

Item LPP01 - REPORTS - 1/11/2023



NSLPP MEETING HELD ON 01/11/2023

Attachments:

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Statement (Building Height)

ADDRESS/WARD: 21 Cowdroy Avenue, Cammeray (C)

APPLICATION No: DA 38/23

PROPOSAL: Demolition of a dwelling house and construction of a new dwelling house.

PLANS REF:

Plan No.	Rev.	Description	Prepared by	Dated	Received
DA101	A	Site/Roof Plan	A+ Design Group	16/10/2022	27/02/2023
DA103	A	Demolition Plan	A+ Design Group	16/10/2022	27/02/2023
DA201	A	Proposed Basement Plan	A+ Design Group	16/10/2022	27/02/2023
DA202	A	Proposed Lower Ground Floor Plan	A+ Design Group	16/10/2022	27/02/2023
DA203	A	Proposed Ground Floor Plan	A+ Design Group	16/10/2022	27/02/2023
DA204	A	Proposed Level 1	A+ Design Group	16/10/2022	27/02/2023
DA205	A	Proposed Level 2	A+ Design Group	16/10/2022	27/02/2023
DA206	A	Roof Plan	A+ Design Group	16/10/2022	27/02/2023
DA301	A	North Elevation	A+ Design Group	16/10/2022	27/02/2023
DA302	A	South Elevation	A+ Design Group	16/10/2022	27/02/2023
DA303	A	East Elevation	A+ Design Group	16/10/2022	27/02/2023
DA304	A	West Elevation	A+ Design Group	16/10/2022	27/02/2023
DA401	A	Section A-A	A+ Design Group	16/10/2022	27/02/2023
DA402	A	Section B-B	A+ Design Group	16/10/2022	27/02/2023
DA403	A	Section C-C	A+ Design Group	16/10/2022	27/02/2023
DA501	A	Material Finishes – North Elevation	A+ Design Group	16/10/2022	27/02/2023
DA502	A	Material Finishes – East Elevation	A+ Design Group	16/10/2022	27/02/2023
DA503	A	Material Finishes – South Elevation	A+ Design Group	16/10/2022	27/02/2023
DA504	A	Material Finishes – West Elevation	A+ Design Group	16/10/2022	27/02/2023
001	A	Landscape Masterplan	Site Image	11/11/2022	27/02/2023
100	A	Landscape Plan – Lower Ground Floor	Site Image	11/11/2022	27/02/2023
101	A	Landscape Plan – Ground Floor	Site Image	11/11/2022	27/02/2023

OWNER: George Lewkovitz

APPLICANT: George Lewkovitz

AUTHOR: Andrew Beveridge, Assessment Officer

DATE OF REPORT: 23 October 2023

DATE LODGED: 27 February 2023

RECOMMENDATION: Refusal

EXECUTIVE SUMMARY

This development application seeks NSLPP approval for the demolition of the existing three-storey, four-bedroom, dwelling house and detached single garage on site and the construction of a new five-storey, 5-6-bedroom, dwelling house with an attached parking level.

This application is reported to North Sydney Local Planning Panel for determination because the proposed works breach the building height limit by greater than 10%, and the proposal has received more than ten (10) objecting submissions.

As the proposal involves the construction of a new dwelling with a maximum height of 10.94m that is in exceedance of the maximum permitted height limit by 2.44m (28.7%), the applicant has submitted a written request seeking a variation to the building height development standard in accordance with Clause 4.6 of NSLEP 2013. The applicant's submission has been considered with reference to the Land and Environment Court's decision in *Wehbe v Pittwater Council [2007] NSWLEC 827* in order to justify the proposed variation. The applicant's Clause 4.6 is considered to be unsatisfactory given the site circumstances and on the basis that it will have a significant impacts upon the amenity of adjoining properties and the character, landscaped context, and topography of the site.

Notification of the proposal has attracted twelve (12) unique submissions, and the assessment has considered these as well as the performance of the application against Council's planning requirements.

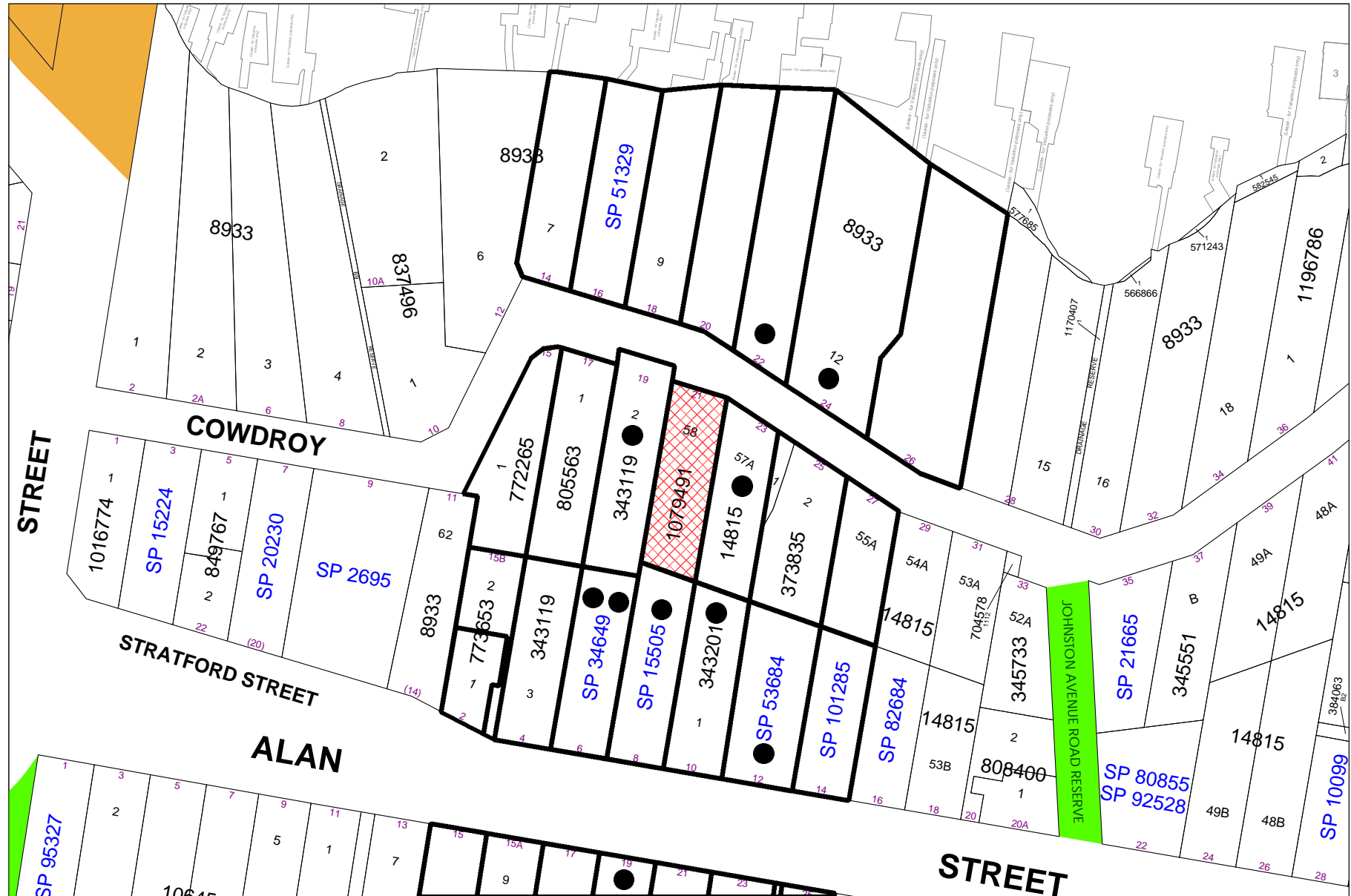
The proposed dwelling is inconsistent with the character and scale of adjoining and nearby properties, with a built form of 4-5 storeys when viewed from the street, particularly along Cowdroy Avenue, where it will be highly visible and will present significant additional bulk and scale, exacerbated by the non-compliances in building height, setbacks, and the additional footprint of the dwelling overall with non-compliances in site coverage, landscaped area, and unbuilt-upon area. The significant additional bulk and scale, particularly above the height limit, are also likely to contribute to additional overshadowing and block existing views/outlooks that will impact upon the amenity of neighbouring properties.

The proposed excavation to accommodate the new development is also considered to be excessive, creating two floor levels below existing ground level, and requiring significant excavation that will likely impact upon nearby significant trees, and the regrading/excavation within the front setback to the street that will require the loss of the significant natural sandstone outcrops.

The proposed development would have an unacceptable impact upon the landscaped context of the site that is located within a C4 Environment Living Zone, and a bushland buffer zone, including the loss of landscaped areas, and impacts arising from excavation upon nearby trees.

Having regard for the potential impacts upon the amenity of adjoining properties and the surrounding neighbourhood, the development application is considered to be unsatisfactory and is recommended for **refusal**.

LOCATION MAP



□ Property/Applicant ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

The proposed works are for the demolition of an existing three-storey, four-bedroom, dwelling house and detached single garage on site, and the construction of a five-storey, 5-6-bedroom, dwelling house with an attached parking level, as follows:

- Demolition of the existing dwelling, detached garage, and pool cabana on site.
- Significant excavation and rock removal to allow construction of a 5-level detached dwelling and double garage comprising the following:
 - a) **Basement Level** – Double garage, archive/storage, mechanical/plant/services rooms, elevator to floors above.
 - b) **Lower Ground Level** – Bedroom with ensuite, Multi-purpose room/bedroom with bathroom, WC laundry room, theatre, water feature, outdoor terrace and landscaping above garage level, elevator to floors above.
 - c) **Ground Floor Level** – Living/family/dining room, pantry/butler’s kitchen, storage and WC, dwelling entrance and entry foyer, formal dining room, outdoor terrace, and landscaping to the rear to connect to pool level, associated terracing, landscaping and external stairs to connect to dwelling entry, internal elevator to floors above.
 - d) **Level 1** – 3 x bedrooms with ensuite bathrooms and shared balcony/terrace, 2 x study rooms, gym, and lounge/foyer area, elevator to floors above.
 - e) **Level 2** – Master bedroom suite, with walk-in-robe, lounge, ensuite bathroom, outdoor balcony/terrace, elevator to floors below.

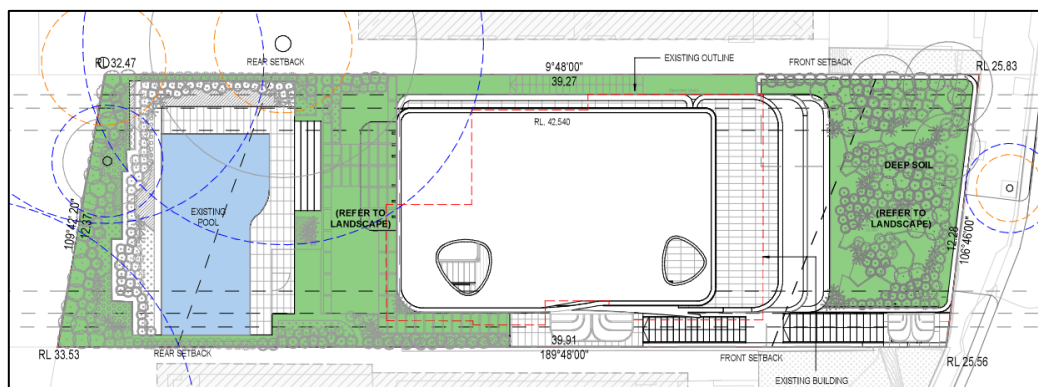


Figure 1. Site Plan.



Figure 2. Northern (Cowdroy Avenue) street elevation.



Figure 3. Southern rear elevation.



Figure 4. Eastern side elevation.

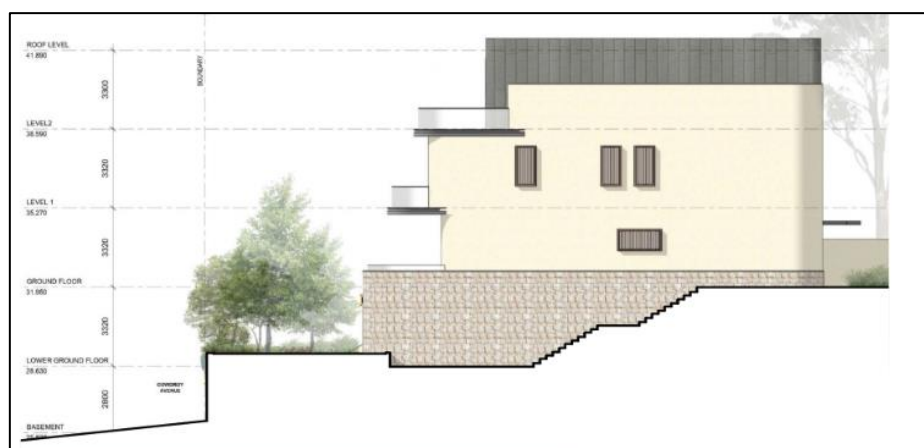


Figure 5. Western side elevation.

STATUTORY CONTROLS

North Sydney Local Environmental Plan 2013 (NSLEP 2013)

- Zoning – C4 Environmental Living
- Item of Heritage – No
- In Vicinity of Item of Heritage – No
- Conservation Area – No
- Foreshore Building Line – No

Environmental Planning & Assessment Act 1979

SEPP (Biodiversity and Conservation) 2021

- Chapter 2 – Vegetation in non-rural areas
- Chapter 6 – Water Catchments

SEPP (Resilience and Hazards) 2021

- Chapter 4 – Remediation of Land

SEPP (Sustainable Buildings) 2022

Local Development

POLICY CONTROLS

North Sydney Development Control Plan 2013 (NSDCP 2013)

- Bushland Buffer – Buffer Area B (300m)

North Sydney Local Infrastructure Contributions Plan 2020

DESCRIPTION OF LOCALITY

The subject site (Lot 58 DP 1079491) is located on the southern side of Cowdroy Avenue. Currently located on site is a 3-storey, four-bedroom, single dwelling, built in 1977. There a detached single garage within the north-eastern corner of the site and a large in-ground swimming pool and detached cabana/shed in the rear setback. The dwelling is currently unoccupied.

The 482.7m² site is rectangular in shape, with the site's topography steeply sloping down to the north towards Long Bay and the waters of Middle Harbour. The front of the site facing Cowdroy Avenue includes significant natural sandstone outcrops upon which the existing dwelling is located. Surrounding development is predominantly residential, comprising multi-storey single dwellings and some residential flat/dual occupancy buildings to the south on Alan Street. Photos of the site and local area are provided below.

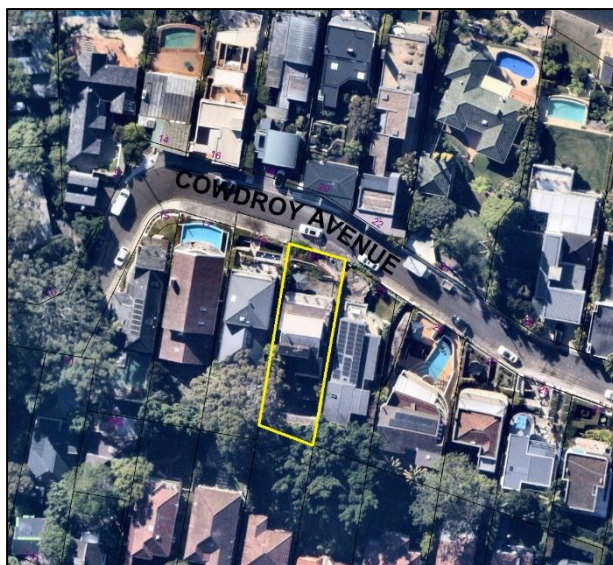


Figure 6. Aerial photograph of subject site (outlined yellow).

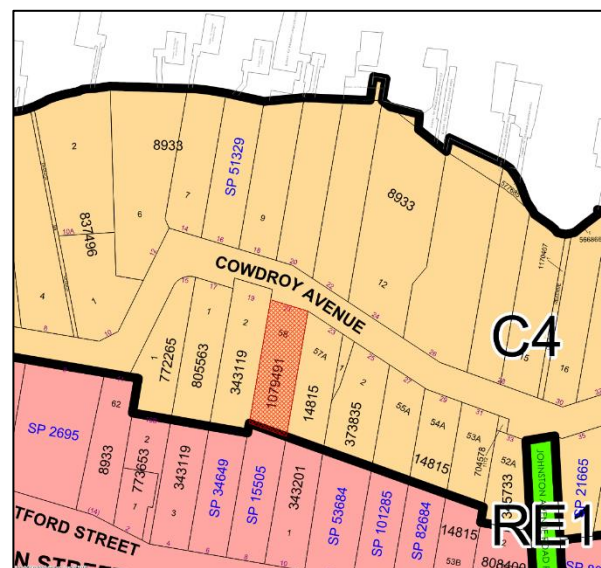


Figure 7. NSLEP Zoning Map with the subject hatched red in the C4 Zone.

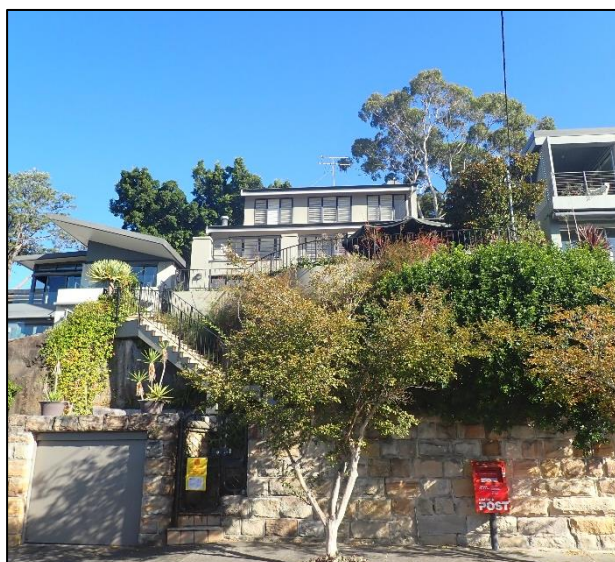


Figure 8. View of the site from Cowdroy Avenue.



Figure 9. View of the existing rear setback from No. 23 Cowdroy Avenue.

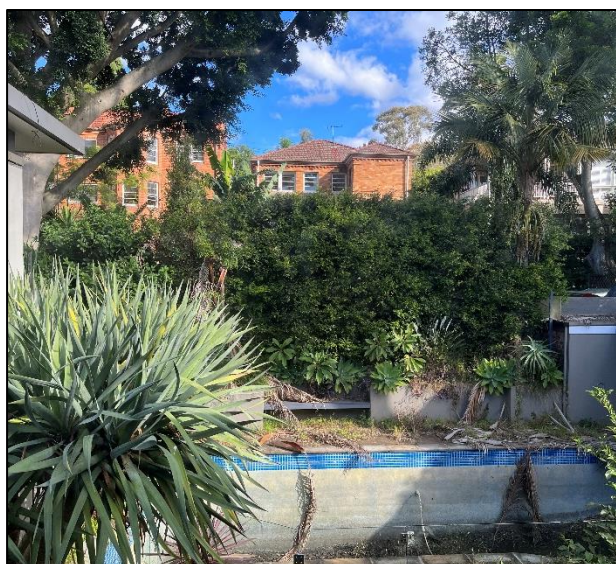


Figure 10. View looking south from the existing dwelling towards Alan Street.



Figure 11. View looking north-west over the front setback from 23 Cowdroy Avenue.

RELEVANT HISTORY

Building Application No. 77/149 (lodged 12 April 1977) for the construction of a two-storey brick and brick veneer dwelling on the site, was approved by Council on 28 April 1977.

Building Application No. 81/677 (lodged 30 September 1981) for alterations and additions to the dwelling, including a bedroom to the first floor level and a family room to the ground floor level, was approved by Council on 3 November 1981.

Building Application No. 84/419 (lodged 11 July 1984) for alterations and additions, including the addition of a third storey to the dwelling, and the addition of a swimming pool at the rear, and brick fencing, was approved by Council on 5 September 1984.

Building Application No. 98/326 (lodged 6 May 1998) for alterations and additions to the dwelling, including the extension of the third floor level and a new ground floor level terrace at the front, was approved by Council on 14 September 1998.

CURRENT HISTORY

Date	Action
27 February 2023	The application was lodged with Council
8 March 2023	The subject application was notified to adjoining properties and the Bay Precinct Committee between 17 March 2023 and 31 March 2023. Twelve (12) submissions were received raising various concerns.
28 April 2023	Site visits were undertaken to three neighbouring sites.
2 May 2023	A site visit was undertaken to a neighbouring site.
3 May 2023	An inspection of the subject site was undertaken by the assessing officer.
1 September 2023	A site visit was undertaken to a neighbouring site.
12 July 2023	Council sent the applicant a letter raising various concerns regarding the development and requesting amended plans and information within 21 days. On 11 August, an extension of time for response was granted to 1 September.
21 September 2023	Following the expiry of the time allotted for a response to Council's letter and no further request for an extension of time, Council sent the applicant a letter requesting that the application be withdrawn, or it would be determined on the plans as submitted. No withdrawal request was received.

REFERRALS

Aboriginal Heritage

The Aboriginal Heritage Office has assessed the proposed works and raised no objection, providing the following comments:

Reference is made to the proposed development at the above area and Aboriginal heritage. There are known Aboriginal sites in the area. No sites are recorded in the current development area. However, the area of the proposed development is identified as having high potential for unrecorded Aboriginal sites.

If areas of in situ sandstone outcrop are in the proposed development area or revealed during works (i.e. platforms over 2m square), the Aboriginal Heritage Office would recommend a preliminary inspection by a qualified Aboriginal heritage professional prior to any further development. If there are no existing sandstone outcrops present (or if any outcrops that were present were properly excluded from future impacts), then no further assessment is required, and the Aboriginal Heritage Office would not foresee any further Aboriginal heritage constraints on the proposal.

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 Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act, should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

The comments of the Aboriginal Heritage Office are noted. As a revised scheme addressing Council's concerns regarding the level of excavation access the site and in particular the loss of significant natural sandstone outcrops issues has not been submitted, the application is recommended for refusal.

Building

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

Engineering

Council's Development Engineer has reviewed the proposal, who raised no concerns, subject to appropriate engineering conditions. However, the application is recommended for refusal with no engineering matters raised in the overall reasons for refusal.

Landscaping

Council's Landscape Development Officer has reviewed the proposal and provided the following comments:

This proposal cannot be supported in its current form based on the information provided to date. At a minimum, additional details required should include:

- 1. The proposed levels and level changes within the rear setback.*
- 2. The arborist report needs to be amended to assess the impact of landscaping changes and not just the footprint of the proposed dwelling. While the potential impact of the development upon T2 (Corymbia citriodora, 20x18m, located within the rear yard of 19 Cowdroy Avenue) may be on the borderline of being acceptable subject to strict conditions and further information when only building outline is considered, but the proposed level changes and landscaping proposed within the rear setback likely result in a major and unacceptable encroachment within the Tree Protection Zone.*
- 3. The Statement of Environmental Effects suggests existing that the existing driveway layback/crossover is to be retained, while plans indicate a new crossover within structural root zone of the street tree.*

4. *This proposal is unlikely to be supported with the proposed excavation and lowered level landscape within the rear setback as proposed within Tree Protection Zone of T2 Corymbia citriodora. This also includes the proposed modifications to retaining walls around the perimeter of the swimming pool where within the Tree Protection Zone of T2, T3 (Eucalyptus microcorys), T4 (Howea forsteriana), or T6 (Ficus microcarpa hillii).*
5. *The Landscape Plan does not provide a plant schedule. A detailed planting schedule needs to be provided with the species, number, and pot size required, and should be largely drawn from Council's list of local species for this area, given proximity to bushland.*
6. *The stormwater line shown through the Tree Protection Zone of T2 must be redirected outside the Tree Protection Zone.*
7. *The removal of a large expanse of existing natural rock outcrop above existing garage is unlikely to be supported.*
8. *Any future proposal shall require that existing perimeter masonry walls within rear setback be retained to protect the root zones of neighbouring trees.*

The comments from Council's Landscape Development Officer are noted and supported. As a revised scheme addressing the above issues has not been submitted to the satisfaction of Council's Landscape Development Officer, including a more desirable landscaping outcome and the protection of trees, the application is recommended for refusal.

SUBMISSIONS

On 8 March 2023, the subject application was notified to adjoining properties and the Bay Precinct Committee between 17 March 2023 and 31 March 2023. Twelve (12) submissions were received raising various concerns. The issues raised in the submissions are summarised below and addressed later in this report.

Basis of Submission

- The proposal exceeds the building height by a full floor and results in excessive bulk and scale.
- The excessive bulk and scale will dominate the streetscape, blocking buildings and trees, and dwarfing neighbouring homes.
- The excessive bulk and scale is exacerbated by a lack of green space visible from the street.
- The significant increased height and bulk of the building will result in unreasonable overshadowing impacts.
- The proposal will have an adverse impact upon views and outlook to the north.
- The proposal exceeds the building height by a full floor and results in excessive bulk and scale.
- The significant increased height of the building will result in unreasonable overshadowing impacts.
- The proposal had made no analysis or provision of traffic impacts.
- The dividing fence between 19-21 Cowdroy Avenue is to be retained.
- Concern regarding the provision of landscaping across the site and the protection of significant trees on adjoining sites.
- The proposal exceeds the building height by a full floor and results in excessive bulk and scale.
- The proposal will have an adverse impact upon views and outlook to the north.

- The significant increased height of the building will result in unreasonable overshadowing impacts.
- The proposal will have an adverse impact upon views and outlook to the north.
- The significant increased height of the building will result in unreasonable overshadowing impacts.
- The proposed dwelling has an excessive bulk and scale and dominates its position from the street and neighbouring buildings.
- The proposal exceeds the building height by a full floor and results in excessive bulk and scale and dominates its position from the street and neighbouring buildings.
- The flat roof is out of character with the area and emphasises the excessive bulk and scale.
- The proposal results in the loss of outlook of trees behind the dwelling and the loss of characteristic sandstone outcrops, visible from the street.
- The proposed involves excessive excavation and does not conform with or reflect the natural slope of the site.
- The significant increased height of the building will result in unreasonable overshadowing impacts including to solar panels.
- The proposal includes an excessive amount of on-site parking.
- Concern regarding the adverse impacts of excavation and consequent traffic flows.
- The proposed bulk and scale is excessive and is inconsistent with neighbouring buildings.
- The flat roof is out of character with the area and emphasises the excessive bulk and scale.
- The proposal will have an adverse impact upon views and outlook to the north.
- The significant increased height and bulk of the building will result in unreasonable overshadowing impacts.
- The proposal exceeds the building height by a full floor and results in excessive bulk and scale and dominates its position from the street and neighbouring buildings.
- The proposal will have an adverse impact upon views and outlook to the north.
- The proposed south façade will overshadow and overlook properties to the south.
- The proposed development is out of character with the surrounding area.
- The proposed bulk and scale is excessive and is inconsistent with neighbouring buildings and the surrounding character.
- The flat roof is out of character with the area and emphasises the excessive bulk and scale.
- The significant increased height and bulk of the building will result in unreasonable overshadowing impacts to neighbouring properties.
- The proposed bulk and scale is excessive and is inconsistent with neighbouring buildings and the surrounding character.
- The proposal will have an adverse impact upon views to the north.
- The proposed bulk, scale, and height is excessive and is inconsistent with the surrounding neighbourhood.

CONSIDERATION

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

SEPP (Biodiversity and Conservation) 2021 – Chapter 2 – Vegetation in non-rural areas

Under Chapter 2 of this SEPP, the proposed development would not require the removal of any significant vegetation defined under this SEPP.

SEPP (Biodiversity and Conservation) 2021 – Chapter 6 – Water Catchments

Chapter 6 of this SEPP applies to this site and is required to be considered in the assessment of the application. As result of the significant excavation, rock removal and topography changes across the site, there is likely to be an impact upon stormwater runoffs from the site to the nearby waterway in the form of increased runoffs and reduced environmental qualities of the site. However, it is likely that this could be resolved with appropriate conditions or amendments should this application be approved. The impacts of this development upon the broader context of the site with regard to landscaped area, bushland, and the C4 Zoning are addressed elsewhere in this report. In summary, the proposal is considered to be satisfactory having regard for the aims and objectives of this chapter of the SEPP.

SEPP (Resilience and Hazards) 2021 – Chapter 4 – Remediation of Land

Chapter 4 of this SEPP requires Council to consider the likelihood of land contamination and any remediation necessary to rehabilitate the site. Council's records indicate that the site has previously been used for residential development for a substantial period of time and as such is unlikely to contain any contamination. Therefore, the requirements of the above SEPP have been satisfactorily addressed.

SEPP (Sustainable Buildings) 2022

On 1 October 2023, the *SEPP (Sustainable Buildings) 2022* came into effect, which repealed the *SEPP (Building Sustainability Index: BASIX) 2004*. However, as this application was submitted prior to 1 October, the new BASIX standards do not apply. While the applicant has submitted a valid BASIX Certificate to satisfy the requirements of the above SEPP, this application is recommended for refusal and no conditions are recommended.

North Sydney Local Environmental Plan 2013

Permissibility

The subject site is Zoned C4 Environmental Living under the provisions of the NSLEP 2013. The modifications involve the demolition and construction of a dwelling house which is a permissible form of development in the Zone C4 with consent from Council.

Objectives of the zone

The objectives of the Zone C4 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.*

While the proposal will provide improved amenity for the residents of the site, it is considered that the works will have an adverse impact upon the surrounding area due to its excessive height, bulk and scale, and its impact upon the natural topography and sandstone outcrops, landscaped context within a Bushland Buffer Zone, and significant trees.

The proposed additions will also result in unnecessary overshadowing to adjoining properties, affecting the amenity of the surrounding area. In these respects, the proposal would not achieve the planning objectives for a medium density residential area.

Clause 4.3 – Height

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Clause	Proposed	Control	Complies
Clause 4.3 – Heights of Building	10.94m (2.44m/28.7%)	8.5m	No

Due to the steep natural fall of the site, the majority of the roof and top Level 2 is above the 8.5m high limit at 10.94m (2.44m or 28.7%). Consequently, the proposed changes within Level 2 involve a variation of the Development Standard in clause 4.3 in NSLEP 2013 (see discussion below).

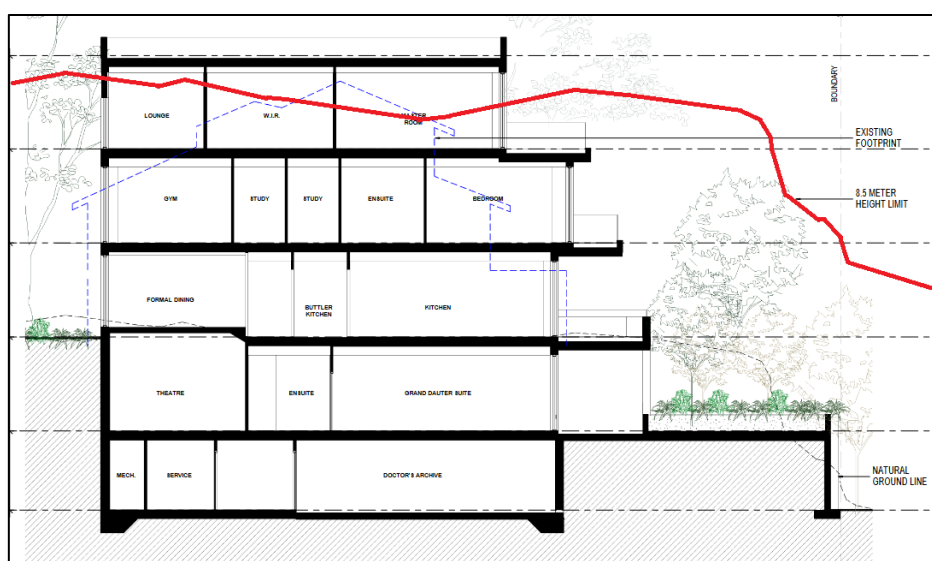


Figure 12. Section diagram looking west, with the areas above 8.5m shown by the red line.

Clause 4.6 – Exceptions to development standards

The applicant has provided a written request to vary the development standard for height.

Extent of the Variation

The proposed works would exceed the maximum permitted height. The proposed height of the dwelling results in a maximum variation of 2.44m or 28.7% from the development standard, as shown in the above table.

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

For reference the objectives of the development standard are as follows:

Clause 4.3(1) of North Sydney Local Environmental Plan 2013

“(1) The objectives of this clause are as follows:

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) to promote the retention and, if appropriate, sharing of existing views,*
- (c) to maintain solar access to existing dwellings, public reserves, and streets, and to promote solar access for future development,*
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) to ensure compatibility between development, particularly at zone boundaries,*
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.”*
- (g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and E4 Environmental Living.*

The Applicant’s written request relies upon *Webhe Test 1* to demonstrate that compliance with the development standard is unreasonable and unnecessary in this instance as the objectives of the development standard would be achieved notwithstanding the non-compliance with the development standard. The development is considered below, having regard to the objectives of the development standard.

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

It is considered that the proposed dwelling does not adequately conform to the existing site conditions and topography of the site, with two levels (Basement and Lower Ground Level) of the dwelling being located below existing ground level. The development also results in the removal of natural landforms in the form of the existing natural sandstone that are highly visible from the Cowdroy Avenue elevation. While the development has a small degree of stepping on its northern elevation to reflect the sloping topography, it is not considered to be at an extent to conclude that this objective has been achieved, and the primary built form reads as vertical in emphasis with a scale of 4-5 storeys to the street that is similar to a residential flat building rather than a single dwelling.

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

There are a number of adjoining properties which have Middle Harbour views and outlooks across the site which will be to varying degrees impacted by the development. The applicant has provided a View Impact Assessment. Council officers have carried out a view impact assessment for some of the affected properties below. It should be noted that site visits were only able to be conducted for the below properties.

While view impacts were raised by other nearby sites (6 and 19 Alan Street), site visits were not able to be conducted for these sites, despite requests. Nevertheless it is considered that view impacts are unlikely to be significant for these properties due to their distance from the subject site and the position of intervening buildings, side boundaries, and significant trees.

Planning Principle – View Sharing

To understand whether the proposal will ensure a reasonable level of view sharing for adjoining properties, consideration is given to the four (4) step process adopted by Commissioner Roseth of the NSW Land and Environment Court in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140.


1. Assessment of views to be affected;




“Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.”

2. Consider from what part of the property the views are obtained.

“For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.”

The below table describes the view to be affected, along with the part of the subject site from which the views are obtained:

Address	View	Part of Property
Units 1-2/8 Alan Street  <p>Figure 13. Views (in yellow) across the subject site (outlined red).</p>	Northern water glimpses of Long Bay in between buildings (Unit 2 only). District view/outlook towards trees at Northbridge.	The affected views are from the lounge/dining room of both units on the northern rear elevation of the building.
Units 1-2/10 Alan Street	North-western view/outlook towards trees at Northbridge.	Heavily filtered outlook to Northbridge trees, obscured by significant trees on site and adjoining sites across side boundaries of 8 Alan Street, and 19-21 Cowdroy Avenue. Accessed from main lounge and study, and Bedroom on northern rear elevation. Also from rear northern common garden.

 <p>Figure 14. Views (in yellow) across the subject site (outlined red).</p>		
<p>Unit 2/12 Alan Street</p>  <p>Figure 15. Views (in yellow) across the subject site (outlined red).</p>	<p>North-western view/outlook towards trees at Northbridge.</p>	<p>Heavily filtered outlook to Northbridge trees, obscured by significant trees on site and adjoining sites across side boundaries of 10 Alan Street, and 21-23 Cowdroy Avenue. Accessed from main lounge and dining room, and outdoor balcony on northern rear elevation. Also outlook to sky from rear common garden.</p> <p>Note: no submission was received from the owners of Unit 1 and no site visit was undertaken. However their elevation above the subject site means that view impacts are unlikely.</p>
<p>19 Cowdroy Avenue</p>  <p>Figure 16. Views (in yellow) across the subject site (outlined red).</p>	<p>Eastern district view to houses and trees at Cammeray/Folly Point.</p>	<p>View accessed from east-facing side elevation first floor bedroom window across side boundaries of 21-23 Cowdroy. Outlook to sky from eastern skylight windows of study.</p>

3. Assess the extent of the impact in qualitative terms as negligible, minor,

moderate, severe, or devastating.

“This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.”

Unit 1/8 Alan Street

Lounge/dining room – This room would retain the majority of its district view/outlook to the north but would likely lose some trees and completeness of this outlook to the east due to the new roof level of the development. This loss will be created through the Level 2 addition of the subject site. Nevertheless, this overall view and general outlook will be retained by the proposal as the majority of the lower part of the water view is already obstructed by existing buildings on the subject site and adjoining sites.



Figure 17. The outlook/view from the lounge/dining room of Unit 1.

Overall, the view impacts to this property are assessed as minor. Refer to **Figure 17** above.

Unit 2/8 Alan Street

Lounge/dining room – This room would retain the majority of its district view/outlook to the north but would likely lose some trees and completeness of this outlook due to the new roof level of the development. The water glimpse accessed in between Nos. 21-23 Cowdroy Avenue will also be unaffected. The outlook loss will be created through the Level 2 addition of the subject site. Nevertheless, this overall view and general outlook will be retained by the proposal as the majority of the lower part of the view is already obstructed by existing buildings on the subject site and adjoining sites.



Figure 18. The outlook/view from the lounge/dining room of Unit 2.

The impacts for this property are assessed as minor. Refer to **Figure 16** above.

Common Garden – The common garden would retain the majority of its district view/outlook to the north but would likely lose some trees and completeness of this outlook due to the new roof level of the development. This loss will be created through the Level 2 addition of the subject site. Nevertheless, this overall view and general outlook will be retained by the proposal as the majority of the view is already obstructed by existing buildings on the subject site and adjoining sites.



Figure 19. The outlook/view from the rear common garden.

The impacts for this area are assessed as negligible. Refer to **Figure 19** above.

Units 1-2/10 Alan Street

Lounge and Bedroom – The lounge would likely lose some filtered views of trees and completeness of this outlook due to the new roof level of the development. This loss will be created through the Level 2 addition of the subject site. Nevertheless, this overall view and general outlook will be retained by the proposal as the majority of the view is already obstructed by existing buildings and significant trees on the subject site and adjoining sites. Unit 2 has a significantly reduced view compared to Unit 1 due to its elevated position above the canopies of the large Fig trees present in the rear garden of 23 Cowdroy.



Figure 20. The outlook/view from the lounge room (left) and bedroom (right) of Unit 1.



Figure 21. The outlook/view from the lounge room (left) and bedroom (right) of Unit 2.

Overall, the view impacts to these properties are assessed as minor. Refer to **Figures 20-21** above.

Common Garden – The common garden would retain the majority of its district view/outlook to the north but would likely lose some trees and completeness of this outlook due to the new roof level of the development. This loss will be created through the Level 2 addition of the subject site. Nevertheless, this overall view and general outlook will be retained by the proposal as the majority of the view is already obstructed by existing buildings on the subject site and adjoining sites.



Figure 22. The outlook/view from the rear common garden.

Overall, the view impacts to these properties are assessed as minor. Refer to **Figures 20-22** above.

Unit 2/12 Alan Street

Lounge and Bedroom – The lounge would likely lose some filtered views of trees and completeness of this outlook due to the new roof level of the development. This loss will be created through the Level 2 addition of the subject site. Nevertheless, this overall view and general outlook will be retained by the proposal as the majority of the view is already obstructed by existing buildings and significant trees on the subject site and adjoining sites. Unit 2 has a significantly reduced view compared to Unit 1 due to its elevated position above the canopies of the large Fig trees present in the rear garden of 23 Cowdroy.



Figure 23. The outlook/view from the balcony (left) and dining room (right) of Unit 2.

Common Garden – The common garden would retain the majority of its outlook to sky the north but would likely lose some sky due to the new roof level of the development. This loss will be created through the Level 2 addition of the subject site. Nevertheless, this overall view and general outlook will be retained by the proposal.

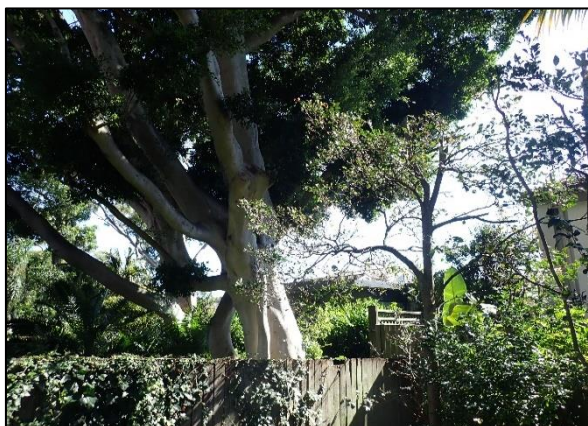


Figure 24. The outlook from the rear common garden.

Overall, the view impacts to these properties are assessed as minor. Refer to **Figures 23-24** above.

19 Cowdroy Avenue

Bedroom – Some of the existing view to houses/trees at Cammeray and Folly Point views from this bedroom window is likely to be lost due to the expanded footprint of the development. Nevertheless, this view is accessed from a bedroom and not a primary living area, is accessed across several side boundaries of Nos. 21-23 Cowdroy Avenue, and the property overall has a high level of view access overall (including water views) that are enjoyed to the north, north-west, and north-east.

Study – Some of the existing outlook to sky from the east-facing skylights/windows for the first floor study is likely to be impacted as a result of this development. However, this outlook is a secondary outlook from a space that is not a primary living area, and the dwelling overall maintains a high degree of views and outlook to sky from its living areas.



Figure 25. The eastern view from the Bedroom (left) and the eastern outlook to sky from the study (right).

Overall, the view impacts to these properties is assessed as minor. Refer to **Figure 25** above.

4. Assess the reasonableness of the proposal that is causing the impact.

“A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

The proposed development results in a breach of the NSLEP height control of 8.5m by up to 12.44m or 28.7%. This height breach occurs at the Level 2. The view/outlook impacts for the properties at Nos. 6-12 Alan Street and 19 Cowdroy Avenue, while partially created as a result of non-complying building elements, are considered to be relatively minor due to the nature of the views impacted that are filtered through significant trees and the adjoining buildings across side boundaries, and will have a minimal impact upon the overall views available for these dwellings elsewhere, with the majority of water and district views being retained from these dwellings.

Nevertheless, it is noted that it is likely that a more skilful design that minimises the height level breach and reduces the bulk and scale of the dwelling, could achieve minimal or no adverse view/outlook impacts upon these neighbouring sites.

However, given the above considerations, on balance, the proposal will result in a reasonable and acceptable level of view loss impacts. As such, it is considered that this objective has been achieved by the proposal.

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

Due to the orientation, topography, and separation from adjoining buildings to the east, west and south, the proposed development will not result in significant overshadowing for adjoining properties. It is likely that adjoining properties will be able to retain a minimum of 3 hours' solar access to their primary internal and external living spaces. It is also noted that the elevated position of properties along the southern side of Cowdroy Avenue means that these properties are afforded a high degree of solar access, particularly when considering the building designs to take advantage of views to the north.

Nevertheless, it is noted that it is likely that a more skilful design that minimises the height level breach and reduces the bulk and scale of the dwelling, could achieve a closer to neutral solar access impact upon adjoining properties to the east and west. Council has also requested additional details in the form of hourly and elevational shadow diagrams in order to quantify and assess the shadow impacts upon adjoining sites, particularly upon Nos. 19 and 23 Cowdroy Avenue, but this has not been provided.

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

The proposed works will maintain appropriate levels of privacy for residents of the subject site and adjoining properties. The proposed dwelling has been designed to orientate openings to the north and south away from the primary living areas of adjoining sites. Accordingly, this objective has been achieved.

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

The site is located within the C4 Environmental Living zone and directly adjoined by buildings within this zone to the north, east and west, with relatively low-scale dual occupancies and flat buildings located to the south on Alan Street within the R2 Low Density residential zone. The bulk and scale of the proposed new dwelling is considered to be out of proportion with neighbouring buildings, particularly for Nos. 19 and 23 Cowdroy Avenue. While the existing dwelling is noted for its existing non-compliance with the height limit, the extent of this variance is significantly compared to what is proposed.

The proposed dwelling significantly increases both the height (doubling the height breach level) and the footprint of the structures on the site. The proposed new dwelling will be significantly more visible from adjoining properties and will provide significant additional bulk and scale, presenting as four to five storeys to the street, with an appearance more like a residential flat building than a single dwelling. The development is therefore incompatible with the zoning of the site and surrounding sites, as it does not maintain a development that is compatible with the zoning expectations for a reduced bulk and scale.

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

It is considered that the proposed dwelling does not adequately conform to the existing site conditions and topography of the site, with two levels (Basement and Lower Ground Level) of the dwelling being located below existing ground level. The development also results in the removal of natural landforms in the form of the existing natural sandstone that are highly visible from the Cowdroy Avenue elevation and are characteristic elements of the area. The primary built form reads as vertical in emphasis, particularly from the street, with a scale of 4-5 storeys that is similar to a residential flat building rather than a single dwelling. While the curves and articulation in some areas of the façade do have a positive impact in somewhat reducing the overall bulk and scale of the dwelling, this is not considered to be sufficient to meet this objective.

(1)(g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and C4 Environmental Living.

Due to the steeply sloping topography of the neighbourhood, particularly along the southern side of Cowdroy Avenue, a built form of 1-2 storeys is not typical, with a built form of 2+ storeys being more typical as a response to the sloping topography. However, the built form emphasis on these sites is for a stepped design to align with the topography of the area and retain significant natural features such as sandstone outcrops and trees. The existing building on site is a 2-3-storey dwelling while adjoining buildings to the east and west with similar site conditions are also 2-3 storeys in height. The proposed new dwelling on site, by contrast presents a built form of 4-5 storeys to the street, a scale that is greater than adjoining buildings, and significantly greater than the objective. Accordingly, this objective has not been achieved.

Clause 4.6(3)(b) Are there sufficient environmental planning grounds to justify the variation

The applicant has provided the following grounds in their Clause 4.6 statement:

- ***Environmental Planning Ground 1 – Negligible amenity or visual impacts***
Numerically, the Height of Buildings for maximum building height exceedance is not considered excessive or unreasonable in the context of the site or surrounding locality. This is especially the case given that the overall scheme provides an appropriately sized building complying with the site coverage standard, which are utilised along with the Height of Buildings standard to restrict a development's bulk, form and scale.

It is argued that the exceedance in height does not cause unreasonable impact and satisfies the objectives of the standard, and any additional impact on the adjoining land to the south will be minimal. As such, it is considered that the particular design delivers appropriate and sufficient environmental planning grounds to support the additional HOB, which is proposed.

- ***Environmental Planning Ground 2 – Street Character***
The proposed development represents an excellent design outcome. The particular design, in the context of this particular site means that the excess Height of Buildings is not perceived from the public domain given that the roof form is located within the floor plates and is setback farther from all boundaries than the lower floors. It therefore does not have any adverse impact on the streetscape or urban form otherwise anticipated by the controls.

Furthermore, the environmental planning grounds which support variation to the standard in this instance are that the particular design in the context of this particular site means that the non-complying building height is not obvious and therefore does not have adverse effects on the streetscape or urban form otherwise anticipated by the controls. The Height of Buildings exceedance allows for the achievement of each of the zone and Height of Buildings objectives.

As demonstrated above and elsewhere in this report, the proposed development is not considered to demonstrate sufficient planning grounds by which the variation to the height of buildings control is acceptable on its merits on the basis that it will have a significant impacts upon the amenity of adjoining properties and the character, landscaped context, and topography of the site and adjoining sites.

Clause 4.6(4)(a)(ii) Applicant's written request

On the basis of the above discussion, it is Considered that the written request provided by the applicant had not adequately addressed the matters required by subclause (3).

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

The proposed development would not be in the public interest because it is inconsistent with the objectives of the development standard for height and the objectives of the zone as discussed above. It is also considered that the proposal results in adverse impacts for the character of the surrounding area and the amenity of adjoining properties.

Conclusion

The applicant has submitted a written request pursuant to Clause 4.6 in *NSLEP 2013*. The written request has not adequately addressed sub clause (3) and, is not considered to be in the public interest because it is inconsistent with the relevant development standard and the objectives of the zone.

Clause 5.10 – Heritage conservation

The site is not a heritage item, is not located within a conservation area, and is not within the vicinity of any heritage item. Consequently, Section 5.10 does not apply to this development.

Clause 6.10 – Earthworks

The proposal includes significant excavation works to accommodate the new dwelling, with two levels being located below existing ground level. The development results in the removal of natural landforms in the form of the existing natural sandstone that are highly visible from the Cowdroy Avenue elevation. Council's Development Engineer has raised no objection to the excavation which is physically able to be undertaken.

It is considered that the degree of excavation, and the removal of landscaping and level changes both the front and rear setbacks of the site, will result in significant adverse impacts to existing site and adjoining trees, leaving very limited space for replacement and/or deep soil planting, and resulting the removal of significant natural sandstone outcrops. In this respect, the proposal is considered to have a detrimental impact upon environmental and natural features of the subject site and adjoining properties.

North Sydney Development Control Plan 2013

Part B Section 1 – Residential Development		
<i>Section</i>	<i>Complies</i>	<i>Comments</i>
1.2 Social Amenity		
Population Mix	Yes	The proposal will replace the existing four-bedroom single dwelling house on the site, with a significantly larger 5-6 bedroom dwelling. The existing dwelling does not involve affordable housing.
Maintaining residential accommodation		
Affordable housing		
1.3 Environmental criteria		
Topography	No	<p>The extent of the proposed excavation is considered excessive. The application is inconsistent with Section 1.3.1 of NSDCP 2013 for the following reasons:</p> <ol style="list-style-type: none"> 1. Inconsistent with O1, O4, and P2 as the proposal will result in major site disturbance due to the amount of excavation proposed. Not just the depth (allowing 2 levels below existing ground level) but also beyond the existing building footprint that will require the complete removal of the existing natural sandstone outcrops within the front setback; 2. The proposed level of regrading of the rear yard to accommodate the new dwelling levels and associated landscaping are likely to impact upon significant trees contrary to O2. 3. New finished floor levels are greater than 500mm below existing ground level contrary to P3; 4. Excavation occurs within 1m of the western side boundary contrary to P5 as measured on the basement and lower ground level floor plans.
Properties in proximity to bushland	No	<p>The subject site does not adjoin bushland but is located within a Bushland Buffer Zone (B – 100m-300m) of the closest bushland areas in Mortlock Reserve to the west. The non-compliance with landscaped area, loss of the existing natural sandstone outcrops within the front setback, combined with potential impacts upon trees on adjoining sites due to the proposed excavation and additional structures on site, means that the proposal is not considered to be sympathetic to the landscaped values of the surrounding Bushland Buffer Zone area and consequently the objectives and provisions of Section 15 (Bushland) of NSDCP 2013.</p> <p>The submitted landscape plan does not include a plant schedule with species, number, and pot size required, and with at least 50% of locally occurring native species included, as required by Provision P3 of Section 15.3.3 (Indigenous Vegetation).</p>
Properties on Bush Fire Prone Land	N/A	The site is not classified as Bush Fire Prone Land.
Properties with a foreshore frontage	N/A	The site does not have a foreshore frontage.
Views	Yes	Refer to the detailed discussion under the Tenacity planning principle assessment earlier within this report, where it is considered that the view impacts are considered to be minor and acceptable within the site circumstances. However, it is noted that a design that is compliant with Council's other controls could result in minimal or no view impact for adjoining sites.

Solar access	Yes	Refer to the detailed discussion earlier within this report, where it was considered that the proposal is unlikely to create significant adverse solar access impacts for adjoining sites. Nevertheless, it is noted that a design that is compliant with Council's other controls could result in reduced solar access impacts for adjoining sites.
Acoustic and Visual privacy	Yes	Refer to the detailed discussion earlier within this report, where it was considered that the proposal is unlikely to create significant adverse privacy impacts for adjoining sites.
1.4 Quality Built Form		
Context	No	While the proposal will maintain the diverse housing typology within the surrounding neighbourhood, the bulk and scale of the new dwelling is not sympathetic to surrounding development. The dwelling, when viewed from adjoining properties and the street, will be significantly greater in scale when compared to adjoining buildings.
Streetscape	Yes/No	<p>The Statement of Environmental Effects suggests that the existing driveway layback/crossover is to be retained while the submitted plans indicate a new crossover within the structural root zone of the existing street tree (<i>Lagerstroemia indica</i>), which has the potential for additional impacts that need to be considered. Despite a Council request for clarification regarding this discrepancy, no further information has been provided.</p> <p>Council's Development Engineer has raised no objection to the proposed works upon Council's footpath and guttering, subject to appropriate conditions.</p>
Siting	Yes	The proposed works will be positioned in the same orientation as the previously approved building on site, which remains consistent and characteristic with the neighbourhood.
Setbacks	Yes	Front The proposed dwelling will have a front setback of approximately 5.5-6.5m, which compares acceptably to the stepped front setbacks of adjoining sites on the southern side of Cowdroy Avenue, to follow the curve of the street.
	No	Side – West The dwelling has a setback of 0.9-1.4m from the western side boundary with No. 19 Cowdroy Avenue which is not compliant with the 1.5m for 2nd storeys (up to 7m) and 2.5m for 3rd storeys (over 7m) minimum side setbacks.
	No	Side – East The dwelling up to Level 1 has a setback of 1.5m from the eastern side boundary with No. 23 Cowdroy Avenue which is compliant with the 1.5m for 2nd storeys (up to 7m). However the entirety of the top floor above 7m has a variable side setback of 1.5-1.8m, which is not compliance with 2.5m setback control for 3rd storeys (over 7m).
	Yes	Rear The dwelling will have a rear setback of 13.4-15m, which compares acceptably to the stepped rear setbacks of adjoining properties.

<p>Form, massing & scale</p>	<p>No</p>	<p>The bulk and scale of the additions are considered to be out of proportion with neighbouring buildings, particularly for the neighbours at Nos. 10 and 16 Armstrong Street. The additions, particularly at the rear will be highly visible from adjoining properties and will provide significant additional bulk and scale, with a high solid wall extending two stories beyond the rear building lines of the two adjoining properties. This is exacerbated by the proposed rear setback of this development that will further reduce the rear setback of the existing building and will not be consistent with the rear setbacks of adjoining properties.</p> <p>Due to the steeply sloping topography along the southern side of Cowdroy Avenue, a built form of 2+ storeys is more typical for this neighbourhood as a response to the sloping topography. However, the built form emphasis on these sites is for a stepped design to align with the topography of the area and retain significant natural features such as sandstone outcrops and trees.</p> <p>The existing building on site is a 2-3-storey dwelling while adjoining buildings to the east and west with similar site conditions are also 2-3 storeys in height. The proposed new dwelling on site, by contrast presents a built form of 4-5 storeys to the street, a scale that is greater than adjoining buildings which is further exacerbated by non-compliant side setbacks and height.</p>
<p>Built form character</p>	<p>Yes/No</p>	<p>The proposed works are consistent with the existing character of the streetscape, with contemporary style developments very common for Cowdroy Avenue. The development has curved balconies integrated within the built form and a modestly stepped built form along the northern elevation, and an articulated façade that somewhat minimises the amount glazing on this elevation. However, the excessive bulk and scale of the dwelling, particularly from the street, and the significant excavation and removal of the natural sandstone outcrops within the front setback serve to create an uncharacteristic development, that appears more as a residential flat building than a single dwelling.</p>
<p>Roofs</p>	<p>Yes</p>	<p>The proposed flat roof of the dwelling is not uncharacteristic of the surrounding neighbourhood, which comprises a diverse range of roof typologies, including flat, skillion, and hipped roofs of various designs and styles. The flat roof also helps somewhat in reducing the bulk and scale when compared to a hipped or pitched roof on the same structure. The height of the dwelling and its excessive bulk and scale also means that the flat roof will not be readily perceptible from street level.</p>
<p>Colours and materials</p>	<p>Yes</p>	<p>The proposed colours and materials are acceptable and sympathetic to the surrounding neighbourhood.</p>

<p>Front Fences</p>	<p>No</p>	<p>The existing sandstone front fence will be replaced by a 3.4m-high sandstone wall and new garage opening to the street, which is required due to the significant excavation and level changes proposed for the front setback. The new pedestrian entry gate at the eastern end of the site will have a height of approximately 2m.</p> <p>While high front fences and gates on the southern side of Cowdroy Avenue are not uncommon, such as those present at No. 19 Cowdroy Avenue, the proposed walling and level changes at the front are significant in their visible height and bulk, and result in the loss of the existing articulated pedestrian entry and terraced walls to the street, as well as the natural sandstone outcrops that contribute to the garden setting.</p>																									
<p>1.5 Quality urban environment</p>																											
<p>High quality residential accommodation</p>	<p>Yes</p>	<p>The proposed works will provide a high standard of accommodation for the dwelling.</p>																									
<p>Site coverage, Landscaped area, and Unbuilt-upon Area</p>	<p>No</p>	<p>The proposed works would cause significant non-compliances, with Site Coverage being increased from 51% to 56%. While landscaped area is being increased and unbuilt-upon area reduced, these remain non-compliant with the relevant controls.</p> <p>It is noted that the variance between the figures provided above, and the figures provided in the submitted DA documentation is largely the result of requiring the inclusion of the garage area forward of the main front building line as site coverage, and the spaced paving areas within the rear and side setbacks as unbuilt-upon area. The existing and proposed levels are provided in the table below.</p> <table border="1" data-bbox="699 1245 1410 1554"> <thead> <tr> <th>Site Area:</th> <th>Existing</th> <th>Complies</th> <th>Proposed</th> <th>Complies</th> </tr> </thead> <tbody> <tr> <td>482.7m²</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Site Coverage (50% max)</td> <td>51.68% (249.5m²)</td> <td>No</td> <td>56.68% (273.6m²)</td> <td>No</td> </tr> <tr> <td>Landscaped area (30% min)</td> <td>14.54% (70.2m²)</td> <td>No</td> <td>22.1% (106.7m²)</td> <td>No</td> </tr> <tr> <td>Unbuilt-upon area (20% max)</td> <td>33.76% (163m²)</td> <td>No</td> <td>21.21% (102.4m²)</td> <td>No</td> </tr> </tbody> </table>	Site Area:	Existing	Complies	Proposed	Complies	482.7m²					Site Coverage (50% max)	51.68% (249.5m ²)	No	56.68% (273.6m ²)	No	Landscaped area (30% min)	14.54% (70.2m ²)	No	22.1% (106.7m ²)	No	Unbuilt-upon area (20% max)	33.76% (163m ²)	No	21.21% (102.4m ²)	No
Site Area:	Existing	Complies	Proposed	Complies																							
482.7m²																											
Site Coverage (50% max)	51.68% (249.5m ²)	No	56.68% (273.6m ²)	No																							
Landscaped area (30% min)	14.54% (70.2m ²)	No	22.1% (106.7m ²)	No																							
Unbuilt-upon area (20% max)	33.76% (163m ²)	No	21.21% (102.4m ²)	No																							
<p>Safety and Security</p>	<p>Yes</p>	<p>Safety and security would not be compromised as a result of the subject development application. The proposal maintains a high level of security and natural surveillance of the subject site to and from the street.</p>																									
<p>Vehicle Access and Car parking</p>	<p>No</p>	<p>The proposed double garage structure dominates the street frontage of the site, serving to further obscure the landscaped context of the site, the streetscape, and results in the loss of significant natural sandstone outcrops. The width and depth of the proposed parking also appear to have the potential to accommodate 4-6 cars in a tandem format, which would be in excess of the maximum number of two parking spaces permitted for single dwellings of three or more bedrooms, as specified within Section 10 (Car Parking and Transport), sub Section 10.2 of Part B in NSDCP 2013. The proposal, however, is unlikely to result in the loss of on-street parking. Should this application be further considered, a Construction and Traffic Management Plan should be required.</p>																									

Landscaping and front gardens	No	See the comments provided by Council’s Landscape Development Officer earlier in this report, where the proposal was not supported due to its adverse impact upon nearby significant trees, the loss of landscaping and landscaped context within a bushland buffer zone, and the removal of significant sandstone outcrops. As a consequence, the proposed landscaping is considered to be insufficient to mitigate the loss of landscaping and natural features, and impact upon significant trees represented by the proposed works, and will adversely affect the streetscape presentation of the site.
Private and Communal Open Space	Yes	The proposal maintains a substantial area of private open space.
Garbage Storage	Yes	A garbage storage area is proposed within the garage level with easy access to the street.
1.6 Efficient use of resources		
Energy efficiency	Yes	A valid BASIX Certificate has been lodged with this proposal. The new windows and doors are likely to increase the insulation and energy efficiency of the new dwelling compared to existing.
Stormwater management	Yes	Council’s Development Engineer has raised no objection to the proposed stormwater system subject to appropriate conditions.

Cammeray Planning Area (Cammeray Neighbourhood)

Consideration has been given to the Character Statement for the Cammeray Planning Area in Part C of NSDCP 2013, including Section 4.2 (Cammeray Neighbourhood) where this site is located. The proposal does not accord with the “Quality Built Form” criteria of the Cammeray Planning Area in that “any development that occurs, reflects and reinforces the existing distinctive built form/landscape areas and distribution of accommodation types”, as well as character statement of the Cammeray Neighbourhood: s4.2.1 (Significant Elements) – P4 *Natural vegetation and landforms, including shoreline with rock outcrops and native vegetation*; s4.2.2 (Desired Built Form – Form, scale and massing) – P5 *Buildings on sloping land should be designed to follow the slope of the land, with minimum cut and fill to be undertaken*.

As stated previously in this report, the proposed replacement dwelling is not considered to reflect and/or reinforce the existing built form character and landscaped context of the Cammeray Neighbourhood, particularly given its excessive bulk and scale, excavation, and removal of natural sandstone features.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The proposal involves development where the cost of works is more than \$100,000, and consequently is classified under the North Sydney Local Infrastructure Contributions Plan 2020 as a ‘Type (c) development’ that triggers a Section 7.12 contribution. However, the proposal is recommended for refusal and no conditions are recommended in this report.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

ENVIRONMENTAL APPRAISAL	CONSIDERED
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	Yes
5. Traffic generation and Carparking provision	Yes
6. Loading and Servicing facilities	N/A
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	Yes
9. All relevant S4.15 considerations of <i>Environmental Planning and Assessment (Amendment) Act 1979</i>	Yes

SUITABILITY OF THE SITE (Section 4.15 of the EPAA 1979)

The proposal involves residential development in a residential zone, so the proposal is considered to be suitable for the subject site.

SUBMISSIONS (Section 4.15 of the EPA&A 1979)

The subject application was notified to adjoining properties and the Bay Precinct Committee seeking comment. Twelve (12) unique submissions were received by Council raising concerns regarding the proposal. The issues raised in the submissions are summarised below and addressed with planning comments:

- ***The proposal exceeds the building height by a full floor and results in excessive bulk and scale.***
- ***The excessive bulk and scale will dominate the streetscape, blocking buildings and trees, and dwarfing neighbouring homes.***
- ***The flat roof is out of character with the area and emphasises the excessive bulk and scale.***

Refer to the discussion regarding bulk and scale, and visual impacts of the development in pages elsewhere in this report, where it was found that the proposal would result in significant adverse visual and amenity impacts upon the surrounding neighbourhood and in particular for adjoining properties, and that the application is recommended for refusal.

- ***The proposed involves excessive excavation and does not conform with or reflect the natural slope of the site.***
- ***Concern regarding the provision of landscaping across the site, the protection of significant trees on adjoining sites, and sandstone outcrops.***

Refer to the discussion regarding landscaping, excavation, and topography elsewhere in this report, where it was found that the proposal would result in an excessive amount of excavation that is not compliant with Council's controls and will create adverse impacts to the streetscape, landscaped context, and the natural features of the site, and that the application is recommended for refusal.

- ***The significant increased height and bulk of the building will result in unreasonable overshadowing impacts.***
- ***The proposal will have an adverse impact upon views and outlook to the north.***

Refer to the discussion earlier in this report, where the overshadowing and view loss impacts were considered to be generally acceptable. However it is also noted that a more compliant scheme is likely to significantly reduce the impacts upon adjoining sites.

- ***The proposal had made no analysis or provision of traffic impacts.***
- ***The proposal includes an excessive amount of on-site parking.***

Refer to the discussion earlier in this report, where it was considered that the on street-traffic impacts are unlikely to create unreasonable issues and should an approval be considered by the panel, a Construction and Traffic Management Plan should be a consent requirement. It is also noted that the size of the garage area indicates a level of parking that is not compliant with Council's maximum parking rate of 2 spaces for this site.

- ***The dividing fence between 19-21 Cowdroy Avenue is to be retained.***

The matter of dividing fences is a civil matter under the *Dividing Fences Act 1991*, and is not a matter for Council.

PUBLIC INTEREST (Section 4.15 of the EPA&A 1979)

The proposal, in its current form, would unreasonably impact upon the area's character and landscaped context, the streetscape, and the amenity of adjoining properties. It is considered that the proposal is not in the public interest for the reasons provided throughout this report.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION

The subject application was notified to surrounding properties and the Bay Precinct Committee seeking comment and 12 submissions were received raising various objections. It is considered that the proposal would likely result in adverse impacts upon the built form character of the immediate neighbourhood, streetscape, and landscaped context of the site, and will create and excessive bulk and scale that is likely to impact upon the amenity of adjoining and nearby properties. Consequently, the proposal is recommended for refusal.

CONCLUSION AND REASONS

The development application has been assessed against the relevant planning instruments and policies, in particular the *North Sydney Local Environmental Plan 2013* and the *North Sydney Development Control Plan 2013*, and generally found to be unsatisfactory.

As the proposal involves the construction of a new dwelling with a maximum height of 10.94m that is in exceedance of the maximum permitted height limit by 2.44m (28.7%), the applicant has submitted a written request seeking a variation to the building height development standard in accordance with Clause 4.6 of *NSLEP 2013*. The applicant's submission has been considered with reference to the Land and Environment Court's decision in *Wehbe v Pittwater Council [2007] NSWLEC 827* in order to justify the proposed variation. The applicant's Clause 4.6 is considered to be unsatisfactory given the site circumstances and on the basis that it will have a significant impacts upon the amenity of adjoining properties and the character, landscaped context, and topography of the site.

The proposed dwelling is inconsistent with the character and scale of adjoining and nearby properties, with a built form of 4-5 storeys from the street, particularly along Cowdroy Avenue, where it will be highly visible and will present significant additional bulk and scale, exacerbated by the non-compliances in building height, setbacks, and the additional footprint of the dwelling overall with non-compliances in site coverage, landscaped area, and unbuilt-upon area. The significant additional bulk and scale, particularly above the height limit, are also likely to contribute to additional overshadowing and block existing views/outlooks that will impact upon the amenity of neighbouring properties.

The proposed excavation to accommodate the new development is also considered to be excessive, creating two floor levels that are up to 5.1 metres below existing ground level, and requiring significant excavation that will likely impact upon nearby significant trees, and the regrading/excavation within the front setback to the street that will require the loss of the significant natural sandstone outcrops.

The proposed development would have an unacceptable impact upon the landscaped context of the site that is located within a C4 Environment Living Zone, and a bushland buffer zone, including the loss of landscaped areas, and impacts arising from excavation upon nearby trees.

Having regard to the provisions of Section 4.15 of the *EP&A Act 1979* the application is considered to be unsatisfactory and therefore is recommended for **refusal**.

RECOMMENDATION

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

THAT the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning, Industry, and Environment and invoke the provisions of Clause 4.6 in *NSLEP 2013* with regards to the non-compliance with Clause 4.3 and **refuse consent** to Development Application No. 38/23 for the demolition and construction of a single dwelling, on land at 21 Cowdroy Avenue, Cammeray, for the following reasons: -

1. The proposed development is inappropriate to its context and is incompatible with the built form and landscape character of the Cammeray Neighbourhood and the Cowdroy Avenue streetscape;

The proposed development is not appropriate to its context or compatible with the character of the Cammeray Neighbourhood, and Cowdroy Avenue by virtue of its excessive height, bulk and scale, its excessive building footprint and inadequate area for deep soil tree planting, its incongruous built form, and its failure to respond to the landscaped and topographical context of the site and adjoining properties.

Particulars:

- a) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the aims of *North Sydney Local Environmental Plan 2013 (NSLEP 2013)* as listed in Clauses 1.2 (2)(a), (2)(c)(i), (2)(b)(i), (2)(e)(i) in Part 1 of NSLEP 2013, and the Objectives of the C4 Environment Living zone, to ensure developments are appropriate and compatible to the context, and character of an area and that development does not adversely affect the amenity of neighbouring properties, or the ecological and aesthetic values of the area.
- b) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not comply with the maximum permitted height of buildings pursuant to clause 4.3 of the *North Sydney Local Environmental Plan 2013 (NSLEP 2013)*: The portion of the building that does not comply with the height control results in a loss of amenity to surrounding developments including unnecessary view loss and overshadowing. The height and scale of the development exceeds that of the surrounding development and the written request to justify the contravention has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary, or that there are sufficient environmental planning grounds to justify the variation.
- c) The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development fails to satisfy the development standard as listed in Clause 6.10 in Part 4 of *NSLEP 2013* to ensure that earthworks will not have a detrimental impact upon the environmental functions and processes, and natural vegetation of the land.
- d) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that the proposed development would have an adverse visual and amenity impact upon surrounding properties, the streetscape presentation of the site, and results in an over-scaled development that is unsympathetic to existing development and character within the street and surrounding area.

The proposed development therefore fails to satisfy the objectives and provisions within Section 1 (Residential Development) in Part B of the North Sydney Development Control Plan 2013 (NSDCP 2013). Specifically, Objectives O5, O6, O7, and O9 of Section 1.1.1 (General Objectives); Objective O1 and Provision P1 of Section 1.4.1 (Context); Objectives O1, O2, O3, and O4, and Provisions P2, P3, P4, and P5, of Section 1.4.6 (Setbacks); Objective O1 and Provision P1 of Section 1.4.7 (Form, massing & scale); Objective O1 of Section 1.4.8 (Built form character); Objective O4 and Provisions P1, P3, and P5 of Section 1.4.14 (Front Fences); Objectives O3 and O4 and Provisions P1, P10, P11 and P14 of Section 1.5.4 (Vehicular access and parking); and Objectives O1, O2, O3 and O4, and Provision P1 of Section 1.5.5 (Site coverage).

- e) The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development would have an unacceptable impact upon the landscaped context of the site that is located within a bushland buffer zone including the loss of natural sandstone outcrops, insufficient landscaped areas, and significant impacts arising from excavation upon adjoining site trees.

The proposed development therefore fails to satisfy the objectives and provisions within Section 1 (Residential Development), Section 15 (Bushland), and Section 16 (Tree and Vegetation Management) in Part B of the North Sydney Development Control Plan 2013 (NSDCP 2013). Specifically, Objective O5 of Section 1.1.1 (General Objectives); Objectives O1, O2, O3 and O4 and Provisions P1 and P2 of Section 1.3.1 (Topography); Objective O1 and Provision P1 of Section 1.3.2 (Properties in proximity to bushland); Objective O1 and Provisions P1, P3, P4, P8, and P10 of Section 1.5.6 (Landscaped Area); Objectives O1, O3, O4, and Provisions P1 P2, P3, P5, P6 and P7 of Section 1.5.7 (Landscaping); Objectives O1 and O2, and Provisions P2, P3, P5, and P6 of Section 1.5.8 (Front Gardens); Objective O5 of Section 15.1.1 (General Objectives); Objectives O1 and O2 of Section 15.2.1 (Siting and design); Objective O1 and Provision P3 of Section 15.3.3 (Indigenous Vegetation); and the Objectives O2, O3, O4 and O6 of Section 16.1.1 (General Objectives).

- f) The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposed the proposed development does not satisfy the Area Character Statement for the Cammeray Planning Area in Section 4 in Part C of NSDCP 2013 – The proposal will adversely and unreasonably impact upon the built form character of the Greens Drive neighbourhood and its context within the surrounding area and is contrary to the objective of development within the planning area that “*reflects and reinforces the existing distinctive built form/landscape areas and distribution of accommodation types*”.
- g) The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* in that the proposed development does not satisfy the Area Character Statement for the Cammeray Neighbourhood in Section 4.2 in Part C of NSDCP 2013, specifically section 4.2.1 (Significant Elements) Provision P4; and section 4.2.2 (Desired Built Form – Form, scale and massing), provision P5.

- h) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(ci) of the *Environmental Planning and Assessment Act 1979* in that the proposed development is an overdevelopment of the site which is not suitable for development of the proposed form.
- i) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(a)(e) of the *Environmental Planning and Assessment Act 1979* in that the proposed development will create undesirable precedent and the building proposes significant variations to numerical and merit-based controls and is therefore not in the public interest.

2. Unnecessary overshadowing to and view loss from neighbouring properties caused by an excessive bulk and scale;

The proposed development would result in unnecessary overshadowing and view loss for neighbours.

Particulars:

- a) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that the proposed development, although complying with the minimum 3 hours of solar access to neighbours requirement, still results in unnecessary overshadowing to adjoining neighbours by way of the proposal's excessive scale, bulk and height and is contrary to the Aims of NSLEP 2013, specifically (2)(c)(i); (Residential amenity); the Objectives of the C4 Environment Living zone, Objectives O5, O6 and O7 in Part B, section 1.1.1 in NSDCP 2013, and Objectives O2 and O4 and Provision P4 in Part B, section 1.4.6 in NSDCP 2013.
- b) The application is considered to be unacceptable pursuant to the provisions of s. 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* in that the proposed development, although retaining the majority of the views and outlooks of adjoining sites with only minor view impacts, a compliant scheme would minimise the view impacts and the proposal is therefore is contrary to the Aims of NSLEP 2013, specifically (2)(c)(i); (Residential amenity); the Objectives of the C4 Environment Living zone, specifically dot points 3 and 4; Objective O5 in Part B, section 1.1.1 in NSDCP 2013, and Objective O2 and Provisions P2 and P3 in Part B, section 1.3.6 (Views) in NSDCP 2013.

3. Insufficient and inadequate plans and supporting information;

The supporting information is inadequate.

Particulars:

- a) The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979* in that the proposed development fails to meet the requirements outlined in Clauses 23 and 36 of the *Environmental Planning and Assessment Regulation 2021*. This includes the necessary additional information to properly consider the development application with regards to the inconsistency between documentation. The Statement of Environmental Effects suggests that the existing driveway layback/crossover is to be retained while the submitted plans indicate a new crossover within the structural root zone of the existing street tree (*Lagerstroemia indica*), which has the potential for additional impacts.
- b) The application is considered unacceptable pursuant to the provisions of s.4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979* in that the proposed development fails to meet the requirements outlined in Clauses 23 and 36 of the *Environmental Planning and Assessment Regulation 2021*. The submitted Shadow Diagrams are of limited utility in assessing the overall overshadowing upon adjoining properties, including the shadows cast in relation to the openings and elevations of adjoining properties.

4. The amended development is not in the public interest given the above likely impacts.

Particulars:

- a) The application is considered unacceptable pursuant to the provisions of s.4.15(1)(d) & (e) of the *Environmental Planning and Assessment Act 1979* in that the above matters were raised in the twelve (12) submissions from nearby residents. The proposal is, therefore, not considered to be in the public interest or suitable for the site.

ANDREW BEVERIDGE
ASSESSMENT OFFICER

ISOBELLA LUCIC
TEAM LEADER ASSESSMENTS

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES



NOMINATED ARCHITECT: TONY LEUNG NSW 7133

21 COWDROY AVENUE, CAMMERAY

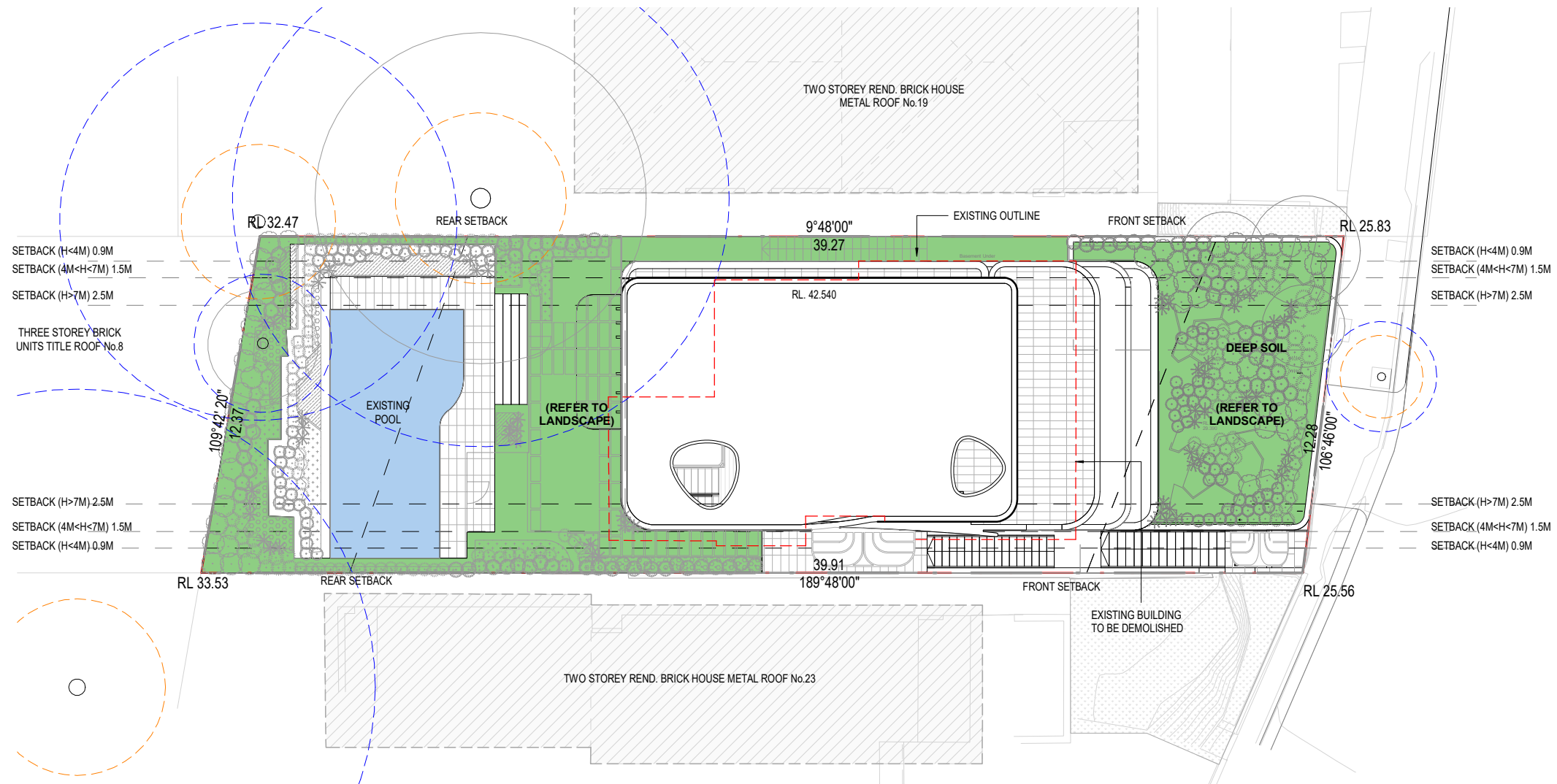
DEVELOPMENT APPLICATION

DEVELOPMENT SUMMARY

DEVELOPMENT SUMMARY		
Site Area	482.7	(to survey)
Zoning	E4 - Environmental Living	
Allowable FSR	n/a	
Heritage	n/a	
Minimum Lot size	450 m ²	

	Area		Percentage	Req. in %
Site Coverage	227.46	sqm	47%	50 (max)
Landscape Area	165.61	sqm	34.31%	30 (min)
Un-Built upon area	95.82	sqm	19.85%	20 (max)

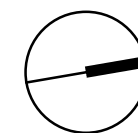
DRAWING NO.	DRAWING NAME
DA 000	COVER SHEET
DA 101	Development Summary
DA 102	Site Plan / Roof Plan
DA 105	Demolition Plan
	FLOOR PLANS
DA 201	Proposed Basement Plan
DA 202	Proposed Lower Ground Plan
DA 203	Proposed Ground Floor Plan
DA 204	Proposed Level 1 Plan
DA 205	Proposed Level 2 Plan
DA 206	Roof Plan
	ELEVATIONS
DA 301	North Elevation
DA 302	South Elevation
DA 303	East Elevation
DA 304	West Elevation
	SECTIONS
DA 401	Section A-A
DA 402	Section B-B
DA 402	Section C-C
	SCHEDULE OF MATERIALS & FINISHES
DA 501	Materials & Finishes - North Elevation
DA 502	Materials & Finishes - East Elevation
DA 503	Materials & Finishes - South Elevation
DA 504	Materials & Finishes - West Elevation
	SOLAR STUDIES
DA 601	21 June at 9am - 12pm - 3pm
	ARTIST IMPRESSION
DA 701	Artist Impression 1
DA 702	Artist Impression 2

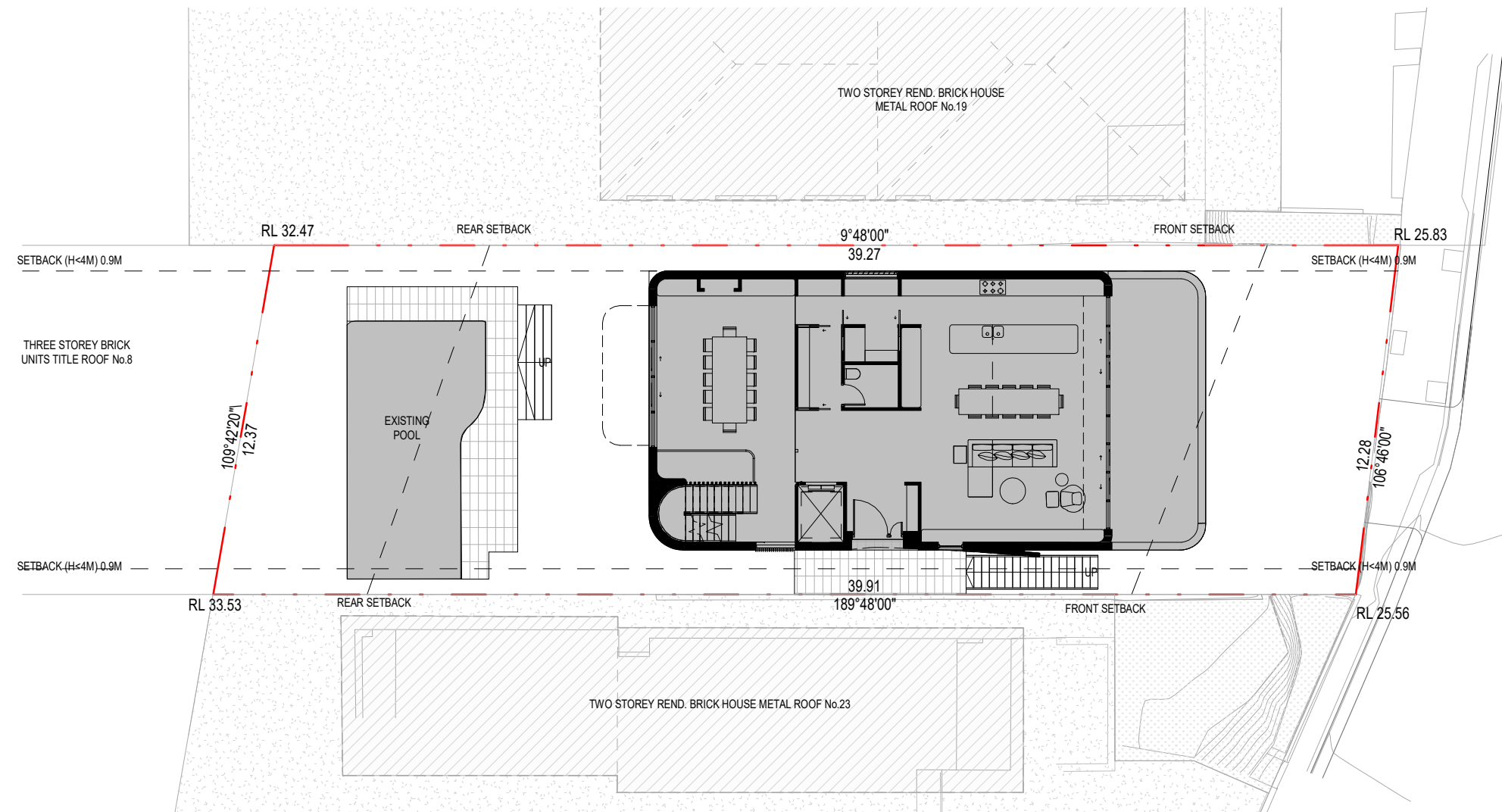


LEGEND:

- - - - - EXISTING BUILDING OUTLINE
- - - - - STRUCTURE ROOT ZONE
- - - - - TREE PROTECTION ZONE

Rev	Description	Date
A	Development Application	16/12/2022





SITE COVERAGE (DEFINITION IN NORTH SYDNEY COUNCIL DCP PART B 1.5.5)

- The following items are considered to constitute site coverage:
- (a) buildings as defined by the EP&A Act 1979;
 - (b) garages and carports;
 - (c) sheds;
 - (d) enclosed / covered balconies, decks, pergolas and the like;
 - (e) swimming pools, spa pools and the like;
 - (f) other structures including:
 - (i) permanent BBQ structures;
 - (ii) cabanas;
 - (iii) external staircases;
 - (iv) gazebos;
 - (v) greenhouse/glasshouse;
 - (vi) plant rooms;
 - (vii) rainwater tanks;
 - (viii) ramps;
 - (ix) garbage storage facilities.
- However, site coverage excludes:
- (g) any basement;
 - (h) any part of an awning that is outside the subject site;
 - (i) any eaves;
 - (j) unenclosed balconies, decks, pergolas and the like;
 - (k) paving and patios (porous and non-porous);
 - (l) driveways and car stand areas (porous and non-porous);
 - (m) water features; or
 - (n) anything else defined as landscaped area.

SITE AREA

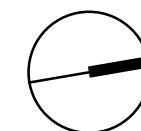
482.7m²

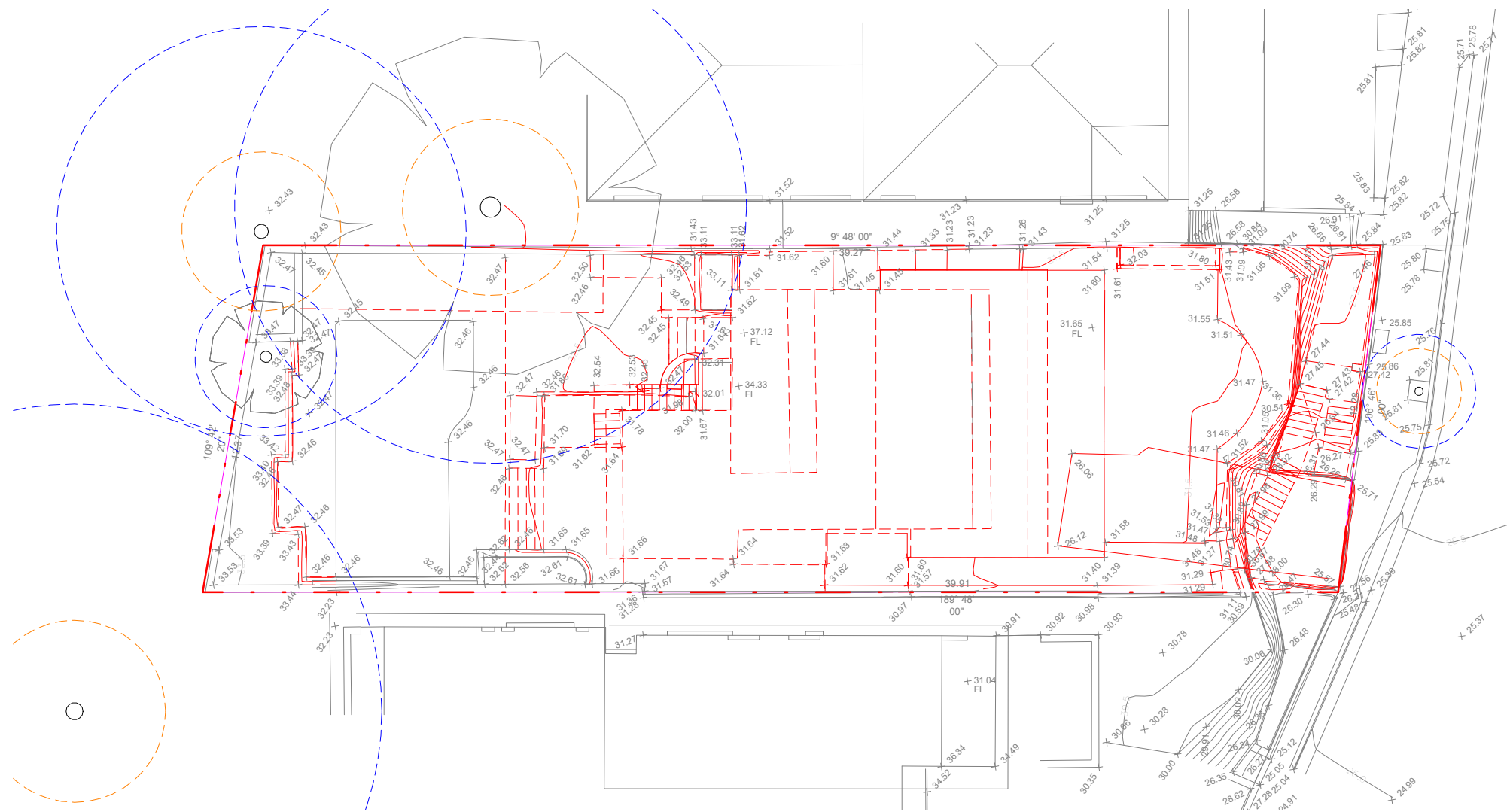
NORTH SYDNEY COUNCIL DCP (PART B 1.5.5) PERMISSIBLE SITE COVERAGE

Max 50% SITE (241.35m²)

PROPOSED SITE COVERAGE

227.46 m² (2.9% COMPLIED-OVER 13.89m²)





LEGEND:

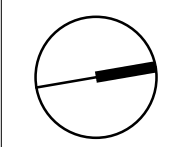
- - - - - TO BE DEMOLISHED
- TO RETAIN
- - - - - STRUCTURE ROOT ZONE
- - - - - TREE PROTECTION ZONE



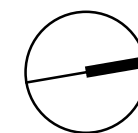
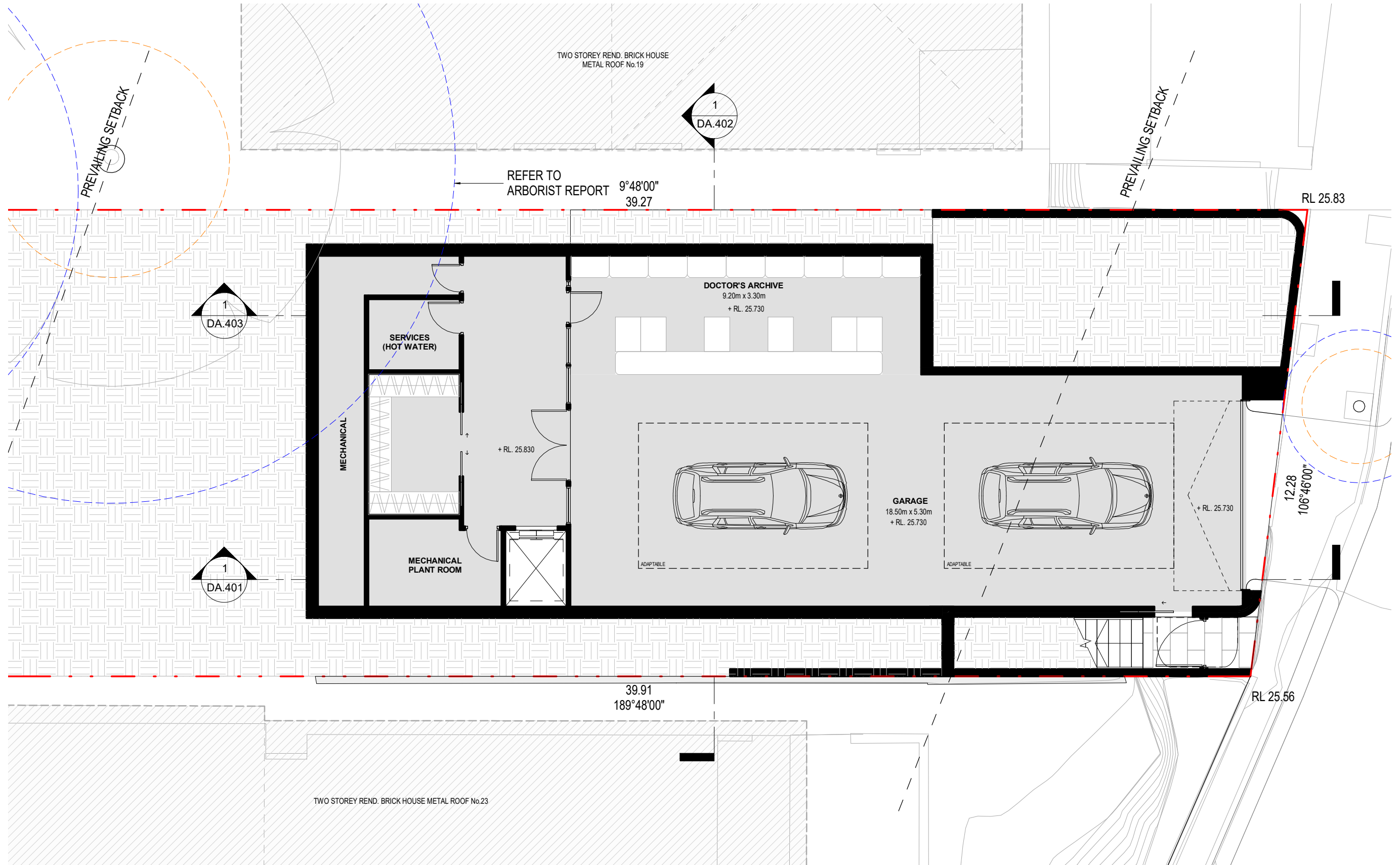
www.aplusedg.com.au
 PH: 1300 388 789
 LEVEL 3, 9 BARRACK STREET,
 SYDNEY, NSW 2000
 NOMINATED ARCHITECT TONY LEUNG NSW 7133

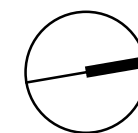
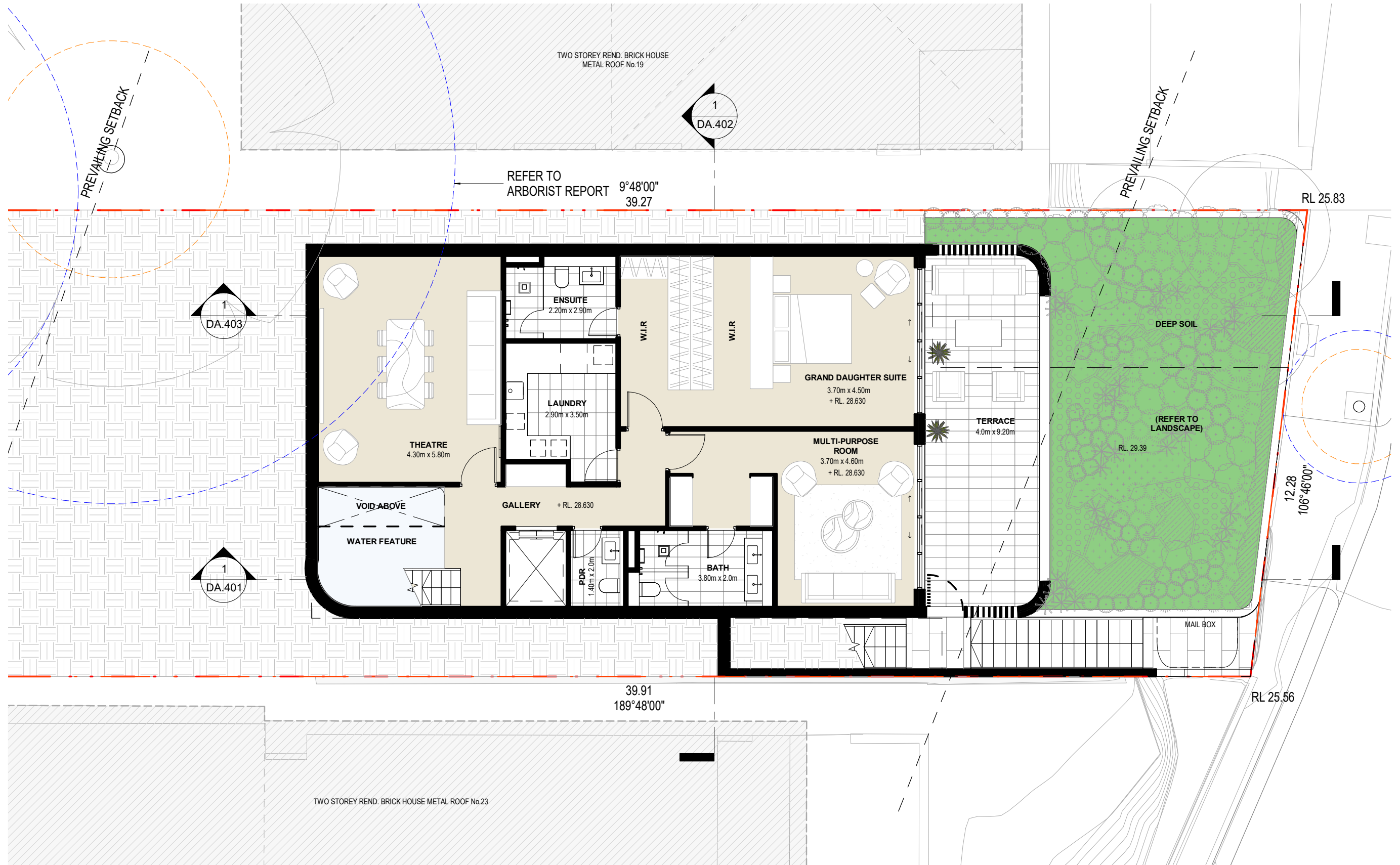
Rev	Description	Date
A	Development Application	16/12/2022

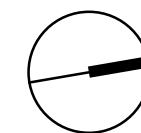
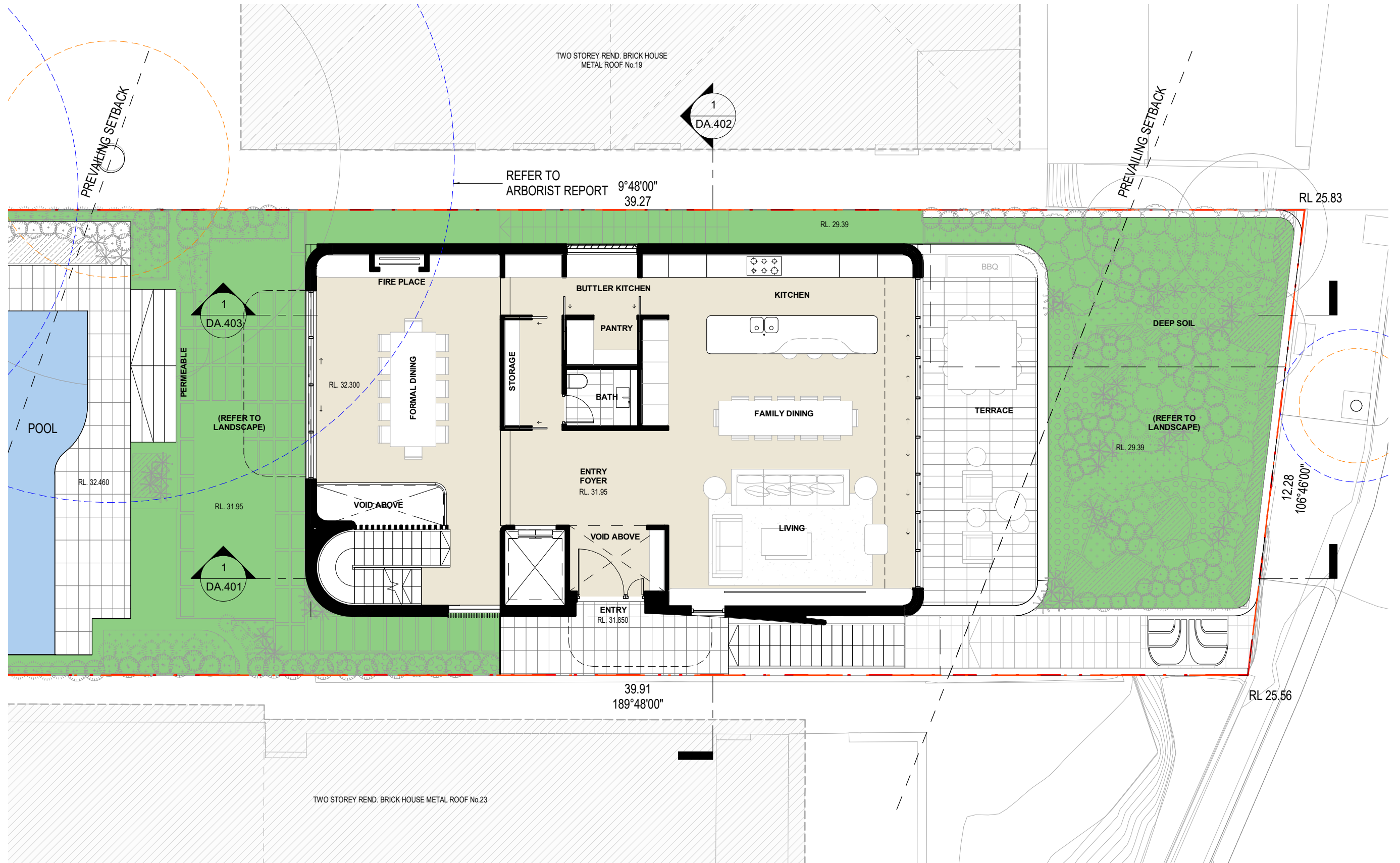
Project Name
a21040_21 Cowdroy Avenue, Cammeray

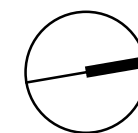
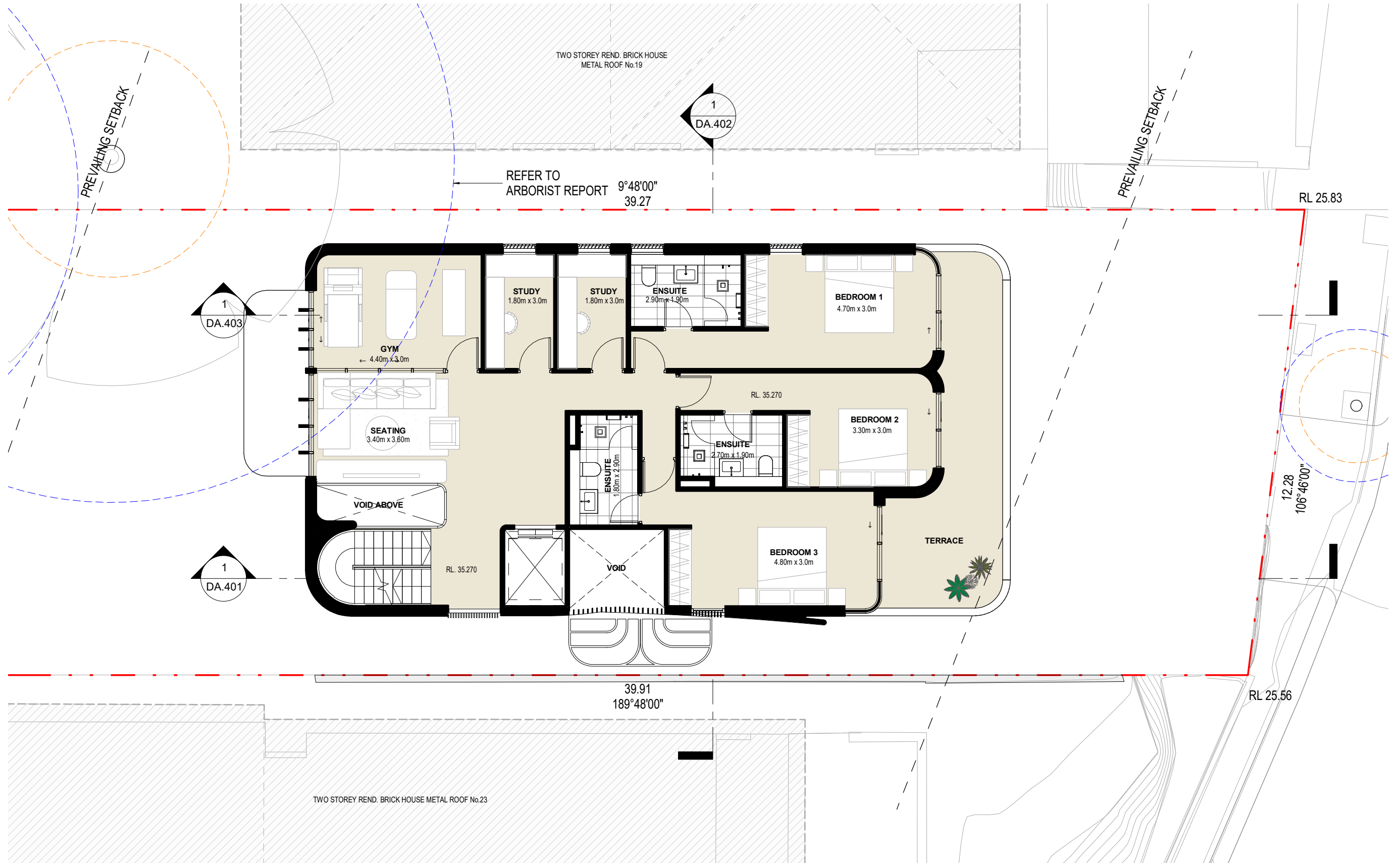


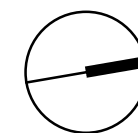
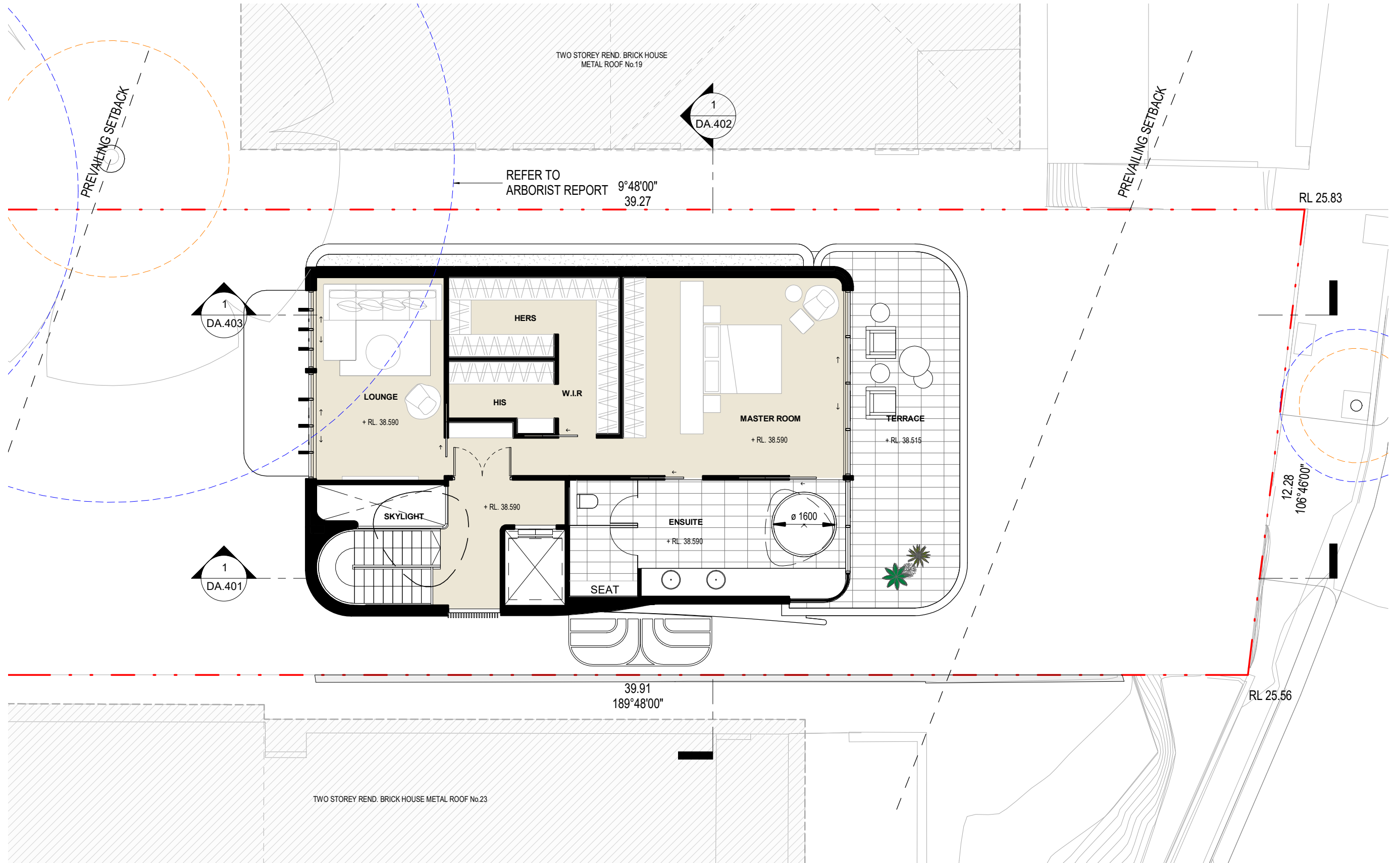
Drawing Title DEMOLITION PLAN		Project No. A21040
SCALE 0 2 4 8	1:200 @ A3	Drawing no: DA.103
ISSUE A		

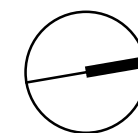
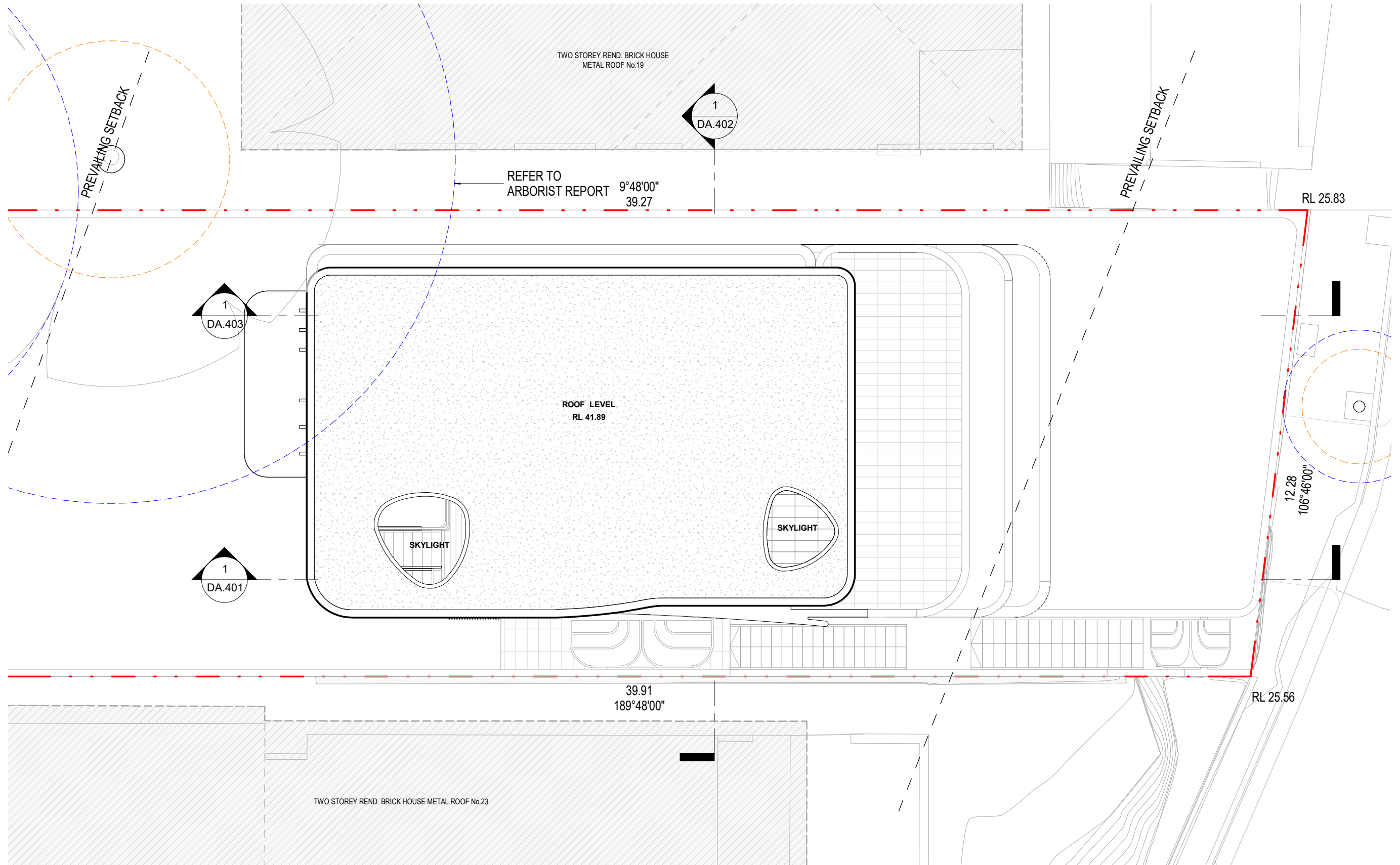







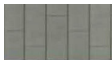














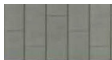









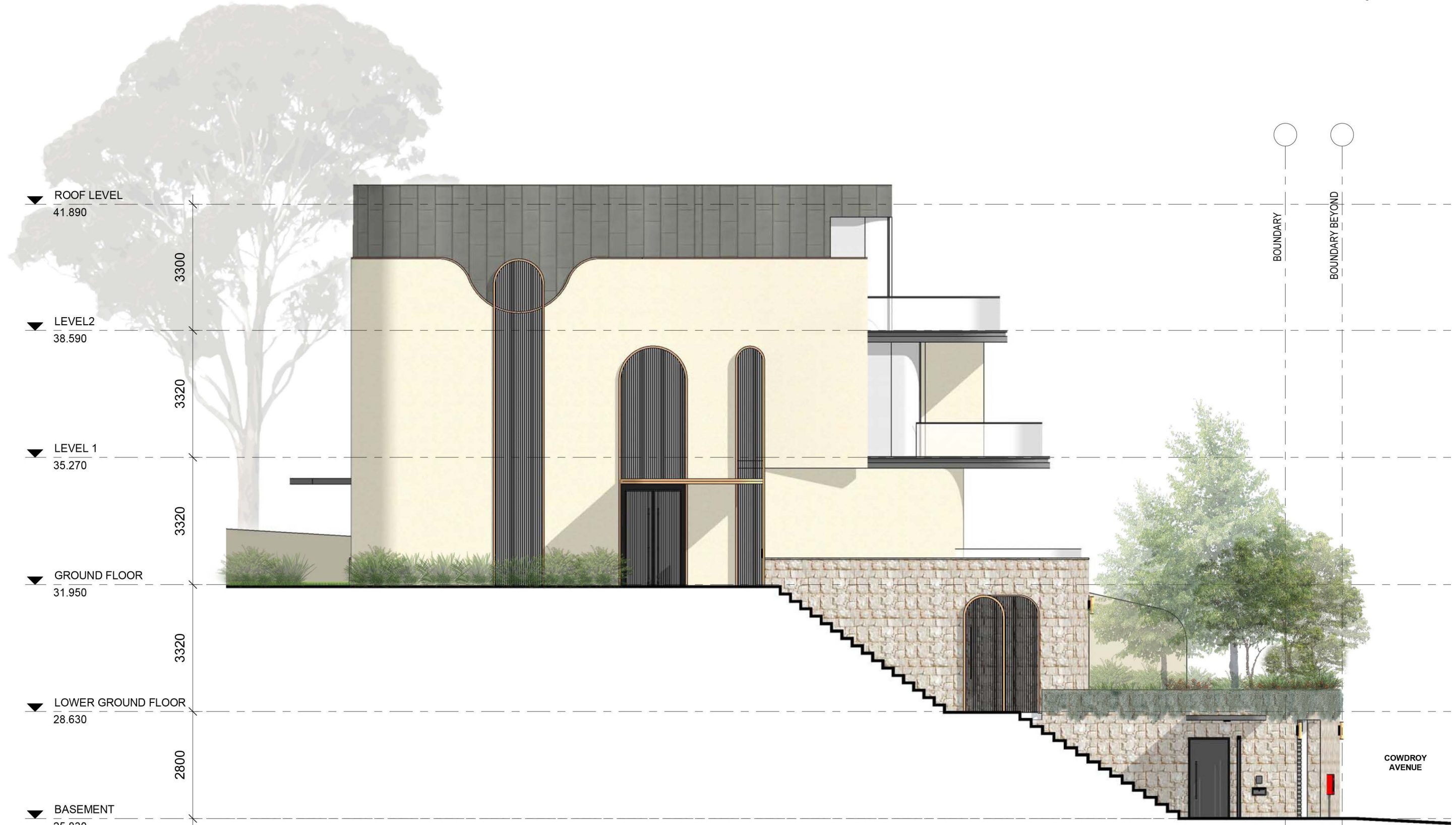
LEGEND

	SANDSTONE		INTERLOCKING METAL CLADDING		ALUMINUM FRAMING WINDOW DULUX		ROLL-UP DOOR		METAL FENCE
	RENDERED PAINT		POWDER COATED VERTICAL SUN LOUVER		COPPER SMOOTH PEARL LATINA CANOPY		FRAMELESS GLASS BALUSTRADE		


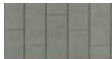









LEGEND

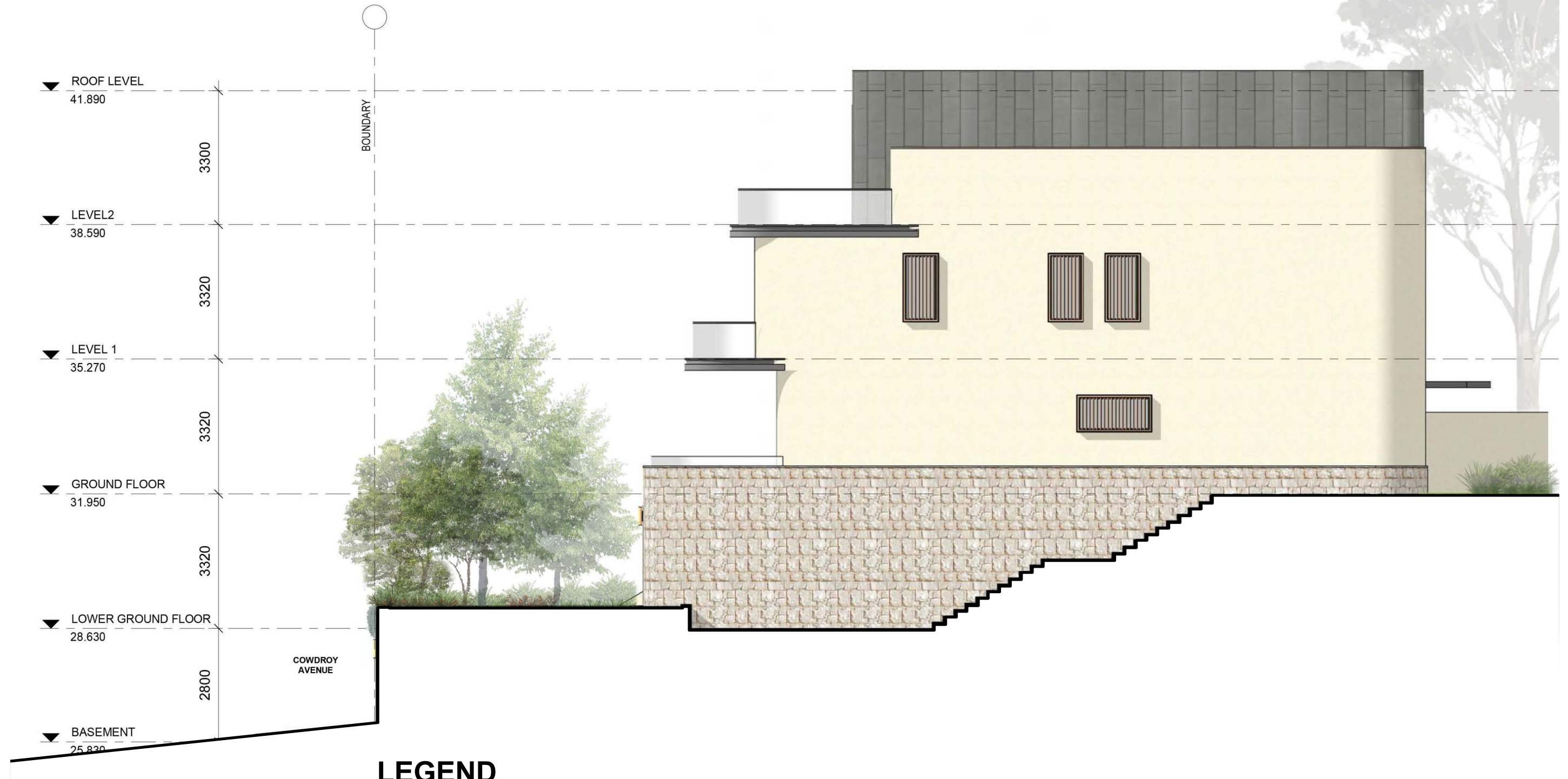
	SANDSTONE		INTERLOCKING METAL CLADDING		ALUMINUM FRAMING WINDOW DULUX		ROLL-UP DOOR		METAL FENCE
	RENDERED PAINT		POWDER COATED VERTICAL SUN LOUVER		COPPER SMOOTH PEARL LATINA CANOPY		FRAMELESS GLASS BALUSTRADE		



LEGEND

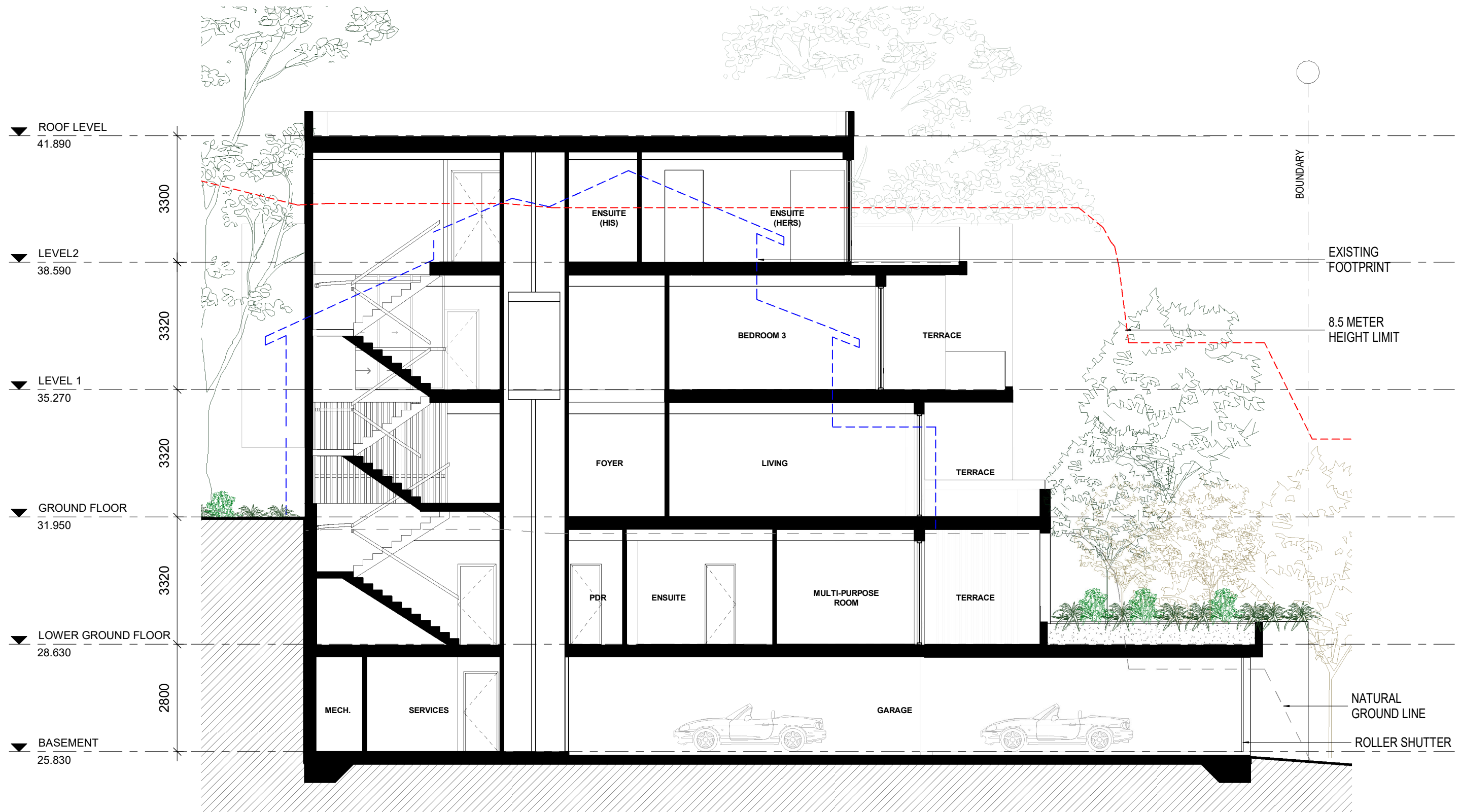
-  SANDSTONE
-  INTERLOCKING METAL CLADDING
-  ALUMINUM FRAMING WINDOW DULUX
-  ROLL-UP DOOR
-  METAL FENCE
-  RENDERED PAINT
-  POWDER COATED VERTICAL SUN LOUVER
-  COPPER SMOOTH PEARL LATINA CANOPY
-  FRAMELESS GLASS BALUSTRADE

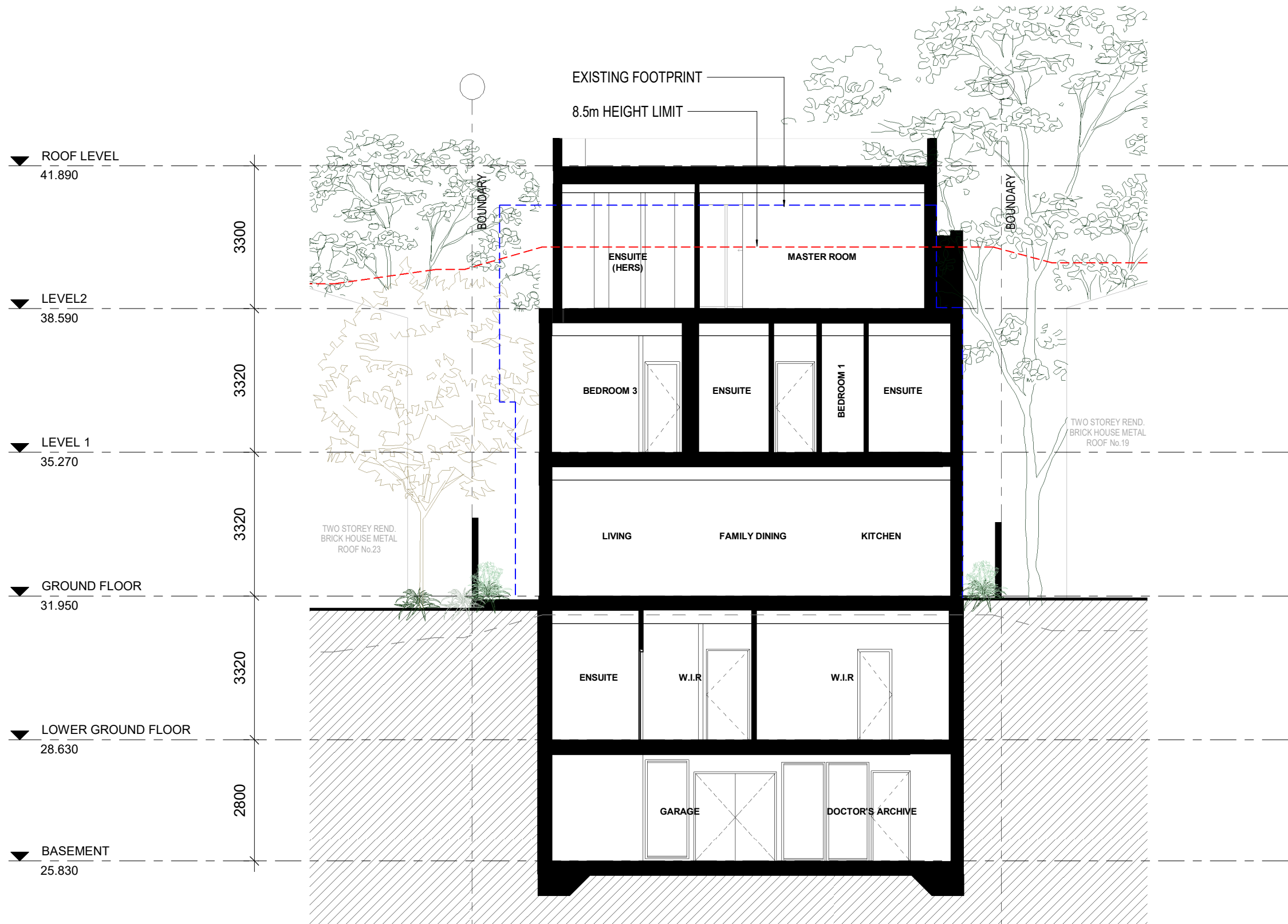
Rev	Description	Date
A	Development Application	16/12/2022

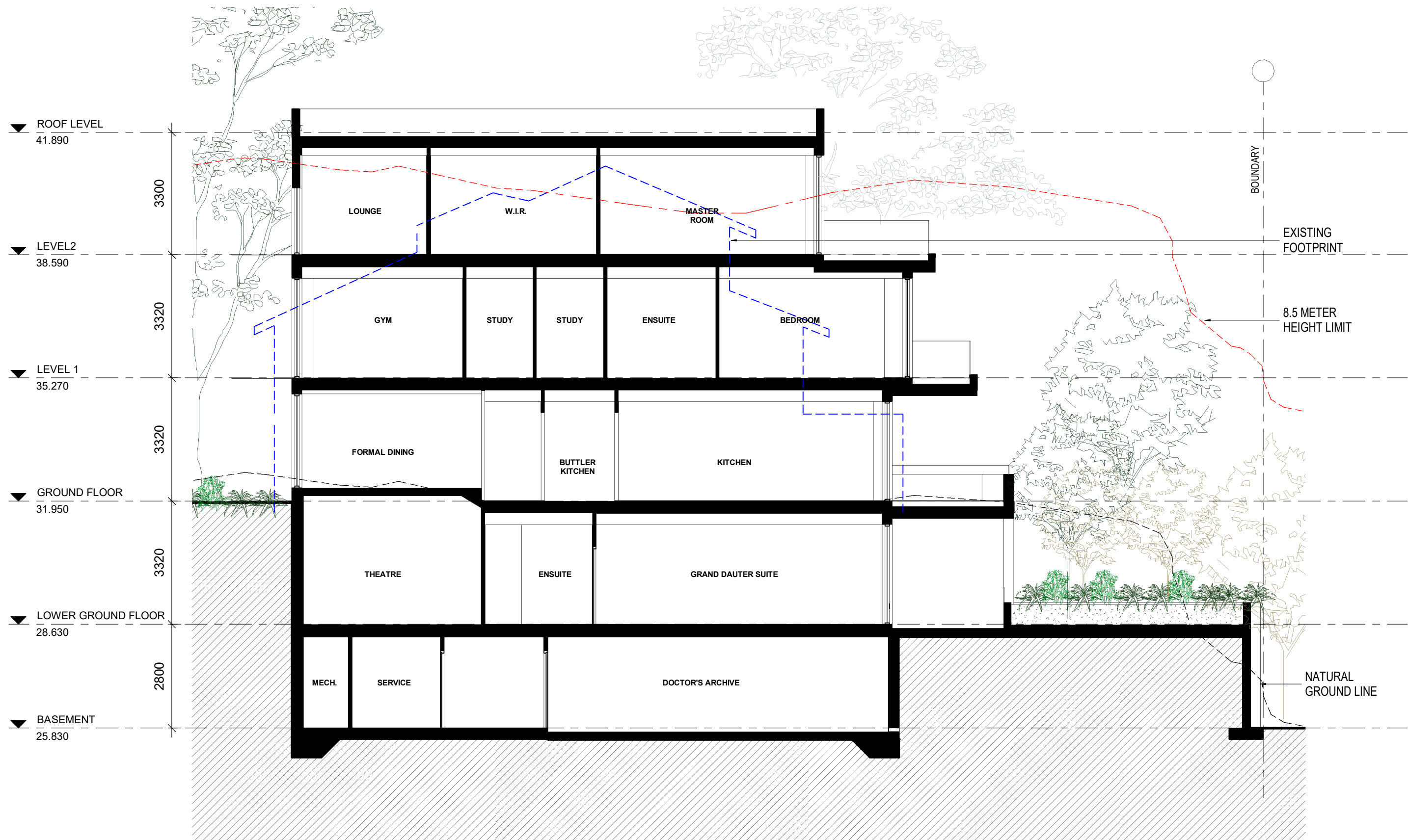


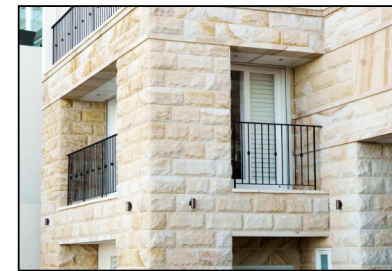
LEGEND

	SANDSTONE		INTERLOCKING METAL CLADDING		ALUMINUM FRAMING WINDOW DULUX		ROLL-UP DOOR		METAL FENCE
	RENDERED PAINT		POWDER COATED VERTICAL SUN LOUVER		COPPER SMOOTH PEARL LATINA CANOPY		FRAMELESS GLASS BALUSTRADE		

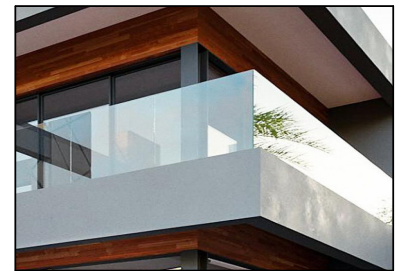








SC SANDSTONE CLADDING



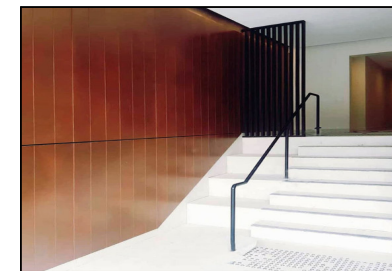
GB FRAMELESS GLASS BALUSTRADE



WF ALUMINUM WINDOW FRAMING DULUX



MC INTERLOCKING METAL CLADDING



CO COPPER SMOOTH PEARL LATINA

MF METAL FENCE



P1 RENDERED & PAINTED DULUX ECRU HALF

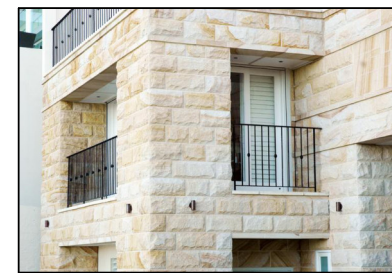
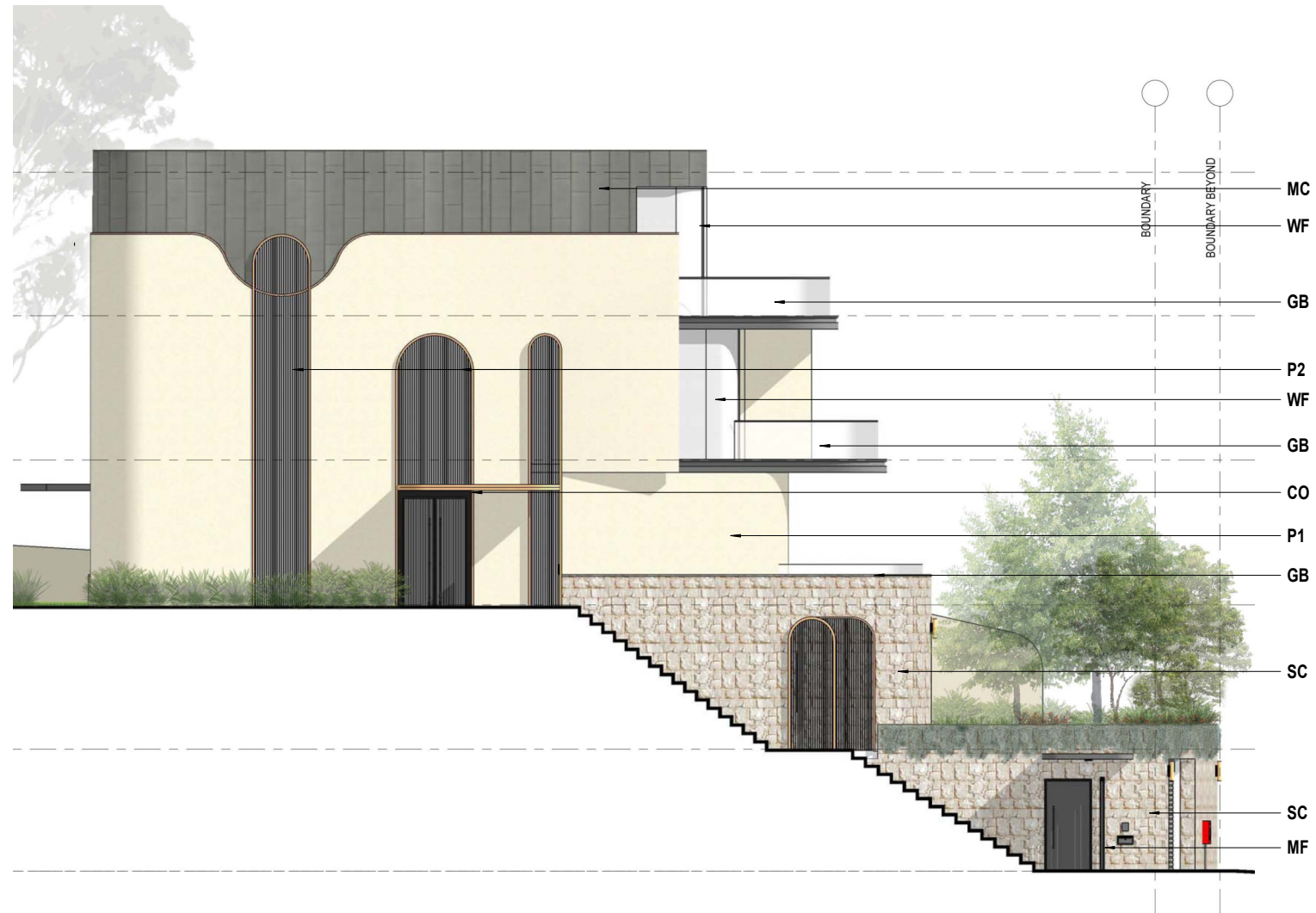


P2 DULUX MONUMENT POWDERCOATED FINISH

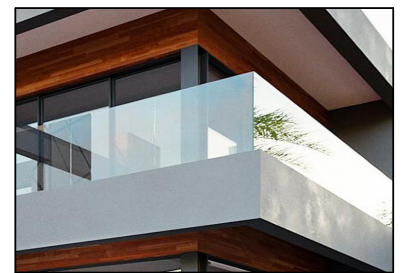


MONUMENT | YL264A

NOTE: ALL SELECTIONS ARE TO FUTURE CONSTRUCTION STAGE OR APPROVED SIMILAR



SC SANDSTONE CLADDING



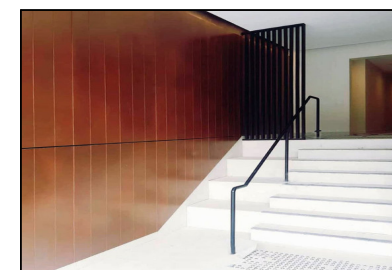
GB FRAMELESS GLASS BALUSTRADE



WF ALUMINUM WINDOW FRAMING DULUX



MC INTERLOCKING METAL CLADDING

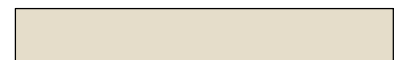


CO COPPER SMOOTH PEARL LATINA

MF METAL FENCE



P1 RENDERED & PAINTED DULUX ECRU HALF

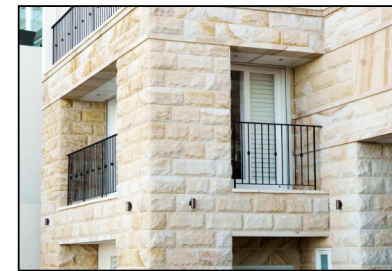


P2 DULUX MONUMENT POWDERCOATED FINISH

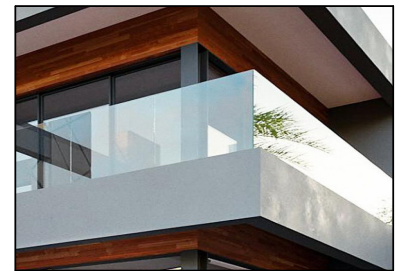


MONUMENT | YL264A

NOTE: ALL SELECTIONS ARE TO FUTURE CONSTRUCTION STAGE OR APPROVED SIMILAR



SC SANDSTONE CLADDING



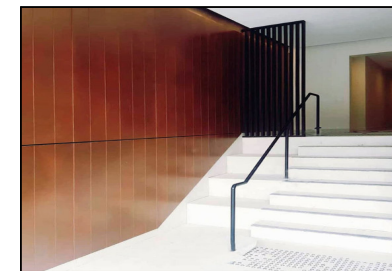
GB FRAMELESS GLASS BALUSTRADE



WF ALUMINUM WINDOW FRAMING DULUX



MC INTERLOCKING METAL CLADDING



CO COPPER SMOOTH PEARL LATINA

MF METAL FENCE



P1 RENDERED & PAINTED DULUX ECRU HALF

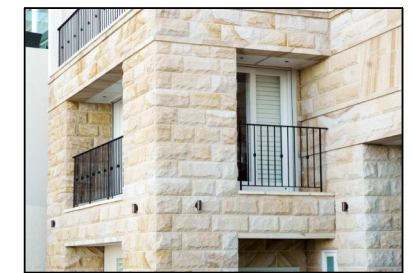
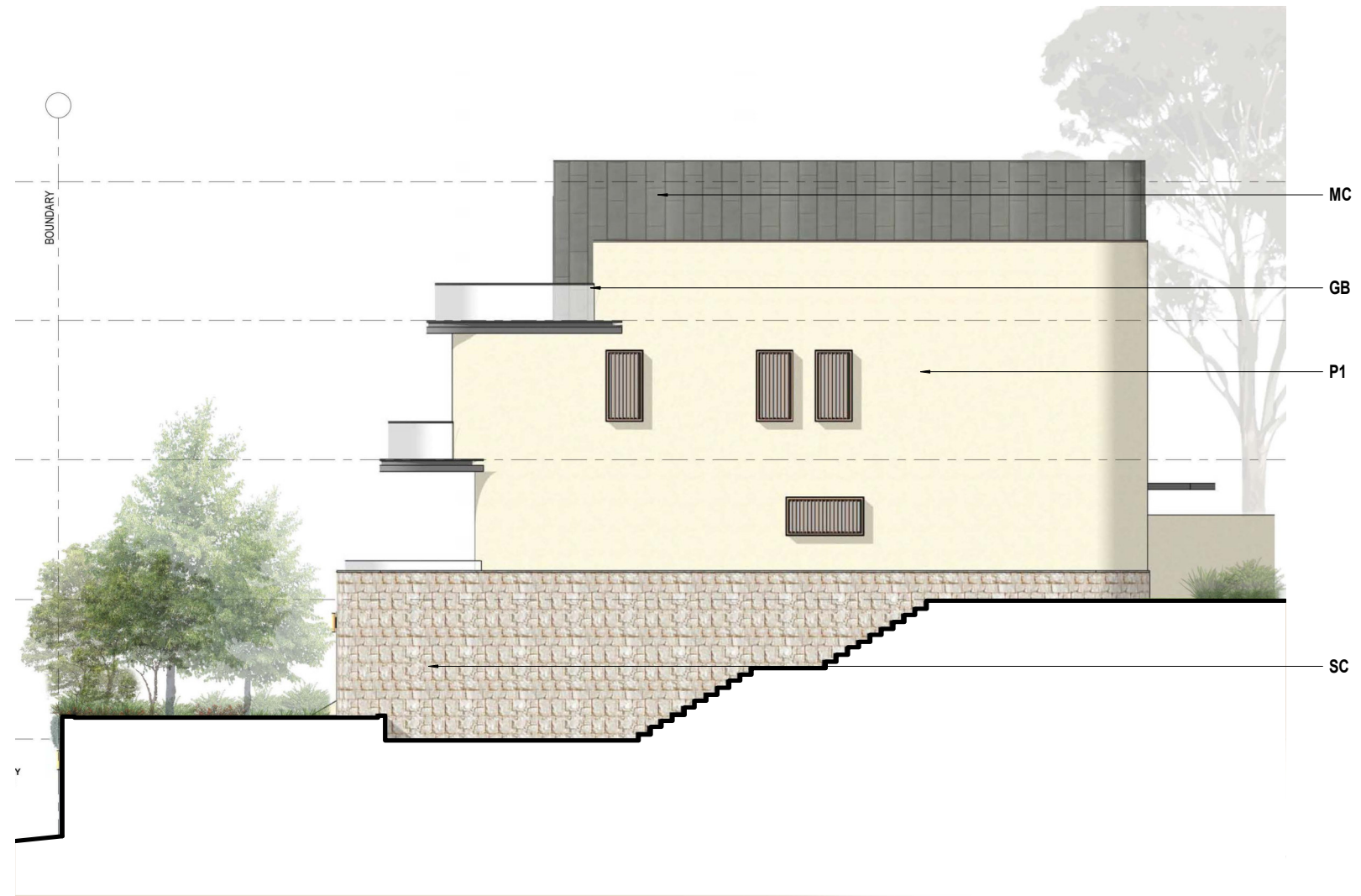


P2 DULUX MONUMENT POWDERCOATED FINISH

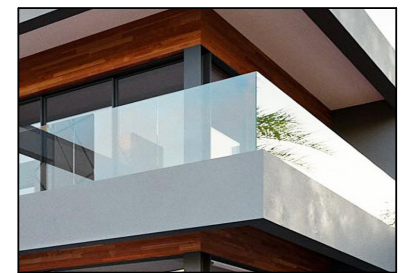


MONUMENT | YL264A

NOTE: ALL SELECTIONS ARE TO FUTURE CONSTRUCTION STAGE OR APPROVED SIMILAR



SC SANDSTONE CLADDING



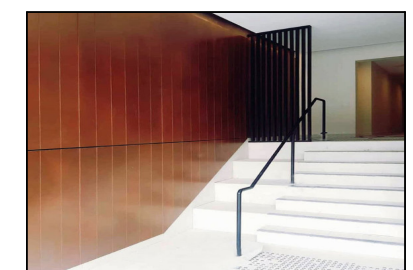
GB FRAMELESS GLASS BALUSTRADE



WF ALUMINUM WINDOW FRAMING DULUX



MC INTERLOCKING METAL CLADDING

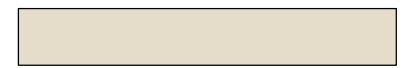


CO COPPER SMOOTH PEARL LATINA

MF METAL FENCE



P1 RENDERED & PAINTED DULUX ECRU HALF



P2 DULUX MONUMENT POWDERCOATED FINISH



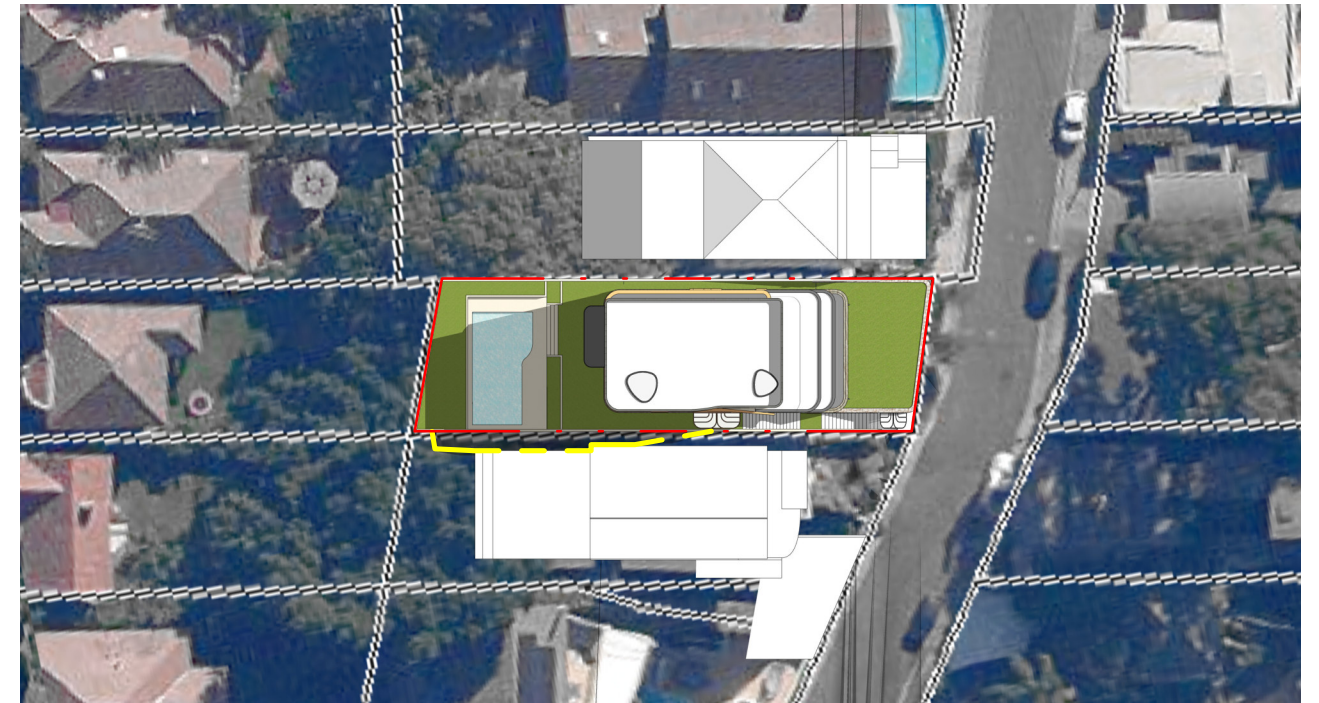
MONUMENT | YL264A

NOTE: ALL SELECTIONS ARE TO FUTURE CONSTRUCTION STAGE OR APPROVED SIMILAR

Rev	Description	Date
A	Development Application	16/12/2022



JUNE 21ST - 9AM



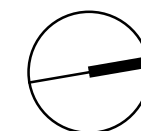
JUNE 21ST - 12PM



JUNE 21ST - 3PM

LEGEND:

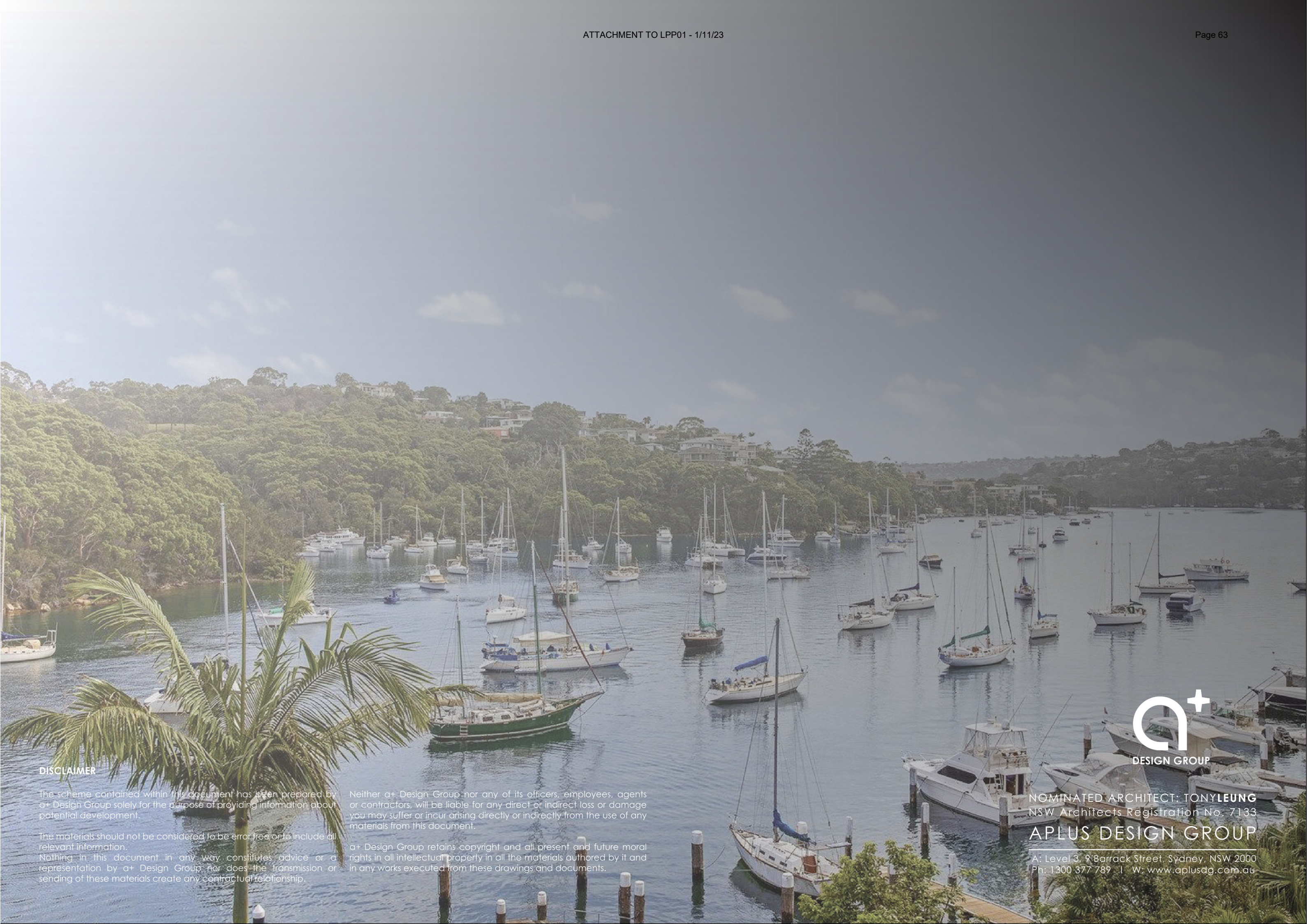
--- SHADOW OUTLINE







Rev	Description	Date
A	Development Application	16/12/2022



DISCLAIMER

The scheme contained within this document has been prepared by a+ Design Group solely for the purpose of providing information about potential development.

The materials should not be considered to be error free or to include all relevant information.

Nothing in this document in any way constitutes advice or a representation by a+ Design Group nor does the transmission or sending of these materials create any contractual relationship.

Neither a+ Design Group nor any of its officers, employees, agents or contractors, will be liable for any direct or indirect loss or damage you may suffer or incur arising directly or indirectly from the use of any materials from this document.

a+ Design Group retains copyright and all present and future moral rights in all intellectual property in all the materials authored by it and in any works executed from these drawings and documents.



NOMINATED ARCHITECT: **TONY LEUNG**
NSW Architects Registration No. 7133

APLUS DESIGN GROUP

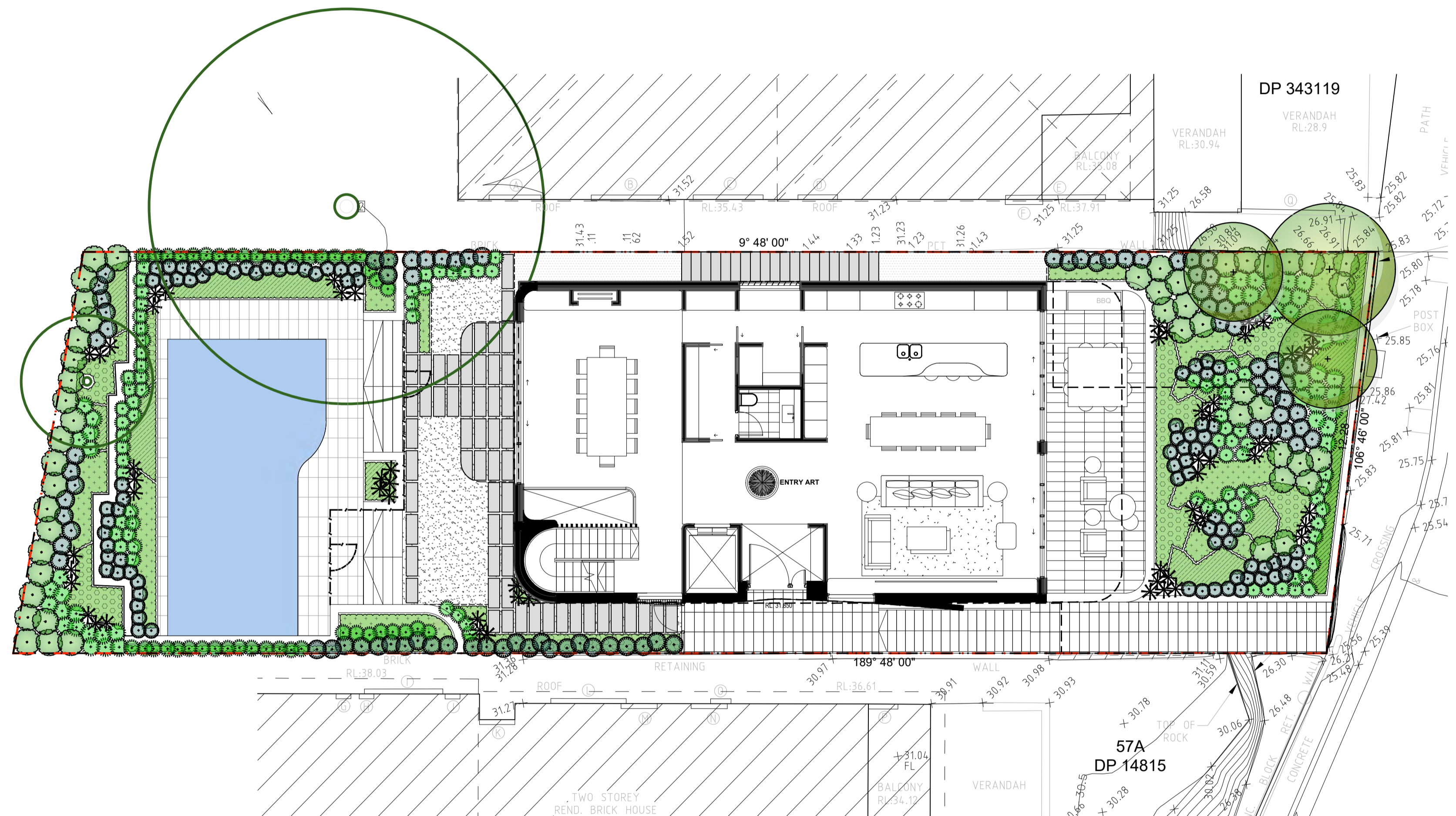
A: Level 3, 9 Barrack Street, Sydney, NSW 2000
Ph: 1300 377 789 | W: www.aplusdg.com.au

21 Cowdroy Avenue, Cammeray

Landscape Development Application

Drawing Schedule

Drawing Number	Drawing Title	Scale
000	Landscape Coversheet	N/A
001	Landscape Masterplan	1:75
100	Landscape Plan - Lower Ground Floor	1:50
101	Landscape Plan - Ground Floor	1:50
501	Landscape Details	As Shown



Site Plan | 1:100

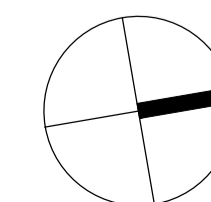
NOT FOR CONSTRUCTION

© 2021 Site Image (NSW) Pty Ltd. ABN 44 801 262 380 as agent for Site Image NSW Partnership. All rights reserved. This drawing is copyright and shall not be reproduced or copied in any form or by any means (graphic, electronic or mechanical including photocopying) without the written permission of Site Image (NSW) Pty Ltd. Any license, expressed or implied, to use this document for any purpose whatsoever is restricted to the terms of the written agreement between Site Image (NSW) Pty Ltd and the instructing party.

The contractor shall check and verify all work on site (including work by others) before commencing the landscape installation. Any discrepancies are to be reported to the Project Manager or Landscape Architect prior to commencing work. Do not scale this drawing. Any required dimensions not shown shall be referred to the Landscape Architect for confirmation.

A Preliminary Issue
Revision Description

RG NM 11.11.2022
Drawn Check Date



SITE IMAGE
Landscape Architects
Level 1, 3-5 Baptist Street
Redfern NSW 2016
Australia
Tel: (61 2) 8332 5600
Fax: (61 2) 9698 2877
www.siteimage.com.au

Client

Project

21 Cowdroy Avenue
Cammeray NSW

Drawing Name

Landscape Coversheet

Scale

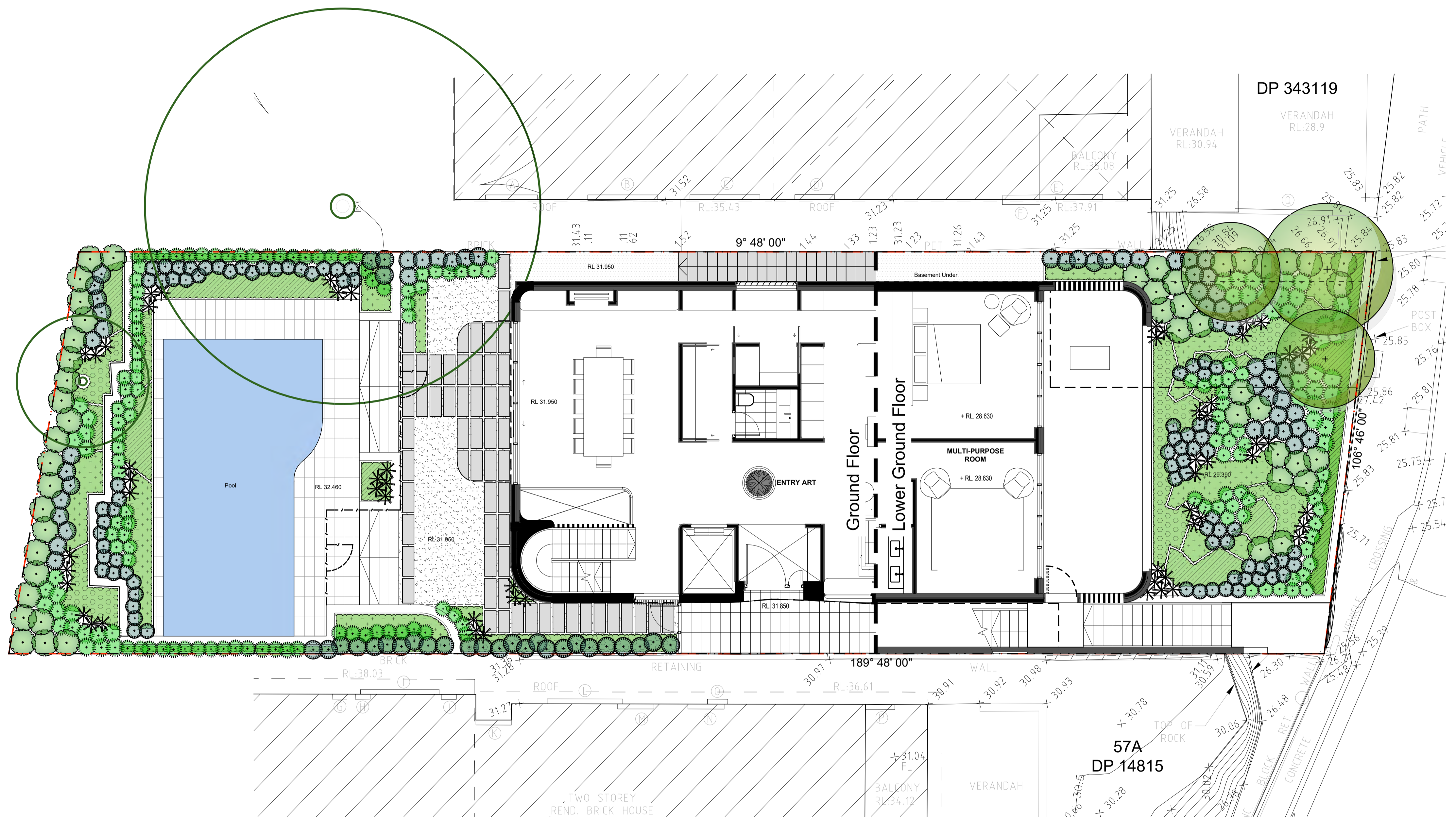
Job Number
SS22-5062

Development Application

Drawing Number

Issue

000 A

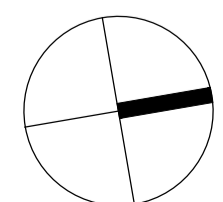


NOT FOR CONSTRUCTION

© 2021 Site Image (NSW) Pty Ltd. ABN 44 801 262 380 as agent for Site Image NSW Partnership. All rights reserved. This drawing is copyright and shall not be reproduced or copied in any form or by any means (graphic, electronic or mechanical including photocopying) without the written permission of Site Image (NSW) Pty Ltd. Any license, expressed or implied, to use this document for any purpose whatsoever is restricted to the terms of the written agreement between Site Image (NSW) Pty Ltd and the instructing party.

The contractor shall check and verify all work on site (including work by others) before commencing the landscape installation. Any discrepancies are to be reported to the Project Manager or Landscape Architect prior to commencing work. Do not scale this drawing. Any required dimensions not shown shall be referred to the Landscape Architect for confirmation.

- | | | | |
|---------------------------------------|--|--------------------|------------|
| Site Boundary | Grasses & Groundcovers
Refer Plant Schedule | Steppers | Steel Edge |
| Existing Tree to be Retained | Shrubs & Accents
Refer Plant Schedule | Decomposed Granite | |
| Proposed Tree
Refer Plant Schedule | Turf | Pool Fence | |



SITE IMAGE
Landscape Architects
Level 1, 3-5 Baptist Street
Redfern NSW 2016
Australia
Tel: (61 2) 8332 5600
Fax: (61 2) 9688 2877
www.siteimage.com.au

Client

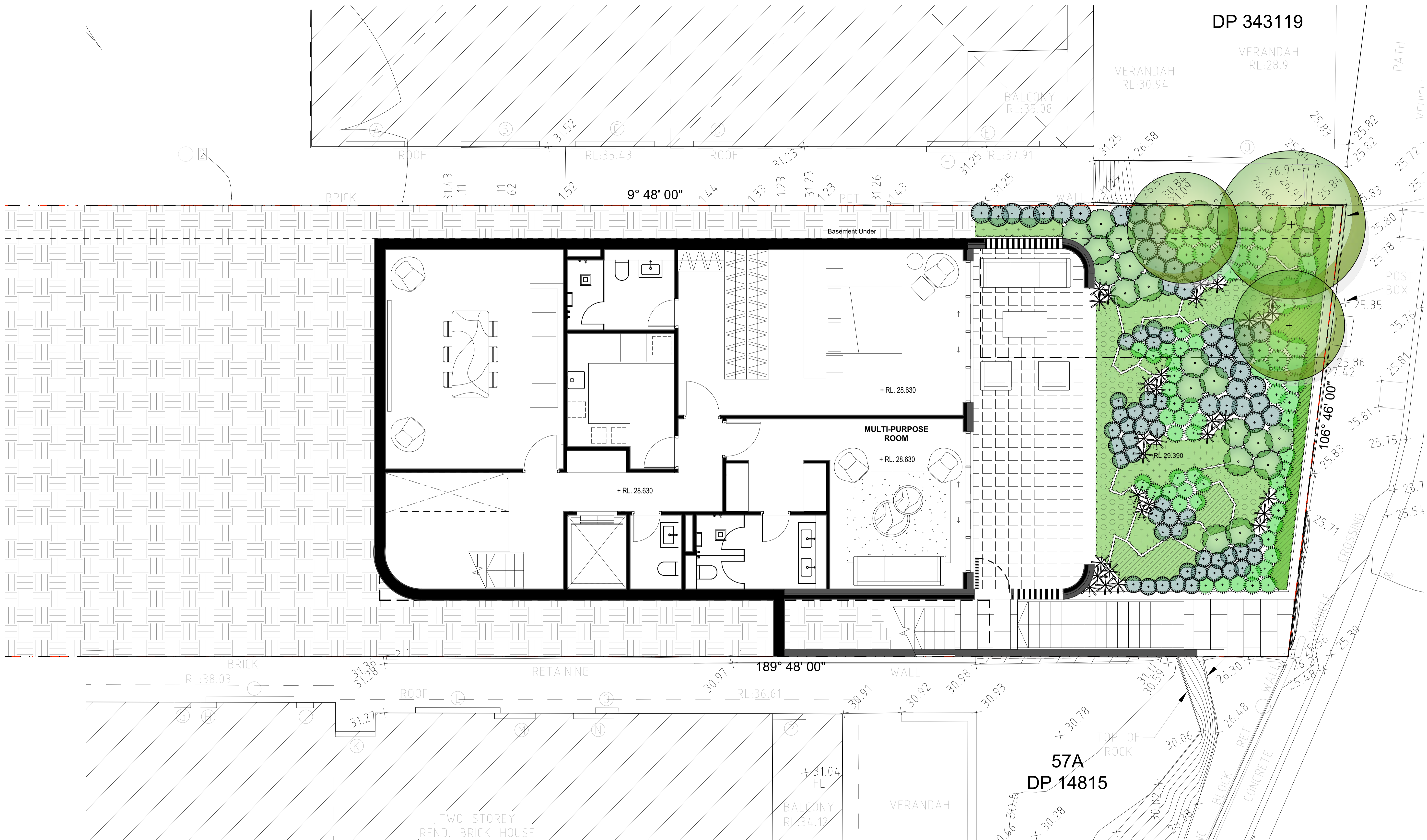
Project
**21 Cowdroy Avenue
Camberay NSW**

Drawing Name
Landscape Masterplan

Development Application

Scale 1:75 @ A1
Job Number
SS22-5062
Drawing Number
001
Issue
A

A Preliminary Issue
Revision Description
RG NM 11.11.2022
Drawn Check Date

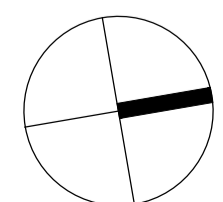


NOT FOR CONSTRUCTION

© 2021 Site Image (NSW) Pty Ltd. ABN 44 801 262 380 as agent for Site Image NSW Partnership. All rights reserved. This drawing is copyright and shall not be reproduced or copied in any form or by any means (graphic, electronic or mechanical including photocopying) without the written permission of Site Image (NSW) Pty Ltd. Any license, expressed or implied, to use this document for any purpose whatsoever is restricted to the terms of the written agreement between Site Image (NSW) Pty Ltd and the instructing party.

The contractor shall check and verify all work on site (including work by others) before commencing the landscape installation. Any discrepancies are to be reported to the Project Manager or Landscape Architect prior to commencing work. Do not scale this drawing. Any required dimensions not shown shall be referred to the Landscape Architect for confirmation.

- Legend**
- Site Boundary
 - Existing Tree to be Retained
 - Proposed Tree
 - Grasses & Groundcovers Refer Plant Schedule
 - Shrubs & Accents Refer Plant Schedule
 - Turf
 - Steppers
 - Decomposed Granite
 - Pool Fence
 - Steel Edge



SITE IMAGE
 Landscape Architects
 Level 1, 3-5 Baptist Street
 Redfern NSW 2016
 Australia
 Tel: (61 2) 8332 5600
 Fax: (61 2) 9698 2877
 www.siteimage.com.au

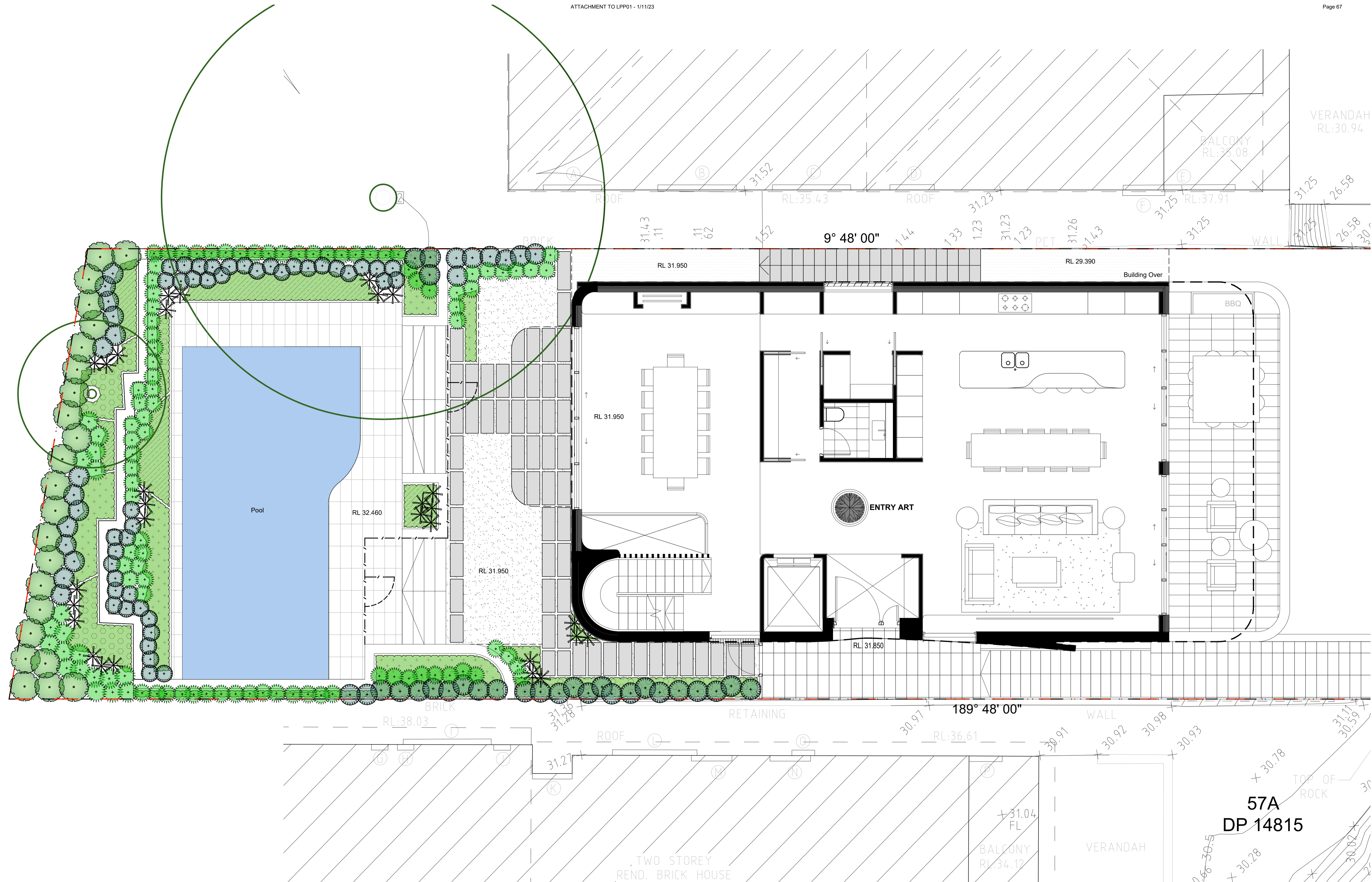
Client
 Project
21 Cowdroy Avenue
Cammeray NSW

Drawing Name
Landscape Plan
Lower Ground Floor

Development Application

Scale 1:50 @ A1
 Job Number
SS22-5062
 Drawing Number
100 A

A Preliminary Issue
 RG NM 11.11.2022
 Drawn Check Date



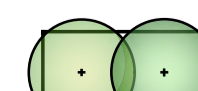
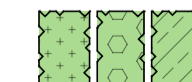

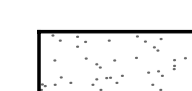


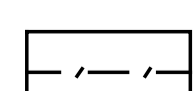
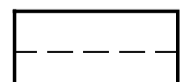


NOT FOR CONSTRUCTION

© 2021 Site Image (NSW) Pty Ltd. ABN 44 801 262 380 as agent for Site Image NSW Partnership. All rights reserved. This drawing is copyright and shall not be reproduced or copied in any form or by any means (graphic, electronic or mechanical including photocopying) without the written permission of Site Image (NSW) Pty Ltd. Any license, expressed or implied, to use this document for any purpose whatsoever is restricted to the terms of the written agreement between Site Image (NSW) Pty Ltd and the instructing party.

The contractor shall check and verify all work on site (including work by others) before commencing the landscape installation. Any discrepancies are to be reported to the Project Manager or Landscape Architect prior to commencing work. Do not scale this drawing. Any required dimensions not shown shall be referred to the Landscape Architect for confirmation.

Legend

-  Site Boundary
-  Existing Tree to be Retained
-  Proposed Tree Refer Plant Schedule
-  Grasses & Groundcovers Refer Plant Schedule
-  Shrubs & Accents Refer Plant Schedule
-  Turf
-  Steppers
-  Decomposed Granite
-  Pool Fence
-  Steel Edge

SITE IMAGE



Tel: (61 2) 8332 5600
Fax: (61 2) 9698 2877
www.siteimage.com.au

Client

Project

21 Cowdroy Avenue
Camberay NSW

Drawing Name

Landscape Plan
Ground Floor

Development Application

Scale 1:50 @ A1
Job Number

SS22-5062

0 0.5 1 1.5 2 2.5m
Drawing Number Issue

101 A



NOT FOR CONSTRUCTION

© 2021 Site Image (NSW) Pty Ltd ABN 44 801 262 380 as agent for Site Image NSW Partnership. All rights reserved. This drawing is copyright and shall not be reproduced or copied in any form or by any means (graphic, electronic or mechanical including photocopy) without the written permission of Site Image (NSW) Pty Ltd. Any license, expressed or implied, to use this document for any purpose what so ever is restricted to the terms of the written agreement between Site Image (NSW) Pty Ltd and the instructing party.

The contractor shall check and verify all work on site (including work by others) before commencing the landscape installation. Any discrepancies are to be reported to the Project Manager or Landscape Architect prior to commencing work. Do not scale this drawing. Any required dimensions not shown shall be referred to the Landscape Architect for confirmation.

A Preliminary
Issue Revision Description

RG NM 29.11.2022
Drawn Check Date

SITE IMAGE
Landscape Architects
Level 1, 3-5 Baptist Street
Redfern NSW 2016
Australia
Tel: (61 2) 8332 5600
Fax: (61 2) 9698 2877
www.siteimage.com.au

Client
Project
21 Cowdroy Avenue
Cammeray NSW

Drawing Name
Landscape Elevation - North

Development Application
Scale: As Shown
Job Number: SS22-5062
Drawing Number: 601
Issue: A



NOT FOR CONSTRUCTION

© 2021 Site Image (NSW) Pty Ltd ABN 44 801 262 380 as agent for Site Image NSW Partnership. All rights reserved. This drawing is copyright and shall not be reproduced or copied in any form or by any means (graphic, electronic or mechanical including photocopy) without the written permission of Site Image (NSW) Pty Ltd Any license, expressed or implied, to use this document for any purpose what so ever is restricted to the terms of the written agreement between Site Image (NSW) Pty Ltd and the instructing party.

The contractor shall check and verify all work on site (including work by others) before commencing the landscape installation. Any discrepancies are to be reported to the Project Manager or Landscape Architect prior to commencing work. Do not scale this drawing. Any required dimensions not shown shall be referred to the Landscape Architect for confirmation.

A Preliminary Issue Revision Description

RG NM 29.11.2022 Drawn Check Date

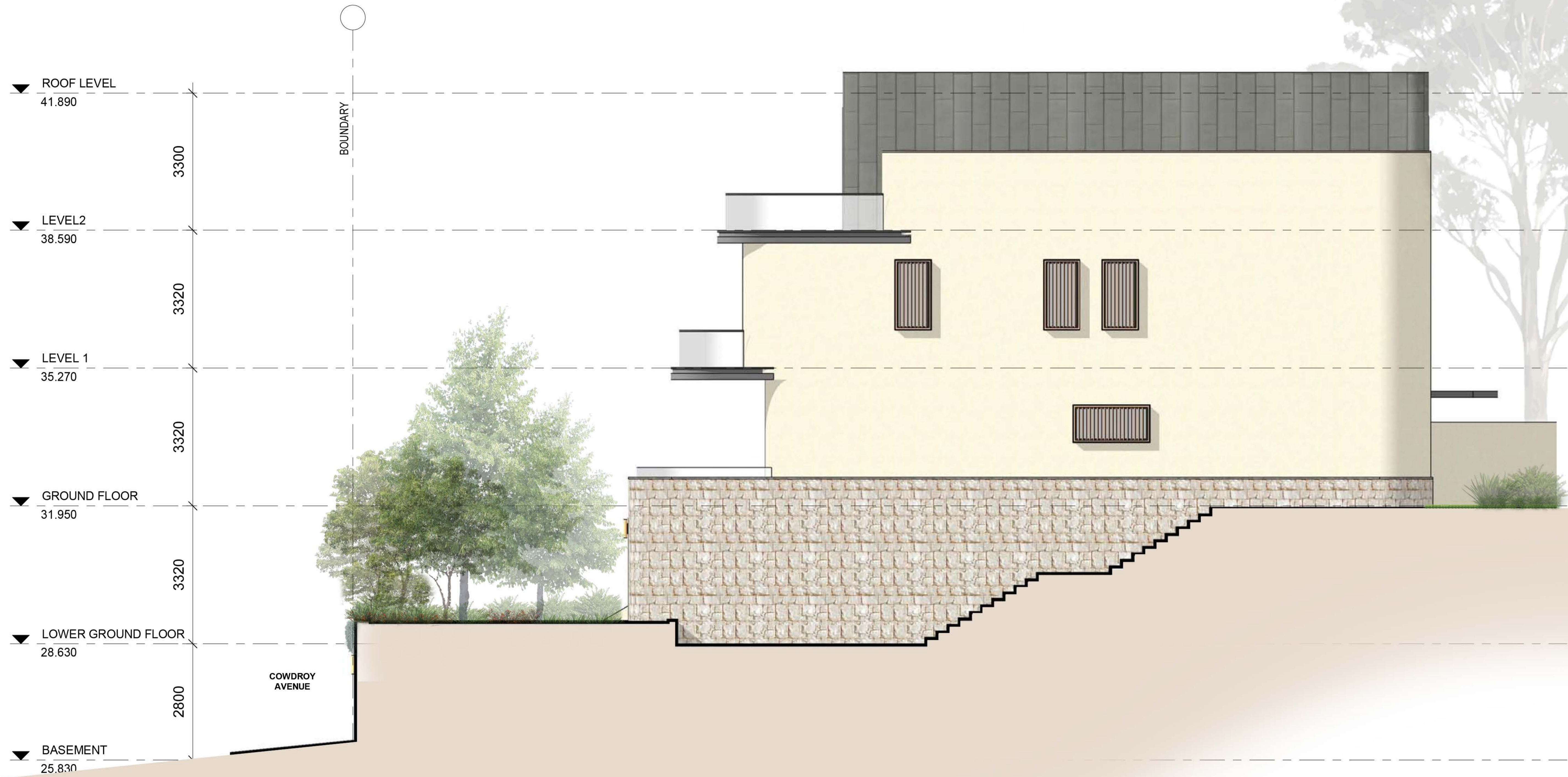
SITE IMAGE
Landscape Architects
Level 1, 3-5 Baptist Street
Redfern NSW 2016
Australia
Tel: (61 2) 8332 5600
Fax: (61 2) 9698 2877
www.siteimage.com.au

Client
Project
21 Cowdroy Avenue
Cammeray NSW

Drawing Name
Landscape Elevation - East

Development Application
Scale As Shown
Job Number
SS22-5062

Drawing Number
602
Issue
A



NOT FOR CONSTRUCTION

© 2021 Site Image (NSW) Pty Ltd ABN 44 801 262 380 as agent for Site Image NSW Partnership. All rights reserved. This drawing is copyright and shall not be reproduced or copied in any form or by any means (graphic, electronic or mechanical including photocopy) without the written permission of Site Image (NSW) Pty Ltd Any license, expressed or implied, to use this document for any purpose what so ever is restricted to the terms of the written agreement between Site Image (NSW) Pty Ltd and the instructing party.

The contractor shall check and verify all work on site (including work by others) before commencing the landscape installation. Any discrepancies are to be reported to the Project Manager or Landscape Architect prior to commencing work. Do not scale this drawing. Any required dimensions not shown shall be referred to the Landscape Architect for confirmation.

A Preliminary Issue
Revision Description

RG NM 29.11.2022
Drawn Check Date

SITE IMAGE
Landscape Architects
Level 1, 3-5 Baptist Street
Redfern NSW 2016
Australia
Tel: (61 2) 8332 5600
Fax: (61 2) 9698 2877
www.siteimage.com.au

Client
Project
21 Cowdroy Avenue
Cammeray NSW

Drawing Name
Landscape Elevation - West

Development Application
Scale: As Shown
Job Number: SS22-5062
Drawing Number: 603
Issue: A



NOT FOR CONSTRUCTION

© 2021 Site Image (NSW) Pty Ltd ABN 44 801 262 380 as agent for Site Image NSW Partnership. All rights reserved. This drawing is copyright and shall not be reproduced or copied in any form or by any means (graphic, electronic or mechanical including photocopy) without the written permission of Site Image (NSW) Pty Ltd Any license, expressed or implied, to use this document for any purpose what so ever is restricted to the terms of the written agreement between Site Image (NSW) Pty Ltd and the instructing party.

The contractor shall check and verify all work on site (including work by others) before commencing the landscape installation. Any discrepancies are to be reported to the Project Manager or Landscape Architect prior to commencing work. Do not scale this drawing. Any required dimensions not shown shall be referred to the Landscape Architect for confirmation.

Issue	Revision Description	Drawn	Check	Date
A	Preliminary	RG	NM	29.11.2022

SITE IMAGE Client

Landscape Architects
Level 1, 3-5 Baptist Street
Redfern NSW 2016
Australia
Tel: (61 2) 8332 5600
Fax: (61 2) 9698 2877
www.siteimage.com.au

Drawing Name
Landscape Elevation - South

Project
**21 Cowdroy Avenue
Cammeray NSW**

Development Application

Scale: As Shown
Job Number: SS22-5062
Drawing Number: 604
Issue: A

8 Appendix 2 – Clause 4.6 Request for variation of 'height of buildings' development standard

1 Introduction

This request has been prepared as the Applicant's Written Request for Variation to a Development Standard and is made in accordance with the provisions of clause 4.6 of the *North Sydney Local Environmental Plan 2013 (NSLEP2013)*, and is to be read in conjunction with the associated development application statement of environmental effects (SEE).

The Request for Variation is made in respect of a Development Application for the demolition of an existing dwelling and ancillary structures and the construction of a new dwelling.

The development is located at **Lot 58 DP 1079491** otherwise known as **21 Cowdroy Avenue, Cammeray**.

The site of the development is shown in figures 1, 2, 3, 4 & 5 of the SEE and the site area is 482.7sqm.

The North Sydney planning controls provide a minimum lot size of 450sqm for the subject site and the site exceeds the minimum lot size requirement by 32.7sqm.

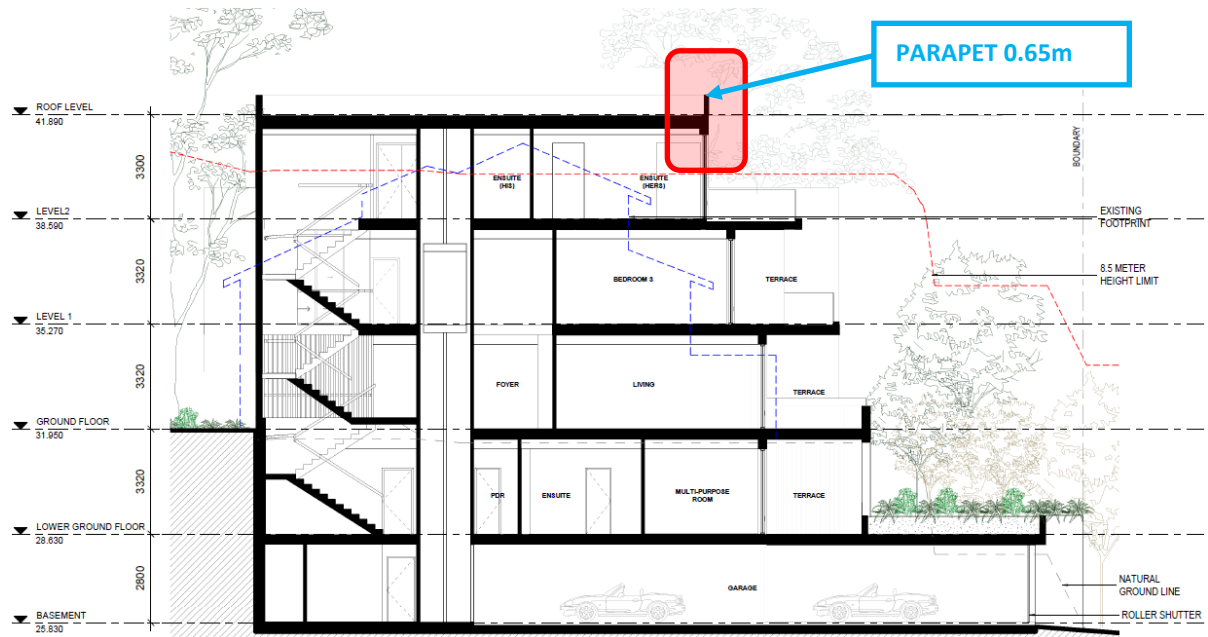
The North Sydney planning controls do not impose an FSR development standard upon the subject property.

The North Sydney planning controls impose a maximum 50 % (241.35sqm) site coverage control and the proposed development achieves compliance with a proposed site coverage of 47% (227.46sqm).

The North Sydney planning controls impose a minimum 30 % (144.81sqm) landscape area control and the proposed development achieves compliance with a proposed landscaped area of 34.31% (165.61sqm).

The development will read as a well designed, contemporary residential dwelling sitting atop a stone faced base element with curved elements to the upper level northern elevation terraces/decks. The building's design and orientation is responsive to the north facing street frontage to Cowdroy Avenue.

The Request for Variation relates to clause 4.3(2) Height of Buildings, of NSLEP2013, which sets a maximum building height of 8.5 metres. The roof of the dwelling over the uppermost level, including the parapet element which is continuous around (and conceals) the flat design roof form. The maximum height exceedance is associated with the uppermost level of the dwelling and the roof form and parapet element and is 10.94m above ground level (existing). This is a non-compliance of 2.44 metres or 28.7% variation. The parapet element contributes 0.65m of the exceedance which when deducted from the overall height reduces the height exceedance to 1.79m. The exceedance of the height limit is demonstrated in figure A below.



LEGEND: - - - - - EXISTING DWELLING OUTLINE - - - - - HEIGHT OF BUILDING LINE

Figure A. Section drawing – with existing dwelling outline & site HOB line.

It is important to note that the existing dwelling is considered to be both an acceptable and a moderate example of a residential dwelling in the Cowdroy Avenue precinct of Cammeray. Given the acceptance of the existing dwelling and its contribution to the varied built forms in the locality it is also important to note that the existing dwelling exceeds the 8.5m height of buildings development standard. The highest ridgeline of the dwelling which extends on an east-west axis is RL 41.38, and the interpolated contour line underneath the ridgeline is approximately RL 31.50. This height difference illuminates the existing dwelling HOB non-compliance as being 9.88m, some 1.38m above the maximum 8.5m.

The maximum building height is established by the identification of the ground level (existing) which is established by the survey plan information and content prepared at the time of the preparation of the dwelling design and application.

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

The topography of the subject site and indeed the establishment of ground level (existing) is detailed in the recent property survey plan and this information forms the basis for the determination of the building height for the site. The original contours and slope of the site may be the subject of interpolation when the spot levels around the dwelling are considered and the contour lines are formed from this data.

The nature of construction on a steep or sloping site will always seek to prescribe level areas around a dwelling footprint to aid in simplifying both access and functional, useable outdoor space. For 21 Cowdroy Avenue, the existing dwelling on site has clearly established both access and use by aligning the internal floor levels with either at grade external levels or landings, balconies and stairs to serve the dwelling occupants.

The existing dwelling, when the height of building is measured, exceeds the maximum 8.5m appreciably, by 1.38m. It could be considered that the existing dwelling, despite its numerical non-compliance with the height of building standard of 8.5m, represents an appropriate and acceptable built form in the context of the site and location. The site and neighbouring properties all benefit from the north-south axis alignment of the lots with a steep sloping gradient down to Cowdroy Avenue facing north. The site context affords generous solar access opportunities with any resulting overshadowing to be distributed generally evenly amongst the immediately neighbouring properties to the east and west of the site.

An argument is available that a sensitively designed dwelling, despite an appreciable breach in the height of building standard, may be able to be developed without resulting in any appreciable adverse impacts upon the surrounding properties having regards to solar access, privacy, general amenity, views and general character outcomes for the locality. Importantly, as has been depicted in the accompanying 'Urban Design Report' the proposed dwelling development may be considered to be generally consistent with the examples of residential development and built forms in the Cowdroy Avenue locality.

The section detail shows that the slope and topography of the site will have substantial parts of the new dwelling built form well within the height of building standard, but with the need for level floors for internal functionality and ease of access (to allow aging in place) invariably building footprints on a sloping site will include areas of the built form which breach the HOB standard.

In preparing this Request for Variation, the requirements of clause 4.6 of the NSLEP 2013 have been strictly met. The Request for Variation has been generally set out in accordance with the structure recommended by the Department of Planning in its publication entitled Varying Development Standards – A Guide.

In very brief terms, this variation request says that:

- The intensity of the proposed development accords with the planned intensity in the existing NSLEP 2013. This planned intensity forms part of a considered approach to enable the new dwelling to serve the occupants with a high level of residential amenity and with a view to allow for 'aging in place' with delivered access provisions through the dwelling.
- The height of the proposed development, whilst numerically non-compliant, is consistent with the objectives of the C4 Environmental Living zone and the desired future character of the area —both in terms of the NSLEP 2013's existing planned level of density and the NSDCP Part C Area Character Statement for Cammeray.
- The height of building non-compliance does not result in apparent adverse impacts for solar access and overshadowing to neighbouring properties.
- The benefits afforded the subject site and adjoining properties on the 'high-side' of Cowdroy Avenue, such as north-south axis, northern sloping access and orientation, with waterways and shoreline view opportunities can be obtained and equitably shared through sensitive design and adherence to front setback alignments.
- From the public view analysis performed it could be considered that there are no appreciable adverse impacts to the public domain as a result of the non-compliance with the height of buildings development standard.
- The proposed development is in the public interest because it is consistent with:

- the objectives of the height control standard; and
 - the objectives for development within the zone in which the development is proposed to be carried out.
- Requiring strict compliance with the height control is unreasonable in the circumstances of the case. This because:
 - requiring such compliance will constrain the design and occupant amenity outcomes without benefiting neighbouring properties or views from the public domain.
 - Requiring strict compliance with the height control is unnecessary in the circumstances of the case. NSDCP Part C Area Character Statement for Cammeray articulates the desired future character of the Cammeray area and in particular the need to address the desired future character, including the following:
 1. *Primarily low-density residential development consisting of dwelling houses, semidetached houses concentrated long the foreshore areas.*
 2. *Multi dwelling housing and residential flat buildings concentrated towards the tops of the ridges.*
 3. *The density of development along foreshore areas and in areas of steep terrain must be kept to a minimum.*
 - Requiring strict compliance with the height control is unnecessary in the circumstances of the case. NSDCP Part C Area Character Statement for Cammeray articulates the desired built form of the Cammeray area, including the following:
 1. *Buildings should provide adequate separation to bushland and foreshore areas.*
 2. *Buildings should not obstruct views from neighbouring properties. This is especially important in foreshore areas or sites that enjoy water views.*
 3. *Buildings should not obstruct views and vistas from public places to the waterway.*
 - There are sufficient environmental planning grounds to justify contravening the height control. This is because, if the variation is not approved the height of the development would need to be reduced by one storey. This alternative leads to an inferior design response for the site having regard to the underutilised opportunity for residential amenity which would represent a development that is not orderly and economic development in the context of the site's benefits. The grant of development consent with the variation to the height of buildings development standard will avoid both this outcome.
 - The contravention of the development standard does not raise any matter of significance for State or regional environmental planning.
 - There is no public benefit of maintaining the development standard in the present circumstances. The proposed variation will not set an undesirable precedent for sites not sharing those same site specific characteristics. The absence of public benefit from strict application of the standard in this instance is also because the height of buildings as proposed is consistent with the objectives of the standard and the zone and therefore consistent with the public interest.

2 Background and Development Description (including development and site analysis)

2.1 Development Description

This Development Application seeks development consent for:

- Demolition

The existing dwelling and ancillary structures will be demolished, and will be replaced with the proposed new dwelling and associated landscaping, with the existing swimming pool to be retained and refurbished.

- Construction

A multi storey dwelling over five (5) levels including a basement garage and storage/plant level and four (4) levels of the residence.

2.2 The Site

The site has a substantial (and varying) slope that falls from the rear southern boundary of the site to the northern street frontage of the site with a minor crossfall from east to west. The existing site front setback area is a mix of rock outcrop, stone wall and steps, with a section of steel fence that assists with the delineation of the site from the public domain, footpath and Cowdroy Avenue. The site has existing built improvements (as detailed in the existing survey plan) comprising the terrace areas, existing dwelling, outbuildings and inground swimming pool in the rear yard. There is varied landscaping areas and elements around the site predominately in the curtilage of the dwelling and swimming pool.

Vehicular access to the site is available from Cowdroy Avenue and there is an existing vehicular layback serving a single car garage on the eastern side of the front boundary.

2.3 The Variation

The subject site is zoned C4, the proposed development is a new dwelling, and the maximum building height is 10.94m. This represents a maximum exceedance in height of 2.44m above the 8.5m maximum as per the development standard.

2.4 Proposed Development Context

This request seeks to establish the particulars of the height exceedance by providing an overview of the proposed development outcome in the context of;

- a) the design response to the site topography and site orientation benefits and advantages,
- b) the adjoining site existing developments,
- c) the wide ranging multi-level residential developments on the sloping sites both on the high and low side of Cowdroy Avenue ,

- a) Design Response

The proposed development provides a building form which;

- i) Pays regard to the neighbouring developments and adheres to the front building line setback to ensure view sharing is afforded to the neighbouring dwellings,
 - ii) The dwelling design does not encroach upon view lines of the adjoining properties at 19 & 23 Cowdroy Avenue by adhering to the established building alignments.
 - iii) Remains a site that has a development built form representative of the diverse and ranging dwelling built forms in the Cowdroy Avenue precinct, with multi-level elevation appearances prevalent from many public vantage points, and
 - iv) The dwelling design frames the two lowest levels as distinct from the three upper levels with material selection and landscaping treatments to assist in the visual 'break up' of the dwelling's built form.
- b) Adjoining site existing developments,
- i) the allotments immediately to the east and west will not receive noncompliant solar access having regard to the new dwelling's built form, breach of building height standard or design and siting,
 - ii) the allotments immediately to the east and west will not receive encroachment upon northern views and sightlines to the Middle Harbour waterway,
 - iii) the allotments immediately to the south in Alan Street will not receive unreasonable impacts associated with view lines noting the apparent absence of existing view lines to the Middle Harbour waterways to the north,

The proposed development has been designed to facilitate a complementary and modern addition to the locality in which it sits. Setbacks of the proposed development are generally compliant with the applicable development controls, and provide for an appropriate response to site constraints by providing a building envelope that responds to the existing adjoining development, while also ensuring that any prospects for adjoining development potential is not impacted upon.

3 Clause 4.6 Request for Variation

Clause 4.6 of NSLEP2013 allows for variation to development standards.

Components of Clause 4.6 relevant to the preparation of a Request for Variation are:

4.6 Exceptions to development standards

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

(a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

(b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*

(a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

(b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

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

(a) *the consent authority is satisfied that—*

(i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

(ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) *the concurrence of the Planning Secretary has been obtained.*

(5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*

(a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

(b) *the public benefit of maintaining the development standard, and*

(c) *any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

(6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*

(a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—

When this Plan was made it did not include all of these zones.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(caa) clause 5.5,

(ca) clause 4.3 in relation to land identified as "Area 1" on the Special Provisions Area Map, other than subject land within the meaning of clause 6.19C,

(cab) clause 4.4, 5.6 or 6.19C in relation to land identified as "Area 1" on the Special Provisions Area Map,

(cb) clause 6.3(2)(a) and (b),

(cba) clause 6.19A,

(cc) clause 6.20.

(8A) (Repealed)

Clause 4.3 is not identified as being excluded from the operation of clause 4.6. Therefore, a request to vary the development standard may be made by the applicant.

3.1 What is the name of the environmental Planning instrument that applies to the land?

North Sydney Local Environmental Plan 2013.

3.2 What is the zoning of the Land?

The subject site is zoned C4 Environmental Living.

3.3 What are the objectives of the zone?

The objectives of the C4 Environmental Living zone are:

- *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.*

It is considered that this proposal will satisfy the relevant zone objectives. That is, this proposal will result in a low impact residential development in the area identified as having special aesthetic values, without compromising those values. The dwelling design will ensure that a high level of residential amenity is achieved and maintained.

3.4 What is the Development Standard being varied?

The subject Request for Variation relates to the maximum height of building standard pursuant to clause 4.3(2) of the NSLEP2013. Therefore, the proposed development seeks exception to the 8.5m HOB standard.

3.5 What are the objectives of the Development Standard?

The objectives of the development standard are:

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

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) to promote the retention and, if appropriate, sharing of existing views,*
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) to ensure compatibility between development, particularly at zone boundaries,*
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,*
- (g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.*

With respect to the objectives of the development standard it is argued that this proposal satisfies the objectives. That is, the proposal:

- The building platform is established by the ground level (existing) and the site has undergone such prior change as to represent a stepped platform development without a 'natural gradient' and the site is in part unable to apply the objective directly.

- The objective is satisfactorily achieved through the protection of views of the immediately adjoining properties (to the east and west, 19 & 23 Cowdroy Avenue).
- The dwelling design has maintained solar access to existing dwellings, public reserves and streets, and is not inconsistent with the promotion of solar access for future development.
- The dwelling design is able to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings.
- The dwelling design is able to ensure compatibility between development,
- As identified in the accompanying 'Urban design report', the development is generally consistent with the built form in the locality and the new dwelling encourages an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,
- The dwelling design has not been able to directly satisfy this objective by maintaining 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 (now C4), however the broader application of the character of the area, as identified in the 'urban design report' indicates the dwelling design is a good representative of the range of built forms which *can take advantage of site opportunities without introducing adverse impacts upon others*.
- The dwelling design does not impact on views nor does the built form cause unreasonable levels of overshadowing to adjoining premises than what is anticipated in the locality by that development standard.
- does not impact on the heritage values of any items or conservation areas.

3.6 What Is the Numeric Value of the Development Standard in the Environmental Planning Instrument?

Clause 4.3 prescribes a maximum height of building of 8.5m, by reference to Clause 4.3(2) of the NSLEP 2013.

3.7 What Is The Numeric Value Of The Exceedance to the Development Standard In The Development Application?

The maximum building height proposed is 10.94m. This exceeds the maximum permitted building height by 2.44m. The variation of exceedance is principally due to a proposed built form that overall responds to the site topography, requiring a minimum Ground Floor (Flood Planning) Level 85.20 AHD.

3.8 What is the percentage variation between the proposal and the environmental planning instrument?

The proposed maximum building height exceedance is 2.44m above the 8.5m development standard. This represents a per cent exceedance of 28.7%.

Whilst the NSW Department of Planning and Environment includes a requirement to identify the percentage variation in its *Guide to Varying Development Standards* there are a number of case law examples that demonstrate that there is no constraint on the degree to which a consent authority may depart from a numerical standard.

The following examples relate to Floor Space Ratio and Height of Buildings development standards and assist in demonstrating that the degree of exceedance alone is not determinative in assessment of a Request for Variation to a development standard.

Clause 4.6 of the LEP is in similar terms to SEPP 1. Relevantly, like SEPP 1, there are no provisions that make necessary for a consent authority to decide whether the variation is minor. This makes the Court of Appeal's decision in *Legal and General Life* equally applicable to clause 4.6. This means that there is no constraint on the degree to which a consent authority may depart from a numerical standard.

Some examples that illustrate the wide range of commonplace numerical variations to development standards under clause 4.6 (as it appears in the Standard Instrument) are as follows:

- (a) In *Baker Kavanagh Architects v Sydney City Council* [2014] NSWLEC 1003 the Land and Environment Court granted a development consent for a three storey shop top housing development in Woolloomooloo. In this decision, the Court, approved a **floor space ratio variation of 187 per cent**.
- (b) In *Amarino Pty Ltd v Liverpool City Council* [2017] NSWLEC 1035 the Land and Environment Court granted development consent to a mixed use development on the basis of a clause 4.6 request that sought a **38 per cent height exceedance over a 15-metre building height standard**.
- (c) In *Auswin TWT Development Pty Ltd v Council of the City of Sydney* [2015] NSWLEC 1273 the Land and Environment Court granted development consent for a mixed use development on the basis of a clause 4.6 request that sought a **28 per cent height exceedance over a 22-metre building height standard**.
- (d) In *Season Group Pty Ltd v Council of the City of Sydney* [2016] NSWLEC 1354 the Land and Environment Court granted development consent for a mixed use development on the basis of a clause 4.6 request that sought a **21 per cent height exceedance over a 18-metre building height standard**.

In short, clause 4.6 is a performance-based control so it is possible (and not uncommon) for large variations to be approved in the right circumstances.

3.9 How is strict compliance with the development unreasonable or unnecessary in this particular case?

The matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007) sets out five ways in which strict compliance with a development standard can be demonstrated to be unreasonable or unnecessary in the circumstances of the case.

The 5 ways are:

1. *if the proposed development proffers an alternative means of achieving the [development standard] objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served);*
2. *the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary*

3. *the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable*
4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable*
5. *"the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

Compliance with a development standard might be shown as unreasonable or unnecessary in circumstances where the development achieves the objectives of the development standard, notwithstanding non-compliance with the development standard. Demonstrating that the development achieves the objectives of the development standard involves identification of what are the objectives of the development standard and establishing that those objectives are in fact achieved.

Reference should be made to figures A above of this document, and the DA accompanying documents including the 'View Loss Comparison & Analysis', and the 'Urban Design Report', for a clear understanding of site topography and limited extent of height exceedance in the context of the Cowdroy Avenue locality.

Strict compliance with the HOB development standard is considered to be unreasonable and unnecessary in the circumstances of the case for the following reasons:

The proposal achieves the objectives of the Zone.

It is considered that this proposal will satisfy the relevant zone objectives. That is, this proposal will result in a low impact residential development in the area identified as having special aesthetic values, without compromising those values. The dwelling design will ensure that a high level of residential amenity is achieved and maintained.

The proposal achieves the objective of clause 4.3

As detailed above, this proposal achieves the objectives of the development standard. That is, this proposal is designed to be compatible with the desired future character of the locality, does not impact on views nor does the built form cause unreasonable levels of overshadowing to adjoining premises, and does not impact on the heritage values of any items or conservation areas.

Sufficient environmental planning grounds to justify contravening the development standard

The term "environmental planning grounds" is not defined in NSLEP2013 nor any other environmental planning instrument. It is also not defined in the Department of Planning's Guide to Varying Development Standards

Nevertheless, given that demonstration of sufficient environmental planning grounds is a separate test under clause 4.6(3) to the test of “unreasonable or unnecessary in the circumstances of the case”; and that case law relevant to SEPP 1 such as *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007) and *Winten Property v North Sydney* (2001) 130 LGERA 79 deal with demonstration of “unreasonable and unnecessary in the circumstances of the case”, it must therefore be concluded that “environmental planning grounds” are a different test which cannot necessarily rely on the same methodology as laid down in SEPP 1 relevant Court decisions.

The matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (30 January 2015) provides some helpful guidance on the subject of “environmental planning grounds”, however it is in fact limited to defining some factors which are not environmental planning grounds. Paragraph 60 of Commissioner Pearson’s decision states:

*The environmental planning grounds identified in the written request are the public benefits arising from the additional housing and employment opportunities that would be delivered by the development, noting (at p 5) the close proximity to Ashfield railway station, major regional road networks and the Ashfield town centre; access to areas of employment, educational facilities, entertainment and open space; provision of increased employment opportunities through the ground floor retail/business space; and an increase in the available housing stock. I accept that the proposed development would provide those public benefits, however any development for a mixed use development on this site would provide those benefits, as would any similar development on any of the sites on Liverpool Road in the vicinity of the subject site that are also in the B4 zone. **These grounds are not particular to the circumstances of this proposed development on this site.** To accept a departure from the development standard in that context would not promote the proper and orderly development of land as contemplated by the controls applicable to the B4 zoned land, which is an objective of the Act (s 5(a)(ii)) and which it can be assumed is within the scope of the “environmental planning grounds” referred to in cl 4.6(4)(a)(i) of the LEP. (emphasis added)*

30. On Appeal in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 (3 June 2015), the Court considered whether the Commissioner had erred in law in confining environmental planning grounds to those particular to a site or proposed development. The Court held at [29] and [30] that this was a matter which the Commissioner was entitled to consider in her exercising of discretion:

Turning to the first ground of appeal, it refers to a finding of the Commissioner at [60] in relation to the environmental planning grounds identified in the written request, as required by cl 4.6(3)(b). The Commissioner concluded that the grounds referred to were not particular to the circumstances of the proposed development on the particular site. Firstly, it is debatable that this ground of appeal couched as the misconstruction of subclause (4)(a)(i) does identify a question of law. The Commissioner’s finding, that the grounds relied on in the written report were not particular to the circumstances of the proposed development on this particular site, is one of fact. That informed her finding of whether the grounds put forward were sufficient environmental planning grounds.

To the extent the issue raised can be described as a question of mixed fact and law, the Commissioner is exercising a discretion under subclause (4)(a)(i) in relation to the written report where the terms in subclause (3)(b) of sufficient environmental planning grounds are not defined and have wide import,

From this we interpret that particular circumstances of the site or development is an appropriate (although not exclusive) filter through which to view the sufficiency of environmental planning grounds.

In the absence of a legislative or other definition we adopt a definition for "environmental planning grounds" as 'any matter arising from consideration of either Section 4.15 of the EP&A Act 1979 or its Objectives which in the circumstances of the particular development on the particular site, warrants variation from the development standard'.

Based on that methodology, the environmental planning grounds which support variation to the HOB standard in this instance are:

Environmental Planning Ground 1 – Negligible amenity or visual impacts

Numerically, the HOB for maximum building height exceedance is not considered excessive or unreasonable in the context of the site or surrounding locality. This is especially the case given that the overall scheme provides an appropriately sized building complying with the site coverage standard, which are utilised along with the HOB standard to restrict a development's bulk, form and scale.

It is argued that the exceedance in height does not cause unreasonable impact and satisfies the objectives of the standard, and any additional impact on the adjoining land to the south will be minimal. As such, it is considered that the particular design delivers appropriate and sufficient environmental planning grounds to support the additional HOB, which is proposed.

Environmental Planning Ground 2 – Street Character

The proposed development represents an excellent design outcome. The particular design, in the context of this particular site means that the excess HOB is not perceived from the public domain given that the roof form is located within the floor plates and is setback farther from all boundaries than the lower floors. It therefore does not have any adverse impact on the streetscape or urban form otherwise anticipated by the controls.

Furthermore, the environmental planning grounds which support variation to the standard in this instance are that the particular design in the context of this particular site means that the non-complying building height is not obvious and therefore does not have adverse effects on the streetscape or urban form otherwise anticipated by the controls. The HOB exceedance allows for the achievement of each of the zone and HOB objectives.

Public Interest

The proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the zone. As the Court recently reminded in *Initial Action* (2018) at [26] – [27], this is what is required, rather than broad statements about general 'public interest' considerations at large.

The arguments outlined earlier in relation to consistency with clause 4.3, C4 zone objectives of the NSLEP 2013 are relied upon as detailed above.

Secretary's Concurrence

It is understood that the Secretary's concurrence under clause 4.6(4) of CLEP 2010 has been delegated to Council. Nevertheless, Council may wish to consider the concurrence requirements, being:

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

In this matter, for the reasons outlined above – and particularly having regard to the minimal adverse amenity impacts stemming from the non-compliance – there is nothing about this proposed variation that raises any matter of significance for State or regional environmental planning, nor is there any broad public benefit in maintaining the development standard on this site. There are no other relevant matters required to be taken into consideration before granting concurrence.

Conclusion

For the reasons outlined above, the objection to Clause 4.3 of NSLEP 2013 is considered well-founded on the basis that the development in fact demonstrates achievement of the objectives of the development standard and the objectives of the C4 zone. In this regard, strict compliance with the development standard is considered unreasonable or unnecessary, particularly noting the following:

- there are no unreasonable impacts associated with the proposed development with respect to overshadowing, amenity and privacy concerns;
- the proposed development is consistent with the desired future character of the area in relation to the building bulk, form and scale; and,
- the proposed development is not an overdevelopment, and would otherwise be entirely compliant were it not required to respond to the flood affectation.

As demonstrated within this submission and the Architectural plans, the Urban Design Report, and the View Study, the overall massing, scale, bulk and height of the proposed development is considered appropriate to the locality.

Council can be satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development and that there are sufficient environmental planning grounds to justify contravening the development standards.

It is therefore requested that the Council not withhold development consent for the proposed development due to a noncompliance with the HOB development standard.