

STATEMENT OF ENVIRONMENTAL EFFECTS

No.1 Tabalum Road Balgowlah Heights

Proposed Dwelling House

Prepared for
Mr. K.Mooney

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Demolition of existing house & erection of a new detached dwelling house

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CONTENTS

1.0 INTRODUCTION & SUMMARY

2.0 THE SITE & CONTEXT

2.1 Locality Description

2.2 Site Description

3.0 THE PROPOSAL

4.0 PLANNING REGIME

4.1 SEPP (Building Sustainability Index: BASIX) 2004

4.2 Deemed SEPP Sydney Regional Environmental Plan (Sydney Harbour Catchment)

4.3 Draft SEPP (Environment)

4.4 Manly LEP 2013

4.5 Manly Development Control Plan 2013

4.6 S.4.15 E.P. & A. Act 1979

5.0 ENVIRONMENTAL ASSESSMENT

5.1 Deemed SEPP Sydney Regional Environmental Plan (Sydney Harbour Catchment)

5.2 Manly LEP 2013

5.3 Manly Development Control Plan 2013

5.3.1 Tenacity View Impact Analysis

5.4 S.4.15 E.P.&A. Act 1979

6.0 CONCLUSION

ANNEXURE 1 Reduced Drawings, Sanctum Design

ANNEXURE 2 Cl.4.6 request for variation to height & floor space ratio standards

1.0 INTRODUCTION & SUMMARY

This statement is provided as supporting documentation in relation to a development application for No.1 Tabalum Road Balgowlah Heights.

The proposal is for the demolition of the existing house and swimming pool and erection of a new dwelling house, basement parking and swimming pool.

In this statement the proposal is presented and assessed in relation to the relevant planning regime. The application is accompanied by the following:

- *Drawings, elevations, finishes schedule and shadow diagrams prepared by Sanctum Design;*
- *Basix Assessment prepared by Efficient Living;*
- *Level & detail survey prepared by Bee & Lethbridge;*
- *Stormwater, erosion and sedimentation control plans prepared by NB Consulting Engineers;*
- *Geotechnical assessment report prepared by White Geotechnical Group;*
- *Bushfire assessment report prepared by Building Code & Bushfire Hazard Solutions;*
- *Landscape design by Paul Scrivener Landscape Architect;*
- *Arborist report prepared by Hugh the Arborist;*
- *Quantity surveyor, North East Quantity Surveyors;*

The scheme has been developed with reference to the objectives and standards of the Manly LEP 2013 and DCP 2013 as well as the character of the locality. It also responds strongly to site analysis and the surrounding context within which it sits comfortably including the relationship with the foreshore scenic protection area, and landscape heritage items.

It is concluded that having regard to site analysis and context the proposal is appropriate, low in impact and worthy of a grant of development consent.

2.0 SITE AND CONTEXT

2.1 Locality Description

The site is located in a low density residential neighbourhood of Balgowlah Heights. Built form in the locality is typically detached dwelling houses. Many recent contemporary houses in the locality present a similar scale to the proposed development.

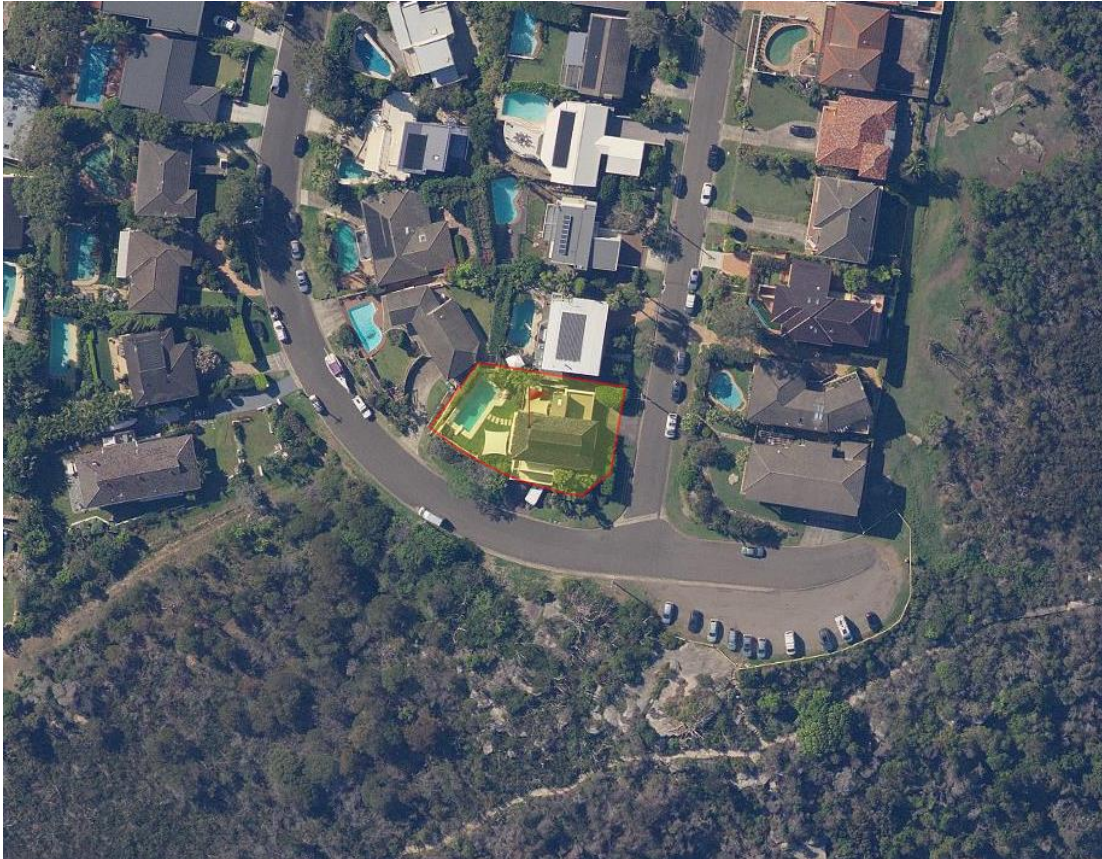


fig 1. Aerial view of locality (source: six Maps)

2.2 Site Description

The legal title of the site of the proposed development is Lot 20 Sec 58 DP 758044. The land is 753.8m² in area and is located on the north western corner of Tabalum Road and Cutler Road. The site has a frontage of 18.29m to Tabalum Road and an arc frontage of 35.05m to Cutler Road. There is a splay corer at the intersection.

The land falls quite steeply from the Tabalum Road frontage at rl 76.66 centrally to the rear boundary abutting No.6 Cutler Road at rl 72 at the pool coping. There is a retaining wall adjacent to the boundary with No.6 Cutler Road. The level at the base on the abutting property being approximately rl 68.18

The site contains a three storey plus attic brick detached dwelling house with a rear swimming pool located off the Cutler Road frontage

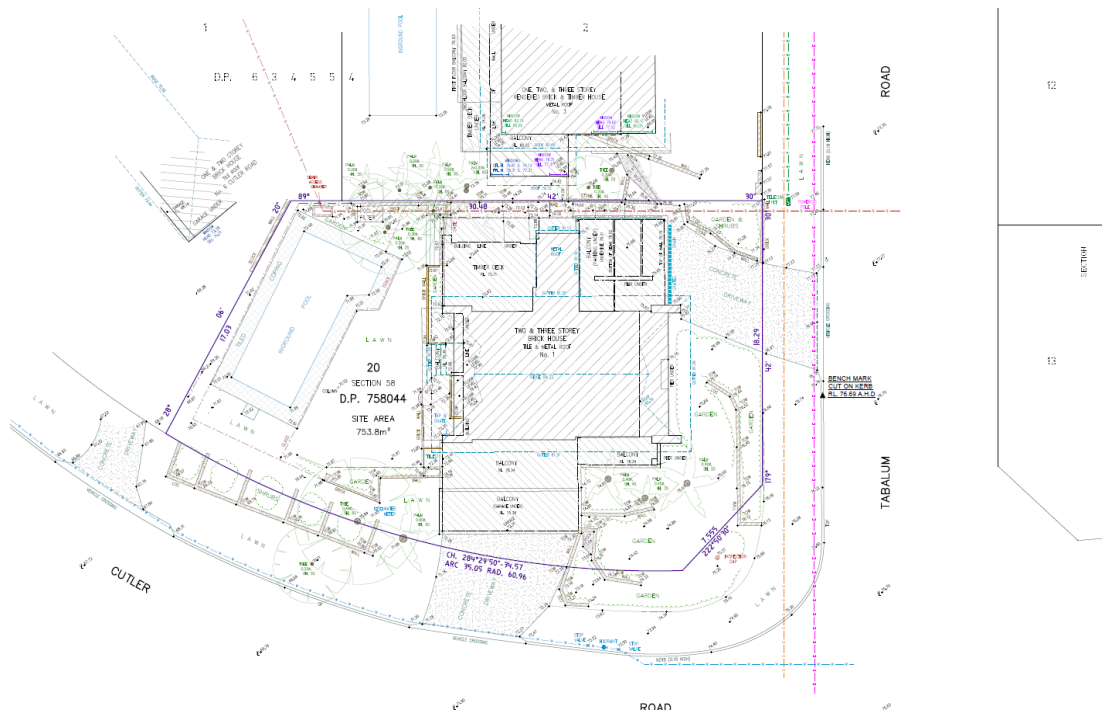


Fig 2. Extract Level & detail survey (source: Bee & Lethbridge Surveyors)

Vehicular access to a three car garage at the lower house level is located off Cutler Road. Access to an additional covered car parking space is available from Tabalum Road adjacent to the house entry.

Abutting to the north at No.3 Tabalum is a large 2 and 3 storey dwelling house with an upper roof level of rl 83.45

To the west on No. 6 Cutler Road is an older style two storey brick dwelling house. Opposite the site at a significantly higher level than the subject site, on Nos. 2 & 4 Tabalum Road, large two storey houses also evident.



No. 1 Tabalum Road frontage, note attic and driveway



No. 1 Tabalum, 3 storey presentation to Cutler Road



Nos 1 & 3 Tabalum Rd as viewed from Cutler Road, note 3 level form.

3.0 THE PROPOSAL

It is proposed to demolish the existing house pool and site improvements and erect a new contemporary dwelling house.

The scheme is depicted on the accompanying drawings prepared by Sanctum Design and is described as follows:

1. Garage Level rl 69.1

- *Relocate vehicular access further south on Cutler Road away from the intersection;*
- *Construct a basement level double garage with pool equipment and storage room and plant room;*
- *Lift and stairs to living level above;*

2. Level 1 rl 72.5

- *Provide new reduced size swimming pool and spa to the Cutler Road frontage with deck and chat pit adjacent;*
- *Remove and fill existing pool to provide new deep soil landscaped area;*
- *Provide paved terrace with BBQ and undercover seating area;*
- *Floor plan to incorporate guest bedroom, outdoor gym, bathroom and rumpus room with lift and stairs to level above;*

3. Level 2 rl 75.6

- *New floor plan to provide 4 bedrooms, laundry and bathroom. All beds to have built in or walk in robes, beds 1 & 2 to have en suite bathrooms;*
- *Return deck to south and east elevations with perimeter planter;*
- *Drying court at rl 74;*

4. Level 3 rl 78.7

- *Landscaped entry to house with water feature and landscape stair;*
- *Combined living, dining and kitchen area;*
- *Family room and office;*
- *Powder room;*
- *Deck to south elevation;*

The form and presentation are balanced in proportion and utilises a contemporary roof form, balconies, steps and projections to create well-articulated elevations further modulated by variety in materials and finishes.

A clerestory is provided over the upper level of the proposed house to allow entry of northern light and to provide further interest and street appeal to the streetscape elevation.

The maximum height of the proposed house is less than the upper ridge of the existing house by up to 1.17m acknowledging a pitched roof form is to be replaced by a flat form.

The dwelling house will be constructed in a variety of finishes including:

- *Rendered and painted surfaces in Dulux Natural white;*
- *Sandstone cladding;*
- *Glazed balustrades;*
- *Timber battening;*
- *Board formed concrete*
- *Timber batten fencing;*
- *A schedule of materials and finishes accompanies the drawing set (sheet A30);*

The scale responds positively to the site context whilst the height, form and footprint is assessed as appropriate pursuant to the LEP, DCP and also from a merit assessment.

Drawings prepared by Sanctum Design accompany the development application.

4.0 PLANNING REGIME

4.1 SEPP (Building Sustainability Index: BASIX) 2004

From the Department of Planning website:

“The SEPP ensures consistency in the implementation of BASIX throughout the State by overriding competing provisions in other environmental planning instruments and development control plans and specifying that SEPP 1 does not apply in relation to any development standard arising under BASIX.”

BASIX is utilised to make certain that in the design of homes, less water is used and that less greenhouse gas emissions arise through the determination of energy and water reduction goals.

The development has received complying scores for energy, thermal comfort and water. A copy of the certification prepared by Efficient Living accompanies the submission.

4.2 Deemed SEPP Sydney Regional Environmental Plan (Sydney Harbour Catchment 2005)

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (deemed SEPP) was made on 28 September 2005 and covers 25 Local Government areas that constitute the catchment of Sydney Harbour. It is a deemed SEPP.

The site development will blend with other development located nearby. The proposal would be concluded as a minor one within the terms of the instrument and there are no provisions therein with which the proposal would conflict.

It is concluded that the visual impact of the development on the Sydney Harbour is appropriate and that the objectives of the Regional Plan are achieved.

Further the proposal does not conflict with any of the objectives or principles set out in CL.12 & 14 of the REP.

4.3 Draft SEPP (Environment)

The draft SEPP intends replacing a number of SEPPs and deemed SEPPs including Deemed SEPP (Sydney Harbour Catchment) 2005. The draft SEPP was exhibited from 31/10/2017 – 31/01/2018.

The draft SEPP is a wide ranging document and as far as it relates to the deemed EPP Sydney Harbour catchment the Explanation of intent states:

“The current aims relating to the importance of the Harbour as an outstanding natural asset of national and heritage significance, for current and future generations will be retained and transferred to the new SEPP. The emphasis on public accessibility to and along the foreshore and within the waterways themselves, and on the

protection and enhancement of the natural and scenic qualities will be retained, as will the emphasis on the unique identity and cultural significance of Sydney Harbour.

The aims relating to the importance of the Harbour and its natural features as a public asset of national and international significance will be carried forward and the aims will continue to require consent authorities to give precedence to the public good and to prioritise the protection of the natural assets of the Harbour.

The aims related to catchment management and water quality will be transferred to a new 'Catchments' section in the Environment SEPP where the generic catchment management and water quality and water quantity provisions from SEPP (Sydney Drinking Water Catchment), the Harbour Regional Environmental Plan, Georges River Regional Environmental Plan and Hawkesbury Nepean Regional Environmental Plan will be consolidated.

It is proposed to amend aim 1(d) of the Harbour Regional Environmental Plan to clarify that the 'working harbour' includes a range of recreational, transport, tourism and commercial uses. This reflects the changes to Sydney Harbour in recent years that has seen a shift away from traditional industrial and heavy shipping uses to a more modern working harbour. The provisions will continue to provide a framework that balances development for these uses against the values of the harbour as a public asset and the need for public access to the waterways and foreshores."

Source: SEPP (Environment) Explanation of Intended Effect October 2017 NS Government

There is no part of the proposal that conflicts with the draft SEPP.

4.4 Manly LEP 2013

The site is zoned R2 Low Density Residential in the L.E.P. The building height limit is mapped at 8.5m. The site is within the Foreshore Scenic Protection Area. Landscape heritage items 136 & 138 lie opposite the site

4.4 Manly Development Control Plan 2013

The Development Control Plan contains Council's detailed requirements for residential and other development. General Principles of Development are contained in Part 3 of the DCP. Controls for Residential Development are contained in Part 4.1 of the DCP.

The DCP contains controls and objectives for housing including, design, building form and character, environmental amenity and site development controls such as landscaped and built upon area and setbacks etc. Additional matters of relevance in the DCP relate to solar access, view impact, stormwater, visual and acoustic privacy.

4.5 S.4.15 E.P.&A. Act 1979

S.79C contains the broad heads of consideration related to assessment of development proposals.

5.0 ENVIRONMENTAL ASSESSMENT

5.1 Deemed SEPP Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Deemed SEPP Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (the REP) was made on 28 September 2005 and covers 25 Local Government areas that constitute the catchment of Sydney Harbour.

The role of the REP is to provide a framework for a consistent approach to the planning and development of foreshore areas.

The proposal is a minor one within the terms of the SREP and there are no specific provisions therein with which the proposal conflicts.

The primary concern in relation to a proposal such as this is with visual impact. The development will sit adjacent to the foreshore in a highly developed locality characterised by multi-level dwelling houses.

Of itself the proposal represents development that will create a modern, well designed and visually interesting building in a built up environment significantly removed from the actual foreshore.

It is concluded that the visual impact of the development on the waterway is appropriate and that the objectives of the Regional Plan are achieved.

5.1.1 Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005

The subject site is outside the area covered by the DCP.

5.2 Manly Local Environmental Plan 2013

Pursuant to the LEP the site is zoned R2. The objectives of the R2 zone are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal represents development of the site for a contemporary dwelling house at low density. It is concluded as being in accordance with the zone objectives, which are as such achieved in this proposal.

(i) Characterisation

Under the definitions to the LEP, the proposed development is classed as a detached dwelling house. This form of development is permitted in the zoning.

Clause	Required	Proposed	✓ or ✗
4.3 Height of Building	8.5m	The majority if the proposed addition is under the 8.5m control as apparent in the elevation drawings. There is an area of minor non-compliance to an absolute maximum of 1.15m through the middle of the building as evidenced by the accompanying diagram. The part of the building over the height standard consists of the clerestory and roof over the upper level balcony. A request for variation pursuant to Cl. 4.6 is enclosed at Annexure 2.	✗
4.4 Floor space Ratio	.4:1 max	The building has a proposed FSR of .423:1 slightly over the .4:1 control but is of a scale fitting to the local context. A request for variation pursuant to Cl. 4.6 is enclosed at Annexure 2.	✗
5.10(5) Heritage conservation	Vicinity of items	The site is opposite two landscape heritage items being items 136 & 138 being a fortification at Dobroyd Point and the natural landscape at Dobroyd Headland and Grotto Point. Given the location of the site in a residential area and the context of the items within Sydney Harbour National Park the proposed work will not have any adverse heritage impact. It is not considered that a heritage management document is necessary in this case.	✓
6.9 Foreshore scenic protection area	Protect visual amenity	The site is within an FSPA and is considered appropriate for the context noting the following: <ul style="list-style-type: none"> - The site is well removed from the actual waterway of the harbour and is with a residential area with a developed backdrop; - No adverse impact is apparent and little relationship is evident with the actual coastline; - The site is within an R2 zone and represents a reasonable expectation for residential development with minimal impact on the foreshore, from which it is well separated; 	✓

5.3 Manly DCP 2013

5.3.1 Part 3 General Principles of Development

The following analysis sets out the proposed development in relation to the residential provisions of Part 3 of the DCP:

3.1 Streetscape and Townscapes		
Streetscape	COMMENT	Outcome
1. To minimise any negative visual impact of walls, fences and carparking on the street frontage. 2. To ensure	The development achieves these objectives by removing all parking and vehicular access from Tabalum Road and by locating all vehicle access to Cutler Road, further from the intersection than is apparent in the existing arrangement.	✓

development generally viewed from the street complements the identified streetscape. 3. To encourage soft landscape alternatives when front fences and walls may not be appropriate.	The form of the proposed development is contextual with recent development in the locality including Nos 3 Tabalum Road and Nos. 10 – 18 Cutler Road.	✓
	Additional soft landscaping and landscape features are provided on the Tabalum Road frontage in replacement of existing hard car parking surfaces.	✓
3.1.1.5 Garbage Areas	Garbage storage to be within the proposed garage integrated with the house design.	✓
3.1.1.1 Complementary Design and Visual Improvement	The house is of contemporary design and proposed in materials and finishes that are contextual to the neighbourhood and residential development generally. The scale is compatible with adjacent development in relation to height and massing of built form. The proposed new swimming pool is smaller and better located in terms of relationship with the neighbour than the existing structure. Relocation of car parking from Tabalum Road results in a definite streetscape improvement. The prescribed setbacks have been achieved.	✓
3.1.1.2 Front Fences and Gates	Contextual fencing to the street frontages and neighbouring properties have been proposed.	✓
3.1.1.3 Roofs and Dormer Windows	The proposed roof form is complementary and of interesting design	✓
3.1.1.4 Garages, Carports and Hardstand Areas	The proposed car paring provision is recessive in its presentation and better located than the current arrangements.	✓
3.3 Landscaping		
	A landscape plan accompanies the proposal prepared by Paul Scrivener. The plan exhibits a high level of detail and proposes a hierarchy of plant material to complement the house design and character of the locality. The principles of the DCP are achieved by the landscape design.	✓
3.4 Amenity		Outcome
Sunlight Access and Overshadowing	Given the topography of the site which falls from north to south and the fact that the site has two road frontages, the shadows cast by the proposed development are either within the shadows cast by the existing house or fall over the adjacent roads. Reference to the accompanying diagrams attests to this fact.	✓
Privacy and Security	Representing a contextually designed new dwelling house, the proposal does not have potential for any unusual acoustic or visual privacy impact. This is determined by the site orientation which is south and south east over National Park not oriented to the neighbouring houses. The north elevation to the abutting house in Tabalum Road has little glazing and what glass exists will be frosted or is not at a level or in a position to cause any overlooking. The western elevation of the house is well setback from the common boundary with No.6 Cutler road. The proposed balconies are also well removed from the rear and front yard located private open space areas of No.6 Cutler road. Removal of the existing large swimming pool and replacement with deep soil landscaping actually improves the relationship with the neighbour at this point. This is concluded noting that front setback swimming pools are commonplace in the locality.	✓

Maintenance of Views	See following separate assessment	✓
Other Nuisance	n.a.	n.a.

5.3.1 View Impact Tenacity Analysis

Planning principles adopted by the Land & Environment Court of NSW represent:

“statements of desirable outcome from a chain of reasoning aimed at reaching or a list of appropriate matters to be considered in making, a planning decision.”

(source: http://www.lec.justice.nsw.gov.au/Pages/practice_procedure/principles/planning_principles.aspx)

With respect to view loss, the principle was established in *Tenacity v Warringah Council* [2004] NSWLEC 140 at 25-29.

Given the nature of the south facing topography in the locality and the orientation of the subject site and those abutting it is apparent that there is potential to impact views from the properties Nos. 2,3, 4 & 6 Tabalum Road located abutting and on the opposite side of Tabalum Road.

Given this situation the following analysis follows the Tenacity test.

- **View Loss - *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140**

26 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 in question are from 2,3,4 & 6 Tabalum Road and are westerly/south westerly over Middle Harbour towards Mosman.

Being of Middle Harbour generally as described above without a specific icon, it is considered that the views are not iconic. The view is however considered valuable in line with the principle as there is considerable land water interface visible on the opposite side of the waterway

*“27 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.**”*

The potentially impacted views from the subject properties are from windows and balconies located on the front (western) elevations of the subject properties.

These views are across Tabalum Road and across the subject property and become more oblique as one moves westwards along Tabalum road noting that Nos 4 & 6 are located more adjacent to Nos. 3 & 5 Tabalum Road respectively.

28 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.

The potentially affected views from Nos 2, 3, 4 & 6 Tabalum road do not constitute the sole views available from these properties.

No. 2 Tabalum Road, immediately opposite the site is noted as having totally unaffected views to the south that consist of the primary orientation of this house.

Nos. 4 & 6 have views from the rear to the east also unaffected. No.3 has broad west/south westerly views that are unaffected.

The following photographs indicate the existing aspects available from Nos. 2,4 & 6 Tabalum Rd.



Photo 5. Primary southern orientation of No.2 Tabalum Rd



Photo 6. Rear of No. 4 & 6 showing balconies oriented to south/south-eastern view



Photo 7. Aspect from rear of Nos. 4 & 6

In order to assess potential impact, the architect has prepared from detailed survey information, the following before and after 3D views from windows and balconies on their subject western elevations.

1. No.2. Tabalum Road



As stated earlier No.2 is clearly oriented to the south and that orientation is not affected by the proposal. No. 2 also has a rear balcony at first floor level oriented eastwards of the National Park that is similarly not affected. There is a minor effect to the west facing end of the balcony however given the totality of views available and only very minor change the impact is assessed as not significant.

2. No. 4 Tabalum Road



No.4 is more located opposite No. 3 Tabalum Road than the subject site however there is an aspect over No.1 and also an aspect along the roadway and park to the south west.

No.4 also has unobstructed north easterly views over the National Park at first floor from the rear of the property that are not related to or affected by the proposed development.

As the above diagrams indicate the view along the roadway to the south west is not affected by the proposal but there is a minor impact from the front balcony and window.

Lowering of the roof below the existing top ridge level actually opens up some land based view to the opposite side of the waterway. Whilst there is a small loss of water view available from the front elevation of No.4, given the totality of views available and only very minor change the impact is assessed as not significant

3. No.6 Tabalum Road



No.6 is more located opposite No. 5 Tabalum Road than the subject site however similar to No.4 there is an aspect over No.1 and also an aspect along the roadway (albeit more constrained) to the south west. No.6 also has unobstructed easterly/north easterly and south easterly views over the National Park at first floor from the rear of the property that are not related to or affected by the proposed development.

As the above diagrams indicate the view along the roadway and over the National Park to the south west is not affected by the proposal but there is a minor impact from the front balcony and window.

It is concluded that there is a negligible difference in impact caused from the front elevation windows and balcony of No.6. Given the totality of views available and only

very minor change the impact is assessed as not significant. Additional land based view to the opposite side of the waterway is actually created.

4. No 3 Tabalum Road



No. 3 Tabalum Road is the abutting property to the north. As the above diagram shows this property has extensive water and land based views to the west that are unaffected by the proposal and to the south west across the side boundary of the subject site. As the diagram shows the aspect across the side boundary more to the south will be changed however not to a great degree. The roof over the level 3 balcony causes a minor loss of land based view however water views beneath the roof are maintained. As stated above the primary expansive views available from No. 3 to the west are not impacted as they are achieved over Nos. 6 & 8 Cutler Road.

Given the totality of views available and only very minor change the impact is assessed as not significant.

29 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.

There is a portion of the proposed building that exceeds the MLEP 2013 height control however the non-complying areas are the more westerly portion

(approximately 1/3rd) of the clerestory roof form further from the street frontage and the balcony roof below the clerestory roof that is not visible from Nos. 2,4 & 6.


Given the minor view impact apparent and the totality of views available from Nos. 2,3, 4 & 6 Tabalum Road, in conjunction with the intervening distance and oblique view apparent from the affected properties to the non-complying portion of the roof, it is not considered that a more skilful design would achieve a noticeably different outcome.

In conclusion it is assessed that the proposed development does not have a significant or adverse impact on the views available from Nos. 2, 3, 4 & 6 Tabalum Road.

The proposal is assessed as satisfying the test in the Land and Court matter, *Tenacity v Warringah Council* [2004] NSWLEC 140 at 25-29 and which constitutes the Court's Planning Principle in relation to view loss assessment.

3.5 Sustainability		Outcome
Solar Access Energy Ventilation Energy Efficiency Landscaping Glazing Insulation	<p>The building has been designed to achieve the principles enunciated and will received high levels of solar access, light and ventilation given the specifics of the proposed design. Adequate window shading devices will be provided.</p> <p>BASIX commitments have been ascertained. Energy sources and appliances will receive the necessary ratings. A sustainable landscape design has been chosen.</p>	✓
WSUD	A stormwater design to DCP requirements has been prepared to DCP standards by NB Design and accompanies the DA.	
3.7 Stormwater Management		Outcome
A stormwater design to DCP requirements has been prepared to DCP standards by NB Design and accompanies the DA.		✓
3.8 Waste Management		Outcome
A WMP accompanies the DA submission covering demolition and construction of the new dwelling house. The DCP requirements for single dwellings will continue to be adhered to in the redevelopment of the site.		✓
3.9 Mechanical Plant Equipment		Outcome
A plant room is proposed in the basement of the house below ground level at the rear of the proposed garage. The plant room will accommodate lift plant. It is clear that the proposed plant room does not add to building bulk and is not habitable.		✓
3.10 Safety & Security		Outcome
The proposed house achieves the DCP requirements in regard to these issues. There are rooms and windows along with balconies orienting to each street enabling passive surveillance. The landscape design and fencing proposals ensure safety for residents and deter concealment.		✓

The following table is an assessment of the residential development controls in Part 4 of the DCP:

Part 4	COMMENT	Outcome
4.1.1. dwelling Density, size	The site is within D8, 950m ² of site area per dwelling. The proposal represents demolition of an existing dwelling and construction of a contemporary new house. No issue arises given no density change to the existing situation.	✓
4.1.2 Height of buildings/wall height No. of storeys	<p>The site exceeds the LEP height control standard to a minor extent and a Cl.4.6 objection is enclosed. Part non-compliance is evident.</p> <p>The site has a slope of 1:3.8 and an 8m wall height results. The proposal has three levels but in reality, only presents as two storeys on elevation. It is noted that the proposed house replaces and existing dwelling house with a higher top ridge level and which contains three levels plus attic. The proposed building responds the steep topography of the site and has an appropriate number of levels given the context. The proposed house is 400mm lower in absolute height than neighbouring No.3 which has three storeys and is thus in context. In addition, recent development apparent at Nos. 10 – 18 Cutler Road presents a similar three storey streetscape. Further the existing house is higher than what is proposed and contains three storeys plus attic:</p>  <p>Adjacent height & scale, Nos 10 – 18 Cutler Road (streetscape)</p>	<p>✗ part</p> <p>✓</p>
4.1.3 Floor Space Ratio	The proposal slightly exceeds the LEP floor space ratio control primarily due to inclusion of underground floor space. A Cl.4.6 request for variation is annexed to this statement.	✗
4.1.4 Setbacks and building separation	<p>Street front to be contextual at 6.63m and matches neighbouring building line.</p> <p>Side & secondary street 1/3rd external wall adjacent. Full compliance apparent to sole residential neighbour to the north.</p> <p>To Cutler Road the setback varies from 1.5m to 4.445m with compliance evident at the 1.5m setback. The remainder of the building is articulated having voids created by balconies and presents with a varied and interesting appearance. The setback increases from 2.035m at a point – 4.445. At 4.45m the setback at the northern corner is far greater than</p>	<p>✓</p> <p>✓</p> <p>✓ on avg</p>

	the control would seek. In the circumstances, given the slope of the land and the lack of neighbours, it is considered that the required setback of up to 3.24m is achieved on average. and that the objectives of the control are achieved. Rear 8m required = 10.165m – 16.93m proposed	✓
4.1.5 Open Space Landscaping & Private open space.	Site is within Area OS4 and 60% site area total open space required of which 40% is to be landscaped area. 25% maximum above ground. Total required .6X 753.8 = 452.28m² Landscaped area = 181m² Above ground max = 113.07m² Proposed is: Total open space = 536.28m² or 71% Landscaped area = 214m² or 47% of the requires total open space. The accompanying landscape plan has included the required number of trees as set out in section 4.1.5.2 of the DCP. Private open space has been provided well in excess of DCP requirements.	✓ ✓
4.1.6 Parking, vehicular access	A two vehicle garage has been provided off Cutler Road in a position relocated to a safer position further from the intersection than the existing driveway. The existing vehicle access from Tabalum Road will be removed. 6.2m width max is complied with to street where opening width of 6.0m is proposed.	✓
4.1.8 Development on sloping sites	The building design has responded to the site slope by stepping southwards. A Geotech report by White Geotechnical Group has been prepared recommending appropriate construction standards for the site. The report notes that no geotechnical hazards will be created by the proposal if carried out in accordance with the specified methods.	✓
4.1.9 Swimming pools, spas and water features	The proposed pool replaces the existing structure but in a far smaller form. The pool is proposed at the same level as the existing pool however the removal of the old pool allows for the establishment of a new deep soil planting are to the benefit of the site an adjacent neighbour. Required setbacks are 1m to the pool edge and 1.5m to the water edge. The pool edge is a minimum of 1.0m at all points. The water edge setback is 1.2m – 1.43m and from the rear boundary and 1.68m – 1.98m from the side (Cutler Rd boundary) Minor non-compliance is evident but noting the smaller footprint of the new pool and adjacent driveway to neighbours house no amenity impact is apparent. The pool comprises 5% of total open space in compliance with the DCP.	Part, objectives achieved ✓
4.1.10 Fencing	The proposed front fence to Tabalum Road is generally on average in compliance with the 1.0m control with minor exceedances allowing for the cross fall along the frontage up to 1.5m creating articulation and visual interest. The new glazed fence on the retaining wall to the west will be in the same position as the existing fence thus maintaining the existing relationship.	✓ Part, objectives achieved.

The proposed development is assessed as appropriate pursuant to the MDCP 2013. Notably the reduction in the area of site covered by the existing pool will enable an increase in landscaped area thus producing a greater soft landscaped setting that is apparent in the existing situation.

In overall terms the objectives and or standards of the DCP are achieved.

5.4 S.4.15 Considerations

The preceding analysis covers the primary range of matters for consideration under S.79C of the E.P. &A. Act 1979 including statutory matters, matters of design, amenity and other matters relating to merit. It is concluded that the site is well suited to the

development proposed and in conformity with the objectives of the planning regime and exhibits no adverse environmental impacts.

5.4.1 Trees and Vegetation Management

An arborist report prepared by Hugh the Arborist accompanies the application. The report covers 16 trees located on and adjoining the site. Seven trees are to be removed, five of which are not protected by Council regulations. These trees need to be removed to facilitate the preferred driveway location off Cutler Road.

A number of trees are also proposed to be relocated on site. Recommendations have been made as to the proper carrying out of transplantation.

5.4.2 Bushfire protection

The site is deemed to be bushfire prone in the Northern Beaches Council Bushfire Prone Land Map. The accompanying report prepared by Building Code and Bushfire Hazard Solutions notes that:

“The proposed dwelling was found to be located 19 metres from the hazard to the southwest, 50 metres to the southeast and >56 metres from the hazard interface to the east. The separation from the hazard interface includes maintained land within the subject property and land “equivalent to an Asset Protection Zone” within neighbouring private residential allotments, Cutler Road and Tabalum Road.”

As such the report concludes that in accordance with the measures outlined in the report that a satisfactory level of bushfire protection will be provided to the proposed development.

6.0 CONCLUSION

The proposed development is considered appropriate pursuant to S.4.15 of the Environmental Planning & Assessment Act 1979 and is recommended to Council for approval.

The proposal:


- *is in compliance with the objectives and/or development controls of the Manly LEP 2013 and DCP 2013;*
- *poses no material impacts on the amenity of abutting properties from the point of view of invasion of privacy, loss of view or overshadowing;*
- *represents contextual development in regard to bulk, height and scale given the character of the neighbourhood;*



C.F. Blyth MPIA CPP Director,
Plansight Pty Ltd
Docs\1TabalumSEE


ANNEXURE 1

Drawing register		Issue Date	
		day	21
		month	10
		year	19
DRAWING NUMBER	DRAWING NAME	SCALE	REVISION
A 00	COVERPAGE		
A 00	SURVEY		
A 01	SITE PLAN	1:200	
A 02	SITE ANALYSIS PLAN	1:200	
A 03	DEMOLITION PLAN	1:100	
A 04	EXCAVATION PLAN	1:200	
A 05	GARAGE	1:100	
A 06	LEVEL 1	1:100	
A 07	LEVEL 2	1:100	
A 08	LEVEL 3	1:100	
A 09	ROOF PLAN	1:100	
A 10	SECTION A	1:100	
A 11	SECTION B	1:100	
A 12	EAST ELEVATION	1:100	
A 13	SOUTH ELEVATION	1:100	
A 14	WEST ELEVATION	1:100	
A 15	NORTH ELEVATION	1:100	
A 16	3D VIEWS		
A 17	AREA CALCULATIONS	1:250	
A 18	SHADOW DIAGRAMS - JUNE 21 - 9am - EXISTING	1:200	
A 19	SHADOW DIAGRAMS - JUNE 21 - 9am - PROPOSED	1:200	
A 20	SHADOW DIAGRAMS - JUNE 21 - 12pm - EXISTING	1:200	
A 21	SHADOW DIAGRAMS - JUNE 21 - 12pm - PROPOSED	1:200	
A 22	SHADOW DIAGRAMS - JUNE 21 - 3pm - EXISTING	1:200	
A 23	SHADOW DIAGRAMS - JUNE 21 - 3pm - PROPOSED	1:200	
A 24	VIEW ANALYSIS FROM #3		
A 25	VIEW ANALYSIS FROM #2		
A 26	VIEW ANALYSIS FROM #4		
A 27	VIEW ANALYSIS FROM #6		
A 28	EXTERNAL FINISHES SCHEDULE		
A 29	WINDOW SCHEDULE 1		
A 30	WINDOW SCHEDULE 2		
A 31	WINDOW SCHEDULE 3		
A 32	WINDOW SCHEDULE 4		
A 33	WINDOW SCHEDULE 5		
A 34	THERMAL COMFORT INCLUSIONS		
A 35	NOTIFICATION PLAN	1:250	
A 36	NOTIFICATION PLAN	1:250	




1 Tabalum Rd, Balgowlah Heights

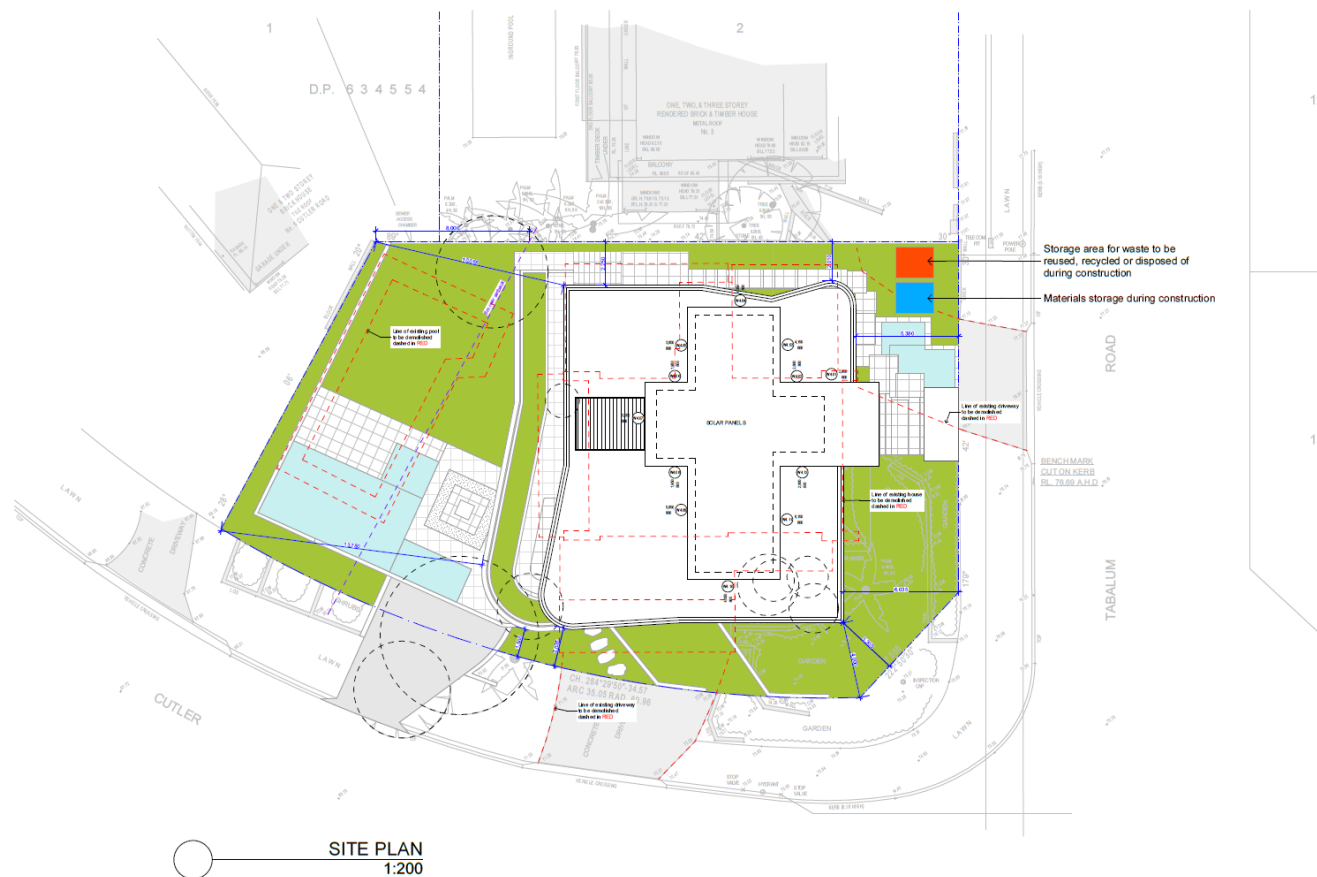
LOCATION PLAN (NTS)

	Revision	Date	Revision Note
	General Notes:		

Project: New Dwelling	Drawing: COVERPAGE
Client: Kevin Mooney	Project #: MOO 0219 Issue Type: DA01
Address: 1 Tabalum Rd, Balgowlah Heights	Original Sheet Size: A3 Issue Date: 21/10/2019
Lot 20, Section 58, DP 758044	Scale @ A3: Sheet #: Revision:
	Chkd: Drawn: A 00




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Nominated Architect, Ian Bassett NSW Reg. No. 6987




Storage area for waste to be reused, recycled or disposed of during construction


Materials storage during construction

— Materials storage during construction

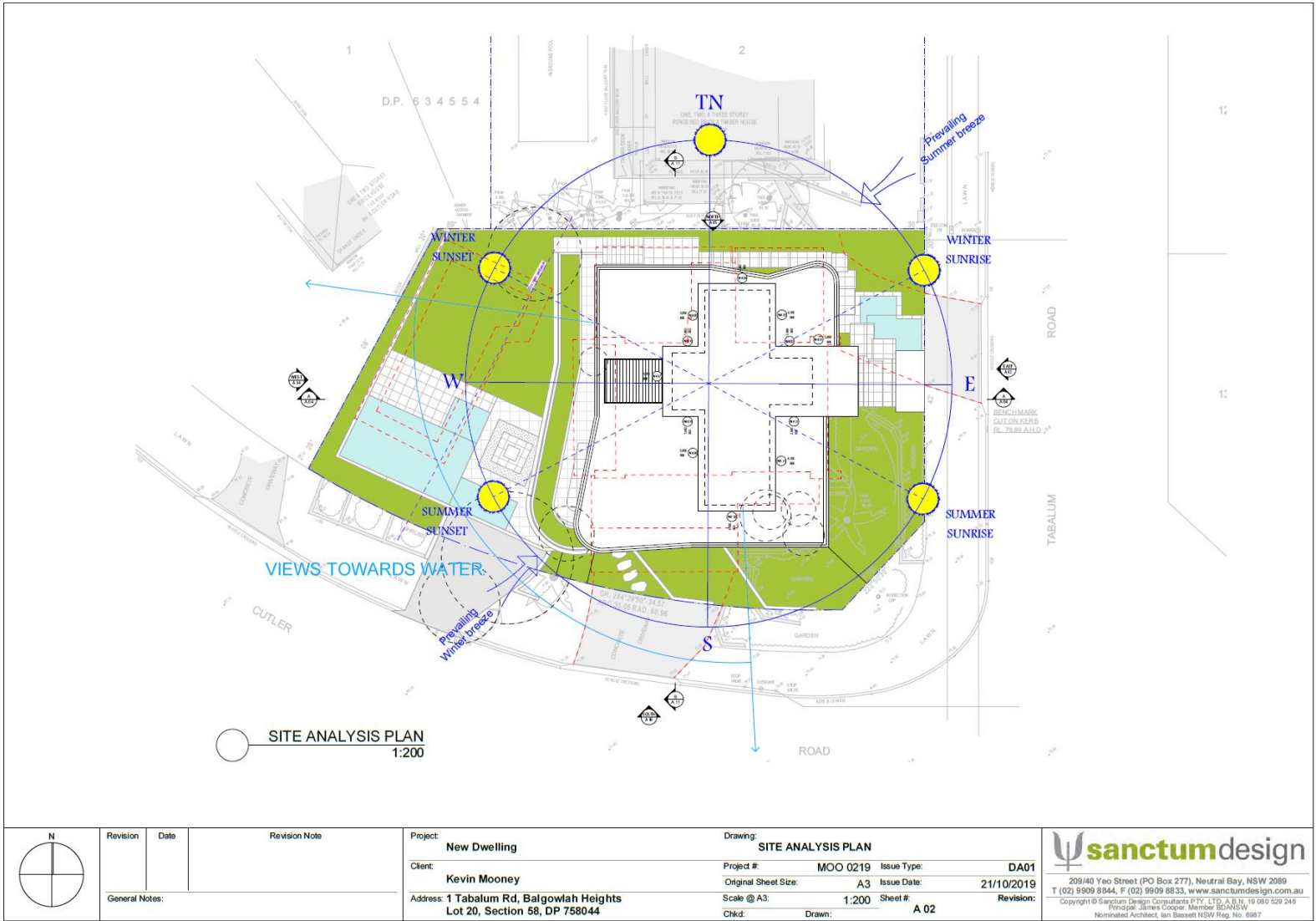
 Trees to be removed or transplanted.
See accompanying arborist report

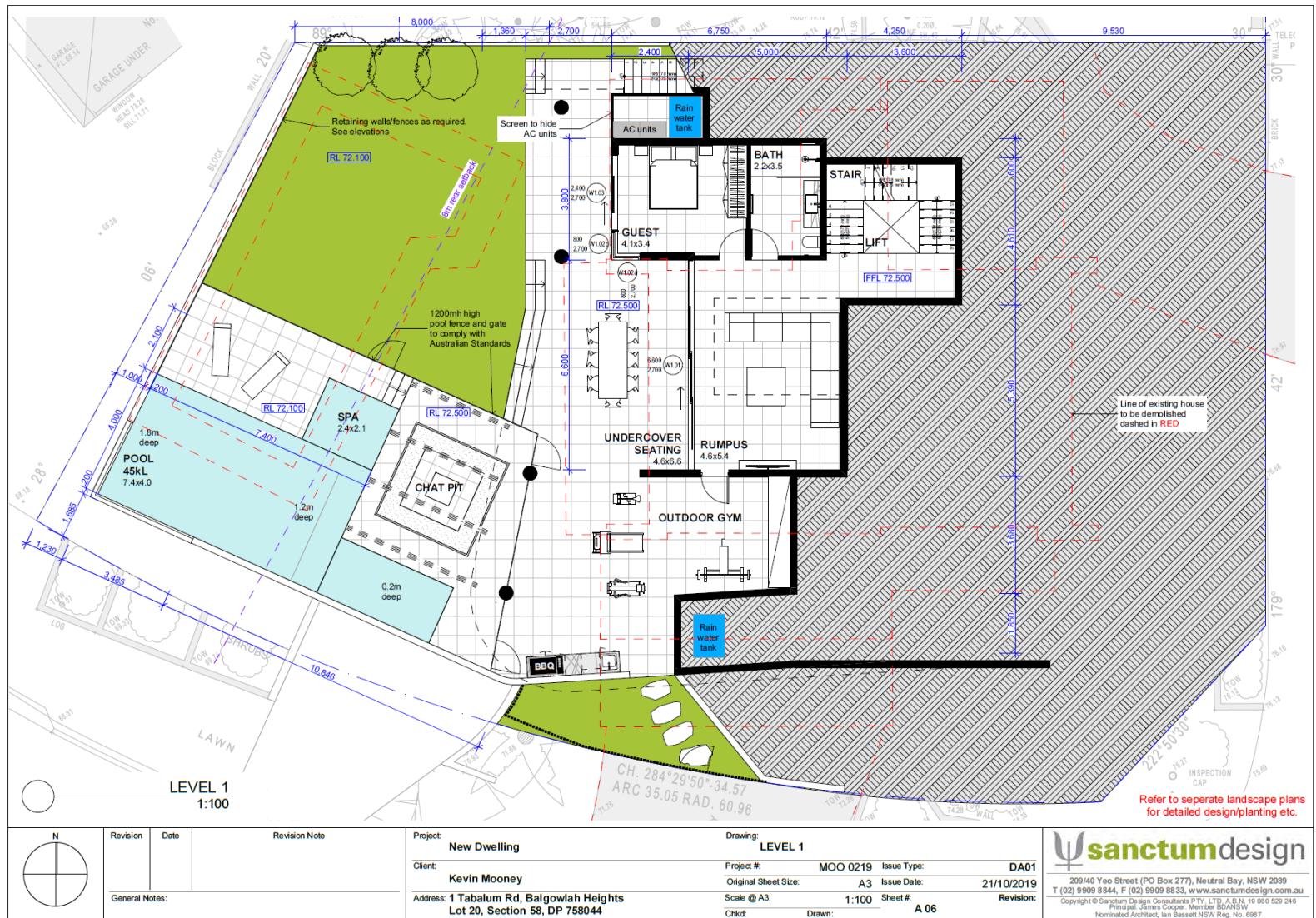
Refer to separate landscape plans
for detailed design/planting etc.

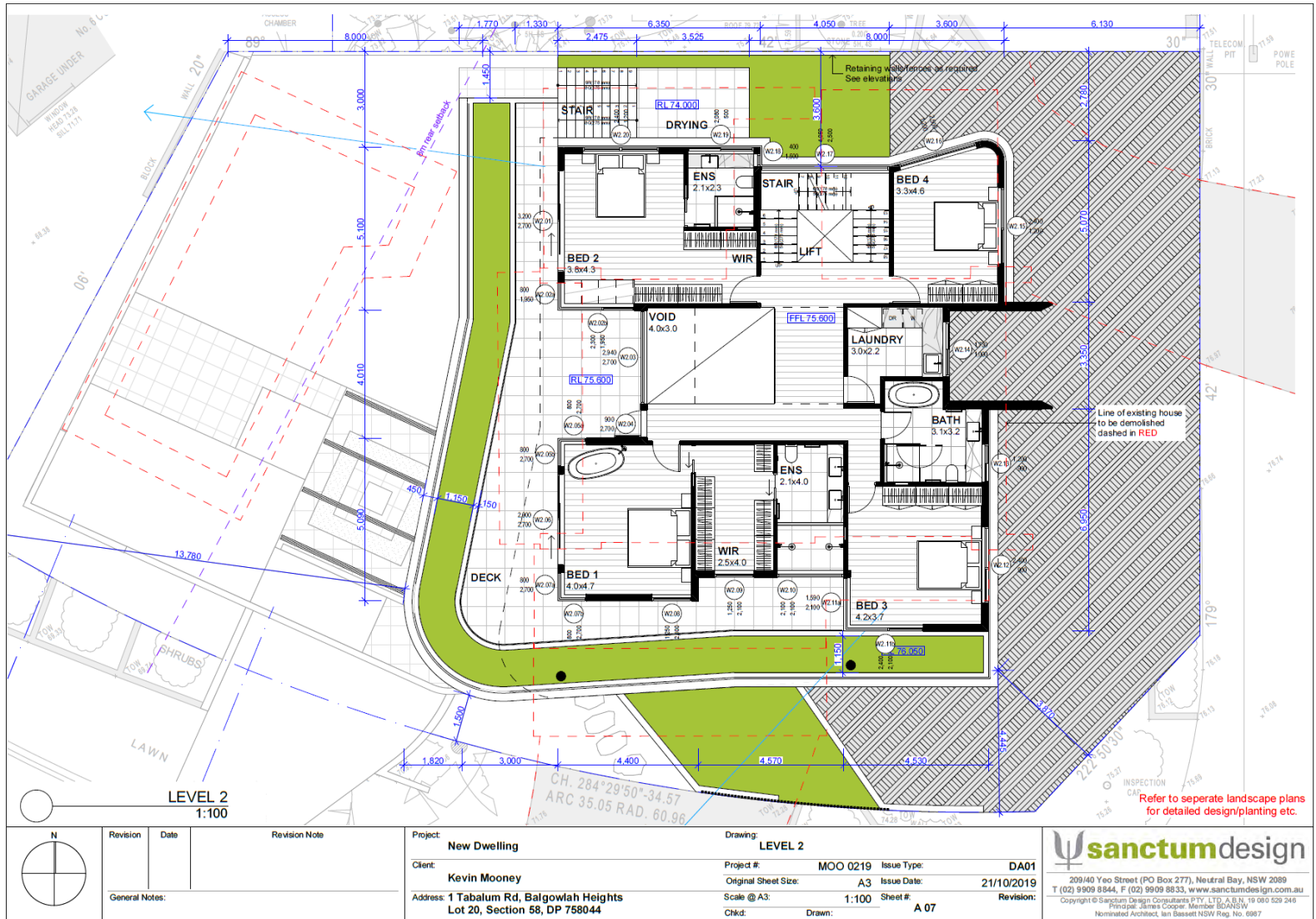
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				New Dwelling	SITE PLAN			
	General Notes:			Client:	Project #:	MOO 0219	Issue Type:	DA01
				Kevin Mooney	Original Sheet Size:	A3	Issue Date:	21/10/2019
				Address: 1 Tabulam Rd, Balgowlah Heights Lot 20, Section 58, DP 758044	Scale @ A3:	1:200	Sheet #:	A 01
					Chk'd:	Drawn:		Revision:

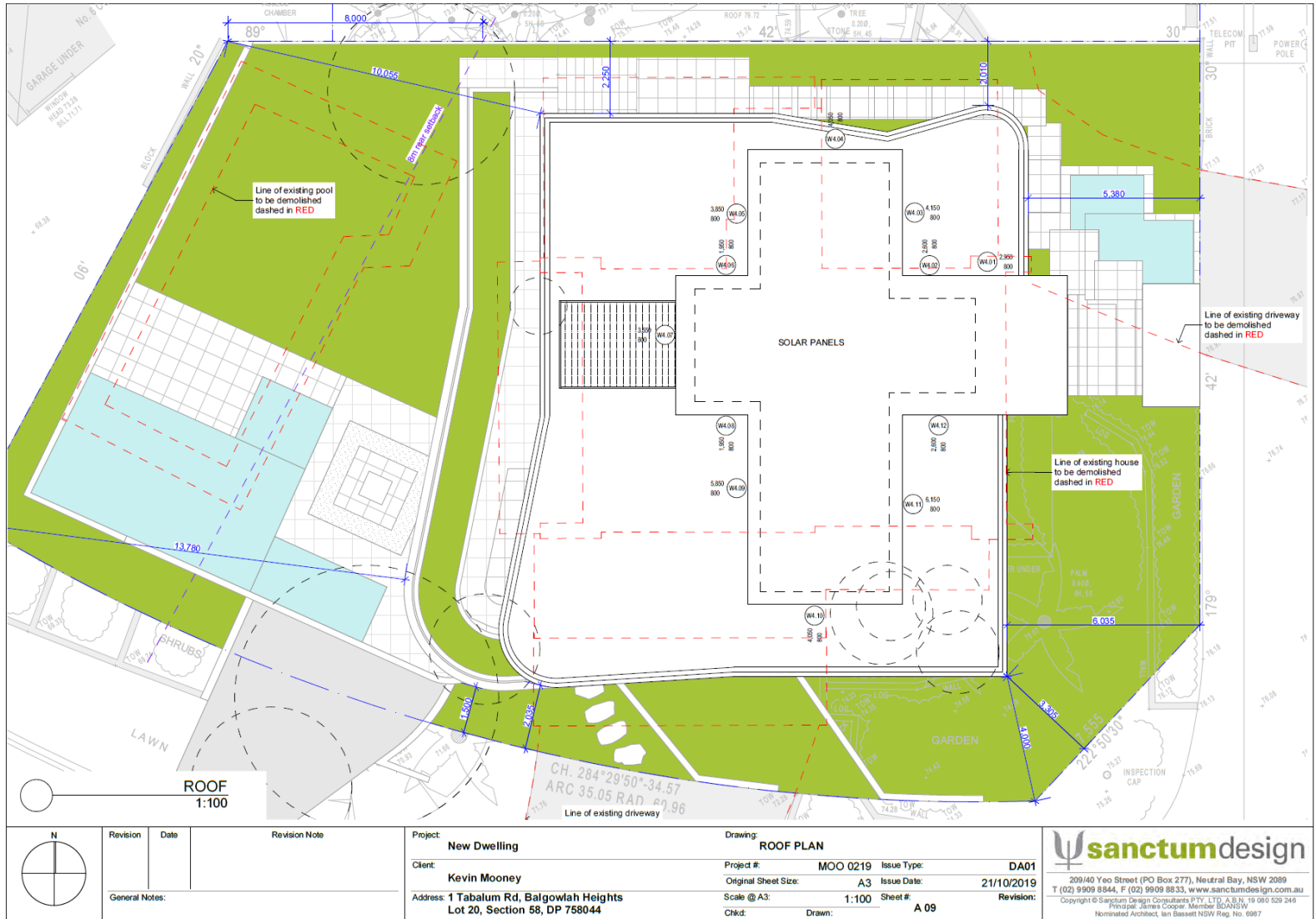


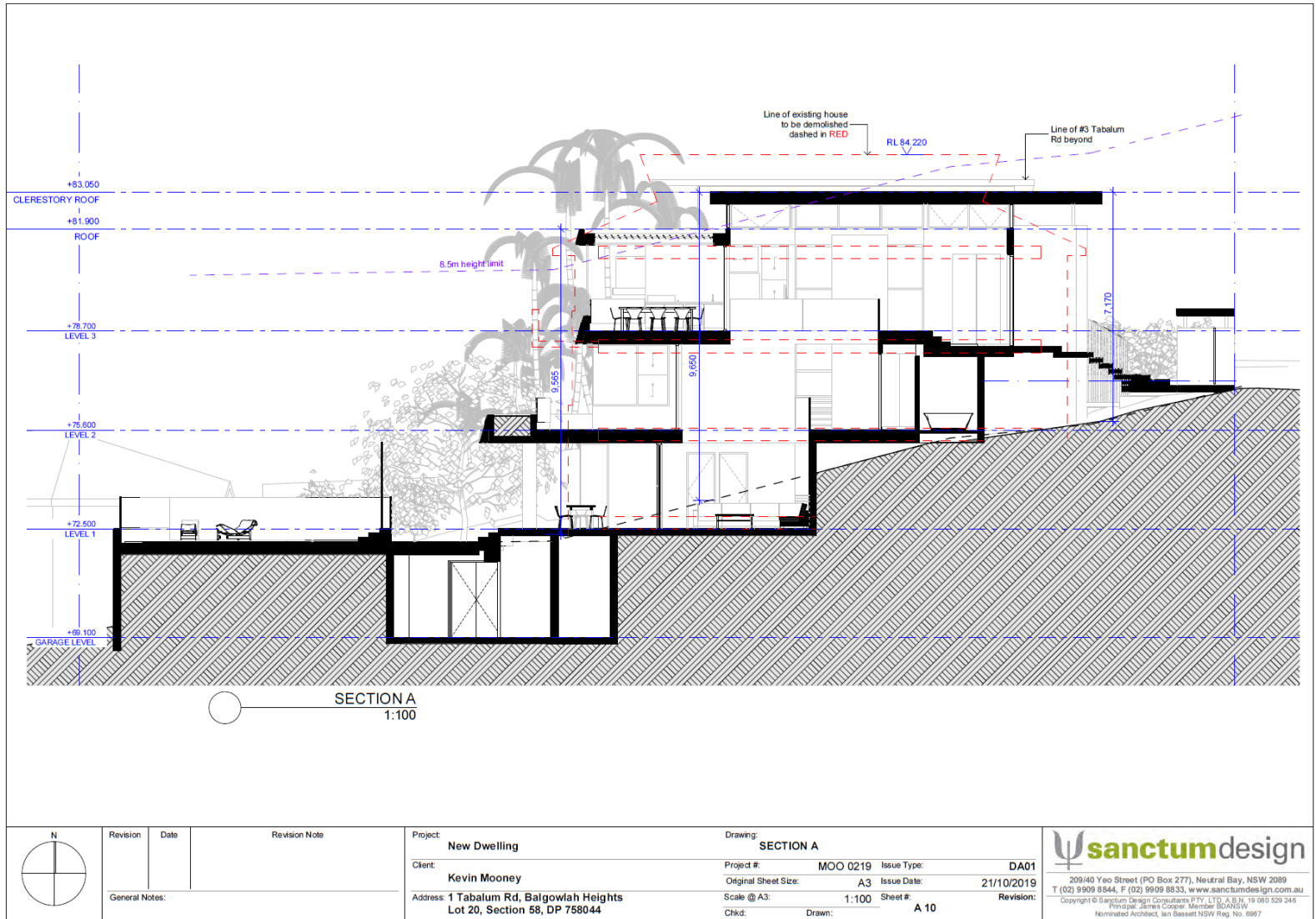
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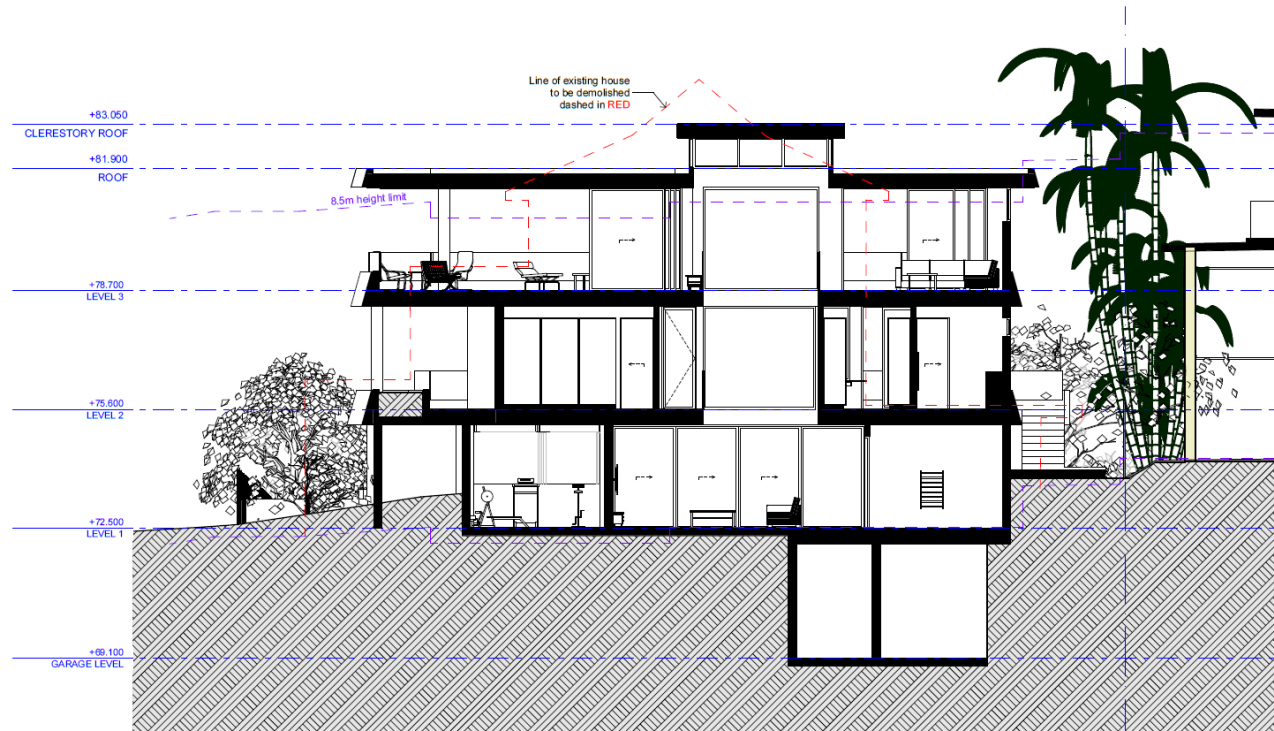












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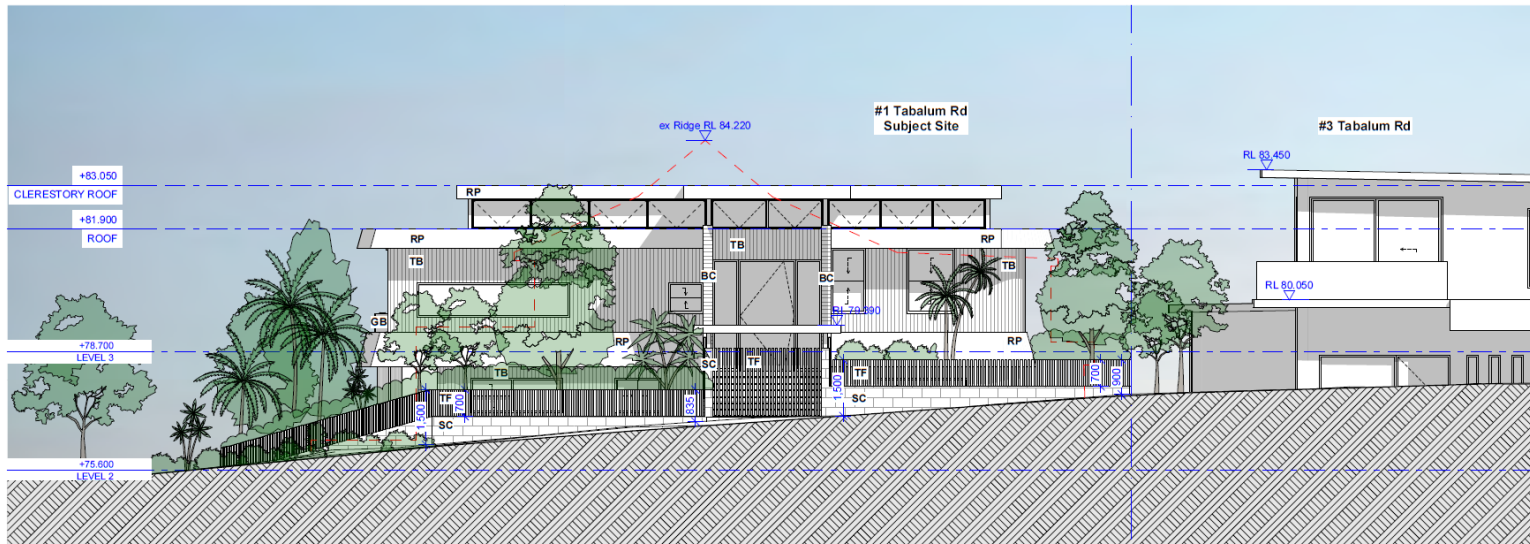
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General Notes:		

Project:	New Dwelling
Client:	Kevin Mooney
Address:	1 Tabalum Rd, Balgowlah Heights Lot 20, Section 58, DP 758044

Drawing:	SECTION B
Project #:	MOO 0219
Original Sheet Size:	A3
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Chkd:	
Issue Type:	DA01
Issue Date:	21/10/2019
Sheet #:	A 11
Revision:	

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○ EAST ELEVATION
1:100

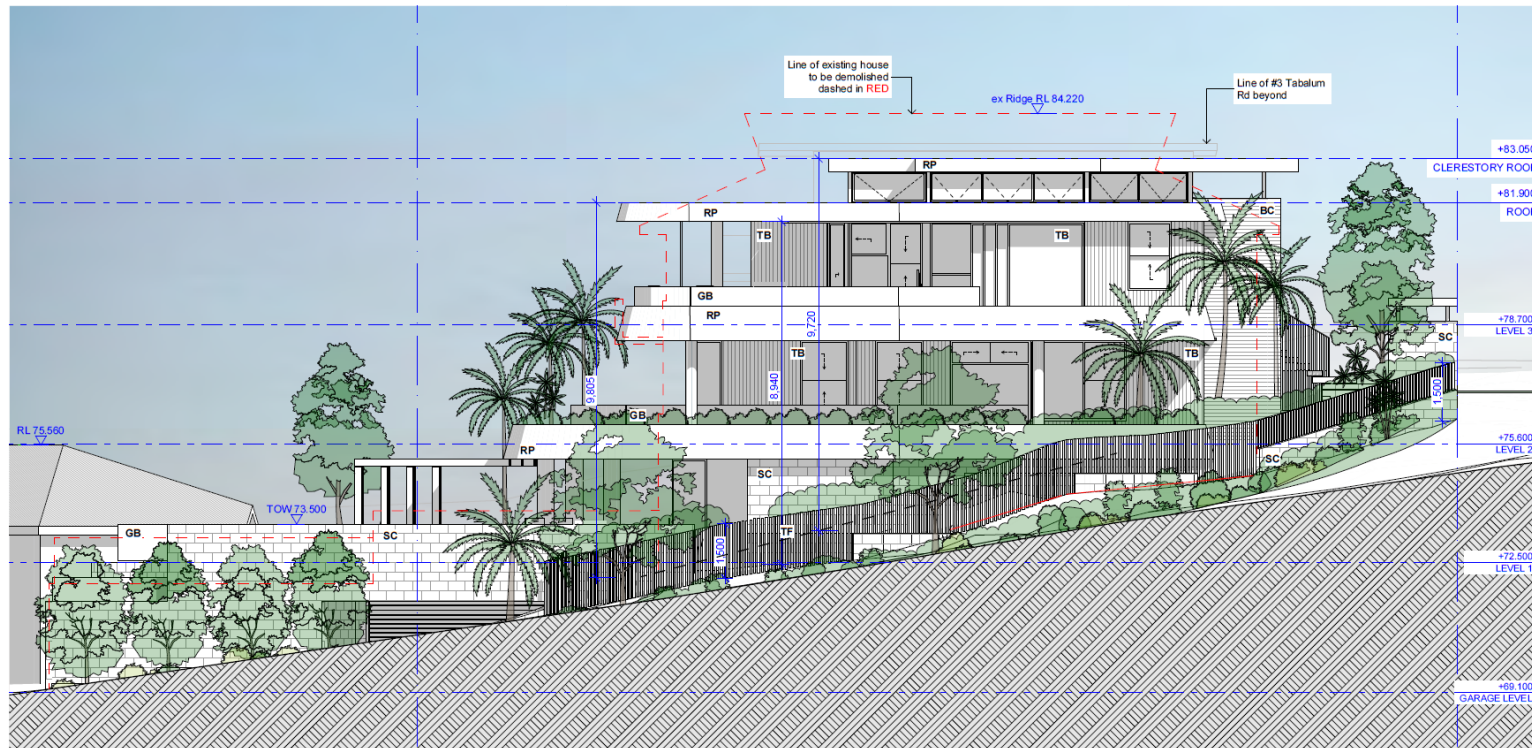


Revision	Date	Revision Note
General Notes:		

Project: **New Dwelling**
 Client: **Kevin Mooney**
 Address: **1 Tabalum Rd, Balgowlah Heights
 Lot 20, Section 58, DP 758044**

Drawing: **EAST ELEVATION**
 Project #: **MOO 0219** Issue Type: **DA01**
 Original Sheet Size: **A3** Issue Date: **21/10/2019**
 Scale @ A3: **1:100** Sheet #: **A 12**
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SOUTH ELEVATION
1:100

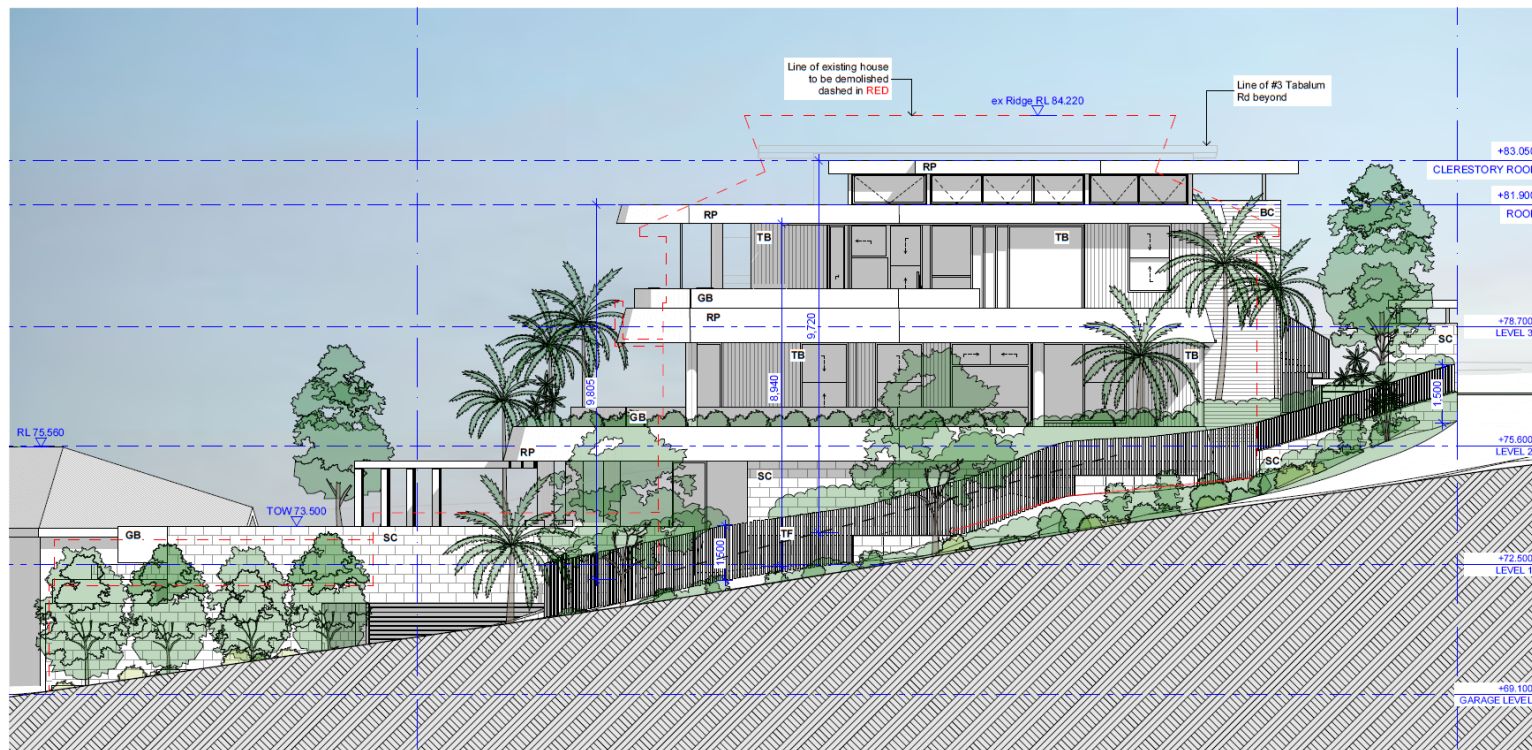


Revision	Date	Revision Note
General Notes:		

Project: **New Dwelling**
 Client: **Kevin Mooney**
 Address: **1 Tabalum Rd, Balgowlah Heights
 Lot 20, Section 58, DP 758044**

Drawing: **SOUTH ELEVATION**
 Project #: **MOO 0219** Issue Type: **DA01**
 Original Sheet Size: **A3** Issue Date: **21/10/2019**
 Scale @ A3: **1:100** Sheet #: **A 13**
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SOUTH ELEVATION
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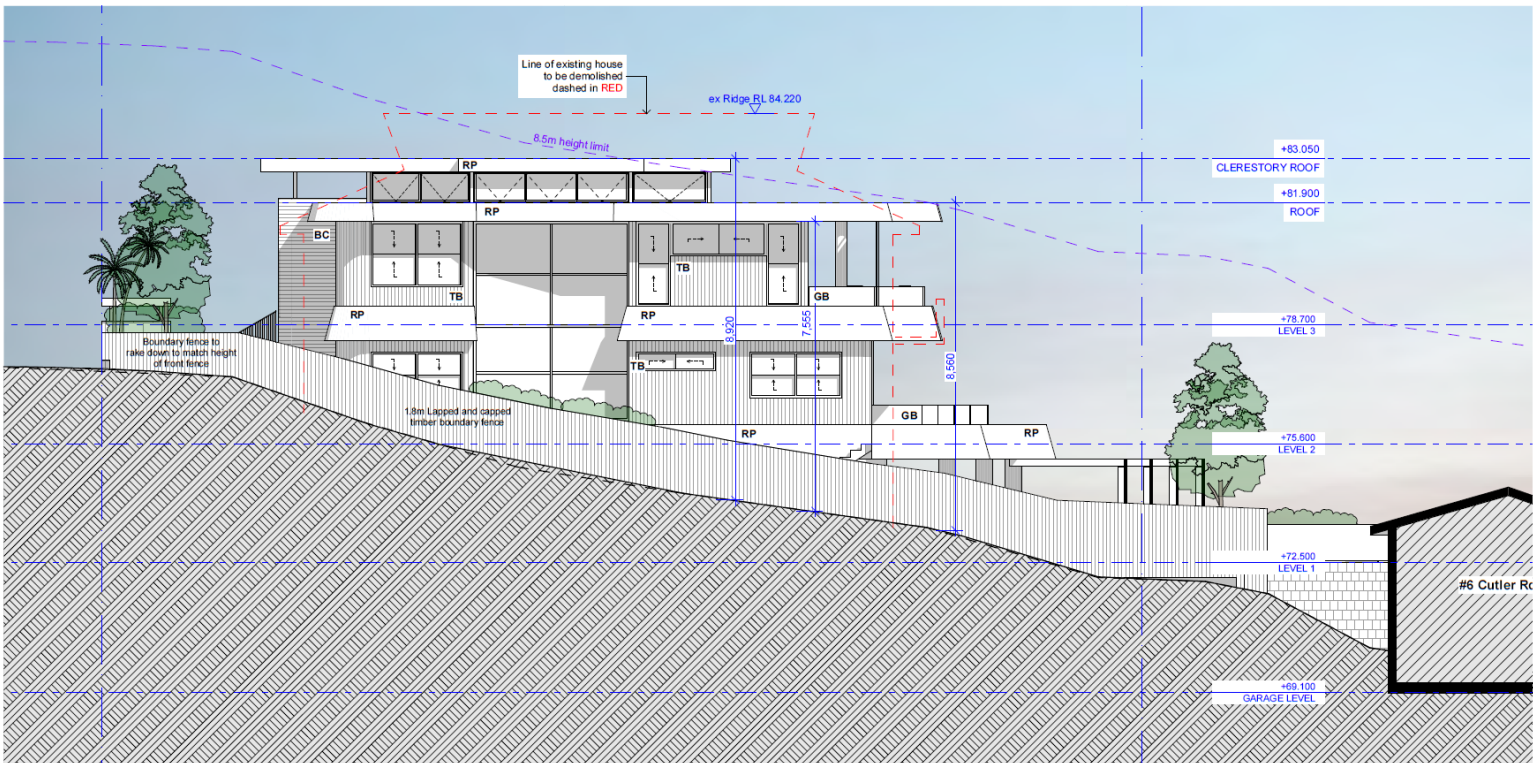


Revision	Date	Revision Note
General Notes:		

Project: **New Dwelling**
 Client: **Kevin Mooney**
 Address: **1 Tabalum Rd, Balgowlah Heights
 Lot 20, Section 58, DP 758044**

Drawing: **SOUTH ELEVATION**
 Project #: **MOO 0219** Issue Type: **DA01**
 Original Sheet Size: **A3** Issue Date: **21/10/2019**
 Scale @ A3: **1:100** Sheet #: **A 13**
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NORTH ELEVATION
1:100



Revision	Date	Revision Note
General Notes:		

Project: **New Dwelling**
 Client: **Kevin Mooney**
 Address: **1 Tabalum Rd, Balgownie Heights
 Lot 20, Section 58, DP 758044**

Drawing: **NORTH ELEVATION**
 Project #: **MOO 0219** Issue Type: **DA01**
 Original Sheet Size: **A3** Issue Date: **21/10/2019**
 Scale @ A3: **1:100** Sheet #: **A 15**
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3D VIEW 1



3D VIEW 2



3D VIEW 3



Revision	Date	Revision Note
General Notes:		

Project:	New Dwelling
Client:	Kevin Mooney
Address:	1 Tabalum Rd, Balgowlah Heights Lot 20, Section 58, DP 758044

Drawing:		3D VIEWS	
Project #:	MOO 0219	Issue Type:	DA01
Original Sheet Size:	A3	Issue Date:	21/10/2019
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ANNEXURE 2

**No. 1 Tabalum Road Balgowlah Heights
Objection pursuant to the provisions
of Cl. 4.6 of Manly Local Environmental Plan 2013**

This request for variation to a development standard has been prepared in relation to a Development Application that proposes demolition of the existing house and erection of a new dwelling house on the subject site.

The request has been prepared noting the recent judgment in the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

In this instance the Manly LEP 2013 at Clause 4.3 Height of Buildings states “(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*” The maximum building height specified is 8.5m.

No. 1 Tabalum Road as it currently exists already exceeds this height to the topmost point of the ridge and is at maximum 11.32m in height to the top of the roof ridge.

The maximum height of the proposed house is 9.72m at a point on section. The encroaching portions of the development are light weight and not readily visible in the streetscape nor from any neighbouring properties.

The floor space ratio of the proposed development exceeds the .4:1 standard proposing a ratio of .423:1 which is in excess by a minor amount of 19m². The excess floor space is not significant and is less than the existing building FSR of .45:1. In addition the bulk and scale of the proposal is contextual in the locality.

1.0 Cl.4.6 Exception to development standards MLEP 2013

Clause 4.6 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

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

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though it would contravene a development standard imposed by this or any other environmental planning instrument. This clause does not apply however to a development standard that is expressly excluded from the operation of this clause.

This clause would apply to the development standards in Cl.4.3 height of buildings and Cl.4.4 Floor space ratio.

Clause 4.6(3) states that 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.*

Clause 4.6(4) states consent must not be granted for development that contravenes a development standard unless:

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

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General must consider:

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

2.0 Zone Objectives

The subject site is zoned R2 Low Density Residential pursuant to the provisions of Manly Local Environmental Plan 2013 ("MLEP 2012"). The objectives of the R2 zone are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development achieves the objectives and is permitted in the zone. The proposal will result in additions that achieve contemporary low density development, with a high level of design quality. In so doing a development contextual with the locality is achieved. Notwithstanding the breach of the height and FSR control, the

scale of the proposed development is sympathetic to and consistent with what is found on neighbouring sites.



Fig 2. Adjacent height and scale, 10 – 18 Cutler Road, subject site & 3 Tabalum Road

The proposed development is therefore considered to be consistent with the stated zone objectives. Accordingly, there is no zone or zone objective impediment to the granting of consent.

3.0 Request to vary development standard of Building height Control

3.1 Compliance is unreasonable or unnecessary

Pursuant to Clause 4.3(2) of MLEP 2013 buildings on the site must not exceed 8.5m. The existing building predates the control by many years and already exceeds the 8.5m control having a maximum height to the top ridge of 11.32m measured from original ground level noting the definition of basement which refers to a space predominantly below ground level (existing) level.

The proposed development will result in a partial building height breach to a maximum of 1.15m (9.65m) but being less than the existing maximum building height of 11.32m.

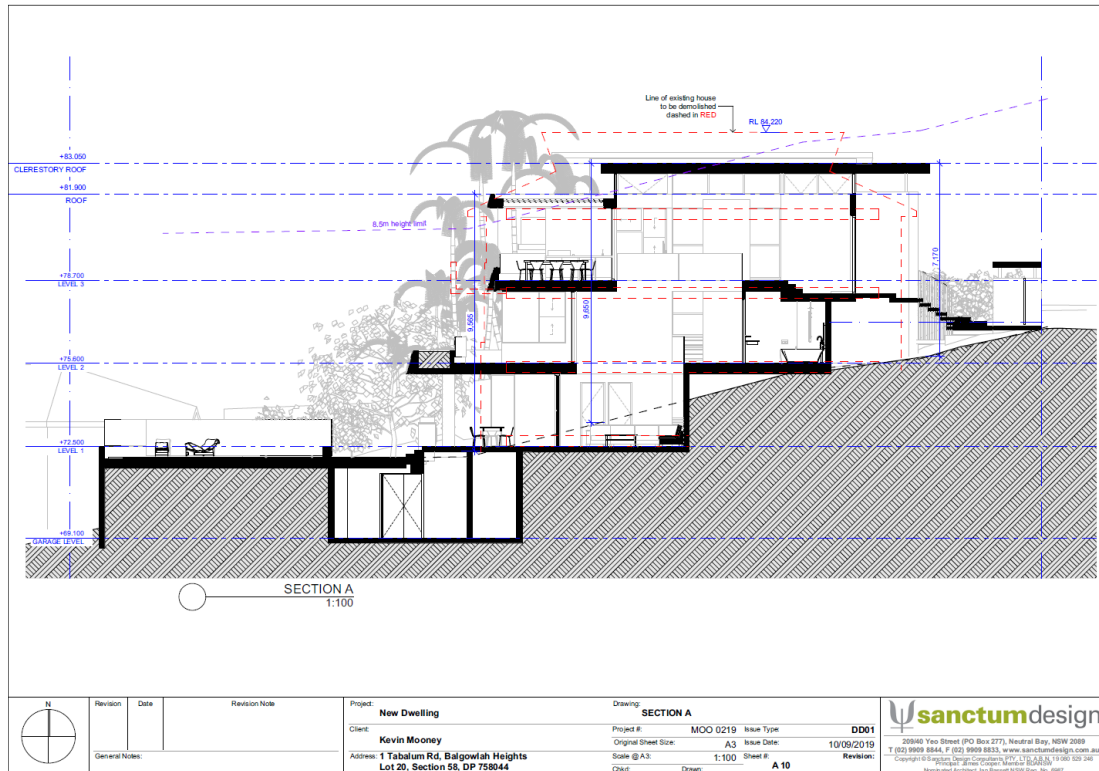


Fig. 3 Section through building indicating maximum height breach of 1.15m

The proposed building had height that in absolute terms has a top RL less than the maximum RL of the existing building acknowledging however that a flat roof is proposed to replace the existing pitched roof. The non-complying section consists of part of the clerestory well setback from the street frontages and the roof over the rear verandah on level 3. The non-compliance is not visible from Tabalum Street and not prominent in Cutler Road where stepping in response to site slope is apparent.

The areas of non-compliance are of light weight construction and visually recessive.

The objectives of the height control standard are:

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

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) *to control the bulk and scale of buildings,*
- (c) *to minimise disruption to the following:*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*

- (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Having regard to the judgment in *Wehbe v Pittwater Council* (2007) LEC 827 & *Four2Five Pty Ltd v Ashfield* [2015] NSWLEC 90 it is considered that strict compliance with the development standard is both unreasonable and unnecessary and the objectives of the development standard are achieved notwithstanding the non-compliance for the following reasons:

- *The proposed development produces new built form that is contextual to the locality and produces a form that is of well-considered contemporary design. The development steps down the site and responds more thoughtfully to the site characteristics than the existing building in achievement of objective (a);*
- *The height encroachment is not apparent in the Tabalum road streetscape being well setback from the street elevation where the building is well under the control and is visually recessive from Cutler Road and adjoining premises due to the steep topography which reduces visibility significantly. The proposal is contextual in scale and achieves objective (b);*
- *The proposed encroaching portions of roof do not cause any significant effect on views from adjacent properties having regard to the tests in *Tenacity v Warringah Council* thus not offending objective (c);*
- *The height of the proposed building does not exceed the top ridge level of the existing development (up to 1.17m less) and has a maximum rl below that of the abutting house No. 3 Tabalum road again supporting the appropriateness of the proposed height in achievement of objectives (a) and (b);*
- *The proposed height is well within the development potential of the site noting again that the existing building height exceeds MLEP 2013. A built form that is consistent with the surrounding built form and which successfully achieves and adds to the character of the locality will result. The upper level section that breaches the control is articulated and light weight in form, setback and not readily visible from the street frontages;*
- *The breach of the control does not cause any adverse impact on the amenity of surrounding properties in relation to overlooking or overshadowing (refer shadow diagrams) in achievement of objective (d);*
- *The proposed development incorporates a high level of design skill. The rationale behind the design was having regard to the south facing slope to provide a clerestory in order to achieve the penetration of northern light into the proposed house;*
- *Objective (e) is not applicable to this site;*

3.2 Sufficient environmental planning grounds

In the subject case it is put forward that there are sufficient environmental planning grounds to justify a request to vary the development standard.

Sufficiency is concluded noting that there is a significant portion of the existing structure that already breaches the height standard by up to 2.82m.

The breach of the 8.5m standard is not uncommon in the vicinity generally and the documentation accompanying the application provides a full environmental planning assessment of the proposed development.

It demonstrates that given the nature and form of the building on the site and the location of that part of the building that breaches the height control that sufficient environmental planning grounds exist to justify the breach including the relevant matters set out in section 1.3 of the Environmental Planning & Assessment Act 1979, Objects of Act specifically:

(c) to promote the orderly and economic use and development of land,

The development achieves this object because the non-complying portion of the upper level is proposed in a manner that does not impact the streetscape where compliance is apparent and because it does not adversely impact on the amenity of abutting properties whilst allowing the owners to reasonable and economically develop their property.

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

The site is opposite two landscape heritage items but due to the relative distance between the site and the subject items little relationship exists such that the impact can be assessed as neutral.

(g) to promote good design and amenity of the built environment

The non-complying portion of the development represents good design because it is able to be constructed in the manner proposed being set well back from the streetscape on a non-obtrusive position with minimal visibility whilst achieving high levels of residential amenity and not being associated with any adverse impact on abutting or adjacent properties.

3.3 Satisfaction the proposed development will be in the public interest

The preceding analysis of the proposed development has provided justification that compliance with the objectives of the zone and the objectives of the development standard have been achieved notwithstanding a breach of the development standard. Accordingly, the proposed development will be in the public interest.

3.4 Conclusions

Having regard to the provisions of Cl. 4.6, I am of the opinion that:

- *the proposed height of the house is consistent with development in the locality and achieves the zone objectives;*
- *the proposed non complying additions are at roof level, setback from street frontage and appearing as a lightweight clerestory and roof form;*
- *the proposed height is contextual in the streetscape noting that the overall maximum height is less than the existing house and less than the neighbouring house No.3;*
- *there are sufficient circumstances to justify the non-compliance with the development standard in this case given the lack of impact associated with the breach, the location and design of the proposal and the character of the locality;*
- *there are no adverse amenity impacts such as overshadowing, overlooking and material loss of view caused to surrounding properties by the non-compliance with the development standard;*
- *that having regard to the above that compliance with the building height standard is unreasonable or unnecessary in the circumstances of the case;*
- *that sufficient environmental planning grounds exist to justify the variation;*
- *that given the fact that the objectives of the zone and the development standard have been achieved, approval would be in the public interest;*
- *non-compliance with the development standard does not raise any matter of significance for State or Regional environmental planning;*

As such it is my opinion that the request is well founded and that there is no statutory impediment or planning merit reason to deny the granting of a variation in this case.

4.0 Request to vary development standard of Floor space Ratio

4.1 Compliance is unreasonable or unnecessary

Pursuant to Clause 4.4(2) of MLEP 2013 the FSR of a building on the site must not exceed .4:1. The existing building predates the control by many years and has an estimated FSR of .45:1.

The proposed development will result in a breach to a maximum of the .4:1 standard having a calculated FSR of .423:1 an excess of 19.26m².

The site is steep and has been stepped from north to south in response to site levels with only a slightly greater amount of excavation than existing building noting that the existing pool is to be removed and the new pool much reduced in size. It adopts essentially the same floor levels noting that the existing building is three levels *plus* attic space. Accordingly the scale of the proposal is not hugely different to what currently exists. The height of proposed building is less than the existing house however the footprint has been increased representing a reasonable expectation for a contemporary dwelling house.

The objectives of the FSR control standard are:

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

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Having regard to the judgment in *Wehbe v Pittwater Council* (2007) LEC 827 & *Four2Five Pty Ltd v Ashfield* [2015] NSWLEC 90 it is considered that strict compliance with the development standard is both unreasonable and unnecessary and the objectives of the development standard are achieved notwithstanding the non-compliance for the following reasons:

- *The proposed development produces a built form incorporating contemporary design that is contextual to the locality noting the scale of the existing house and abutting properties of a similar bulk. In this regards the proposed bulk and scale is consistent with what is found in the locality as evidenced by the enclosed photographs at page 46 of this request. As such it is concluded that the bulk and scale is consistent with the locality and produces a built form that is of well-considered contemporary design in achievement of objective (a);*
- *The proposed FSR is well within the development potential of the site noting again that the existing building predates the LEP control and has an existing FSR of .45:1 that exceeds MLEP 2013. A built form that is consistent with the surrounding context will result and which does not obscure any landscape or townscape features in achievement of objective (b);*
- *The breach of the control does not cause any adverse impact on the amenity of surrounding properties, in relation to loss of view, overlooking or overshadowing (refer shadow diagrams and view analysis);*
- *The proposal does not impede the use of any adjoining land in the public domain thus not offending objective (d);*
- *Objective (e) is not applicable to this site;*

4.2 Sufficient environmental planning grounds

In the subject case it is put forward that there are sufficient environmental planning grounds to justify a request to vary the development standard.

Sufficiency is concluded noting that the scale of the proposed building is not dissimilar to the existing house which accommodated three levels plus an attic space and has an overall height greater than the proposal and an FSR that exceeds the control to a greater extent than is proposed.

The documentation accompanying the application provides a full environmental planning assessment of the proposed development and demonstrates that given the nature and form of the building on the site, the local built form context and lack of visual and amenity impacts associated with the bulk of the building, that sufficient environmental planning grounds exist to justify the breach including the relevant matters set out in section 1.3 of the Environmental Planning & Assessment Act 1979, Objects of Act specifically:

(c) to promote the orderly and economic use and development of land,

The development achieves this object because the excess floorspace in the building is numerically minor and not able to be visibly discerned. It has been incorporated into the design in a manner that does not impact the streetscape nor the amenity of abutting properties whilst allowing the owners to reasonable and economically develop their property.

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

The site is opposite two landscape heritage items but due to the relative distance between the site and the subject items little relationship exists such that the impact can be assessed as neutral.

(g) to promote good design and amenity of the built environment,

The scheme represents good design because it is able to be constructed in the manner proposed and appearing in context with the existing bulk and scale of the neighborhood whilst achieving high levels of residential amenity and not being associated with any adverse impact on abutting or adjacent properties.

4.3 Satisfaction the proposed development will be in the public interest

The preceding analysis of the proposed development has provided justification that compliance with the objectives of the zone and the objectives of the development standard have been achieved notwithstanding a breach of the development standard. Accordingly, the proposed development will be in the public interest.

5.0 Conclusions

Having regard to the provisions of Cl. 4.6 I am of the opinion that:

- *the proposed height and FSR of the house are consistent with development in the locality and achieves the zone objectives;*
- *the scale of the proposed house is not dissimilar to the existing house and contextual with the neighbouring house No.3;*
- *The built form on the site proposes a footprint with total open space well in excess of the DCP minimum requirement indicative of a bulk scale that is appropriate for the locality;*

- *there are sufficient circumstances to justify the non-compliance with the development standard in this case given the lack of impact associated with the breaches, the site location and design of the proposal and the character of the locality;*
- *there are no adverse amenity impacts such as overshadowing, overlooking and material loss of view caused to surrounding properties by the non-compliance with the development standard;*
- *that having regard to the above that compliance with the FSR standard is unreasonable or unnecessary in the circumstances of the case;*
- *that sufficient environmental planning grounds exist to justify the variation;*
- *that given the fact that the objectives of the zone and the development standard have been achieved, approval would be in the public interest;*
- *non-compliance with the development standard does not raise any matter of significance for State or Regional environmental planning;*

As such it is my opinion that the request is well founded and that there is no statutory impediment or planning merit reason to deny the granting of variations in this case.



C.F. Blyth RP Director

Plansight Pty Ltd

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