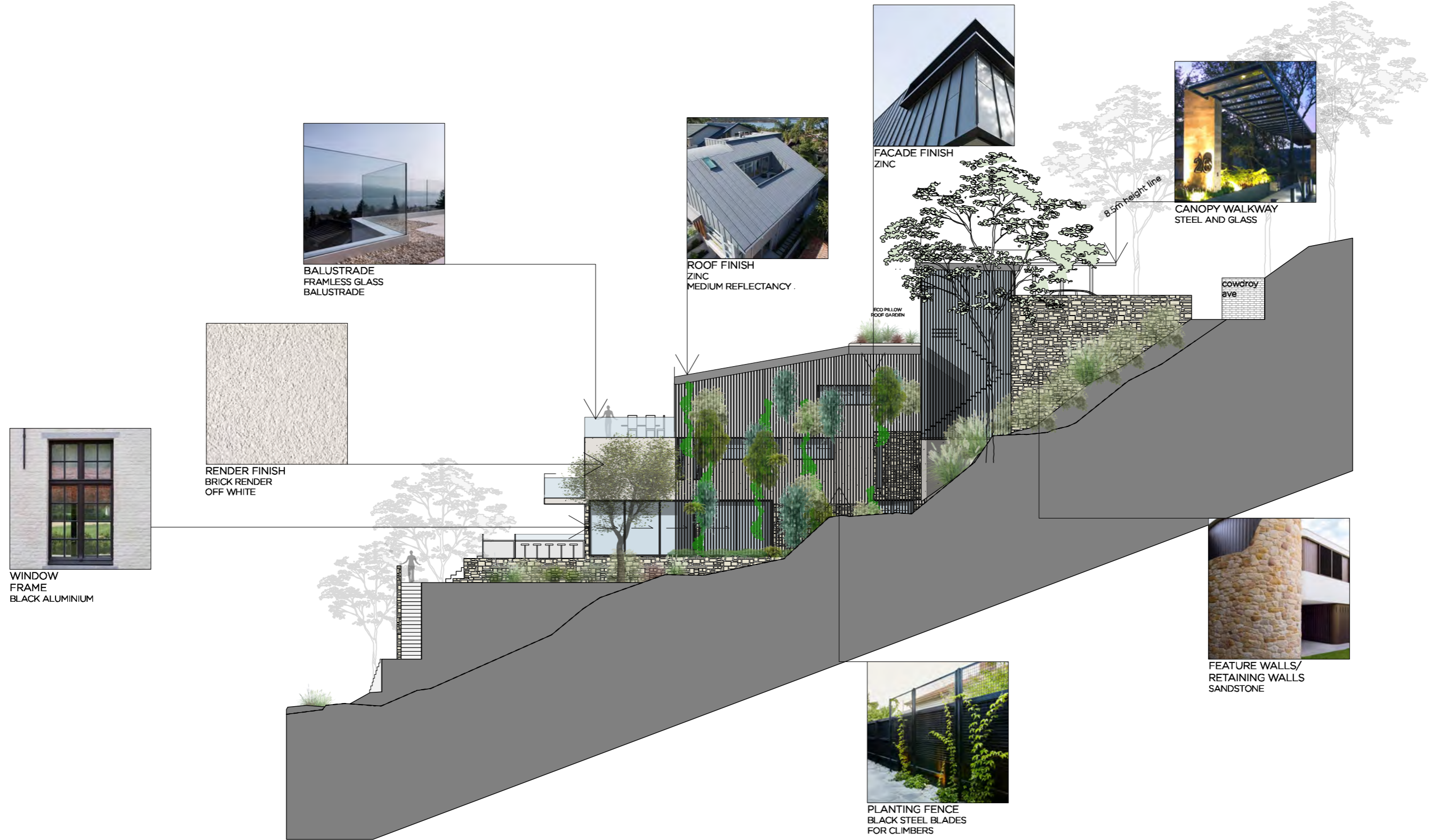
DATE: OCT 2022  
 SCALE: 1:200 AT A3/ 1:100 AT A2



DRAWING NO.

**DA 16**

REVISION.



LEGEND.

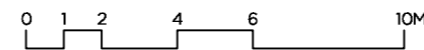
	EXISTING		TIMBER		BLOCKWORK		CONCRETE		BRICK		CLADDING		ROOFING		RENDER		TIMBER FLOOR		TILES		PAVING		HATCH SHOWING ORIGINAL DA BULK		DEMOLISHED
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**COSO**  
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**DEVELOPMENT APPLICATION  
SUBMISSION**

58 COWDROY AVENUE CAMMERAY 2062  
PREPARED FOR RENATA + PAUL



DRAWING NAME.  
**EXTERNAL MATERIALS/FINISHES PALETTE**

DATE: OCT 2022  
SCALE: 1:200 AT A3/ 1:100 AT A2

DRAWING NO.

**DA 17**

REVISION.



# CLAUSE 4.6 VARIATION REQUEST

58 COWDROY AVE,  
CAMMERAY

7 February 2022

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## APPENDICIES

A – Survey Plan and Extracts and calculations used to determine the extent of the breach.

## 1.0 INTRODUCTION

- 1.1 This Clause 4.6 request supports the variation to the Height development standard pursuant to Clause 4.3 of North Sydney LEP 2013.
- 1.2 The subject site is zoned C4 Environmental Living under North Sydney LEP 2013.
- 1.3 Clause 4.3 of the LEP relates to height. The accompanying map specifies a maximum height of 8.5 metres.
- 1.4 Clause 4.6 allows for the contravention of a development standard with approval of the consent authority.
- 1.5 The request is structured to address the requirements of Clause 4.6 and in reference to the following Land and Environment Court judgements:
  - *Wehbe V Pittwater Council NSW [2007] LEC 82*
  - *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*
  - *Randwick City Council v Micaul Holdings [2016] NSWLEC 7*
  - *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 2018*

## 2.0 CLAUSE 4.6 VARIATION REQUEST

### Standard to be varied

- 2.1 Clause 4.3 of the LEP relates to height. The accompanying map specifies a maximum height of 8.5 metres.

### Extent of Variation

- 2.2 The proposed dwelling seeks to vary the height control as follows:
- Lift & stairs – maximum of 2.25 metres on the western side, reducing to 660mm on the eastern side
  - Living area on the upper floor level – variation of 310mm increasing to 990mm centrally and then reducing to a maximum of 500mm
  - Balustrade to the terrace on the mid floor plan – there is a minor variation to the glass balustrade at the eastern side of approximately 800mm, which reduces to approx. 500mm on the western end.
- 2.3 The extent of variation has been determined using two methods given the circumstances of the site and the presence of the existing dwelling. Firstly, where there is an existing ground level, the survey RL's at that point have been used to determine whether the height at that point complies with the permitted height of 8.5 metres.
- 2.4 As there is an existing dwelling to part of the site, there is no 'existing ground level'. To determine the ground level at these points, I have utilised the surveyed levels and contours along the side boundaries of the site and extrapolated these levels across the site. This is an effective approach to determining estimated levels where the site contains an existing building. It also provides for an assessment of the relationship of the new building relative to the surrounding context and changes in levels. In undertaking this assessment, I have determined that the maximum breach of the height control is 2.25 metres to part of the lift and stair.
- 2.5 Attached at Appendix A are the extracts and calculations I have used to determine the extent of the breach. The height variations are also demonstrated on Drawings DA18 & DA19 prepared by COSO Architecture.

### Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

- 2.6 The proposed variation to the height control is assessed with consideration to the principles established by the Land and Environment Court in *Wehbe V Pittwater Council [2007] NSW LEC 82*. His Honour Preston CJ set out 5 ways of establishing that compliance with the standard is unreasonable or unnecessary. The 5 parameters were further tested in *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC 90* where Justice Pain found that meeting the objectives of the standard was not sufficient to demonstrate that compliance was unreasonable or unnecessary.



- 2.7 In *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, it was held that *'establishing that the development would not cause environmental harm and is consistent with the objectives of the development standard is an established means of demonstrating compliance with the development standard is unreasonable or unnecessary'*.
- 2.8 In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 2018 Preston CJ held that *'an applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way'*
- 2.9 Accordingly, clause 4.6(3) of the LEP can be satisfied if a development satisfies one or more of the 5 ways which are addressed in detail below:

**(a) The proposal meets the objectives of the development standard notwithstanding its non-compliance with the standard.**

- 2.10 Yes, the proposal meets the objectives of the standard as demonstrated below.
- (a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- 2.11 The form of the dwelling considers and adapts to the natural fall of the land. The dwelling has been designed over multiple levels to work with the natural topography and steps down to follow this natural gradient.
- (b) *to promote the retention and, if appropriate, sharing of existing views,*
- 2.12 The dwelling has been designed to ensure high levels of view sharing for adjacent dwellings. The form of the dwelling considers and adapts to the natural fall of the land. The accompanying view assessment confirms that view sharing is achieved to surrounding dwellings.
- (c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- 2.13 The shadow diagrams demonstrate that notwithstanding the variation to the height control, the adjacent properties receive the required 3 hours of solar access between the hours of 9am to 3pm to the main living areas and open space. In addition, given the orientation of the subdivision pattern, both adjacent dwellings have north facing living areas that will receive high levels of direct solar access throughout the majority of the day.
- 2.14 The dwelling will have no shadow impact on public reserves or streets.
- (d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- 2.15 The dwelling has been designed with its primary orientation to the north towards the water which assists in minimising potential impacts to neighbouring dwellings. The side elevations have been treated with a combination of features to ensure a high level of privacy including highlight windows to the eastern elevation and the incorporation of timber louvres to the western elevation.
- (e) *to ensure compatibility between development, particularly at zone boundaries,*

2.16 The site is not located at the zone boundary. It is compatible with the scale and height of the surrounding dwellings.

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

2.17 The desired future character of the Cammeray Neighbourhood is to maintain the low-density residential living with lower density along the foreshore. Buildings near the foreshore areas should address the waterway and be designed to follow the slope of land. The form, scale and density of the proposed dwelling conforms with the desired future character of the area. The building is of an appropriate scale to ensure the low density character of the area is maintained.

*(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.\**

\*It is noted that as of 1 December 2021 the reference to E4 Environmental Living is now referred to as C4 Environmental Living.

2.18 The dwelling achieves a built form that is complimentary to the slope of the land. The central portion of the dwelling sits over three storeys; however, this maintains a consistent built form that steps down towards the north. The built form presents as a one storey dwelling to Cowdroy Avenue.

2.19 For the reasons discussed above, the variation to the height control will still achieve the building height objectives.

***(b) The underlying objective or purpose is not relevant to the development;***

2.20 The expressed objectives for height are still relevant.

***(c) The underlying objective or purpose would be defeated or thwarted if compliance was required with the standard;***

2.21 The expressed objective or purpose of the height control would not be defeated or thwarted if strict compliance was required.

***(d) The development standard has been virtually abandoned or destroyed by Council's own actions.***

2.22 Council has not abandoned the height controls. It is relevant to note that Council have approved development applications that breach the height control in this locality. This is evident by the approved DA at 56 Cowdroy Avenue approved by the North Sydney Local Planning Panel with a breach of 4.9 metres. This demonstrates the Council has agreed to the flexible application of the height control based on the circumstances of the individual site.

***(e) The zoning of the land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable and unnecessary.***

2.23 The zoning of the land C4 Environmental Living is appropriate.

### Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

- 2.24 In the judgement of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 2018* it was established that a Clause 4.6 variation need not establish that a development containing a variation provides a better or even neutral outcome for a development site compared with a compliant development. Further, the environmental planning grounds relied upon must be “sufficient”. There are two respects in which the request needs to be “sufficient”
1. The environmental planning grounds advanced in the written request must be sufficient “to justify the contravening of the standard”. The focus is on the aspect or element of the development that contravenes the development standard, not the development as a whole.
  2. The request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.
- 2.25 This written request focuses on the elements of the development that breach the height control. This is limited to the lift, stairs, part of the roof to the kitchen and living area and a section of the balustrade to the terrace.
- 2.26 There are sufficient environmental planning grounds to justify the variation as outlined in this request and summarised as follows:
- The breach of the control results primarily from the slope of the land. The lift and stairs are appropriately positioned in this part of the site to enable the provision of access to the various levels of the dwelling. These elements are housed in a modest single storey structure and only trigger a variation as the land falls away steeply. It is important to provide off street parking and therefore the lift and stairs sit beyond triggering the variation. Access from the street and the parking spaces to the dwelling is a critical component of providing a level of amenity for the residents. The design effectively achieves this. Given the location of the lift and stairs they will not impact on the opportunity for view sharing to the neighbouring properties.
  - Notwithstanding the breach, the dwelling presents as a single storey dwelling to Cowdroy Avenue. The non-compliant portions of the lift and stair, although exceeding the height control are a compatible and complementary building presentation. If measured from street level, these elements have a height of approximately 3.1 metres which is a good planning outcome.
  - Part of the roof to the living area also breaches the height control. The variation ranges from approximately 310mm to 990mm. The internal height of the space reduces in this location to 2.7 metres. The architectural design reduces the extent of variation by sloping the roof generally consistent with the fall of the land. The internal height of the kitchen and living area reduces from 4.2 metres to 2.7 metres. The slope of the roof, consistent with the fall of the site, ensures the height is reduced without compromising the internal amenity for the residents. The variation to the height control at this part of the site enables the retention of minimum floor to ceiling heights of 2.7 metres which is considered desirable in contemporary dwellings. Given the roof rakes towards the north, any further reduction at the northern end will reduce the amount of natural light penetrating the kitchen area.
  - The balustrade which results in a minor breach is a glazed element and therefore will not result in an adverse impact.

- The components that exceed the height control do not cause an adverse impact by way of overshadowing, loss of privacy or view loss that would support a further reduction to the internal heights.
- The proposed development achieves the objectives of the control and the C4 Environmental Living zoning.
- The proposed development meets the objectives of the development standard notwithstanding the breach of the height control.

2.27 Based on the above, there are sufficient planning grounds to justify the variation.

#### **Clause 4.6(4)(a)(i) – Has the request addressed the matters in 4.6(3)**

2.28 The matters required in 4.6(3) have been addressed in detail above.

#### **Clause 4.6(4)(a)(ii) – Is the development in the Public Interest?**

2.29 In the judgement of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 2018*, Preston CJ indicated that a consent authority must consider if the development is *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. It is the developments consistency with the objectives of the development standard that make the proposed development in the public interest.*

2.30 The zoning of the land is C4 Environmental Living (formally E4 Environmental Living).

2.31 The proposed development maintains compliance with the objectives of the C4 Environmental Living zone.

2.32 The objectives of the C4 Environmental Living zone under North Sydney LEP 2013 are as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

2.33 The development satisfies the objectives in the following ways:

- The proposed dwelling will replace an existing dwelling on the site, maintaining the low-impact residential use.
- The area has high aesthetic values and the form and design of the new dwelling respects this. The stepping form of the dwelling, use of a simple palette of materials and proposed landscaping will enable the dwelling to minimise its visual impact. The modest architecture of the dwelling will complement the surrounding buildings and provide an improved presentation to the foreshore.
- The dwelling will achieve a high level of residential amenity for its residents. While respecting the slope of the land, the dwelling steps down the hill providing all living areas and the primary bedroom facing the foreshore and achieving an abundance of natural light and ventilation.
- The orientation of the subdivision pattern will ensure a high level of amenity is maintained to the adjacent properties with complaint solar access and view sharing.

2.34 It is therefore considered that the development, notwithstanding the variation to the development standard, achieves the objectives of the C4 Environmental Living zone.

**Clause 4.6(5) – Secretary to consider**

2.35 In deciding whether to grant concurrent, the Secretary must consider:

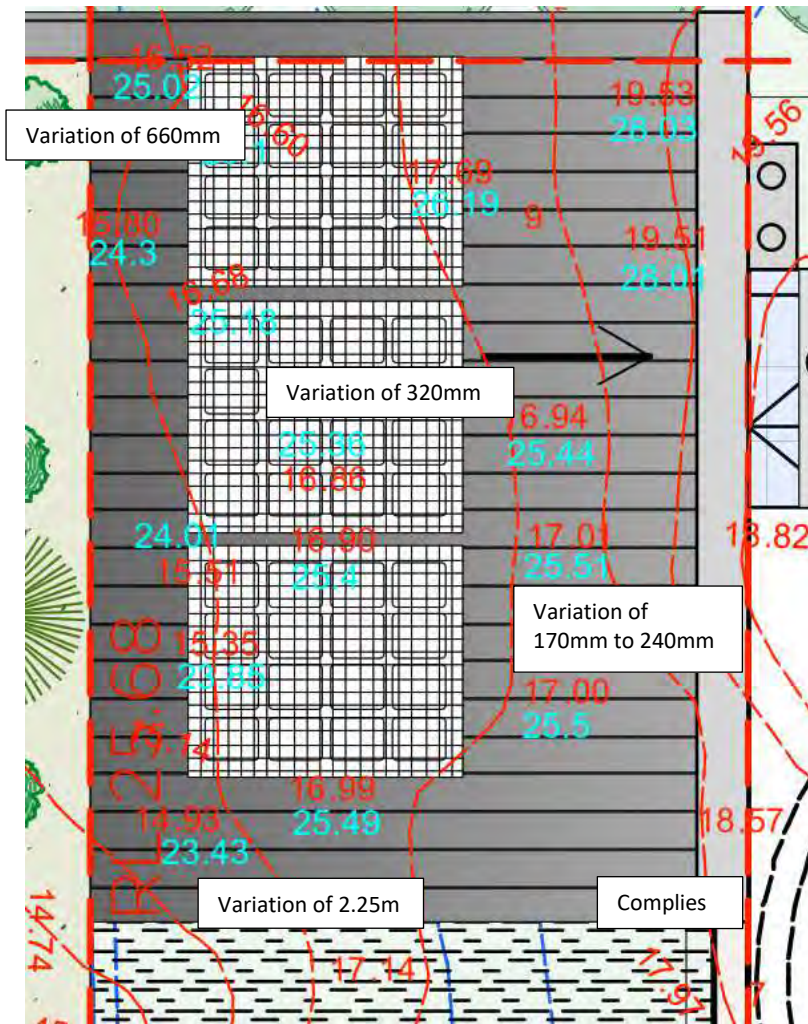
- a) Whether contravening the development standard raises any matter of significance for state or regional environmental planning, and
- b) The public benefit of maintaining the standard; and
- c) Any other matters required to be taken into consideration by the Secretary before granting consent:

2.36 The variation to the height control does not raise any matters or state or regional significance. Further as the Local Planning Panel is the consent authority, concurrence is assumed.

2.37 Furthermore, there is no material benefit of maintaining strict compliance with the standard for the reasons explored in this Clause 4.6 request.

# APPENDIX A

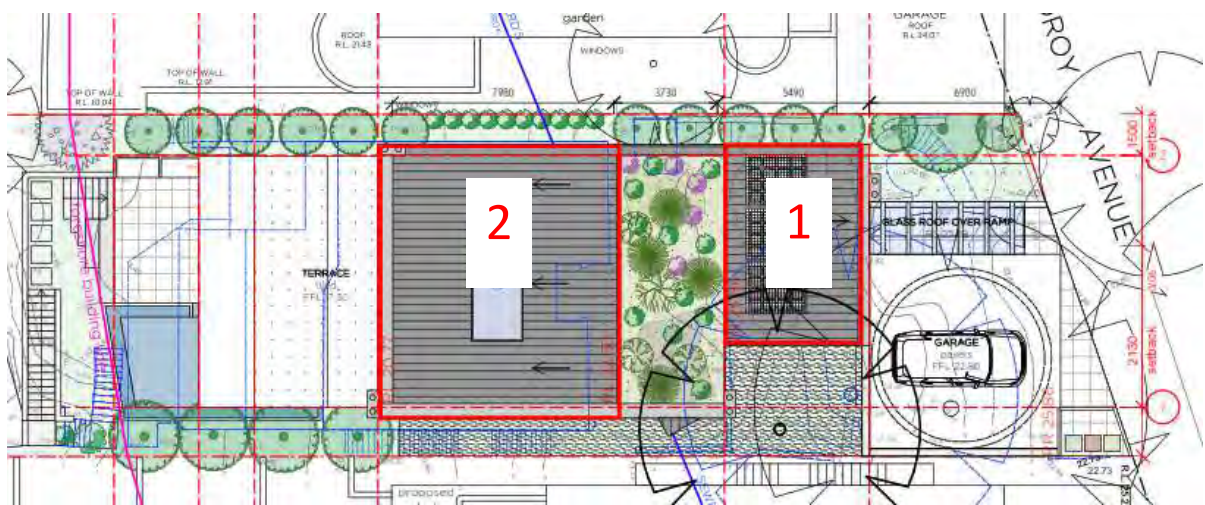
**Diagrams & Calculations used to determine  
the extent of the Height breach.**



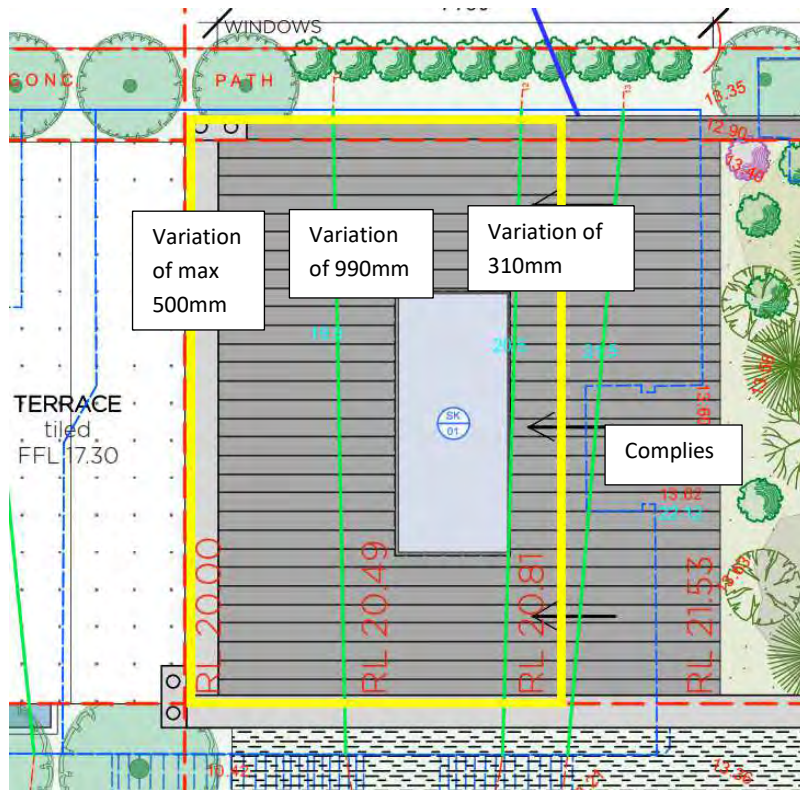
**Diagram 1:** Extract of existing ground levels from survey & proposed RL's to roof of lift and stairs.

**Key**

- Existing RL's
- RL @ 8.5m above existing



Key Plan



**Diagram 2:** Extract of existing contours, extrapolated across the site & proposed RL's to living room & kitchen.

**Key**

Extrapolation of contours





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