
Sent: 2/05/2019 10:56:52 AM
Subject: RE: DA2019/0335 - 84 HILMA STREET COLLAROY PLATEAU
Attachments: Objection Letter dated 2 May 2019.pdf;

ATTENTION: MR JORDAN DAVIES

Please find attached objection letter relating to the abovementioned matter.

The Original is being hand delivered to Council Chambers at Dee Why this morning.

Kind regards

Lou Marasco, Solicitor

Cara Marasco & Company

Solicitors & Attorneys

Suite 3, 515 Pittwater Road BROOKVALE 2100

PO Box 337 DEE WHY 2099

DX 29137 BROOKVALE

Telephone: 9939 6900

Facsimile: 9905 0627

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Legal Practitioners employed by Luigi Pasquale Marasco trading as Cara Marasco & Company are members of the Scheme.

Mr L.P & Mrs A.M Marasco
45 Idaline Street
COLLARROY PLATEAU NSW 2097
Tel: (02) 9939 6900 (w)

2 May 2019

Mr Jordan Davies
Northern Beaches Council
725 Pittwater Road
DEE WHY NSW 2099

BY HAND

Dear Sir,

RE: DA2019/0335 – 84 Hilma Street, Collaroy Plateau

1. INTRODUCTION

We are the owners of the following properties affected by the proposed development:

- 43 Idaline Street, Collaroy Plateau
- 45 Idaline Street, Collaroy Plateau
- 47 Idaline Street, Collaroy Plateau.

Please see attached letter by Mr Vince Squillace of Squillace Architects Interior Designers dated 1 May 2019, which forms part of this objection.

We object to the proposal, primarily on the grounds of the significant impact on views.

In order to establish the significance of the impact, the planning principles enunciated by the Land & Environment Court in *Tenacity Consulting v Warringah Council* (Tenacity) have been adopted as the basis for assessment. The assessment below enables the Council to comfortably conclude that the impacts are so significant as to warrant refusal of the application.

2. ASSESSMENT OF VIEW IMPACT: *Tenacity principles*

2.1 Step 1: Views affected

“The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbor Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.”

- The view affected is of water (Pacific Ocean) and Long Reef Point and Headland being important and highly valued natural landscape elements and iconic on the Northern Beaches peninsula;
- The view loss also includes the shoreline and water interface.

The diagram enclosed herewith provides an overlay (orange) of the proposal and highlights the portion which exceeds the height standard (red). Although we are confident based on the limit of baseline information of the reasonable accuracy for the purpose, in order for an accurate assessment to be undertaken by Council, height profiles should be erected and a professional independent montage prepared.

2.2 Step 2: Location of views

“The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views.

The expectation to retain side views and sitting views is often unrealistic.”

2.2.1 Comments

- Views affected are obtained from across the rear boundary as opposed to views across side boundaries which are conceded as difficult and often unrealistic to preserve.
- Views from a standing position are affected.

2.3 Step 3: extent of the impact

“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 kitchen 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 percent if it includes one of the sails of the 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.

2.3.1 Comments

- Views lost are from primarily living areas which are located on level 1.
- Views from level 1 are the only predominant views from the site.
- Views lost from level 1 are severe.
- The nature of the views can be readily gauged from the photos above.

2.4 Step 4: Reasonableness of proposal

"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 skillful 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."

2.4.1. Comments

- A significant portion of the water view loss is caused by the non-compliance with the 8.5m LEP height limit at the front of the proposal;
- The water view loss is also affected by the breaches of the building envelope control as well as the height breach
- In addition the proposal also breaches the landscaped open space control.
- Even if the proposal did fit within the required height limits, the design would still cause a severe view loss, particularly of the iconic headland and the land/water interface.
- In our opinion a more skillful and sensitive design solution could provide reasonable accommodation whilst still allowing for reasonable retention of views.
- For example crude changes with significant reductions would include all of or a combination of the following:
 - Reduced ceiling heights;

- Redesign the roof so that the significant detrimental effect of the present “pitched design” is addressed. The present proposed upper level pitched roof form, is contributing to the view loss and height encroachment. An alternate flatter, skillion style roof (similar to what was approved and constructed on the adjoining property at No 86), would aid in attenuating this issue;
- Lowering of the ground floor level;
- Pulling the upper level of the building back to the west from the east and reducing the generous proportions of rooms; and
- Increasing the northern setback of the upper floor.

3. OTHER COMMENTS

3.1 New Building v alterations and additions

- The proposal is described as “alterations and additions”. This would appear to be a convenient description aimed at aiding the justification to the variations to the height, building envelope and landscaped area controls. In assessing the proposal under the *Coorey v Hunters Hill Council* planning principle, the answers to both the qualitative and quantitative tests would in any reasonable person concluding that the proposal is for a new building.

59. *Qualitative issues*

- *How is the appearance of the existing building to be hanged when viewed form public places?*
- *To what extent, if any, will existing landscaping be removed and how will that affect the setting of the building when viewed from public places?*
- *To what extent, if any, will the proposal impact on a heritage item, the curtilage of a heritage item or a heritage conservation area?*
- *What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved?*
- *What is the extent, if any of any proposed change to the use of the building?*
- *To what extent, if any, will the proposed development result in any change to the streetscape in which the building is located?*
- *To what extent, if any, are the existing access arrangements for the building proposed to be altered?*

- *To what extent, if any, will the outlook form within the existing building be altered as a consequence of the proposed development?*
- *Is the proposed demolition so extensive to cause that which remains to lose the characteristics of the form of the existing structure?*

60. *Quantitative issues*

- *To what extent is the site coverage proposed to be changed?*
- *To what extent are any existing non-compliances with numerical controls wither increased or diminished by the proposal?*
- *To what extent is the building envelope proposed to be changed?*
- *To what extent are boundary setbacks proposed to be changed?*
- *To what extent will the present numerical degree of landscaping on the site be changed?*
- *To what extent will the existing floor space ratio be altered?*
- *To what extent will there be changes in the roof form?*
- *To what extent will there be alterations to car parking/garaging on the site and/or within the building?*
- *To what extent is the existing landform proposed to be changed by cut and/or fill to give effect to the proposed development?*
- *What relationship does the proportion of the retained building bear to the proposed new development?*

The Northern and Southern elevation diagrams depict the comparison between the existing modest cottage and the finished building and confirms that it will be wholly subsumed within the new envelope. The floor plans and elevations also confirm that there will be little if any of the original fabric retained. In the circumstances, given the extensive works, it is highly inevitable that the tokenistic portion of building to be retained, will ultimately be demolished during construction as its retention will be either financially or structurally unviable.

3.2 Clause 4.6 Objection

The justification for the variation to the height standard prepared by Vaughan Milligan Development Consulting Pty Ltd is fundamentally flawed, deficient and does not address the fundamental tests and provisions of Clause 4.6 of the Warringah LEP. In particular it does not demonstrate that compliance is unnecessary and unreasonable (*Wehbe v Pittwater Council* [2007] NSWLEC827); it does not demonstrate that non-compliance would be in the public interest and that a better environmental outcome is produced.

Further the environmental planning grounds included in the written request, which are based on reliance on the steep topography and constraints of the existing garage and floor levels, is simply not the case. **Moreover, the manner in which the Applicant has measured the height is incorrect (see Mr Squillace's Report herewith). The "existing ground line" should be measured from the underside of the existing garage floor level.**

Council is therefore legally precluded from approving the Application.

3.3 Statement of Environmental effects

The design has been clearly driven by the Applicant's sole desires without any consideration to a proper site analysis and consideration to the potential impact on neighbours. This is clearly evidenced in the Statement of Environmental Effects which makes the following incorrect, unfounded and misleading comments:

- *It is considered that the proposed design respects the desired character objectives of the DCP in that it reinforces the existing residential character of the area and is compatible with the existing uses in the vicinity.*
- *The development respects the streetscape character objectives of the DCP and will prove a cohesive and sympathetic addition to the site which will make a positive contribution to the area.*
- *It is considered that the proposed design respects the desired character objectives of the DCP in that it reinforces the existing residential character of the area and will provide a cohesive and sympathetic addition to the site and which will make a positive contribution to the area.*
- *It is considered that the proposal, which seeks consent for the construction of alterations and additions to an existing dwelling including new swimming pool and driveway, which have been located and designed to appropriately minimize impacts on the amenity of adjoining properties and are compatible with and will complement the character of the area.*
- *The proposal is considered to be well designed having regard for the relevant provisions of the SEPP, Council's LEP and DCP.*

- *The site is considered suitable for the proposed development.*
- *It is suggested that the proposal will not have a detrimental impact on the amenity of the adjoining properties or any impact on the streetscape.*
- *The proposal will not impact upon the environment or the character of the locality and the considered location of habitable room windows and decks will mitigate any unreasonable visual impacts on the amenity of adjoining properties and is therefore considered to be within the public interest.*
- *The proposal provides for the proposed construction of alterations and additions to an existing dwelling including new swimming pool and driveway, which will not have a detrimental impact on the adjoining properties or the locality.*
- *“D7-Views” on page 17- the comments are just wrong.*

How such assertions/comments can be made in the Report, when the Author of the Report has not even been into any of our Properties to make any assessment is astounding.

4. CONCLUSION

Having regard to the above, it is clear that the Applicant has undertaken the design without any due regard to the potential impacts on adjoining properties. The assessment under the *Tenacity Principles*, confirms that the proposal will have a significant impact on highly valued views. Therefore, as reasonable opportunities exist to mitigate or at least substantially reduce the impacts to an acceptable degree, the proposal fails and should be refused.

This is reinforced by the fact that the impacts arise from non compliances with the height and building envelope control, and approval would necessitate upholding a Clause 4.6 objection which is as highlighted above, clearly invalid and would be unlawful.

We would appreciate being given the opportunity to address the relevant determining body and invite the Applicant to contact us to discuss an alternate new application which addresses the concerns expressed in this submission.

Yours faithfully,

.....
L. P. MARASCÓ



01 May 2019

Jordan Davies
Northern Beaches Council
Civic Centre
725 Pittwater Road
Dee Why NSW 2099

RE: 84 HILMA ST, COLLAROY PLATEAU
OBJECTION TO APPLICATION No. DA2019/0335

Dear Jordan,

We are writing on behalf of our client, Luigi Pasquale Marasco of 45 Idaline Street, Collaroy Plateau, to register an objection to the Development Application lodged for a first floor addition to the property at 84 Hilma St, Collaroy Plateau (Application No. DA2019/0335)

As per the Statement of Environmental Effects accompanying the submission, the proposal is seeking a clause 4.6 variation to breach the 8.5m height plane at the eastern ridge by 402mm via a proposed first floor addition (please see submitted elevations, drawings 181201-N2 & 181201-N3).

We strongly object to this height encroachment but more importantly we advise that the existing height plane has been incorrectly documented in the applicant's submission. The 8.5m height plane appears to be generated from the extrapolated natural ground line at the boundary prior to any development of the site, not the existing ground plane. The Warringah Local Environmental Plan 2011 defines the existing ground level as *"the existing level of a site at any point"* and as established by case law is taken from the underside of the slab of the lowest floor level of an existing building when measuring building height. The submission completely ignores the exiting lower ground level when defining the 8.5m height plane, significantly diminishing the impact of the breach.

In actuality, the height plane breach occurs along the first floor ridge for more than half of the top storey envelope, representing an encroachment of almost 700mm over approximately 12 metres of ridgeline – please see a mark-up of the submitted elevations at appendix A for further clarification.

We object to the submission on the basis of the proposed height breach which, when correctly defined as noted above, is incongruent with the development standard objectives and not justifiable under a clause 4.6 variation given the severity of the breach.

ARCHITECTS
INTERIOR DESIGNERS

SYDNEY

1/80 Albion Street
Surry Hills NSW 2010
Ph: +61 2 8354 1300

MELBOURNE

Level 2, 333 Flinders Lane
Melbourne VIC 3000
Ph: +61 3 9629 4888

squillace.com.au

ABN 24 132 554 753 (NSW)
ABN 34 137 620 538 (VIC)

Nominated Architect
Vince Squillace
Reg No. NSW 6468, VIC 17219, QLD 3677

Furthermore the proposed first floor addition will have a significant and detrimental impact to our client's property, primarily, but not limited to, the impact on their views to the Long Reef Golf Course and Headland. Please see attached photograph with a mark-up of the view impact at Appendix B.

The approval of the submission will result in the unacceptable view loss of iconic headland views of Long Reef to the south-east across the rear boundary of our client's property, in conflict with the view sharing principles established in Tenacity Consulting vs. Warringah Council determination.

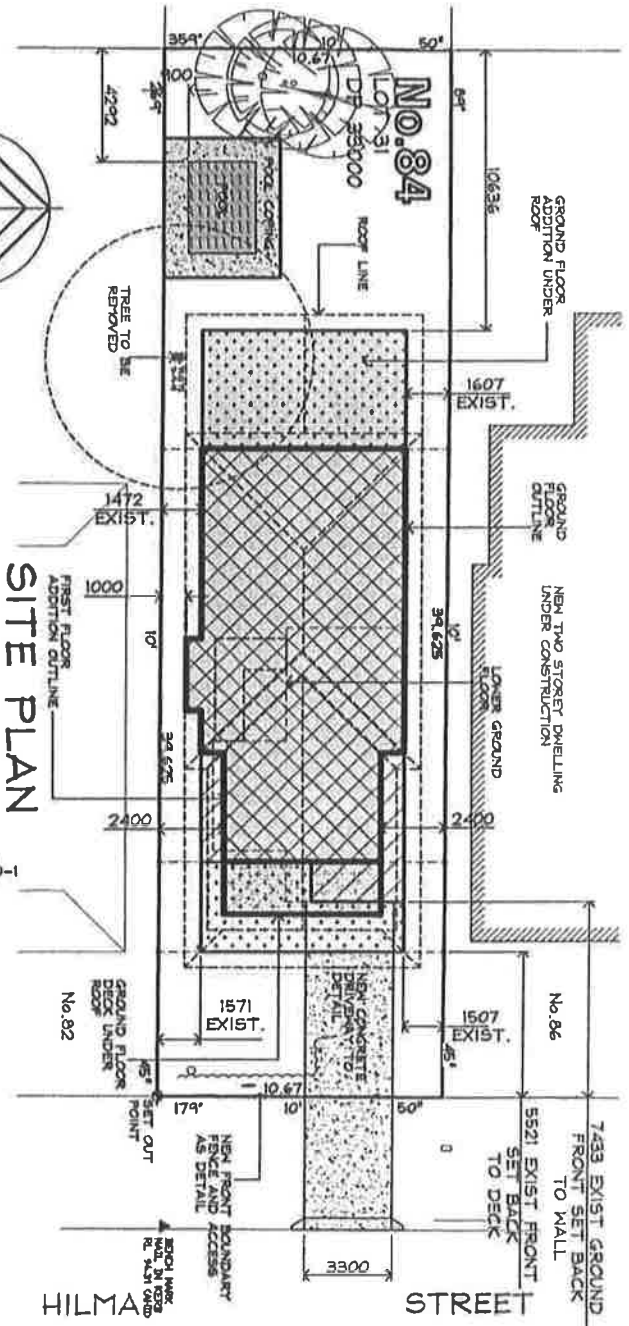
We would also flag that the proposal presents further items for objection, such as dissonant street character, excessive bulk, privacy and overshadowing impacts however given the voracity of the height breach and view impact we have solely focused our comments on height and views for clarity.

Yours sincerely,

Vince Squillace
Director

Appendix B - Photo from 45 Idaline Street looking south-east





SITE PLAN

SITE CRITERIA

No 84 HILMA STREET COLLAROT PLATEAU 2097 N.S.M.
 LOT 31 SEC. 1 DP 33000

EXISTING LANDSCAPED AREA < THAN 2.0m	BY TITLE
473	sq. m.
42.7	sq. m.
4.4	sq. m. (10.2 %)
129.4	sq. m. (28.3 %)
255.4	sq. m. (60.4 %)
191.3	sq. m.
80.6	sq. m. (19.1 %)
129.6	sq. m. (30.7 %)
22.3	sq. m. (5.0 %)
56.8	sq. m.
124.9	sq. m.
19.4	sq. m.
24.4	sq. m.
6.0	sq. m.
124.9	sq. m.
20.7	sq. m.
34.2	sq. m.
14.2	sq. m.
8.9	sq. m.
11.4	sq. m.
11.7	sq. m.
216.8	sq. m.

GENERAL NOTES AND BCA COMPLIANCE

- EARTHWORKS METHOD OF EXCAVATION AND FILL TO COMPLY WITH PART 3.1.1, B.C.A.
- TERMITE RISK MANAGEMENT TO COMPLY WITH PART 3.1.3 OF THE B.C.A. AND A93640-1
- FOOTINGS AND SLABS TO COMPLY WITH PART 3.2 OF THE B.C.A. , A82870
- AND ENGINEERS DETAILS
- MASONRY CONSTRUCTION TO COMPLY WITH PART 3.3 OF THE B.C.A. AND A93700
- TIMBER FRAMING TO COMPLY WITH PART 3.4 OF THE B.C.A. AND A91664
- GLAZING TO COMPLY WITH PART 3.6 OF THE B.C.A. AND A91288
- SMOKE ALARMS TO COMPLY WITH PART 3.7.2 OF THE B.C.A. AND A93766
- STAIR CONSTRUCTION TO COMPLY WITH PART 3.9.1 OF THE B.C.A.
- BALUSTRADES AND OTHER BARRIERS TO COMPLY WITH PART 3.9.2 OF THE B.C.A.
- NATURAL LIGHT TO COMPLY WITH PART 3.9.4 OF THE B.C.A.
- VENTILATION TO COMPLY WITH PART 3.8.5 OF THE B.C.A.
- ALL DAMP AND WEATHERPROOFING TO COMPLY WITH PART 3.8 OF THE B.C.A.
- ROOFING TO COMPLY WITH PART 3.5.1 OF THE B.C.A. AND A9/NZ1562
- FLOOR SURFACES OF WATER CLOSETS, SHOWER COMPARTMENTS AND THE A LIKE TO BE OF MATERIALS IMPERVIOUS TO MOISTURE AND WALLS FINISHED WITH AN APPROVED IMPERVIOUS FINISH TO COMPLY WITH THE REQUIREMENTS OF PART 3.8 OF THE B.C.A. AND A93740
- CLOTHES WASHING, DRYING AND COOKING FACILITIES TO BE PROVIDED TO COMPLY WITH PART 3.6.3 OF THE B.C.A.

ABOVE NOTES TO BE READ IN-CONJUNCTION WITH THE ARCHITECTURAL PLANS AND THE STRUCTURAL ENGINEERS DETAILS

- NOTES:-**
1. ALL GLAZING TO WINDOWS & DOORS SHALL BE IN ACCORDANCE WITH THE BASIC REPORT.
 2. EXTERNAL WALL CLADDING SHALL BE SELECTED PLANK CLADDING
 3. EXTERIOR FINISHES TO BE IN ACCORDANCE WITH THE BASIC REPORT
 4. AN APPROVED RATED INSULATION MATERIAL TO BE PLACED IN THE CEILING SPACE WITHIN THE PERIMETER OF ALL EXTERNAL WALLS IN ACCORDANCE WITH THE BASIC REPORT.
 5. ALL EXTERIOR WALLS TO BE IN ACCORDANCE WITH THE BASIC REPORT.
 6. ROOF FINISHES TO BE IN ACCORDANCE WITH THE BASIC REPORT.
 7. EXTERNAL WALL FINISHES TO BE IN ACCORDANCE WITH THE BASIC REPORT.
 8. ALL WINDOWS AND DOORS TO HAVE WEATHER STRIPPING.
 9. ALL WINDOWS & DOORS AS NOTED ON PLAN WITH SPECIFIED COLOUR FINISH.
 10. ALL PAINTING TO OWNERS REQUIREMENTS.
 11. ALL PLASTER FINISHES TO OWNERS REQUIREMENTS.
 12. ALL PEST TREATMENT TO CODE A93640-1-2000
 13. ALL PEST TREATMENT TO CODE A93640-1-2000
 14. SMOKE DETECTOR DEPICTED SO ON PLAN TO BE A93740
 15. ALL WEATHERPROOFING TO MEET AREAS TO CODE A93740
 16. ALL TYPING TO COMPLY WITH THE BASIC REPORT
 17. ALL WORK CARRIED OUT TO BE IN ACCORDANCE WITH THE B.C.A.

BASIC REQUIREMENTS

- TO BE READ INCONJUNCTION WITH THE BASIC CERTIFICATE NUMBER A939822
- NEW SHOWER HEAD MINIMUM RATING ----- 3 STAR RATING
 - NEW TOILET MINIMUM RATING ----- 3 STAR RATING
 - ALL NEW TAP FITTINGS MINIMUM RATING ----- 3 STAR RATING
 - GLAZING TO ALUMINIUM FRAMED WINDOWS AND DOORS OR OTHERWISE NOTED ARE TO BE IN ACCORDANCE WITH THE BASIC REPORT
 - FLOOR COLOUR ----- DARK SA | 0.70
 - ROOF ABOVE ENCLOSED SUPERIOR ----- 0.8 OR (R15 RATING INCLUDING CONSTRUCTION)
 - ROOF SHEETING ON INSULATION ----- R15 RATING
 - EXTERNAL WALLS INSULATION ----- R15 RATING
 - CEILING INSULATION ----- R224 RATING
 - HOT WATER SERVICE TO BE GAS INSTANTANEOUS WITH A PERFORMANCE OF 4.5 STARS OR BETTER.
 - COOLING SYSTEM TO BE IN AT LEAST 1 LIVING AREA & 1 BEDROOM TO BE A 3-PHASE AIR CONDITIONING WITH AN ENERGY RATING OF ER 3.0-3.5 OR BETTER PLUS A CEILING FAN THE COOLING SYSTEM MUST PROVIDE FOR DAY/NIGHT ZONING BETWEEN LIVING & BEDROOM AREAS.
 - HEATING SYSTEM IN AT LEAST 1 LIVING AREA GAS FIXED FUE FIRE PLACE WITH A 3 STAR RATING.
 - HEATING SYSTEM IN AT LEAST 1 BEDROOM 3-PHASE AIR CONDITIONING WITH AN ENERGY RATING OF ER 3.0-3.5 OR BETTER.
 - FIXED OUTDOORS CLOTHES DRYING LINE TO BE INSTALLED GAS COOKER WITH ELECTRIC OVEN.
- APPLICANT MUST ENSURE THAT THE PREPARED TYPE OF ARTIFICIAL LIGHTING IS FLUORESCENT OR LIGHT EMITTING DIODE (LED) LIGHTING IN EACH OF THE ROOMS. THE LIGHTING MUST BE CAPABLE OF ACCEPTING FLUORESCENT OR LIGHT EMITTING DIODE (LED) LAMPS / STUDY AND TO ALL BATHROOMS/TOILETS TO AT LEAST 2 OF THE BEDROOMS / STUDY AND TO ALL BATHROOMS/TOILETS
- THE SWIMMING POOL MUST NOT HAVE A VOLUME GREATER THAN 16 KILOLITRES. THE SWIMMING POOL MUST HAVE A POOL COVER AND MUST BE OUTDOORS. THE APPLICANT MUST INSTALL A THERM FOR THE SWIMMING POOL PUMP. THE APPLICANT MUST INSTALL A POOL COVER.

DEVELOPEMENT APPLICATION ISSUE

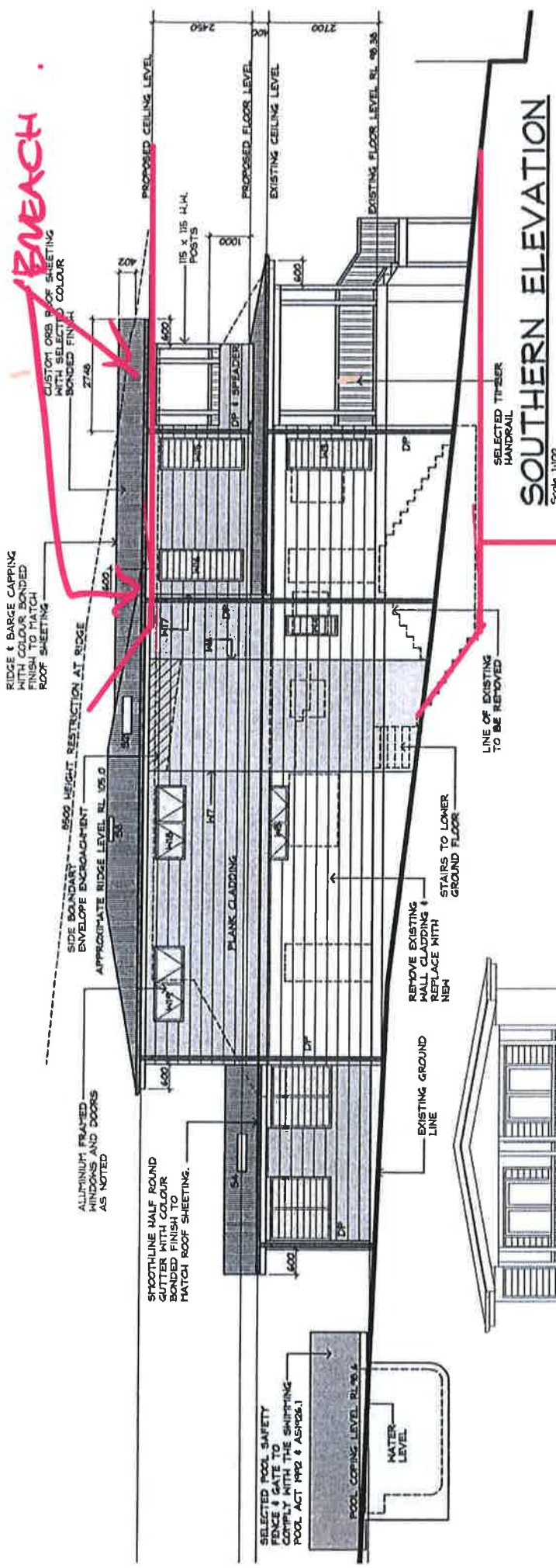
Project PROPOSED ADDITIONS & ATERAIONS
 84 HILMA STREET COLLAROT PLATEAU
 FOR ARENA FAMILY

IF IN DOUBT ASK

Prepared by **H&C DESIGN PTY. LTD.**
 80 FRITZLER STREET COLLAROT PLATEAU
 A.C.N. 008079109

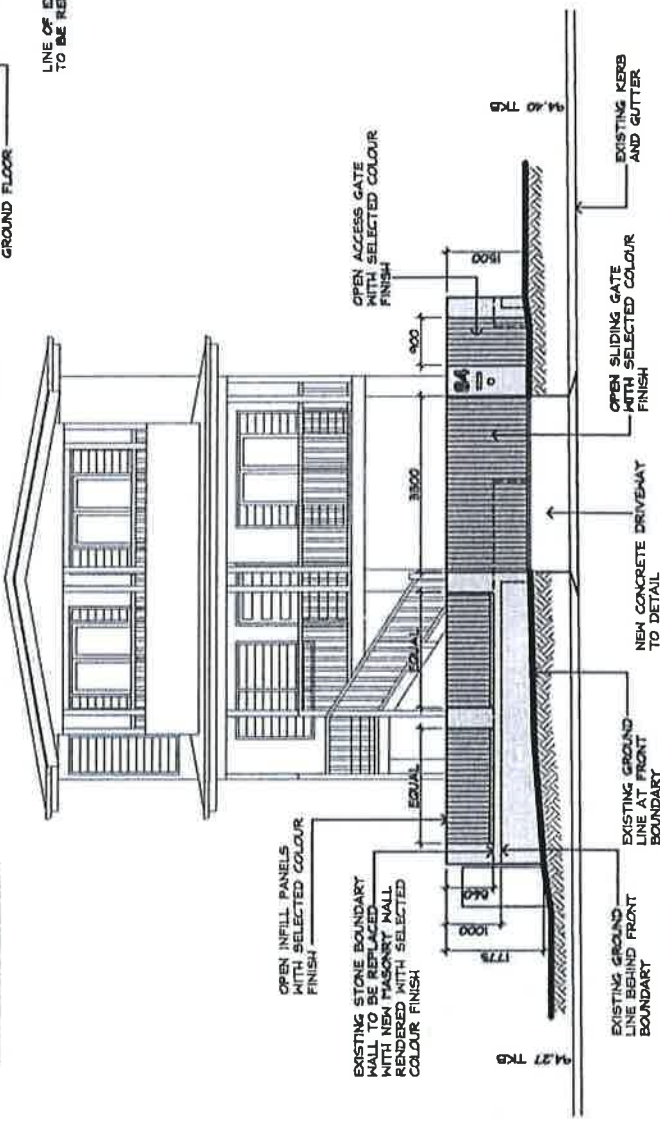
Date JAN. 2019
 Drawn **HENK**
 Scale 1:200 (A3)
 Job No. 191201-NI

NOTES:-
 1. Refer to check and confirm of necessary approvals on site prior to construction.
 2. All work to be in accordance with the B.C.A. & in the construction of local council requirements & other authorities concerned.
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SOUTHERN ELEVATION
Scale 1:100

EXISTING GROUND LINE SHOULD BE MEASURED FROM THE UNDERSIDE OF THE EXISTING GARAGE.

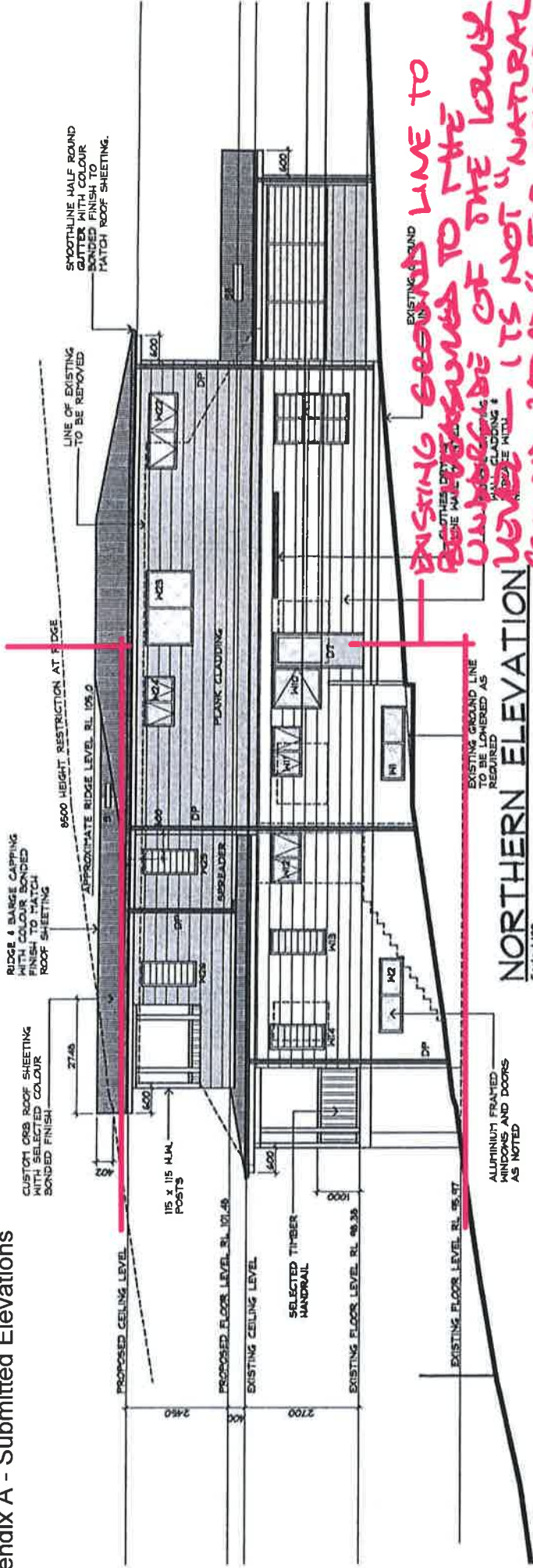


FRONT BOUNDARY FENCE ELEVATION
Scale 1:100

DEVELOPEMENT APPLICATION ISSUE

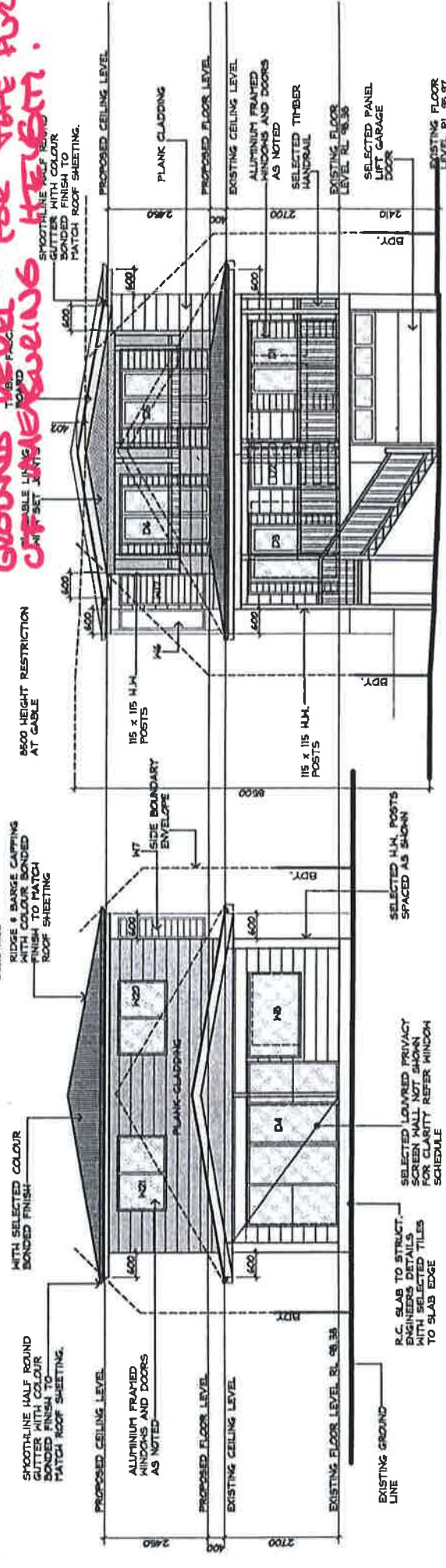
<p>IF IN DOUBT ASK</p>	<p>Prepared by H & C DESIGN P.TY. LTD. 50 FULLER STREET COLLAROY PLATEAU PHONE (02) 9944-0830 A.C.N. 08070102</p>	<p>Date JAN. 2019 Drawn HENK. Scale 1:100@A3 Job No. 18201-N3</p>	<p>NOTES - 1. Builder to check and confirm all necessary dimensions on site prior to the commencement of construction. DO NOT SCALE THE DRAWING. 2. All work to be in accordance with the E.C.A. & to the satisfaction of the Council. 3. This drawing is the copyright of H & C Design Pty. Limited and shall not be reproduced in part or whole without their written approval.</p>	<p>Project PROPOSED ADDITIONS & ALTERATIONS 84 HILMA STREET COLLAROY PLATEAU FOR ARENA FAMILY</p>
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Appendix A - Submitted Elevations



NORTHERN ELEVATION
Scale 1:100

WESTERN ELEVATION
Scale 1:100



EASTERN ELEVATION
Scale 1:100

DEVELOPEMENT APPLICATION ISSUE

<p>IF IN DOUBT ASK</p>	<p>Prepared by H&C DESIGN 50 FULLER STREET COLLAROY PLATEAU PHONE (02) 9944-0830 A.C.N. 008070100</p>	<p>Dets JAN. 2019 Drawn HENK. Scale 1:1000A3 Job No. 181201-N2</p>	<p>Project PROPOSED ADDITIONS & ALTERATIONS 84 HILMA STREET COLLAROY PLATEAU FOR ARENA FAMILY</p>
	<p>NOTES:- 1. Refer to check and confirm of necessary dimensions on site prior to the commencement of construction. DO NOT SCALE THE DRAWING. 2. All work to be in accordance with the S.C.A. & to the satisfaction of local council requirements & other authorities concerned. 3. This drawing is the copyright of H & C Design Pty. Limited and shall not be reproduced in part or whole without their written approval.</p>		