

S.4.55(1A) APPLICATION
STATEMENT OF MODIFICATION & ENVIRONMENTAL EFFECTS
1 Tabalum Road Balgowlah Heights
March 2022

Prepared for
Mr Kevin Mooney

S.4.55(1A) STATEMENT OF MODIFICATION & ENVIRONMENTAL EFFECTS

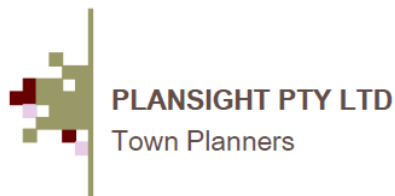
Development Consent DA2020/0077

Demolition works and construction of a new dwelling

- Additional basement excavation
- Swimming pool
- Outdoor gym and operable wall to lounge Level 1

1 Tabalum Road Balgowlah Heights

C.F. Blyth RP, Director



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1.0 INTRODUCTION & HISTORY

Demolition of the existing dwelling house and erection of a new house was approved by Northern Beaches Council in DA2020/0077 by notice dated 21 October 2020. A S.4.55 modification, Mod2021/0509 was approved by Council on 11 October 2021. This modification approved:

- *Increase the size of the bed 1 Level 2 ensuite and walk in robe to align with the main wall of the bedroom, beneath approved roof form;*
- *Reconfigure WIR layout and provide a bath within the enlarged Ensuite space;*
- *Extend approved clerestory westwards by 2.05m and 4.35m in width at the approved r.l.;*

Further refinement of the proposal has determined that a number of modifications are necessary having regard to the provision of appropriate amenity and efficient operation of the dwelling house and

The proposed modifications relate to provision of a swimming pool to the landscaped area, some additional excavation to permit additional basement storage, deletion of the atrium and provide an operable wall to the Level 1 lounge area, provide a subfloor storage cellar and an outdoor gym area in the former outdoor seating area. These modifications are within the envelope of the approved building and approved space or below ground and are assessed as minor in extent as well as environmental impact.

Accompanying the submission are:

- *Plans and specifications of the proposed modification prepared by Legend Design Studio;*
- *Revised BASIX certification;*
- *Landscape plan prepared by Pau Scrivener Landscape Architecture;*
- *Statement of modification and environmental effects prepared by Plansight Pty Ltd;*
- *Revised Geotechnical report prepared by white Geotechnical Group;*

It is concluded that the proposed development remains substantially the same as originally approved with a minor difference in environmental impact.

2.0 SITE DESCRIPTION AND CONTEXT

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 approved development.

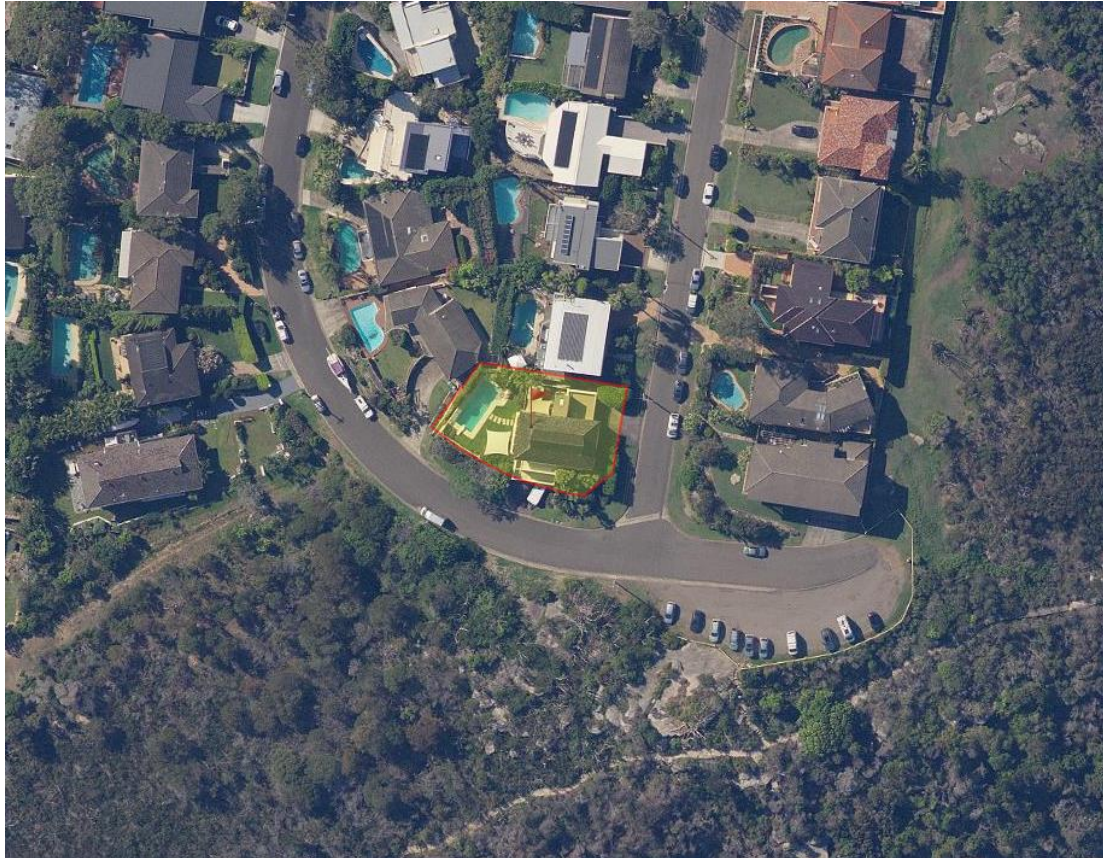


fig 1. Aerial view of locality (source: six Maps)

The site is described as Lot 20 Sec 58 DP 758044 and is 753.8m² in area and 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 corner 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.

3.0 MODIFICATION TO DEVELOPMENT CONSENT

It is proposed that the site development be amended as follows:

1. Garage basement Level

- *Extend excavation in a south easterly direction to allow and additional storage room ;*
- *Reconfigure bin storage room;*
- *Provide door and sidelight to lift foyer space;*

2. Level 1

- *Provide swimming pool, spa and associated paving to landscape area;*
- *Delete atrium, carry out additional excavation to allow storage cellar and sub floor access;*
- *Provide outdoor gym to replace undercover seating area;*
- *Provide undercover lounge space with operable wall;*

3. Elevations

- *Amended to reflect alteration at Level 1;*

4. Conditions

- *Condition 1, Approved plans and BASIX certification to be substituted;*

4.0 PLANNING AND DEVELOPMENT CONTROLS

4.1 S.4.55 Environmental Planning & assessment Act 1979

The proposal is submitted as a modification pursuant to S.4.55 (1A) of the Act and in the applicant's submission the proposed modifications do not have other than a minor impact:

(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification.

4.3 Manly L.E.P. 2013

The LEP applies a zoning of R2 Low density residential to the site. Dwelling houses are a permissible use in the zone.

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.

5.0 ENVIRONMENTAL ASSESSMENT

5.1 S.4.55 Considerations

Pursuant to S.4.55 (1A) the proposal is assessed as follows:

(1A) Modifications involving minimal environmental impact

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

The proposed modifications are in relation to the overall development, considered to be minor.

The enclosure of the approved undercroft space at Level 1 represent a small increase in the gross floor area however it is noted that the space is within the approved envelope and the enclosure is by a light weight glassed operable wall. The operable wall is also well recessed beneath the overhang of Level 2 above and thus not visually apparent. The additional excavation is likewise within the footprint of the approved dwelling house and below ground level and has no outward presentation. The swimming pool is proposed in a position better located with respect to its relationship to the neighbouring property and has little potential to impact upon residential amenity or the public domain.

The modifications are therefore assessed as being of minor environmental impact having been proposed to reflect a more logical and efficient floor plan.

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

The development is substantially the same as originally approved, which is a three storey dwelling house. The modifications represent additional excavation within the approved footprint, a reallocation and minor extension of approved space and a swimming pool with minimal external presence.

(c) it has notified the application in accordance with:

- (i) the regulations, if the regulations so require, or**
- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.**

Notification and consultation will occur as is Council's normal procedure in such matters.

Subsections (1), (2) and (5) do not apply to such a modification.

S.4.55 (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

It is considered that the proposed modification will not have other than a minor impact when compared to that the original approval, and that the site is suitable for the proposed development.

The following response is provided in terms of S.4.15 (1):

(1) Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

(i) any environmental planning instrument, and

➤ **State and Regional Plans**

The proposed modifications do not cause any non-compliance with the State or Regional Plans.

➤ **Local Environmental Plans**

- *Manly LEP 2013*

The LEP applies a zoning of R2 medium density residential to the site. The proposed modifications do not raise any issue of concern pursuant to the LEP. The following table assesses the modifications with respect to the relevant development standards:

Clause	Proposed	✓ or ✗
Cl. 4.3 Height, maximum 10.5m	The proposed modifications result in no change to the approved building height.	✓
Cl. 4.4 (2A) FSR, maximum :9:1	A minor increase in FSR from .403:1 to .439:1 (27m ²) is proposed. It is created by the enclosure of the undercroft lounge area by an operable glazed wall. The additional floorspace is well recessed behind the overhanging balcony of the level above and not easily distinguished. Further the wall is light weight and fully operable. In the closed position it will secure the area and make it weatherproof whilst in favorable conditions it will remain open. The space created is fully within the envelope of the building and has no impact on bulk, scale or height and as such	✓

	the objectives of the standard are not offended. It is concluded that the original Cl.4.6 request to vary the standard is still applicable in these circumstances and the applicant remains substantially the same. (Ref, Gann v Sutherland Shire Council [2008] NSWLEC 157).	
Cl 5.10(5) Heritage Assessment	The proposed modifications do not have an adverse heritage impact and maintain the same presentation to the streetscape.	✓
Cl.6.1 Acid Sulfate Soils,	The site is Class 5 but the modifications do not trigger operation of the clause.	n.a.
Cl.6.2 Earthworks	n.a.	n.a.
Cl.6.3 Flood Planning	n.a.	n.a.

It is thus concluded that the proposed minor modification is appropriate pursuant to LEP 2013.

(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

There are no draft environmental planning instruments of relevance to the proposed modifications.

(iii) any development control plan, and

The proposal is assessed as not creating any significant issue pursuant to the provisions of Part 3 & 4.1 of the Manly DCP 2013. Whilst approval is sought for a swimming pool in the modification, the site has always contained a swimming pool and the size of the proposed pool is significantly less than the existing pool and is also further removed from the neighbour's house resulting in less impact.

The additional excavation is below ground level on the garage level and Level 1 and a supporting modified geotechnical report accompanies the application addressing the aspect of the proposal.

There are no view, overshadowing or impacts related to bulk and scale caused by the proposed modifications.

Clause	Proposed	✓ or ✗
4.1.9 Swimming pools, spas and water features Objectives: 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;	The proposed pool replaces the existing structure but with a far smaller footprint. The pool location is close to, but setback by a minimum of 2.035m from the Cutler Road elevation adjacent to the neighbour's driveway. The current pool position is much closer and adjacent to the south eastern wall of the neighbouring house, No.6 Cutler Road and which contains a large corner window. The pool is proposed at the same level as the existing pool however the removal of the old pool also allows for the establishment of a new deep soil planting area to the benefit of the site and the residents of No.6 Cutler Road.	✓

<p>2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;</p> <p>3) To integrate landscaping; and</p> <p>4) To become an emergency water resource in bush fire prone areas</p>	<p>Required setbacks are 1m to the pool concourse and 1.5m to the water edge.</p> <p>The pool edge is a minimum of 1.0m at all points. The water edge setback is 1.5m from No.6 Cutler Rd (rear boundary) and a minimum of 2.035m from Cutler Road. The pool comprises 5% of total open space in compliance with the DCP.</p> <p>Objective 1 is achieved as the proposed pool location reduces amenity impact on No.6 (the sole relevant neighbour) due to its smaller size and relocation away from the house.</p> <p>Objective 2 is achieved as there are no dwellings opposite on Cutler Road and the location of the proposed pool is obscured by a screen wall such that the pool is not visually apparent in the Cutler Road streetscape. The existence of pools within the front setback to Cutler Rd is however noted as a distinct local feature in any case notably on each of Nos. 6, 8, 10, 12 & 14 Cutler Road</p> <p>Objective 3 is achieved noting that screening and complementary planting has been proposed between the pool fence and the Cutler Road boundary, to the north of the pool and along the boundary with No.6 Cutler Road.</p> <p>Objective 4 is also achieved as the location of the pool would facilitate such use in this manner due to its location adjacent to Cutler Road.</p>	
<p>4.1.5 Open Space Landscaping & Private open space.</p>	<p>The site is within Area OS4 and 60% site area total open space is required of which 40% is to be landscaped area and 25% maximum above ground.</p> <p>Total required .6X 753.8 = 452.28m²</p> <p>Landscaped area = 181m²</p> <p>Above ground max = 113.07m²</p> <p>Proposed <u>as modified</u> is:</p> <p>Total open space = 548.23m² or 71% (no change)</p> <p>Landscaped area = 333.49m² or 60.8% of the required total open space.</p> <p>The modification alters the amount of landscaped area through provision of the swimming pool however the amount remaining at 60.8% is still well in excess of DCP requirements. The accompanying modified 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 maintained well in excess of DCP requirements.</p>	<p>✓</p> <p>✓</p>
<p>4.1.8 Development on sloping sites</p>	<p>The building design has responded to the site slope by stepping southwards. A supportive Geotech report by White Geotechnical Group has been prepared addressing the effect of the additional excavation and recommending appropriate construction standards for the site. The report again notes that no geotechnical hazards will be created by the proposal if carried out in accordance with the specified methods.</p>	<p>✓</p>

(iia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and,

There are no issues of relevance in relation to these matters created by the modifications.

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;

The preceding assessment has considered the range of likely impacts associated with the proposed modification. It is concluded that the proposed modifications are:

- *minor in extent and not associated with any increase in impact in relation to privacy, noise impact, or view loss;*
- *In relation to the swimming pool, in compliance with DCP provisions and objectives and representing a lesser impact on neighbours than the existing pool*
- *Otherwise representative of primarily internal reallocation, minor extension of approved space and additional below ground excavation all within the existing approved envelope and footprint;*

It can be concluded the proposed modification is not associated with any non-compliance with any State, Regional or Local planning instrument or code.

(c) the suitability of the site for the development,

It is clear that the overall site remains suitable for the proposed development. The proposed modifications do not alter the suitability of the land for the approved purpose. The modifications can occur with minimal environmental impact.

(d) any submissions made in accordance with this Act or the regulations,

(e) the public interest.

Such matters will be considered as a matter of course. The modification is assessed in this statement as not inconsistent with the public interest.

5.2 Qualitative and Qualitative Comparison

5.2.1 Qualitative Comparison

The proposal is assessed as substantially the same development in a qualitative sense, compared to the originally approved development for the following reasons:

- *It does not propose any change of land use or increase in site accommodation;*
- *It does not detract from the originally intended architectural concept but provides a harmonious modification thereto;*
- *It does not incorporate any modification that would result in any change or different impact on the streetscape;*
- *It maintains the same relationship to the streetscape as the approved building;*

5.2.2 Quantitative Comparison

The proposal is assessed as substantially the same development in a quantitative sense, compared to the originally approved development for the following reasons:

- *It proposes only a minor change to the approved floor space ratio that is within the envelope of the approved building;*
- *The modifications do not cause any material impact in relation to views overshadowing, privacy (aural or visual) or building bulk. The proposed pool has been located in accordance with DCP objectives and controls. The pool is screened and visually recessive. The additional floor space is within the building envelope and well recessed into the footprint;*
- *It maintains the same amount of private open space and whilst lessening the amount of landscaped area the percentage retained is 60% of open space still far in excess of the DCP 40% minimum;*

6.0 CONCLUSION

In conclusion it is considered that the proposed modifications to development consent DA2020/0077 are environmentally acceptable under the considerations of S.4.55(1A) of the Environmental Planning & Assessment Act 1979.

It is concluded that the proposed modification is minor in nature and environmentally acceptable and that it ought to be approved.

I give the proposal my support.




C.F. Blyth, MPIA CPP Director
Plansight Pty Ltd
Reports/1TAB0322S4.55SMEEV1

ANNEXURE 1



Drawing register			Issue Date
DRAWING NUMBER	DRAWING NAME	SCALE	REVISION
A 00	COVERPAGE		A
A 01	SITE PLAN	1:200	A
A 02	SITE ANALYSIS PLAN	1:200	A
A 04	EXCAVATION PLAN	1:200	A
A 05	GARAGE	1:100	A
A 06	LEVEL 1	1:100	A
A 09	ROOF PLAN	1:100	A
A 10	SECTION A	1:100	A
A 11	SECTION B	1:100	A
A 13	SOUTH (CUTLER RD STREETSCAPE) ELEVATION	1:100	A
A 14	WEST ELEVATION	1:100	A
A 17	AREA CALCULATIONS	1:250	A
A 19	SHADOW DIAGRAMS - JUNE 21 - 9am - PROPOSED	1:200	A
A 21	SHADOW DIAGRAMS - JUNE 21 - 12pm - PROPOSED	1:200	A
A 23	SHADOW DIAGRAMS - JUNE 21 - 3pm - PROPOSED	1:200	A
A 34	THERMAL COMFORT INCLUSIONS		A
A 35	POOL DETAILS	1:100	A
A 36	NOTIFICATION PLAN	1:250	A
A 37	NOTIFICATION PLAN	1:250	A

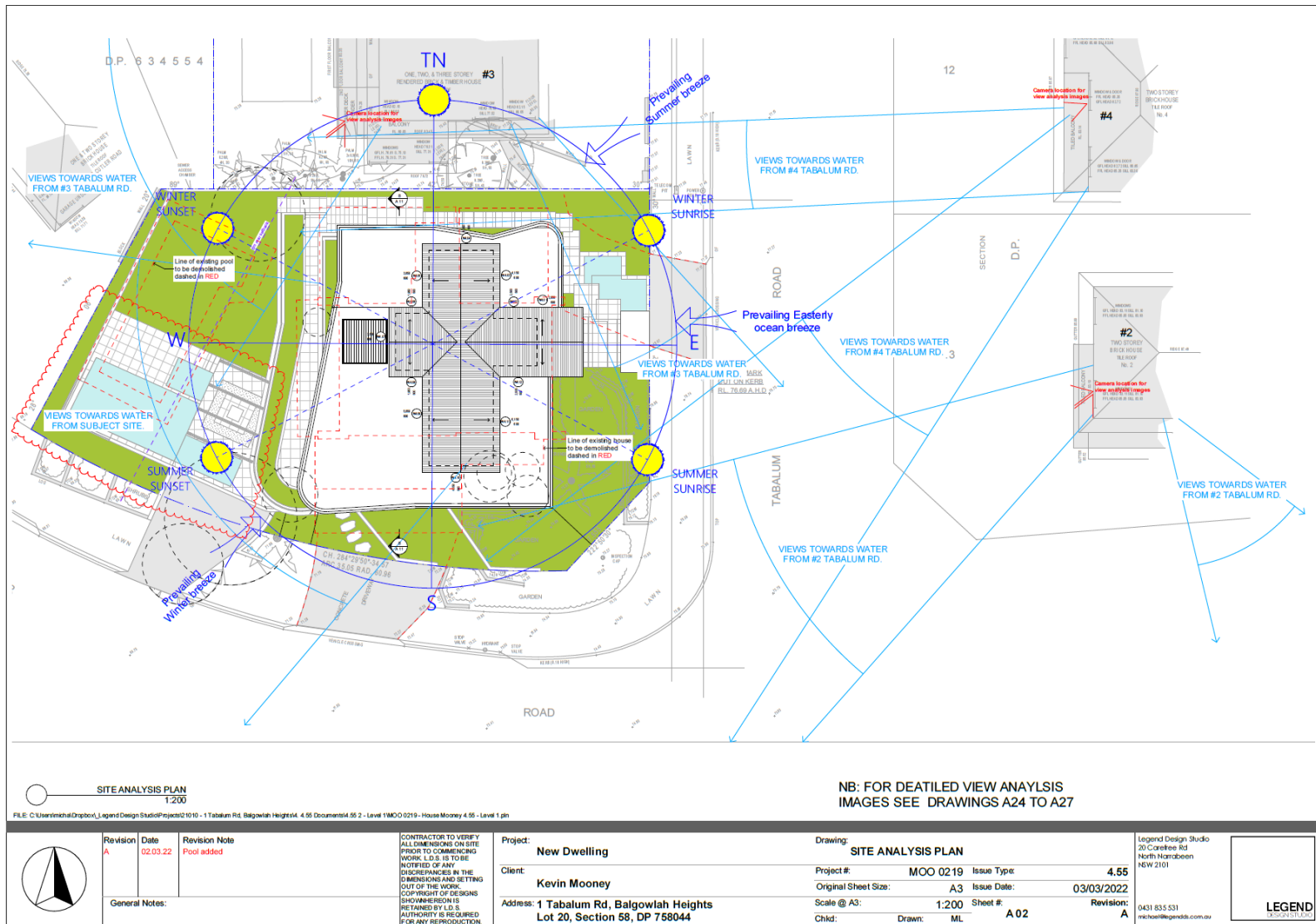
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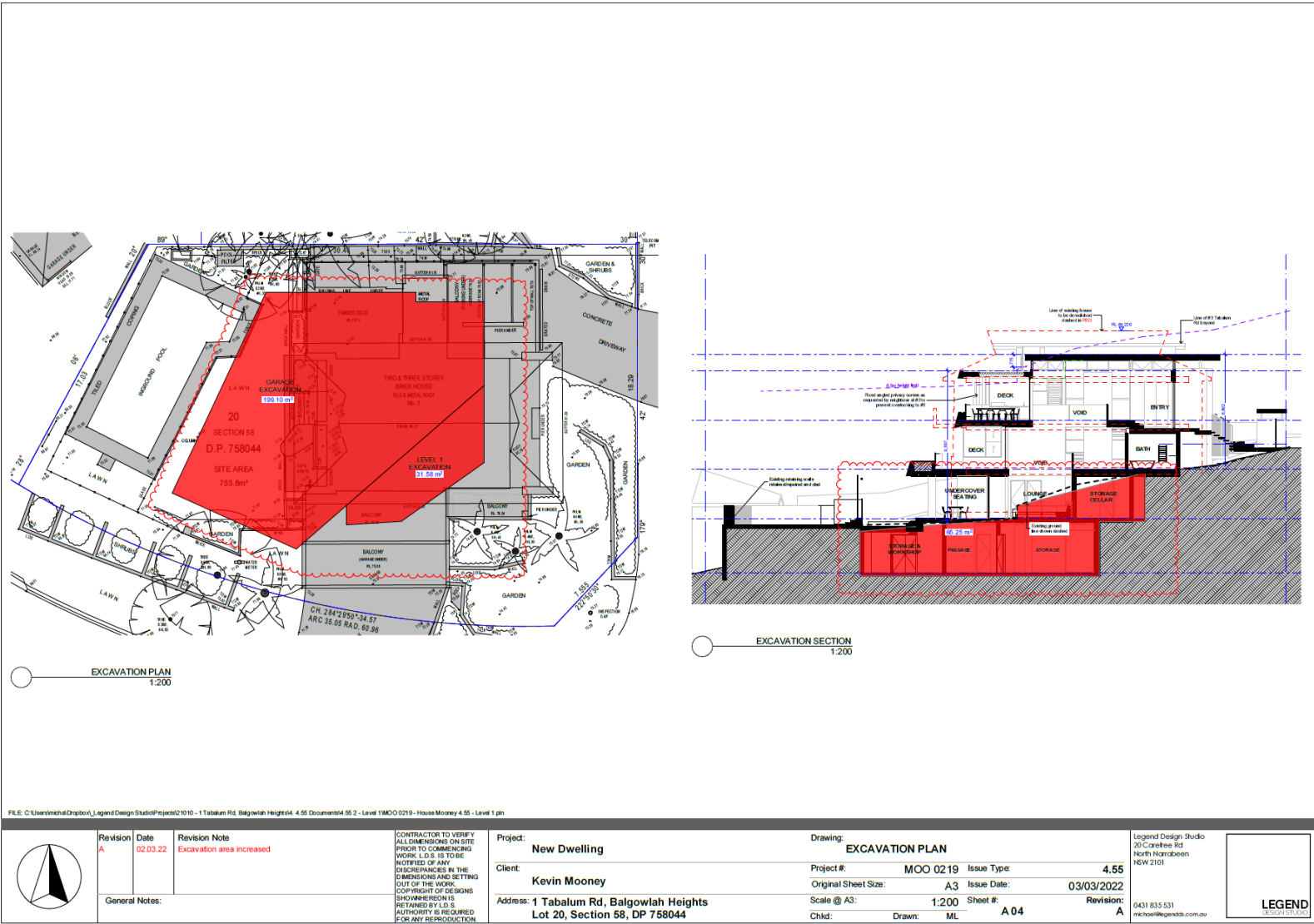


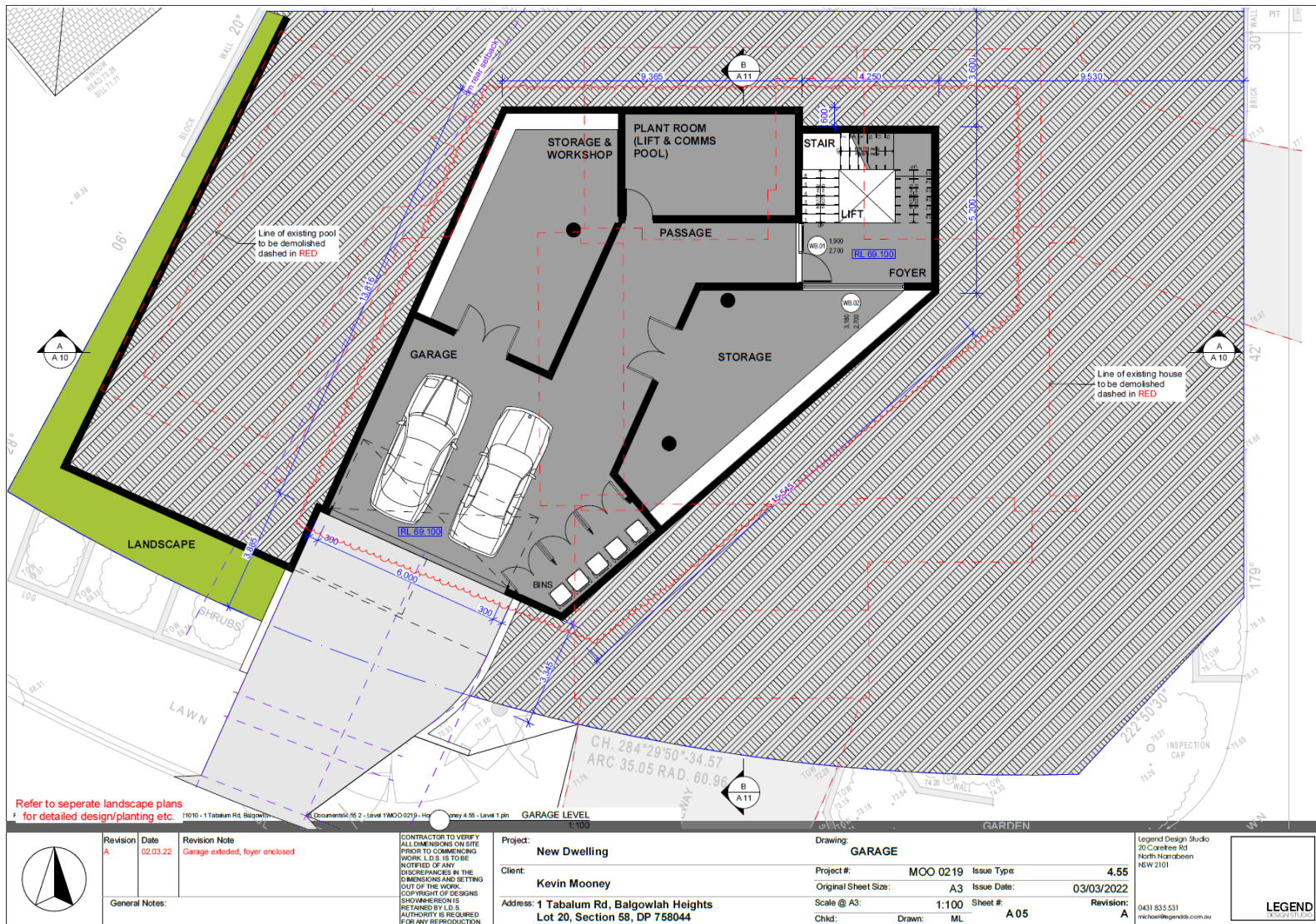
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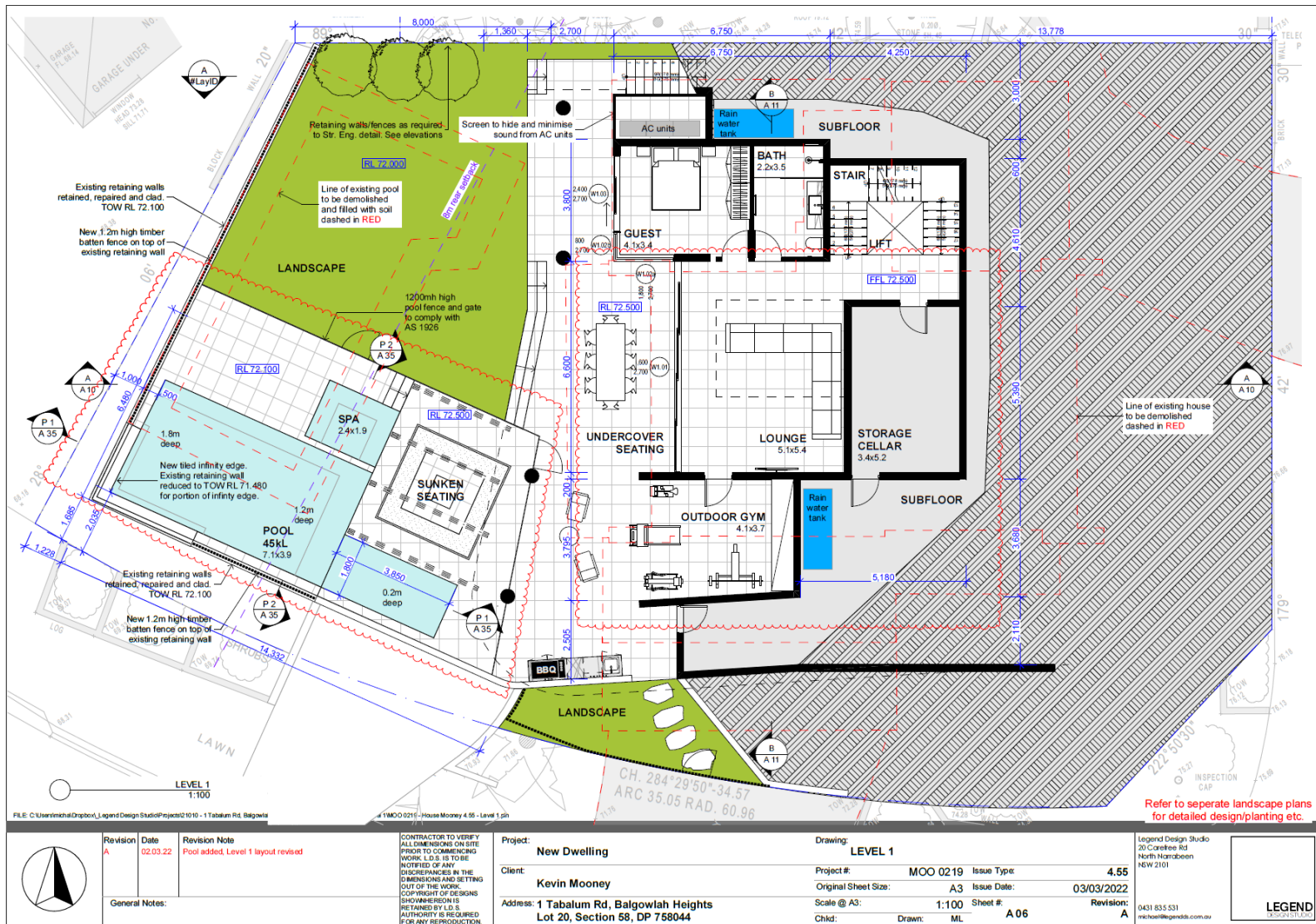
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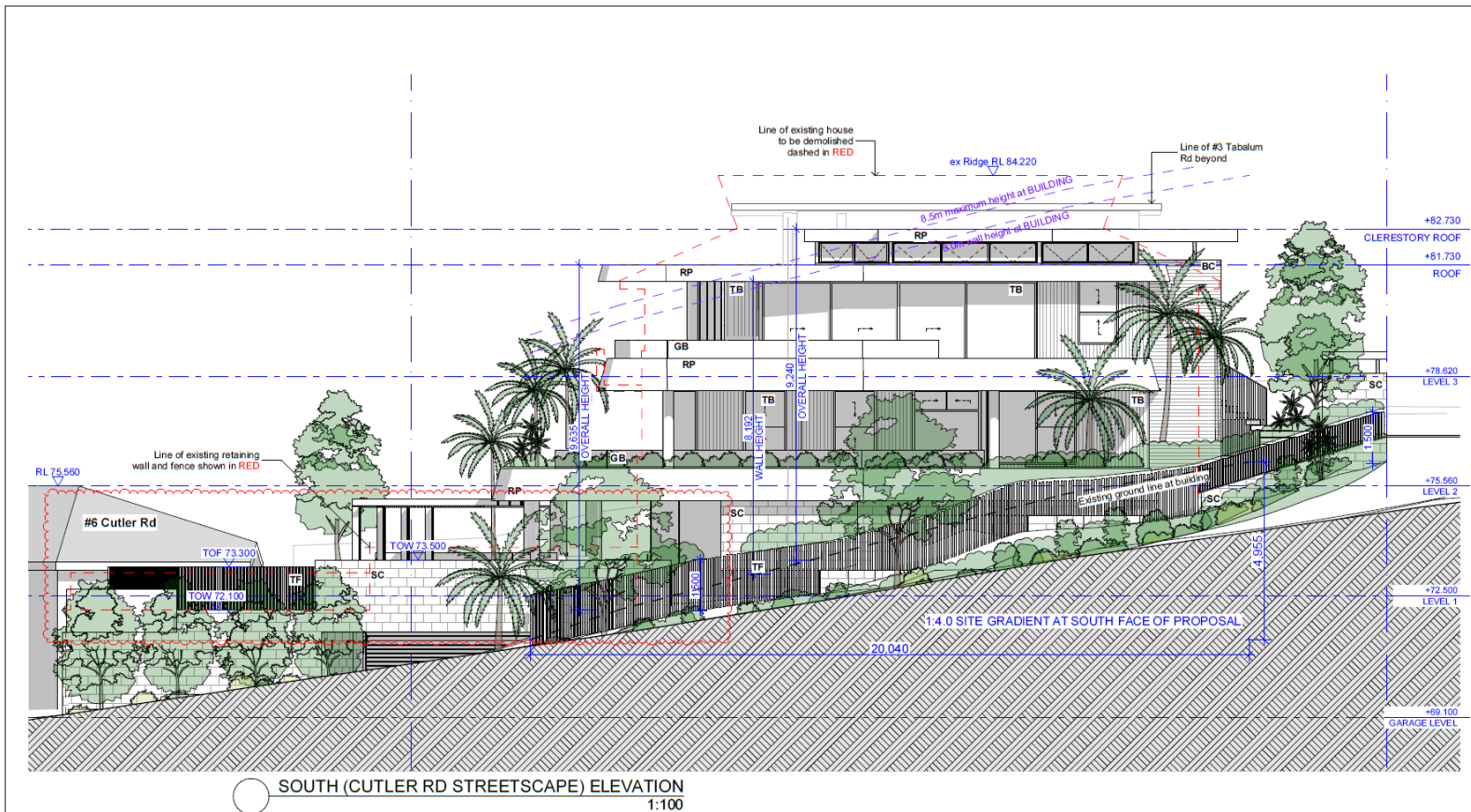
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	General Notes:				Client: Kevin Mooney Address: 1 Tabalum Rd, Balgowlah Heights Lot 20, Section 58, DP 758044	Project #: MOO 0219 Issue Type: 4.55 Original Sheet Size: A3 Issue Date: 03/03/2022 Scale @ A3: Sheet #: A 00 Revision: A Chkd: Drawn: ML		











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Revision	Date	Revision Note
A	02.03.22	Pool added, fence revised
General Notes:		

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Project: **New Dwelling**

Client: **Kevin Mooney**

Address: **1 Tabalum Rd, Balgowlah Heights
Lot 20, Section 58, DP 758044**

Drawing: **SOUTH (CUTLER RD STREETSCAPE) ELEVATION**

Project #: **MOO 0219** Issue Type: **4.55**

Original Sheet Size: **A3** Issue Date: **03/03/2022**

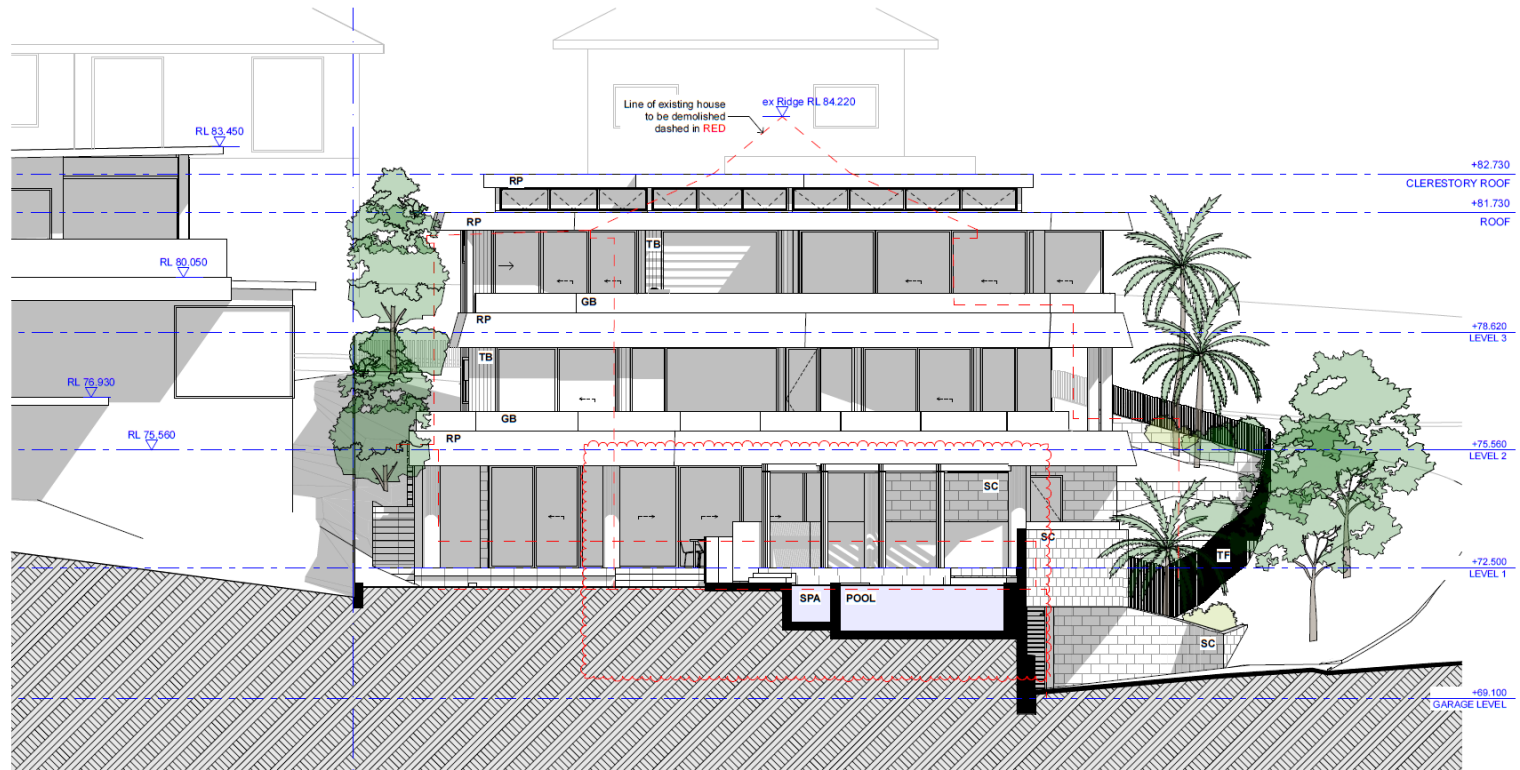
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Chkd: Drawn: **ML**

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WEST ELEVATION
1:100

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Revision	Date	Revision Note
A	02/03/22	Pool added, Level 1 layout revised

General Notes:

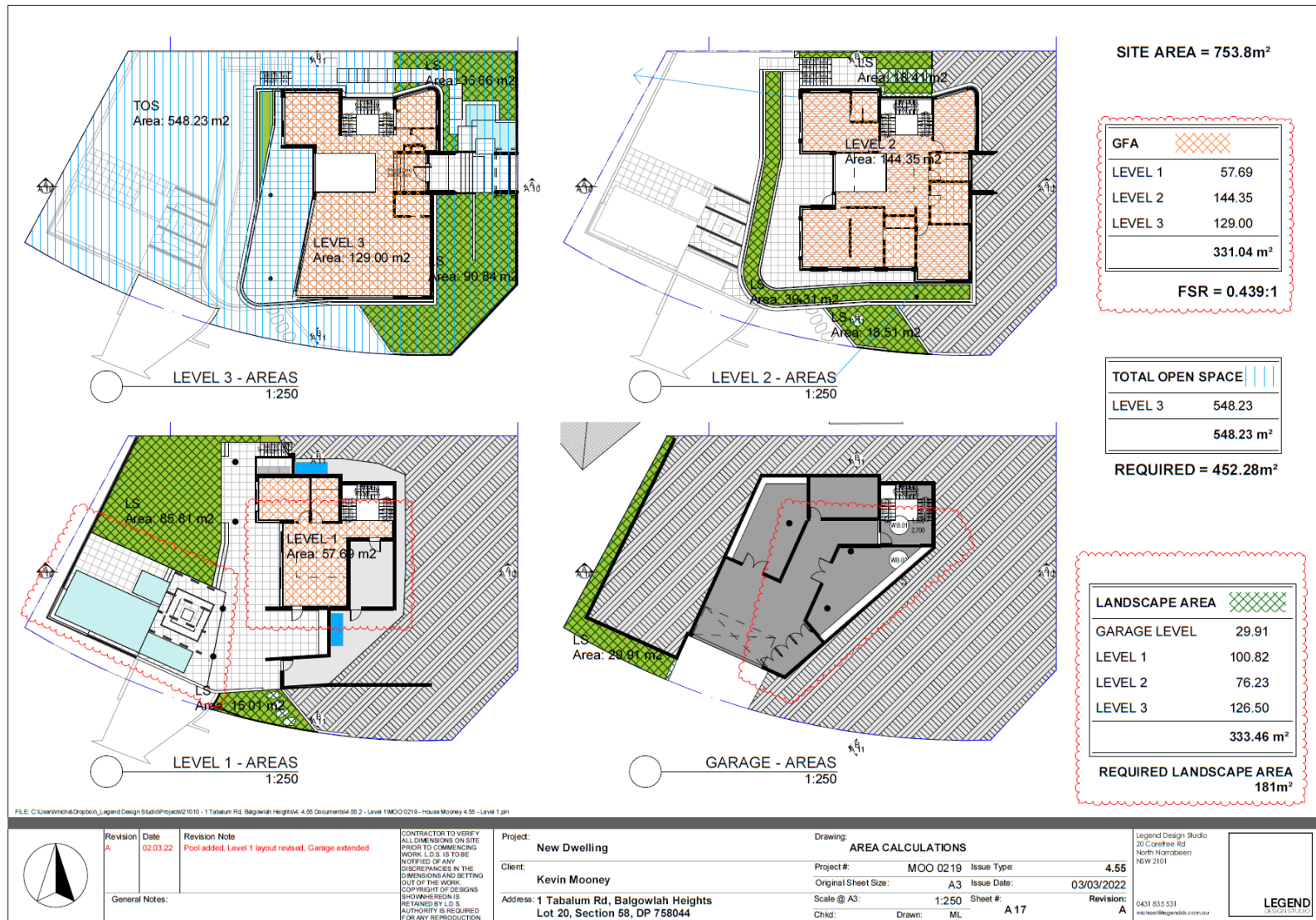
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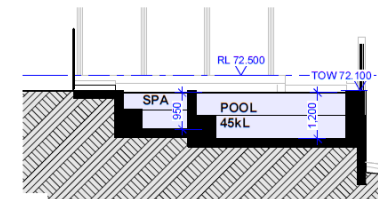
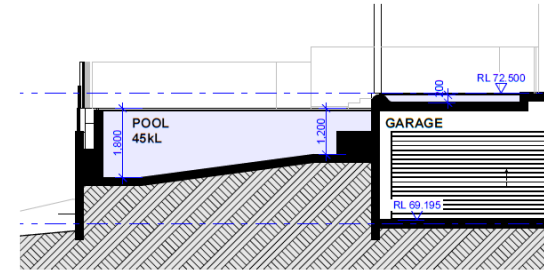
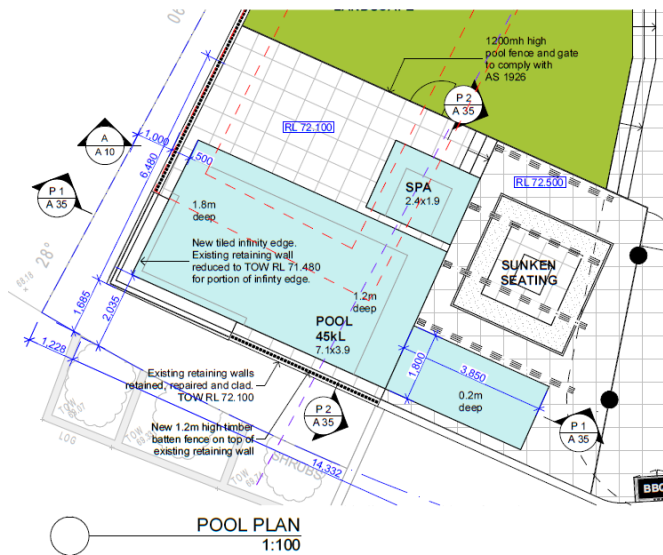
Project: **New Dwelling**
Client: **Kevin Mooney**
Address: **1 Tabulam Rd, Balgowlah Heights
Lot 20, Section 58, DP 758044**

Drawing: **WEST ELEVATION**
Project #: **MOO 0219** Issue Type: **4.55**
Original Sheet Size: **A3** Issue Date: **03/03/2022**
Scale @ A3: **1:100** Sheet #: **A14**
Chkd: Drawn: **ML**

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Revision	Date	Revision Note
A	02.03.22	Pool added

General Notes:

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Project: **New Dwelling**

Client: **Kevin Mooney**

Address: **1 Tabalum Rd, Balgowlah Heights
Lot 20, Section 58, DP 758044**

Drawing: **POOL DETAILS**

Project #: **MOO 0219** Issue Type: **4.55**

Original Sheet Size: **A3** Issue Date: **03/03/2022**

Scale @ A3: **1:100** Sheet #: **A 35**

Chkd: **ML** Drawn: **ML**

Revision: **A**

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