

DA NO: DA-2018/266

ADDRESS: 16 THE BATTLEMENT, CASTLECRAG NSW 2068.

PROPOSAL: CONSTRUCTION OF A NEW DWELLING, SWIMMING POOL AND ASSOCIATED WORKS.

RECOMMENDATION: APPROVAL

ATTACHMENTS:

1. SCHEDULE OF CONDITIONS
2. SITE DESCRIPTION AND AERIAL PHOTO
3. DEVELOPMENT CONTROLS, STATISTICS, DEVELOPER CONTRIBUTION & REFERRALS
4. SUBMISSIONS TABLE
5. APPLICANT'S CLAUSE 4.6 SUBMISSION - FSR
6. OFFICER'S CLAUSE 4.6 ASSESSMENT - FSR
7. SECTION 4.15 (79C) ASSESSMENT
8. NOTIFICATION MAP
9. ARCHITECTURAL PLANS

RESPONSIBLE OFFICER: RITU SHANKAR (TEAM LEADER)

AUTHOR: JANE MCMILLAN - DEVELOPMENT ASSESSMENT OFFICER

MEETING DATE 24 SEPTEMBER 2019

1. PURPOSE OF REPORT

The purpose of this report is to seek determination by Willoughby Local Planning Panel (WLPP) of Development Application DA-2018/266 for construction of a new dwelling, swimming pool and associated works at 16 The Battlement, Castlecrag.

The application is required to be referred to the WLPP for determination because it is a contentious development having received more than ten submissions as a result of neighbour notification.

2. OFFICER'S RECOMMENDATION

THAT the Willoughby Local Planning Panel:

2.1 Support the Clause 4.6 exception contained in Attachment 5 as it is considered unreasonable and unnecessary to comply with the development standard of Clause 4.4A of *Willoughby Local Environmental Plan 2012* (Floor Space Ratio) for the following reasons:

2.1.1 The proposed size of the dwelling house is consistent with the size of other dwelling houses in the Castlecrag locality generally and the neighbouring houses in the Griffin Heritage Conservation Area.

2.1.2 The Clause 4.6 variation submitted with the development application establishes that the proposal is consistent with the objectives of the development standard and the objectives of the zone.

2.1.3 The plans comply with the maximum FSR that applies to the site at the ground floor and first floor levels.

2.1.4 Due to the unique characteristics of the site, a basement level is included and the FSR limit is exceeded by 47.7m² at the basement level

2.1.4 The dwelling house has been designed to suit the topography of the site with an articulated façade and recessed first floor minimising building bulk and streetscape impacts.

2.1.5 The amenity impacts to adjoining properties are acceptable despite the numerical non-compliance, subject to conditions.

2.2 Approve Development Application DA-2018/266 for construction of a new dwelling, swimming pool and associated works at 16 The Battlement Castlecrag subject to the conditions contained in Attachment 1, for the following reasons:

2.2.1 The amended proposal will have acceptable amenity impacts to neighbouring properties with regard to building bulk, views, overshadowing and privacy, subject to conditions.

2.2.2 The amended proposal will have an acceptable impact on the environment.

2.2.3 The amended proposal is considered to be consistent with the objectives for development in the E4 Environmental Living Zone.

2.2.4 The proposed development has a bulk and scale consistent with the size of surrounding dwelling houses in Castlecrag and is considered to be consistent with the streetscape character and neighbouring houses in the Griffin Heritage Conservation Area.

3. BACKGROUND

The site is located on the north-western side of The Battlement within the Griffin Heritage Conservation Area. A description of the site and surrounding area, including an aerial photograph is contained in **Attachment 2**.

The subject site has a history of unauthorised works undertaken by the applicant including:

- unauthorised retaining walls and fill on the subject site;
- unauthorised retaining walls and fill on Council's road reserve;
- an unauthorised retaining wall on the rear adjoining property at 162 Edinburgh Road.

A number of meetings and discussions were held between Council and the applicant prior to the lodgement of the DA to discuss the issue of unauthorised works and lodging a DA for a new dwelling house.

4. DISCUSSION

A number of issues of concern were raised by the submissions received as a result of neighbour notification. Council's Assessment Officer requested a number of amendments to the plans to reduce the overall height and the floor area of the proposed building to comply more closely with the development standards and to reduce environmental impacts. A final set of amended plans were submitted to Council on 2 September 2019 which is the subject of this report.

1. Building Bulk and Non-Compliance with FSR

In the latest set of plans, a reduction was made in the floor area of 18m² so that the proposed dwelling house complies with the maximum floor space ratio at the ground floor and first floor levels. The basement level primarily includes the provision of parking spaces and access to that parking. Council's Assessment Officer previously requested a reduction in the size of the basement to reduce excavation and the current basement is substantially smaller than originally proposed. The basement enables vehicles to exit the site in a forward direction which improves vehicular safety. At the basement level, the stairs, lift, garbage bin/storage area and plant area are included in the calculation of GFA as well as the area of an additional parking space as the basement is large enough to accommodate three cars. The calculation of GFA excludes the voids above the stairs and lifts at the upper levels. A Clause 4.6 Variation was requested by Council's Assessment Officer during the assessment of the development application.

Council's Assessment Officer requested a reduction in covered decks at the first floor level as these extensive areas contribute to bulk and scale although not included in the definition of gross floor area. The amended set of plans include vergolas over a rear first floor balcony and first floor side facing bar-be-que area as well as a non-trafficable roof garden with balustrades which will be visible from the street. The recommended conditions require that the roof garden be converted to a non-trafficable pebble roof without enclosing balustrades. Amended plans are required to be submitted to Council prior to the issue of the construction certificate. It is also a recommended condition of consent that a privacy screen extends for the full length of the eastern elevation of the bar-be-que area.

2. Finished Ground Levels at the Front Property Boundary and in the Road Reserve

Many submissions were received during the notification period about the raised ground levels on Council's road reserve and on the subject site. Concern was expressed that the floor levels for the proposed building would be based on these elevated ground levels and not the original ground levels. This matter was investigated by Council's Assessment Officer and ground levels were provided to the applicant based on original ground levels.

The applicant has undertaken extensive unauthorised works that have increased the height of the road reserve and the ground levels at the front boundary of the property. This is illustrated in the photographs below:



Photograph of pre-existing ground levels on Council's road reserve and the adjoining road reserve outside 18 The Battlement



Current ground levels on Council's road reserve in front of 16 and 18 The Battlement

Council's Development Enforcement Officer has advised the applicant that Council will require remedial work within the road reserve to align the ground levels with those outside 18 The Battlement. These have been established to be: a maximum height of RL 73.66 for the retaining wall adjacent to the kerb increasing to a maximum height of RL 74.66 at the front boundary of the property. This has relevance for the development application as finished ground levels have to be established within the front yard. In this regard Council's Assessment Officer requested a revised Landscape Plan detailing finished ground level at the front boundary of the subject site and in the road reserve.

The applicant has argued that the retaining walls on the road reserve and at the front boundary of 16 The Battlement should be higher than at 18 The Battlement as the terrain is sloping from west to east. However the kerb outside 16 The Battlement has a slight crossfall of only 3.5% from the western to the eastern side boundary. Further, the kerb level at the boundary between the two properties has been measured by Council to be RL 72.46. This means that the retaining walls proposed by Council will have a height of 1.2m at the kerb increasing to a height of 2.2m at the property boundary. It is also important that the levels on the road reserve between the two properties are consistent.

It is a recommended condition of consent that an amended Landscape Plan is submitted to Council prior to the issue of the Construction Certificate showing the required finished ground levels in the road reserve and at the front property boundary.

3. Building Height

The original plans submitted to Council exceeded the 8m height limit that applies to the site and had a ridge height of RL 84.93. Council's Assessment Officer requested that building height be measured from existing ground levels underneath the existing house and relative to the driveway which reflect original ground levels. On 31 October 2018, Council's Assessment Officer sent the following request to the applicant:

Height is measured from existing ground levels. In this regard the existing ground levels for the building platform are taken to be the levels at the side of the existing house of approximately RL 75.5 at the front of the building platform and RL 76.5 at the rear of the building platform. The finished floor level for the existing house is RL 76.6.

As a result of Council's request, floor levels were reduced as follows:

	Original Plans RL	Amended Plans RL
Basement Level	75.15	74.72
Ground Floor Level	78.59	77.93
First Floor Level	81.67	80.92
Roof Ridge	84.93	84.31

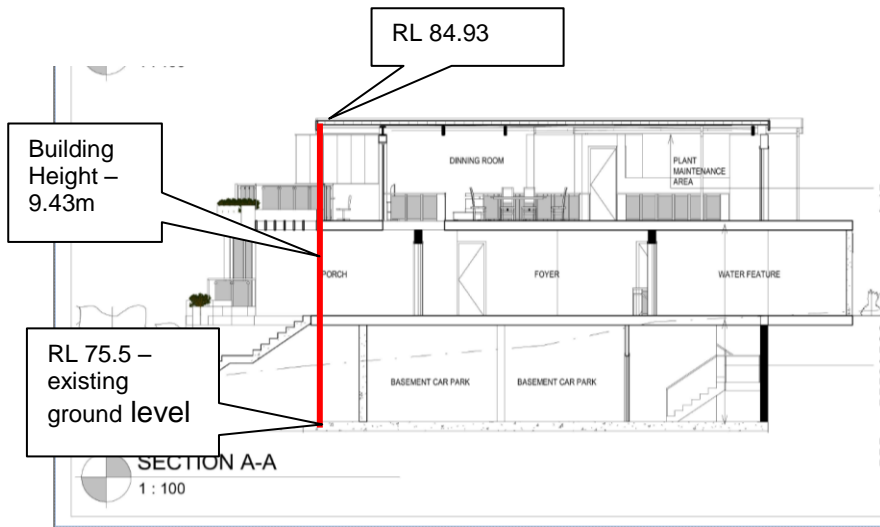
The floor levels and ridge height of the adjoining properties are as follows:

	14 The Battlement RL	18 The Battlement RL
Basement Level	75.82	73.845
Ground Floor Level	78.60	77.08
First Floor Level	81.80	80.01
Roof Ridge	85.08	83.25

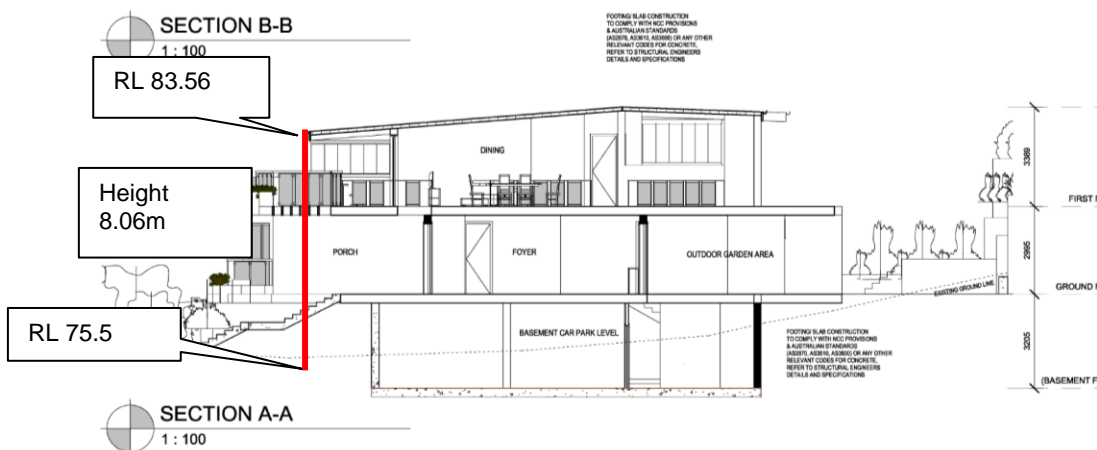
The RL at the front elevation of the roof is shown on the roof plan to be RL 83.56. It is a recommended condition of consent that the RL for the roof at the front elevation does not exceed a height of RL 83.5,

The changes requested to the plans reduce the height of the building by a maximum of 1.43m:

Original Plans

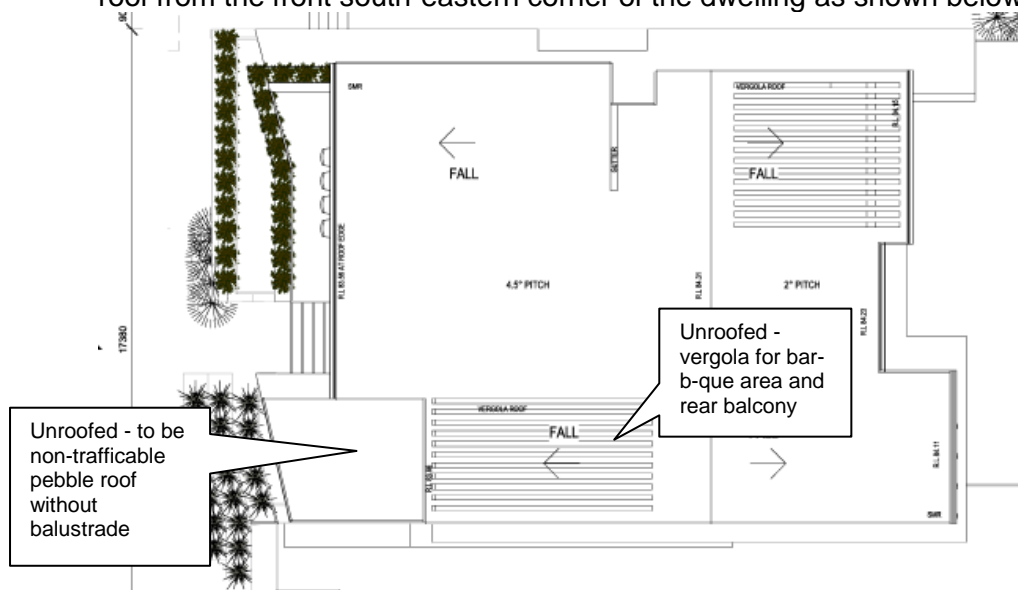


Final Amended Proposal



Note: height to be 8m by condition – a reduction of 60mm.

To further reduce building bulk, Council’s Assessment Officer requested the removal of the roof from the front south-eastern corner of the dwelling as shown below:



4. Heritage Guidelines and Streetscape Considerations

Council’s Assessment Officer requested a number of changes to the design to better reflect the guidelines contained in Part H of the DCP for the Griffin Heritage Conservation Area.

These included the following:

- Reduction in the width of the deck in front of the study at the ground floor level which was located within the 3m setback from the eastern side boundary;
- Removal of a pergola located above the swimming pool.
- Amendments to the Landscaping Plan to show vegetation screen planting at the front of the 3m side setback
- Removing the south-eastern section of the roof and balustrade (recommended by condition) to reduce building bulk from the street.

On the high side of the street, The Battlement is characterised by one, two and three storey houses built to maximise water views to Middle Harbour. The subject site is adjoining by three storey buildings at 14 and 18 The Battlement. Any third storey should be setback to minimise streetscape impacts as has been done at 18 The Battlement. The adjoining house at 14 The Battlement is uncharacteristic of most houses in the street containing three storeys without any setback at the upper level.



For the proposed building, the floor levels are setback as building height increases:

Front Setback:

- Basement Level: 7.2m
- Ground Floor Wall: 8.4m
- First Floor Balcony Roof/Walls: 11.655m

In conclusion, the amended proposal is considered to be consistent with the streetscape character.

5. Excavation and Swimming Pool

During the assessment of the development application, Council's Assessment Officer requested a reduction in the size of the basement and the length of the swimming pool to reduce the amount of excavation. As a result of this request, the size of the basement was reduced substantially and the depth and length of the swimming pool were reduced:

- The rear setback for the swimming pool was increased from 0.9m to 1.5m
- The pool depth at the rear is reduced from 1.859m to 1.3m.

The maximum depth of excavation for the basement is approximately 3.6m. The maximum depth of excavation for the swimming pool is approximately 2.3m.

6. Unauthorised Retaining Walls in Rear Yard

The photograph below shows unauthorised retaining walls in the rear yard, constructed by the applicant. It is a condition of consent that all existing retaining walls in the rear yard that exceed a height of 600mm are to be certified by an engineer as being structurally sound and details submitted to Council for approval prior to the issue of the construction certificate.



Unauthorised retaining walls in rear yard

7. View Loss

Properties in Edinburgh Road raised issues of view loss as well as the adjoining properties at 14 and 18 The Battlement. The owners of 160 Edinburgh Road requested that height poles be erected. This request was declined by the applicant.

The final plans submitted for approval reduce the roofed area of decks at the first floor level to minimise view loss to properties in Edinburgh Road. The amended plans also change the shape of the roof to follow the contours of the land to maintain an 8m height limit above existing ground level. At the front elevation, the roof height has been reduced by 1.43m. In summary, amendments have been made to the plans to minimise view loss to neighbouring properties.

A full view assessment using the principles of *Tenacity* is provided in **Attachment 3**. It is considered that view loss is moderate to 14 The Battlement and 160 Edinburgh Road based on the amended set of plans.

8. Privacy

Concerns about privacy have been raised by the owners of 14, 18 and 19 The Battlement. A full assessment of privacy impacts is provided in **Attachment 3**.

Privacy concerns to 18 The Battlement regarding the large first floor deck on the eastern side of the building have been addressed by reducing the size of the deck to include a non-trafficable area in the amended plans. Further, recommended conditions of consent include a privacy screen for the full length of the eastern elevation of the deck.

The proposed swimming pool within the eastern side setback is located 1.5m from the side boundary at a height of 440mm above the ground floor level of 18 The Battlement. The Landscape Plan includes screen planting between the swimming pool and the side boundary and there is no coping in this area for people to stand on.

Regarding 14 The Battlement, recommended conditions of consent include fixed translucent glazing to a minimum height of 1.6m above floor level for the bedroom 2 windows.

Regarding views into 19 The Battlement, the proposed dwelling house is to be built to enjoy district and water views consistent with the adjoining dwellings at 14 and 18 The Battlement.

In summary, the amended proposal is considered to have an acceptable impact on neighbouring properties subject to the recommended conditions of consent.

9. Overshadowing and Loss of Light

Concerns have been raised by the owners of 14 The Battlement regarding loss of light and overshadowing to north-eastern facing kitchen and second and third bedroom windows. A submission from 19 The Battlement raised a contention that the shadow diagrams did not accurately show the full extent of overshadowing and that the non-compliances with the planning controls caused unacceptable overshadowing impacts to 14 The Battlement.

Council requested amended plans to reduce amenity impacts to 14 The Battlement and for the design to comply with the 8m height limit from existing original ground levels. This reduced the height of the proposed building at the front elevation by 1.43m making it 1.58m below the height of 14 The Battlement at the front elevation.

A Clause 4.6 variation submitted by GSA Planning states that the amended proposal provides three hours of solar access between 9am to 3pm on 22 June to private open space and living areas.

The amended proposal is considered to satisfy the objectives and performance criteria for solar access contained in Part D1.12 of the WDCP and to significantly reduce overshadowing from the plans originally submitted to Council.

10. Retention of Existing Trees

The original plans were modified to retain the existing gum tree (Tree 4) in the rear yard.

There are also three trees on the south-western side boundary with 14 The Battlement which will be affected by the development proposal. One of these trees is located on the adjoining property (Tree 1), one tree is located on the boundary (Tree 2) and one tree is located on the subject site (Tree 3). Tree 3 will be removed as shown on the Landscape Plan. However, Trees 1 and 2 are to be retained and recommended conditions of consent are included for the protection of these trees. Further, the Landscape Plan is to be amended to show the retention of Trees 1 and 2.

The controls and development statistics that apply to the subject land are provided in **Attachment 3**.

A table of the issues raised in the submissions objecting to the proposal and the assessing officer's response is contained in **Attachment 4**.

The applicant's Clause 4.6 request for a variation to a development standard (floor space ratio) is provided in **Attachment 5**. Council's assessment of the Clause 4.6 request is provided in **Attachment 6**.

A detailed assessment of the proposal for approval is provided in **Attachment 7**.

11. CONCLUSION

The Development Application DA-2018/266 for construction of a new dwelling, swimming pool and associated works at 16 The Battlement Castlecrag has been assessed in accordance with Section 4.15 (79C) of the *Environmental Planning and Assessment Act 1979*, *WLEP 2012*, *WDCP*, and other relevant codes and policies. It is considered that the amended proposal is acceptable in the particular location, subject to the consent conditions included in **Attachment 1**.

ATTACHMENT 1: SCHEDULE OF CONDITIONS

SCHEDULE

CONDITIONS OF CONSENT: (including reasons for such conditions)

CONSENT IDENTIFICATION

The following condition provides information on what forms part of the Consent.

1. Approved Plan/Details

The development must be in accordance with the following consent plans electronically stamped by Council:

Type	Plan No.	Revision/ Issue No	Plan Date (as Amended)	Prepared by
Architectural Plans- 0368	FM5003-004	7	27/08/2019	Design Draft Solutions
	FM5003-005			
	FM5003-006			
	FM5003-007			
	FM5003-008			
	FM5003-009			
	FM5003-010			
	FM5003-011			
	FM5003-012			
External Colours and Materials	FM5003-015	1	01/08/2018	
Landscape Plan	L/01	-	29/08/2019	A Total Concept

the application form and any other supporting documentation submitted as part of the application, except for:

- (a) any modifications which are “Exempt Development” as defined under S.4.1(1) of the *Environmental Planning and Assessment Act 1979*;
- (b) otherwise provided by the conditions of this consent.
(Reason: Information and ensure compliance)

PRIOR TO MAKING AN APPLICATION FOR A CONSTRUCTION CERTIFICATE

The following conditions are to be complied with before any Construction Certificate Application is made to the Certifying Authority.

2. Design of Works in Public Road (Roads Act Approval)

Prior to making an application for a Construction Certificate, the applicant must submit, for approval by Council as a road authority, full design engineering plans and specifications prepared by a suitably qualified and experienced civil engineer for the following infrastructure works:

- (a) Removal of the existing retaining walls located within the road reserve
- (b) Construction of a new retaining wall, with the face of the wall located within 400mm of the nominal kerb line. The top of the new wall shall have a maximum level of RL73.66m AHD. The wall is to be constructed of sandstone. No other walls are to be located within the road reserve
- (c) Removal of fill between the boundary and the new wall, such that the maximum ground level at the property boundary is RL 74.66m AHD

The required plans must be designed in accordance with Council's specifications (AUS-SPEC). A minimum of three (3) weeks will be required for Council to assess the Roads Act submissions. Early submission is recommended to avoid delays in obtaining a Construction Certificate. For the purpose of inspections carried out by Council Engineers, the corresponding fees set out in Council's current Fees and Charges Schedule are payable to Council prior to issue of the approved plans.

Approval must be obtained from Willoughby City Council as the road authority under the *Roads Act 1993* for any proposed works in the public road prior to making an application for a Construction Certificate.

(Reason: Ensure compliance)

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

The following conditions of consent must be complied with prior to the issue of a construction certificate.

3. Amendments

Prior to the issue of the Construction Certificate, the proposal is to be amended in the following manner and the amended plan submitted to Council for approval:

- (a) The Landscape Plan is to be amended to show the retaining wall on the road reserve to have a maximum height of RL of 73.66.
- (b) The Landscape Plan is to be amended to show the retaining wall at the front boundary of 16 The Battlement to have a maximum height of RL of 74.66.
- (c) The Landscape Plan is to be amended to show the retention of Tree 1 and Tree 2.
- (d) The RL for the front elevation of the roof as shown on the roof plan is to be reduced from RL 83.56 to RL 83.5.
- (e) The bar-be-que area is to have a fixed louvred privacy screen with views angled away from 18 The Battlement for the full length of the north-eastern elevation (6m in length) and for a minimum height of 1.6m above the FFL of RL 80.71.
- (f) The non-trafficable green roof is to be replaced with a pebble roof and the balustrades are to be removed from the south-eastern and north-eastern elevations.
- (g) The first floor front balcony and rear balcony on the south-western side are to have fixed louvres along the south-west elevation as shown on the first floor plan and on the south-west elevation plan. These louvres are to be a minimum height of 1.6m above the FFL of 80.71 with views angled away from 14 The Battlement.

- (h) The south-western facing bedroom 2 windows at the ground floor are to have fixed translucent glazing to a minimum height of 1.6m above the ground floor level.
- (i) The ground floor plan is to be amended to show natural ground levels to be retained around the Eucalyptus tree as shown on the Landscape Plan.

Plans detailing these amendments are required to be shown on the Construction Certificate plans.

(Reason: Ensure compliance and reduce amenity impacts)

4. Fixed Development Consent Levies

Prior to the issue of the Construction Certificate, a monetary contribution of \$21,548.21 (subject to indexing as outlined below) is to be paid in accordance with Section 7.12 of the *Environmental Planning and Assessment Act, 1979*.

This contribution is based on 1% of the estimated total development cost of \$2,154,821 at 15 August 2018 and the adopted Section 94A Contributions Plan.

To calculate the monetary contribution that is payable, the proposed cost of development is to be indexed to reflect quantity variations in the Consumer Price Index, All Groups, Sydney, as published by the Australian Bureau of Statistics (ABS) between the date the proposed cost of development was agreed by the Council and the date the levy is to be paid as required by this Plan.

To calculate the indexed levy, the formula used to determine the cash contribution is set out below.

$$IDC = ODC \times CP2/CP1$$

Where:

IDC = the indexed development contribution payable

ODC = the original development contribution determined by the Council as a percentage of the cost as set down in this contributions plan

CP2 = the quarterly Consumer Price Index, All Groups, Sydney, as published by the Australian Bureau of Statistics (ABS) immediately prior to the date of payment

CP1 = the quarterly Consumer Price Index, All Groups, Sydney as published by the ABS immediately prior to the date of imposition of the condition requiring payment of the contribution.

Prior to payment Council can provide the value of the indexed levy.

Copies of the S94A Contributions Plan are available for inspection online at www.willoughby.nsw.gov.au

(Reason: Statutory requirement)

5. Certification of Retaining Walls

Prior to the issue of a Construction Certificate, all retaining walls constructed in the rear yard exceeding a height of 600mm are to be certified by a structural engineer and the details are to be submitted to Council for approval.

(Reason: To ensure structural adequacy)

6. Sydney Water 'Tap In'

Prior to the issue of the Construction Certificate, the approved plans must be submitted online to "Sydney Water Tap In" to determine whether the development will affect Sydney Water's sewer and water mains and to see if further requirements need to be met.

An approval receipt will need to be obtained prior to release of the Construction Certificate.

(Reason: Ensure compliance)

7. External Finishes – Heritage Character

All external building material shall be in colours and textures, which are compatible with the heritage character of the locality. In this regard the Schedule of Colours and Finishes submitted with the application satisfies this requirement, and is to be provided to the Accredited Certifier.

(Reason: Visual amenity)

8. Side Boundary Setback

A 3.0m side setback to the dwelling house is to be provided to the north-eastern boundary of the site. Details are to be shown on the Construction Certificate plans prior to the issue of the Construction Certificate.

(Reason: Heritage conservation)

9. Maximum Ridge Height

The maximum ridge height of the proposed development is not to exceed RL 84.30. This is to reduce the bulk of the proposed development. Details are to be shown on the Construction Certificate plans prior to the issue of the Construction Certificate.

(Reason: Visual amenity and heritage Conservation)

10. Front Setback Area

The front garden area is to be landscaped with locally native shrubs and trees. Details are to be shown on the Construction Certificate plans prior to the issue of the Construction Certificate.

(Reason: Conservation area amenity)

11. Damage Deposit

Prior to the issue of the Construction Certificate, the applicant shall lodge a Damage Deposit of **\$4,295** (GST Exempt) as cash, cheque or an unconditional bank guarantee, to Council against possible damage to Council's assets and any infrastructure within the road reserve/footway during the course of the building works. The deposit will be refundable subject to inspection by Council after the completion of all works relating to the proposed development. For the purpose of inspections carried out by Council Engineers, an inspection fee of **\$169** (GST Exempt) is payable to Council. Any damages identified by Council shall be restored by the applicant prior to release of the Damage Deposit.

(Reason: Protection of public asset)

12. Stormwater Conveyed to Street Drainage

Stormwater runoff from the site shall be collected and conveyed to the street drainage system in accordance with Council's specifications. The outlet shall connect to the street drainage system at the new vehicle crossing grated channel. Any new drainage pipe connections to street kerb / grated channel shall be made using a 125mm x 75mm x 4mm thick galvanised Rectangular Hollow Section (RHS) with a grated drainage pit (min. 450mm x 450mm) provided within the property and adjacent to the boundary prior to discharging to the Council's drainage system. All drainage works shall comply with the requirements described in Part C.5 of Council's DCP and Technical Standards. In this regard, full design and construction details showing the method of disposal of surface and roof water from the site shall be shown on the Construction Certificate plans.

(Reason: Stormwater control)

13. Detailed Stormwater Management Plan Including Rainwater Tank (SWMP)

Prior to the issue of the Construction Certificate, submit for approval by the Certifying Authority, detailed stormwater management plans for collection of stormwater drainage from the site and connection to the street drainage channel at or adjacent to the new vehicular crossing. The plans shall include a rainwater re-use tank(s) system with a minimum storage volume of 10 m³ in accordance with Sydney Water's requirements and Part C.5 of the Willoughby DCP and Technical Standard No. 1 and 2. The rainwater reuse tank system shall be connected to supply non-potable use including toilet flushing, laundry use, landscape irrigation and car washing. Overflow from the rainwater tank(s) shall be directed to the receiving stormwater-system by gravity. Any above ground rainwater re-use tank shall be located behind the front alignment of the building to which the tank is connected.

The construction drawings and specifications shall be prepared by a qualified and experienced civil engineer or suitably qualified stormwater drainage consultant and shall be in accordance with the stormwater management plans. All drawings shall comply with Part C.5 of Council's Development Control Plan and Technical Standards, AS3500.3 – *Plumbing and Drainage Code*, Sydney Water's requirements and the National Construction Code Volume 3.

(Reason: Ensure compliance)

14. Driveway Longsection

Prior to issue of the Construction Certificate and in order to assess the susceptibility of vehicles to scraping as they pass over the proposed access driveway the applicant shall submit longitudinal sections for approval by the Certifying Authority along each side of the proposed vehicular access path drawn at 1:20 Scale. The longitudinal sections shall include the following: -

- (a) Horizontal distance from the centreline of the road to the proposed parking slab, including provision of Council's "gutter bridge" style layback as per Council's standard drawing SD106 which is available from Council's website.
- (b) Both existing and proposed levels (in AHD) and gradients represented in percentage (%) of the vehicular crossing and driveway.
- (c) Crossfall on road pavement shall be shown on long sections.

The design shall be prepared by a suitably qualified civil engineer using Council's standard vehicle profile (SD100). All driveway grades and transitions shall comply with AS 2890.1 -2004 and Council's specifications.

The existing drainage pipe under the driveway is to be replaced with a grated drainage channel across the new layback, similar to the layback detailed in SD106, with the depth varying to suit the new driveway levels. The existing pipe under the driveway at #14 The Battlement is to discharge into the new grated channel.

The new crossing is to be 3.5 metres wide with no splays and be constructed at right angle to street kerb. For the design levels of the vehicular crossing at the property boundary, the following shall be complied with:

- (a) At centreline of existing pipe / drainage channel – 340 mm above and parallel to the existing pipe / drainage channel invert. (RL approx. 73.29mAHD)
- (b) At 1.0m from the back edge of grate – 470mm above and parallel to the existing pipe / drainage channel invert. (RL approx. 73.43mAHD)
- (c) At 3.0m from the back edge of grate – 780mm above and parallel to the existing pipe / drainage channel invert. (RL approx. 73.74m AHD)
- (d) At property boundary – match existing levels.

The suitability of the grade of driveway inside the property is the sole responsibility of the applicant and the required alignment levels fixed by Council may impact upon these levels.

(Reason: Safe vehicular access)

15. Tree Protection Plan

- (a) Submit to the accredited certifier a Tree Protection Plan drawing for approval prior to issue of a construction certificate.
- (b) The Tree Protection Plan is to be prepared by a qualified Arborist with minimum qualification AQF Level 5.
- (c) Tree Protection Plan drawing shall address tree protection and management of all trees (including those on adjoining properties) in accordance with AS 4970-2009 'Protection of trees on development sites' and clearly mark tree protection zones as well as tree protection measures and fencing and include:
 - (i). Layout of the approved development
 - (ii). Location of trees numbered 1,2 and 4 as indicated in the Arboricultural Impact Appraisal dated 10 December 2018 prepared by Naturally Trees
 - (iii). Extent of canopy spread
 - (iv). Location of tree protection fencing / barriers (fencing in accordance with AS2470 – 2009)
 - (v). Required tree protection measures
 - (vi). Required hold points for inspection by or presence of the Project Arborist.

(Reason: Retain and protect significant planting on and adjacent to the site)

PRIOR TO COMMENCEMENT

The following conditions of consent have been imposed to ensure that the administration and amenities relating to the proposed development comply with all relevant requirements. All of these conditions are to be complied with prior to the commencement of any works on site, including demolition.

16. Licensee Details

The name, address and contractor licence number of the licensee who has contracted to carry out the work or the name and permit number of the owner-builder who intends to carry out the work shall be furnished in writing to the Certifying Authority prior to commencement of work. N.B. Should changes be made for the carrying out of the work the Certifying Authority must be immediately informed.

(Reason: Information)

17. Dilapidation Report of Adjoining Properties

Prior to commencement of work, submit a photographic survey and report of the adjoining properties 14 The Battlement Castlecrag, 18 The Battlement Castlecrag and 162 Edinburgh Road Castlecrag to the Certifying Authority and all owners of these adjoining properties. Such photographic survey and report shall be prepared by a suitably qualified person, detailing the physical condition of these properties, both internal and external including items as walls, ceilings, roof, structural members and other items as necessary.

In the event of a property owner refusing to allow access to carry out the photographic survey, the proponent must demonstrate in writing to the Certifying Authority, and provide a copy to Council, that the purpose of the survey was made clear to the property owner and that reasonable attempts to obtain access were made.

(Reason: Protection of adjoining owners)

18. Report Existing Damages on Council's Property

Prior to commencement of any works on site, submit to Council as the Principal Certifying Authority a report with digital photographs of any existing damages to Council's assets fronting the property and the immediate adjoining properties. Failure to do so will result in the applicant being liable for any construction related damages to these assets. In this respect, the damage deposit lodged by the applicant may be used by Council to repair such damages.

(Reasons: Protection of Council's Infrastructure)

19. Permits and Approvals Required

Application is to be made to Council's Infrastructure Services Division for the following approvals and permits as appropriate:-

- (a) Permit to erect Builder's hoarding where buildings are to be erected or demolished within 3.50m of the street alignment. Applications are to include current fees and are to be received at least 21 days before commencement of the construction.
- (b) Permit to stand mobile cranes and/or other major plant on public roads. Applications are to include current fees and security deposits and are to be

received at least seven days before the proposed use. It should be noted that the issue of such permits may also involve approval from the NSW Police Force and the RMS. A separate written application to work outside normal hours must be submitted for approval.

It should also be noted that, in some cases, the above Permits may be refused and temporary road closures required instead which may lead to longer delays due to statutory advertisement requirements.

- (c) Permit to open public roads, including footpaths, nature strip, vehicular crossing or for any purpose whatsoever. All applications are to include current fees.
- (d) Permit to place skip/waste bin on footpath and/or nature strip. (Maximum three (3) days).
- (e) Permit to work and/or place building materials on footpath and/or nature strip. (Maximum two (2) weeks).
- (f) Permit to establish Works Zone on Public Roads adjacent to the Development including use of footpath area. Applications must be received by Council at least twenty-one days prior to the zone being required. The application will then be referred to the Council's Local Traffic Committee for approval, which may include special conditions.
- (g) Permit to construct vehicular crossings over Council's footpath, road or nature strip.

The public footway must not be obstructed at any time unless written approval has been granted by Council. Council's footpath and footway shall be maintained in a safe condition for pedestrians and the general public at all times.
(Reason: Legal requirements)

20. Application for Vehicle crossing

Submit an application with fees to Council for the construction of a plain concrete vehicular crossing.
(Reason: Protection of public asset)

21. Underground Utility Services

Where excavation is proposed, locate and establish the size and levels of all utility services in the footpath and road reserve. Contact "Dial Before You Dig" Service" prior to commencement of any works.

All adjustments to public utilities' mains and services as a consequence of the development and associated construction works shall be at the full cost to the applicant.
(Reason: Protection of utilities)

22. Project Arborist

- (a) A Project Arborist is to be appointed prior to commencement of works on site;
- (b) The Project Arborist is to have a minimum qualification AQF Level 5;
- (c) The Project Arborist is to oversee and authorise all tree protection measures, removals and works adjacent to protected trees as detailed in the approved Tree Protection Plan, the Arboricultural Impact Appraisal dated 10 December 2018 prepared by Naturally Trees and AS4970-2009

Protection of trees on development sites and relevant conditions of consent;

- (d) The Project Arborist is to certify
 - i) that all tree protection measures have been installed prior to commencement of works and
 - ii) that all tree protection measures and remediation works have been complied with prior to issue an Occupation Certificate.

(Reason: Safety, environmental protection, landscape amenity)

DURING DEMOLITION, EXCAVATION AND CONSTRUCTION

The following conditions are to be complied with throughout the course of site works including demolition, excavation and construction.

23. Certification Required

- (a) Finished ground levels in the road reserve and at the front boundary of 16 The Battlement are to be certified by a registered surveyor and submitted to Council for approval prior to the construction of the ground floor level. The certified RLs are to comply with the conditions of consent for the walls on the road reserve and at the front boundary.
- (b) The finished floor level at the ground floor of RL 77.93 is to be certified by a Registered Surveyor and submitted to Council for approval prior to the construction of the first floor level.

(Reason: To ensure compliance)

24. Hours of Work

All construction/demolition work relating to this Development Consent within the City, unless varied by an Out of Hours Work Permit, must be carried out only between the hours of 7 am to 5 pm Mondays to Fridays and 7 am to 12 noon on Saturdays. No work is permitted on Sundays or Public Holidays.

An application for an Out of Hours Work Permit to allow variation to these approved hours must be lodged with Council at least 48 hours prior to the proposed commencement of the work. The application must include a statement regarding the reasons for the variation sought, the type of work/s to be carried out, the additional time required, the anticipated impact upon the local amenity and how this will be minimized, and must be accompanied by the required fee. One (1) permit is required for each variation to the approved working hours within any 24 hour period.

If a variation to these approved hours for multiple or extended periods is sought, an application under Section 4.55 of the *Environmental Planning and Assessment Act 1979* must be lodged with Council at least twenty-one (21) days in advance of the proposed changes to the hours of work. The application must include a statement regarding the reasons for the variation sought, the type of work/s to be carried out, the additional time required, the anticipated impact upon the local amenity and how this will be minimized, and be accompanied by the required fee. Note: This Section 4.55 application may require re-notification in some circumstances.

(Reason: Ensure compliance and amenity)

25. Building Site Fencing

Public access to the site and building works, materials and equipment on the site is to be restricted, when work is not in progress or the site is unoccupied.

A temporary safety fence is to be provided to protect the public, located to the perimeter of the site (unless the site is separated from the adjoining land by an existing structurally adequate fence, having a minimum height of 1.5m). Temporary fences are to have a minimum height of 1.8m and be constructed of cyclone wire or similar with fabric attached to the inside of the fence to provide dust control.

Fences are to be structurally adequate and be constructed in a good and workmanlike manner and the use of poor quality materials or steel reinforcement mesh as fencing is not permissible. All parts of the fence, including the fencing blocks shall be located wholly within the property boundaries.

The public safety provisions and temporary fences must be in place and be maintained throughout construction.

(Reason: Safety)

26. Provide Erosion and Sediment Control

Where work involves excavation or stockpiling of raw or loose materials, erosion and sediment control devices shall be provided wholly within the site whilst work is being carried out in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into Council's stormwater system natural watercourses, bushland and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the requirements of the *Protection of Environment Operations Act 1997* and the Department of Environment, Climate Change and Water guidelines. The control devices are to be maintained in a serviceable condition AT ALL TIMES.

(Reason: Environmental protection)

27. Suitable Screens

In the event of likely emission of dust, noise, waste water or other matter, suitable screens shall be erected during demolition and building work to prevent their emission from the site.

(Reason: Maintain amenity to adjoining properties)

28. Demolition Work AS 2601-2001

Any demolition must be carried out in accordance with AS 2601 – 2001, *The demolition of structures*.

(Reason: Safety)

29. Access to Site

During Demolition, Excavation and Construction, access to the site is to be available in all weather conditions, and stabilised to prevent vehicles tracking soil materials onto public roads.

(Reason: Environmental protection)

30. Rock Hammering/Sawing

Having regard to the residential nature of surrounding area rock sawing is to be used in preference to rock hammering during the excavation/construction phase of the development.

(Reason: Amenity)

31. Survey Certificate

Certification of the following shall be submitted to the Certifying Authority by a registered surveyor:

- (a) Prior to the construction of footings or first completed floor slab (i.e. prior to pouring of concrete) showing the area of the land, building under construction and boundary setbacks;
- (b) At completion indicating the relation of the building and any projections to the boundaries, and that the building has been erected to the levels approved in the Development Application.

(Reason: Ensure compliance)

32. Road and Footpath

Council's footpath, nature strip or roadway shall not be damaged and shall be kept clear at all times. The public footway must not be obstructed at any time unless written approval has been granted by Council and the footway including any footpath shall be maintained in a safe condition for pedestrians and the general public at all times.

(Reason: Maintain public safety)

33. No Storage or Parking on Footway/Nature Strip

Building materials, plant and equipment and builder's waste, are not to be placed or stored at any time on Council's footpath, nature strip or roadway adjacent to building sites unless prior written approval has been granted by Council.

Further, the parking of motor vehicles on footpaths, nature strips and cross overs and unloading vehicles while double parked or otherwise unsafely parked is not permitted. All vehicles are required to be parked legally and safely

(Reason: Safety)

34. Skips and Bins

Rubbish skips or bins are not to be placed on Council's footpath, nature strip or roadway unless prior written approval has been granted by Council.

(Reason: Safety)

35. Excavations and Backfilling

All excavations and backfilling associated with the erection or demolition of a building must be executed safely, and must be properly guarded and protected to prevent them from being dangerous to life or property.

(Reason: Safety)

36. Temporary Toilet Facilities

Temporary toilet facilities shall be provided to the satisfaction of the Certifying Authority.

The provision of toilet facilities must be completed before any other work is commenced on site. NOTE: Portable toilet facilities are not permitted to be placed on public areas without prior approval having been obtained from Council.

(Reason: Health and amenity)

37. Swimming Pool Safety During Construction

The swimming pool is to be made safe during the construction of the dwelling, by the erection of a temporary safety fence to the satisfaction of the accredited certifier. The pool is not to be filled with water until the dwelling is completed and occupied and a child resistant barrier erected in accordance with the regulations prescribed in the *Swimming Pool Act 1992*.

(Reason: Safety)

38. Swimming Pool Notice

During construction and in perpetuity following completion, a notice shall be displayed showing:

- (a) Appropriate instructions of artificial resuscitation methods.
- (b) A warning stating
 - (i) "YOUNG CHILDREN SHOULD BE ACTIVELY SUPERVISED WHEN USING THIS SWIMMING POOL",
 - (ii) "POOL GATES MUST BE KEPT CLOSED AT ALL TIMES", and
 - (iii) "KEEP ARTICLES, OBJECTS AND STRUCTURES CLEAR OF THE POOL FENCE AT ALL TIMES"

NB: This notice shall be kept in a legible condition and at the pool side.

(Reason: Safety)

39. Erection Wholly within the Boundaries

All works (with the exception of any works approved under S138 of the *Roads Act 1993*) including footings, shall be erected wholly within the boundaries of the property. This condition does not apply to remedial works required to be undertaken on the road reserve adjacent to 16 The Battlement.

(Reason: Ensure compliance)

40. Sweep & Clean Pavement

Sweep and clean pavement surface adjacent to the ingress and egress points of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council.

(Reason: Legal requirement)

41. Street Signs

The applicant is responsible for the protection of all regulatory / parking / street signs fronting the property. Any damaged or missing street signs as a consequence of the

development and associated construction works are to be replaced at full cost to the applicant.

(Reason: Protection of public assets)

42. Tree Trunk, Branch and Root Protection

- (a) Existing trees which must be retained
 - (i). Trees numbered 1,2 and 4 as indicated in the Arboricultural Impact Appraisal dated 10 December 2018 prepared by Naturally Trees
 - (ii). Trees located on adjoining land
 - (iii). all road reserve trees and vegetation.
- (b) Tree protection measures:
 - (i). No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by the Project Arborist on site.
 - (ii). All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by the Project Arborist on site.
 - (iii). All tree protection is to be in accordance with the approved Tree Protection Plan, the Arboricultural Impact Appraisal dated 10 December 2018 prepared by Naturally Trees and AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
 - (iv). The tree protection measures specified in this clause must:
 - 1.1.1. be in place before work commences on the site, and
 - 1.1.2. be maintained in good condition during the construction period, and
 - 1.1.3. remain in place for the duration of the construction works.
 - (v). No excavated material, building material storage, site facilities, or landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - (vi). All tree pruning within the subject site is to be in accordance with the relevant Development Control Plan for Private Property Tree Management and AS 4373 Pruning of amenity trees
 - (vii). any tree roots exposed during excavation with a diameter greater than 25mm within the Tree Protection Zone must be assessed by the Project Arborist. Details including photographic evidence of works undertaken shall be submitted by the Project Arborist to the Certifying Authority.

(Reason: Tree protection)

PRIOR TO OCCUPATION OF THE DEVELOPMENT

The following conditions of consent must be complied with prior to the issue of an occupation certificate.

43. Automatic Fire Detection

Prior to the issue of any Occupation Certificate, an automatic fire detection and alarm system complying with Part 3.7.2 of the Housing Provisions or smoke alarms complying with AS 3786 or listed in the SSL Register of Accredited Products, connected to the mains electricity and having a stand by power supply shall be provided. Smoke alarms must be interconnected and installed in a Class 1 building on or near the ceiling in:

- (a) any storey containing bedrooms
 - (i) between each part of the dwelling containing bedrooms and the remainder of the dwelling;
 - (ii) where the bedrooms are served by a hallway, in the hallway.
- (b) any other storey not containing bedrooms.

(Reason: Safety)

44. Swimming Pool – Heating and Cover

Prior to the issue of the Occupation Certificate and in perpetuity, the swimming pool is to be fitted with a cover to maintain temperatures and minimise evaporation of water. Any heating shall be of energy efficient means.

(Reason: Ensure compliance/ sustainable development)

45. Swimming Pool - Access

Prior to the issue of the Occupation Certificate for the swimming pool, access to the swimming pool shall be restricted by a child resistant barrier in accordance with the regulations prescribed in the *Swimming Pools Act 1992*.

- (a) The pool shall not be filled with water, or be allowed to collect stormwater, until the installation of the child resistant barrier is completed to the Certifying Authority's satisfaction.
- (b) The barrier is to conform to the requirements of AS 1926 –
Part 1 – “Safety Barriers for Swimming Pools”
Part 2 – “Location of Safety Barriers for Swimming Pools”

(Reason: Safety)

46. Swimming Pool Concourse

Prior to the issue of the Occupation Certificate for the swimming pool, the pool concourse shall be constructed to provide a lip on the outer edge, so as to prevent water surge or overflow onto the adjoining property and landscaped area.

(Reason: Amenity)

47. Emitted Noise – Swimming Pool

Prior to the issue of the Occupation Certificate and in perpetuity, the noise emitted by the swimming pool pump and filter equipment shall be not more than 5dBA above the ambient background noise level measured at the boundaries in accordance with the

current Environment Protection Authority (EPA) guidelines for noise assessment. Further, in accordance with the Protection of the Environment Operations (Noise Control) Regulation 2017, the equipment is not to operate between 8pm to 7am weekdays and 8pm to 8am on weekends and public holidays if noise can be heard within any room in any other residential premises (that is not a garage, storage area, bathroom, laundry, toilet or pantry) whether or not any door or window to that room is open. A time switch is to be installed on the power source for the above equipment to ensure that the non-permitted hours are observed.

(Reason: Amenity)

48. Spa/Swimming Pool Backwash and/or Overflow

Prior to the issue of an Occupation Certificate for the spa and/or swimming pool, water from the spa/swimming pool, including any backwash, overflow and runoff shall be effectively contained and discharged to the sewer by appropriate, permanent piping, drainage and design so this water does not:

- (i) enter any land, waters or the stormwater disposal system, including during wet weather events;
- (ii) cause, or be likely to cause, damage to other land, or a building on the land or other land; and
- (iii) cause discharge of sewer from the residential premises at a flow rate exceeding 2 Litres per second per Sydney Water's requirements.

Upon completion, certification from an independent, licenced and practising plumber and any engaged suitable pool specialists must be submitted to the Principal Certifying Authority certifying that the spa/swimming pool, any associated components and all drainage at the premises complies with the most recent, relevant editions of:

- (a) the *Plumbing Code of Australia*;
- (b) Australian Standard/New Zealand Standard AS/NZS 3500 series on *Plumbing and Drainage*;
- (c) the *Building Code of Australia* and relevant Australian Standards and Australian Standard/New Zealand Standards for spas, swimming pools and any associated components featured or installed at the premises;
- (d) *Part C.5 – Water Management* of the *Willoughby Development Control Plan* (WDCP); and
- (e) Sydney Water editions of the relevant *Water Services Association of Australia* codes of practice and any Sydney Water guidelines, policies and relevant requirements.

(Reason: Environmental compliance, health and safety)

49. Surface Water Runoff

Prior to the issue of the Occupation Certificate and in perpetuity, surface water runoff from new paved areas shall be directed away from neighbouring properties and disposed of to the satisfaction of the Certifying Authority.

(Reason: Health and amenity)

50. Certification of Roof Levels

Prior to the issue of any Interim or Final Occupation Certificate, the RLs for the roof as shown on the approved Roof Plan are to be certified by a Registered Surveyor and submitted to Council for approval.
(Reason: To Ensure Compliance)

51. Nature Strip – Griffin Conservation Area

Prior to the issue of any Occupation Certificate, the strip of land between the property boundary and the road, shall be heavily landscaped by informal indigenous shrubs and trees integrated with the natural environment so as to maintain, protect and enhance the indigenous landscape and the landforms natural features.
(Reason: Conservation area amenity)

52. Stormwater Runoff from Upstream Lots

Prior to the issue of any Occupation Certificate, provide an overland flow path to convey all stormwater runoff from the upstream neighbouring property to the public drainage system. The drainage system is to be designed in accordance with Part C.5 of the Council's WDCP and for storm events up to and including the 100-year ARI.
(Reason: Prevent nuisance flooding)

53. Grated Box Drain

Prior to the issue of any Occupation Certificate and for stormwater control, a 200 mm wide grated trench drain with a heavy duty removable galvanised grate is to be provided at the property boundary across the driveway to collect driveway runoff. The trench drain shall be connected to the main drainage system and must have an outlet of minimum diameter 150mm to prevent blockage by silt and debris.
(Reason: Proper disposal of stormwater)

54. Rainwater Re-use – Major

Prior to the issue of any Occupation Certificate, the applicant shall supply and install rainwater re-use tanks with a minimum storage volume of 10 m³ in accordance with KD Stormwater plans DG1624 Sheets 1 and 2, , Sydney Water's requirements and Council's DCP and Technical Standards. The rainwater reuse system shall be connected to supply non-potable use including, but not limited to laundry, toilet flushing and landscape irrigation. Any above ground rainwater tank shall be located behind the front alignment of the building to which the tank is connected.
(Reason: Ensure compliance and conserve natural resources)

55. Sign for Rainwater Reuse system

Prior to the issue of any Occupation Certificate, an aluminium plaque measuring no less than 400mm x 200mm is to be permanently attached and displayed within the immediate vicinity of the rainwater tank.

The wording for the plaque shall state *"This is the rainwater retention and reuse system required by Willoughby City Council. It is an offence to alter any part of the system without written consent from Council. The registered proprietor shall keep the system in good working order by regular maintenance including removal of debris"*.
(Reason: Prevent unlawful alteration)

56. Confined Space Sign

Prior to the issue of any Occupation Certificate, securely install a standard confined space danger sign in a prominent location within the immediate vicinity of access cover of the below ground rainwater tank.

(Reason: Safe access to tank)

57. Certification of Rainwater Reuse System

Prior to the issue of any Occupation Certificate and upon completion of the Rainwater Retention and Reuse System, a licensed plumber shall certify that the rainwater retention and reuse system has been constructed in accordance with the approved stormwater management plans and that the as-built system has been fitted with proprietary first flush device and connected to non-potable use including toilet flushing, laundry and landscape irrigation. All plumbing/drainage works shall be carried out which comply with the current plumbing requirements of Sydney Water and the National Construction Code Volume 3.

(Reason: Record of works)

58. Works-As-Executed Plans – Rainwater Reuse

Prior to the issue of any Occupation Certificate and upon completion of the Rainwater Re-use System, the following shall be submitted to the Certifying Authority:

- (a) Work-as-executed plans based on the approved stormwater plans from a registered surveyor to verify that the volume of storage, invert levels of inlet, overflow pipes and discharge outlet are constructed in accordance with design requirements. Any minor changes or variations to the approved plans should be highlighted in red on the approved stormwater plans.
- (b) Plumber's certification that the Rainwater Re-use system has been fitted with proprietary first flush device and connected to non-potable use including toilet flushing, laundry and landscape irrigation. The Certificate shall detail the number and type of fixtures connected to the tank. All works completed shall comply with the current plumbing requirements of Sydney Water and the National Construction Code Volume 3.

(Reason: Record of works)

59. S88B/S88E(3) Instrument

Create Positive Covenant and Restriction on the Use of Land on the Title in favour of Council as the benefiting authority for the as-built rainwater retention and reuse system. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council's Technical Standards.

The above instruments shall be created under Section 88B of the *Conveyancing Act 1919* for newly created lots. For an existing lot, the instruments can be created under Section 88E(3) of the *Conveyancing Act 1919* using Form 13PC and 13RPA respectively. The size and relative location of the rainwater tank, in relation to the building footprint and property boundary, must be shown on the final plan of subdivision/strata plan or must be shown on the scale sketch, attached as an annexure to the request 13PC and 13RPA forms. The S88B instrument or 13PC/13RPA forms shall be lodged with Council's Standard S88B/S88E Lodgement Form with all supporting documentations listed in the Form. Council's Standard Form is available from Council upon requested.

Documentary evidence of registration of these instruments with the NSW Land Registry Services shall be submitted to the Certifying Authority and Council prior to issue of any Occupation Certificate.

(Reason: Maintenance requirement)

60. Documentary Evidence of Positive Covenant, Engineers Certificate

Prior to the issue of any Occupation Certificate, the following documentary evidence of the completed drainage works shall be submitted to Certifying Authority and Council: -

- (a) Registered Positive Covenant and Restriction on the Use of Land by way of the Title Deed.
- (b) Plumber's certification of the as-built rainwater reuse system.
- (c) Work-as-Executed plans highlighting in red based on the approved stormwater management plans from a registered surveyor for the as-built rainwater reuse system.

(Reason: Public record)

61. Splay Corner for Wall on Driveway

Prior to the issue of any Occupation Certificate and in order to ensure adequate sight distances for pedestrians and traffic in the frontage road, any wall along the edge of the driveway shall be constructed with a minimum clear splay at the boundary of 1m x 1m on both sides of the driveway exit.

(Reason: Pedestrian safety)

62. Wall

Prior to the issue of any Occupation Certificate, remove the existing walls within the road reserve and construct a new stone wall adjacent to the kerb. The top of the wall shall have a maximum level of RL 73.66m AHD and the ground level at the boundary shall be no higher than RL 74.66m AHD.

All works shall be carried out in accordance with Council's standard specifications and drawings.

(Reason: Public amenity)

63. Vehicular Crossing

Construct a new vehicular crossing including the replacement of the existing layback and/or gutter and any associated road restoration as directed by Council's Engineers. All works shall be carried out in accordance with Council's specification AUS-SPEC C271 and Council's Standard Drawing SD106 – Grated Channel Crossing and any approved longitudinal sections. A separate application for the crossing including current fees and charges is to be submitted for approval by Council.

The crossing is to be 3.5 metres wide with no splays and is to be constructed at right angles to the street kerb in plain concrete. The new crossing shall be located no closer than 1 metre from any power pole and 2 metres from any street tree unless otherwise approved by Council. The centreline of the new crossing shall be "in-line" with the centreline of the parking space(s).

The existing drainage pipe under the driveway is to be replaced with a grated drainage channel across the new layback, similar to the layback detailed in SD106,

with the depth varying to suit the new driveway levels. The existing pipe under the driveway at #14 The Battlement is to discharge into the new grated channel.

For the design levels of the vehicular crossing at the property boundary, the following shall be complied with:

- (a) At centreline of existing pipe / drainage channel – 340 mm above and parallel to the existing pipe / drainage channel invert. (RL approx. 73.29mAHD)
- (b) At 1.0m from the back edge of grate – 470mm above and parallel to the existing pipe / drainage channel invert. (RL approx. 73.43mAHD)
- (c) At 3.0m from the back edge of grate – 780mm above and parallel to the existing pipe / drainage channel invert. (RL approx. 73.74m AHD)
- (d) At property boundary – match existing levels.

The suitability of the grade of driveway inside the property is the sole responsibility of the applicant and the required alignment levels fixed by Council may impact upon these levels.

All adjustments to the nature strip, footpath and/or public utilities' mains and services as a consequence of the development and any associated construction works shall be carried out at the full cost to the Applicant. All driveway grades and transitions must comply with AS/NZS 2890.1.

Vehicular Crossing Formwork Inspection Sheet shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Certifying Authority prior to issue of any Occupation Certificate.
(Reason: Public amenity)

64. Inspection of Civil Works on Road Reserves

All required works on the road reserve, including new walls, shall be completed in accordance with the Council approved drawings, conditions and specification (AUS-SPEC).

Pursuant to Section 138 of the *Roads Act 1993*, all works carried out on the road reserve shall be inspected and approved by Council's Engineer. Upon completion, Work-as-Executed drawings prepared by a registered surveyor shall be submitted to Council for record purposes. A completion certificate shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Certifying Authority prior to the issue of any Occupation Certificate.
(Reason: Ensure compliance)

65. Performance Bond

Prior to the issue of any Occupation Certificate, the Applicant shall lodge with the Council a performance bond of \$3,000 against defective public civil works undertaken by the main Contractor for a period of twelve (12) months from the date of the completion certificate issued by Council as the road authority under the *Roads Act 1993*. The bond shall be lodged in the form of a cash deposit, cheque or unconditional bank guarantee which will be refundable subject to the approval of Council's Engineers at the end of the maintenance period. In this period, the Applicant is liable for any part of the work which fails to achieve the design specifications. Council shall be given full authority to make use of the bond for such restoration works within the maintenance period as deemed necessary.
(Reason: Ensure compliance and specification)

66. Vehicular Access and Garaging

Driveways and vehicular access ramps shall be designed to provide adequate ground clearance to the underside of B85 vehicles. In all respects, prior to the issue of any Occupation Certificate, the proposed vehicle access including any parking spaces shall be designed and constructed to comply with the minimum requirements of AS/NZS 2890.1 and Council's standard specification.

(Reason: Vehicular access)

67. Public Infrastructure Restoration

Prior to the release of the Damage Deposit, any damaged public infrastructure caused as a result of the construction works on the subject site (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) must be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.

(Reason: Protection of public assets)

68. Creation of Positive Covenant

Prior to the issue of any Occupation Certificate, the applicant must create a Positive Covenant under Section 88E of the *Conveyancing Act 1919*, burdening the owner with the requirement to maintain the stairs, path and walls within the road reserve. The Positive Covenant is to be created through an application to the Department of Lands in the form of a request using forms 13PC. **Title documents showing the registered covenant must be submitted and approved by the Principal Certifying Authority prior to issue of any Occupation Certificate.**

The terms of the instruments are to be in accordance with the following:

1. Definitions and Interpretation

1.1. For the purpose of this covenant, the following definitions apply:

Act means the *Conveyancing Act 1919*.

Business Day means a day that is not a Saturday, Sunday or public holiday in the state of New South Wales.

Claim includes any liability, damage, loss, action, application, cause of action or demand.

Council means Willoughby City Council.

Council Land means the area of the road reserve fronting the property.

Expenses includes:

- (i) any reasonable expense incurred by Council in exercising its powers under this Positive Covenant. Such expense shall include wages for Council's employees, agents or contractors in effecting any work, supervising any work and administering any work together with the costs for the use of machinery, tools and equipment in conjunction with such work; and

- (ii) reasonable legal costs on an indemnity basis.

Land means the area of 16 The Battlement Lot 127 DP14804.

Plan means Drawings ### prepared by ####

Prescribed Authority means Willoughby City Council.

Registered Proprietor means being the current registered proprietor in fee simple of the Land and includes the registered proprietors of the Land from time to time.

Relevant Authority means Council and all and any other governmental or semi-governmental entity entitled to authorise or regulate the construction, use, condition and removal of the Structure.

Structure means the walls approved under Development Consent DA 2018/266 constructed on Council Land fronting the development.

1.2. Interpretation

In this Positive Covenant, except where the context otherwise requires:

- (i) the singular includes the plural and vice versa, and a gender includes other genders;
- (ii) another grammatical form of a defined word or expression has a corresponding meaning;
- (iii) a reference to a clause, paragraph, schedule, information table or annexure is to a clause of paragraph of, or schedule or information table or annexure to, this Positive Covenant and a reference to this Positive Covenant includes any schedule or annexure;
- (iv) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (v) a reference to a party includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (vi) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (vii) the meaning of general works is not limited by specific examples introduced by including, for example or similar expressions;
- (viii) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;

- (ix) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Positive Covenant or any part of it;
- (x) headings are for ease of reference only and do not affect interpretation; and
- (xi) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

2. Obligation to construct

The Registered Proprietor must construct the Structure on the Council Land:

- (i) in a proper and workmanlike manner by properly insured contractors; and
- (ii) in accordance with the Plans prepared for the proprietor by a qualified designer; and
- (iii) in accordance with the requirements of any Relevant Authority.

3. Obligations in relation to Structure

The Registered Proprietor must at all times without notice from Council:

- (i) subject to clause 4(i)(B), keep and maintain the Structure in good and tidy condition and in a proper state of repair;
- (ii) carry out regular inspections of the Structure to ensure that the Structure is securely constructed and meets all requirements from time to time of Relevant Authorities and the law; and
- (iii) paint (if applicable) and refurbish the Structure whenever required to do so by the Council,

to the satisfaction of the Council.

4. Covenants of the Registered Proprietor

The Registered Proprietor:

- (i) at its own cost must:
 - (A) ensure that the Structure is at all times securely constructed and meets the requirements of all Relevant Authorities and complies with all relevant Australian Standards, building codes and the law;
 - (B) except in the case of an emergency, submit to the Council details of any proposed repairs, maintenance, refurbishment, alteration or replacement of the Structure for approval by the Council and shall not carry out any such work without first obtaining the written approval of the Council and any other Relevant Authority;

- (C) if applicable, procure the consent of the Relevant Authority under Section 138 of the *Roads Act 1993* (NSW) in relation to the Structure or any works associated with the Structure;
 - (D) promptly comply with all orders and notices issued by the Council or any Relevant Authority in relation to the Structure, including without limitation as to the need to construct, repair, maintain, replace, refurbish or alter the Structure; and
 - (E) if required by Council in writing, remove the Structure, restore the land on which the Structure is erected to match the surrounding land and make safe the site of the Structure to the satisfaction of Council within one (1) month of any notice issued by the Council pursuant to this clause,
- (ii) covenants that in carrying out its obligations and exercising its rights under this Positive Covenant, it must use its best endeavours not to cause any inconvenience to the public and adjoining owners.

5. Rights and obligations of the Council

- (i) By written notice to the Registered Proprietor the Council at any time may require the Registered Proprietor to attend to any matter and to carry out any further work to the Structure within such time as the Council may specify or require to ensure structural soundness and proper and efficient maintenance of the Structure. The Registered Proprietor must comply with the notice at its own costs.
- (ii) If the Registered Proprietor fails to comply with the terms of any written notice by the Council as set out in the clause 5(i), the Council or any person authorised by the Council may repair, replace or otherwise remedy any failure by the Registered Proprietor to observe its obligations under this Positive Covenant and may recover all Expenses incurred by Council of so doing from the Registered Proprietor.

6. Insurances

- (i) The Registered Proprietor must at the Registered Proprietor's own cost and expense take out and keep in force:
 - (A) a public liability policy of insurance for a sum of \$20,000,000.00 or such other amount as the Council from time to time may require against liability arising in respect of personal injury to or death of any person in or about the Structure; and
 - (B) an adequate insurance policy for all risks including damage to person or property and the replacement and reinstatement cost of the Structure and any other interest Council may from time to time require.
- (ii) The policies of insurance referred to in clause 6(i) must:
 - (A) be in the name of the Registered Proprietor and note the interest of Council;

- (B) be taken out with an accredited insurance company approved by Council;
 - (C) be endorsed to indemnify the Council in respect of the indemnity given by the Registered Proprietor to the Council under clause 8;
 - (D) have no exclusions, endorsements or alterations unless first approved of by the Council; and
 - (E) be on such terms and conditions as the Council from time to time require.
- (iii) If the Registered Proprietor fails to maintain the insurances required by this clause 6, the Council may effect and maintain those insurances and the Council's reasonable costs of doing so must be paid by the Registered Proprietor.
- (iv) The Registered Proprietor must produce or cause to be produced to the Council the relevant policy, certificates of currency and premium receipts as and when required by the Council. If the Registered Proprietor does not do so, the Council may insure against the relevant risk and the Registered Proprietor must pay all reasonable expenses incurred by the Council in obtaining the relevant policy to the Council within seven (7) Business Days of receipt of a written demand from the Council.

7. Risk

- (i) The Registered Proprietor acknowledges and agrees that it and its contractors, employees, agents, invitees, licensees, lessees and sublessees, the general public and anyone associated with the Registered Proprietor will use the Structure at its or their own risk.
- (ii) To the full extent permitted by law, the Registered Proprietor releases the Council from liability for any Claim in respect of or arising from:
 - (A) any Structure connected with the Land existing at the date of this Positive Covenant;
 - (B) any Structure to be erected on the road reserve connected with the Land;
 - (C) any fault in the construction or state of repair of the Structure;
 - (D) any defect in the Structure;
 - (E) any failure by the Registered Proprietor to properly maintain the Structure;
 - (F) any damage or injury to any person on or about the Structure except to the extent caused by the Council's negligent or wrongful act or omission; and
 - (G) any of the circumstances set out in clause 8.

8. Indemnity

The Registered Proprietor must indemnify and keep indemnified the Council from and against all Claims, costs (including legal costs calculated on a solicitor and own client basis), charges, damages and expenses of whatsoever nature and kind to which the Council or any of the Council's employees, agents, officers, contractors or the general public is or may be liable for or in respect of any loss, damage, accident or injury of any nature or kind arising from the failure of the Registered Proprietor including its employees, agents, contractors, invitees and the general public to comply with the terms and conditions of this Positive Covenant except to the extent that the Claims, costs, charges, damages and expenses arising in whole or in part out of the negligent or wrongful act or omission of the Council or its employees, agents, officers or contractors.

9. Termination

The Registered Proprietor acknowledges that if the improvements on the Land are demolished or if the improvement erected on the Land cease to be used for the purpose for which they are used at the date of this Positive Covenant the Council may require the Structure be demolished and removed from the road reserve and the land on which the Structure was erected to be restored to match the surrounding land to the satisfaction of the Council within one (1) month of any notice issued pursuant to this clause.

10. Notices

Any notice, approval, consent or other communication required to be given or served in connection with this Positive Covenant must be in writing and must be served in accordance with Section 170 of the Act.

11. Governing Law

The laws of the State of New South Wales and of the Commonwealth of Australia apply to this Positive Covenant to the exclusion of any other laws and the parties agree to submit to the jurisdiction of the Courts of New South Wales in relation to this Positive Covenant.

12. Severability

In the event that any provision of this Positive Covenant is held to be invalid, illegal or unenforceable, that provision must to the extent of the invalidity, illegality and unenforceability be ignored in the interpretation of this Positive Covenant and all other provisions of this Positive Covenant will remain in full force and effect.

13. No waiver

A party to this Positive Covenant is not to be taken to have waived any right or entitlement it may have under this Positive Covenant unless and until that waiver is notified in writing to the party seeking the benefit of the alleged waiver. Waiver by a party in respect of any act or thing required to be done under this Positive Covenant does not constitute a waiver of any other act or thing (whether of the same or of a different nature) required to be done under this Positive Covenant.

14. Right to extinguish

The only party with the authority to release, vary or modify or extinguish this Positive Covenant is the Council.

15. Legal costs

The Registered Proprietor must pay all the Council's reasonable legal costs and expenses in respect of the preparation of this Positive Covenant and the costs of registering this Positive Covenant.

(Reason: Protection of public assets and road reserve)

69. Landscape Certification

Prior to the issue of any Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with the approved landscape plan and any other relevant conditions of consent.

(Reason: to ensure that the landscape treatments are installed to provide landscape amenity)

70. Condition of Retained Vegetation

Prior to the issue of any Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Principal Certifying Authority addressing the health and impact on trees and vegetation required to be retained as a result of the proposed development, including the following information:

- i) Compliance with conditions for tree protection works.
- ii) Any damage sustained by trees or vegetation as a result of the works.
- iii) Remedial works undertaken to ensure the long term retention of the vegetation or tree canopy cover.

(Reason: to ensure the long term survival of vegetation to be retained)

ONGOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

The following conditions have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the planning instrument affecting the land, and relevant legislation.

71. Ground Levels

The finished ground levels external to the building are to be consistent with the development consent and are not to be raised.

(Reason: Ensure compliance)

72. Retaining Walls and Drainage

If the soil conditions require it:

- (a) retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided, and

- (b) adequate provision must be made for drainage.
(Reason: Safety)

73. Stormwater Kerb Outlet

New stormwater connection outlets at street kerb or vehicle crossing grated channel shall be made using 125x75x4 galvanised Rectangular Hollow Section (RHS). Where there are multiple outlets required, a minimum distance of 100mm shall separate these outlets. A grated drainage pit (min. 450mm x 450mm) shall be provided within and adjacent to the property boundary prior to discharging to the Council's drainage system.
(Reason: Protection of public asset)

PRESCRIBED CONDITIONS

The following conditions are prescribed by Section 4.17 of the Environmental Planning & Assessment Act for developments involving building work.

74. Compliance with National Construction Code

All building works must be carried out in accordance with the performance requirements of the National Construction Code.
(Reason: Compliance)

75. Construction Information Sign

A clearly visible all weather sign is required to be erected in a prominent position on the site detailing:

- (a) that unauthorised entry to the work site is prohibited;
- (b) the excavator's and / or the demolisher's and / or the builder's name;
- (c) contact phone number/after hours emergency number;
- (d) licence number;
- (e) approved hours of site work; and
- (f) name, address and contact phone number of the Certifying Authority (if other than Council)

ANY SUCH SIGN IS TO BE REMOVED WHEN THE WORK HAS BEEN COMPLETED.

Council may allow exceptions where normal use of the building/s concerned will continue with ongoing occupation, or the works approved are contained wholly within the building.
(Reason: Ensure compliance)

STATUTORY REQUIREMENTS

The following advisory notes are statutory requirements of the Environmental Planning & Assessment Act and the Environmental Planning & Assessment Regulations and are provided to assist applicants

76. Construction Certificate Required

This consent IS NOT an approval to carry out any building works. A Construction Certificate may be required PRIOR TO ANY WORKS BEING COMMENCED.

Enquiries regarding the issue of a construction certificate can be made to Council's Customer Service Centre on 9777 1000.

(Reason: Ensure compliance and statutory requirement)

77. Notify Council of Intention to Commence Works

In accordance with the provisions of Section 6.6 of the *Environmental Planning and Assessment Act 1979* the person having the benefit of the development consent shall appoint a Certifying Authority and give at least 2 days' notice to Council, in writing, of the person's intention to commence the erection of the building.

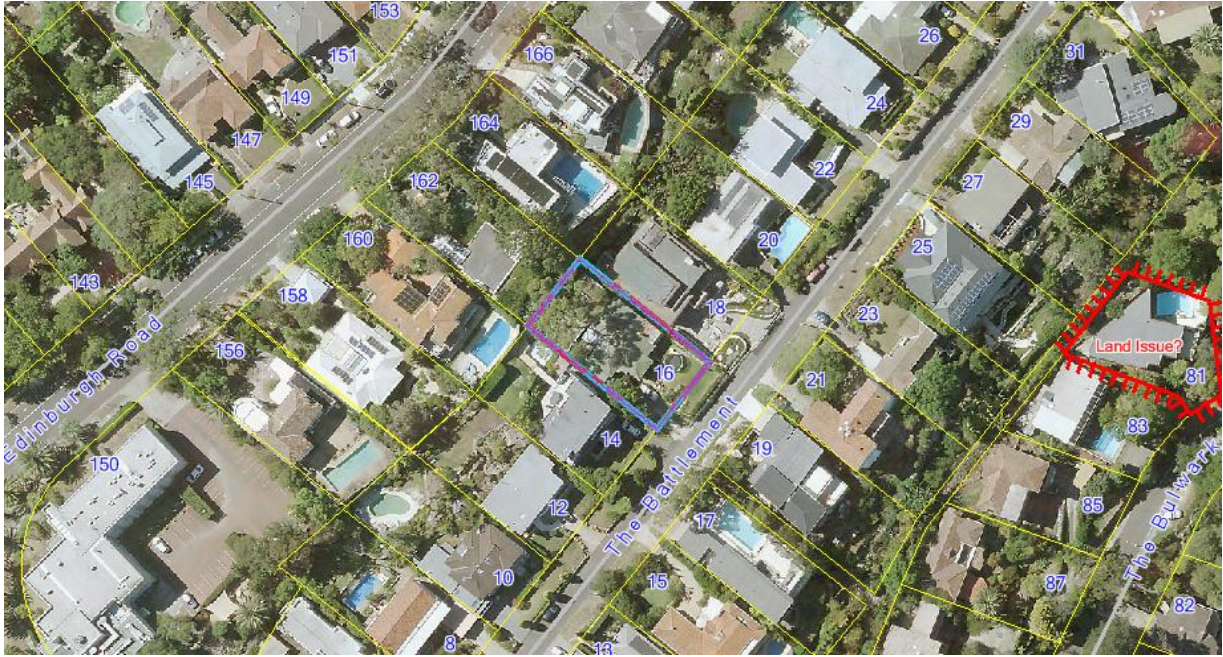
(Reason: Information and ensure compliance)

78. Occupation Certificate

The building/structure or part thereof shall not be occupied or used until an interim occupation / final occupation certificate has been issued in respect of the building or part.

(Reason: Safety)

ATTACHMENT 2: SITE DESCRIPTION AND AERIAL PHOTO



Subject Site – 16 The Battlement Castlecrag

The subject site is described as Lot 127 DP 14804. The site is zoned E4 Environmental Living and is located within the Griffin Heritage Conservation Area. The site is located on the north-western side of The Battlement and has a north-western to south-eastern orientation. The site has a rectangular shape with a frontage to The Battlement of 18.28m and a depth of 35.14m, for a total site area of 638.6m². There is a fall of 7.36m from the rear boundary to the front boundary. The site is located on the high side of the street with views towards Middle Harbour.

ATTACHMENT 3: CONTROLS & DEVELOPMENT STATISTICS AND REFERRALS

Willoughby Local Environmental Plan 2012 Zoning:	E4
Existing Use Rights	No
Conservation area	Yes
Heritage Item	No
Vicinity of Heritage Item	Yes – 150, 156, 158 Edinburgh Rd & 6 The Battlement
Bushfire Prone Area	No
Foreshore Protection Area	No
Flood related planning control	No
Adjacent to classified road	No
Road/lane widening	No
Applicable DCP	Willoughby DCP
Applicable SEPPs	SEPP 55, BASIX SEPP
Relevant policies and resolutions	SREP (Sydney Harbour Catchment)

		Proposed by applicant	Calc. by Council	Standard	Numerical Compliance
	Site Area (m²)		638.6m ²		
CI.4.3	Height (m)	8.06m	8.06m	8m (HCA)	Yes by condition
CI.4.4 & CI. 4.4A	GFA (m²)	237.84	264.84	217.14 m ²	No
	FSR	0.37:1	0.42:1	0.34:1 (HCA)	
WDCP					
C.4	Parking	2	3	2	Yes
C.5	Water management (%)			>55% 10,000L tank	Yes
C.9	Tree preservation	N/A		Trees exceeding 4m, trunk girth 0.6m or crown exceeding 3 m subject to preservation controls	Yes
D1.4.2.4	Colours			Sensitive to surroundings	Yes
D1.4.3.2	Two storey wall length			6m max without articulation	Yes
D1.7	Building Height Plane		Non-compliance on south-west elevation	envelope 3.5 m high at boundary and 45 degree angle inwards over site	No
	Front Setback (m)		7.2m	Front setbacks vary generally between 6m – 10m	Yes

		Proposed by applicant	Calc. by Council	Standard	Numerical Compliance
	Side Setback North-Eastern (m)		3m	0.9 (1.5m on 1 side E4 only)	Yes
	Side Setback South-Western (m)		900mm & 1.939m (3 rd storey)		
	Rear Setback (m)		6.83m	6m for 2 storey dwelling and consistent with established line	Yes
D1.8	Soft Landscaped Area (m ²)	275m ²	246.6m ² (Dwelling, hardstand & Pool 392m ²)	41.5% (265m ²)	No
	Landscaping within front setback area (%)		72%	70% where > 18m frontage.	Yes
D1.9	Private open space (>400m ²)	>150m ²	>150m ²	150m ²	Yes
D1.10	Private Recreation Facilities	2.5m	2m	Pools not to exceed 1.5m high setback min 1 m from boundary.	No
D1.11	Privacy		Privacy controls added	Need for privacy protection	Yes
D1.12	Solar access		3 hrs achieved	3 hours between 9am to 3pm on 22 June to private open space and living areas	Yes
H3.5	Setback (m)		7.2m to ground floor	Street :Variable: 6-10m 3m – one side	Yes
	Facades			Horizontal emphasis	Yes
	Ridge height (m)			8m	Yes by condition
	Roof pitch (degrees)			Simple flat roofs or low pitched hipped roof forms – maximum roof pitch 22.5 degrees.	Yes
	Landscaping			Heavily landscaped front gardens, dominated by indigenous shrubs	Yes

Developer's Contribution Plans:

S7.11/7.12 Section 94A contribution:	Yes
a. Applicable rate (%):	1%
b. The cost of development (Part A CI 25J) (\$)	2,154,821
c. Date of accepted cost of development:	15 August 2018
d. The total contribution payable (\$)	21,548.21

Referrals

Building services	Yes, subject to conditions
Engineering	Yes, subject to conditions
Environmental Health	No
Waste	No
Landscape	Yes , subject to conditions
Heritage	Yes, subject to conditions

Non-compliances with Council's Codes and Policies

WLEP 2012

There is a non-compliance with FSR development standard of 0.34:1. A detailed assessment of the Clause 4.6 is provided in **Attachment 6**.

WDCP

Front Setback

The proposed dwelling house has a front setback of 7.2m to the basement with the ground floor and first floor set further back to provide articulation and reduce building bulk. The proposed front setback is slightly forward of the adjoining dwelling houses. However, dwelling houses on the high side of The Battlement have varying front setbacks and the proposed front setback of 7.2m is considered to be consistent with the prevailing building line for houses on the high side of The Battlement. Further the proposed front setback is consistent with guidelines for the Griffin Heritage Conservation Area of between 6m and 10m.

Building Height Plane

Part D1.7 of the DCP, Building Envelopes and Setbacks - Planes are projected at 45° from a height of 3.5m above natural ground level at the side boundaries to a maximum height of 8m metres for the subject site.

The proposal complies with the building envelope on the north-eastern side boundary but there is an encroachment on the south-western side boundary. However, the Section B-B plan shows that the first floor is setback by an additional 1.494m from the ground floor which is consistent with the performance criteria of the control: *Setbacks will progressively increase as the height of the external wall increases to reduce bulk and overshadowing.* Furthermore it is considered that the proposed dwelling house, notwithstanding the numerical non-compliance, meets the objectives of the control.

Soft Landscaping

Part D1,8 stipulates minimum landscaped areas for dwelling houses. The site has an area of 638.6m². Hard stand areas including the swimming pool come to a total of 392m² which leaves the remainder of the site available for soft landscaping. This comes to 246.6m² or 38.6% of the site available for soft landscaping. The required soft landscaping area for a site in the E4 zone is 265 m². Despite this numerical non-compliance, the proposal does comply with the minimum landscaped area requirement of 70% within the front setback and will therefore meet the objective of reinforcing the landscape character of the street. The Landscape Plan submitted with the development application shows significant landscaping within the front and rear setbacks. In conclusion, it is considered that the proposed dwelling house, notwithstanding the numerical non-compliance, meets the objectives of the control.

Pool Height

Part D1.10 stipulates a maximum height for the swimming pool of 1.5m above existing ground level. The pool exceeds this height at the front elevation. However, due to the length of the pool and the slope of the land, the pool is located below existing ground level at its rear elevation. The pool has been reduced in length at the northern end to reduce excavation. The pool has been designed with landscaping adjacent to the side boundary (and no coping) and vegetation to be planted at the front elevation with tiers leading down to the front garden. The pool is located behind the front setback and will be screened by vegetation from the street.

Regarding amenity impacts to the adjoining property at 18 The Battlement, the pool achieves the required 1m setback and the level of the pool is similar to the ground floor level of the adjoining house. There is room for screen planting between the pool and the boundary and there is no pool coping between the swimming pool and the common boundary with 18 The Battlement to ensure privacy.

In conclusion, it is considered that the proposed pool, notwithstanding the numerical non-compliance, meets the objectives of the control.

Tenacity View Loss Assessment

A number of submissions were received from neighbouring properties regarding view loss and these are summarised as:

- 14 The Battlement – side facing views from two bedrooms at the ground floor level; loss of views from a first floor sitting room/parent's retreat and view loss from the rear terrace and pool (including pool deck)
- 18 The Battlement – view loss in a south-westerly direction from a first floor front balcony
- View loss from properties in Edinburgh Road at the ground floor level both internal and for outdoor areas. In this regard submissions regarding view loss were received from properties at 160 and 164 Edinburgh Road.

The four planning principles for view loss assessment from *Tenacity* are outlined below:

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. 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, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

The views from all the properties include views of Middle Harbour both water and land/water interface views.

The second step is to 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.

In the case of 14 The Battlement, views from the two bedroom windows and the parent's retreat/sitting room are directly across the side boundary with 16 The Battlement. The water views from the pool and deck/open space area are in a south-easterly direction over 14 The Battlement and the side boundary with 16 The Battlement.

In the case of 18 The Battlement, potential view loss in a south-westerly direction from a first floor front balcony.

In the case of properties in Edinburgh Road view loss is from ground floor internal and outdoor living areas including in the case of 160 Edinburgh Road, the kitchen, dining room, lounge room, family room and outdoor pool/deck areas.

The third step is to assess the extent of the impact. 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.

14 The Battlement

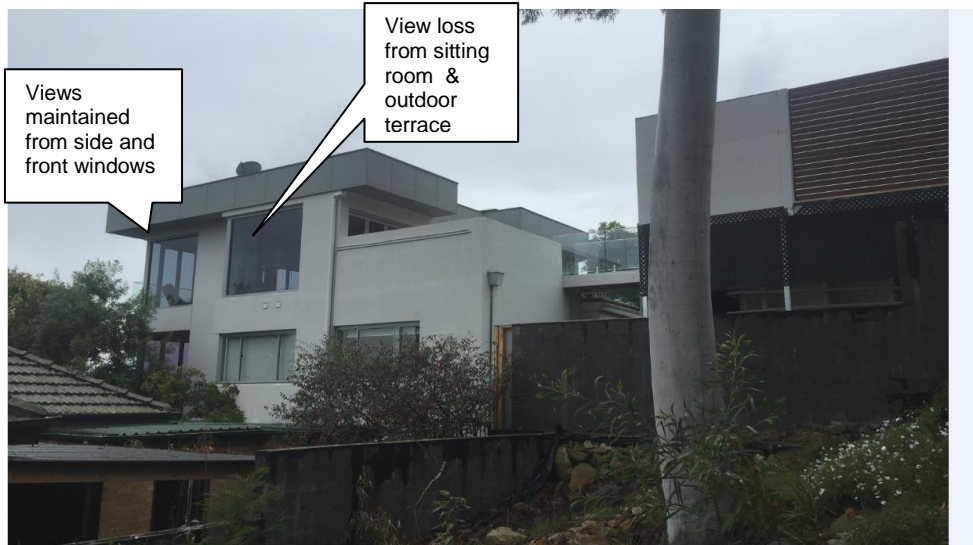
A view corridor to Middle Harbour from the pool and pool deck area will be maintained as it extends over 14 The Battlement. The height of the side boundary fence adjoining the pool at 14 The Battlement is RL83.6 which is higher than the proposed height of the roof at the front elevation RL 83.5.

Views from the side facing bedroom windows at the ground floor will be lost as the windows have sill heights of RL 79.8 and head heights of RL 81.3 and will be adjacent to the proposed dwelling house at 16 The Battlement.

The first floor parent's retreat/sitting area has a side facing window with a sill height of RL 82 and a head height of RL 84.3. The views from this window and the outdoor terrace will be substantially lost as the proposed building has a height of approximately RL 84 at this point. However, this room also has a side/corner window and front doors and balcony facing Middle Harbour. As a result views from this first floor sitting room will be substantially maintained.

In summary, 14 The Battlement will suffer view loss from the ground floor bedroom windows and from the first floor sitting room /parents' retreat that face over the common boundary with 16 The Battlement. However, the sitting room maintains extensive views of Middle Harbour from the side/corner window and the front windows/doors and balcony.

There will also be view loss from the terrace adjacent to the sitting room/master bedroom. However, a view corridor towards Middle Harbour from the pool and pool deck will be maintained.



View impacts to first floor

As stated in Tenacity ... *the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries and views should be assessed for the whole of the property, not just for the view that is affected. The expectation to retain side views and sitting views is often unrealistic.*

The view loss from 14 The Battlement as a result of the proposed dwelling house is assessed as being moderate given the difficulty of maintaining views across side boundary fences and given the extensive views of Middle Harbour that the house enjoys at the front elevation and at the south-eastern corner of the property. Importantly views will be maintained from the pool and pool deck and from the parents' retreat.

160 Edinburgh Road

A view assessment was submitted for 160 Edinburgh Road that considered potential view loss from the ground floor internal and external living areas as being severe to devastating based on the original set of plans submitted to Council. The town planner also requested height poles be erected to accurately assess view loss. This property also has views from a first floor level that will not be affected by the proposed development.

The final set of amended plans will reduce view impacts to 160 Edinburgh Road as follows:

- The RL for the front elevation of the roof has been reduced from RL 84.93 to RL 83.56 (to be RL 83.5 by condition) a reduction of 1.43m.
- The final set of plans delete the roof over the first floor deck at the south-eastern corner of the building by a maximum depth of 4.456m.
- 18 the Battlement has a gutter height at the front elevation of RL 82.99 which is only 510mm lower than the proposed RL of 83.5 for the front elevation of the roof at 16 The Battlement.

It is considered that the amended design will significantly improve view loss impacts to 160 Edinburgh Road and that view loss to this property will now be moderate.

There are no significant view loss issues to 18 the Battlement. The reduction in the roof area over the proposed first floor deck will further assist in maintaining view corridors from this property.

The fourth step is to 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 will achieve compliance with the height limit that applies to the site but does exceed the FSR limit.

The most significant view loss relates to views across the side boundary to the subject site from 14 The Battlement. As stated in *Tenacity* it is unreasonable to expect that views directly across side boundaries can always be maintained.

View loss from properties in Edinburgh Road has been greatly improved by an amended proposal that complies with the 8m height limit and by changes in roof design. It is therefore considered that although the FSR limit is breached, the proposal is considered acceptable and the view sharing reasonable.

Privacy

Privacy concerns were raised by the owners of 18 The Battlement regarding the swimming pool within the side setback and the first floor terrace located at the north-eastern side of the building.



Height of Proposed Swimming Pool

The pool has a level of RL 77.52 which is 440mm above the ground floor level of the adjoining house at 18 The Battlement (RL 77.08). The pool is setback at 1.5m with a landscaped strip between the pool and the side boundary fence. Vegetation in the side setback will be to a height of 2.5m. The pool fence is shown to be located on the eastern side of the pool and there is no pool coping on the eastern side of the swimming pool

The first floor bar-be-que area with vergola is to have a 6m privacy screen for the full length of its eastern elevation. Eastern facing windows at the ground floor level are well setback

from the side boundary and will be screened by vegetation within the side setback. The first floor kitchen window has a sill height of RL 81.92 which is 2.9m above the top of the ground floor windows of 18 The Battlement (RL 79.7)



Large Side Facing Bedroom and Living Area Windows – 14 The Battlement and Elevated Swimming Pool Fence.

Privacy concerns from 14 The Battlement include:

- The decks and entertainment areas on the first floor are at the same level as our external deck which leads our from our primary living area (parent retreat)
- Direct viewing into our pool area which is our primary outdoor area
- Full height glass window which is our primary living area (parents retreat) and the proposed first floor entertainment and balcony areas will look straight into our living area
- Direct unobstructed view into both our children's bedroom on the north-eastern side.

In response to these comments the following privacy assessment has been made:

- The first floor living areas of the proposed dwelling house have an increased side setback of 2.394m from the common boundary with 14 The Battlement
- The first floor rear balcony and front balcony at the first floor level have louvres preventing overlooking into 14 The Battlement. It is a condition of consent that the louvres are to be fixed with views angled away from 14 The Battlement.
- At the ground floor level the side windows facing towards 14 The Battlement are highlight windows except for two windows for bedroom 2. It is a recommended condition of consent that these windows are to have fixed translucent glazing to a minimum height of 1.6m above the ground floor level.

Regarding views from the upper rear balcony, the floor level for the proposed rear balcony is RL 80.71. The adjoining pool at 14 The Battlement has a similar RL of 81.8. The adjoining pool and deck are screened for a distance of approximately 10m from the rear boundary with a 1.8m high fence along the common boundary. The proposed first floor balcony is setback at 9.648m from the rear boundary and has a side privacy screen so that it will not be possible to look into the adjoining pool and open space area at 14 The Battlement.

ATTACHMENT 4: SUBMISSIONS TABLE

Submissions were received from the following properties:

- 156 Edinburgh Road Castlecrag
- 158 Edinburgh Road Castlecrag
- 160 Edinburgh Road Castlecrag – owners and town planner
- 162 Edinburgh Road Castlecrag- architect
- 164 Edinburgh Road Castlecrag
- 14 The Battlement Castlecrag – owner
- 18 The Battlement Castlecrag
- 19 The Battlement Castlecrag – both previous and current owners
- 22 The Battlement Castlecrag
- 5 The Barbette Castlecrag
- Castlecrag Progress Association – two submissions
- Walter Burley Griffin Society

A second submission was received in response to the re-notification of plans from the following properties:

- 160 Edinburgh Road Castlecrag
- 162 Edinburgh Road Castlecrag
- 164 Edinburgh Road Castlecrag
- 14 The Battlement Castlecrag
- 18 The Battlement Castlecrag

Property	Issues raised
5 The Barbette	Height poles requested Artificial ground levels – illegal works
Council Comment:	The consent requires remedial work on the road reserve. Council requested the erection of height poles during the assessment of the application but the request was declined.
14 The Battlement	Privacy concerns regarding upper entertainment deck and direct overlooking into the pool area View loss from upper level open space and pool. View loss from side facing children’s bedroom at ground floor View loss from side facing parent’s retreat room. level Overshadowing – massive overshadowing to north-east facing windows which includes the living area, kitchen, second and third bedrooms Removal of trees –on boundary. Two of trees are on adjoining property. No permission has been granted to remove these trees. Illegal works on road reserve - Worried about natural light to eastern facing rooms
Council Comment:	- Privacy impacts have been assessed and found to be satisfactory as detailed in the planning assessment report. Additional privacy measures have been incorporated into the consent. - A view loss assessment has been carried out using the principles of <i>Tenacity</i> . With the amended proposal the view corridor from the pool and deck will be retained. Overshadowing has been reduced with the amended proposal. Tree 1 is on the adjoining property – to be retained and amended plans submitted to Council to show the protection of this tree. Tree 2 is shown on the survey plan to be on the boundary and is to be retained.

Property	Issues raised
	Tree 3 is on the subject site and is to be removed
18 The Battlement	Concerned with privacy impacts from pool within the eastern side setback and first floor deck at eastern side elevation Concerned with effect of excavation on property Concerned with front setback and requests same front building line to maintain views. Plans do not show windows of neighbouring properties Concern with 25m long pool at 1.5m from boundary and height of pool. Concern with privacy from elevated deck
Council comment:	Privacy impacts to 18 The Battlement have been assessed in detail as part of the assessment report and are found to be satisfactory subject to conditions and a reduction made to the size of the upper eastern side deck at the first floor. In the final set of plans, Council requested a removal of the roof in the south-eastern corner which will assist in maintaining view corridors from 18 The Battlement. Pool height is slightly higher than ground floor level of 18 The Battlement and this is detailed in the assessment report. Adjoining window height and locations are shown on the survey plan. Conditions have been included requiring dilapidation report for adjoining properties and rock sawing instead of rock hammering.
19 the Battlement	Building Height Non-compliance - Exceeds FSR - Number of storeys - Does not comply with minimum landscaped area requirement - Excessive floor to floor heights - Large garage access - Overbearing, bulk, mass and scale - View loss impacts - Loss of privacy to properties on the lower side of Edinburgh Road - privacy impacts - loss of trees at 14 and 16 - unacceptable overshadowing - inaccuracy of documentation - illegal ground levels, fill and retaining walls
Council comment:	As discussed, Council requested amended plans to reduce bulk and scale, to reduce amenity impacts and to address unauthorised works. Trees 1, 2 and 4 will be retained.
22 The Battlement	Applicant has not removed unauthorised walls built on public land Concerned if DA is approved before the illegal walls are removed there will be no incentive to remove the walls. Illegal walls marked as existing retaining walls Artificial ground levels are misleading.
Council comment:	As discussed, remedial work on the road reserve is included as part of the recommended conditions of consent. Revised ground levels were provided to the applicant for the preparation of amended plans.
156 Edinburgh Road	Building is too large for the site
Council comment:	Amended plans were requested to lower the height of the building and to achieve compliance and to reduce the FSR of the building.

Property	Issues raised
158 Edinburgh Road	Raised levels on road reserve Height non-compliance Set well forward of existing cottage Eucalypt tree looks badly affected height concern
Council comment:	Proposed front setback is forward of adjoining dwellings but is considered to be consistent with the prevailing building line and the guidelines for front setbacks within the Griffin Heritage Conservation Area. Existing Eucalypt tree is to be retained and protected
160 Edinburgh Road	Existing ground levels are based on unauthorised fill. Breaches of planning controls regarding height and FSR GFA not correctly calculated Deficient in landscape area Devastating view loss to 160 Edinburgh Road – <i>Tenacity View</i> Loss Assessment Height poles requested.
Council comment:	Calculation of GFA explained in development assessment report. Amended plans requested to reduce view loss impacts to 160 Edinburgh Rd Height poles requested but applicant declined.
162 Edinburgh Road	Floor space ratio should include area for additional parking spaces. Non-compliance with building envelope Concern regarding compliance with planning controls – character, streetscape and design.
Council comment:	These issues are discussed in the assessment report and GFA calculation includes additional parking. Amended plans requested to better address planning controls.
164 Edinburgh Road	Views will be severely impacted The extensive use of water features will create significant noise concerns Height limits have been set from artificial levels. Entertaining areas on the first floor will impact on privacy View loss from outdoor entertaining areas. Request for height poles
Council comment:	As discussed above The amended plans reduce the height of the building at the front elevation by 1.43m to reduce view loss. Privacy measures have been included to ensure privacy will be maintained to adjoining properties.
Castlecrag Progress Association	Illegal works on road reserve and false ground levels.
Council comment:	As discussed.
Walter Burley Griffin Society	The Society has approached Council about the unauthorised works on the nature reserve and at the rear of the property. Request the design be simplified and the height lowered so as to result in a less visually intrusive building. The dwelling is unsympathetically imposing and should be a maximum of two storeys and subordinate to the landscape. Request 3m side setback – pool will restrict vegetation within the setback Unauthorised walls have not been removed - Concern with height, bulk and scale. - Concern regarding impacts of levels in the rear yard on the

Property	Issues raised
	Eucalypt tree
Council comment	Amended plans were requested to lower the height of the building and to achieve compliance and to reduce the FSR of the building. An amended Landscape Plan was provided to ground levels adjacent to the Eucalypt tree. Amendments made to retain 3m setback with increased landscaping

ATTACHMENT 5: APPLICANT'S CLAUSE 4.6 SUBMISSION

gsa planning

**WILLOUGHBY LEP
2012
Clause 4.6 Exceptions
to Development
Standards – Floor
Space Ratio (FSR)**

Demolition of the existing dwelling and construction of a
two storey dwelling with basement garage at

**16 The Battlement,
Castlecrag**

Prepared for:

Mr Mike Fitch
16 The Battlement,
Castlecrag, NSW 2068

Prepared by:

GSA PLANNING
Urban Design, Environmental & Traffic Planners
(A.B.N 18 003 667 963)

95 Paddington Street, Paddington NSW 2021

p: 02 9362 3364

e: info@gsaplanning.com.au

JOB NO. 18316

March 2019

© GSA PLANNING 2019



**WILLOUGHBY LOCAL ENVIRONMENTAL PLAN (LEP) 2012
CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS**

APPLICANT'S NAME: Mr. Mike Fitch

SITE ADDRESS: No. 16 The Battlement, Castlecrag

PROPOSAL: Demolition of the existing dwelling and construction of a two storey dwelling with basement car parking

1. (i) Name of the applicable planning instrument which specifies the development standard:

Willoughby Local Environmental Plan (LEP) 2012

(ii) The land is zoned:

E4 – Environmental Living

(iii) The number of the relevant clauses therein:

Clause 4.4 – Floor space Ratio

Clause 4.4A – Exceptions to floor space ratio

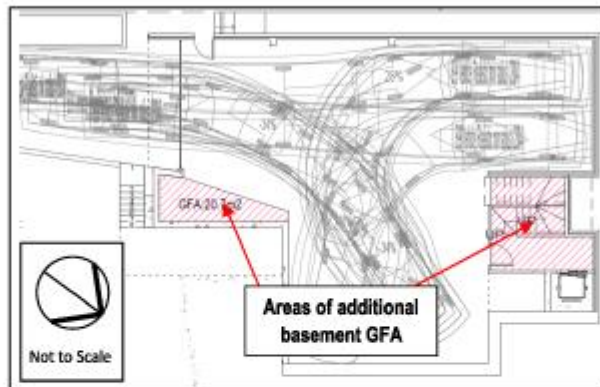
2. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.4 of the LEP – Floor Space Ratio. This Clause operates in conjunction with the LEP FSR Map which indicates a maximum 0.25:1 applies to the subject site. However, Clause 4.4A provides exceptions to the FSR for properties zoned E4 Environmental Living and located in 'Area 10' of the LEP's FSR map.

The site has an area of 638.6m² and is zoned E4 Environmental Living. As the site is located within 'Area 10', Clause 4.4A applies. This nominates a maximum FSR of 0.34:1, equivalent to 217.14m² gross floor area (GFA).

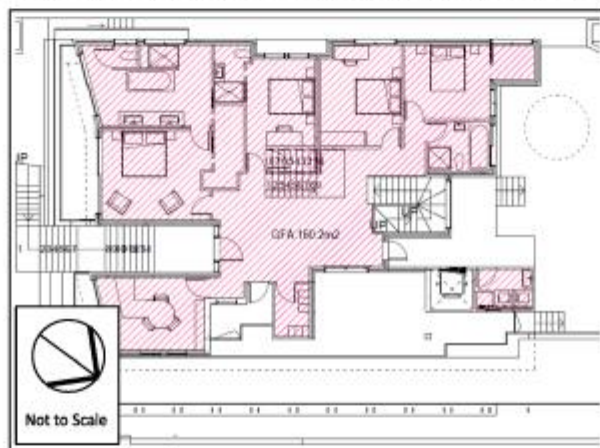
The proposal has a non-compliant FSR of 0.4:1, exceeding the control by 38.76m², of which 20.7m² is in the basement.

The area of non-compliant FSR is predominately located in the basement level is a function of the sloping topography (see Figures 1 to 3 on the following page). When the basement level is excluded from the calculation, the proposals exceedance is reduced to 18.06m² (8.3% exceedance).



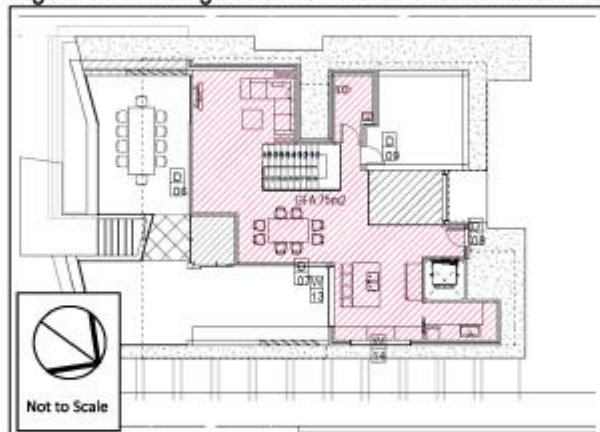
Source: Design Draft Solutions

Figure 1: Diagram Shadowing Basement Areas included in GFA calculation



Source: Design Draft Solutions

Figure 2: Diagram Shadowing Ground Floor Areas included in GFA calculation



Source: Design Draft Solutions

Figure 3: Diagram Shadowing First Floor Areas included in GFA calculation

3. Consistency with Objectives of Clause 4.6

It is noted that the objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the recent Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC118 (*Initial Action*), Preston CJ notes at [87 and 90]:

Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.

However, for abundant caution, it is still considered helpful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

The proposal seeks flexibility in the application of the FSR development standard to the development in the circumstance of this particular case. This report demonstrates the additional FSR is unlikely to affect nearby residents and will positively contribute to the evolving character of The Battlement. The proposal is a contemporary dwelling which will complement the precinct. The proposal is consistent with the desired future character of the E4 Environmental Living Zone, which promotes dwellings which emphasis landscaping and the natural environment.

The proposal is a contextually appropriate design for the site, complying with the LEP's 8m Building Height development standard, and DCP setback controls for front, side and rear setbacks. Additionally, the proposal provides compliant deep soil landscaping area within the front and rear setbacks which contribute to the leafy character of the HCA. Building articulation and upper level massing break down the built form of the proposal and present a development which is consistent with the three storey dwellings along The Battlement.

Flexibility in the circumstances will facilitate the redevelopment of the building to improve the amenity for future occupants and provide a dwelling which is consistent with the character of the locality. The proposal is also a better planning outcome from the site in terms of streetscape presentation and the economic use of the land. Additionally, residents will benefit from an accessible dwelling that accommodates intergenerational living, and flexible living space that provide for diverse mix of recreational uses.

4. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The clause is stated, inter alia:

- (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.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in these circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

4.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

It is our opinion that the proposal satisfies two of the five tests established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant tests will be considered below.

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;

It is noted that under Clause 4.6(4)(a)ii, 'achieved' has been replaced by the lesser test of 'consistent'. Commissioner Brown has considered the question of consistency in *Abrams v The Council of the City of Sydney* [2017] NSWLEC 1371, and at [26] held:

In considering the question of consistency, I have adopted approach of the former Chief Judge, Justice Pearman in Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21 where, Her Honour expresses the following opinion [at 27]:

The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.

Similar reasoning was provided in *Initial Action*, however this has been challenged, but not overturned, by *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 (*Al Maha*). Despite the non-compliance, the proposal is consistent with the desired environmental living character of the area. The proposal provides a height, bulk and scale that is consistent with that envisaged by Council's controls.

Clause 4.4 of the LEP states the objectives for Floor Space Ratio are, inter alia:

- (a) to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives for the land,
- (b) to limit traffic generation as a result of that development,
- (c) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,
- (d) to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone,
- (e) to permit higher density development at transport nodal points,

- (f) to allow growth for a mix of retail, business and commercial purposes consistent with Chatswood's sub-regional retail and business service, employment, entertainment and cultural roles while conserving the compactness of the city centre of Chatswood,
- (g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,
- (h) to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood,
- (i) to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas,
- (j) to encourage the consolidation of certain land for redevelopment,
- (k) to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses.

In our opinion, the proposal is consistent with the relevant objectives of the FSR standard which will now be discussed:

(a) to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives for the land

The proposal is compliant with the building height standard of the LEP, and the setback controls of the DCP. Compliance with development standards and the controls limits the intensity of the built form to maintain the environmental living character of The Battlement and is considered to be in accordance with the environmental capacity of the land. As previously discussed, The Battlement is currently undergoing a transition of single storey dwellings to tiered three storey dwellings which utilise the underlying topography to maximise views towards Sailors Bay. Council has recently approved a several Development Applications in the near vicinity, for new dwellings or alterations and additions to three storey dwellings of similar height, bulk and scale to the proposal. The alterations and additions to No. 19 The Battlement (DA-2016/104), exceeded the FSR limit. As the proposal is a similar bulk and scale to nearby dwellings, the additional FSR is therefore unlike to be discernible.

The objectives of the E4 Environmental Living Zone are as follows, inter alia:

- *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 development preserves and enhances the natural features and bushland within the immediate locality (including natural vegetation, geological features, drainage patterns, the water table and the relationship of development to the natural topography) and does not increase bush fire hazard potential.*
- *To maintain the scale, character and streetscape of individual localities.*
- *To retain and enhance residential amenity, including views, solar access, aural and visual privacy, foreshore setting, landscape quality and heritage value.*

The proposal has been assessed against the objectives of the E4 Environmental Zone as stated, inter alia:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
The proposal is consistent with the building height and setback controls and will be a low-impact dwelling with a limited footprint. The additional FSR will not appear inconsistent with nearby dwellings. The proposal will be compatible with the locality when viewed from the foreshore harbor area and public domain.

- **To ensure that residential development does not have an adverse effect on those values.**
 The proposal has been designed in accordance with the DCP to maintain the aesthetic values of the locality. The upper level massing remains below the rear ridgeline and the building height of No. 14 The Battlement. A low pitched roof and articulated street façade interact with the streetscape. Landscaping and native vegetation planting screen the built form from the streetscape and contribute to local ecological values.
- **To ensure that development preserves and enhances the natural features and bushland within the immediate locality (including natural vegetation, geological features, drainage patterns, the water table and the relationship of development to the natural topography) and does not increase bush fire hazard potential.**
 Although the natural ground level of the site has previously been altered, the proposed dwelling and landscaping has been designed to reflect the topography with sandstone clad retaining walls and mature species proposed. Additionally, landscaping enhancement will preserve the natural vegetation values of The Battlement.
- **To maintain the scale, character and streetscape of individual localities.**
 As discussed, the proposal is consistent with the recently approved dwellings and alterations and additions in The Battlement, and therefore maintains the scale, local character and streetscape.
- **To retain and enhance residential amenity, including views, solar access, aural and visual privacy, foreshore setting, landscape quality and heritage value.**
 As discussed, the amended proposal has reduced the building height to maintain neighbours' views. The proposal provides compliant solar access and privacy for adjoining properties. The Landscape Plan enhances the proposal, providing 275m² landscaped area. While the site is in the Griffin HCA and the foreshore area, the proposal's additional FSR is unlikely to affect the heritage values of the precinct or the foreshore setting.

Accordingly, the proposal is considered to satisfy the objectives of the E4 Environmental Living Zone and is in accordance with the environmental capacity of the land.

(b) to limit traffic generation as a result of that development,

The proposal maintains the existing use of a dwelling house on the site. For these reasons, the proposal is unlikely to generate any additional traffic.

(c) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion

The proposal will maintain view sharing, privacy and solar access, and minimise visual intrusion, in accordance with the DCP. Therefore, the proposal has minimised any impacts of the additional FSR. These matters are discussed individually below.

View Maintenance

Submissions from the rear adjoining properties at Nos. 162 and 164 Edinburgh Road raised concerns about the potential loss of views across the subject site from No. 162 Edinburgh Road, of Sailors Bay. These submissions were in response to the originally submitted proposal. Since then, the amended proposal has reduced the building height by approximately 900mm and is now compliant with the building height development standard.

An additional submission from the adjoining dwelling, No. 14 The Battlement, was also received regarding views from Living areas and from a rear pool area. The views from the pool area are oblique views across a side boundary.

In the assessment of development applications relating to view issues, the NSW Land and Environment Court rely on the principle of the *Tenacity v Warringah Council* (2004) NSWLEC 140. Our assessment of the proposal against this planning principle is included below.

We have not had the benefit of visiting neighbouring sites, including the rear private open space of No. 160 Edinburgh Road. Our assessment is based on an inspection of the subject site, use of aerial photography and photographs from the submitted objections. The four steps in assessing view affectation are considered as follows:

Assessment of the views Affected

In respect of the first step, *Tenacity Consulting v Warringah Council* states that water views are valued more highly than land views and iconic views (Opera House or Harbour Bridge) are valued more highly than views without icons. In addition, whole views are valued more highly than partial views.

The submissions identify the potential water views from the living areas and rear private open space of No. 162 Edinburgh Road and from the rear pool and private open space from No. 14 The Battlement. The potential view loss would be minor in both instances, as the compliant building height and compliant side setbacks maintain view corridors for No. 160 Edinburgh Road. Views from the front primary living areas of No. 14 The Battlement remain unaffected by the proposal.

From what Part of the Property are Views Obtained?

In respect of the second step, *Tenacity Consulting v Warringah Council* states that the protection of views from across side boundaries is more difficult than the protection of views from front or rear boundaries. In addition, sitting views are more difficult to protect than standing views.

The submission from No. 14 The Battlement referred to views obtained from the front primary living areas (see Figure 4). The standing views shown in Figure 4 demonstrate the proposal will have no further effect on views.



Source: GMU Urban Design and Architecture (2016)

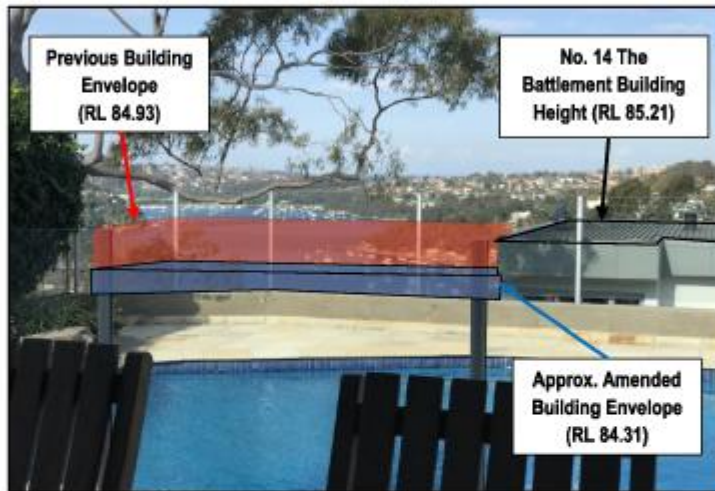
Figure 4: Standing views obtained from No. 14 The Battlements first floor dining room window

Additionally, views of Sailors Bay are obtained across the side boundary from the raised rear pool area of No. 14 The Battlement. It is noted, that retention of views across side boundaries are more difficult to protect the principles of *Tenacity*. In terms of the extent of impact, the pool deck views are less significant than the living area views.

The standing views from No. 162 Edinburgh Road from the living, dining and private open space are obtained across the rear boundary and are therefore considered in any view assessment.

The Extent of Impact

In respect of the third step, *Tenacity Consulting v Warringah Council* states that the views from living areas is more significant than from bedrooms or service areas. The amended proposal includes a reduced building height that is approximately 0.9m below the adjoining property at No. 14 The Battlement. This reduction has substantially increased the views to Sailors Bay. Importantly, the proposed building height is compliant with Council’s standard and maintains water views for No. 162 Edinburgh Road (see Figure 5). Any additional FSR does not contribute to view loss.



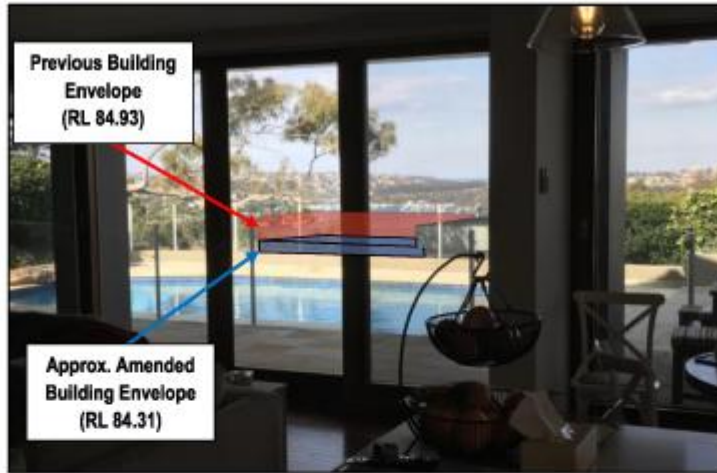
Source: Daintry Associates (2018)

Figure 5: Standing view from the Terrace of No. 162 Edinburgh Road

The Reasonableness of the Proposal

In respect of the fourth step, *Tenacity Consulting v Warringah Council* states that a development that complies with all planning controls would be considered more reasonable than a development that breaches the controls. With a complying development proposal, the issue is whether the same development potential could be achieved with a more skilful design without affecting the views of the neighbours.

The proposal complies with the key development standards for maximum building height, the DCP controls for setbacks, and is therefore consistent with the desired future character of the area. Any proposal which is compliant with the building height development standard will result in a minor reduction of the water views of Sailor Bay. The reduced roof height improves the views from No.162 Edinburgh Road (see Figures 6 – 8 on the following pages). On this basis, the area of FSR exceedance is unlikely to affect views.



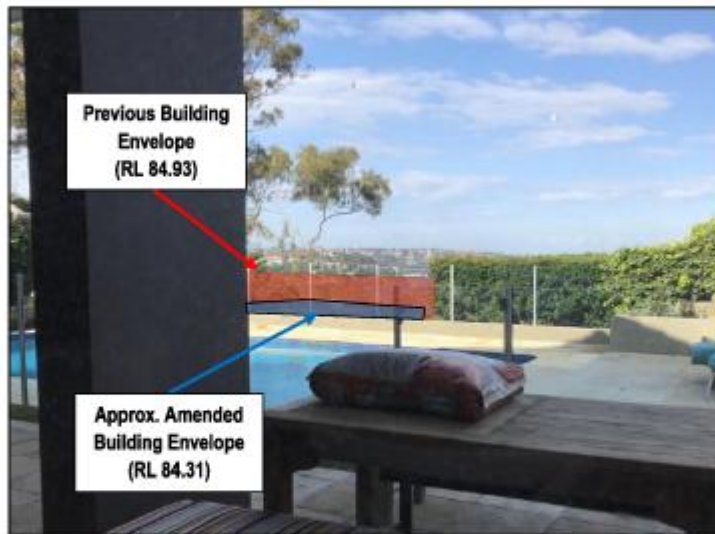
Source: Daintry Associates (2018)

Figure 6: Standing view from Kitchen of No. 162 Edinburgh Road



Source: Daintry Associates (2018)

Figure 7: Standing view from Family room of No. 162 Edinburgh Road



Source: Daintry Associates (2018)

Figure 8: Standing view from Dining room of No. 162 Edinburgh Road

As discussed, No. 14 The Battlement predominately receives water views of Sailors Bay to their primary living spaces, which are located beyond the front building line of the proposal. The proposal will have a minor impact on the views from the rear pool which has been raised above the ground level of the subject site. It is noted that as the majority of the FSR exceedance is located in the basement, any view loss would likely be from the compliant portion of the proposal.

Applying the four principles to the proposed amended development, it is considered that the impact on the view from No. 160 Edinburgh Road and No. 14 The Battlement is not significant. Based on the view analysis undertaken, the additional FSR of the amended proposal will not significantly impact either properties views of Sailors Bay.

Accordingly, the loss of view is considered to be minor and the proposal is in our opinion reasonable on the basis of *Tenacity Consulting v Warringah Council*.

Privacy

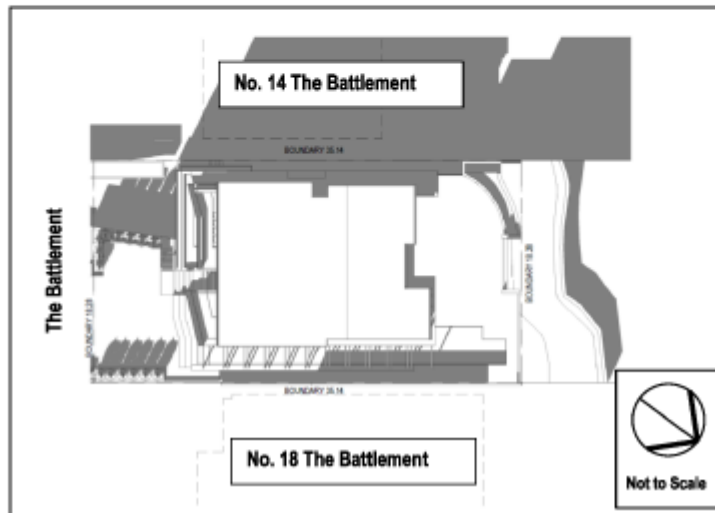
The additional FSR will not affect neighbour's privacy. More than half of the exceedance is located in the basement area and therefore does not affect the adjoining properties. Compliant setbacks are provided that reduce privacy impacts on neighbours. Openings with an orientation towards the side boundary have been limited and feature high sill windows and privacy screens to minimise the opportunity for direct sightlines into neighbouring properties. The existing topography and boundary fencing will screen the rear first floor balconies from the adjoining raised pool at No. 14 The Battlement. Additional fencing and new landscaping will assist in screening the proposal from No. 18 The Battlement, to maintain neighbouring amenity. No. 18 The Battlement has few windows facing the subject site.

Solar Access

To assess the impact of the potential overshadowing, amended shadow diagrams have been prepared for 9:00am, 12 noon and 3:00pm for the winter solstice (separately submitted). These diagrams indicate that neighbouring properties will continue to receive three hours of solar access to living rooms between 9:00am and 3:00pm on winter solstice.

Adjoining properties primarily receive solar access to their main living rooms from the western elevation, outside the shadow cast by the proposal. As noted, No. 14 is elevated above the subject site, and NO. 18 The Battlement has few windows facing the subject site. Any potential overshadowing has been minimised by complying with the building height standard of the LEP.

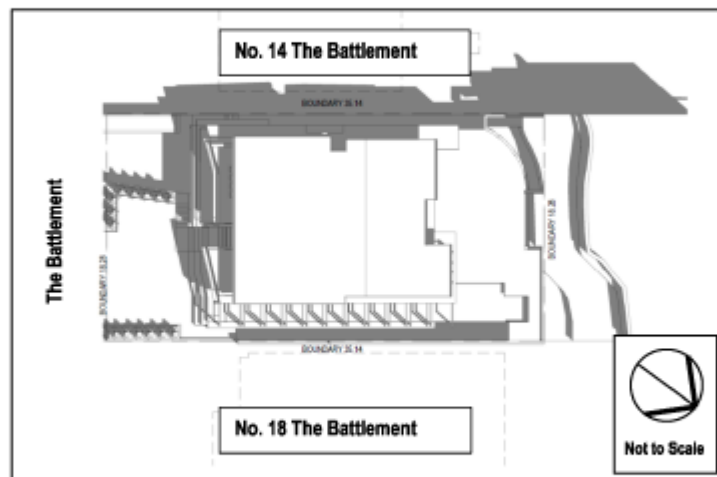
At 9:00am, the proposal casts shadows onto the rear setback and dwelling at No. 14 The Battlement (see Figure 9).



Source: Design Draft Solutions

Figure 9: Shadows cast at 9.00am

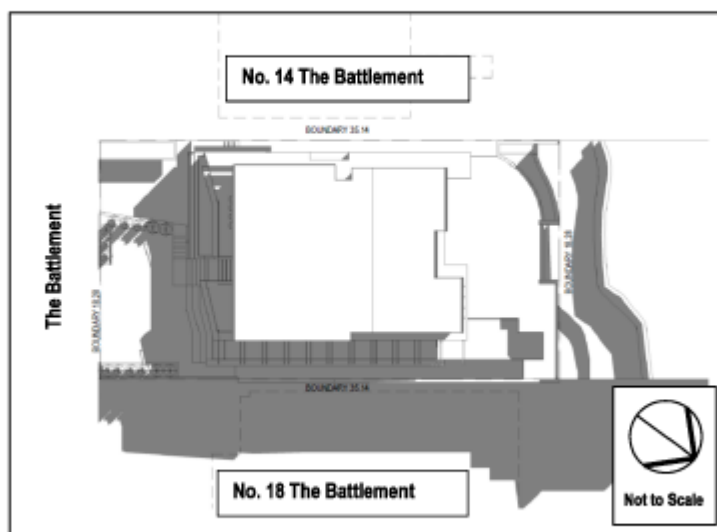
At 12:00 noon, shadows cast by the proposal are predominately cast on the side setback, with existing side fencing casting shadow on the rear garden of No. 14 The Battlement (see Figure 10 on the following page).



Source: Design Draft Solutions

Figure 10: Shadows cast at 12.00noon

At 3:00pm, the proposal casts shadows onto the dwelling at No. 18 The Battlement and part of the front garden. The existing fencing casts shadows on the rear garden of the adjacent property (see Figure 11).



Source: Design Draft Solutions

Figure 11: Shadows cast at 3.00pm

As demonstrated in the Shadow Diagrams, both adjoining properties will receive a minimum of three hours solar access to the main living areas, consistent with the requirements of the DCP.

Visual Intrusion

The amended proposal has a compliant roof height and has been designed with wide eaves, balconies and overhangs. Compliant setbacks are provided, and therefore increased visual intrusion is unlikely, as the built form is what could reasonably be expected on the site. For these reasons, the additional FSR is unlikely to be discernible.

(d) to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone,

The proposal is articulated and features a setback upper level to reduce the bulk and scale of the built form, maintaining the Environmental Living character of The Battlement. As discussed, the majority of the additional FSR relates to the basement level, due to the undulating topography. As this area of exceedance is located below ground level, it will not have an impact on bulk and scale of the proposed development.

Additionally, balconies and recessed elements break up the proposal and create visual interest which contributes to the eclectic mix of architectural styles along the streetscape. Garaging has been incorporated into the built form to allow for landscaping to dominate the front setback.

Accordingly, although the proposal will exceed the FSR control, this report demonstrates it is unlikely to have any significant adverse impacts as the design is compliant with the building height and consistent within the streetscape. As the area of FSR exceedance is predominately located within the basement, the proposal is unlikely to have any significant adverse impacts.

Test 3 - The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

In our opinion, the underlying objective is for buildings of a bulk and scale that maintain neighbouring and local amenity. It is our opinion that the underlying objective or purpose outlined above would be defeated if compliance with the maximum FSR was necessary. The bulk at the street front is consistent with nearby buildings. Reductions would result in an incongruous form in the locality, which is a poor urban design outcome and contrary to Clause 4.4(1)(d).

Removing further floorspace from the development would limit accessibility and internal amenity in a built form compatible with adjoining development and which maintains amenity, to Council's requirements under objective 4.4(1)(d). Our report has demonstrated the additional FSR does not affect those elements, and therefore compliance would be unreasonable, in our opinion.

Additionally, nearby dwellings along The Battlement present of a similar bulk and scale to the proposal. Council have recently approved alterations and additions for the adjoining dwelling at No. 19 The Battlement (DA-2016/104) which exceeds the FSR by 14m². Adjoining properties to the north and south are similar to the proposal, being two storeys above a basement/ground floor garage.

In our opinion, it is unreasonable to comply with the maximum FSR control in this instance when the proposal is contextually compatible with the surrounding developments; more than half the area of exceedance is in the basement; neighbouring amenity is maintained, and the dwelling is consistent with the desired future character

4.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The proposal is consistent with the relevant zone objectives and satisfies two of the 'unreasonable and unnecessary' tests established by the Court in *Wehbe*. In *Initial Action*, Preson CJ states at [23] – [24] that the environmental planning grounds must be 'sufficient' in two respects, *inter alia*:

- a) The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.
- b) The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.

Therefore, we consider the elements contributing to the proposal's additional FSR. This report demonstrates the proposed new dwelling will be compatible with nearby and future development. The additional FSR will be compatible with the existing streetscape of The Battlement, and therefore has no effect on streetscape amenity or existing characteristics of the precinct.

As detailed, strict compliance with the development standard would not result in a better outcome for development. It would unnecessarily complicate orderly and economic development of the land in accordance with the intentions of the zoning and the objectives of the Environmental Planning and Assessment Act 1979. The majority of the non-compliant GFA is due to the sloping topography of the site and proposed basement level, rather than an overdevelopment of the site. The proposed dwelling will sit comfortably on the site and in the context. The contemporary design will contribute to the evolving streetscape and represents a building envelope which is similar to the adjoining properties.

Accordingly, in our opinion, the additional FSR will be consistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning ground to justify the variation to the development standard, as required in Clause 4.6(3)(b).

5. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

- (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*

The applicant submits that the consent authority can and should be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this request, and having regard to the site and locality.

In our opinion the proposal satisfies both tests as outlined in *Initial Action* and *Al Maha*. It is consistent with both the objectives of the Development Standard; and the E4 Environmental Living Zone as demonstrated in this report. From this, we consider the proposal is in the public interest and should be supported.

For the reasons contained in this application, there are sufficient environmental planning grounds to justify varying the development standard as the proposal is consistent with the development standard objectives, the zone objectives, and the intent of Clause 4.6. From this, we consider the proposal is in the public interest and should be supported.

6. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning and the Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. While the proposal exceeds the development standard by over 10%, the Planning Circular provides for the Local Planning Panel to assume concurrence. As the proposal exceeds 10% when the basement area is included, the proposal will be referred to the Willoughby Local Planning Panel.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

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

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The FSR non-compliance will enhance the amenity and functionality of the proposed dwelling house and maintaining the amenity of neighbouring properties. Consistency with the objectives of the zone ensure a dwelling which will complement the eclectic mix of architectural styles in The Battlement.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear consistent in the streetscape. As discussed, a number of existing and recently dwellings buildings appear to exceed the FSR standard along The Battlement.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a dwelling which will be with the desired character of the locality. As the proposal is consistent with both the zone and development standards, in our opinion, approval is in the public interest.

7. Conclusion

This written request has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see Table 1 on the following page).

We are of the view that the consent authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives of the E4 Environmental Living Zone pursuant to the LEP. On that basis, the request to vary Clause 4.4 should be upheld.

APPENDICE A – Compliance Matrix

Table 1: Compliance Matrix				
Para (Initial Action)	Requirement	Section	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	YES
11	What is the development standard	1	FSR	YES
12	What is the control	1 & 2	0.34-1	YES
14	First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	
15, 25	1st Positive Opinion – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by C14.6(3). There are two aspects of that requirement. The consent authority does not have to directly form the opinion of satisfaction regarding the matters in C14.6(3)(a)&(b), but only that the applicant's written request has adequately addressed the matters required. The applicant bears the onus to demonstrate that the matters in C14.6(3) have been adequately addressed in order to enable the consent authority to form the requisite opinion of satisfaction.	4	The C14.6 variation has adequately addressed both matters in C14.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	First Aspect is C14.6(3)(a) – that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	4.1	The proposal is consistent with Tests 1 and 3 of <i>Wehbe</i> : <ul style="list-style-type: none"> The objectives of the standard are achieved notwithstanding the non-compliance with the standard; The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable 	YES
23-24	Second Aspect is C14.6(3)(b) – The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be indirectly satisfied under C14.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: a) The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. b) The environmental planning grounds advanced in the written request must justify	4.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> The proposed FSR is consistent with the planning objectives of the area; The proposal is consistent with the building height and setback controls; The proposal is similar to a recent approval and existing dwellings along The Battlement 	YES

26-27	<p>the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.</p> <p>2nd Positive Opinion – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. This second opinion differs from the first opinion of satisfaction in that the consent authority must be directly satisfied about the matter in C14.6(4)(e)(ii).</p>	5	<p>The proposed development is consistent with the objectives of the FSR standard as addressed under Test 1 of Wabe by providing a compliant building height with the LEP, and setbacks in accordance with the DCP. The proposal is also consistent with the objectives of the E4 Environmental Living Zone</p>	YES
28-29	<p>Second Precondition to Enlivening the Power – that the concurrence of the Secretary has been obtained [C14.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under C14.6.</p>	6	<p>As the relevant matters for consideration under C14.6 have been satisfied as outlined above, the Council can grant development consent.</p>	YES

APPENDICE B - Site Analysis & Surrounding Development

The subject site is located on the western side of The Battlement, between The Citadel and Sortie Port, and is known as No. 16 The Battlement, Castlecrag, described as Lot 127 in Deposited Plan 14804. The site is rectangular and has an area of approximately 638.6m² (see Figure 1).

The subject site is occupied by a single storey brick dwelling house with tiled roof, which is elevated above the street level (see Photograph 1 on the following page). Vehicular and pedestrian access is provided by a single carport from The Battlement. A retaining wall constructed on Council's road reserve largely obscures the dwelling when viewed from the streetscape (see Photograph 2 on the following pages). The site has a steep topography, which slopes from the rear to the street. Views of Sailors Bay are available from the rear of the site (see Photograph 3 on the following pages).



Source: sixmaps

Figure 1: Location Plan

 **Subject Site**



Photograph 1: the subject site, as viewed from the top of the retaining wall



Photograph 2: The front retaining wall, as viewed from The Battlement



Photograph 3: Sailor Bay, as viewed from the rear of the site

The Surrounds

The subject site is located within the Griffin Heritage Conservation Area (HCA), which encompasses the original Castlecrag Estate. Subdivision patterns and streets have been designed to remain harmonious with the natural environment and reinforce the leafy character of the locality. The sites immediate surroundings are a mix of mainly two to three storey dwellings with integrated ground level garages, of various ages and architectural styles. A number of the adjoining sites have recently been reconstructed to feature contemporary elements. Dwellings are typically designed and orientated to maximise views towards Sailors Bay.

To the north is No. 164 Edinburgh Road and No. 18 The Battlement. No. 164 Edinburgh Road is a two storey brick dwelling with rendered façade. No. 18 The Battlement is a recently constructed two storey brick dwelling with a basement level carpark (see Photograph 4). To the east are Nos. 19 and 21 The Battlement. No. 19 The Battlement is a three storey brick dwelling, which has recently reconstructed the carport and upper levels of the dwelling (DA-2016/104) (see Photograph 5). No. 21 The Battlement is a three storey brick dwelling with a third floor carport, which is largely obscured from the streetscape due to the steep topography.



Photograph 4: No. 18 The Battlement, as viewed from the street



Photograph 5: No. 19 The Battlement, as viewed from Sailors Bay

To the south is No. 14 The Battlement a recently renovated three storey brick dwelling with a rendered façade, and elevated garden to the rear (see Photograph 6 on the following page). To the west are Nos. 160 and 162 Edinburgh Road. No. 160 is a two storey dwelling with a pool and balcony that overlook the rear of the subject site (see Photograph 7 on the following page). No. 162 is a two storey brick dwelling with a rendered façade.



Photograph 6: No. 14 The Battlement, as viewed from the street



Photograph 7: No. 162 Edinburgh Road, as viewed from the street

APPENDICE C - Background of Application

On **13 December 2016** a Building Certificate was submitted for the retroactive approval of unauthorised works to construct a retaining wall within Council's verge. The application was refused on 17 February 2017.

On **3 July 2017** a Building Certificate was submitted for the retroactive approval of unauthorised works to construct a retaining wall along the front and rear boundary and planter boxes to the side and rear of the dwelling. The application was refused on 29 May 2018.

On **27 September 2017** a Pre-DA meeting was undertaken to discuss the preliminary proposal and to include the refused unauthorised works as part of a future Development Application (DA). The Council Officer advised to include the unauthorised works as part of the future DA. Recommendations given by the officer, relating to compliance with the height control and increased front and side setbacks have been incorporated into the revised proposal. The officer recommended an additional meeting once the plans had been revised.

On **27 November 2017** a second Pre-DA meeting was undertaken to discuss the revised plans. The officer indicated additional consultant reports including a Landscape Plan, Arborist Report and Swept Path Analysis will be required at lodgement. These have been submitted with this proposal (DA-2018/266).

On **15 August 2018** a Development Application (DA-2018/266) was lodged for the demolition of the existing dwelling and construction of a two-storey dwelling with basement carparking, swimming pool and associated landscaping works. The assessment requested a Clause 4.6 Variation for FSR be submitted with the proposal. During the notification period, 13 objections were received.

On **11 and 16 January 2019** subsequent amended plans and additional consultant reports were submitted that provided further clarity for the application.

On **29 January 2019 Council** requested additional amendments to the submitted plans, including indicating a RL for the highest point of the building, RL for the swimming pool and additional consultant reports. The assessing officer also identified the need for a request for a variation under Clause 4.6 for the floor space development standard by a qualified town planner. These amendments have been included as part of this submission.

ATTACHMENT 6: OFFICER'S CLAUSE 4.6 ASSESSMENT

Site Area: 638.6m²

	Standard	Proposed	Extent Variation
Gross Floor Area (m ²)	217.14	264.84m ²	20.7m ² or 9.5%.
WLEP 2012 Floor Space Ratio Clause 4.4	0.34:1	0.42:1*	

*Additional 47.7m² at the basement level.

Applicant's Reasons for Supporting a Variation to the Standard as follows:

Objectives of the Standard

- the proposal is a contextually appropriate design for the site complying with the height limit and setback controls
- the proposal provides compliant deep soil landscaping within the front and rear setbacks
- building articulation and upper floor level massing break down the built form of the proposal and presents a development which is consistent with the three storey dwellings along The Battlement.
- The proposal is consistent with other three tiered dwellings in The Battlement which utilise the topography to maximise views towards Sailors Bay
- The proposal will maintain view sharing, privacy and solar access and minimise visual intrusion

Objectives of the E4 Environmental Living Zone

- The proposal is consistent with the height and setback controls and will be a low impact dwelling with a limited footprint
- The additional FSR will not appear inconsistent with nearby dwellings
- The proposal will be compatible with locality when viewed from the harbour and the public domain
- The proposal has been designed to maintain the aesthetic values of the locality.
- The upper level massing remains below the rear ridgeline and the building height of 14 The Battlement.
- A low pitched roof and articulated street façade interact with the streetscape.
- Landscaping and native vegetation screen the built form from the streetscape and contribute to local ecological values.
- The proposed dwelling and landscaping have been designed to reflect the topography
- The proposed dwelling maintains the scale, local character and streetscape
- The amended proposal has reduced building height to preserve views. The proposal complies with the DCP requirements for privacy and solar access.
- The proposal provides 275m² of landscaped area and the proposal's additional FSR is unlikely to affect the heritage values of the HCA.

Council's comments:

The objectives of Clause 4.6 are:

- *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

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

Clause 4.6 stipulates that:

Development consent must not be granted for development that contravenes a development standard unless it has been demonstrated that:

- *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,*
- *there are sufficient environmental planning grounds to justify contravening the development standard.*
- *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.*

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

The plans comply with the maximum FSR that applies to the site at the ground floor and first floor levels. Due to the unique characteristics of the site, a basement level is included and the FSR limit is exceeded by 47.7m² at the basement level. The dwelling house has been designed to suit the topography of the site with an articulated façade and recessed first floor minimising building bulk and streetscape impacts.

There are sufficient environmental planning grounds to justify contravening the development standard

The proposed development maintains the scale and character of the locality and will not detrimentally affect the ecology and scenic quality of the harbour. It is considered that there are sufficient environmental planning grounds to vary the standard.

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.

The relevant objectives of the standard are considered to be met by the proposed development as stated by the applicant above.

The proposal is consistent with the objectives of the E4 Environmental Living Zone being a low density residential development that will not have an adverse impact on the special ecological, scientific, and aesthetic values of the area, subject to conditions, as stated by the applicant above.

Based on the above considerations, the proposed variation to the development standard is acceptable based on the particular circumstances of the case. It is considered that approval of the application will not compromise the interests of the public, given that the relevant objectives of the zone and the standard are met by the proposal despite its numerical non-compliance with the development standard. The variation is not considered to raise any matter of regional and State significance, and concurrence of the Minister in approving the variation can be assumed by Council.

Having regard to the above, the variation to **Clause 4.4 A – Floor Space Ratio** development standard is **supported** by the Assessment Officer and, there are sufficient environmental planning grounds to vary the standard.

ATTACHMENT 7 - SECTION 4.15 (79C) ASSESSMENT

The application has been assessed under the provisions of S.4.15 (79C) of the *Environmental Planning and Assessment Act*.

The most relevant matters for consideration are assessed under the following headings:

Matters for Consideration Under S.4.15 (S79C) EP&A Act

Considered & Satisfactory ✓ Considered & Unsatisfactory ✗ Not Relevant N/A

(a)(i)	The provisions of any environmental planning instrument (EPI)	
	<ul style="list-style-type: none"> State Environmental Planning Policies (SEPP) 	✓
	<ul style="list-style-type: none"> Regional Environmental Plans (REP) 	✓
	<ul style="list-style-type: none"> Local Environmental Plans (LEP) 	✓
	<p>Comment: The development proposal does not contravene any State or Regional Plans or policies. The proposed development maintains the scale and character of the locality and will not detrimentally affect the ecology and scenic quality of the harbour.</p> <p>The zoning for the site is E4 Environmental Living under the provisions of <i>WLEP 2012</i>. The proposed development is consistent with the objectives of the E4 zone.</p> <p>The amended plans contain a non-compliance with the floor space ratio development standard contained in Clause 4.4A of <i>WLEP 2012</i>. The proposed building is considered to be consistent with the bulk and scale of neighbouring properties. Subject to conditions the proposed dwelling house will not have adverse amenity impacts to neighbouring properties with regard to building bulk, privacy, solar access and views.</p> <p>A Clause 4.6 request for a variation has been submitted with the development application which is found to be acceptable.</p> <p>The site is located within the Griffin Heritage Conservation Area. The amended proposal is considered to have an acceptable impact on the heritage significance of the conservation area being compatible with the bulk and scale of other dwellings in the street and satisfies Clause 5.10 of the <i>WLEP 2012</i>.</p>	
(a)(ii)	The provision of any draft environmental planning instrument (EPI)	
	<ul style="list-style-type: none"> Draft State Environmental Planning Policies (SEPP) 	N/A
	<ul style="list-style-type: none"> Draft Regional Environmental Plans (REP) 	N/A
	<ul style="list-style-type: none"> Draft Local Environmental Plans (LEP) 	N/A
	Comment: N/A	
(a)(iii)	Any development control plans	
	<ul style="list-style-type: none"> Development control plans (DCPs) 	✓

Matters for Consideration Under S.4.15 (S79C) EP&A Act

Considered & Satisfactory ✓ Considered & Unsatisfactory ✗ Not Relevant N/A

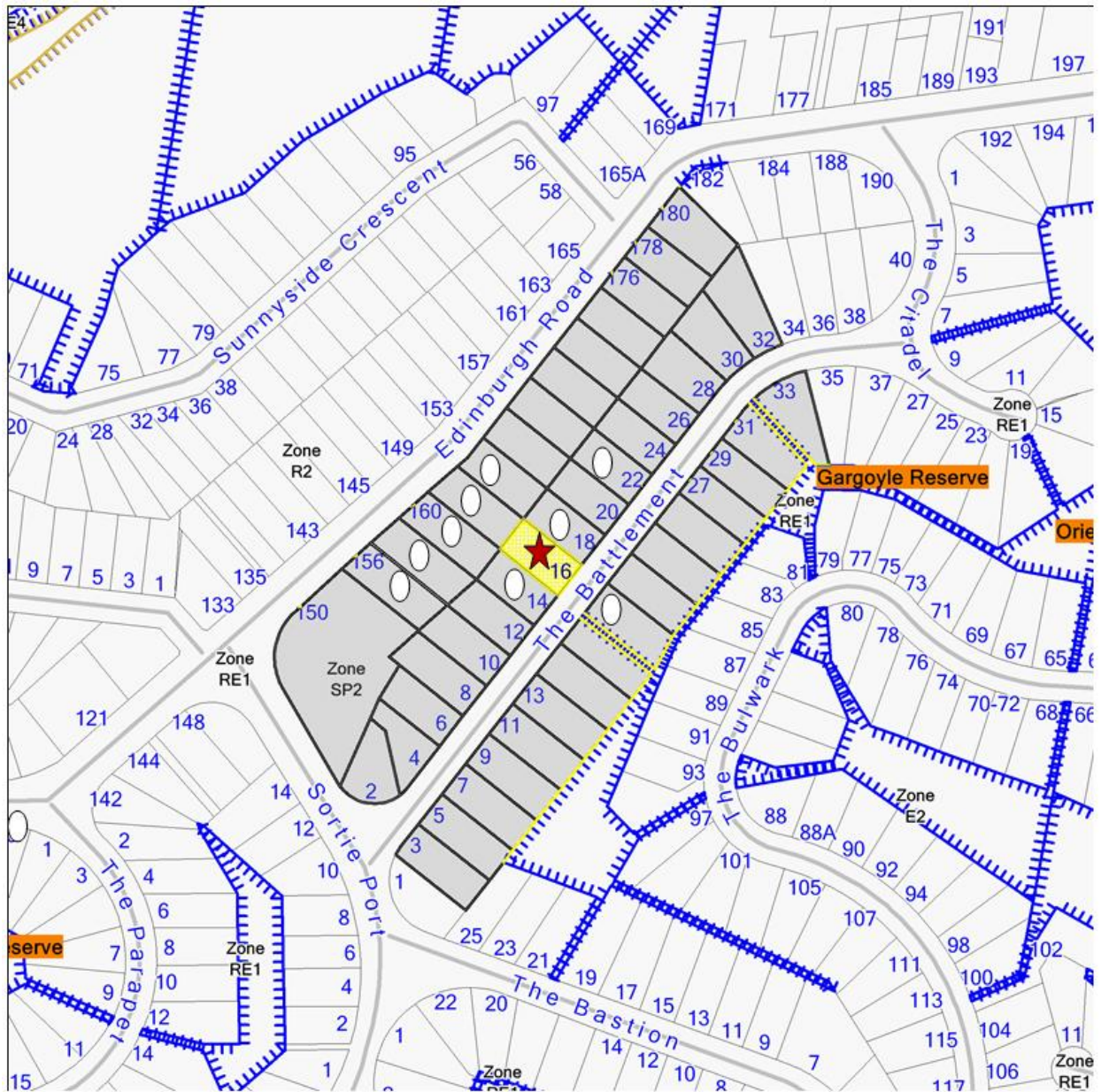
	<p>Part D1.16 of the WDCP contains objectives and controls for development in the E4 Environmental Living Zone. Subject to conditions, the proposed development complies with the relevant objectives contained in Part D1.16</p> <p>It is considered that the proposal, subject to conditions, is consistent with the objectives for dwelling houses contained in Part D1 of the WDCP.</p> <p>WDCP The amended proposal is consistent with the objectives for dwelling houses contained in Part D1.of the WDCP. Numerical non-compliances are discussed in detail in Attachment 3 and the proposal is found to be satisfactory in this regard. Subject to conditions, the proposal is considered to be consistent with the objectives of the WDCP for view sharing, privacy and overshadowing.</p>	
(a)(iv)	Any matters prescribed by the regulations	
	<ul style="list-style-type: none"> • Clause 92 EP&A Regulation-Demolition 	✓
	<ul style="list-style-type: none"> • Clause 93 EP&A Regulation-Fire Safety Considerations 	N/A
	<ul style="list-style-type: none"> • Clause 94 EP&A Regulation-Fire Upgrade of Existing Buildings 	N/A
	<p>Comment: Demolition work is required by condition to comply with AS 2601 – 2001.</p>	
(b)	The likely impacts of the development	
	<ul style="list-style-type: none"> • Context & setting 	✓
	<ul style="list-style-type: none"> • Access, transport & traffic, parking 	N/A
	<ul style="list-style-type: none"> • Servicing, loading/unloading 	N/A
	<ul style="list-style-type: none"> • Public domain 	✓
	<ul style="list-style-type: none"> • Utilities 	N/A
	<ul style="list-style-type: none"> • Heritage 	✓
	<ul style="list-style-type: none"> • Privacy 	✓
	<ul style="list-style-type: none"> • Views 	✓
	<ul style="list-style-type: none"> • Solar Access 	✓
	<ul style="list-style-type: none"> • Water and draining 	✓
	<ul style="list-style-type: none"> • Soils 	✓
	<ul style="list-style-type: none"> • Air & microclimate 	✓
	<ul style="list-style-type: none"> • Flora & fauna 	✓
	<ul style="list-style-type: none"> • Waste 	✓
	<ul style="list-style-type: none"> • Energy 	✓
	<ul style="list-style-type: none"> • Noise & vibration 	✓
	<ul style="list-style-type: none"> • Natural hazards 	✓
	<ul style="list-style-type: none"> • Safety, security crime prevention 	✓
	<ul style="list-style-type: none"> • Social impact in the locality 	✓
	<ul style="list-style-type: none"> • Economic impact in the locality 	✓
	<ul style="list-style-type: none"> • Site design and internal design 	✓
	<ul style="list-style-type: none"> • Construction 	✓
	<ul style="list-style-type: none"> • Cumulative impacts 	✓

Matters for Consideration Under S.4.15 (S79C) EP&A Act

Considered & Satisfactory ✓ Considered & Unsatisfactory ✗ Not Relevant N/A

	<p>Comment: The proposed development results in a new dwelling house. Subject to conditions, the amended proposal is considered to be satisfactory with respect to impacts on neighbouring properties regarding view sharing, overshadowing, privacy and building bulk. Subject to conditions it is considered that the proposal will have an acceptable impact on the environment.</p>	
(c)	The suitability of the site for the development	
	<ul style="list-style-type: none"> • Does the proposal fit in the locality? 	✓
	<ul style="list-style-type: none"> • Are the site attributes conducive to this development? 	✓
	<p>Comment: The site is located in an environmentally sensitive area. The proposal is considered to be consistent with the character of the locality which contains detached dwelling houses. The proposed development is considered suitable for the site.</p>	
(d)	Any submissions made in accordance with this Act or the regulations	
	<ul style="list-style-type: none"> • Private submissions 	✓
	<ul style="list-style-type: none"> • Submissions from public authorities 	N/A
	<p>Comment: Twelve submissions were received from neighbouring property owners. The comments made in the submissions have been considered during the assessment of the development proposal.</p>	
(e)	The public interest	
	<ul style="list-style-type: none"> • Federal, State and Local Government interests and Community interests 	✓
	<p>Comment: Subject to conditions, the proposed development is considered to be consistent with the objectives of the E4 Environmental Living Zone and will not have unreasonable amenity impacts on adjoining private properties or from the public domain including the scenic quality of Sydney Harbour. The proposal is considered to be consistent with the desired future character of the Castlecrag locality. The amended proposal is consistent with neighbouring dwellings in the Griffin Heritage Conservation Area. Therefore the proposal does not compromise the public's interest.</p>	

ATTACHMENT 8: NOTIFICATION MAP



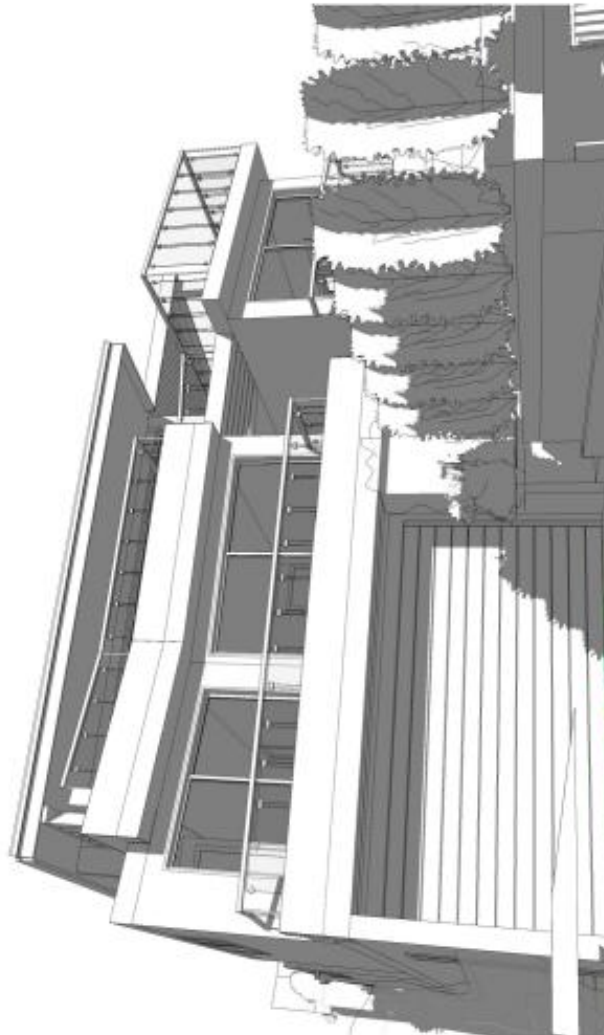
Subject Property



Objectors



ATTACHMENT 9: ARCHITECTURAL PLANS



DESIGN IDENT SOLUTIONS
Unit 10, 180-182, 11A
Wentworth Street
Sydney NSW 2000
Tel: (02) 9238 0000
www.designident.com.au

Copyright © 2018 Design Ident Solutions Pty Ltd
All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage or retrieval system, without the prior written permission of Design Ident Solutions Pty Ltd.

GENERAL NOTES

1. ALL CONSTRUCTION SHALL COMPLY WITH THE REQUIREMENTS OF THE NATIONAL CONSTRUCTION CODES, INCORPORATING ALL AMENDMENTS AND VARIATIONS.
2. ALL CONSTRUCTION SHALL COMPLY WITH THE REQUIREMENTS OF THE NATIONAL CONSTRUCTION CODES, INCORPORATING ALL AMENDMENTS AND VARIATIONS.
3. THE BUILDING CONTRACTOR MUST VERIFY ALL DIMENSIONS PRIOR TO THE START OF WORK.
4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
5. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
6. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
7. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
8. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
9. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
10. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.

PROPOSAL FOR NEW DWELLING
16 THE BATTLEMENT, CASTLECRAG, 2068

Anique Powell
COVER SHEET

Rev	Description	Date
1	DA	21.08.18
2	DA	14.04.18

PROJECT NO: 16 THE BATTLEMENT, CASTLECRAG, 2068
DRAWING NO: ANI001-001

DATE: 14.04.18
SCALE: AS

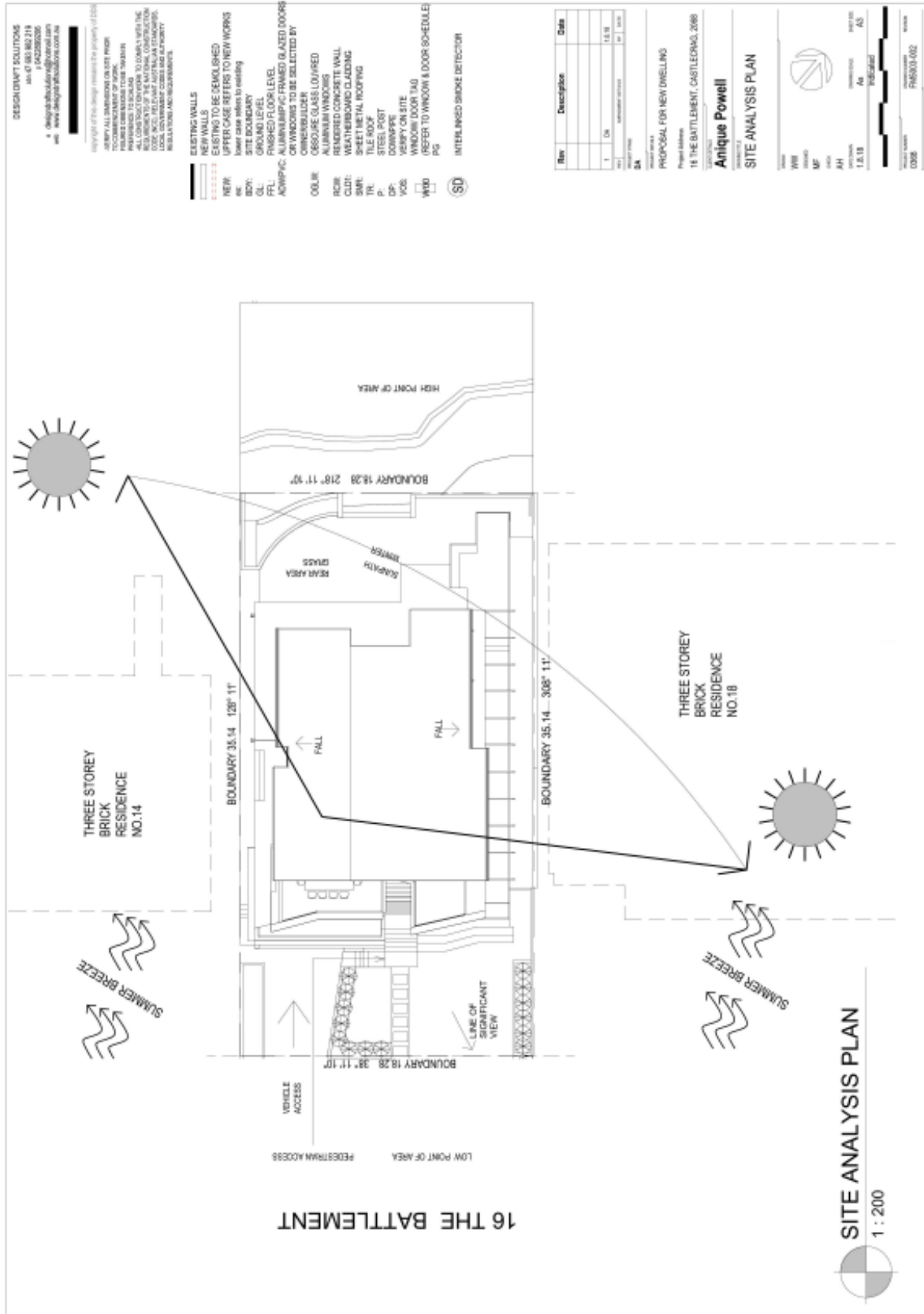
PROJECT NO: 16 THE BATTLEMENT, CASTLECRAG, 2068
DRAWING NO: ANI001-001

DRAWING SCHEDULE

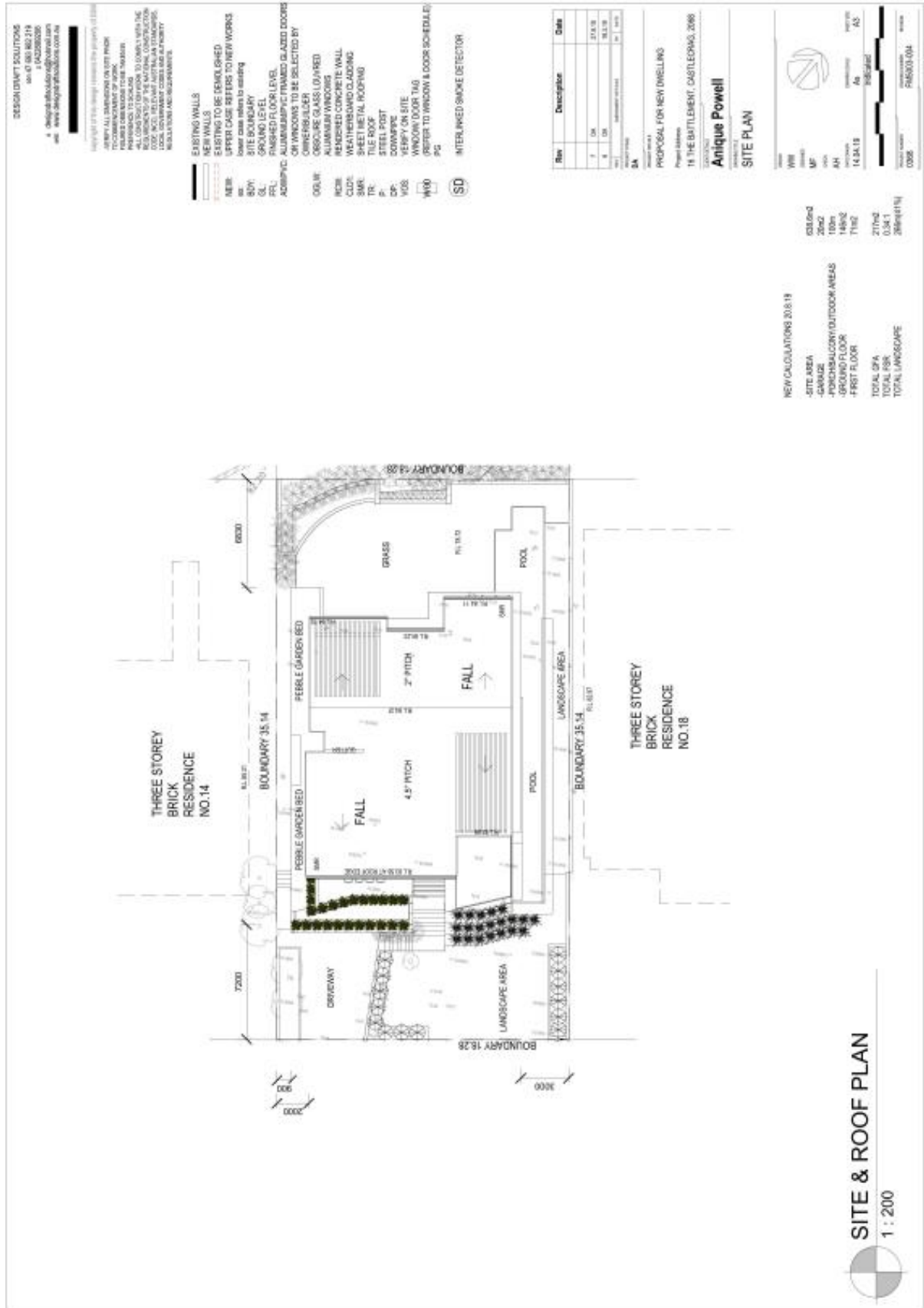
SHEET NO:

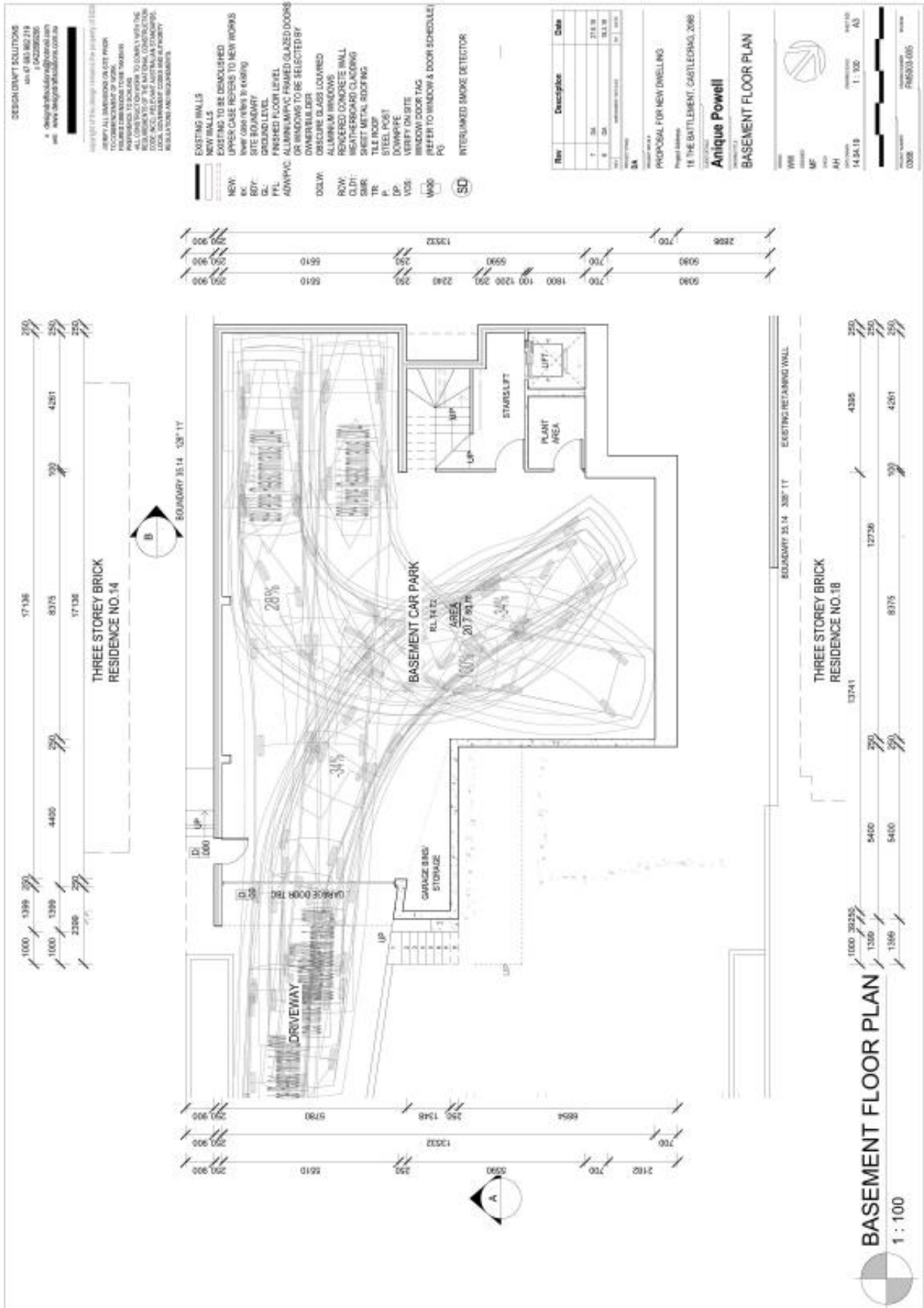
- FMS000-001 TITLE SHEET AND 3D BUILDING
- FMS000-002 SITE ANALYSIS PLAN
- FMS000-003 DEMOLITION PLAN
- FMS000-004 SITE / ROOF & LOCATION PLAN
- FMS000-005 BASEMENT FLOOR PLAN
- FMS000-006 GROUND FLOOR PLAN
- FMS000-007 FIRST FLOOR PLAN
- FMS000-008 ROOF PLAN
- FMS000-009 EAST & WEST ELEVATIONS
- FMS000-010 NORTH & SOUTH ELEVATIONS
- FMS000-011 PROPOSED SECTIONS
- FMS000-012 WINDOW & DOOR LEGEND
- FMS000-013 LANDSCAPE PLAN
- FMS000-014 SEDIMENT & EROSION PLAN
- FMS000-015 COLOURS & MATERIALS
- FMS000-016 DRIVEWAY PLAN & SECTION
- FMS000-017 LAP POOL DETAILS
- FMS000-018 SHADOW DIAGRAMS
- FMS000-019 SHADOW DIAGRAMS
- FMS000-020 SHADOW DIAGRAMS

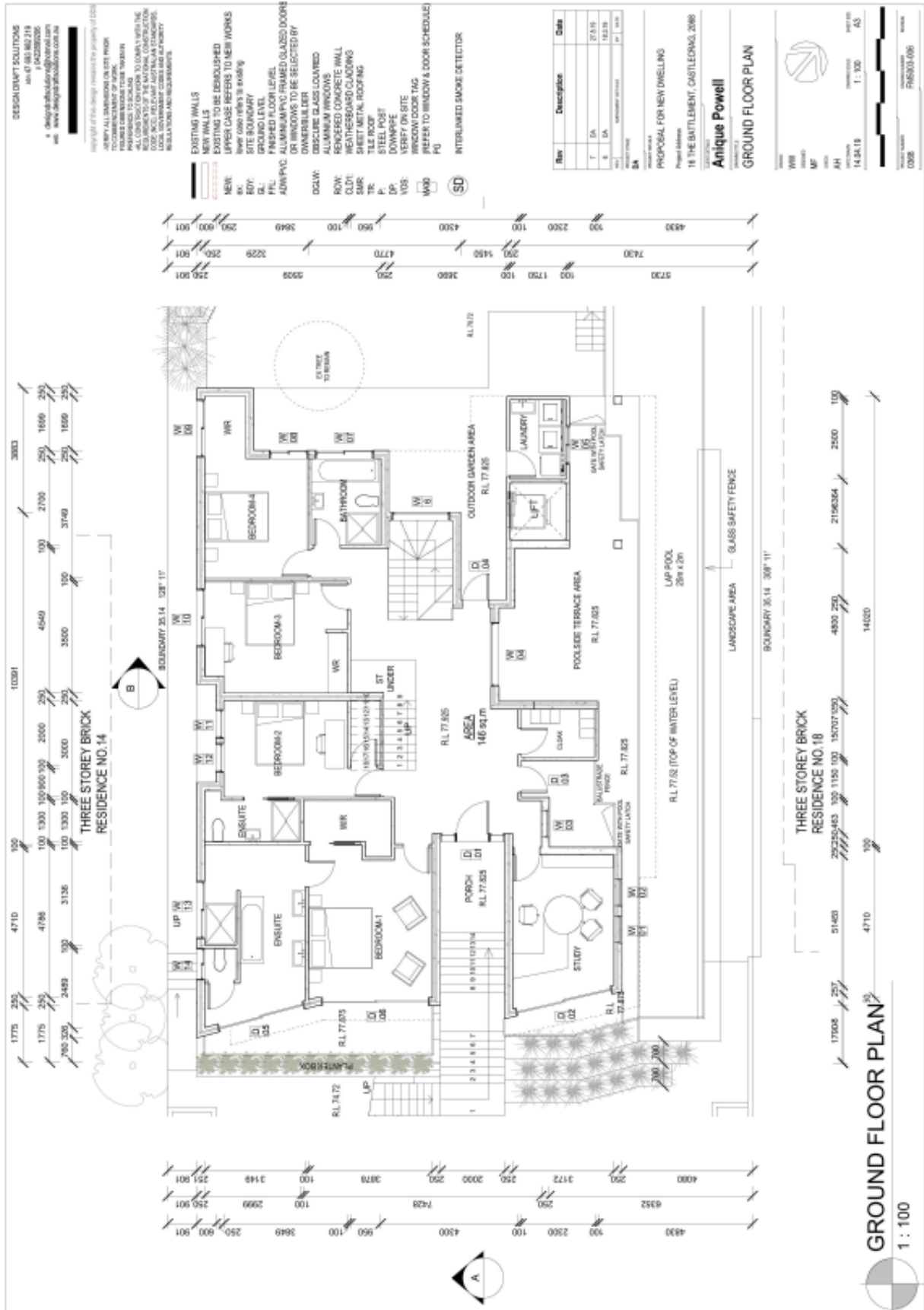
PROPOSAL FOR A NEW DWELLING @
16 THE BATTLEMENT, CASTLECRAG, NSW, 2068

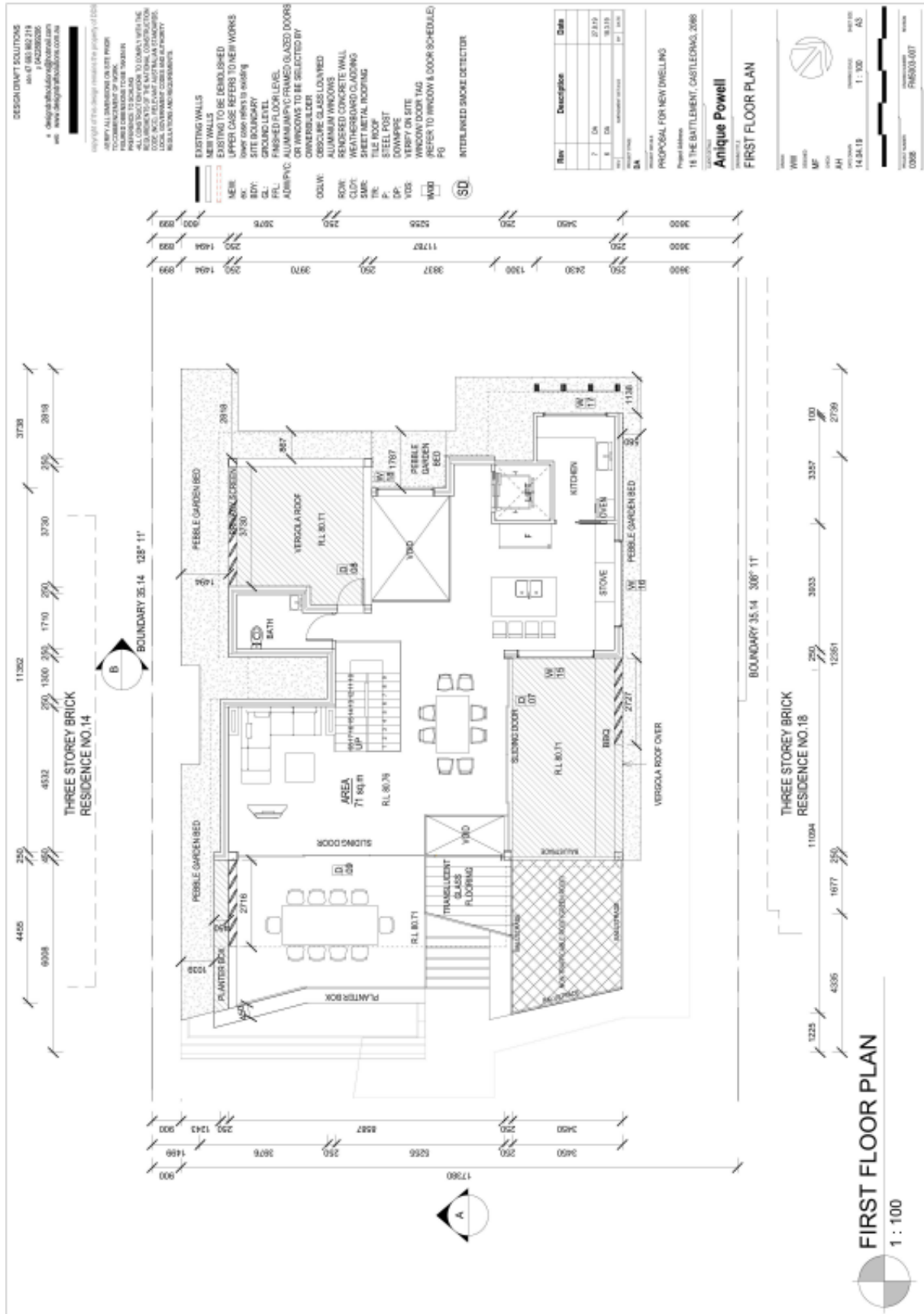


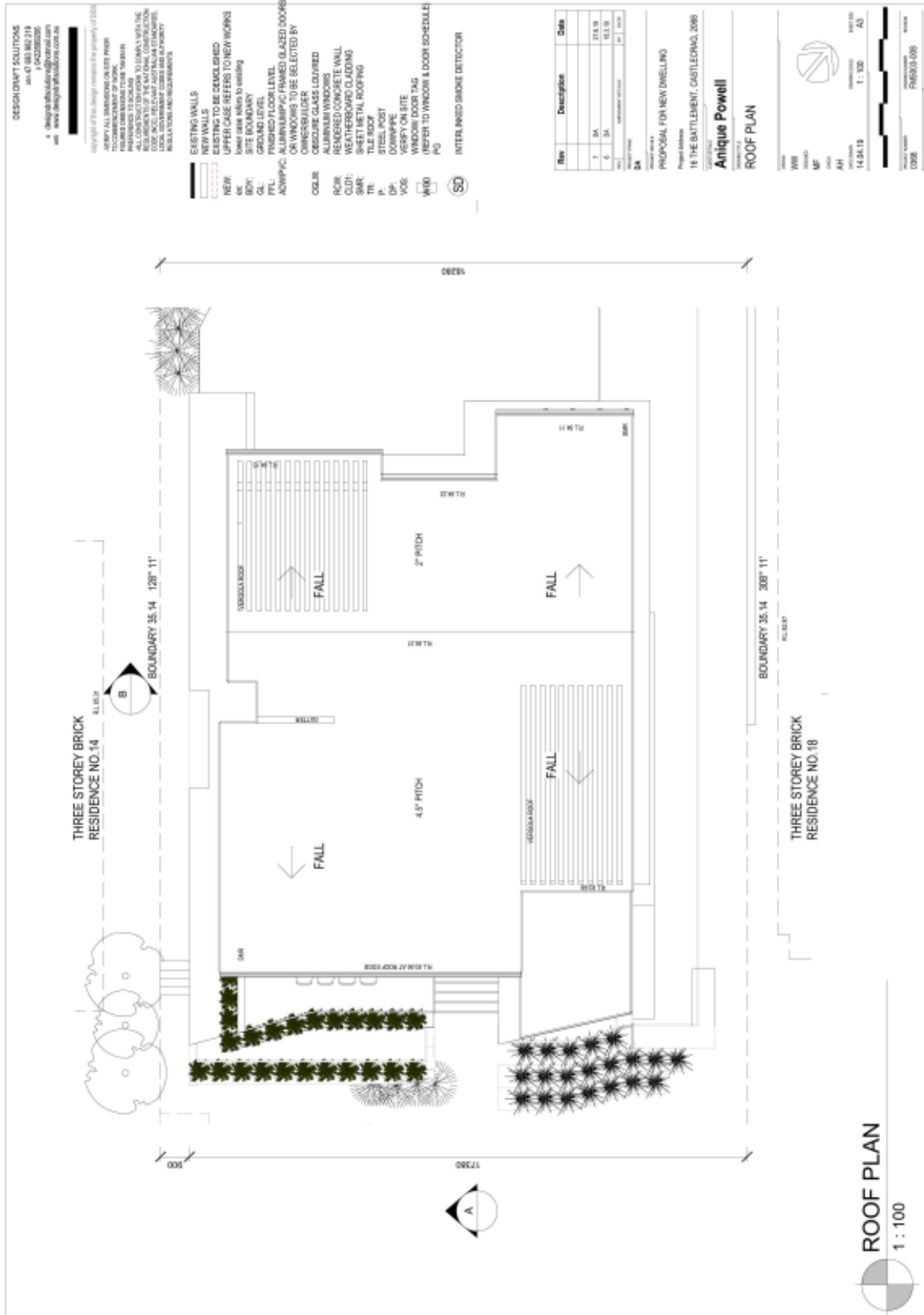


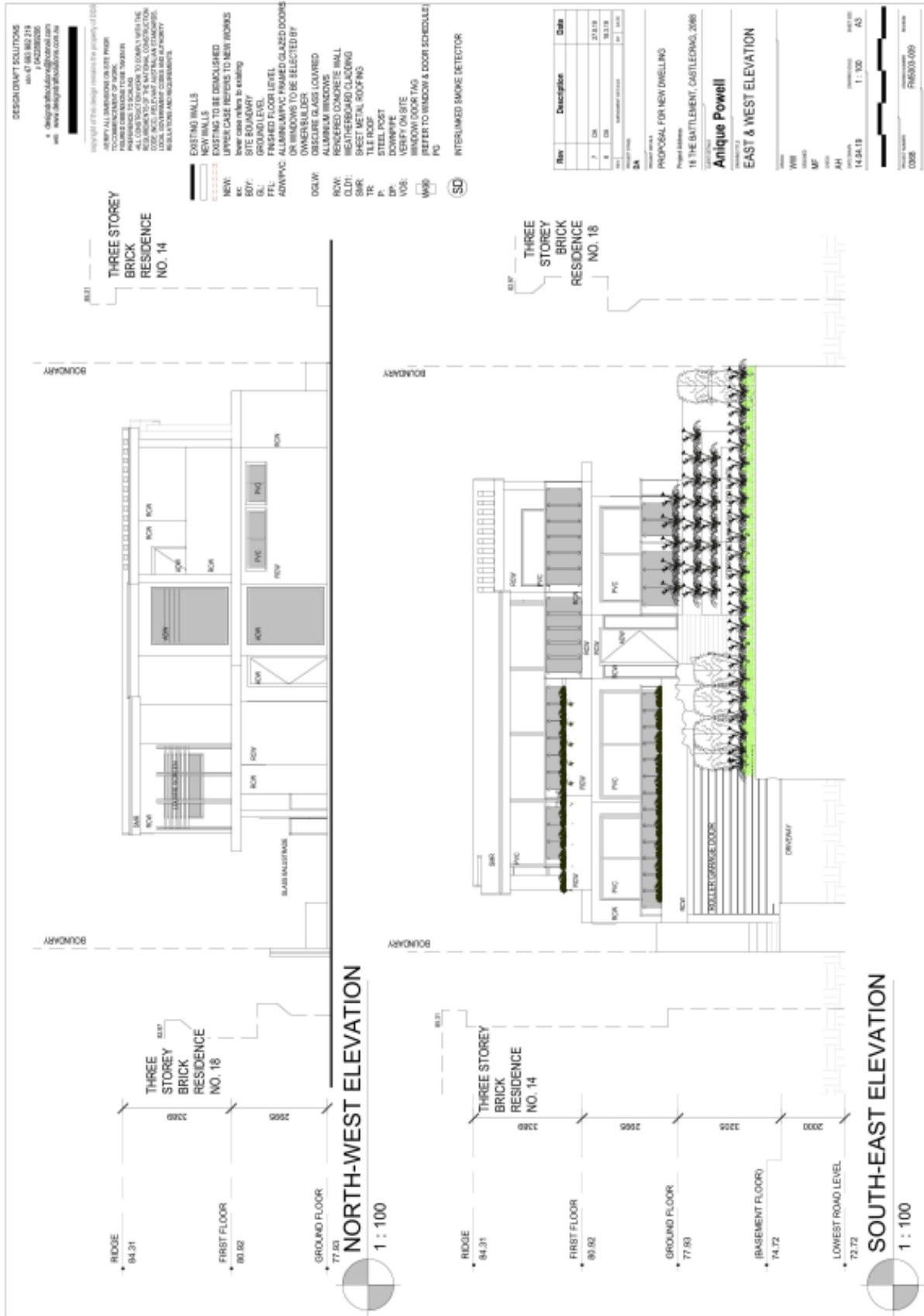


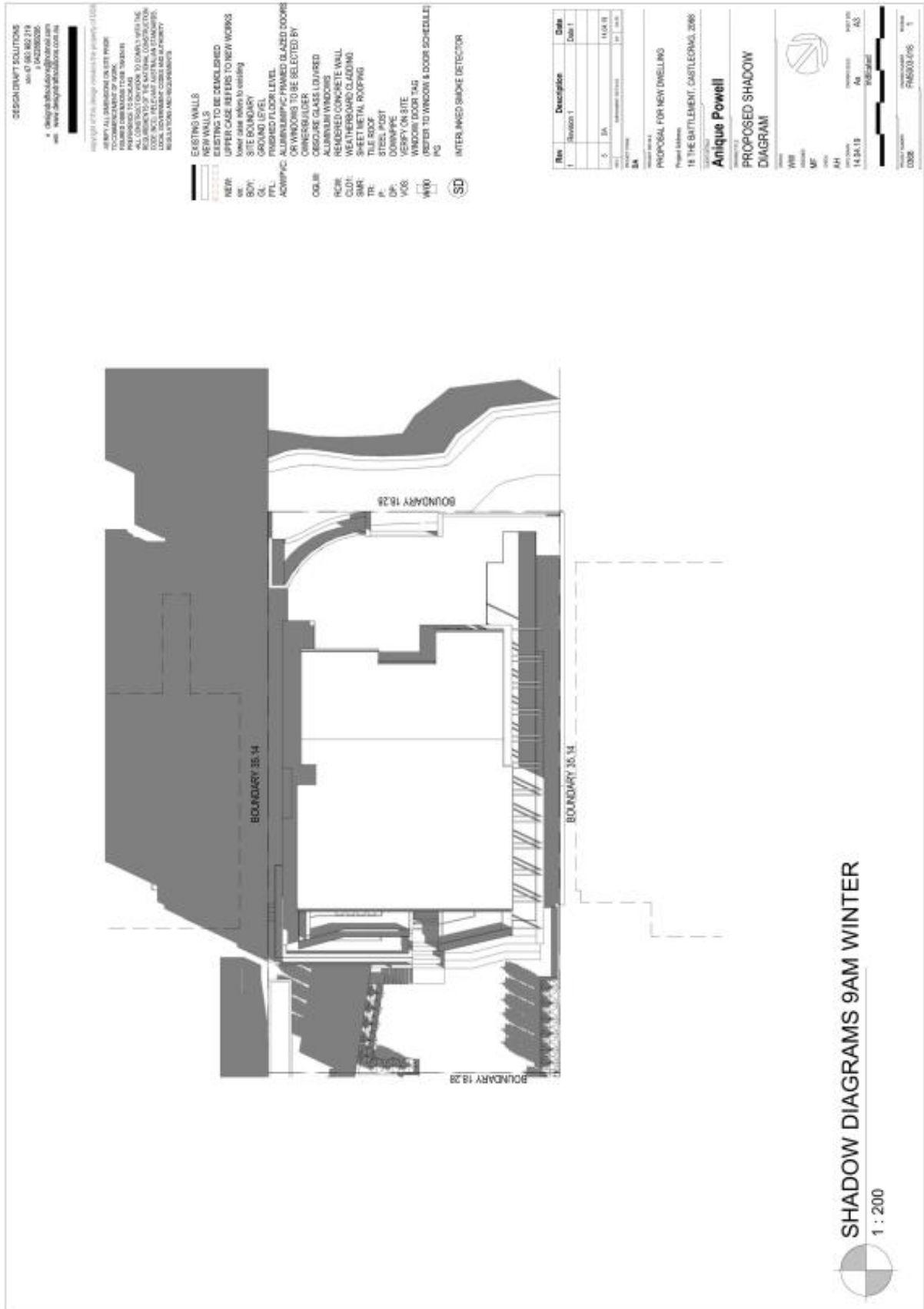


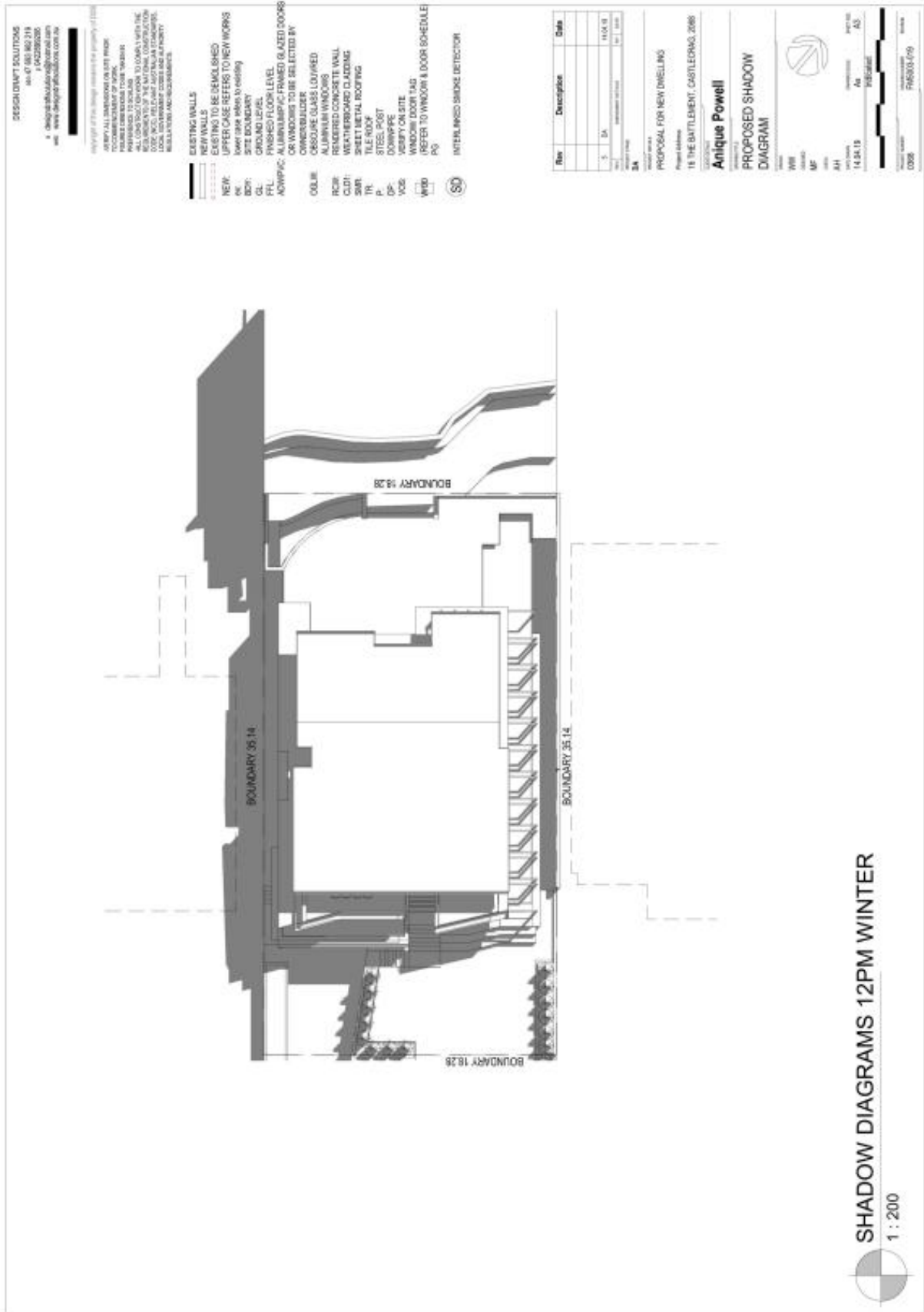


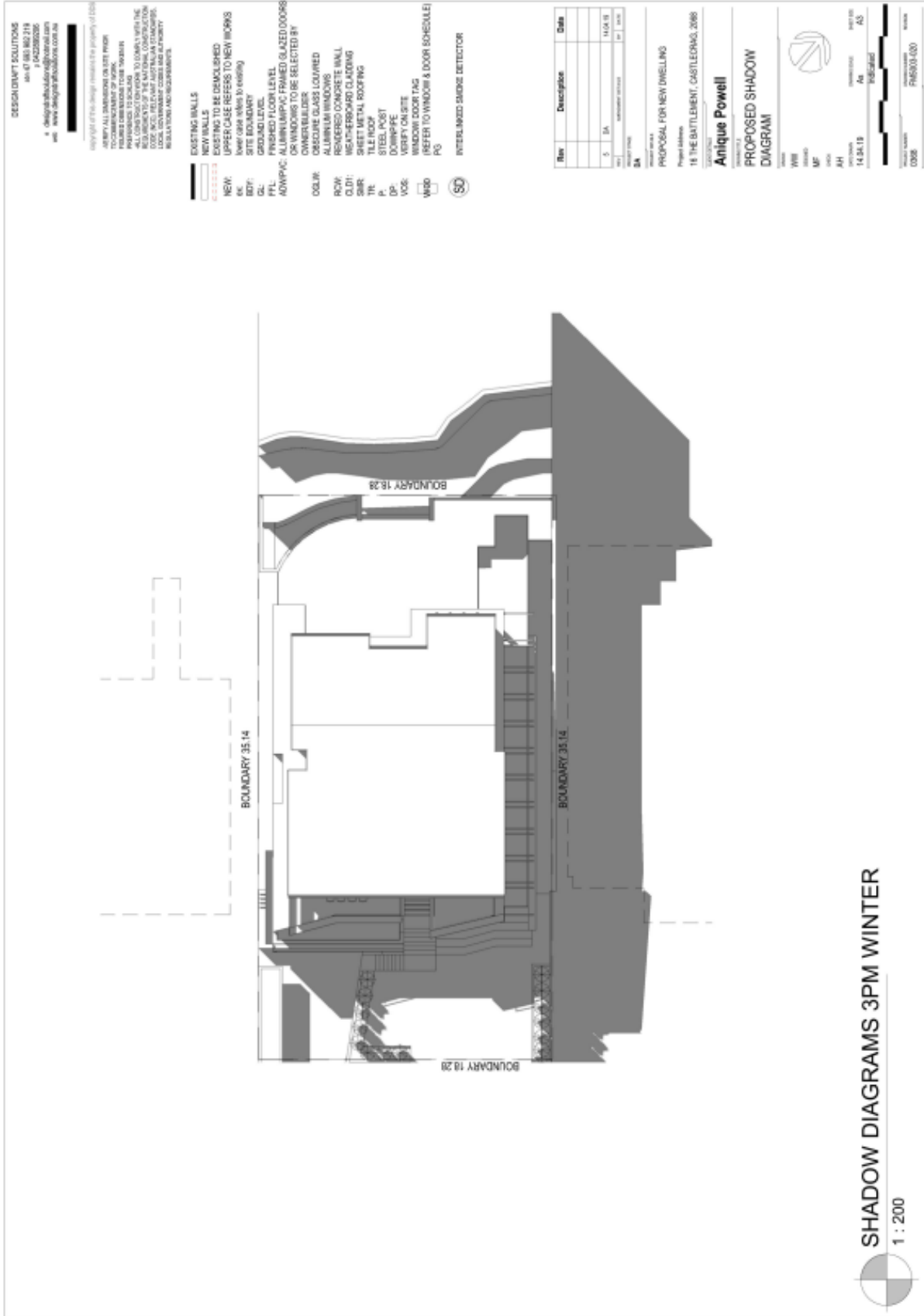












DESIGN DWAIT SOLUTIONS
 14/17 163-165 21st
 a. design@dwait.com.au
 www.dwait.com.au

NOTICE: This drawing is the property of Dwait Solutions Pty Ltd. It is to be used only for the project and site shown. It is not to be used for any other purpose without the written consent of Dwait Solutions Pty Ltd. All construction dimensions to comply with the Australian Standards and the relevant local government codes and all other relevant requirements.

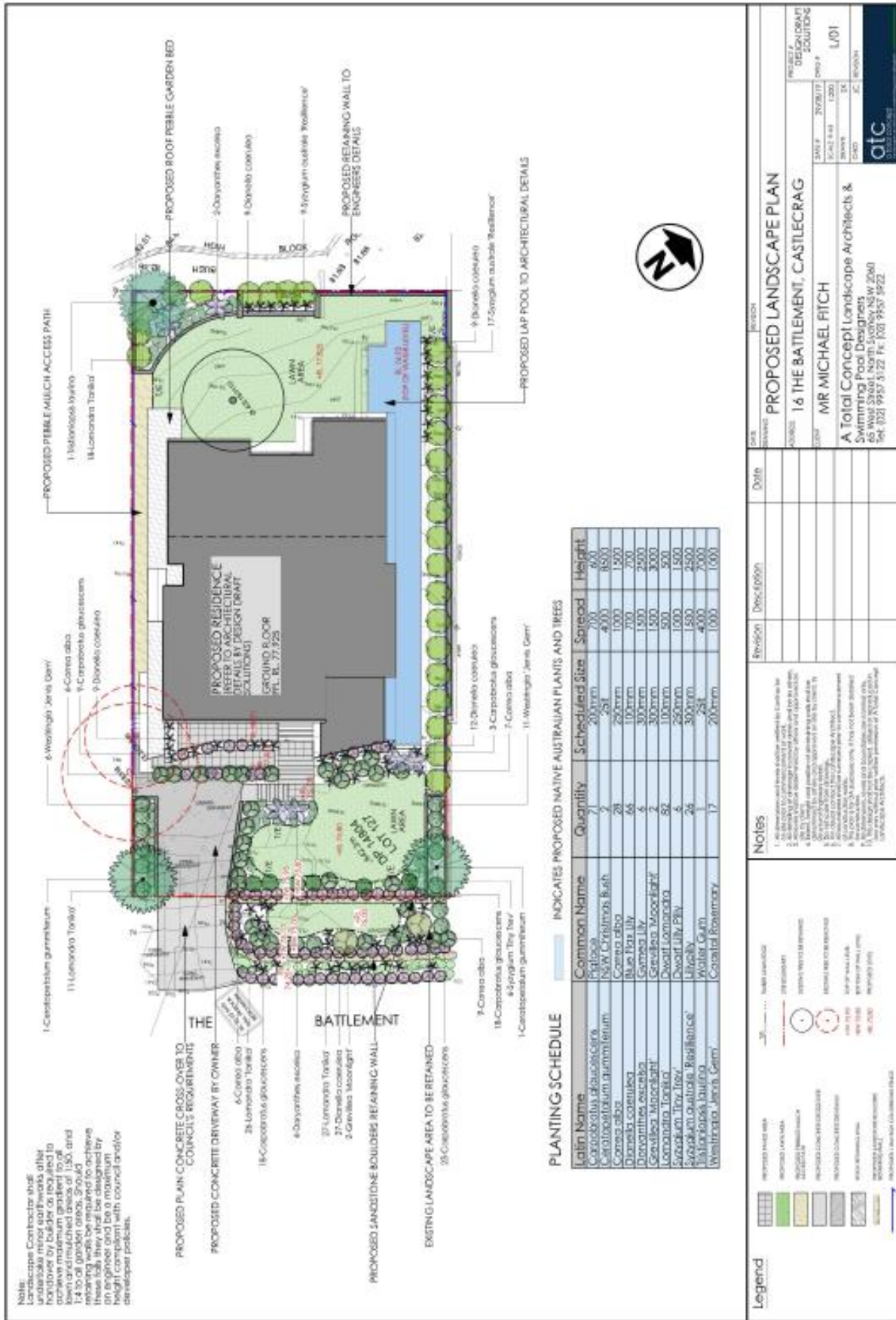
- EXISTING WALLS**
 NEW WALLS
 UPPER GLASS RECESS TO NEW WINDOWS
 LOWER GLASS RECESS TO NEW WINDOWS
 SITE BOUNDARY
 GROUND LEVEL
 FINISHED FLOOR LEVEL
 ALUMINUM/UPVC FRAMED GLAZED DOORS
 OR WINDOWS TO BE SELECTED BY OWNER/BUILDER
 OSGINE GLASS COLOURED
 ALUMINUM/UPVC
 REINFORCED CONCRETE WALL
 HEAVYWEIGHT GLAZING
 SHEET METAL ROOFING
 TILE ROOF
 STEEL POST
 DOWNPIPE
 VERIFY ON SITE
 WINDOW DOOR TAG
 REFER TO WINDOW & DOOR SCHEDULE
 PS
 INTERLOCKED BRIDGE DETECTOR

Rev	Description	Date
5	DA	14/04/18

PROJECT NO: 14
 PROPOSAL FOR NEW DWELLING
 PROJECT ADDRESS:
 16 THE BATTLEMENT, CASTLECRAG, 2068

Antique Powell
 PROPOSED SHADOW
 DIAGRAM

DATE: 14/04/18
 DRAWN BY: AS
 CHECKED BY: AS
 PROJECT NO: 14
 PROJECT ADDRESS: 16 THE BATTLEMENT, CASTLECRAG, 2068



OUTLINE LANDSCAPE SPECIFICATION

Preparation by Builder: Builder shall remove all existing concrete pathways, fences, footings, walls, etc. not related to be retained and complete all necessary excavation work prior to commencement on site by Landscape Contractor (Contractor). Builder shall also install new retaining walls, fences, layout lawn, crossover, pathways etc. and make good all existing kerbs, gutters etc. as necessary and to approval of Council. Excavation work shall be a minimum 150mm of topsoil in lawn areas except. Should required depths not exist Builder shall contact Landscape Architect and ask for instructions prior to commencement of excavation works. Excessive soil necessary, then fill with approved site topsoil to allow for minimum 500mm soil depth in lawn areas and 150mm soil depth in garden areas and to gain required slopes & levels. Ensure all garden and lawn areas drain satisfactorily. All levels & surface drainage shall be determined by others & approved on site by Head Contractor. Note: Approved imported topsoil mix may be utilized if there is insufficient site topsoil available. State in Tender a mix rate for additional imported topsoil and the quantities of both site topsoil and imported topsoil allowed for in Tender.

Initial Preparation: Verify all dimensions & levels on site prior to commencement. Do not scale from drawings. Locate all underground & above ground services & ensure no damage occurs to them throughout contract. Spray approved weedicide to all processed lawn & garden areas to manufacturer's directions. Remove existing concrete pathways, footings, walls etc. not included to be retained & weeds from site. Levels indicated on Plan are nominal only and are derived from Architectural Plans & Topographic Survey. The contractor shall verify the site levels and coordinate with the Council regarding any proposed changes to the specification of Council. Storage of machinery or materials beneath canopy of trees to be retained shall not be permitted. Changes to soil level and cultivation of soil beneath canopy of trees to be retained shall not be permitted unless under direct supervision of Landscape Architect. Existing trees shall be pruned to Landscape Architects oral instructions.

Soil Preparation: Cultivate to depth of 200mm of soil beneath canopy of trees to be retained. Do not excavate beneath existing trees to be retained. In areas where fill is required gain required shades & levels using a premium grade soil mix. In areas where excavation is required (if in clay) over excavate as required to allow for installation of 500mm depth of premium grade topsoil mix to garden areas and 500mm depth of premium grade topsoil mix to lawn areas. Undertake all required action to ensure that no rootballs of proposed plants sit in clay wells and that all garden areas and lawn areas drain satisfactorily. Note it is intended that wherever possible existing levels shall not be altered through garden and lawn areas. It is the Contractors responsibility to ensure that the end result of the project is that all lawn and garden areas drain sufficiently (both surface & subsurface), are at required finished levels and have sufficient soil depths to enable lawn and plants to thrive and grow. Should alternative works to those specified be required to achieve the above result, Contractor shall inform Builder at time of Tender and request instructions.

Lawn Edging and Stepping Stones: 125 x 25mm approved finished impregnated pine edging shall be installed to lines as indicated on plan and slaked with approved stakes at maximum 1500mm centres. At areas and changes of direction, slakes shall be nailed to edging with approved galvanised steel nails. Top of edging shall finish flush with surrounding surfaces. Top of slakes shall finish 25mm below top of edging (if Contractor shall install approved bricks on edge on a minimum 100mm concrete base). Edging shall be installed on plan or as indicated on site. Approved stepping stones shall be installed on plan on a 25mm river sand bed. Approved sandstone stepping stones shall be positioned as indicated on plan on a 25mm river sand bed.

Retaining Walls: Positions, detail and heights of retaining walls shall be by others.

Planting: Purchase plants from an approved nursery. Plants to be healthy & true to type & species. Set out plants to positions indicated on plan. Following approval, plant holes shall be dug approximately twice width and to 100mm deeper than plant rootballs that they are to receive. Base and sides of hole shall be further loosened. Fertiliser, followed by 100mm depth of topsoil mix shall then be placed into base of hole and lightly consolidated. Base of hole shall then be watered. Remove plant container and install plant into hole. Rootball shall be backfilled with surrounding topsoil and topsoil firmed into place. An approved chalk dish shall be formed to contain water around base of stem. Base of stem of plant shall finish flush with finished soil level. Once installed plant shall be thoroughly watered and maintained for the duration of the Contract.

Staking: All trees shall be staked using 2 x 38mm x 38mm x 2000mm long hardwood stakes per plant and with tension webbing ties installed to Landscape Architects on site instructions.

Structuring: Install 75mm depth of 25mm diameter reinforced mesh to all garden areas, covering mesh down around all plant staking & to finish flush with adjacent surfaces. In lawn areas, mesh shall be installed in 1m x 1m squares. More & maintain levels as necessary until completion of maintenance period. At same time make good all existing paving, concrete, etc. to be replaced or repaired.

Drainage: Prepare for lawn lawn by installing a drainage system with approved pipes and mesh. Also install a drainage system with approved pipes and mesh. Also install a drainage system with approved pipes and mesh.

Fencing: Repair all existing fences unless advised otherwise by builder. Install timber paling fences to heights indicated on Plan. Areas to be paved shall be excavated or filled to allow for installation of bedding materials. Levels and falls shall be as per Plan. Surface drainage on paving shall be towards graded drains with all drains connected to stormwater system and installed by Builder.

Irrigation: Contractor shall supply and install an approved fully automatic, vandal resistant, computerised irrigation system to all garden and lawn areas, excluding council nature strip. Entire system shall be to approval of Water Board and shall utilize pop-up sprinklers and electronic controllers. Contractor shall be responsible to ensure that system is able to satisfactorily operate on available water pressure. Power supply for use by irrigation system shall be provided to an approved location near south-east corner of residence by others and shall consist of an approved weatherproof G.P.O. The irrigation system controller shall be housed in an approved weatherproof cabinet mounted to external wall of residence.

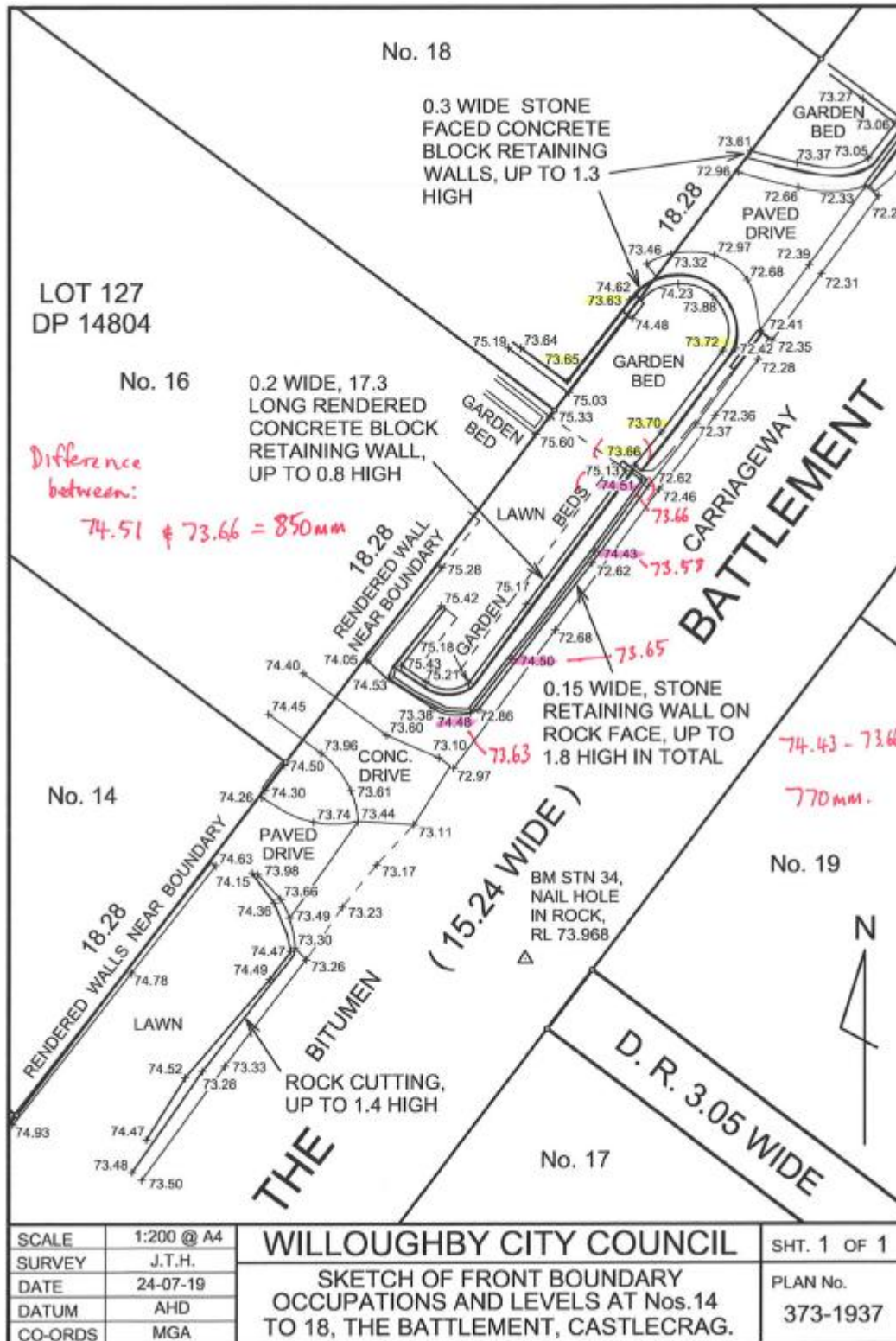
Cablelines: Contractor shall allow for all necessary labour and materials and shall install cablelines to positions as indicated on plan to manufacturer's instructions to approval of Landscape Architect. Cableline type shall be equal to 'Hilly Paddock'.

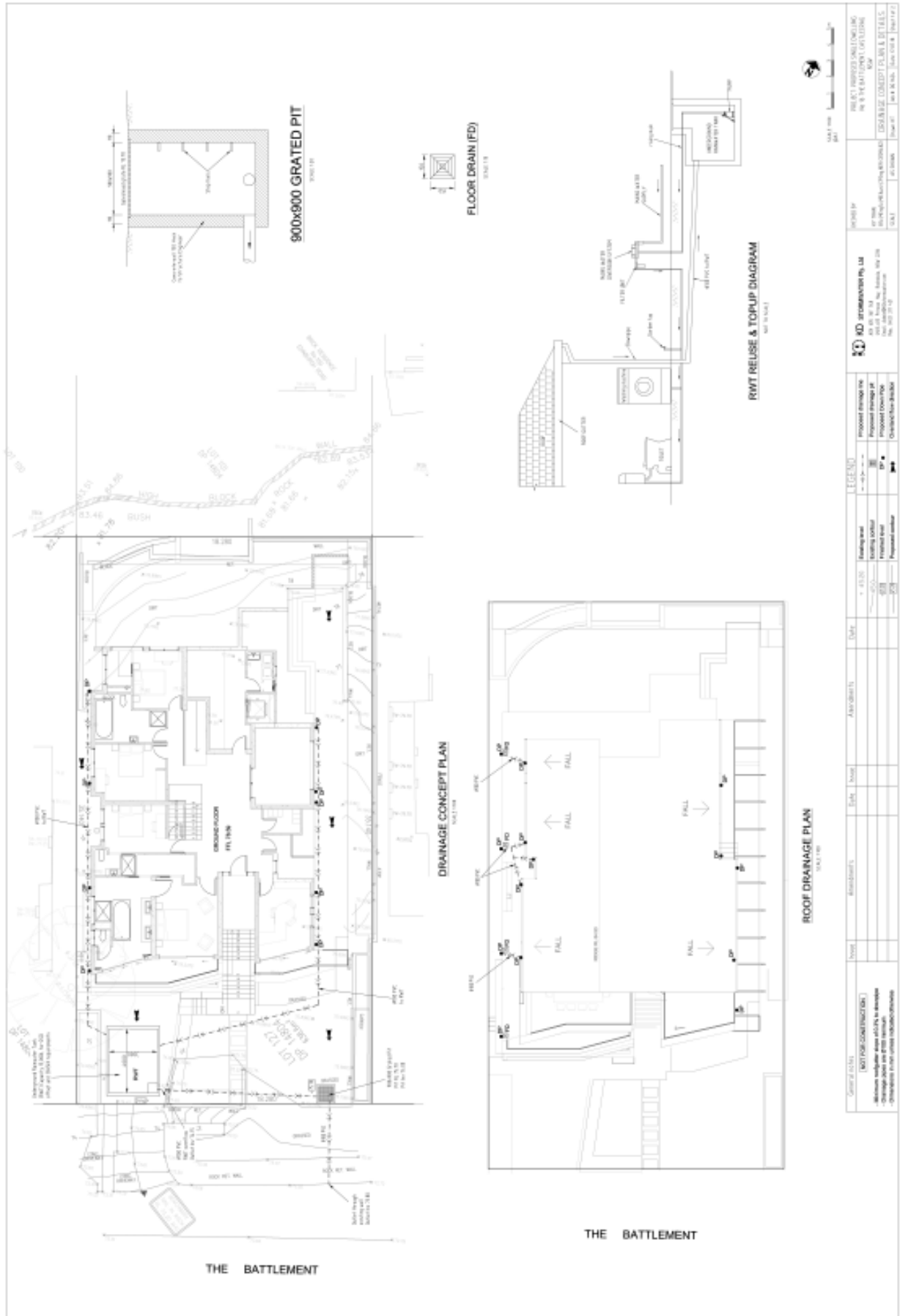
Completion: Prior to practical completion remove from site all unrequired debris occurring from work. Satisfy Council that all landscaping work has been undertaken in strict accordance with Council's landscape codes & guidelines.

Maintenance Period: A twelve month maintenance period shall be undertaken by owner or owners representative as set out herein. Owner shall have care and maintenance of all work specified under this Contract and shall rectify any defective work for a period of 52 weeks following Practical Completion of Landscape Works. This period shall be known as the Maintenance Period. Work shall also include for the care and maintenance of all existing vegetation to be retained and proposed vegetation. Site shall be attended at least weekly and as otherwise required. The following works shall be undertaken during the Maintenance Period.

- (a) **Recurrent works** Undertake recurrent works throughout the Maintenance Period. These works shall include but are not limited to watering, weeding, fertilising, pest and disease control, reurfing, staking and tying, replanting, cultivation, pruning, clearing, removing, top dressing and the like.
- (b) **Watering** Regularly water all plants and lawn areas to maintain optimal growing conditions. Contractor shall adjust the water quantity utilised with regard to climatic conditions prevalent at the time.
- (c) **Replacements** Immediately replace plants which die or fail to thrive (at direction of Landscape Architect) with plants of same species or variety and of same size and quality unless otherwise specified. Plant replacement shall be at Contractors expense, unless replacement is required due to vandalism or theft, which shall be determined by Landscape Architect. Required replacement of plants due to vandalism or theft shall be undertaken by Contractor and shall be paid for by Client at an amount equal to the replacement value of the plants.
- (d) **Mulched surfaces** Maintain mulched surfaces in clean, tidy, weed-free condition and shall reapply mulch as necessary to maintain specified depths.
- (e) **Stakes & ties** Adjust and/or replace stakes and ties as required. Remove stakes and ties at end of Maintenance Period if directed by Landscape Architect.
- (f) **Lawn areas** Lawn areas shall be mown at regular intervals to ensure non heaving of lawn with a fine-cutting mulching mower and clippings left on lawn to mulch and self-fertilise lawn areas. Primary cut after laying of lawn by others shall be obtained on site taking into consideration season, watering and growth rate of lawn. Following the primary cut all lawns shall be regularly mown as required to ensure a healthy lawn and a neat appearance. Care shall always be taken to ensure that no clippings are left on surrounding roads or garden areas after mowing. Replace lawn areas that fail to thrive at direction of Landscape Architect. All new and made good lawn areas shall be mulched off from pedestrian traffic by use of star pockets and brightly coloured plastic safety mesh until establishment of lawn. Baricades shall be removed upon establishment of lawn area.
- (g) **Weeding** Remove by hand, or by carefully supervised use of weedicides, any weed growth that may occur throughout Maintenance Period. This work shall be executed at weekly intervals so that all lawn and garden areas may be observed in a weed-free condition.
- (h) **Pruning** Prune new and existing plants (excluding existing trees) as necessary to maintain dense foliage conditions. Any rogue branches, or branches overhanging or obstructing pathways, roads, doorways, etc., shall be removed by approved contractor.
- (i) **Spraying** Spraying for insect, fungal and disease attack shall be undertaken as required and in accordance with spray manufacturers recommendations at intervals taking into account the season of year during which landscape works are to be implemented.
- (j) **Tree Care** Should any existing trees be damaged during construction works immediately engage an experienced arboriculturist and then undertake any remediation work recommended by arboriculturist.

LANDSCAPE SPECIFICATION		PROJECT SHEET SOLUTION	
ADDRESS	16 THE BATTLEMENT, CASTLECRAG	DATE	27/03/18
CLIENT	MR MICHAEL FITCH	DATE	10/03
A Total Concept Landscape Architects & Swimming Pool Designers		DATE	02/04/18
45 West Street, North Sydney NSW 2060		DATE	02/04/18
Tel: (02) 9457 5122 Fax: (02) 9957 5922		atc	





<p>PROJECT APPROVED/AMENDING INSTRUMENT (DRAFT OUTLINE)</p> <p>PROJECT APPROVED/AMENDING INSTRUMENT (DRAFT OUTLINE)</p> <p>PROJECT APPROVED/AMENDING INSTRUMENT (DRAFT OUTLINE)</p>	<p>PROJECT APPROVED/AMENDING INSTRUMENT (DRAFT OUTLINE)</p> <p>PROJECT APPROVED/AMENDING INSTRUMENT (DRAFT OUTLINE)</p> <p>PROJECT APPROVED/AMENDING INSTRUMENT (DRAFT OUTLINE)</p>	<p>PROJECT APPROVED/AMENDING INSTRUMENT (DRAFT OUTLINE)</p> <p>PROJECT APPROVED/AMENDING INSTRUMENT (DRAFT OUTLINE)</p> <p>PROJECT APPROVED/AMENDING INSTRUMENT (DRAFT OUTLINE)</p>	<p>PROJECT APPROVED/AMENDING INSTRUMENT (DRAFT OUTLINE)</p> <p>PROJECT APPROVED/AMENDING INSTRUMENT (DRAFT OUTLINE)</p> <p>PROJECT APPROVED/AMENDING INSTRUMENT (DRAFT OUTLINE)</p>
---	---	---	---

