

Item 2 - 85 Westminster Road, Gladesville - LDA2022/0334

Proposal: Site establishment and preparation works comprising excavation (for previously approved basement levels) and construction of shoring walls.

Report prepared by: Ben Tesoriero, Consultant Town Planner (CPS)

Report approved by: Sohail Faridy, Senior Coordinator - Development Assessment
Carine Elias, Manager - Development Assessment
Sandra Bailey, Executive Manager - City Development

City of Ryde Local Planning Panel Report

DA Number	LDA2022/0334
Site Address & Ward	85 Westminster Road, Gladesville NSW 2111 Lot 10 Sec 1 DP 2183 (East Ward)
Zoning	R2 Low Density Residential under RLEP 2014
Proposal (as amended)	Demolition of existing 3-storey dwelling and construction of a new 3-storey dwelling, swimming pool and carport
Property Owner	Mr Paul Miles
Applicant	Mr Jonathan Spicer
Report Author	Ben Tesoriero – Consultant Planner, CPS
Lodgement Date	25 October 2022
Notification - No. of Submissions	Yes. - 2 x submissions from first notification - 1 x submission from amended plans notification
Cost of Works	\$1,552,826.46
Reason for Referral to LPP	Contentious development – Departure from development standards. Development results in a 22.53% contravention of Clause 4.3 Height of Buildings under RLEP 2014. <i>Schedule 1, Part 2 of Local Planning Panels Direction</i>
Recommendation	Refusal
Attachments	Attachment 1 – RDCP 2014 Compliance Table Attachment 2 – Architectural plans Attachment 3 – Clause 4.6 written request

1. EXECUTIVE SUMMARY

This report considers a Development Application (DA) under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) on land at 85 Westminster Road, Gladesville NSW 2111 (Lot 10 Sec 1 DP 2183).

The subject development application (LDA2022/0334) was lodged on 25 October 2022 and seeks consent for demolition of an existing 3-storey dwelling house and construction of new 3-storey dwelling house, swimming pool and carport.

In accordance with the EP&A Act, Section 9.1 – Directions by the Minister, this application is reported to the Ryde Local Planning Panel for determination as the development contravenes a development standard imposed by an environmental planning instrument by more than 10%.

Clause 4.3(2) of the *Ryde Local Environmental Plan 2014* (RLEP 2014) prescribes a building height standard of 9.5m for the subject site. The building height of the proposed development is 11.64m, resulting in a 22.53% contravention of the development standard.

The building height contravention was identified by Council on 12 May 2023, and the Applicant was afforded the opportunity to submit a clause 4.6 written request seeking to justify the building height contravention for Council's consideration.

A clause 4.6 written request was received by Council on 18 May 2023, and was deemed to be unsatisfactory. The Applicant was then afforded another opportunity to submit a clause 4.6 for Council's consideration. The Applicant engaged the services of a consultant town planner and submitted a new clause 4.6 written request to Council on 20 June 2023 which is considered as part of this assessment report.

The DA was notified between 1 November and 15 November 2022. In response, two (2) unique submissions by way of objection were received. Concerns raised in the submissions related to:

- detrimental impacts on views to the Field of Mars Reserve
- the proposed building height and other non-compliances with Council's development control plan, including diminished solar access and privacy from reduced setbacks
- the ability of the proposed development to retain a major tree on the boundary

Throughout the assessment of the DA, the Applicant was requested to provide further information (RFI) on 18 November, 13 April and 12 May 2023. Information was requested relating to impacts upon adjoining properties in relation to overshadowing, a view impact analysis, tree impact assessment, works outside the property boundary, and the contravening building height.

The Applicant submitted amended plans and documents which partly responded to the concerns raised by Council, and these were the subject renotification. In response, one (1) submission was received. No additional issues were raised in the submission outside of that already raised in response to the original DA notification.

In the absence of a complete response to Council's RFI, the DA is not supported by sufficient information to enable a complete assessment of all aspects of the proposal, namely the development has not been accompanied by an arboricultural impact assessment to demonstrate the development does not result in any adverse environmental impacts.

Despite this, fundamental concerns are held in relation to the building height of development and consequential visual impacts from multiple vantage points within the Field of Mars Reserve and neighbouring areas of the public domain. Having regard to the matters for consideration under Section 4.15 of the *EP&A Act*, it is recommended that Development Application DA2022/0334 be refused for the following reasons:

- The proposed height of 11.64m results in a 22.53% variation to Clause 4.3 Height of Buildings development standard and has not been accompanied by a satisfactory written request to vary the development standard under Clause 4.6 of the RLEP 2014.
- The development does not satisfy the objectives for R2 zoned land. While the development will provide for the housing needs of the community, the building height contravention results in a development incongruous with the city of Ryde low-density residential environment.
- The development poorly responds to the site's context (particularly the neighbouring Field of Mars Reserve) and represents an overdevelopment of the site.
- The proposed development is contrary to a range of development controls contained within the RDCP 2014, including but not limited to building height (number of storeys), view loss, setbacks, swimming pools, landscaping, and deep soil areas.
- The Applicant has not demonstrated the development does not result in any adverse natural environment impacts. The development results in a major encroachment upon existing significant trees nominated for retention. Despite Council's request for additional information, the Applicant has declined to provide sufficient information to assess the impact on significant vegetation and confirm tree retention is possible.
- The proposed development will have an adverse impact on the heritage significance of the neighbouring Field of Mars Reserve heritage item.
- Approval of the development would be contrary to the public interest.
- The application fails to provide sufficient information to carry out a proper assessment of all aspects of the proposal.

The DA has been externally assessed by an independent planning consultant due to Councillor interest during Council's initial assessment of the application.

2. THE SITE & LOCALITY



Figure 1 Aerial photograph of the site and the surrounding context.
Source: <https://apps.nearmap.com/map> - image capture date 20 June 2023

The subject site is 85 Westminster Road, Gladesville (Lot 10 in Section 1 of DP 2183). The site is rectangular in shape with a frontage of 20.12 metres to both Westminster Road and Boyd Lane. The side boundaries are 47.42 metres. The site has an area of 953.9m².

Westminster Road and Boyd Lane slope down towards the north-east, such that the site is located below its immediate neighbour at 83 Westminster Road to the south. Due to the site's location and proximity to the Field of Mars Reserve below, the topography across the site varies significantly from south-east to north-west.

The south-eastern corner of the site represents the highest point, corresponding to an approximate elevation of RL25.0 AHD. The north-western corner of the site represents the lowest point, corresponding to an approximate elevation of RL13.5 (a difference of 11.5 metres).

The site contains a rock outcrop which extends along the southern side boundary and across the front of the site adjacent to the Boyd Lane frontage. It is dissected by an existing retaining wall extending across the south-eastern corner. The area to the south of the retaining wall is an existing paved driveway. Below this level is the dwelling entrance and an existing concrete area at RL22.0.

The bottom of the rock outcrop is located approximately at RL16.00. Outside, the cross-fall is reduced to the southern boundary being approximately at RL17.9, and the northern side being RL16.0. There is a steep change in level at the north-western corner from RL15.88 to RL13.5.

Despite the broader steep topography of the site just explained, the existing ground level in the location of the proposed dwelling and its surrounds is relatively flat. Accordingly, the contravening building height (discussed in detail later), is not a result of an abrupt or varying existing ground level, but rather the proposed building design which includes three oversized stories. For example, the ceilings heights for the proposed development include:

- First storey: 4m
- Second storey: 3m
- Third storey: 3m

It is also noted that large 400mm slab thicknesses are adopted between the floors.



Figure 2 Looking west toward subject site from Boyd Lane. Ahoarding fence has been erected around the property.
Source: CPS site inspection 30 June 2023

The site presently accommodates a three-storey dwelling house in the eastern half of the site, with the western part of the site predominantly comprising of lawn. Vehicular access from Boyd Lane is located adjacent to the south-eastern boundary and comprises of a brick paved driveway extending to an open hardstand area (**Figure 2**).

An informal (unpaved) driveway is also available to the site's lower part via an extension to the Westminster Rd reserve. This connects via the rear lawn to an integrated car port at the dwelling's ground floor level. Other site improvements include paved areas, pathways and retaining walls. Existing vegetation is located along the rear of the southern boundary and at the north-western corner of the site. The site is adjoined by extended vegetation within the Field of Mars Reserve.



Figure 3 Existing dwelling with relatively level areas to north will partially accommodate the new, larger dwelling.
Source: Spicer Architects.

Adjoining properties

To the east, on the opposite side of Boyd Lane, is No. 8 and 10 Kennedy Street (**Figure 4**), which comprises a two-storey attached dual occupancy (under construction) and detached single storey dwelling respectively.



Figure 4 Two-storey development on opposite side of Boyd Lane at 8 and 10 Kennedy Street.
Source: CPS site inspection 30 June 2023

The site is adjoined to the south by, No. 83 Westminster Road which contains a three-storey dwelling. The dwelling contains a detached single garage accessed from Westminster Street. The Field of Mars Reserve is located to the north and northwest of the site. The Field of Mars Reserve Plan of Management (August 2009) describes the Reserve as the largest remnant bushland reserve under the care, control, and management of the City of Ryde.

The Reserve was formally established for public recreation and promotion of the study and the preservation of native flora and fauna. The Field of Mars Environmental Education Centre is located within the Reserve and is operated by the NSW Department of Education to help students and teachers with fieldwork, environmental education, and education for sustainability. A network of public walking trails and board walks also utilised by the Education Centre are located through the Field of Mars and along Buffalo Creek.



Figure 5 South from Field of Mars to Environmental Education Centre in foreground. Existing dwelling circled in red.
Source: CPS site inspection 30 June 2023

3.0 THE PROPOSAL (as amended)

Development consent is sought for demolition of the existing dwelling and construction of new 3-storey dwelling, swimming pool and carport. The development comprises the following works:

- Demolition of existing three-storey dwelling and retaining walls
- Construction of a new three-storey dwelling, comprising:
 - Lower ground floor RL16.96: guest bedroom with ensuite, home theatre, W/C and various storage areas
 - Ground floor RL21.00: Five (5) bedrooms, three (3) bathrooms and laundry
 - First floor RL24.40: Open plan kitchen / living / dining area, pantry, W/C and storage area.
- Semi-covered carport with turntable RL17.34 (accessed via Westminster Road),
- Access between each floor is provided via a lift and spiral staircase.
- External pedestrian entry is proposed at each floor as follows:
 - At lower ground floor level via Westminster Road (adjacent to the proposed garage)

- At ground level via an external staircase adjacent to the southern boundary of the site
- At first floor level adjacent to the replacement hardstand parking area on the upper level of the site and via new steps down from the end of Boyd Lane.
- Construction of a new swimming pool at the lower ground level, along with an open alfresco dining area and separate cabana (RL16.60)
- Retaining walls and new landscaping

The development is depicted in **Figures 6 – 10**.

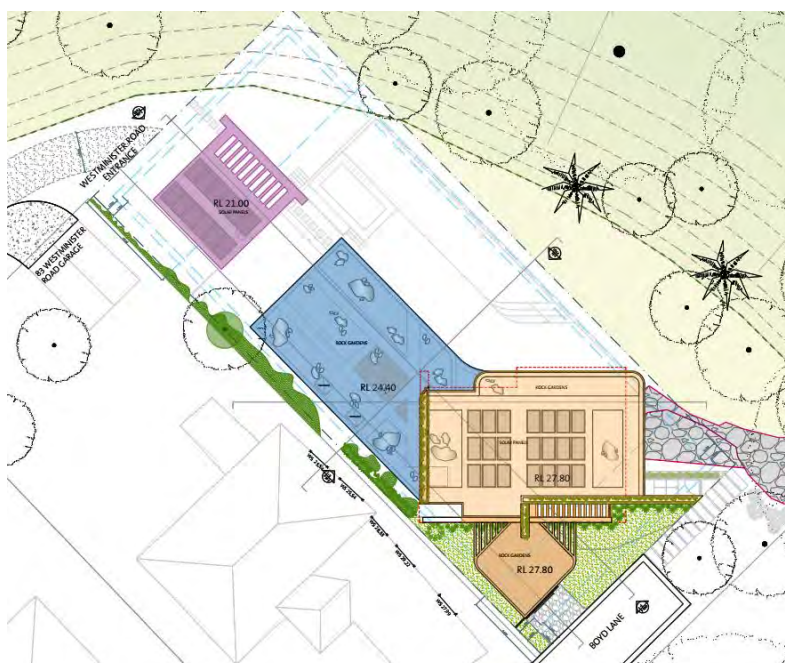


Figure 6 Roof plan of proposed dwelling. Source: Spicer Architects.



Figure 7 Eastern Elevation of dwelling as viewed from Boyd Lane. Source: Spicer Architects.



Figure 8 Northern Elevation presenting to Field of Mars. Existing dwelling outlined in red. Source: Spicer Architects.



Figure 9 Western Elevation. Garage presenting relies upon access from Westminster Road. Source: Spicer Architects.

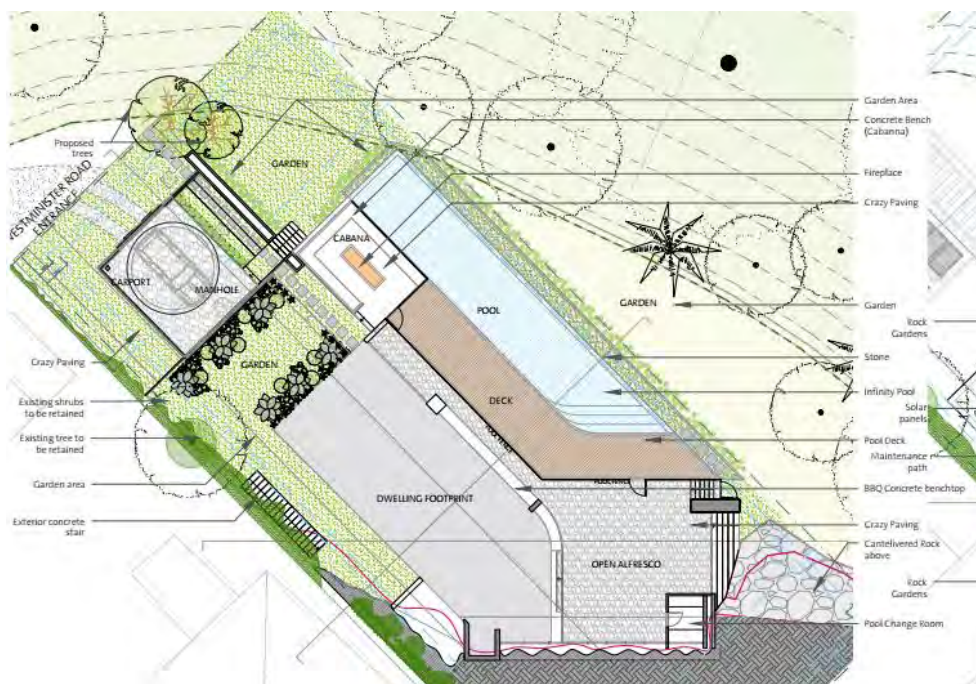


Figure 10 Landscape plan of proposed works. Source: Spicer Architects.

4.0 HISTORY

25 October 2022	Application lodged.
1 November 2022	Application notified. Two (2) submissions received.
16 November 2022	Referral from Bushfire Consultant received advising application should be referred to NSW RFS.
	The New South Wales Rural Fire Service (NSW RFS) response received with recommended conditions.
18 November 2022	A request for information was sent to the Applicant seeking: <ul style="list-style-type: none"> 1. New shadow diagrams including elevational shadow analysis for No.83 Westminster Road

	<ol style="list-style-type: none"> 2. Additional details on views currently available and views that will be retained for the adjoining property at No.83 Westminster Road following construction of the development and any public areas off Boyd Lane 3. Additional details regarding off street parking proposals 4. Revised Gross Floor Area (GFA) calculations 5. Revised architectural plans to address various amendments and updates identified 6. Clarification regarding fencing and gate details for entrances from Westminster Road and Boyd Lane 7. Maximum proposed external wall height details
15 December 2022	Applicant submits amended architectural plans and further information.
22 December 2022	Amended plans renotified. One (1) submission received.
3 February 2023	Redacted copy of submission sent to Applicant for comment and/or any amendments.
3 February 2023	Applicant submits written response to submissions.
6 February 2023	A request for information was sent to the Applicant seeking an amendment to the MM Geomechanics Report referencing the site being listed in the Council's map as having a slope instability risk, referencing the stormwater management plans by DT Civil, and confirming that the proposed stormwater discharge is acceptable.
8 February 2023	Application referred to consultant planner (CPS) for independent assessment given Councillor interest in the DA.
12 February 2023	Applicant submits amended MM Geomechanics Report.
5 April 2023	<p>A request for information was sent to the Applicant seeking:</p> <ol style="list-style-type: none"> 1. Details pertaining to works outside the property boundary including geotechnical, civil and arboricultural matters, particularly to within the Westminster Road reserve. 2. Additional view loss analysis 3. Revised architectural plans to address various amendments and updates identified
13 April 2023	Applicant submits written response to the third request for information, including amended architectural plans and updated view loss analysis.
24 April 2023	The Applicant submits an amended first floor plan showing an increased number of steps (7 stairs, increased from 3 stairs) along the secondary pedestrian entry within the site boundary to ensure the existing levels in Boyd Lane are retained.
17 April 2023	Referral from Development Engineer received, providing conditions to address matters.
4 May 2023	Referral from Landscape Officer received, recommending conditions to address issues raised in previous referral.
5 May 2023	Referral from Heritage Officer received.
11 May 2023	The consultant planner was provided the initial landscape referral dated 27 April 2023. The referral raised concerns with the major encroachment upon an existing tree and requested detailed assessment. The landscape plan was advised to be unsatisfactory.

12 May 2023	Council raises the building height contravention with the Applicant, and affords the Applicant an opportunity to submit a clause 4.6 written request seeking to justify the contravention.
18 May 2023	A clause 4.6 written request was received by Council, but upon review was deemed to be unsatisfactory. The Applicant was afforded another opportunity to submit a clause 4.6 written request for Council's consideration.
20 June 2023	The Applicant engaged the services of a consultant town planner and submitted a new clause 4.6 written request which is considered as part of this assessment report.

5.0 PLANNING ASSESSMENT

Environmental Planning and Assessment Act

Objects of EP&A Act

Section 1.3 of the EP & A Act contains the following relevant objects:

1.3 Objects of Act (cf previous s 5)

- (c) to promote the orderly and economic use and development of land,*
- (g) to promote good design and amenity of the built environment,*

The proposed dwelling house does not provide for an appropriate built form which is responsive to the site constraints and has been unsatisfactorily designed in response to the site's topography. The proposal results in amenity impacts upon adjoining properties and does not demonstrate an acceptable impact upon vegetation. The proposal is not orderly development of land, and therefore inconsistent with abovementioned Objects of the Act.

SECTION 4.14 CONSULTATION AND DEVELOPMENT CONSENT – CERTAIN BUSH FIRE PRONE LAND (formerly 79BA)

Part of the site is mapped as being bushfire affected and within the Vegetation Buffer (**Figure 11**). The site is located within 100m of bush fire prone (hazardous) vegetation. The proposal is subject consideration pursuant to the provisions of Section 4.4 Consultation and Development Consent – Certain Bush Fire Prone Land (Formerly 79BA) of the EP&A Act. The proposed dwelling has been supported by a Bushfire Assessment Report prepared by Bushfire Consulting Services which has identified as BAL-FZ.



Figure 11 Bush Fire Prone Land Map. Yellow identifying Vegetation Buffer.

As the development is within a flame zone, the application was referred to the NSW Rural Fire Service. The NSW RFS raised no objections to the proposed development subject to the inclusion of conditions of consent relating to compliance with *Planning for Bushfire Protection 2019*.

5.1 State Environmental Planning Instruments

Instrument	Proposal	Compliance
State Environmental Planning Policy Resilience and Hazards SEPP 2021		
Chapter 4 Remediation of land		
The object of this Chapter is to provide for a State-wide planning approach to the remediation of contaminated land. The aims are to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.	Pursuant to Clause 4.6(1) considerations, the subject site has been historically used for residential purposes. As such, it is unlikely to contain any contamination and further investigation is not warranted in this case.	Yes
State Environmental Planning Policy BASIX 2004		
The certificate demonstrates compliance with the provisions of the SEPP and is consistent with commitments identified in the application documentation.	A satisfactory BASIX Certificate (see Certificate No. 1325154S_03 and dated 5 October 2022) has been submitted with the application. It is noted the submitted plans have not been stamped by the assessor.	Yes

State Environmental Planning Policy – Biodiversity and Conservation SEPP 2021		
Chapter 2 Vegetation in non-rural areas		
<p>The objective of the SEPP is to protect the biodiversity values of trees and other vegetation and to preserve the amenity of the area through the preservation of trees and other vegetation.</p>	<p>Insufficient information has been provided by the Applicant to carry out a proper impact assessment upon existing vegetation. In particular, a large pine tree located on the southern boundary and Eucalypt trees within the Westminster Road reserve. A request for additional information in the form of an arborist report has been made, however the Applicant has declined to provide such information for Council's assessment.</p> <p>Accordingly, an assessment on the ability to preserve the amenity of the area through the preservation of trees and other vegetation cannot be undertaken.</p>	No
Chapter 6 Water Catchments		
<p>This Plan applies to the whole of the Ryde Local Government Area. The aims of the Plan are to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment and promoting recreational access to the foreshore and waterways by establishing planning principles and controls for the catchment as a whole.</p>	<p>The City of Ryde LGA is shown on Sydney Harbour Catchment Map Sheet SHC_001.</p> <p>Given the nature of the project and the location of the site, there are no specific controls that directly apply to this proposal.</p>	Yes

5.2 Ryde Local Environmental Plan 2014 (RLEP 2014)

The property is zoned R2 Low Density Residential under the RLEP 2014, and the proposed development (i.e. a dwelling house), is permitted with consent.

Aims and objectives for residential zones:

- To provide for the community's housing needs within a low density residential environment.
- To enable other land uses to provide facilities or services to meet the residents' daily needs.
- To provide for a variety of housing types.

The proposed development fails to satisfy the first objective of the zone. While the development will provide for the housing needs of the community, the building height contravention results in a development incongruous with the low-density residential environment for the City of Ryde.

The following is a summary of the proposal's performance against the RLEP 2014 relevant clauses.

Ryde LEP 2014	Proposal	Compliance
4.3(2) Height		
9.5m	11.64m	No
4.4(2) & 4.4A(1) FSR		
0.5:1 (476.95m ²)	0.48:1	Yes
4.6 Exceptions to development standards	The proposal results in a 22.53% contravention of the building height dev standard. The written request is unsatisfactory (refer to detailed assessment after this table).	No
5.10 Heritage Conservation		
<p>(1) The objectives of this clause are as follows—</p> <p>(a) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,</p> <p>(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, setting and views,</p> <p>(c) To conserve archaeological sites,</p> <p>(d) to conserve Aboriginal objects and Aboriginal places of heritage significance</p>	<p>The subject site does not contain an item of heritage; however, the site's northern boundary adjoins the following item of local heritage significance listed within Schedule 5 of RLEP 2014:</p> <ul style="list-style-type: none"> Item No.158 – Field of Mars Wildlife Reserve <p>The proposal's contravening building height, insensitive use of materials and finishes, and ancillary structures will have an adverse impact on the heritage significance of the neighbouring heritage item.</p> <p>For further details on the heritage assessment, refer to the discussion in the referral response section of this report.</p>	No.
6.1 Acid Sulfate Soils		
<p>(1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.</p>	<p>A geotechnical and acid sulfate soil assessment has been submitted by the Applicant. Although the report is dated July 2022 and relates to a previous design, which included a semi basement level, the report considers greater levels of excavation than proposed under the current architectural plans. Site-specific testing revealed the absence of acid sulfate soils and potential acid sulfate soils. No further assessment is required.</p>	Yes

Ryde LEP 2014	Proposal	Compliance
6.2 Earthworks		
(1) The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.	<p>Significant earthworks are proposed on site. The proposal includes excavation to depths between approximately 350mm and 2.35 metres below natural ground level associated with the formation of the new swimming pool, and up to 1.4 metres associated with terracing in the rear garden. Despite these earthworks, the proposal satisfies the matters for consideration under subclause (3). This is because the earthworks will be largely indiscernible from neighbouring properties and the public domain. Furthermore, the referral responses received have not raised any objection to the proposal in this regard.</p> <p>In the event the application was to be approved, the recommendations of the submitted Geotechnical Report would be conditioned along with Council's standard conditions of consent to mitigate impacts.</p>	Yes
Clause 6.4 Stormwater management		
(1) The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters.	<p>The proposal maximises the use of permeable surfaces allowing for water filtration and avoids adverse impacts of stormwater runoff on adjoining properties and receiving waters.</p> <p>The proposal has been considered acceptable by Council's Senior Development Engineer, subject to conditions.</p>	Yes

Clause 4.3 Height of Buildings

With a building height of 11.65m, the proposed development contravenes clause 4.3(2) of RLEP 2014 which prescribes a maximum building height of 9.5m.

The Dictionary within RLEP 2014 provides definitions for 'building height' and 'ground level existing' to calculate the maximum building height of a building. The definitions are reproduced below:

Building height (or height of building) means—

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant & lift overruns, excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues & the like.

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

When applied to the proposed development on the subject site, the existing ground level is RL16.16, and the ridge of the third storey roof is RL27.800. This results in a vertical distance of 11.64m, therefore contravening the building height development standard by 2.14m, or 22.5%. The heights are shown in **Figures 12 and 13**.

Note: The Applicant's written request indicates the building height contravention to be 11.84m, or a 24.63% variation to the standard. However it is likely this measurement is taken from the underside of the slab level. The Council assessment is measured to the top of the existing ground level slab, hence the small difference in calculation.

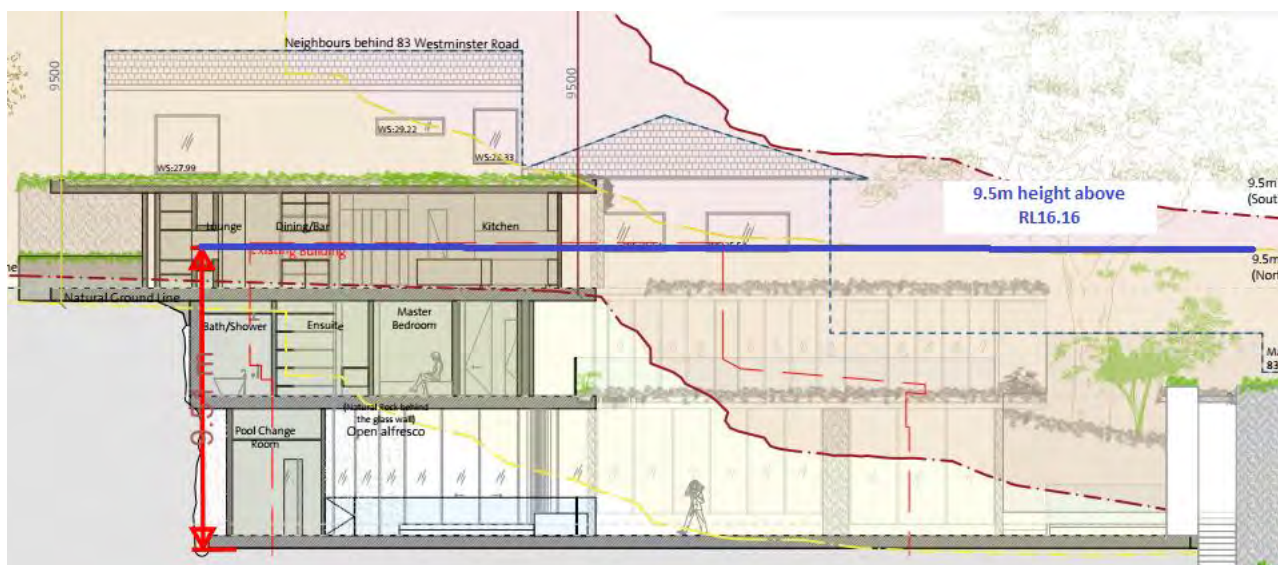


Figure 12 Section B showing 9.5m height above existing ground level established by the current building on site.
Source: Applicant's architectural plans, marked up by CPS.

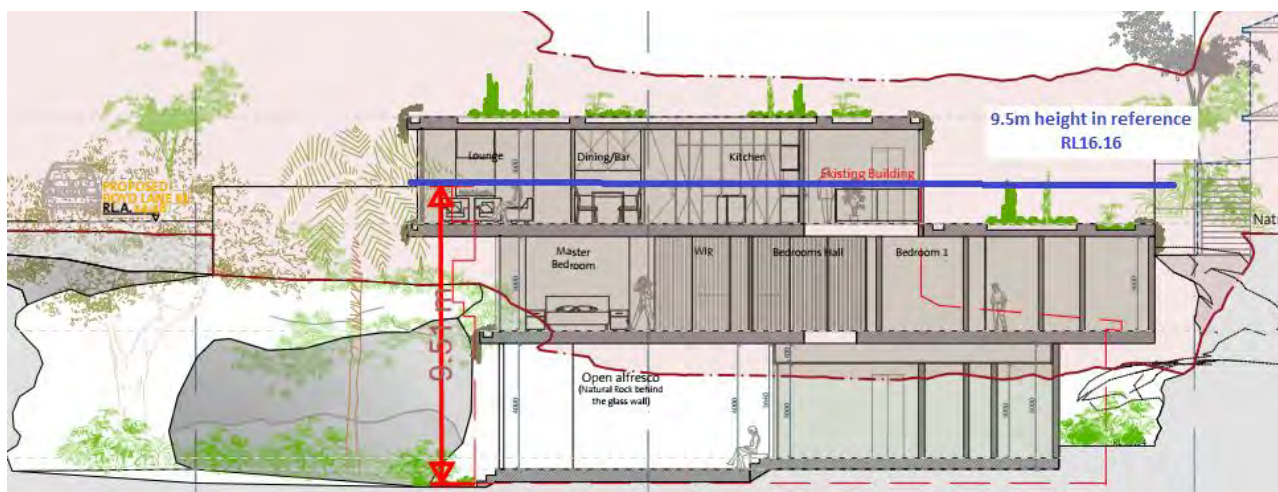


Figure 13 Section A showing 9.5m above existing ground level.
Source: Applicant's architectural plans, marked up by CPS.

Clause 4.6 Exceptions to development standards

Clause 4.6 of the RLEP 2014 provides flexibility in the application of planning controls by allowing Council to approve a development application that does not comply with a development standard, where the provisions of clause 4.6 are satisfied.

The Applicant has submitted a clause 4.6 written request to vary the building height development standard (**Attachment 3**).

An assessment of the relevant provisions of Clause 4.6 is as follows:

- Clause 4.6(3)(a). Is compliance unreasonable or unnecessary in the circumstances of the case?
- Clause 4.6(3)(b). Are there sufficient environmental planning grounds to justify the proposed contravention of the development standard?

Unreasonable and unnecessary

The Applicant's clause 4.6 written request relies only upon part 1 of the five part test established in *Wehbe v Pittwater Council (2007)* to demonstrate compliance with the building height development standard is unreasonable and unnecessary in the circumstances of the case.

Part 1 of the five part test provides that the objectives of the standard are achieved notwithstanding noncompliance with the standard.

The objectives of the height of buildings standard are set out in C4.3 of the RLEP 2014 as follows:

- (a) *to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,*
- (b) *to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,*
- (c) *to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,*
- (d) *to minimise the impact of development on the amenity of surrounding properties,*
- (e) *to emphasise road frontages along road corridors.*

The Applicant's comments on how the objective is achieved is provided below, followed by a response from the assessing officer.

- (a) ***to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development***

Written Request Comments:

The height encroachment will not be readily apparent or obvious to the casual observer at street level nor will it result in a jarring contribution to the character noting that the dwelling is compliant with the prescribed height afforded to the land when measured against the natural ground and in turn, more topographically characteristic site conditions. Furthermore, the strict application of the height standard would impose a greater level of visual discord across the street frontage noting any ensuing built form outcome would be interpreted as far less visually proportionate and contextually incompatible across the street frontage over that tabled as part of this application.

The site conditions set by the already excavated land have as a consequence, created a visual disparity across the street setting made evident by the current relationship between the subject and neighbouring properties. The height variation to some degree, assist in the reestablishment of a more conducive and visually responsive built form outcome across Boyd Lane.

The proposal complies with the FSR standard and provides for setbacks that either comply with or outperform the minimums prescribed by the DCP. Landscaping is also provided at compliant levels that alongside the other controls, numerically inform what the future character should resemble.

Having regard to the foregoing commentary, the proposal, despite the height breach, is deemed to present as contextually suitable and consistent in scale along the Boyd Lane frontage. More generally, the proposed design will visually integrate with that of neighbouring development both current and future, serving as an affirmation of the objective.

Accordingly, it is considered that the height, bulk and scale of the dwelling and in turn, its proportions, will present as compatible with adjoining development, the character of the locality and the natural setting. The height breach does not offend this compatibility in any noticeable way.

Assessment Officer's Response:

To demonstrate new development will be in keeping with the character of nearby development, it is first important to identify the character of nearby development. Once an understanding of the nearby character has been demonstrated, then arguments of the proposed development's compatibility with the local area can be properly considered.

To assist applicants and guide development for detached housing within the City of Ryde, Section 1.6 of the Ryde Development Control Plan 2014 (RDCP 2014) provides a good example of what needs to be documented when analysing the context of a site. This includes:

- Form and character of adjacent and opposite buildings in the streetscape and adjacent sites; architectural character, front fencing, garden styles;
- Neighbouring properties (at the sides of the allotment and to the rear); location, height, use;
- Privacy; adjoining private open space, living room windows overlooking the site, location of any facing doors, windows, and external living areas;
- Walls built to the site's boundary; location, height, materials;
- Difference in ground levels between the site and adjacent properties;
- Views enjoyed by neighbouring properties;
- Views enjoyed from public areas;
- Solar access enjoyed by neighbouring properties;
- Major trees on adjacent properties, within 9 m of the subject site;
- Street frontage features; poles, trees, kerb crossovers, bus stops, other services;
- Heritage features of the surrounding locality and landscape, (if relevant);
- Public open space, (if relevant);
- Adjoining bushland or environmentally sensitive land;
- Sources of nuisance; flight paths, noisy roads or noise, polluting operations (if relevant).

The Applicant's written request includes no description on the character of nearby development. There is no appreciation or understanding of the form and character of adjacent or opposite buildings, and no analysis of the defining characteristics of development within the streetscape. Similarly, there is no acknowledgement of the site's relatively unique setting with two street frontages (one of which is unformalised), and there is no acknowledgment of the site's prominent location on a ridge adjoining the Field of Mars Reserve and Environmental Education Centre.

Given the written request's failure to demonstrate an understanding of the nearby character, little weight can be given to the arguments raised within the written request on the proposal's compatibility with the nearby character.

Accordingly, the Applicant's written request inadequately demonstrates Objective (a) of the building height development standard is achieved. Despite the written request's failure to demonstrate an understanding of the nearby character, the arguments raised within the Applicant's written request in response to Objective 1 are not supported for the following reasons:

- It is disagreed the building height will not be readily apparent or obvious to the casual observer at street level. It is also disagreed that strict compliance with the height standard would be jarring, bring about visual discord, or be contextually incompatible. The site includes two street frontages: Boyd Lane to the east & Westminster Rd to the west. It must be acknowledged that both street frontages are somewhat unconventional.

Boyd Lane is a narrow road extending from Kennedy Street with the paving terminating midway along the subject site's eastern boundary. The road reserve does however continue northwards to the Field of Mars, but no pedestrian or vehicular access is possible past the boundary of the subject site (see **Figure 14** below).



Figure 14 Looking north toward the Field of Mars from Boyd Lane at the end of the road paving adjacent to the site.
Source: <https://www.google.com/maps>

The Westminster Road reserve extends to the subject site's northern boundary with the Field of Mars, but vehicular access is limited beyond the property at 81 Westminster Road. At this point the paving ends and vehicular access occurs over natural ground only. Pedestrian access does however continue past the subject site and connects to a walkway into the Field of Mars Reserve (see **Figure 15** below).

The proposed building height is 2.1m higher than the current three-storey building on the site. From Boyd Lane, the additional building height will be readily apparent and obvious to the casual observer. When considering the site's context at the end of a prominent ridge, it is difficult to understand how a building 2.1m higher than the current building will be less jarring and contextually compatible. Particularly when the additional building height will interrupt the visual outlook toward the Field of Mars Reserve that is currently available over

the roof of the existing building on site. From the Westminster Road reserve and the pedestrian entry to the Field of Mars, the totality of the contravening building height will be readily apparent and obvious to the casual observer.

When ascending the stairs from the Field of Mars via the Westminster Rd reserve, a building 2.1m higher than the current building will be more jarring and contextually incompatible than that of a compliant building, like that which exists on site at the moment (**Figure 16**).



Figure 15 Looking north toward the Field of Mars and the subject site's western boundary (highlighted in red) from the Westminster Road reserve. The white arrow depicts the walkway connecting Westminster Road into the Field of Mars.
Source: CPS site inspection 30 June 2023



Figure 16 – Looking south-east toward the existing building near the site's boundary with the Westminster Road reserve.
Source: CPS site inspection 30 June 2023

- The written request refers to the site conditions already having been set by the excavated land. However there is no evidence contained within the written request to demonstrate how pre-existing ground levels across the site have been modified over time. As such little weight can be given to depictions or arguments claiming to demonstrate building height compliance is achieved when adopting calculations from a 'natural ground line'.
- The written request notes the proposed development's compliance with floor space ratio (FSR) and landscaped area controls, however provides no indication on how this information is relevant to the development achieving the first objective of the building height development standard. The written request also comments that the proposed landscaping informs what the desired future character should resemble. Again this has little relevance to the building's non-compliant height. On this point, Section 2.1 of the RDCP 2014 prescribes the desired future character of the low density residential area for the City of Ryde is one that has a low scale determined by a maximum 2 storey height limit. A proposal to replace a three-storey building with a new three-storey building 2.1m higher is clearly inconsistent with the desired future character.
- It is disagreed with the written request that the height of the dwelling is compatible with adjoining development and the natural setting. Adjoining to the north is the Field of Mars Reserve. The proposal's incompatibility with this adjoining development and surrounding natural setting are discussed further in response to the proposal's inability to satisfy the second and fourth objectives of the development standard.

(b) to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area

Written Request Comments:

With respect to compatibility, we again rely on the foregoing commentary in address of the preceding objective with regards to the current level of streetscape visual discord between the subject and neighbouring sites which has inadvertently resulted from the extent of pre-existing land manipulation that has taken place. The current design scheme which relies, in part, on a departure from the height standard, seeks to reinstate a more orderly design response to the setting and in doing so, will improve the appearance of the area noting the improved built form and spatial relationships that will result.

The height non-compliance is a direct result of the need to achieve a functional and visually coordinated built form outcome. The extent of height breach is numerically exacerbated when measured against the excavated ground levels of the land which is not a clear representation of the site's topography. When measured against the natural and better representative land topography, a wholly compliant building height is observed.

More generally, the proposal incorporates staggered facades, building recesses and the use of a variety of materials and detailing, to provide a highly articulated built form of contemporary external appearance. This design response ensures that the perceptible volume of the development, most notably the breaching components, will not be identified as an adverse contribution to bulk along the street edge but rather, will facilitate the provision of a more sympathetic streetscape outcome.

*In terms of overshadowing, **Figures 6-8** below this table demonstrate the extent of additional shadowing that will be cast upon the adjoining property at No. 83 Westminster Road at the Winter Solstice (hatched annotation). As demonstrated by the diagrams, the extent of additional shadowing impact is not unreasonable and does not adversely prejudice the extent of available solar access to the neighbouring property across key areas. The adjoining property will continue to receive a reasonable level of solar access with respect to its north facing windows and private open space.*

Assessment Officer's Response:

The site has an east to west orientation. The site and surrounding topography has a cross fall from the south-east to the north-west. As a result, properties to the south are sited higher than properties to the north. It is agreed with the Applicant's written request that despite the height contravention, the development does not result in unreasonable overshadowing.

However, it is disagreed that the development is generally compatible with or improves the appearance of the area. To the contrary, it is the position of the assessing officer that the proposed development will have a detrimental impact on the appearance of the area, and is consequently generally incompatible.

Nothing within the Applicant's written request refers to the adjoining Field of Mars Reserve. This is important because the subject site occupies a prominent position at the end of a ridge overlooking the Field of Mars Reserve and the Environmental Education Centre.

Throughout various vantage points within the Field of Mars Reserve, the existing three-storey dwelling house is visually apparent – refer to **Figures 17, 18 and 19** below.



Figure 17 - Looking south from the Field of Mars Reserve to the Environmental Education Centre in the foreground, and the existing dwelling house at 85 Westminster Road in the background (highlighted in red).
Source: CPS site inspection 30 June 2023

The proposal seeks to increase the height of the existing three-storey building on the site by 2.1m. Consequently, the new 11.64m high building will become even more visually apparent throughout the Field of Mars. Furthermore, while the existing building materials adopt a neutral colour palate, the proposed building includes heavy glazing, exposed concrete, and board form concrete. This material choice contrasts with the site's natural setting and insensitively promotes the contravening building height.

As outlined earlier in this report, the Field of Mars Reserve is the largest remnant bushland reserve managed by the City of Ryde, and is formally established for public recreation and studying the preservation of native flora and fauna.

The Environmental Education Centre is located within the Reserve and is operated by the NSW Department of Education to help students and teachers with fieldwork, environmental education, and education for sustainability.

Given the site's prominence with respect to the Field of Mars, the contravening building height will be observed by the public from a wide area within the Reserve. The imposing building height is incongruous with the Reserve's bushland setting, and discordant with the Environmental Education Centre's principles of providing learning experiences for children in the natural environment.

For these reasons the development is incompatible and fails to improve the appearance of the area. Objective (b) of the building height development standard is not satisfied. It is neither reasonable or necessary for the proposed dwelling house to include a building height of 11.64m. A three storey dwelling house largely compliant with the building height standard already exists on the subject site, and the area around this existing building is relatively level.



Figure 18 – Looking south from the Doyle Track within the Field of Mars Reserve towards the Environmental Education Centre in the middle ground, and the existing dwelling house at 85 Westminster Road behind (highlighted in red).
Source: CPS site inspection 30 June 2023



Figure 19 – Looking south from the elevated Sand Track within the Field of Mars Reserve towards the Environmental Education Centre in the middle ground, and the existing dwelling at 85 Westminster Road behind (highlighted in red).
Source: CPS site inspection 30 June 2023

- (c) to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure.**

Written Request Comment: This objective is not relevant to the development.

Assessment Officer's Response: Agreed. This objective is not relevant to the development.

- (d) to minimise the impact of development on the amenity of surrounding properties**

Written Request Comment:

The height breaching components of the dwelling are such that their siting and location will not result in an adverse impact upon the privacy afforded to neighbouring properties. This lack of impact is also relevant to acoustics whereby the breach will have no bearing on the acoustic privacy of neighbouring properties and or public spaces that adjoin the rear of the site.

In terms of view impacts, the landform characteristics relevant to both the subject and neighbouring sites, and the relationship the proposed development will have with those dwellings, ensures that the breaching elements will not have a discernible impact on the extent of view enjoyed. The view loss impacts associated with the development, most notably the breaching elements, are not likely to be significant and have been mitigated through appropriate building design and siting. This has been affirmed in the revised view impact analysis prepared by Spicer Architecture that form part of the architectural plan detail set (DA.13.04.23 View Loss Pack) dated 12 April 2023.

Assessment Officer's Response:

The responses to the first and second objectives demonstrate the proposal fails to minimise the impact of development on the amenity of the streetscapes and the neighbouring Field of Mars Reserve. Despite the assertions made in the Applicant's written request, the development will result in view impacts to the Field of Mars Reserve from the adjoining property at 83 Westminster Road.

The impact on views is assessed later in this report when responding to the provisions of the RDCP 2014 and the Tenacity View Loss Planning Principle. In summary, the impact on views arises as a result of the three-storey dwelling's contravening 11.64m building height.

It is neither necessary or reasonable for a three-storey dwelling house on the site to have a building height of 11.64m when the contravening building height is not a result of an abrupt or varying existing ground level, but rather the proposed building design which includes three oversized stories. The ceiling heights for the proposed development include:

- First storey: 4m
- Second storey: 3m
- Third storey: 3m

It is also noted that large 400mm slab thicknesses are adopted between the floors.

An 11.64m building height is also neither necessary or reasonable in circumstances where the existing dwelling house on site is three-storeys and largely compliant with the building height development standard.

A more skilful design could provide the Applicant with the same development potential and improve view sharing to the Field of Mars Reserve. The proposal is inconsistent with objective (d) of the building height development standard.

(e) to emphasise road frontages along road corridors.

Written Request Comment:

This objective is not relevant to the development.

Assessment Officers Comments:

Agreed. This objective is not relevant to the development.

Regarding clause 4.6(4)(a)(i) of the RLEP 2014, the consent authority should not be satisfied that the Applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Environmental planning grounds

The environmental planning grounds raised in the Applicant's written request are provided below, followed by a response from the Assessment Officer.

Written Request Comment:

- *The proposal is consistent with the objectives of the development standard and the objectives for development in the R2 Low Density Residential Zone.*

Assessment Officer's Response:

Disagreed. As detailed above, the development does not achieve objectives (a), (b) and (d) of the building height development standard. Furthermore, the development is contrary to the first objective of the R2 Low Density Residential Zone, which seeks to provide for the housing needs of the community in a low density residential environment.

While the development will provide for the housing needs of the community, the building height contravention results in a development incongruous with the low-density residential environment for the City of Ryde, which per the RDCP 2014 is described as having a low scale determined by a maximum 2 storey height limit.

Written Request Comment:

- *The subject site is in part, affected by a flame zone buffer and therefore, the dwelling needs to be constructed outside of this flame zone. Of the 953.9m² site area, 356.33m² or 37% is located within a flame zone and is therefore, an area of the site that the dwelling floor plates need to avoid. Consequently, only 597m² or 63% of the site is left outside of the flame buffer zone. This limitation has a direct bearing on the developable land area which is therefore, confined to a notably more limited part of the site. This land condition has had a direct bearing on the siting of the floor plates and in conjunction with the other site specific land characteristics, has had a bearing on the extent of height breach observed across the proposed dwelling.*

Assessment Officer's Response:

Disagreed. Only the north-western corner of the property is bush fire affected given the proximity of the Field of Mars Reserve (**Figure 20**). Despite this, the bushfire affection should have no bearing on the development's building height.

The written request draws no nexus between the necessity for the 11.64m building height as a consequence of the bush fire affection. The existing dwelling house is evidence that a three-storey dwelling can be accommodated within the 9.5m building height standard. Pursuing floor to ceiling heights of 4m at the first storey (and 3m above) is a design choice, not a necessity because of the bush fire affection.

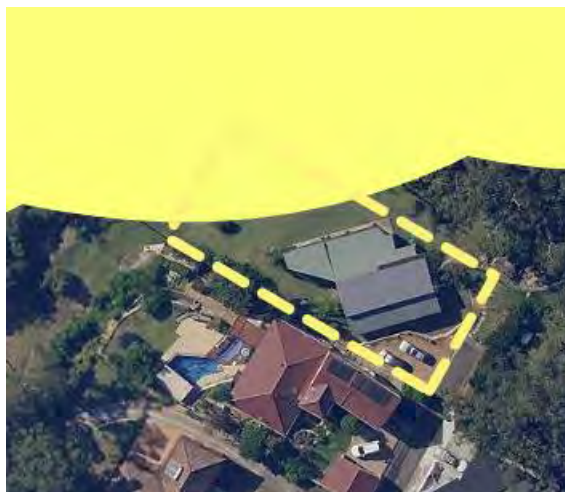


Figure 20 Bush Fire Prone Land Map. Yellow identifying Vegetation Buffer.

Written Request Comment:

- *The proposal readily complies with the remaining development standards applicable to the site including the maximum floor space ratio area standard as prescribed in clauses 4.4 of the Ryde LEP. Therefore, the height variation does not purposely seek to provide any additional gross floor area outside of that prescribed to the development on the land.*

Assessment Officer's Response:

Compliance with the FSR development standard is not an environmental planning ground that justifies contravention of another standard.

Written Request Comment:

- *The proposed variation to the height is deemed a necessary outcome to allow for a well resolved and functional floor plate arrangement offering high levels of residential amenity. The height breach will result in no adverse impacts on adjoining properties in terms of visual bulk, views, privacy or overshadowing.*

Assessment Officer's Response:

Disagreed. Section 2.8.2 of the RDCP 2014 prescribes the minimum ceiling height for habitable rooms in dwelling houses to be 2.4m. If the ceiling heights for the development were reduced to 2.4m, or even 2.7m and standard slab thicknesses adopted, then compliance with the building height development standard could be readily achieved.

Instead, the proposal seeks a 4m ceiling height on the first storey, and 3m for second and third storey with 400mm slab thicknesses. Despite the assertions within the written request, this is not necessary.

The proposed dwelling contains three levels, two separate parking areas, swimming pool, cabana and extended open alfresco area. Even with lower ceiling heights, excellent amenity for the dwelling can still be achieved given the site's favourable aspect, large site area, and visual outlook over the Field of Mars.

As demonstrated earlier, the height contravention will result in adverse impacts on adjoining properties in terms of visual bulk and views.

Written Request Comment:

- *The location and design of the height breaching elements have been organised to ensure that they do not present as visually jarring to the streetscape and in addition, do not result in any adverse level of amenity impact on neighbouring properties.*

Assessment Officer's Response:

Disagreed. As demonstrated earlier, the location and design of the building height contravention will present as visually jarring to observers at Boyd Land, Westminster Road, and adversely impact the level of visual amenity afforded to the neighbouring Field of Mars Reserve.

Written Request Comment:

- The elements which breach the height do so largely as a result of the sites topography which as observed, displays a significant slope from the street towards the rear. This slope was again exacerbated by the previously undertaken site excavation works which have created a further topographical disparity between the subject and neighbouring sites.*

Assessment Officer's Response:

The building height contravention does not occur due to the slope of the land. The height contravention occurs from the north-western projection over a relatively flat existing ground level and a design choice to include large floor to ceiling heights and slab thicknesses.

The Applicant has provided no evidence to demonstrate the site has been extensively excavated. A more sympathetic design could result in a development that is commensurate to the building height of the existing three-storey dwelling house.

Similarly, the adoption of an earthy toned materials palate could ensure the building finishes conform with the natural environment context.

Written Request Comment:

- Prior excavation of the site and the consequent distortion of the height of buildings plane over the site, when compared to the topography, is an environmental planning ground sufficient to justify contravening the development standard. The site's topography and unusual characteristics distinguish this case from the more generic development for which a numeric standard of this kind inevitably must anticipate.*

Assessment Officer's Response:

Disagreed. The Applicant has provided no evidence of prior excavation on site. Irrespective, the existing ground level at the location of the proposed dwelling house is relatively flat.

There is nothing inevitable about the building height non-compliance. The proposed building height contravention comes about solely through pursuit of oversized floor to ceiling heights across a three-storey development.

Written Request Comment:

- A compliant scheme would result in a greater height and mass across Boyd Lane. This would create a greater level of perceived bulk from this domain and neighbouring properties. Allowing the noncompliant scheme will reduce overall adverse impacts on third parties and provide better amenity for the future occupiers of the subject development. Any adverse impacts from allowing the variation are very modest and are dwarfed by the significant benefits of allowing the variation.*

Assessment Officer's Response:

Disagreed. At 9.54m, the existing three-storey dwelling house on the site demonstrates a generally compliant scheme. At 11.64m, the proposed development seeks a 2.1m building height increase over that of the existing dwelling. As demonstrated earlier, the increased building height will be observable from Boyd Lane, and reduce the visual outlook to the Field of Mars.

The contravening building height does not deliver significant benefits, but rather creates detrimental visual impacts to the surrounding public domain, and a view impacts for neighbouring dwellings.

Written Request Comment:

- *The proposed development, notwithstanding non-compliance with the height development standard not only is an orderly and economic use and development of the land, but also promotes good design and amenity of the built environment.*

Assessment Officer's Response:

Disagreed. The development significantly contravenes the development standard, and results in environmental impacts to neighbouring property and the public domain. This does not represent the orderly and economic use of land.

Good design does not just focus on the amenity of building occupiers, but also ensures development is of high quality, sensitive to its environment and positively contributes to its context. The proposed development does not achieve this.

Written Request Comment:

- *There is no planning purpose to be served by limiting the height strictly to the allowable given the site constraints and absence of unreasonable levels of amenity related impacts.*

Assessment Officer's Response:

Disagreed. There are no constraints on site preventing compliance being achieved with the building height development standard. A compliant scheme would help deliver a built form outcome that is more sensitive to its environment, particularly when viewed from the Field of Mars Reserve.

Despite comments provided in the written request, there is a planning purpose to be achieved in ensuring development positively contributes to its context.

As demonstrated in the discussion above, the proposal is not in the public interest as the development is inconsistent with the objectives of the standard and zone as required by Clause 4.6(4)(a)(ii).

Has concurrence been obtained?

Pursuant to clause 4.6(4) of RLEP 2014, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with Planning Circular PS 20-002 dated 5 May 2020, the Secretary's concurrence may be assumed by the Ryde Local Planning Panel, despite the extent of the non-compliance being greater than 10%.

Conclusion

The assessment above has demonstrated the Applicant's written request inadequately addresses the matters required to be demonstrated by clause 4.6(3). It has also been demonstrated that the proposed development will not be in the public interest because it is inconsistent with the objectives of the building height development standard and the objectives of the R2 Low Density Residential zone. For these reasons, the development application must be refused.

5.3 Draft Environmental Planning Instruments

Nil.

5.4 Development Control Plans

Ryde Development Control Plan 2014 (RDCP 2014)

The proposal is subject to the provisions of the following parts of RDCP 2014:

- Part 3.3 – Dwelling Houses and Dual Occupancy under the RDCP 2014.
- Part 7.2: Waste Minimisation and Management;
- Part 8.2: Stormwater & Floodplain Management;
- Part 8.3: Driveways;
- Part 9.3: Parking Controls

The development is subject to the provisions of Part 3.3 Dwelling Houses and Dual Occupancy under the RDCP 2014. A full assessment of the proposal under RDCP 2014 is illustrated in the compliance table at **Attachment 1**.

Where strict compliance has not been achieved, in accordance with Section 4.15 (3A)(b) flexibility has been provided to allow a reasonable alternative solution that achieves the objectives of the standard. These matters are discussed below:

Three storey scale and height

The proposed three-storey dwelling is non-compliant with the provisions of Part 2.1 Desired Future Character, Part 2.2(b) Dwelling houses, and Part 2.8.1 Building Height, which prescribes dwellings to be a maximum of 2 storeys.

It is recognised that the existing dwelling to be demolished is three storeys in height – see **Figure 21** below.

At 9.54m, the existing dwelling's building height is approximately 2.1m lower than the 11.64m high dwelling proposed. The existing dwelling also has larger boundary setbacks which help mitigate the three-storey scale.

Although the proposed three-storey dwelling is to replace an existing three-storey dwelling, given the significant height increase and building height contravention, the non-compliance with the storey controls is not supported for the reasons previously explained in this assessment report – i.e. see the discussion provided in response to clause 4.3 and clause 4.6 of the RLEP 2014.



Figure 21 Existing dwelling's northern elevation showing scale. The proposal seeks to replace this dwelling with a new 3-storey dwelling that is 2.1m higher, which fails to achieve compliance with the building height development standard.
Source: Spicer Architects.

Car parking structures

Part 2.5.1 Streetscape control (d)(ii), Part 2.9.1(b) Front Setbacks and Part 2.11.1(p) Car Parking and Access requires car parking structures to be setback 1m behind the dwelling's front elevation. The proposal includes provision of two (2) separate parking structures. The proposal is non-compliant with the control as the parking structures are not setback behind the front façade. However, neighbouring properties to the south which also have dual frontage to both Boyd Lane and Westminster Road similarly, include vehicular access any parking structures either forward of or in alignment with building setbacks.

In this regard, the proposed parking structures, although non-compliant, are consistent with the existing streetscapes. The objectives of the controls are satisfied and the non-compliance is supported.



Figure 22 Future driveway to proposed & existing garage at 83 Westminster Road. Source: Spicer Architect



Figure 23 Image captured from Boyd Lane looking south west. To the right of frame is the existing hard standard parking on the subject site. In the middle of the frame is the parking garage for the neighbouring dwelling at 83 Westminster Road. To the left of frame is the parking garage for 81 Westminster Road. It is noted each of these parking structures is either forward of or inline with the dwellings. The proposed parking structure in the location of the current structure for 85 Westminster Road will accordingly not be discordant in the streetscape despite not having compliance with Council's setback controls. Source: <https://www.google.com/maps/>

Dwelling orientation

Part 2.5.1(f) requires dwellings to be orientated to match the prevailing orientation of such buildings in the streetscape. The lower levels of the building are orientated broadly east to west which matches the existing streetscape. The first-floor level would be orientated at a different angle (broadly south to north) to other properties along Westminster Road and Boyd Lane. Surrounding development is generally orientated east to west, perpendicular to the street.

The eastern elevation presenting to Boyd Lane however provides for the dwelling entrance and vehicular access, so despite the first-floor orientation the visual presentation will not be inconsistent with surrounding development. The proposed orientation is considered appropriate in this instance and provides for increased levels of visual amenity for future occupants.

Setbacks

Front setback

Part 2.9.1 prescribes a 6m front setback that is free of structures is required. The proposal includes a 3.9m high blade wall extending from the dwelling and associated carport to the front boundary with Boyd Lane (**Figure 24** and **Figure 25**). This structure is not an element which is excluded from the front setback calculation under RDCP 2014 and accordingly, fails to comply with the control.

The blade wall will significantly reduce views from Boyd Lane to the Field of Mars Reserve. The blade wall is also unique within the Boyd Lane streetscape and as such incongruous with the character of the local area. For these reasons, the proposal fails to satisfy the objectives of the control which seek to provide consistent setbacks along the streetscape and limits opportunity for the provision of a front garden.



Figure 24 Perspective showing the northeastern corner of the dwelling and front entrance. Source: Spicer Architects.



Figure 25 Extract showing 6m front setback shown in red.

Side setbacks

The development is subject to controls which require side setbacks of 1.5m. Setbacks are measured to the outside edge of building elevations. The western corner of the first floor of the building has a setback of 600mm to the south-western side boundary.

Concern is held in relation to the dwelling failing to meet the deemed to satisfy provision of the BCA in terms of providing a 900mm setback from the boundary. The remainder of the dwelling achieves the required 1.5m side setback and is acceptable.

The wall to the north of the stairs to the open alfresco are setback 900mm from the northern side boundary. Given the site is adjoined to the north by no other residential dwelling, the setback does not result in any adverse impacts and is deemed acceptable.

Rear setbacks

The dwelling has two (2) road frontages, being Boyd Lane and Westminster Road. The dwelling is orientated with the primary access and front door to Boyd Lane. The rear setback is taken to be the Westminster Road frontage. The proposal includes a detached garage accessed from Westminster Road with a boundary setback of 3.2m.

The applicable rear setback is a minimum of 25% of the length of the site or 8m, whichever is the greater. The site has a length of 47.42m and is subject to a rear setback of 11.955m for the proposed garage.

While it is appreciated the neighbouring dwelling at 83 Westminster Road similarly includes a detached garage on the rear boundary to Westminster Road, this structure is a single garage only and accordingly much smaller in scale.

The objectives of the rear setback control seek to ensure sufficient area for landscaping, mature trees and deep soil areas. As demonstrated below, the proposal fails to achieve compliance with the landscaped area, deep soil, and tree retention controls within the RDCP 2014. In this circumstance, support for the rear setback non compliance cannot be provided.

Topography and Excavation

A three-storey dwelling house is located on the eastern half of the site, while the western half is currently vacant. There are currently sandstone outcrops to the west, east and south of the existing dwelling.

The heights of the typical retaining walls are shown on drawing P109. The proposal results in the following retaining wall heights:

- The retaining wall (R1) along the northern and western elevation of the swimming pool is 1.9m in height.
- The retaining wall (R2) along the northern elevation of the garage and dwelling has a height of 1.04m.
- The proposed retaining wall (R3) along the southern elevation of the garage and contiguous pile has a height of 2.465m

The proposal significantly exceeds the 900mm retaining wall height control. Retaining wall R3 results in a major encroachment of the TPZ of a tree identified for retention along the southern boundary. Further, the proposed height results in the enclosure of the private open space sited between the proposed garage and lower ground floor.

The proposed dwelling extends further to the west, south and north of the existing dwelling resulting in the following levels of excavation:

- 580mm at the southwestern corner of the lower ground floor.
- 400mm at the northwestern corner of the lower ground floor.
- 5.93m associated with the lift adjacent to the southern side boundary.

Excavation associated with development may be considered acceptable, however in this circumstance, the 3-storey scale of the development and resultant height which is facilitated by extending the building footprint does not appropriately respond to the site or its context. The proposal does not achieve the objectives of the control which seek to retain natural ground levels and landform and minimise the extent of excavation and fill.

Landscape and Deep Soil Areas

Part 2.6.1 Deep Soil Areas in control (a) requires minimum of 35% (333.87m²) of the site area to be provided as deep soil areas. Control (d) requires deep soil areas should be 100% permeable.

The proposal provides 33% (315.2m²) of the site area as deep soil areas and is non-compliant. The development results in an 18.67m² shortfall in achieving compliance.

The objectives of the control seek to retain and enhance vegetation corridors, provide for mature tree growth, retain existing mature trees and enable movement of fauna along vegetation corridors.

The subject site neighbours the Field of Mars Reserve, which is the largest remnant bushland reserve under the care, control, and management of the City of Ryde.

The proposal does not retain or enhance the Field of Mars Reserve vegetation corridor. Fails to retain mature trees and will not promote movement of fauna along the vegetation corridor. The objectives of the control are not satisfied.

The development is also contrary to Part 2.13 Landscaping control (a), (e) and (h) which prescribes

- a. Major existing trees to be retained in a viable condition.
- e. Provide a landscaped front garden. Hard paved areas are to be minimised, and at a maximum, are to be no more than 40% of the front garden areas.
- h. The front garden is to have at least 1 tree capable of a minimum mature height of 10 m with a spreading canopy.

The application has not provided sufficient information to confirm retention of existing trees and has not been supported by an Arborist Report. While a landscaped front garden is provided, hard paved areas have not been minimised and equate to 66% of the front setback. The front setback does not include a tree capable of a minimum mature height of 10 m with a spreading canopy. The objectives of the landscape controls are not satisfied and the non-compliances cannot be supported.

Swimming pool

Part 2.12(f) of the RDCP 2014 requires finished coping levels of swimming pools to be not greater than 500mm above the adjacent ground level. The finished coping level of the southern and eastern sides of the pool are at the same level as the adjoining deck. The finished coping level of the northern and western sides of the pool facing the Field of Mars Reserve is 1.2m above the adjacent ground level.

Control (h) requires screen planting to be provided along the length of new swimming pools, within a minimum 900mm wide landscape bed planted with dense hedging. The swimming pool is an infinity pool design, with no screen planting proposed to the northern boundary with the Field of Mars Reserve.

The above non-compliances unreasonably contribute to the visual bulk and scale of the development when viewed from the Field of Mars Reserve. The development consequently fails to satisfy the objectives of the control which seek to minimise the impact of swimming pools on neighbours.

Visual Privacy

Part 2.14.2 controls (a) and (b) requires windows of living areas and outdoor terraces and outdoor living areas to be orientated towards the rear and front boundaries and not the side boundary.

The windows of the main living spaces and all terraces, balconies and outdoor living areas are orientated towards the Field of Marks Reserve. The areas are not orientated to the front and rear of the property as required by the control.

The proposal is unlikely to result in any adverse visual privacy concerns for residents of the dwelling given the considerable separation distances involved.

View Sharing

Part 2.14.4 of the RDCP 2014 requires the siting of development to provide for view sharing, to ensure new dwellings endeavour to respect important views from living areas within neighbouring dwellings.

The planning principle in *Tenacity Consulting v Warringah* [2004] NSWLEC 140 establishes a four-step assessment to assist in identifying whether view sharing is reasonable. This includes:

- Step 1: assessment of views to be affected
- Step 2: consider from what part of the property the views are obtained
- Step 3: assess the extent of the impact
- Step 4: assess the reasonableness of the proposal that is causing the impact.

Applying the above principles to the proposed development is outlined below.

Step 1: Assessment of views to be affected

“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.”

At the site inspection, it was observed that there is a pleasant existing land view towards the Field of Mars Reserve from the neighbouring property at 83 Westminster Road. The view is considered moderately valuable. The view is predominantly toward the north and across the side boundary of 83 Westminster Road, although there are also views across the rear boundary, particularly from the upper ground floor terrace.

Step 2: Consider from what part of the property the views are obtained

“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.”

A view towards the Reserve is currently available from the two bedrooms on the first floor (**Figure 26**) and the living/dining room and open plan kitchen / living / dining room on the upper ground floor (**Figures 27 and 28**), as well as from the upper ground floor terrace. There are also limited views towards the treetops of the Reserve from some windows in the study / TV room at lower ground level (**Figure 29**) and parts of the rear garden.



Figure 26 First floor windows associated with bedrooms looking across the site at 85 Westminster Road to the north.
Source: CPS site inspection 21 March 2023



Figure 27 View from kitchen window at Upper ground floor from standing position looking across the site to the north
Source: CPS site inspection 21 March 2023



Figure 28 Existing view from living room at upper ground floor in standing position looking across the site to the north
Source: CPS site inspection 21 March 2023



Figure 29 View from Study/TV room at lower ground floor looking north towards the subject site
Source: CPS site inspection 21 March 2023

Step 3: Assess the 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 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 proposal would obstruct the views towards the treetops of the Reserve from those windows in the study / TV room at the lower ground level where such views currently exist.

The proposal would result in the partial loss of views available from the two bedrooms on the first floor, parts of the open plan kitchen / living / dining room on the upper ground floor, and parts of the rear garden. Expansive views of the Field of Mars Reserve are expected to be retained over the proposed dwelling from parts of the open plan kitchen / living / dining room and the roof terrace on the upper ground floor, and parts of the rear garden.

In consideration of the proportion of view lost in comparison to views retained, and on the basis that the majority of the impact relates to side views, it is therefore considered that the overall impact on views would range between minor and moderate.

Step 4: Assess the reasonableness of the proposal that is causing the impact

“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.”

Turning to the reasonableness of the proposal (Step 4), the impact on views largely arises as a result of the proposal's non-compliance with the building height development standard under clause 4.3 of the RLEP 2014. The proposed building height of 11.64m, which is 2.1m higher than the existing three-storey dwelling directly contributes to the view loss. The three (3) storeys scale of the building also exceeds numerous controls under the RDCP 2014 that prescribe a two-storey maximum for dwelling houses.

The second part of Step 4 is to consider whether a more skilful design could provide the Applicant with the same development potential and reduce the impact on the views of neighbours.

During the assessment, the proposal was reduced in height and amended to reduce the length of the southwestern first floor blade wall, to align with the rear elevation of the first floor and not project beyond to reduce the view impact. The latter amendment was requested by Council to reduce the impact on views from the adjoining property at 83 Westminster Road, without impacting the developable area of the proposal itself. As part of these amendments the blade wall was chamfered to further reduce the impact on views.

Nonetheless, the view impact (albeit minor to moderate) occurs as a direct result of the building height contravention. The proposal represents a large variation to the development standard (22.53%) and therefore the view impact, no matter how minor, cannot be considered reasonable.

As demonstrated earlier, the DA is not accompanied by a clause 4.6 written request that adequately demonstrates it is unreasonable or unnecessary to comply with the standard, and that there are sufficient environmental planning grounds to justify the height contravention. In these circumstances, the resultant view loss because of the building height contravention cannot be deemed reasonable.

Fencing

Part 2.16.1 control (c) requires front and return fences to have a maximum height of 900mm for solid fences, or 1m for open light weight fences.

The proposed timber batten fence (and gate) adjacent to the Boyd Lane frontage is 1.2m high and non-compliant. The existing streetscape along Boyd Lane includes a variety of different fence and wall treatments and heights. The proposed fence design is consistent with the architectural style of the proposed dwelling and will not unduly detract from the Boyd Lane streetscape. The extent of the non-compliance is minimal, and the proposal is otherwise consistent with the objectives of 2.16.1.

5.5 Planning Agreements OR Draft Planning Agreements

There are no planning agreements or draft planning agreements for this development.

5.6 City of Ryde Section 7.11 Development Contributions Plan 2020

The DA is recommended for refusal.

5.7 Any matters prescribed by the regulations

Environmental Planning and Assessment Regulation 2021

The Regulation underpins the day-to-day operation of the NSW planning system. The Regulation guides the processes, plans, public consultation, impact assessment and decisions made by local councils, the Department of Planning and others. Standard conditions are recommended relating to compliance with BCA and AS.

Australian Standard for Demolition – Clause 61(1)

Clause 61(1) of the *Environmental Planning & Assessment Regulations 2021* requires the consent authority to consider the provisions of *Australian Standard AS 2601-2001: The demolition of structures*. The demolition of the existing structures will be carried out in accordance with a construction/demolition management plan, and this will be required to be submitted prior to the issue of a Construction Certificate. Conditions to this effect are included in the recommendation section of this report.

6.0 Suitability of the site for the development

The subject site occupies a prominent position at the end of a ridge overlooking the Field of Mars Reserve. Despite the land being subject to a building height standard of 9.5m, the proposal seeks consent for a dwelling house with a building height of 11.64m, contravening the development standard by 2.1m (22.53% variation).

This assessment demonstrates it is neither reasonable or necessary for the proposed dwelling house to include a building height of 11.64m. A three storey dwelling house that is largely compliant with the building height standard already exists on the subject site, and the area around this existing building is relatively level.

The contravening building height will be observed by the public from a wide area within the Reserve. The imposing building height is incongruous with the Reserve's bushland setting, and discordant with the neighbouring Environmental Education Centre's principles of providing learning experiences for children in the natural environment.

This building's material choice contrasts with the site's natural setting and insensitively promotes the contravening building height. Numerous other aspects of the proposal are similarly insensitive to the site's context, such as the non-compliant landscaped area, deep soil zone, pool coping height, view sharing, setback non-compliances, and inability to retain mature trees. The proposal will result in significant adverse impacts upon the local area, and is not suitable for the site.

7.0 The Public Interest

The public interest is best served by the consistent application of the requirements of relevant environmental planning instruments and by Council ensuring that any adverse effects on the surrounding area and the environment is minimised. The proposal has been assessed against the relevant planning instruments and is unsatisfactory.

Additionally, the proposal results in a contravention of the building height development standard. The contravention has been demonstrated not to be in the public interest when assessing the proposal against clause 4.6 of the RLEP 2014.

8.0 Submissions

In accordance with RDCP 2014 Part 2.1 Notice of Development Applications, the owners of surrounding properties were given notice of the application. In response, two submissions were received. One submission requested a copy of the DA as the landowners were abroad during the notification period.

In summary, the second submission raised the following issues in relation to potential impacts on the adjoining property at No.83 Westminster Road:

- Detrimental impact on views from living spaces
- Detrimental impact of proposed height and potential non-compliance with RDCP 2014
- Diminished solar access
- Proposed setbacks to the boundary and potential impacts on privacy and ability to retain an existing major tree on the boundary.

Amended plans

The amended plans submitted were renotified to surrounding properties in accordance with the Ryde Community Participation Plan.

In response one submission was received raising, in summary, the following issues in relation to potential impacts on the adjoining property at No.83 Westminster Road:

- Failure of submitted Lost View Studies to properly assess the impact of the proposed development on views from the kitchen windows and from within the dining room
- Failure of Lost View Studies document to provide an accurate representation of the loss of view from 83 Westminster Road
- Proximity and height of proposed development would result in significant / total loss of existing view from kitchen window
- Location of proposed development hard up on property boundary would result in detrimental impact on solar access to dining room / living room
- Impact on solar access to living room / TV room on lower ground floor
- Lost View Studies report provides a misleading and inaccurate representation of the entertainment areas of the house, as the external entertainment area is rarely if ever used, and virtually all entertainment occurs within the existing dwelling itself, within the three main areas of the kitchen, living / lounge area and the formal dining / sitting room
- Significant reduction in view from 83 Westminster which does not allow view sharing
- Excessive ceiling heights proposed resulting in unnecessary building height
- Loss of property value due to loss of existing views
- Proximity of proposed building to boundary line, despite size of existing lot
- Non-compliance with RDCP 2014

The issues above primarily relate to concerns regarding the potential impact of the proposal on dwelling amenity, specifically in relation to view sharing and daylight and sunlight access. The matters raised in the submissions are comments on below.

Loss of views of Fields of Mars from 83 Westminster Road

Comment: The planning principles relating to assessing impacts on views have been established in case law, specifically *Tenacity Consulting v Warringah* [2004] NSWLEC 140 at 25-29, which established a four-step assessment to assist in determining if view sharing is reasonable. A detailed view impact assessment has been provided under Part 2.14.4 of the RDCP 2014 assessment.

When assessed against the RDCP 2014 controls and the planning principle, the view loss is considered unacceptable. Although the proposal results in a minor to moderate impact upon views from 83 Westminster Road, the view loss arises from an unreasonable contravention of the building heights development standard. In these circumstances it is agreed that the proposed development should be refused based on view impact.

Excessive height of the dwelling

Comment: The development contravenes clause 4.3(2) of RLEP 2014, which prescribes a maximum building height of 9.5m. The dwelling results in a building height of 11.64m, contravening the height development standard by 2.1m or 22.53%. Although the Applicant has provided a clause 4.6 written request seeking to vary the standard, the written request fails to demonstrate compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The written request also fails to provide sufficient environmental planning grounds to justify contravening the development standard. The building height contravention is also inconsistent with the objectives of the development standard, and the objectives of the R2 zone. It is agreed that the proposed development should be refused based on building height.

Overshadowing impacts to 83 Westminster Road

Comment: The proposal has been assessed against the daylight and sunlight access controls set out in section 2.14.1 of the RDCP 2014. The Applicant provided further information in response to Council's request for shadow diagrams in elevation. The diagrams are hourly between 9:00am to 3:00pm. The diagrams show the kitchen and dining room window of 83 Westminster Road is impacted at 9:00am only, and receives sunlight for the remainder of the day, achieving compliance with the required 3 hours sunlight at the winter solstice. The kitchen and dining room is proposed at the level which is accessed directly from Boyd Lane.

The ground floor is impacted by shadow until 11:00am and will receive sunlight from 12noon, meaning compliance would be maintained to these openings. The development is acceptable in relation to overshadowing.

Proposed setbacks to the boundary and potential impacts on privacy and ability to retain an existing major tree on the boundary

Comment: The proposal provides a compliant side setback of 1.5m from the southern boundary, except for the first floor where a setback of 600mm is proposed. Council's assessment raised concern about this small setback. Irrespective, the proposal does not result in any adverse privacy impacts. Council's assessment similarly raised concern regarding the impact to the existing tree located on the shared boundary (**Figure 30**). The proposal results in a major encroachment of the TPZ of 17% and has not been supported by an arborist report despite Council's request.

Council's assessment also raises concern with the lack of arboricultural impact assessment associated with the proposed development's impact on significant trees within the Westminster Road reserve. Again, despite a request for additional information, an arboricultural impact assessment has not been provided by the Applicant.



Figure 30 Existing pine tree located on the southern boundary between 83 & 85 Westminster.
Source: CPS site inspection 21 March 2023.

9.0 Referrals

Senior Development Engineer: Council's Development Engineer provided the following:

Background

The following key issues raised in the initial Development Engineering review have been addressed by way of revised plans, liaison with the Applicant's consultant and by conditions of consent:

- The location of the dissipator drew concern in that was positioned on a steeply graded embankment and the stability / structural integrity of the structure was likely to be compromised in this location. Additionally, the configuration would likely result in erosion / degradation of the downstream surface.
- OSD and BASIX requirements – The applicant has provided OSD and BASIX which have mostly satisfied the Council DCP and BASIX commitments. There is some error in the OSD calculations however this can be corrected with condition and this component is addressed.
- The development will require a formed driveway to be constructed from Westminster Road to the site. As there is no public drainage service in this area which could accommodate runoff from extensive paving, the only viable option would be to have formed concrete driveway strips (say, each 500mm wide and 1.5m apart) provided from the end of the current road pavement to the vehicle entry point. These works can be conditioned.

Other Matters

The following issues are noted in the revised plans:

- The lowered parking level accessed from Boyd Lane is likely to present a vehicle scraping issue, noting that a crest above the boundary alignment will be required to prevent road water entering the site. The plans depict only a single car space with single width entry sliding gate. If the applicant is not opposed to relocating the space to the lower northern side and having a solid infill dwarf wall on the uphill section, this can readily be accommodated by condition.
- Noting that a further RFI may be distributed, a second review of the plans has noted that it would be prudent for the applicant to confirm the scope of works on the Boyd Lane frontage. There is a nominated path from the first-floor entry (RL24.40m) to what is assumed will be the existing boundary level (RL22.87m as per the survey). This would present a difference in level of some 1.5m but the plans suggest only 3 stairs and these directing upwards from the entry (contrary to the level difference). This should be clarified with the applicant. It is strongly desired that the existing levels in Boyd Lane be retained where possible to avoid the need for structures or retaining walls on the public domain.

Assessing Officer's Response: The Development Engineer's referral response will require a formed driveway from Westminster Road. These works are located within proximity of significant existing trees in the road reserve, and the impacts of these incursions require assessment. The Applicant was requested on 5 April 2023 to provide details pertaining to the works outside of the property associated with facilitating access to the proposed garage access from Westminster Road. Plans and documentation (engineering and arboricultural) were requested from the Applicant. The Applicant's response dated 13 April 2023 states:

The vehicle access on Westminster is an existing driveway. It is also a shared driveway with 83. This existing shared driveway is not part of this DA.

The geotechnical, civil, structural and aboriginal documentation would be required at CC. This driveway when mowed (I understand it is currently overgrown) reveals a gravel and concrete driveway and is a functioning driveway. Works to upgrade this existing driveway to code if required could form part of a separate joint DA with the neighbours at 83.

In proposing a new garage, compliant vehicle access needs to be demonstrated and cannot be deferred to the Construction Certificate (CC) as the environmental impacts on significant vegetation is unknown, and must be considered under section 4.15 of the Act. **Figure 35** shows the proposed garage and part of the driveway related to the proposed garage. The response from the Applicant indicating it is already a functioning driveway is not agreed.



Figure 31 Extract of plan showing proposed garage is red and location of works associated with driveway.



Figure 32 – Photograph captured from Westminster Rd reserve adjacent to the proposed garage looking south. To the right is the existing paved section of driveway which terminates before a large eucalypt tree. The extension requires a formed driveway to be constructed, yet no assessment of the tree impact has been carried out.

Source: CPS site inspection on 30 June 2023.

There is insufficient information included with the application to assess the development's resultant environmental impact. This is requirement of Section 4.15(1)(b) of the Act. The environmental assessment of a development application cannot be deferred to construction certificate stage or separate Application under the *Roads Act 1993*, as there is no such consideration of environmental impact for these stages. It is not appropriate to defer these matters to conditions.

The Applicant confirmed the scope of works on the Boyd Lane frontage via email on 24 April 2023, including a revised Proposed First Floor plan showing an increased number of steps (7 stairs, increased from 3 stairs) along the secondary pedestrian entry within the site boundary to ensure the existing levels in Boyd Lane are retained.

Landscape Architect

The Application was referred to Council's Landscape Architect, who provided the following comments in their referral response dated 27 April 2023:

1.0 Existing Trees

The tree on site along the western boundary will incur a major encroachment into its Tree Protection Zone (TPZ), see Figure 1

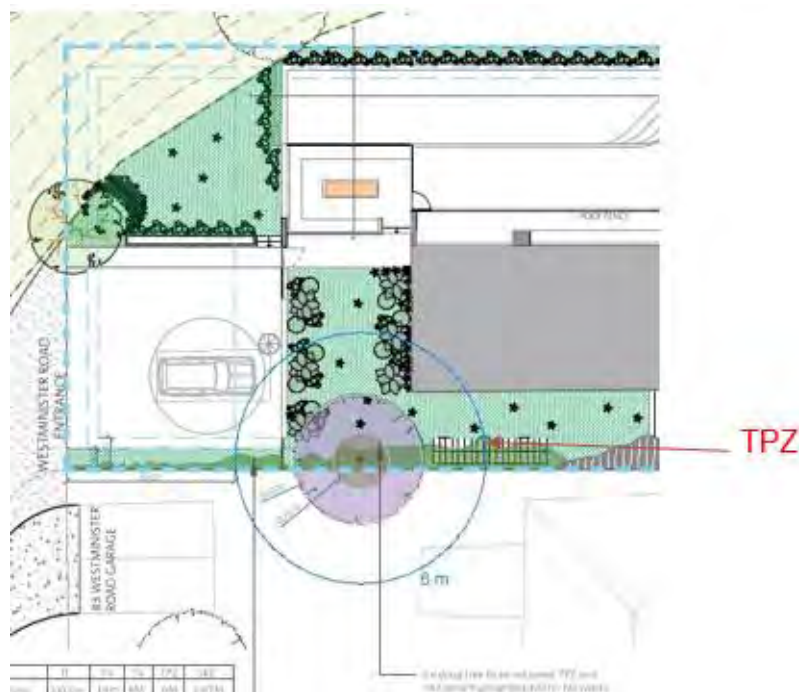


Figure 1

An Arboricultural Impact Assessment (AIA) is required of all trees on site, trees on adjoining sites where any part of the development will encroach into the Tree Protection Zone of those trees and any street trees. This Assessment is to be carried out as per the requirements of Australian Standard AS4970-2009 Protection of trees on development sites. In the AIA must consider the impacts of the development including:

- Fences
- Stormwater proposals.
- Cut and fill.
- Retaining Walls that will be required.
- Car parking and driveway.
- Any encroachment on the Tree Protection Zone and Structural Root Zone of trees on site or on adjoining sites.

The Report must also include a tree protection plan (drawing) showing the TPZs for the trees as required by Australian Standard AS4970-2009. Protection of trees on development sites. It is best if this plan also shows the Structural Root Zones and is superimposed on the Site Plan showing the development and the assessed trees.

2.0 Landscape Plan

The Landscape Plan is unsatisfactory. A Landscape Plan is required prepared by a Landscape Architect or Horticulturalist with a Diploma in Landscape Design. And must comply with the requirements of DCP2014 part 3.3 section 2.13.

The Consultant Planner was provided this referral on 11 May 2023. In the RFI dated 5 April 2023, Council requested information pertaining to the works outside of the property boundary in the Westminster Road reserve which related to the driveway associated with the proposed garage. This included civil, geotechnical, and arboricultural information. The Applicant did not submit this information for the reasons outlined above. Further comments from Council's Landscape Officer were provided on 4 May 2023, providing the following comments:

Existing Trees

The amended plans show the garage has been reduced in size reducing the impact on the Pine Tree to a minor encroachment. However, I have concern that the tree is located on a steep bank and may fail. Therefore, an Arborist should be engaged, and a report issued to Council on the safety and viability of the tree, before the Construction Certificate is issued.

Landscape Plan

The Landscape Plan is still unsatisfactory. A Landscape Plan is required prepared by a Landscape Architect or Horticulturalist with a Diploma in Landscape Design. And must comply with the requirements of DCP2014 part 3.3 section 2.13. This will be made a condition of consent that it is completed before the Construction Certificate is issued.

Assessing Officer's Response: The concerns raised by Council's Landscape Officer are noted. Whilst amendments were undertaken to the garage, the Revision D plans still indicate retaining walls with contiguous piles running parallel to the southern side boundary. It is unclear how the issues raised in the Landscape Architect's initial referral have been satisfactorily addressed given an arborist report and amended landscape plan has not been submitted.

The DA was accompanied by a survey prepared by TECA Management Pty Ltd dated 13/09/2022. This survey references a tree located along the southern boundary with a 14m height, 6m spread and trunk diameter of 0.5m. (**Figure 32**). This detail was utilised to calculate the Structural Root Zone (SRZ) and Tree Protection Zone (TPZ) of the existing tree nominated as being retained.

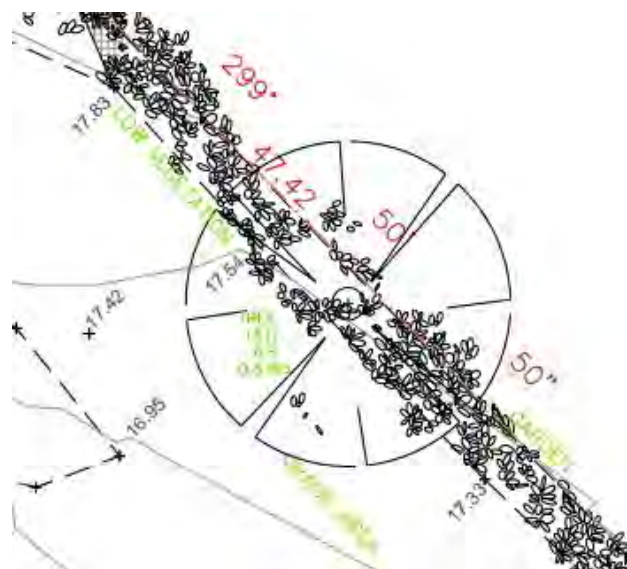


Figure 33 Extract of Survey prepared by TECA Management Pty Ltd dated 13/09/2022.

The consultant who has been engaged to undertake an assessment of this development application (CPS), has obtained advice from CPS's internal AQF Level 5 Arborist. The advice concurs with Council's Landscape Architect referral dated 27 April 2023 that the proposed works will result in a major encroachment of the TPZ (17%).

Figure 33 shows the development includes retaining walls running along the southern side of the nominated garden sited between the garage and lower ground floor. Beneath the retaining wall is contiguous piling which could sever roots of the existing tree. The DA has not been accompanied by an Arborist Report. The extent of encroachment proposed, which is defined as 'major' in accordance with Australian Standard AS4970:2009, is unacceptable and forms part of the recommendation for refusal.

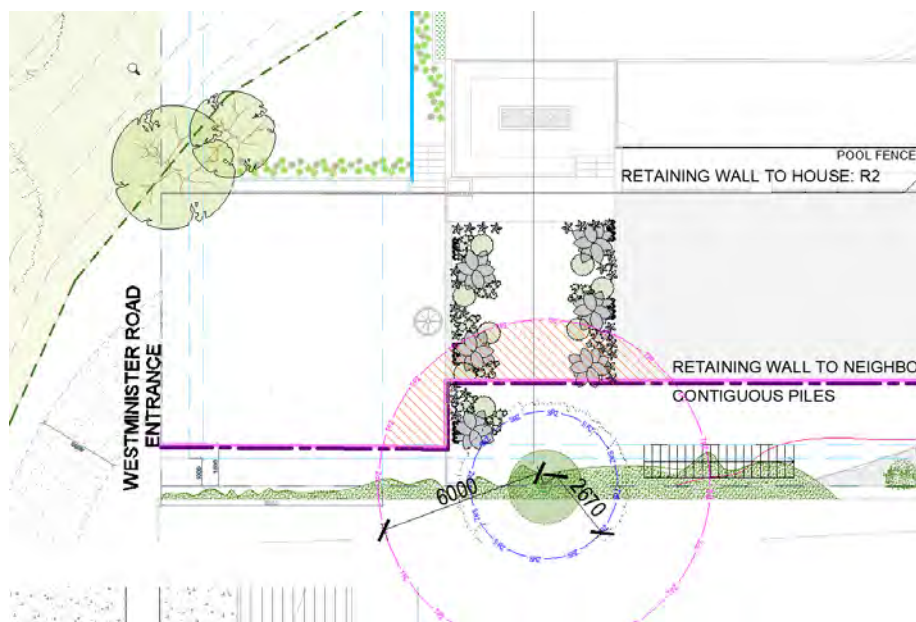


Figure 34 Extract of retaining walls plan with SRZ and TPZ marked. Drawing P109 Revision D dated 12.04.23 provided by Spicer Architects.



Figure 35 Significant vegetation within the area requiring regrading to provide access to proposed garage in the Westminster Road reserve. Source: CPS site inspection dated 21 March 2023.

As mentioned, Council requested information pertaining to the works outside of the property boundary. The Applicant declined to submit such information, indicating the documentation could be provided at construction certificate stage. The environmental assessment of a development application cannot be deferred to construction certificate stage or separate Application under the *Roads Act 1993*, as there is no such consideration of environmental impact for these stages of a development proposal. It is not appropriate to defer these matters to conditions.

Heritage Advisor: The application was referred to Council's Heritage Adviser who provided the following comments:

Heritage Referral Comment (minor) – 85 Westminster Road Gladesville
Details - general

Proposed development: demolition of existing multi-level dwelling house, and construction of a multi-level dwelling-house (modern style), swimming pool and carport. See amended architectural plans, dated 16.12.2022, D22/168101.

SEE. See D22/145295. FYI - The document incorrectly states there are no heritage item in the vicinity of the site.

Heritage Impact Statement. Brief comment. See D22/145302.

Desktop site visit (Google maps): The property is located at the end of Westminster and Boyd Lane and has the Field of Mars reserve and heritage item located on its north and west boundaries. The site has a significant fall of about 9m across the site. There is notable tree plantings on the adjacent property (northern boundary) and beyond that is the Field of Mars Environmental Educational Centre. There are Aboriginal places on the Field of Mars site, but now within the vicinity the site. Westminster Road and Boyd Street are standard residential streets, with a mix of modern single-storey and two-storey dwelling-houses (low density).

Schedule of colours and materials- Can only see reference to render on plans.

Details – Heritage

- Property adjacent to Field of Mars Wildlife Reserve Heritage Item (Landscape), #158
- The heritage item significance relates to its landscape and its indigenous plantings trees/ vegetation communities and other ancillary elements. There is no statement of significance for the heritage item (which needs to be addressed). The heritage item property is owned by NSW Schools Infrastructure/ Department of Education, and it is understood it is on a Section 170 register of the Heritage Act).

Remarks

The proposed development will sit on the southern corner of the site and mainly occupy the footprint of the existing house to be demolished. This onsite location is furthest away from the Field of Mars Reserve/ heritages item. The house is a multi-storey house that is designed to sit-in-to the site, given the drop/ fall across the site. The house will sit-in-to its broader setting with the adjacent Reserve.

The onsite location of the house, ensure there is limited, if no impact on the root systems of vegetation/ plantings on the adjacent Field of Mars Reserve/

heritages item. No views to or from the Field of Mars Reserve/ heritages item are affected by the proposed development.

As matter of general development assessment, the materials and colours to be used where not clear from the plans and reports. It is suggested that a roof colour that reflects the colours of the local vegetation/ plantings be used to further hug the house to the ground and blend the roof with vegetation.

In conclusion, the proposed development will have no adverse impact on the heritage significance of the heritage item adjacent to the site. No heritage conditions of development area required.

Assessing Officer's Response: The Heritage Officer's referral response indicates their assessment is based on a desktop site visit (Google maps). The referral response also indicates no views to or from the Field of Mars Reserve/ heritages item are affected by the proposed development.

As demonstrated throughout this report, the physical inspection of the site and surrounds by the consultant planner has identified that the existing three-storey dwelling house is readily visible from numerous vantage points throughout the Field of Mars Reserve heritage item. This assessment has also demonstrated that views to the Field of Mars Reserve are currently available from neighbouring property at 83 Westminster Road, and from the public domain within the Boyd Land and Westminster Road reserve.

The Heritage Officer's referral response indicates the multi-storey house will sit-in-to the site, but does not acknowledge the proposal's 11.64m building height, with is 2.1m higher and much larger than the existing dwelling on the site.

It is agreed that materials and colour schedule for the proposed development is insensitive to the site's natural setting.

While the Heritage Officer's referral response is acknowledged, it is not agreed that the proposal will have no adverse impact on the heritage significance of the neighbouring heritage item.

Geotech / Structural Engineer: The application was referred to Council's Geotech / Structural Engineer who provided the following comments:

The information provided by Council has been reviewed and we comment as follows:

1. The proposal is for demolition of a split level 3-storey house and construction a new split level 3-storey house with a part basement and a swimming pool. The floor levels of the house generally follow the site topography.
2. The stormwater management plan by DT Civil shows that all stormwater is discharged to the public land to the north-west corner of the site through an energy dissipator located within the subject site at the north-west corner.
3. Excavation depth for the part basement will extend up to about 3.0m below existing ground level. The basement is located about 1.5m from the boundary and the base excavation will be within the zone of influence of the ground level at the southern boundary.
4. Excavation depth for the swimming pool will extend up to about 2.0m below existing ground level. The distance of the pool from the boundary varies and the adjacent property is not affected by the zone of influence from the base of the excavations.

5. Council's maps show that part of the subject site is listed as having a slope instability risk level of M3(A) Moderate Risk.
6. Council's normal policy for construction on sites at risk of slope instability is to request the applicant to provide a geotechnical report that assesses risks and that makes recommendations as to how these risks can be appropriately minimised.
7. The subsurface conditions are described as shallow topsoil, fill up to 3.2m, residual soil up to 1.8m overlaying Class V sandstone. Sandstone ledges are also present in the vicinity of the existing house. The proposed does not intend to disturb the sandstone ledges and proposed structures are clear from the sandstone ledges.
8. MM Geomechanics have undertaken a Risk Assessment and have assessed the post-development risk to low subject to the design and construction being carried out in accordance with the works described in the notes to Table 9.2.
9. MM Geomechanics have assessed the loss of risk of life as acceptable and tolerable subject to the design and construction works being carried out in accordance with the works described in the notes to Table 9.3.
10. A revised geotechnical investigation report has been provided by MM Geomechanics dated 12 February 2023. The report now references the site being listed on Council's maps as having a slope instability, and the stormwater management plan by DT Civil

Should Council's officers decide to approve this application, PSP Consult recommends that this approval be conditional requiring that all design and construction works be carried out in full compliance with the recommendations of the geotechnical investigation report by MM Geomechanics dated 12 February 2023.

Bushfire Consultant: The application was referred to Council's Bushfire Consultant who concurred with the submitted Bush Fire Assessment Report, which concluded a Bushfire Attack Level of Flame Zone, and recommended Council refer the Application to the NSW Rural Fire Service. A response from the NSW RFS has been received with recommended consent conditions.

10.0 Conclusion

After consideration of the development against section 4.15 of the *Environmental Planning and Assessment Act 1979* and the relevant statutory and policy provisions, the proposal is deemed not suitable for the site and contrary to the public interest. Therefore, it is recommended that the application be refused for the following reasons:

- The proposed height of 11.64m results in a 22.53% variation to Clause 4.3 Height of Buildings development standard and has not been accompanied by satisfactory written request to vary the development standard under Clause 4.6 of the RLEP 2014.
- The development does not satisfy the objectives for R2 zoned land. While it will provide for the housing needs of the community, the building height contravention results in a development incongruous with the low-density residential environment for the City of Ryde.
- The development poorly responds to the site's context, and r overdevelopment of the site.
- The Applicant has not demonstrated the development does not result in any adverse impacts to the natural environment. Based on the plans provided, the development results in a major encroachment upon existing significant trees nominated for retention. Despite Council's request for additional information, the Applicant has declined to provide sufficient information to assess the impact of the proposed development on significant vegetation and confirm tree retention is possible.

- The proposed development is contrary to a range of development controls contained within the RDCP 2014, including but not limited to building height (number of storeys), view loss, setbacks, swimming pools, landscaping, and deep soil areas.
- The proposed development will have an adverse impact on the heritage significance of the neighbouring Field of Mars Reserve heritage item.
- Approval of the development would be contrary to the public interest.
- The application fails to provide sufficient information to carry out a proper assessment of all aspects of the proposal.

11.0 Recommendation

THAT the Ryde Local Planning Panel refuse Local Development Application. LDA2022/0334 for the demolition of an existing 3-storey dwelling and construction of a new 3-storey dwelling, swimming pool and carport on land at 85 Westminster Road, Gladesville, for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development contravenes Clause 4.3 of *Ryde Local Environmental Plan 2014* in that:
 - The development results in a building height of 11.64m and contravenes the building height development standard of 9.5m by 2.1m (22.53% variation).
 - The written request seeking a variation to the building height development standard has not demonstrated compliance with the standard is unreasonable or unnecessary pursuant to Clause 4.6(3)(a).
 - Pursuant to Clause 4.6(3)(b), the written request does not demonstrate sufficient environmental planning grounds to justify the building height contravention. The building height contravention arises solely through pursuit of oversized floor to ceiling heights and slab thicknesses across a three-storey development.
 - The jurisdictional prerequisites have not been met with respect to the development application, and development consent cannot be granted.
2. Pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979* the development is contrary to Section 1.3 Objects for the following reasons:
 - The proposal does not promote the orderly and economic use and development of land. The development results in adverse impacts upon surrounding properties that could be avoided with a more sensitive building design that responds better to the site's context.
 - The proposal does not promote good design and amenity of the built environment. The development is not responsive to the site's prominent position at the end of a ridge overlooking the Field of Mars Reserve, and consequently results in environment impacts, and is inconsistent with the suite of built form controls applying to the land.
3. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development is inconsistent with the provisions of *Ryde Local Environmental Plan 2014* in that:

- The development is contrary to Clause 5.10 Heritage Conservation. The proposal's contravening building height, insensitive use of materials and finishes, and ancillary structures will have an adverse visual impact on the heritage significance of the neighbouring heritage item (Item No.158 – Field of Mars Wildlife Reserve).
4. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the development results in unacceptable and adverse impacts upon the natural and built environment:
- The development results in adverse visual impacts to the local area as a result of the contravening building height, and large three-storey scale of the building.
 - The development results in unreasonable amenity impacts to adjoining properties in terms of views loss.
 - The development does not satisfy Chapter 2 of *State Environmental Planning Policy (Biodiversity and Conservation) 2021*. The development results in a major encroachment upon existing significant trees nominated for retention. Despite Council's request for additional information, the Applicant has declined to provide sufficient information to assess the impact of the proposed development on significant vegetation, and confirm tree retention is possible.
5. The development fails to comply with development controls and objectives contained in the *Ryde Development Control Plan 2014*, specifically:
- Part 3.3, including the following provisions –
 - o 2.1 and 2.2 Desired future character and dwelling houses. The proposal is three storeys in scale and exceeds the two-storey maximum.
 - o 2.6.2 Topography and excavation – the proposal includes excavation up to 5.93m, and retaining walls up to 2.465m high. The proposal fails to satisfactorily retain natural ground levels and minimise the extent of excavation and fill.
 - o 2.8.1 Building Height – the proposed building height exceeds the 9.5m control, and two-storey height limit.
 - o 2.9.1 Front setback – The 3.9m high blade wall extending from the building façade to the front boundary with Boyd Street fails to comply with the 6m front setback control.
 - o 2.9.3 Rear setbacks – The proposal includes a detached garage accessed from Westminster Road with a rear boundary setback of 3.2m.
 - o 2.12 Swimming pools – The coping height presenting to the Field of Mars is 1.2m and fails to comply with the 500mm control. No screen planting is provided to the northern pool elevation presenting to the Field of Mars Reserve as required by the controls.
 - o 2.13 Landscaping – The proposal fails to achieve compliance with the minimum deep soil and landscaped area controls. The proposal also results in impacts to significant vegetation and includes excessive hard paving within the front setback.

- 2.14.4 View sharing – The development fails to ensure new dwellings endeavour to respect important views from living areas within neighbouring dwellings, specifically 83 Westminster Road.
6. The application fails to provide sufficient information to carry out a proper assessment of all aspects of the proposal. This includes insufficient information depicting the entire southern elevation showing all components of the proposed development.

The landscape plan is not consistent with the architectural plans.

Plans demonstrating works necessary within the Westminster Road reserve to facilitate access to the new garage on the rear boundary have not been provided, including a supporting arboricultural assessment demonstrating impacts to trees.

7. The site is not suitable for the proposed development pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
8. Having regard to the reasons noted above, pursuant to the provisions of Section 4.15(1)(d) and Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, approval of the development application is not in the public interest.

ATTACHMENTS

- 1 Ryde Development Control Plan 2014 – Table of Compliance
- 2 Architectural Plans - subject to copyright provision
- 3 Clause 4.6 Request – Building Height

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ATTACHMENT 1 – DCP COMPLIANCE TABLE

DCP 2014	Proposed	Compliance
Part 3.3 - Dwelling Houses and Dual Occupancy (attached)		
Section 1.0 Introduction		
Part 1.6 Site Analysis		
Site analysis to be submitted.	Drawing prepared by Spicer Architecture. Drawing number 001 Rev C, dated 15.12.2022	Yes
Section 2.0 General Controls		
2.1 Desired Future Character		
Development is to be consistent with the desired future character of the low density residential areas.	<p>The desired future character for the low-density residential environment is described as having a low scale determined by a maximum 2 storey height limit.</p> <p>The proposed dwelling is three-storey in scale with a contravening 11.64m building height. The building height results in a development incongruous with the low-density residential environment that does not achieve the desired future character.</p>	No
2.2 Dwelling Houses		
(a) Landscape setting which includes significant deep soil areas at the front and rear	A landscaped front garden is provided, however 66% of the front setback is hard paved area and does not provide for a significant deep soil at the front of the site.	No
(b) Maximum two storeys high	There is one area to the rear which includes sufficient space to incorporate the required 8m x 8m deep soil area. The proposal is for a three (3) storey dwelling.	No
(c) Dwellings address the street	The proposed dwelling addresses the street.	Yes
(d) Boundary between public and private space is clearly articulated	The boundary between public and private space is clearly defined.	Yes
(e) Garages and carports are not to be visually prominent features	Although the rear garage and front car port are located within the front setback from Westminster Road and Boyd Lane respectively, the unusual location of the site means they will not be visually prominent	Yes
(f) Dwellings are to respond appropriately to the site analysis	The proposed dwelling responds appropriately to the site analysis. However, the design does not appropriately respond to the topography of the site.	No
2.5 Public Domain Amenity		
2.5.1 Streetscape		

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DCP 2014	Proposed	Compliance
(a) Site design, building setbacks and level changes respect the existing topography	The proposed levels of the development as not responsive to the existing site. The proposal includes an elevated lower ground floor level and increased floor to ceiling heights creating an exacerbated building height.	No
(b) Front gardens to complement and enhance streetscape character	<p>The development has a non compliant front setback, excessive paved areas within the front setback presenting to Boyd Lane and a reduced deep soil landscaped area.</p> <p>Neighbouring properties to the south include vehicular access with parking structures with reduced front garden areas presenting to Boyd Lane. The development in this regard is not inconsistent with the character.</p> <p>However, the reduced setbacks, extend of hard paving and dwelling height which will be readily visible from Boyd Lane has not been mitigated by the provision of a front garden. Therefore, it cannot be said the development enhances the streetscape character.</p>	No
(c) Dwelling design is to enhance the safety and amenity of the streetscape	<p>The proposal has not demonstrated the dwelling design would enhance the visual amenity of the streetscape.</p> <p>The dwelling design would not enable passive surveillance of the existing streetscape along Boyd Lane, this is considered acceptable based on the location of the site at the end of Boyd Lane.</p>	No
<p>(d) Carports and garages visible from the public street are to:</p> <p>(i) Be compatible with the building design</p> <p>(ii) Be setback behind the dwelling's front elevation</p>	<p>The proposal includes provision of two (2) separate parking structures presenting to Boyd Lane and Westminster Road.</p> <p>The proposal is non-compliant with the control as the parking structures are not setback behind the front façade.</p> <p>The proposed parking structures, although non-compliant, are consistent with the existing streetscapes.</p>	No
(e) Driveways and hard stand areas are to be minimised	Driveways proposed from Boyd Lane and Westminster Road have been minimised.	Yes
(f) Dwellings, garages and carports are to be orientated to match the	The lower levels of the building are orientated broadly east to west which matches the existing streetscape. The	No

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DCP 2014	Proposed	Compliance
prevailing orientation of such buildings in the streetscape	first-floor level would be orientated at a different angle (broadly south to north) to other properties along Westminster Road and Boyd Lane. Surrounding development is generally orientated east to west, perpendicular to the street.	
(g) Facades from the public domain are to be well designed.	The eastern elevation presenting to Boyd Lane however provides for the dwelling entrance and vehicular access, so despite the first-floor orientation the visual presentation will not be inconsistent with surrounding development. The proposed orientation is considered appropriate in this instance and provides for increased levels of visual amenity for future occupants. The proposed facades are considered to be well designed.	Yes
2.5.2 Public Views and Vistas		
(a) A view corridor is to be provided along at least one side allotment boundary where there is an existing or potential view to the water from the street. Landscaping is not to restrict views. Fence 70% open where height is >900mm.	There are no existing or potential public views to the water from the existing street. Public views towards the Field of Mars Reserve along Boyd Lane and Westminster Road are available.	N/A
(b) Garages/carports and outbuildings are not to be located within view corridor if they obstruct view.	There are no existing or potential public views to the water from the existing street.	N/A
2.5.3 Pedestrian & Vehicle Safety		
(a) Car parking structures located to accommodate sightlines to footpath & road	The proposed gate / carport is set back 2.7 metres from Boyd Lane and is 1.2 metres tall, so sufficient sightlines to the road will be available for reversing vehicles. The proposed garage accessed from Westminster Road contains a turning circle to enable vehicles exiting in a forward direction to facilitate sightlines.	Yes
(b) Fencing that blocks sight lines is to be splayed.	The proposed timber batten fence / gate is set back 2.7 metres from the property boundary and is 1.2 metres tall, so will not block sightlines.	Yes
(c) Refer to relevant AS when designed driveways	The development is capable of achieving compliance with AS2890.1.	Yes

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DCP 2014	Proposed	Compliance
2.6 Site Configuration		
2.6.1 Deep Soil Areas		
(a) 35% of site area min.	35% of site area = 333.87m ² Total DSA proposed = 315.2m ² (33%)	No
(b) Deep soil area must include: (i) Min 8x8m deep soil area in backyard. (ii) Front garden area to be completely permeable (exception driveway, pedestrian path and garden walls).	There is a minimum 8 x 8 metre deep soil area in the backyard. The front garden is completely permeable except the driveway / parking area, pathway and screen walls.	Yes Yes
(c) Deep soil areas to have soft landscaping	Deep soil areas include soft landscaping.	Yes
(d) Deep soil areas to be 100% permeable. Not covered by structures, paving or the like, or have below surface structures such as stormwater detention elements.	The deep soil areas indicated on the submitted Calculation Areas drawing (no. 105 Rev C) are not 100% permeable, as it includes some areas that are covered by the existing rock cliff edge or proposed structures. These areas have therefore been excluded from the calculation in (a) above.	No
2.6.2 Topography & Excavation		
(a) Building form and siting relates to the original topography of the land and of the streetscape.	A three-storey dwelling house is located on the eastern half of the site, while the western half is currently vacant. There are currently sandstone outcrops to the west, east and south of the existing dwelling. The building form and siting does not relate to the original topography of the land and of the streetscape.	No
(b) The area under the building footprint may be excavated or filled so long as: (i) the topography of the site requires cut and/or fill in order to reasonably accommodate a dwelling (ii) the depth of excavation is limited to 1.2m maximum (iii) the maximum height of fill is 900mm	Retaining walls exceed 900mm. Retaining walls to a maximum height of 2.465m is proposed. The proposal includes excavation to depths between approximately 350mm and 2.35 metres below natural ground level associated with the formation of the new swimming pool. Max fill: 0.82m	No No Yes

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DCP 2014	Proposed	Compliance
<p>(c) Areas outside the dwelling footprint may be excavation and/or filled so long as:</p> <p>(i) the maximum height of retaining walls is not >900mm</p> <p>(ii) the depth of excavation is not >900mm</p> <p>(iii) the height of fill is not >500mm</p> <p>(iv) the excavation and filled areas do not have an adverse impact on the streetscape</p> <p>(v) the filled areas do not have an adverse impact on the privacy of neighbours</p> <p>(vi) the area between the adjacent side wall of the house and the side boundary is not filled</p> <p>(vii) the filled areas are not adjacent to side or rear boundaries</p> <p>(d) Fill is not allowed in areas of overland flow. Refer to Part 8.2 stormwater management</p> <p>(e) Generally the existing topography is to be retained.</p>	<p>Retaining wall height = 1.2m (swimming pool / deck)</p> <p>Up to 1.4 metres excavation associated with terracing in the rear garden.</p> <p>Max fill: 0.6m</p> <p>The areas proposed for excavation and fill outside the dwelling footprint are to provide terraced areas for landscaping and pedestrian access in the lower part of the site, so will not have an adverse impact on the streetscape.</p> <p>The filled areas would not have an adverse impact on the privacy of neighbours due to the topography of the site, which is significantly lower than neighbouring properties.</p> <p>Not proposed.</p> <p>No fill is proposed immediately adjacent to side or rear boundaries.</p> <p>The site is not in an area of overland flow.</p> <p>The existing topography of the site is not generally maintained due to the extent of cut and fill.</p>	<p>No</p> <p>No</p> <p>No</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>N/A</p> <p>Yes</p>
2.7 Floor Space Ratio (FSR)		
<p>(a) FSR is 0.5:1 in accordance Clause 4.4</p> <p>(b) A floor area of 36m² maybe excluded when this area accommodates 2 car space. An area of 18m² may be excluded when the area accommodates 1 parking space.</p>	<p>0.48:1</p> <p>An area of 18m² has been excluded from the GFA calculation as the rear garage accommodates 1 parking space.</p> <p>The Boyd Lane car port has been excluded from GFA calculations as it does not comprise internal floorspace.</p>	<p>Yes</p> <p>Yes</p>
2.8 Height		
2.8.1 Building height		
<p>(a) Building heights are to be as follows:</p>	<p>Roof RL (first floor): RL 27.80</p> <p>EGL (lowest) under: RL 16.16</p> <p>Height of Building = 11.64</p>	<p>No</p>

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DCP 2014	Proposed	Compliance
<ul style="list-style-type: none"> - Maximum height of 9.5 metres for dwellings and dual occupancy. - Outbuildings including garages and carports maximum height 4.5 metres. 		
<u>Maximum wall plate</u> <ul style="list-style-type: none"> - 7.5m max above FGL or - 8m max to top of parapet <p><i>NB:</i> <i>TOW = Top of Wall</i> <i>EGL = Existing Ground Level</i> <i>FGL = Finished Ground Level</i></p>	<p>TOW RL: 24.00</p> <p>EGL below: RL 16.96</p> <p>TOW Height = 7.04m</p>	Yes
<u>Maximum number of storeys:</u> <ul style="list-style-type: none"> - 2 storeys maximum (storey incl basement elevated greater than 1.2m above EGL). 	3 storeys	No
<ul style="list-style-type: none"> - 1 storey maximum above attached garage incl semi-basement or at-grade garages 	No additional storeys proposed above proposed garage.	Yes
2.8.2 Ceiling Height		
(a) Habitable rooms to have 2.4m floor to ceiling height (min).	<p>The proposal includes increased floor to ceiling heights which include:</p> <p>First storey: 4m Second storey: 3m Third storey: 3m</p> <p>In addition, the proposal includes 400mm thick slabs. Although compliant, these heights contribute to the height contravention.</p>	Yes
2.9 Setbacks		
2.9.1 Front setbacks		
(a) Dwellings are generally to be set back 6m from street front boundary	The proposal includes a 3.9m high blade wall extending from the dwelling house and associated carport to the front boundary with Boyd Lane and does not comply with the front setback.	No
(b) Garages and carports, including semi-basement garages and attached garages, set back min 1m from façade	The proposed car port (accessed via Boyd Lane) and garage (accessed via Westminster Road) are both located in front of the building façade. These elements however are not inconsistent with existing streetscape character which includes parking structures forward of dwelling facades presenting to both frontages.	No

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DCP 2014	Proposed	Compliance
(c) The front setback free of structures. The exception is car parking structures which comply with 2.11.	See above.	No
2.9.2 Side Setbacks		
(a) One storey dwellings setback 900mm (b) Two storey dwellings setback 1.5m	<p>N/A</p> <p>The western corner of the first floor of the building has a setback of 600mm to the south-western side boundary.</p> <p>Concern is held in relation to the dwelling failing to meet the deemed to satisfy provision of the BCA in terms of providing a 900mm setback from the boundary.</p> <p>The wall to the north of the stairs to the open alfresco are setback 900mm from the northern side boundary.</p> <p>The development does not comply with the required setbacks.</p>	<p>N/A</p> <p>No</p>
2.9.3 Rear Setbacks		
(a) The rear setback min 25% of the site length or 8m, whichever is greater.	<p>A rear setback of 11.86m is 25% of site length.</p> <p>The rear setback is taken to be the Westminster Road frontage. The proposal includes a detached garage accessed from Westminster Road with a boundary setback of 3.2m and is non-compliant.</p>	No
2.10 Outbuilding		
(a) Ancillary use to the dwg	Proposal includes a cabana to the west of the swimming pool.	Yes
(b) Max area of 20m ²	15m ²	Yes
(c) Not between the front boundary and front of dwelling.	Setback 4.41m from northern side boundary.	Yes
(d) Design and materials to complement the dwelling.		Yes
(e) Outbuilding may contain a toilet, shower and hand basin but cannot contain a bar, sink or any other kitchen facilities	The plans do not indicate any specific design details. This is something that could be conditioned to ensure compliance.	Yes
(f) May be located on the side and rear boundary if the external wall is maintenance free and no eaves overhang	Setback 4.41m from northern side boundary.	Yes

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DCP 2014	Proposed	Compliance
(g) If closer than 900mm to the boundary, a concrete dish drain is to be constructed between the external wall and boundary		N/A
(h) Window to be at least 900mm from boundary	No windows proposed.	N/A
(i) No adverse effect on privacy and/or amenity of neighbours	Proposal does not result in any adverse impact upon neighbouring properties amenity due to the separation distance.	Yes
(j) Not to be located within view corridor to the water	There are no water views from the site.	N/A
(k) Not to be used as a dwelling.	The cabana cannot be used as a dwelling.	Yes
2.11 Car Parking and Access		
2.11.1 Car Parking		
(a) Dwellings 2 spaces. Dual occ 1 space/dwg	Two spaces proposed – one in rear garage and one in front car port.	Yes
(b) Spaces can be enclosed or roofed.		Yes
(c) Garages setback 1m behind front elevation.	The proposed garage is located at the rear of the site.	No
(d) Located forward of existing dwelling if: (i) there is no other suitable position (ii) no vehicular access to the rear of side of the site (iii) it is preferred that it is single car width.	The development proposed carport forward of the building line presenting to Boyd Lane. The site has vehicle access available to the rear of the site from Westminster Road. The proposed structure which accommodates off street parking also includes parking for bicycles and pedestrian access resulting in a width of 5.815m.	No
(e) Garages doors solid. No expanded mesh doors.	Timber batten doors proposed to both parking structures.	Yes
(f) Preference located off laneways, secondary street frontages.	The proposal includes parking structures accessed from both the Boyd Lane frontage and Westminster Road frontage. The site is unusual in having dual frontages with adjoining properties to the south containing access from both frontages.	No
(g) Driveway widths minimised. Driveways single car width except where needed to be widen to double garage access.	Satisfactory	Yes
(h) Driveways not roofed.	Not proposed	Yes

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DCP 2014	Proposed	Compliance
(i) Garages and carports facing the public street are to have a maximum width of 6 m or 50% of the frontage, whichever is less	Due to the location of the site, the rear garage does not face a public street. The front car port (covered/open hardstand area) facing Boyd Lane has a maximum width of 5.85m.	Yes
(j) Total width garage doors not be >5.7m	Rear garage doors will be 3.4m wide, and concealed within a wider timber batten façade which also includes pedestrian entry.	Yes
(k) Driveways for battle axe enable vehicles to enter and leave in forward direction	N/A	N/A
(l) Garage doors not be recessed more than 300mm behind the outside face of the building element immediately above.		Yes
(m) Garage windows >900mm from boundaries	Not proposed	N/A
(n) Free standing garages max GFA 36m ²	N/A	N/A
(o) Design and materials to complement dwelling	Satisfactory	Yes
(p) Setback at least 1m from building's front façade	The proposed garage is located at the rear of the site.	No
(q) Carports not enclosed.	Carport is not proposed to be enclosed.	Yes
2.12 Swimming Pools and Spas		
(a) Swimming pools, fencing, gates and spas must comply with all relevant Acts, Regulations and Australian Standards.	Capable of compliance with conditions of consent.	Yes
(b) Child resistant barrier.	Capable of compliance with conditions of consent.	Yes
(c) Wall of dwelling may form part of the barrier.		N/A
(d) If spa is covered by a child safe structure no barrier required.	No spa proposed.	N/A
(e) Not within front setback.	The swimming pool is not located within the front setback.	Yes

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DCP 2014	Proposed	Compliance
(f) Finished coping level not >500mm above adjacent ground level. Must not adversely impact on privacy of neighbours.	The finished coping level of the southern and eastern sides of the pool are at the same level as the adjoining deck. The finished coping level of the northern and western sides of the pool is 1.2m above the adjacent ground level to the north due to the fall in levels across the site.	No
(g) Pools to be setback 900mm from outside edge of coping, deck or pool surrounding including paving. Further setback to preserve existing screen planting.	The proposed pool is setback 905mm from the boundary.	Yes
(h) Screen planting is to be provided within a landscape bed, which is to have a minimum width of 900 mm and is to extend for the length of the pool. Planting is to take the form of dense hedging with a minimum height of 2 m and minimum spacing of plants of 1 metre.	No screen planting proposed due to existing dense vegetation adjacent to the southern boundary of the site.	No
(i) Min 3m from trunk of trees over 5m in height.	There are no existing trees over 5m in height within 3m of the proposed pool.	Yes
(j) Pool pump/filter away from neighbouring dwgs. Acoustically enclosed noise does not exceed 5dB(a) above background at boundary.	Two potential pump/filter locations indicated on plans, both located away from neighbouring dwellings.	Yes
2.13 Landscaping		
(a) Major trees to be retained where practical	Arborist report has not been submitted. Development results in a 17% major encroachment into TPZ of existing tree. No consideration given to the existing Eucalypts within the Westminster Road reserve which can be potentially impacted by provision of a driveway.	No
(b) Lots adjoining bushland, protect and retain indigenous native vegetation and use native indigenous plant spaces for a distance of 10m	Landscaping within 10m of the northern boundary to comprise native indigenous plant species.	Yes

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DCP 2014	Proposed	Compliance
(c) Provide useful outdoor spaces	The proposal incorporates various different useful outdoor spaces, including parking areas, swimming pool, deck area, uncovered cabana, open/alfresco living area, deep soil areas and other landscaped areas.	Yes
(d) Physical connection between dwelling and external ground level	Satisfactory - physical connections proposed between dwelling and external ground level wherever levels / topography permits.	Yes
(e) Provide landscape front garden. Hard paved areas no more than 40%.	The front setback area is 120m ² in area. The proposed front garden is approximately 40m ² in size (excluding the existing natural landscape / rock outcrop). Approximately 66% of the front garden area comprises hard paved areas.	No
(f) Pathway along one side boundary connecting front to rear. Not to be blocked by ancillary structures. Not required where there is rear lane access or corner allotment.	Access provided along the southern side boundary. .	Yes
(g) Landscape elements in front garden to be compatible with scale of dwelling.	Low level landscape planting is proposed in the front garden. The 3 storey scale and height of the dwelling will be visible. The planting is not compatible with the scale of the development when viewed from Boyd Lane.	No
(h) Front garden at least 1 canopy tree at least 10m in height	The front garden is not sufficient in size to accommodate a 10m high canopy tree given the extent of paved areas and limited deep soil landscape area.	No
(i) Mature tree at least 15m in rear garden with the DSA	One tree shown within the DSA in the rear garden on the submitted Landscape Plan. Minimum tree size can be secured via condition.	Yes
(j) Locate and design landscaping to increase privacy between dwellings	N/A given location of site.	N/A
(k) Hedge planting on boundary no greater than 2.7m	No hedge planting on boundary proposed.	N/A
(l) Retaining walls and other landscape elements not to obstruct stormwater overland flow.	Retaining walls and other landscape elements do not obstruct stormwater overland flow.	Yes

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DCP 2014	Proposed	Compliance
(m) OSD not to be located within front setback unless it is underneath driveway	N/A – OSD not required	N/A
(n) Landscaping to include ground level private open space	The principal landscape area providing private open space is located at lower ground level due to site topography. Although the living areas are located on the first floor, alternative private open space is provided at this level in the form of a balcony.	Yes
2.14 Dwelling Amenity		
2.14.1 Daylight and Sunlight Access		
(a) Living areas are to be predominantly located to the north where possible	Living areas are predominantly located to the north	Yes
(b) Sites with northern side boundary to have increased setback of 4 metres is preferred.	The northern side boundary of site adjoins public recreation land and living areas are located on first floor, so internal living areas will receive plenty of sunlight access. Submitted shadow diagrams demonstrate compliance.	N/A
<u>Subject Dwelling</u>		
(c) Windows to north facing living areas of subject dwellings are to receive at least 3 hours of sunlight between 9am to 3pm on June 21.		Yes
(d) Private open space is to receive at least 2 hours sunlight between 9am to 3pm on June 21.	Submitted shadow diagrams demonstrate compliance.	Yes
<u>Neighbouring properties:</u>		
(e) For neighbouring properties:		

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DCP 2014	Proposed	Compliance
(i) sunlight to 50% of principal areas of ground level POS is not reduced to less than 2 hours between 9am to 3pm on 21 June	<p>The proposal results in the following additional shadow impacts to 83 Westminster Road:</p> <ul style="list-style-type: none"> • Overshadows the two (2) lower ground floor windows at 9am. • Partial overshadowing of the two (2) lower ground floor windows at 10am. • Partial overshadowing of the two (2) lower ground floor windows, greater than 50% of sunlight is received to both windows at 11am. • Partial overshadowing of the two (2) lower ground floor windows, greater than 50% of sunlight is received to both windows at 12 noon. • The two (2) lower ground floor windows receive full sunlight between 1 – 3pm. 	Yes
(ii) windows to north facing living areas to receive at least 3 hours of sunlight between 9am and 3pm on 21 June over a portion of surface, where can be reasonably maintained given orientation and topography.	Submitted shadow diagrams demonstrate compliance.	Yes
2.14.2 Visual Privacy		
(a) Orientate the windows of main living spaces (living room, dining, kitchen, family etc) to the front and rear	The windows of the main living spaces are orientated towards the adjoining reserve to the north, and do not face any existing neighbouring properties.	No
(b) Orientate terraces, balconies and outdoor living areas to front or rear and not side boundary	All terraces, balconies and outdoor living areas are orientated towards the adjoining reserve to the north, and do not face any existing neighbouring properties.	No
(c) Terraces and balconies are not to overlook neighbour's living areas and POS	All terraces and balconies are orientated towards the adjoining reserve to the north, and do not overlook any existing neighbouring properties.	Yes
(d) Living and kitchen windows, terraces and balconies are not to allow direct view into neighbouring dwelling or POS	There will be no direct views into neighbouring dwellings or private open space from any of the living and kitchen windows, terraces or balconies.	Yes
(e) Side windows are to be offset by sufficient distance to avoid visual connection between dwellings.	Condition would be required to ensure side (bathroom) windows on ground level are to be obscure glazed.	No

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DCP 2014	Proposed	Compliance
(f) Splayed walls with windows are not to be located above ground level where the windows provide views into adjoining property.	Not proposed.	N/A
2.14.3 Acoustic Privacy		
(a) Noise of mechanical equipment not exceed 5dB(A) above background noise measured in or on any premises in vicinity of the item.	Capable of compliance - can be controlled by condition.	Yes
2.14.4 View Sharing		
(a) The siting of development is to provide for view sharing.	The development results in view impact to the adjoining dwelling at 83 Westminster Road of the Field of Mars Reserve. Given the height contravention and the site is capable of accommodating a more skilful design, the impact is not acceptable.	No
2.14.5 Cross Ventilation		
(a) Designed to optimise access to prevailing breezes and provide for cross ventilation.	Satisfactory	Yes
2.15 External Building Elements		
2.15.1 Roofs		
(a) Relate roof design to the desired built form by:		
(i) articulating the roof	Articulation of the proposed flat roof is achieved through the use of rock gardens and green roof elements / planting.	Yes
(ii) roof is consistent with the architectural character of dwelling	The proposed flat roof including rock gardens and green roof elements is consistent with the contemporary architectural character of the proposed dwelling.	Yes
(iii) eaves minimum 450mm overhang on pitched roofs	No pitched roofs proposed.	N/A
(iv) compatible roof form, slope, material and colour to adjacent buildings	The existing streetscape along Boyd Lane includes a combination of flat and pitched roofs in a variety of materials and colours.	Yes
(v) roof height is in proportion to the wall height of the building	Flat roofs proposed.	Yes
(b) The main roof not trafficable terrace.	Not proposed	Yes

ITEM 2 – 85 Westminster Road Gladesville

DCP 2014	Proposed	Compliance
(c) Proposed attic contained within the volume of the roof space.	Not proposed	N/A
(d) Skylights to be minimised on roof planes visible from the public domain. Skylights are to be symmetrical.	There are two symmetrical skylights proposed on the middle roof level which will not be visible from the public domain.	Yes
(e) The front roof plane is not to contain both dormer and skylight. Dormers are preferred.	Not proposed	N/A
(f) Balconies and terraces are not to be set into roofs.	Not proposed	N/A
(g) Scale of the roof is to be in proportion with the scale of the wall below.	Satisfactory.	Yes
2.16 Fences		
2.16.1 Front and Return Fences and Walls		
(a) Reflect the design of the dwelling	Timber batten front fence will reflect the contemporary design of the dwelling.	Yes
(b) Materials compatible with the house and other fences in streetscape	Satisfactory – the existing streetscape includes a variety of different fence materials	Yes
(c) Solid fence or wall max 900mm. Open light weight fence (timber picket) 1m.	Proposed timber batten fence 1.2m high.	No
(d) Return fence is to be no higher than front fence	N/A	N/A
(e) Fences max 1.8m if 50% open with solid base max 900mm	N/A	N/A
(f) Fences along arterial road may be solid and 1.8m max	N/A	N/A
(g) No Colorbond or timber paling.	Timber batten fence / gate proposed	Yes
Part 7: Environment		
7.1: Energy Smart, Water Wise		
3.0 The information Guide		
3.2 Required information		
(a) Energy efficiency performance report (b) Site analysis	BASIX Certificate: 1325154S_03 and dated 5 October 2022. Energy: 59 (Target 50) Water: 42 (Target 40) Plans consistent with Certificate	Yes
Part 7.2 Waste Minimisation and Management		
2.3 All developments		
(a) Developments must provide space for onsite waste containers	The proposed plans include sufficient space for onsite waste containers.	Yes

ITEM 2 – 85 Westminster Road Gladesville

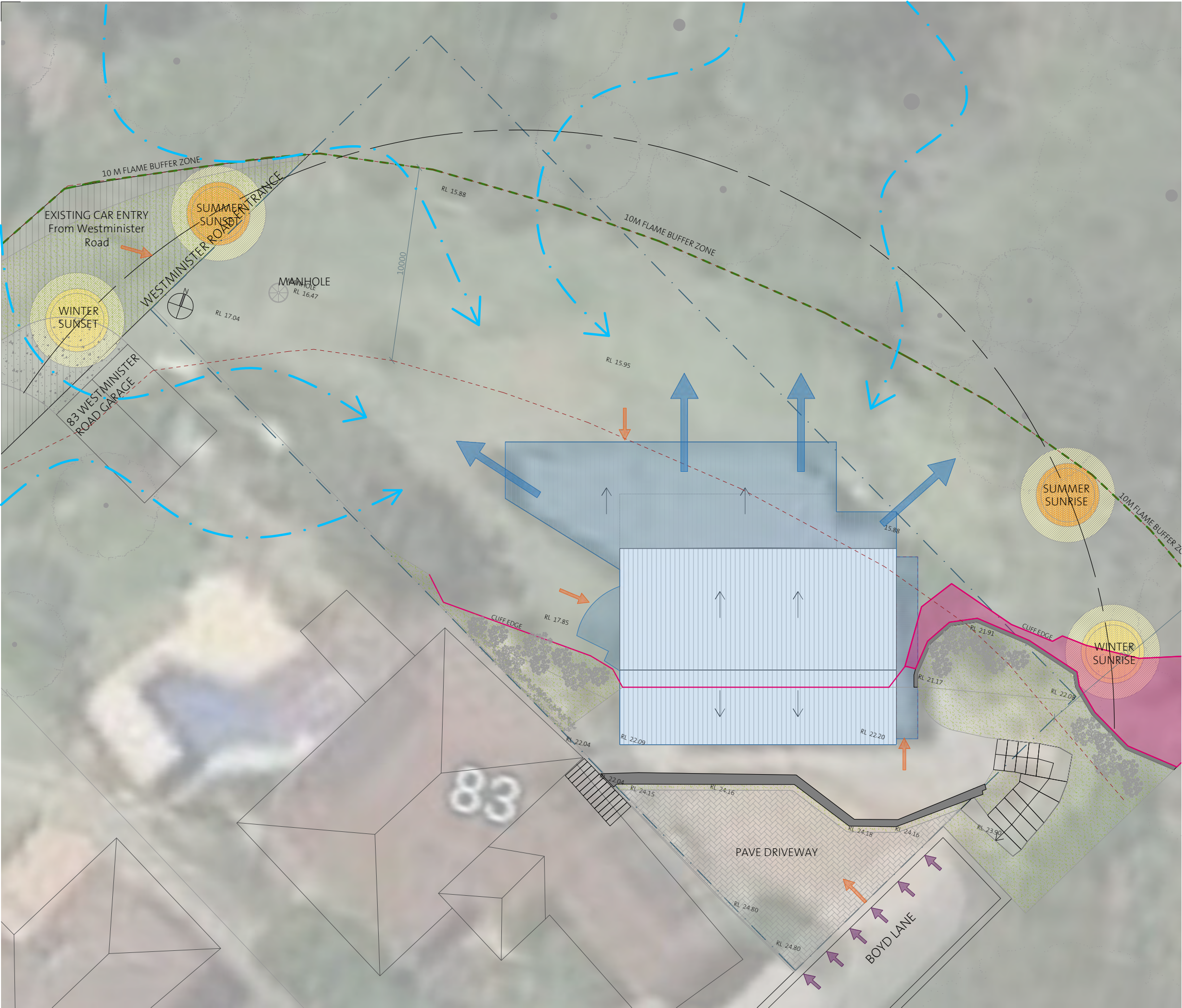
DCP 2014	Proposed	Compliance
(b) Compliant size of storage areas and number of storage containers.	As above.	Yes
(c) Space to be provided for bulk waste where appropriate.	N/A	N/A
(d) Storage of green waste provided	The proposed plans include adequate space for green waste storage if required.	Yes
(e) Stored within the boundaries of the site.	The proposed plans include sufficient space for all waste containers to be stored within the boundaries of the site.	Yes
(f) Site Waste Minimisation and Management Plan (SWMMP) to be submitted	Satisfactory SWMMP submitted.	Yes
(g) Located to provide easy, direct and convenient access.	The proposed plans include sufficient space to store onsite waste containers which provide easy, direct and convenience access to the collection points along either Westminster Road or Boyd Lane.	Yes
(h) Where waste storage areas / facilities are visible from the street, design and location should complement the design of the development and surrounding streetscape.	N/A - The proposed plans include sufficient space to store onsite waste containers in locations screened from the street	N/A
(i) No incineration devices.	Not proposed.	Yes
(j) Collection point identified on plan.	N/A – Bins will continue to be collected from the street	N/A
(k) Path for wheeling bin collection not less than 14:1		Yes
2.4 Demolition and Construction		
(a) Demolition must comply with AS and WorkCover	Can be controlled by condition.	Yes
(b) Demolition work plan submitted	Prepared by Home Demolitions dated 30 August 2022	Yes
(c) Dedicated area on site for stockpile of materials taking into account environmental factors and amenity impacts.	Submitted Demolition Plan does not specify location for stockpile of materials. Ample space on site available to enable suitable location for stockpiles. Can be controlled by condition.	Yes

ITEM 2 – 85 Westminster Road Gladesville

DCP 2014	Proposed	Compliance
(d) Construction materials to be stored away from the waste materials on site.	Can be controlled by condition.	Yes
2.5 Residential Developments comprising 1 or 2 Dwellings		
(a) Space inside each dwelling for receptacles for garbage, recycling.	The proposed plans include sufficient space inside the dwelling for receptacles to store two days' worth of garbage and recycling.	Yes
(b) Space provided outside the dwellings to store the required garbage, recycling and green waste bins. Screened from street. Easy access to wheel the bins to the kerbside.	The proposed plans include sufficient space to store onsite waste containers in locations screened from the street which provide easy, direct and convenience access to the collection points along either Westminster Road or Boyd Lane.	Yes
Part 8: Engineering		
8.1 Construction Activities		
2.1.2 Erosion and Sediment Control Plan		
Erosion and sediment control plan to be submitted.	To be controlled by condition.	Yes
Part 8.2 Stormwater and Floodplain Management		
2.0 Stormwater Drainage		
(a) Drainage is to be piped in accordance with Section 2.0 Stormwater Drainage	<p>Stormwater Plans prepared by ST Civil:</p> <ul style="list-style-type: none"> • Lower Ground Floor Plan (ref 092-22 SW1.01 Rev C and dated 29/09/22) • Ground Floor Plan (ref 092-22 SW1.02 Rev C and dated 29/09/22) • First Floor Plan (ref 092-22 SW1.03 Rev C and dated 29/09/22) • Roof Level Plan (ref 092-22 SW1.04 Rev C and dated 29/09/22) <p>Proposal has been considered satisfactory by Council's Development Engineer subject to conditions.</p>	Yes
Part 8.3 Driveways		
4.2 Design of Parking Spaces		
(b) Vehicles (85 th percentile) to enter and leave designated parking space in a single 3 point turn manoeuvre. A 99 th percentile vehicle for disabled vehicles.	<p>Vehicle tracking on plans demonstrates compliance for front car port along Boyd Lane.</p> <p>Rear garage with access to Westminster Road is proposed to incorporate a turntable to allow cars to leave in a forward gear.</p>	Yes

ITEM 2 – 85 Westminster Road Gladesville

DCP 2014	Proposed	Compliance
(c) Enter and leave in a forward direction. Waived where the garage is located at the front of a dwelling and insufficient space within front setback to provide a turning area.	Waived for front car port along Boyd Lane – insufficient space within front setback to provide turning area. Rear garage with access to Westminster Road is proposed to incorporate a turntable to allow cars to leave in a forward gear.	Acceptable
S2.0 Design Standards		
S2.2 Vehicular crossing widths		
(a) Min 3.0m and max of 5.0m. (b) Max width of 6m to facilitate accessing two adjacent garages if the distance between the space and the street frontage is less than 5.0m	Proposed crossing will be 3.485m to Boyd Lane and 3m to Westminster Road.	Yes
Part 9.2 Access for People with Disabilities		
4.1.2 Class 1 Buildings		
Accessible path required from the street to the front door, where the level of land permits.	An accessible route is available to the first-floor level front door from Boyd Lane via the covered/open hardstand area (car port).	Yes
Part 9.3 Parking Controls		
2.2 Residential Land Uses		
<ul style="list-style-type: none"> - Dwelling houses up to 2 spaces/dwelling - Dual occupancy 1 space/dwelling 	Two spaces proposed – one in rear garage and one in front car port.	Yes



KEY PLAN

Existing 3 storey dwelling:



NOTES:

NOT FOR CONSTRUCTION.
CONFIRM ALL DIMENSIONS ON SITE
AND NOTIFY ALL DISCREPANCIES.
REFER FIGURES DIMENSIONS ONLY.
DO NOT SCALE OFF DRAWINGS

DESIGN PHASE: Development Application

REVISION: Current Revision

NO.	AMENDMENT	DATE
B	Natural lines and 9.5 m updates	29.11.22
C	Drop Building 480mm	15.12.22
D	Deep Soil Area/Carport/Cut & Fill	12.04.23

DRAWING TITLE: Site Analysis

DRAWING NUMBER: 001

DATE OF ISSUE: 17.08.2022

REVISION: D

DRAWN BY: MB

PROJECT TITLE: Miles Residence

PROJECT ADDRESS: 85 Westminister Road, Gladesville

LOT/SECTION/PLAN No: 10/1/DP2183

SCALE: 1:200 @A3

KEY

- Boundary
- Rock Cliff
- Wind Direction

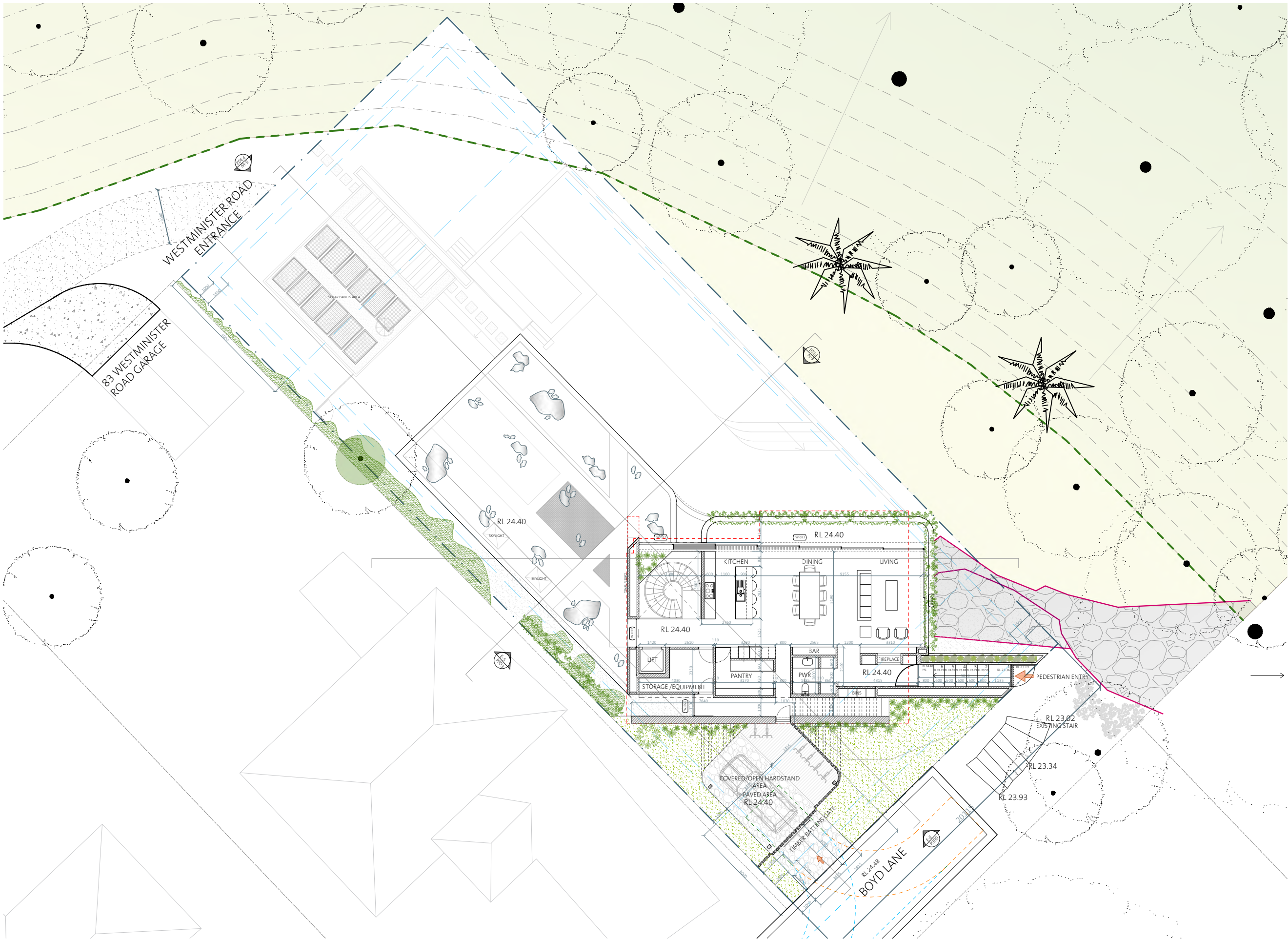
- Key Views
- Main House Entries
- Street Noise



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E001



KEY PLAN

FIRST FLOOR
1 scale 1:200

NOTES:

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DESIGN PHASE: Development Application

NO.	AMENDMENT	DATE
C	Drop Building 480mm	15.12.22
D	Deep Soil Area/Carport/Cut & Fill	12.04.23
E	Entry stair (Boyd Lane)	24.04.23

DRAWING TITLE: Proposed First Floor

DRAWING NUMBER:	103
DATE OF ISSUE:	17.08.2022
REVISION:	E
DRAWN BY:	MB

PROJECT TITLE: Miles Residence

PROJECT ADDRESS:	85 Westminister Road, Gladesville
LOT/SECTION/PLAN No:	10/1/DP2183
SCALE:	1:200 @A3

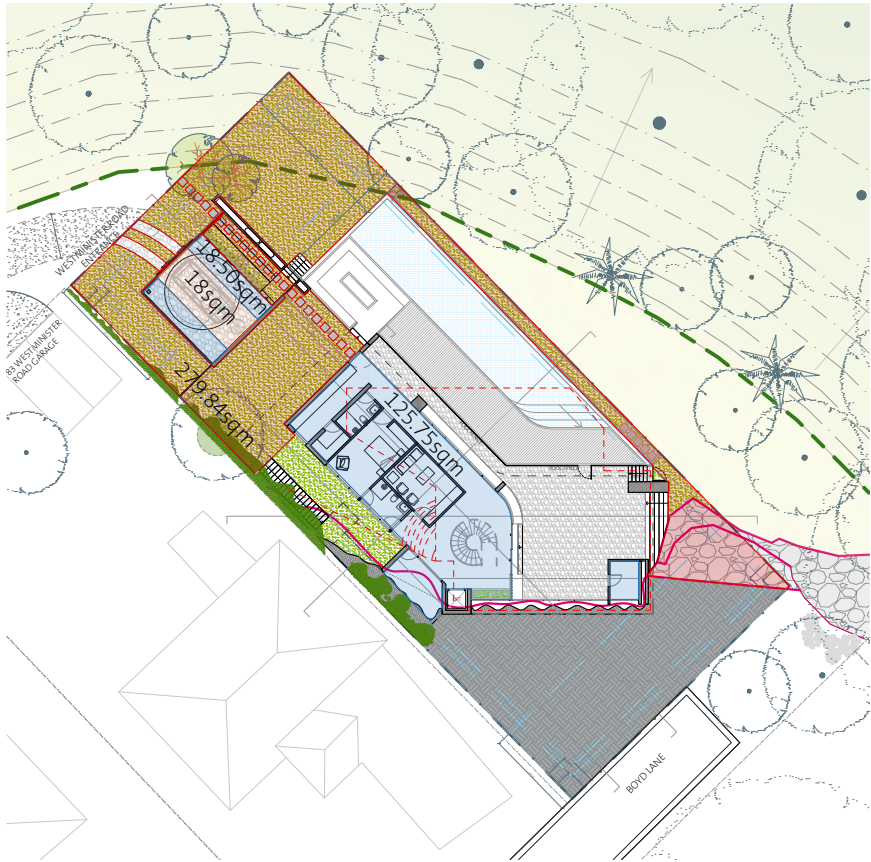
KEY

Boundary	Demolish	CR	Concrete	GL	Glass
Rock Cliff		ST	Stone		
Setbacks		TB	Timber Battens		



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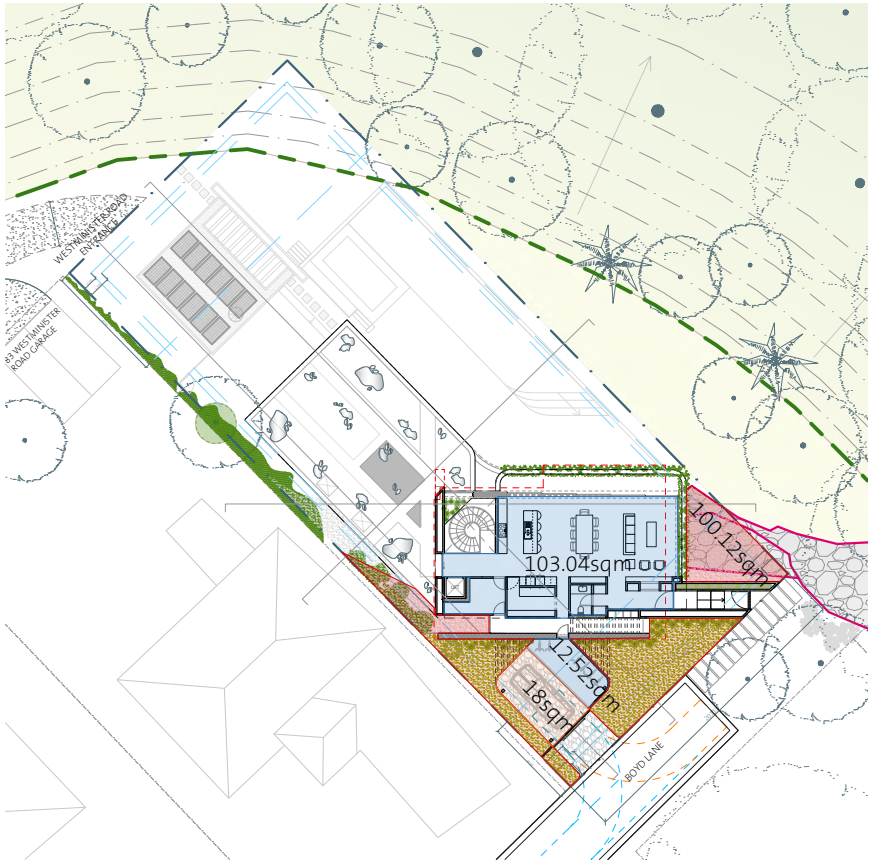
1 LOWER GROUND FLOOR
scale 1:500



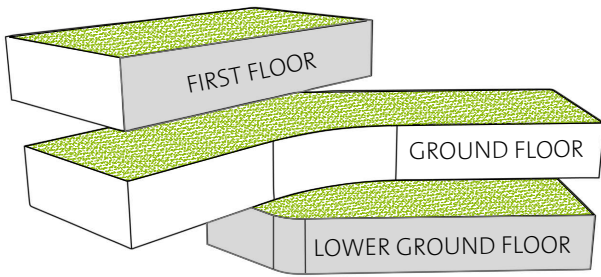
4 LOWER GROUND FLOOR / FILL & CUT AREAS
scale 1:500



2 GROUND FLOOR
scale 1:500



3 FIRST FLOOR
scale 1:500



KEY PLAN

PROPOSED CUT AND FILL AREAS

Cut Area: 140m3 approximately

- Pool
- Proposed Building

Fill Area : 130m3 approximately

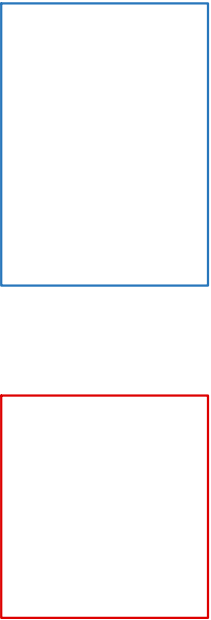
- Carpot/Back Garden/Open Cabana/
Proposed building/Deck Pool/Open Alfresco : 106.17 m3

PROPOSED AREAS

Site Area: 953.9sqm
FSR: 0.5:1
Allowable Max Area: 477sqm

Proposed Area : 438.64sqm

Calculation Areas:



NOTES:

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DESIGN PHASE: Development Application

REVISION: Current Revision

NO.	AMENDMENT	DATE
B	Natural lines and 9.5 m updates	29.11.22
C	Drop Building 480mm	15.12.22
D	Deep Soil Area/Carpot/Cut & Fill	12.04.23

DRAWING TITLE:

Calculation Areas
DRAWING NUMBER: 105
DATE OF ISSUE: 17.08.2022
REVISION: D
DRAWN BY: MB

PROJECT TITLE:

Miles Residence
PROJECT ADDRESS: 85 Westminister Road, Gladesville
LOT/SECTION/PLAN No: 10/1/DP2183
SCALE: 1:200 @A3

KEY

- Boundary
- Rock Cliff
- Setbacks

Areas

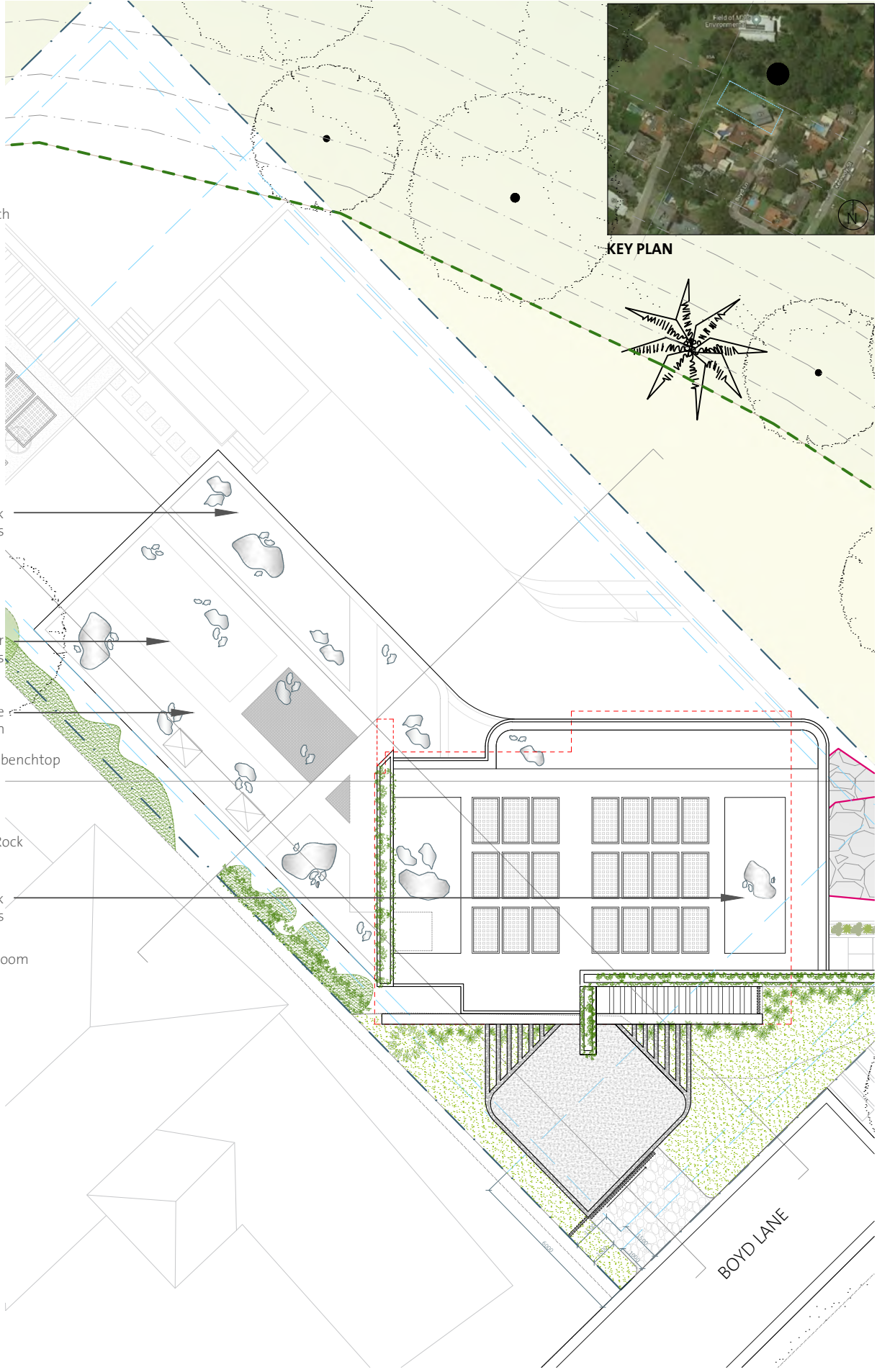
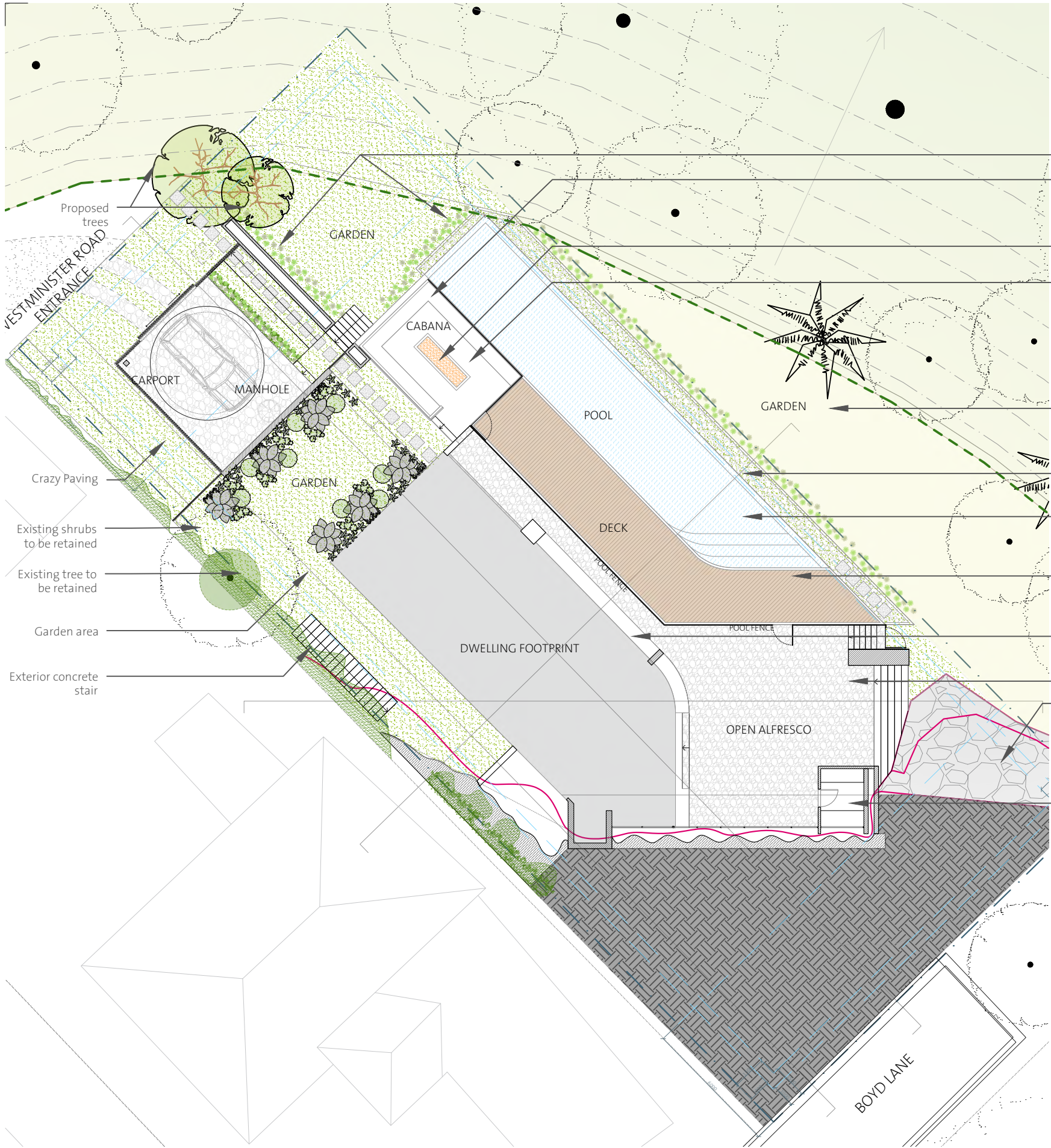
CR	Concrete
ST	Stone
TB	Timber Battens

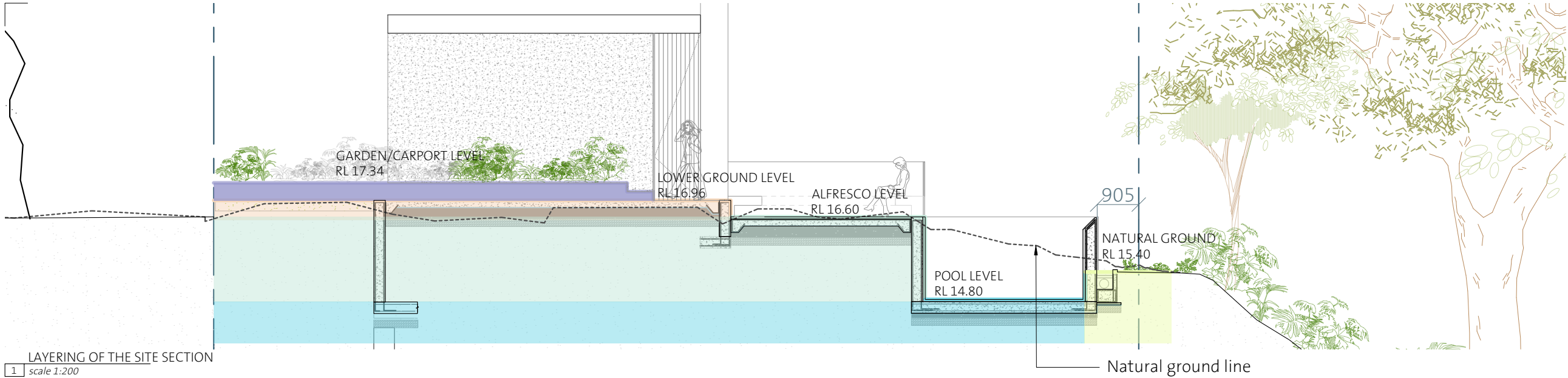
GL Glass



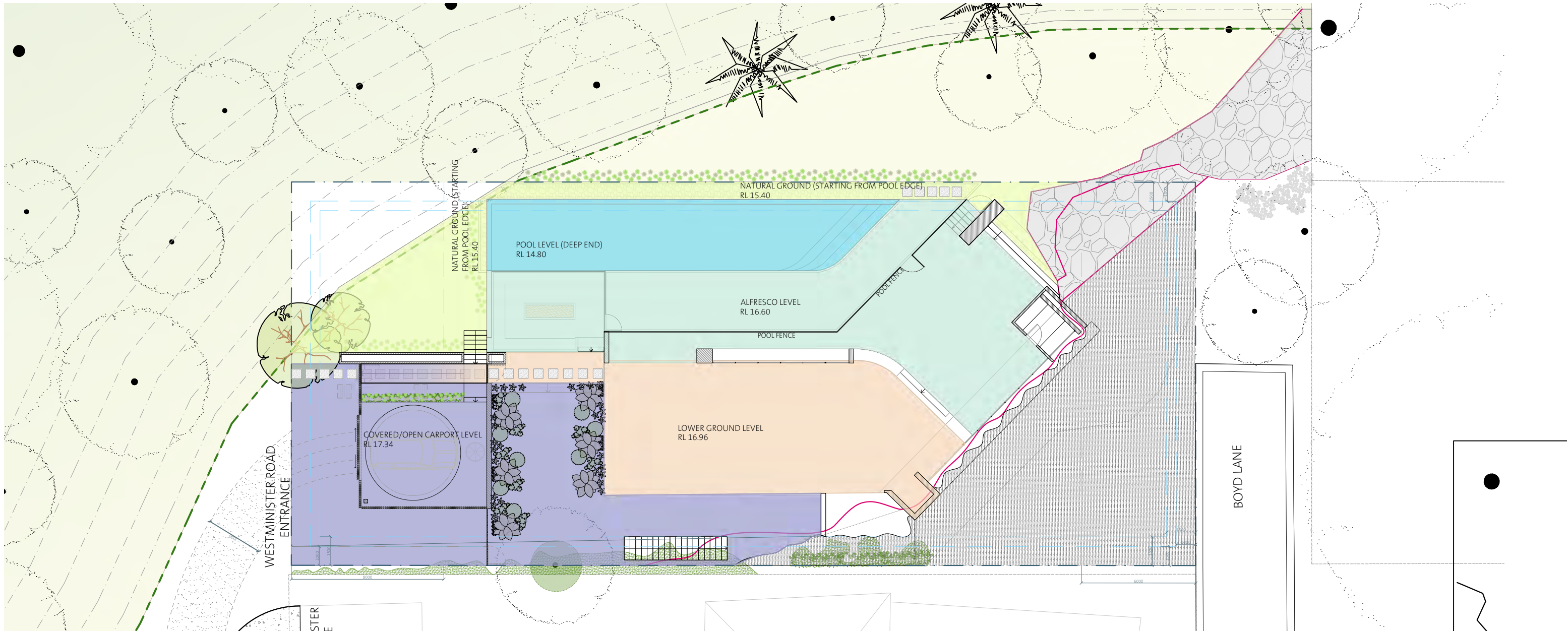
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KEY PLAN



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DESIGN PHASE: Development Application

NO.	AMENDMENT	DATE
B	Natural lines and 9.5 m updates	29.11.22
C	Drop Building 480mm	15.12.22
D	Deep Soil Area/Carport/Cut & Fill	12.04.23

DRAWING TITLE: Site Terracing

DRAWING NUMBER:	108
DATE OF ISSUE:	15.09.2022
REVISION:	D
DRAWN BY:	SN

PROJECT TITLE: Miles Residence
PROJECT ADDRESS: 85 Westminister Road, Gladesville
LOT/SECTION/PLAN No: 10/1/DP2183
SCALE: 1:200 @A3

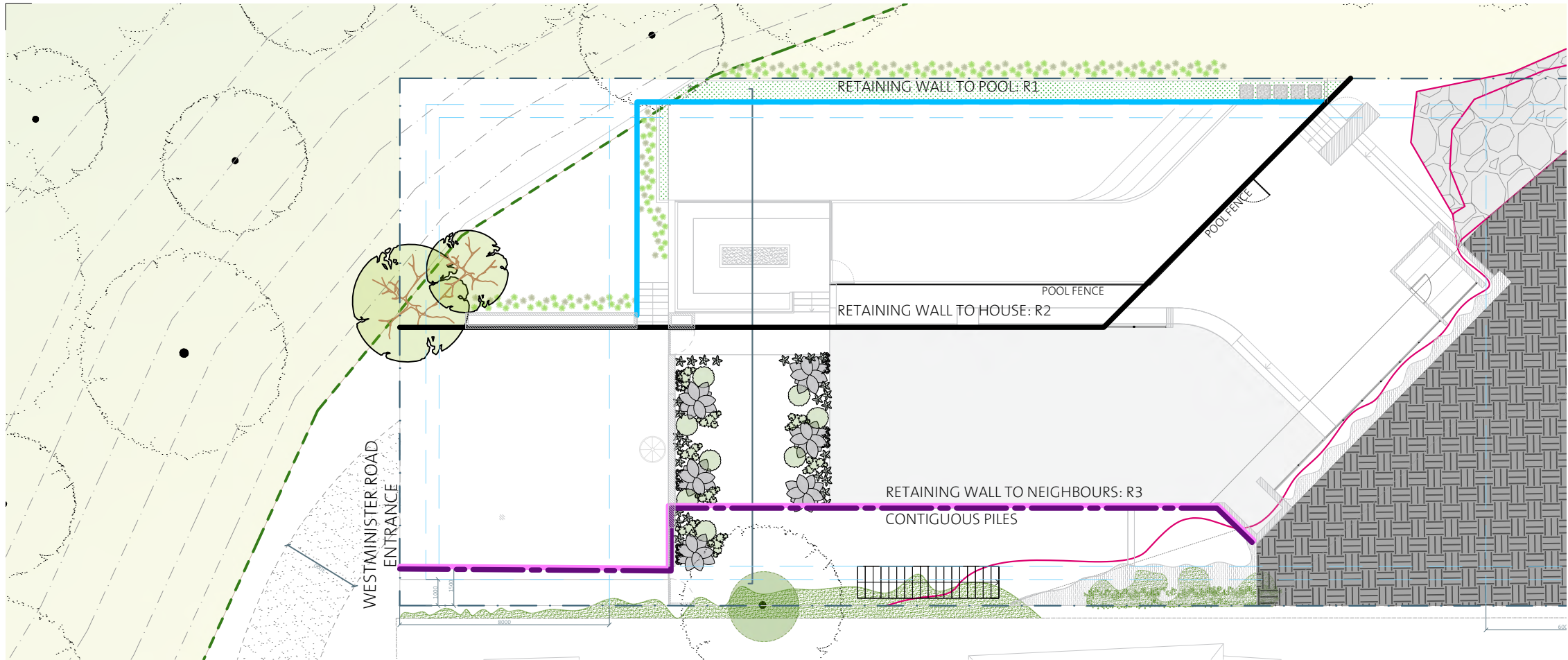
KEY

Boundary	Lower Ground floor	Natural Ground
Rock Cliff	Alfresco	Carport/Garden
Setbacks	Pool	



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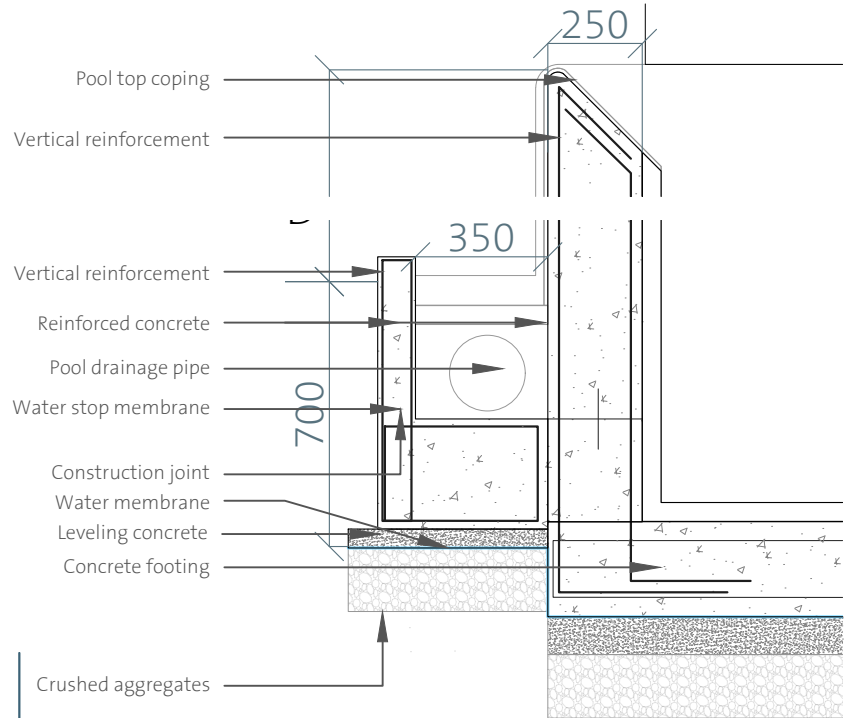
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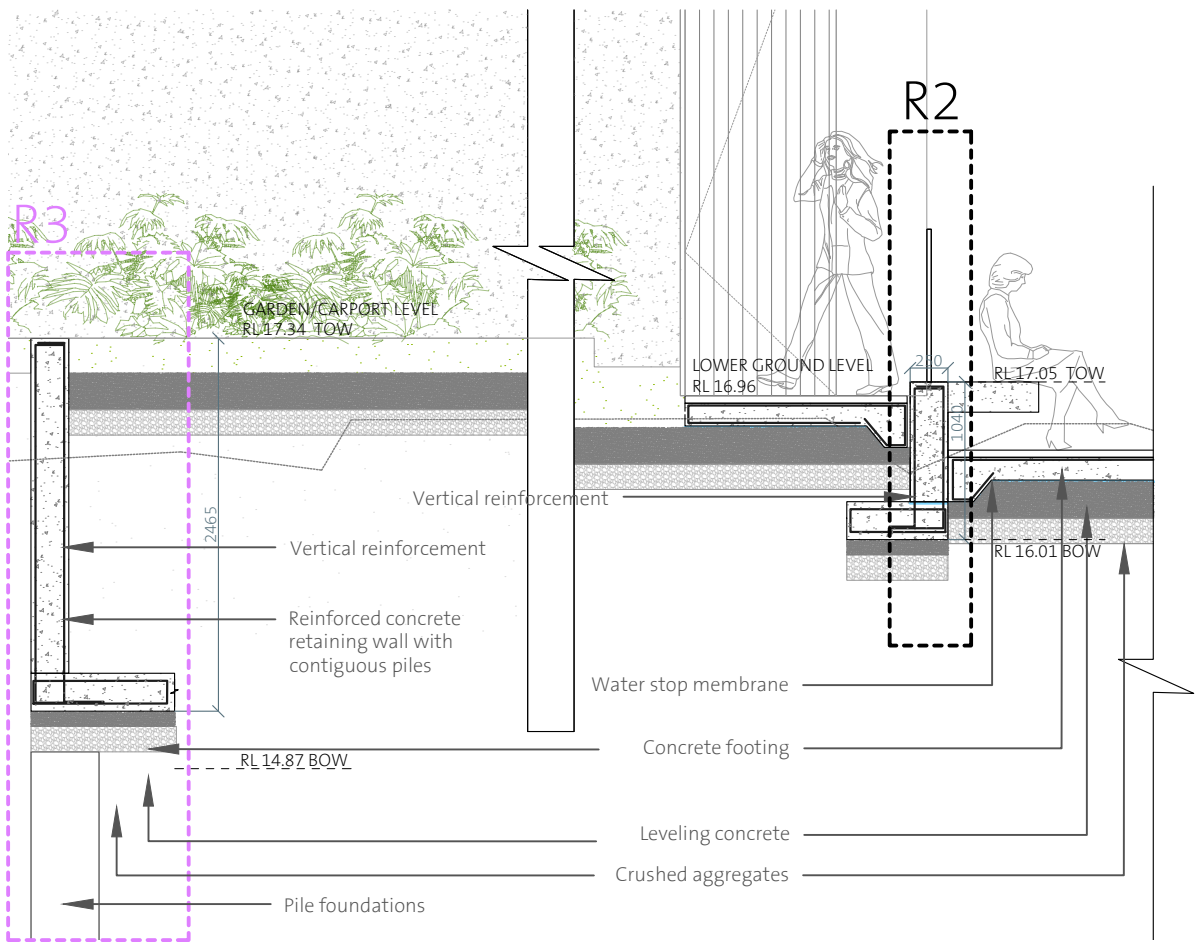
RETAINIG WALLS PLAN
1 scale 1:200



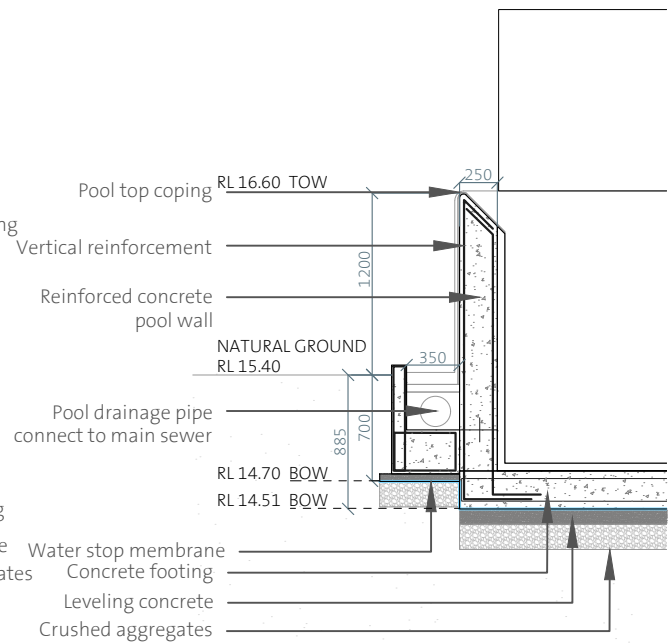
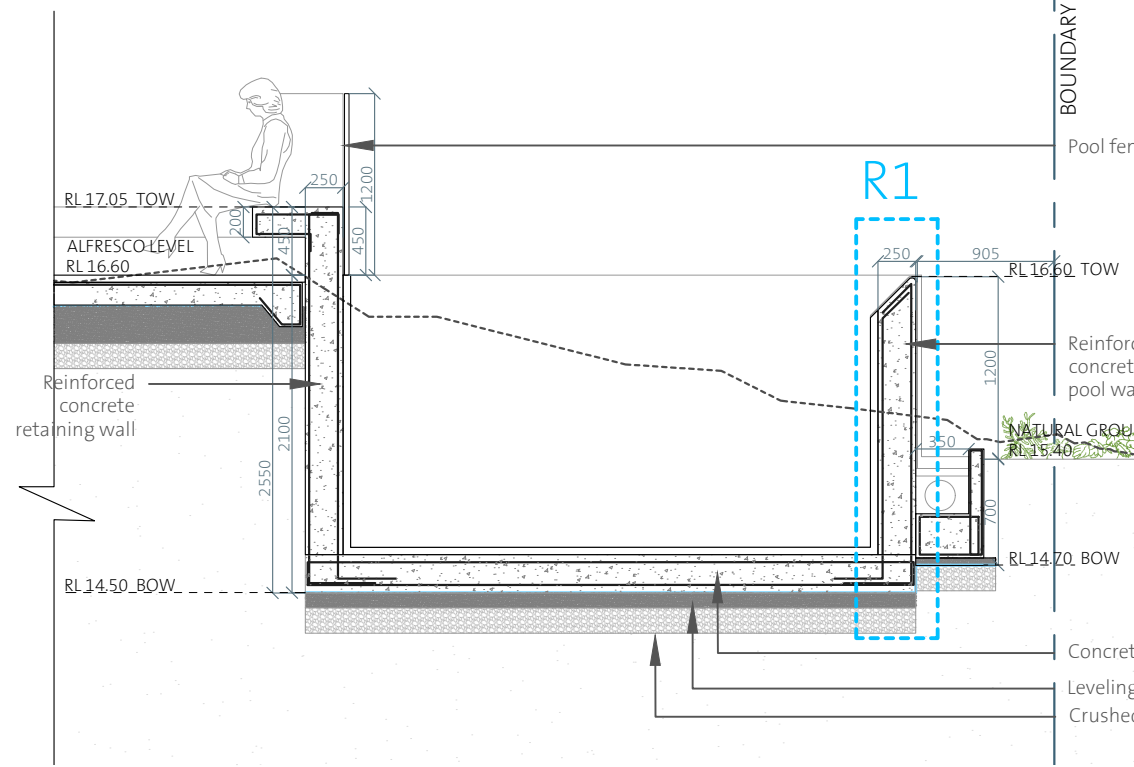
KEY PLAN



TYPICAL RETAINIG WALL SECTION (R1)
2 scale 1:20



TYPICAL RETAINIG WALL SECTIONS
3 scale 1:50



TYPICAL RETAINIG WALL SECTION R1
4 scale 1:50

NOTES:

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DESIGN PHASE: Development Application

NO.	AMENDMENT	DATE
B	Natural lines and 9.5 m updates	29.11.22
C	Drop Building 480mm	15.12.22
D	Deep Soil Area/Carport/Cut & Fill	12.04.23

DRAWING TITLE: Retaining Walls & Typical details

DRAWING NUMBER:	109
DATE OF ISSUE:	15.09.2022
REVISION:	D
DRAWN BY:	SN

PROJECT TITLE: Miles Residence
PROJECT ADDRESS: 85 Westminister Road, Gladesville
LOT/SECTION/PLAN No: 10/1/DP2183
SCALE: 1:200 @A3

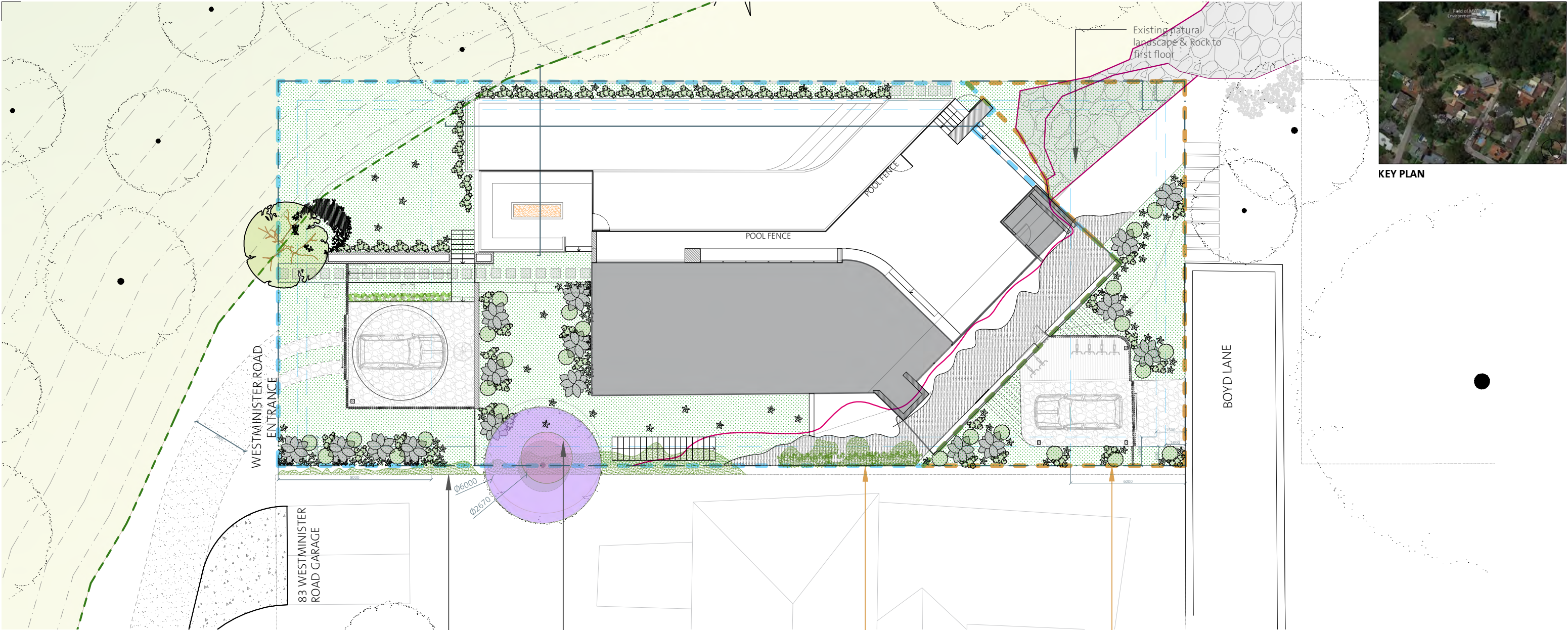
KEY

Boundary	Building retaining wall
Rock Cliff	Pool retaining wall
Setbacks	Piles

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P109



PLANTING PLAN
1 scale 1:200

	Tt	Th	Ts	TPZ	SRZ
Pinus Radiata 'Monterey Pine'	a)0.5m b)0.6m	14m	8M	6M	2.67M

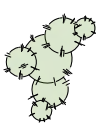
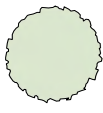
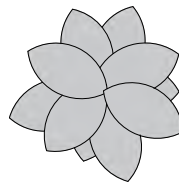
Tta - Tree Trunk at 1.4m
Ttb - Tree Trunk at base
Th - Tree Height
Ts - Tree Spread
Tree Protection Zone
Structural Root Zone

Existing tree to be retained. TPZ and SRZ zone highlighted. NOTE: No works proposed in SRZ
Existing shrubs along cliff on boundary to be retained

First Floor Landscaping (Boyd Lane/ 83 Westminister Road)
Existing shrubs along the boundary to be retained
First Floor landscaping (Boyd Lane)

GARDEN AREA:

PLANT SCHEDULE			
ID	Latin Name	Common Name	Scheduled Size
CraOvaG	Crassula ovata 'Gollum'	Gollum Jade plant	200mm
KalOrgSS	Kalanchoe orgyalis 'Silver Spoons'	Silver Spoons Kalanchoe orgyalis	200mm
ManBol	Mandevilla boliviensis	Mandevilla	200mm
RoPr	Rosmarinus prostratus	Irene Trailing Rosmary	200mm
TulVio	Tulbaghia violacea	Tulbaghia	140mm



KalOrgSS
Kalanchoe orgyalis
'Silver Spoons'
'Silver Spoons'
Kalanchoe
orgyalis

CraOvaG
Crassula ovata
'Gollum'
Gollum Jade plant

RoPr
Rosmarinus
prostratus
Irene Trailing
Rosmary

Tulbaghia violacea
TulVio
Tulbaghia

Mandevilla
boliviensis
ManBol
Mandevilla

NOTES:

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DESIGN PHASE: Development Application

NO.	AMENDMENT	DATE
B	Natural Lines and 9.5 m updates	29.11.22
C	Drop Building 480mm	15.12.22
D	Deep Soil Area/Carport/Cut & Fill	12.04.23

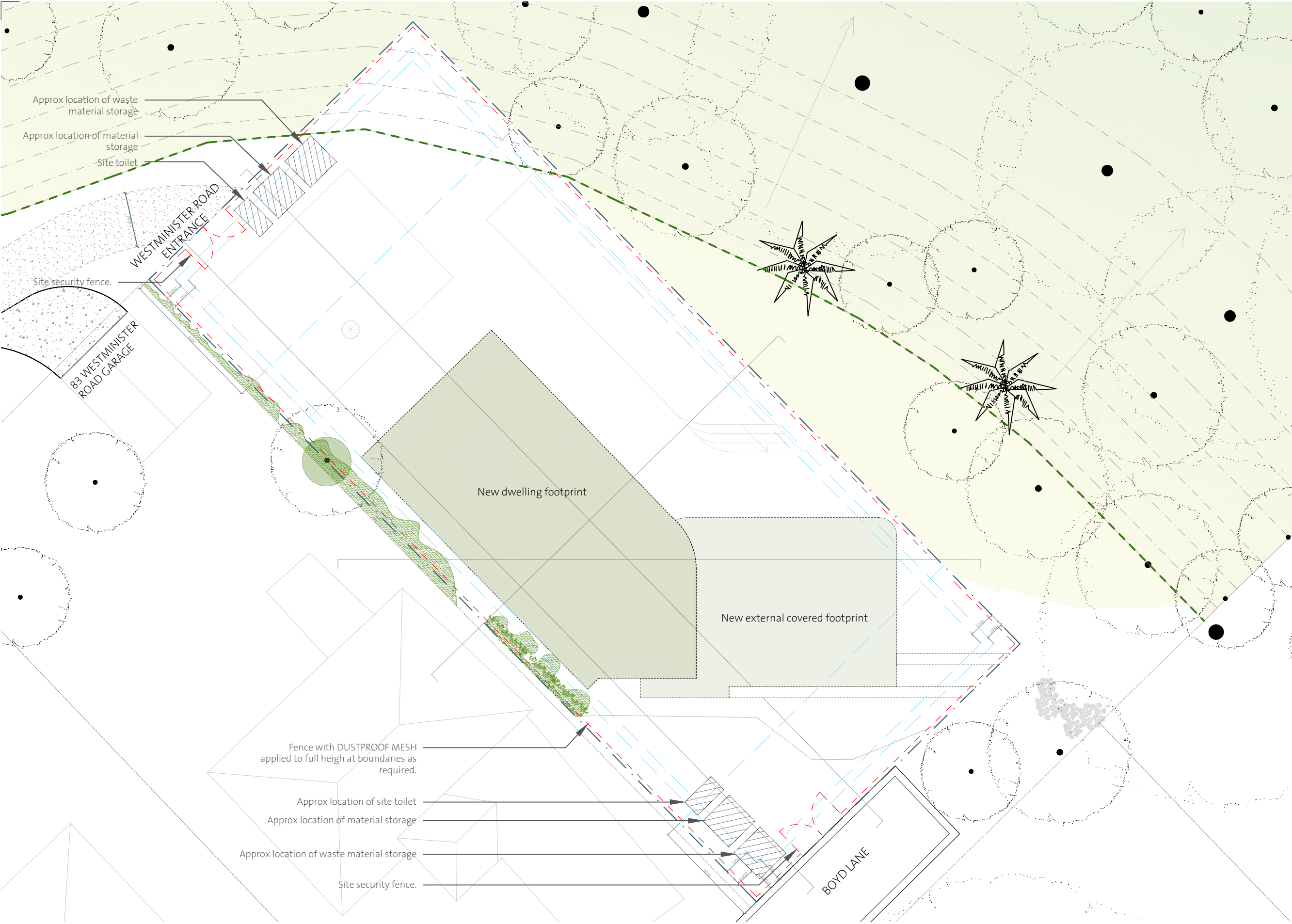
DRAWING TITLE: Planting
DRAWING NUMBER: 110
DATE OF ISSUE: 15.09.2022
REVISION: D
DRAWN BY: SN

PROJECT TITLE: Miles Residence
PROJECT ADDRESS: 85 Westminister Road, Gladesville
LOT/SECTION/PLAN No: 10/1/DP2183
SCALE: 1:200 @A3

KEY	
	Boundary
	Rock Cliff
	Setbacks
	Deck
	Pool
	Grass
	Concrete
	Stone
	Timber Batts
	Glass

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KEY PLAN

- GENERAL NOTES:
- Temporary security fencing to the perimeter of the boundary where required to prevent public access onto the site.
 - Ground lines are approximate. Extent of cut and fill batters will be determined on site.
 - Sediment barriers are customised on site conditions.

- SEDIMENTS CONTROL NOTES:
- All erosion and sediment control measures, including revegetation and storage of soil an topsoil, shall be implemented to the standard of the soil conservation of NSW and inspected daily by the Site Manager.
 - All drainage works shall be constructed and stabilized as early possible during development.
 - Sediment traps shall be constructed around all inlet pits, consisting of 300mm wide x 300mm deep trench.
 - All sediment basins and traps shall be cleaned when the structures are maximum of 60% full of soil materials, including the maintenance period.
 - All disturbed areas shall be revegetated as soon as the relevant works are completed.
 - Soil and topsoil stockpiles shall be located away from drainage lines and area where water may concentrate. all roads and footpaths to be swept daily.
 - Filter shall be constructed by stretching a filter fabric (propex or approved equivalent between post at 3.0m centres). Fabric shall be buried 150mm along its lower edge.
 - dust prevention measures to be maintained at all times.

CONSTRUCTION MANAGEMENT PLAN
1 scale 1:200

NOTES:

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DESIGN PHASE: Development Application

NO.	AMENDMENT	DATE
B	Natural lines and 9.5 m updates	29.11.22
C	Drop Building 480mm	15.12.22
D	Deep Soil Area/Carport/Cut & Fill	12.04.23

DRAWING TITLE: Construction Management Plan

DRAWING NUMBER: 111
DATE OF ISSUE: 17.08.2022
REVISION: D
DRAWN BY: MB

PROJECT TITLE: Miles Residence

PROJECT ADDRESS: 85 Westminister Road, Gladesville
LOT/SECTION/PLAN No: 10/1/DP2183
SCALE: 1:200 @A3

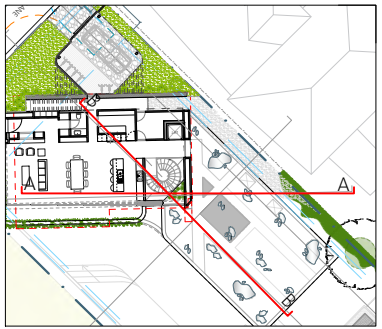
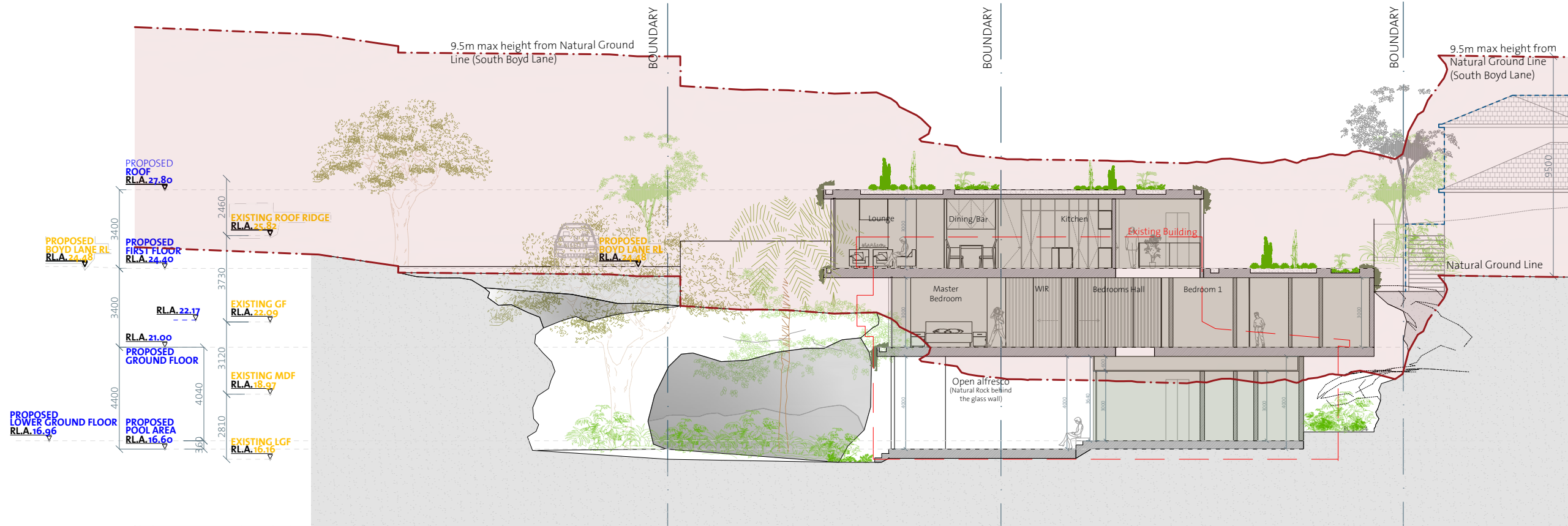
KEY

Boundary	Fence with DUSTPROOF MESH
Rock Cliff	
Setbacks	



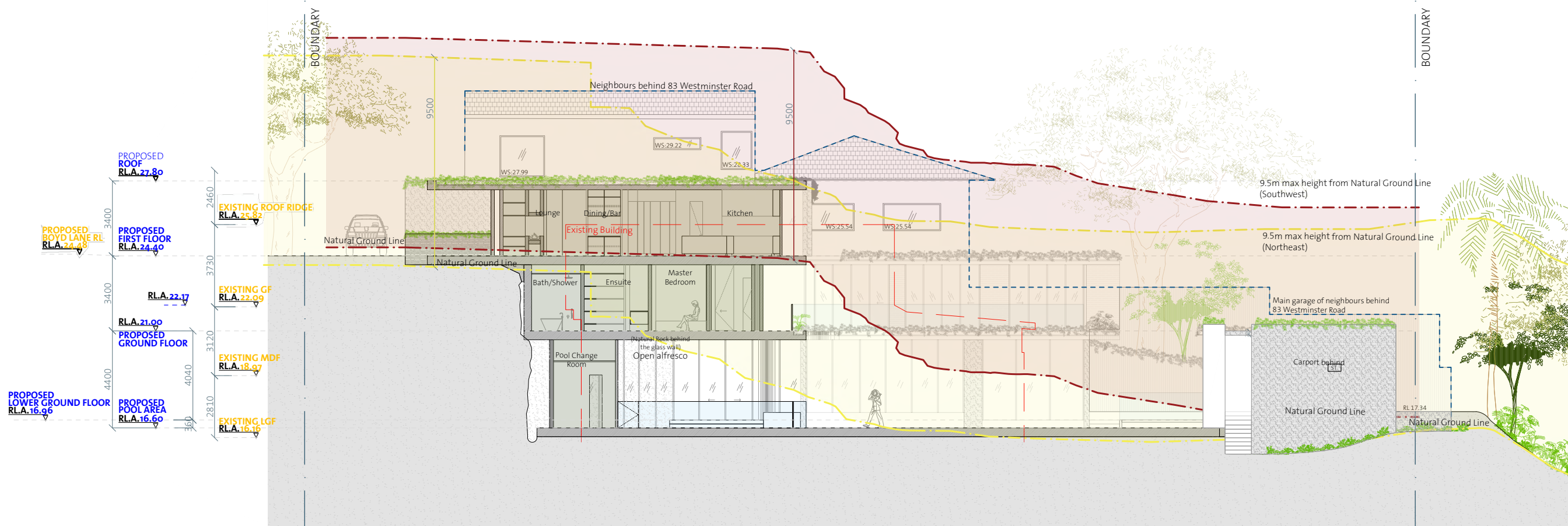
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KEY PLAN

SECTION A
1 scale 1:200



SECTION B
2 scale 1:200

NOTES:

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DESIGN PHASE: Development Application

REVISION: Current Revision

NO.	AMENDMENT	DATE
B	Natural Lines and 9.5 m updates	29.11.22
C	Drop Building 480mm	15.12.22
D	Deep Soil Area/Carport/Cut & Fill	12.04.23

DRAWING TITLE: Proposed Section AA and BB

DRAWING NUMBER: 200

DATE OF ISSUE: 17.08.2022

REVISION: D

DRAWN BY: MB

PROJECT TITLE: Miles Residence

PROJECT ADDRESS: 85 Westminster Road, Gladesville

LOT/SECTION/PLAN No 10/1/DP2183

SCALE: 1:200 @A3

KEY

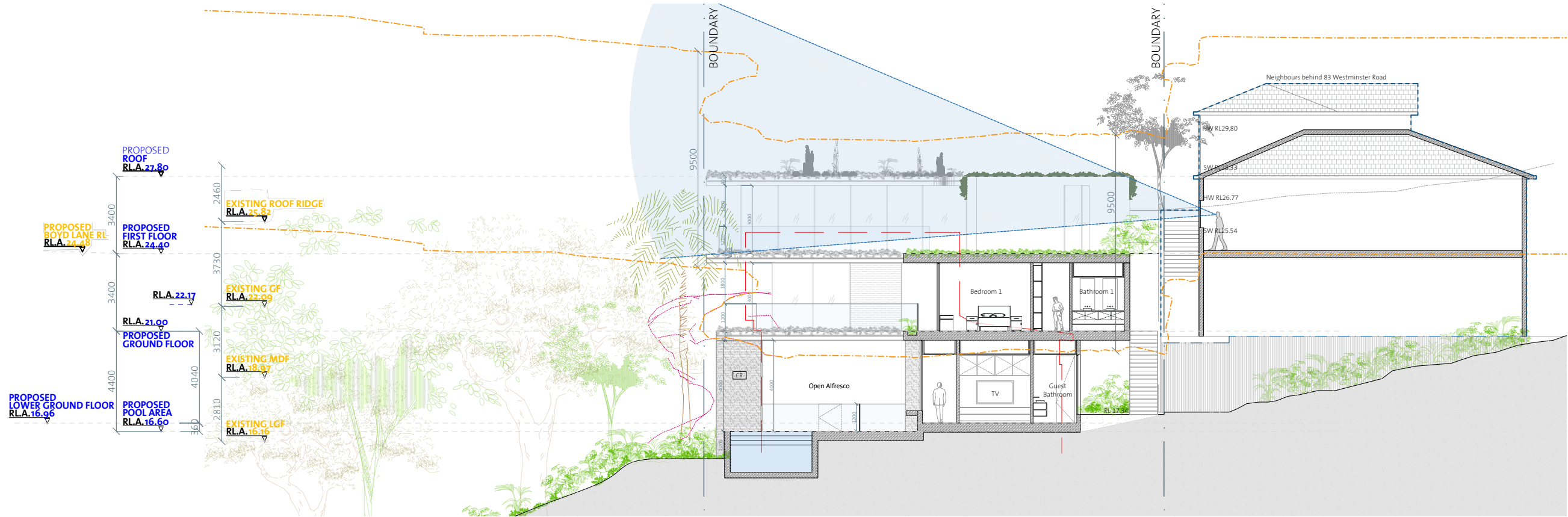
- Boundary
- Neighbours Line
- Existing Building

- Northeast side - Height limit 9.5m
- Southwest side - Height limit 9.5m

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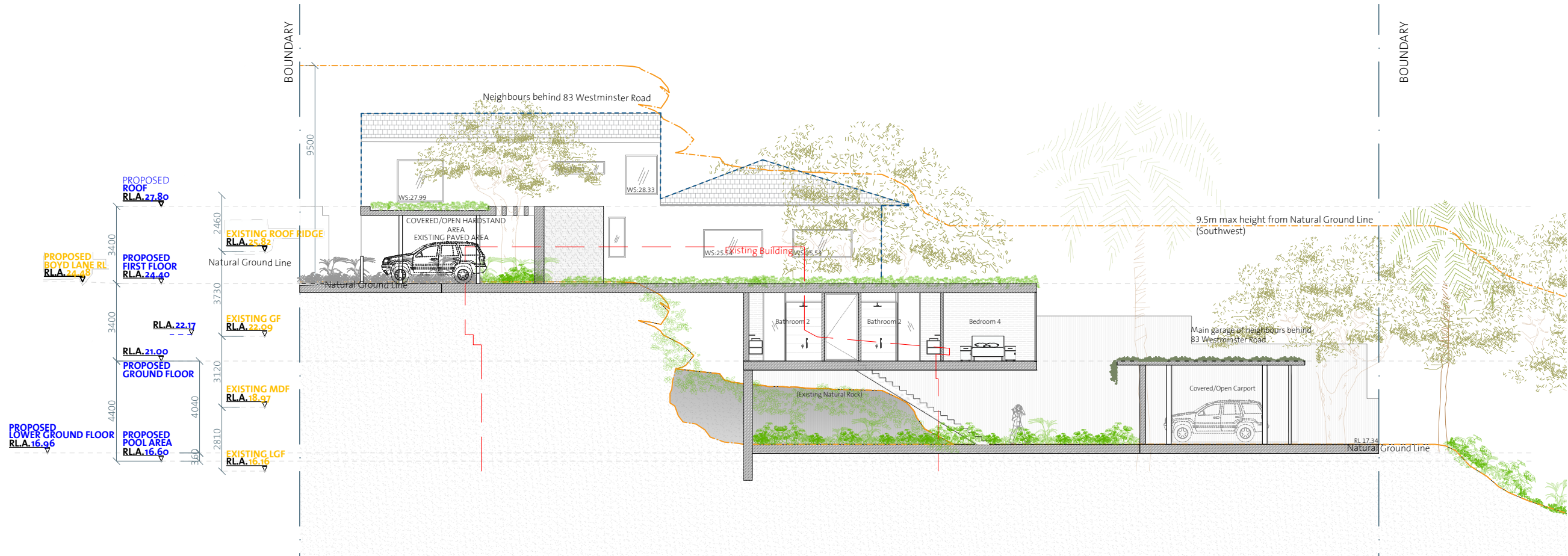
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SECTION C

1 scale 1:200



SECTION D

2 scale 1:200

NOTES:

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DO NOT SCALE OFF DRAWINGS

DESIGN PHASE: Development Application

REVISION: Current Revision

NO.	AMENDMENT	DATE
B	Natural Lines and 9.5 m updates	29.11.22
C	Drop Building 480mm	15.12.22
D	Deep Soil Area/Carport/Cut & Fill	12.04.23

DRAWING TITLE:

Proposed Section CC and DD

DRAWING NUMBER: 200

DATE OF ISSUE: 17.08.2022

REVISION: D

DRAWN BY: MB

PROJECT TITLE:

Miles Residence

PROJECT ADDRESS: 85 Westminster Road, Gladesville

LOT/SECTION/PLAN No 10/1/DP2183

SCALE: 1:200 @A3

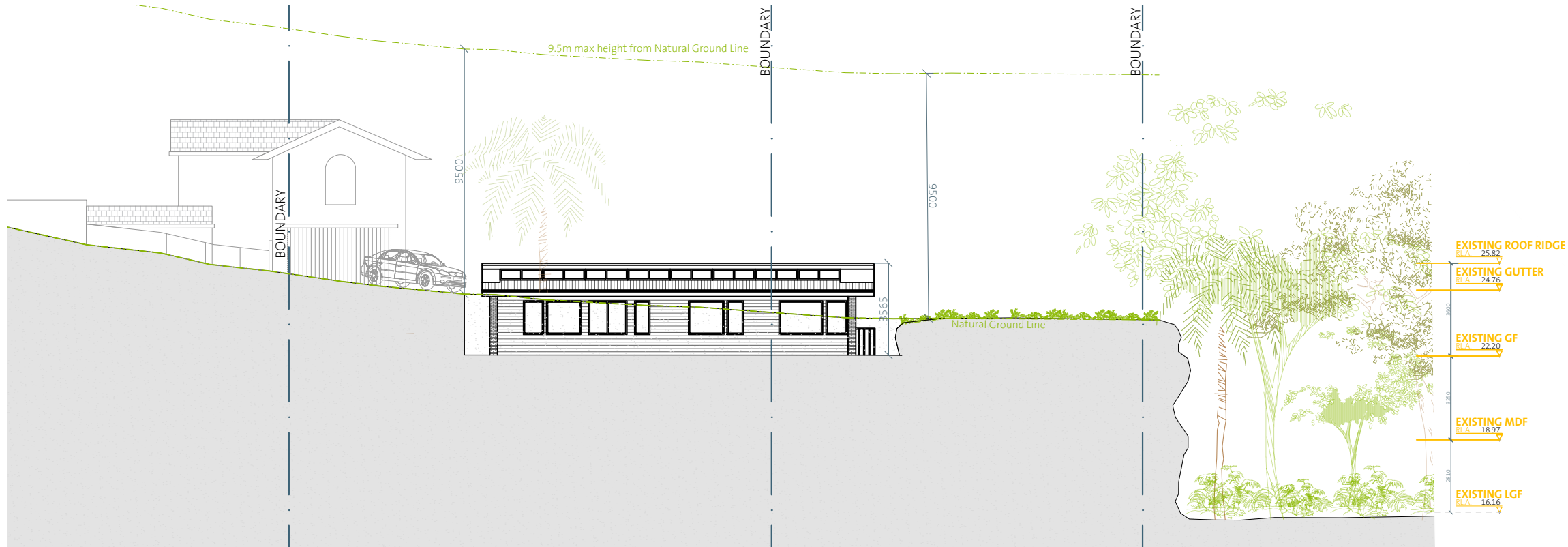
KEY

	Boundary		Neighbours Line
	Northeast side		Existing Building
	Southwest site		

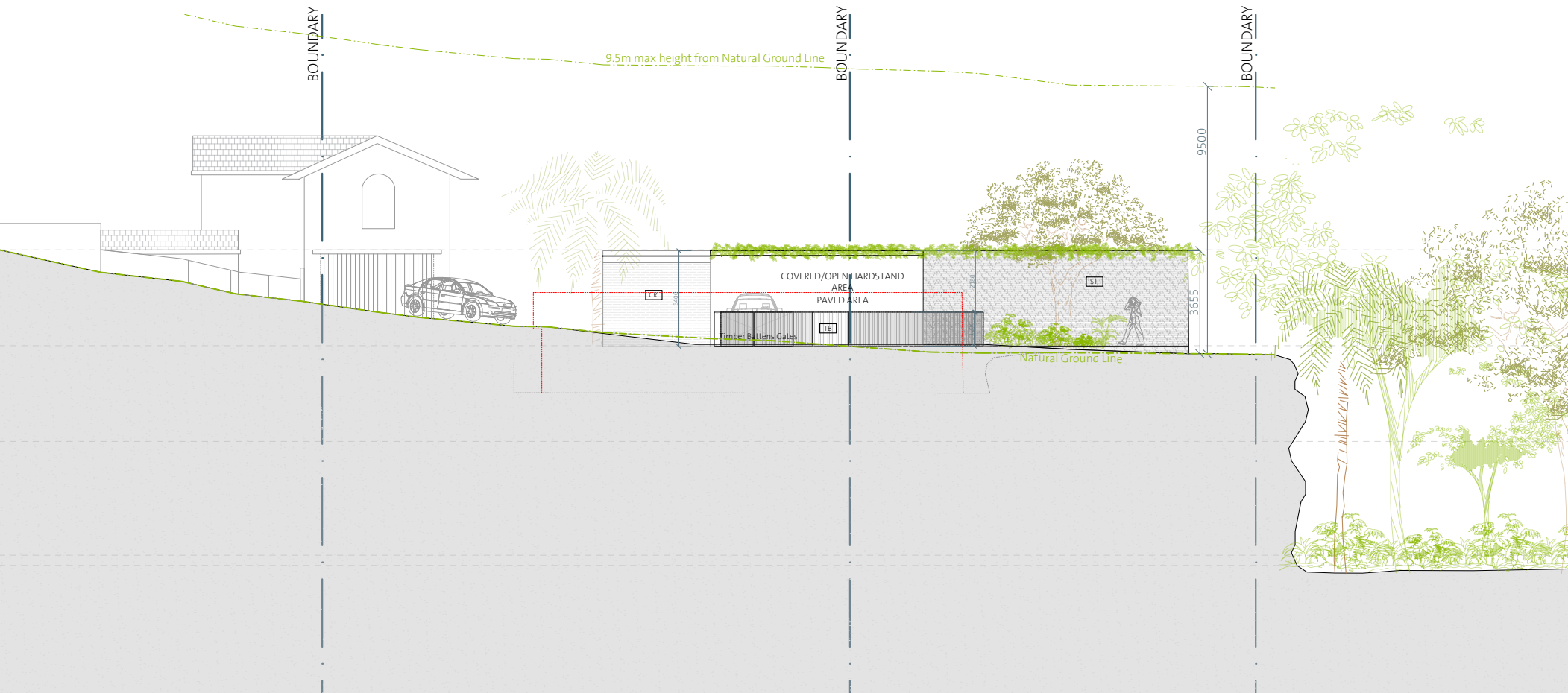
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EXISTING EAST ELEVATION
1 scale 1:200



PROPOSED EAST ELEVATION
2 scale 1:100



KEY PLAN

EXISTING ROOF RIDGE
R.L.A. 25.82
EXISTING GUTTER
R.L.A. 24.76
EXISTING GF
R.L.A. 22.20
EXISTING MDF
R.L.A. 18.97
EXISTING LGF
R.L.A. 16.16

PROPOSED ROOF
R.L.A. 27.80
PROPOSED BOYD LANE RL
R.L.A. 24.48
PROPOSED FIRST FLOOR
R.L.A. 24.40
R.L.A. 22.17
R.L.A. 21.00
PROPOSED GROUND FLOOR
PROPOSED LOWER GROUND FLOOR
R.L.A. 16.96
PROPOSED POOL AREA
R.L.A. 16.60
EXISTING ROOF RIDG
R.L.A. 25.82
EXISTING GF
R.L.A. 22.09
EXISTING MDF
R.L.A. 18.97
EXISTING LGF
R.L.A. 16.16

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DESIGN PHASE: Development Application

NO.	AMENDMENT	DATE
A	DA Updates	22.09.22
B	Natural Lines and 9.5 m updates	29.11.22
C	Drop Building 480mm	15.12.22

DRAWING TITLE: Proposed East Elevation

DRAWING NUMBER: 300
DATE OF ISSUE: 17.08.2022
REVISION: C
DRAWN BY: MB

PROJECT TITLE: Miles Residence
PROJECT ADDRESS: 85 Westminister Road, Gladesville
LOT/SECTION/PLAN No: 10/1/DP2183
SCALE: 1:200 @A3

KEY

Boundary
Natural Line
Rock edge
Neighbours Line

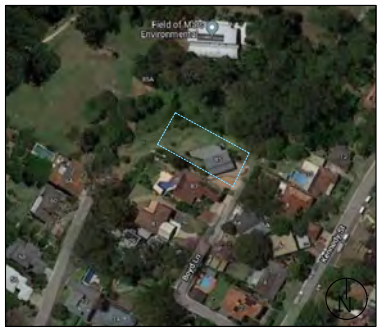
CR Concrete
ST Stone

AW Aluminium Windows
GL Glass
TB Timber Battens

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KEY PLAN



EXISTING NORTH ELEVATION
1 scale 1:200



PROPOSED NORTH ELEVATION
2 scale 1:200

NOTES:

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DESIGN PHASE: Development Application

NO.	AMENDMENT	DATE
A	DA Updates	22.09.22
B	Natural Lines and 9.5 m updates	29.11.22
C	Drop Building 480mm	15.12.22

DRAWING TITLE: Proposed North Elevation

DRAWING NUMBER: 301
DATE OF ISSUE: 17.08.2022
REVISION: C
DRAWN BY: MB

PROJECT TITLE: Miles Residence
PROJECT ADDRESS: 85 Westminister Road, Gladesville
LOT/SECTION/PLAN No: 10/1/DP2183
SCALE: 1:200 @A3

KEY

Boundary	Neighbours Line	CR Concrete	AW Aluminium Windows
Natural Line		ST Stone	GL Glass
Rock edge			TB Timber Battens

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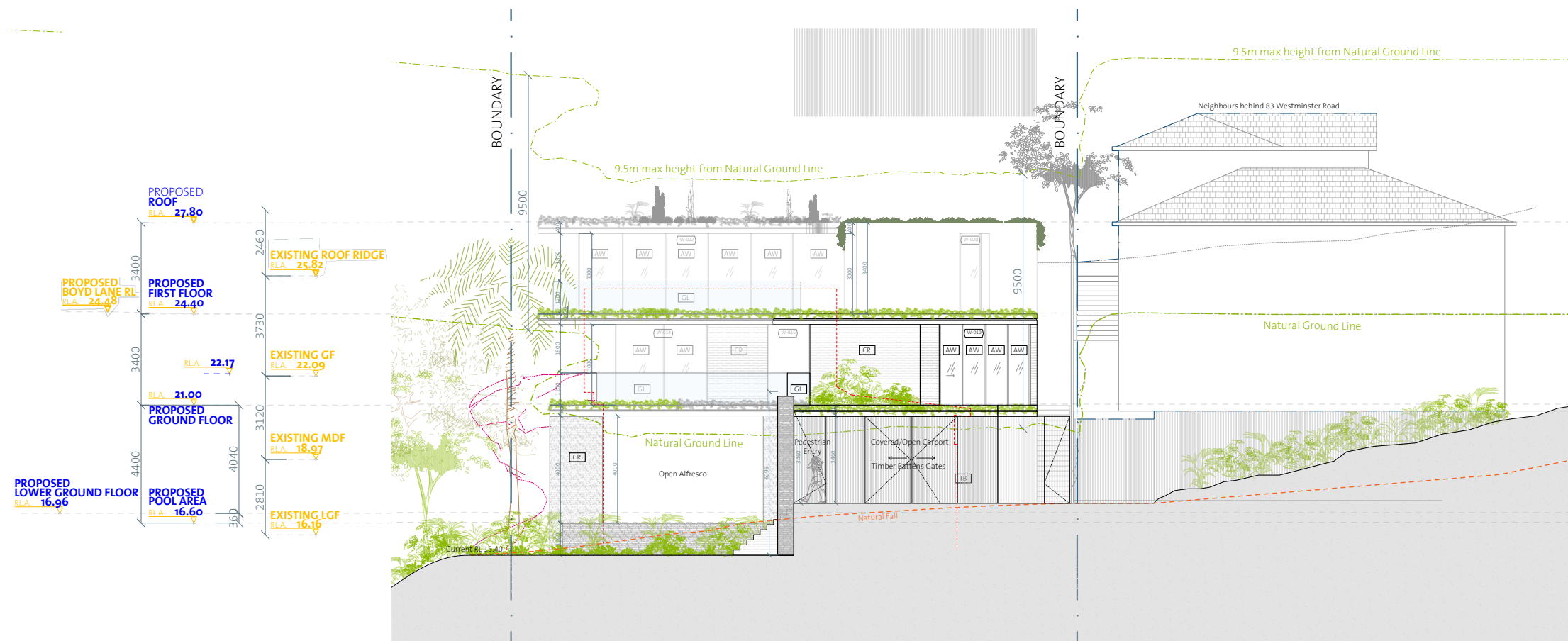
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P301



KEY PLAN

EXISTING WEST ELEVATION
1 scale 1:200



PROPOSED WEST ELEVATION
2 scale 1:200

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DESIGN PHASE: Development Application

REVISION: Current Revision

NO.	AMENDMENT	DATE
A	DA Updates	22.09.22
B	Natural Lines and 9.5 m updates	29.11.22
C	Drop Building 480mm	15.12.22

DRAWING TITLE:

Proposed West Elevation

DRAWING NUMBER: 302

DATE OF ISSUE: 17.08.2022

REVISION:

DRAWN BY:

17.08.2022

C

MB

PROJECT TITLE:

Miles Residence

PROJECT ADDRESS:

85 Westminster Road, Gladesville

LOT/SECTION/PLAN No: 10/1/DP2183

SCALE:

1:200 @A3

KEY

Boundary	Neighbours Line
Natural Line	
Rock edge	

CR	Concrete
ST	Stone

AW	Aluminium Windows
GL	Glass
TB	Timber Battens

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**Clause 4.6 Variation Request
(June 2023)**

Clause 4.3 Height RLEP 2014

85 Westminster Road, Gladesville



1. INTRODUCTION

This Clause 4.6 Exceptions to Development Standards request has been prepared BMA Urban on behalf of Spicer Architecture. It is submitted in support of a Development Application ('DA') for the demolition of the existing dwelling and subsequent construction of a new multi-level dwelling at No. 85 Westminster Road, Gladesville.

This request seeks approval to vary the height of buildings development standard in clause 4.3 of the Ryde Local Environmental Plan 2014. Clause 4.3 prescribes a numerical building height limit of 9.5m over the subject site. The proposed building height departs from this standard as demonstrated in **Part 2** of this variation request.

Clause 4.6 of the *Ryde Local Environmental Plan 2014* ('Ryde LEP') enables consent for development to be granted even though it contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from development.

As the following request demonstrates, flexibility may be afforded by Clause 4.6 because compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify contravening the standard. This request also demonstrates that the proposal will be in the public interest, as the proposed development will be consistent with the objectives of the development standard and the zoning of the site.

The following sections of the report provide an assessment of the request to vary the development standard relating to "**height of buildings**" in accordance with Clause 4.6 of the Ryde LEP.

Consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*
- Relevant planning principles and judgments issued by the Land and Environment Court. The *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 court judgment is the most relevant of recent case law.

Chief Justice Preston of the Land and Environment Court confirmed in the above judgment:

- The consent authority must, primarily, be satisfied the applicant's written request adequately addresses the 'unreasonable or unnecessary' and 'sufficient environmental planning grounds' tests:

"that the applicant's written request ... has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ... and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard ..." [15]

- On the 'Five Part Test' established under *Wehbe v Pittwater Council* [2007] NSWLEC 827:

"The five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way..." [22]

- That in establishing 'sufficient environmental planning grounds' the focus must be on the contravention and not the development as a whole:

"The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole" [26]

- That clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development:

"Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard will have a better environmental planning outcome than a development that complies with the development standard." [88]

This clause 4.6 variation has specifically responded to the matters outlined above and demonstrates that the request meets the relevant tests with regard to recent case law.

In accordance with the Ryde LEP requirements, this Clause 4.6 variation request:

- identifies the development standard to be varied (**Part 2**);
- identifies the variation sought (**Part 2**);
- summarises relevant case law (**Part 3**);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Part 4**);
- demonstrates there are sufficient environmental planning grounds to justify the contravention (**Part 4**);
- demonstrates that the proposed variation is 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 (**Part 4**);
- provides an assessment of the matters the secretary is required to consider before providing concurrence (**Part 4**); and
- provides a conclusion summarising the preceding parts (**Part 5**).

This Clause 4.6 Exceptions to Development Standards request should be read in conjunction with the revised design plan detail (Updated Revision-E) prepared by Spicer Architecture dated 24 April 2023 and view loss impact analysis(DA 13.04.23 View Loss Pack) prepared by Spicer Architecture dated 12 April 2023.

2. VARIATION OF HEIGHT OF BUILDINGS STANDARD

2.1 DEVELOPMENT STANDARD

Clause 4.3(2) of the Ryde LEP sets out the maximum building height for development as shown on the Height of Buildings Map. The site is subject to a maximum building height of 9.5 metres, as illustrated in **Figure 1** below.

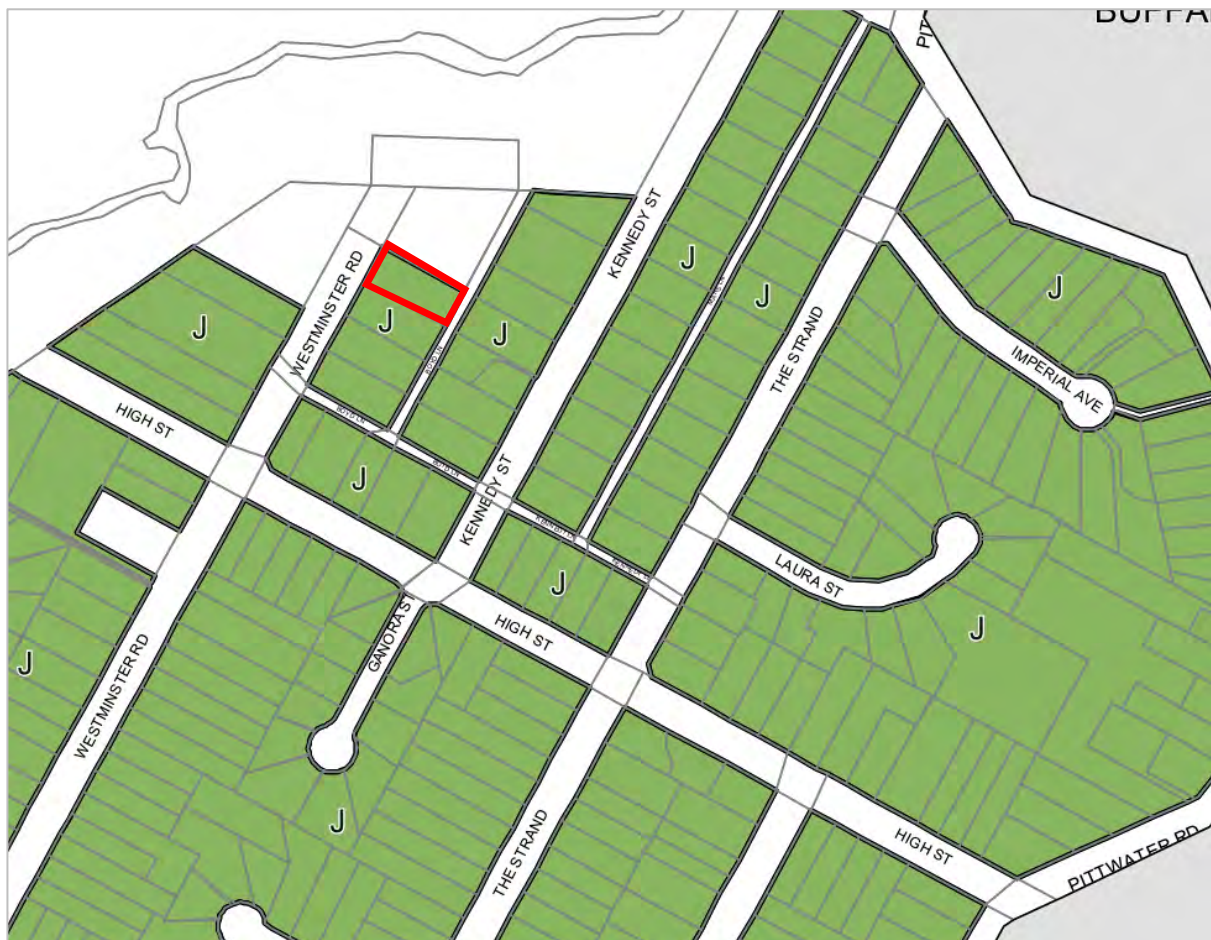
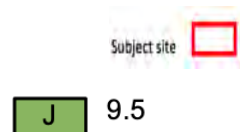


Figure 1: Height of Buildings Map
(Source: www.legislation.nsw.gov.au)



Clause 4.3(1) of the Ryde LEP sets out the objectives for building height, as follows:

- (a) to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,
- (b) to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,
- (c) to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,
- (d) to minimise the impact of development on the amenity of surrounding properties,
- (e) to emphasise road frontages along road corridors.

The definition of “*building height*” for the purposes of clause 4.3 of the Ryde LEP is as follows:

“*building height* (or *height of building*) means—

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”

2.2 VARIATION TO HEIGHT OF BUILDINGS STANDARD

The proposed height departure across the dwelling when measured against the existing excavated ground lines is 11.84m or 24.63%. When measured against the natural ground lines, which in this case, are more reflective of the natural topography of the land, no height breach is observed. The extent of contravention with the prescribed height measured against the existing levels is best demonstrated in **Figure 2** while **Figures 3, 4 and 5** identify the extent of breach, or in this case lack thereof, when measured against the natural and in this case, more topographically appropriate levels of the site.

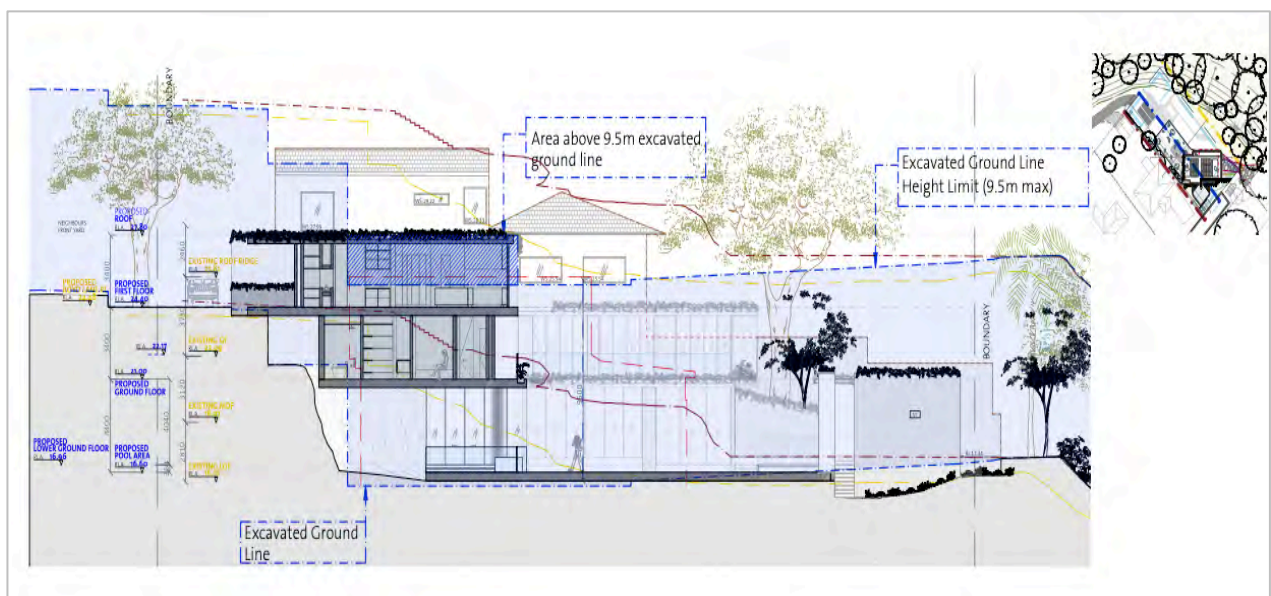


Figure 2: Height Breach Section (Existing ground lines-dark blue hatching)

Source: Spicer Architecture

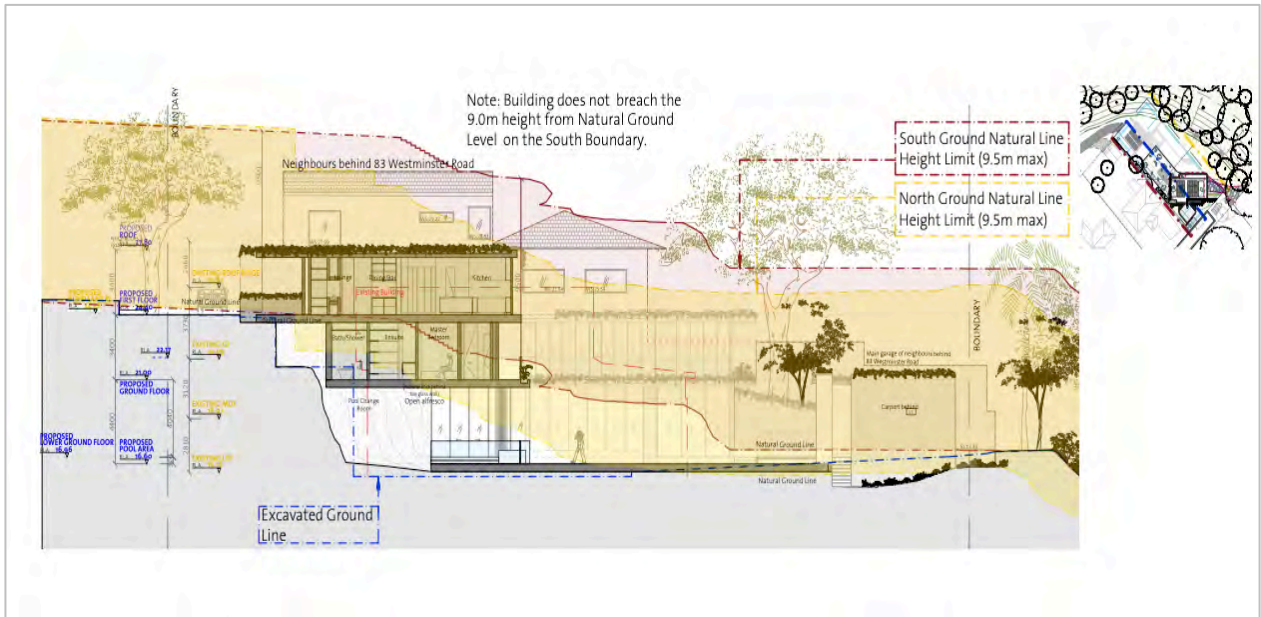


Figure 3: Height Breach Section Breach in **Yellow** (Existing ground lines)
Source: Spicer Architecture



Figure 4: 3D - Height Overlay (Natural ground lines)
Source: Spicer Architecture

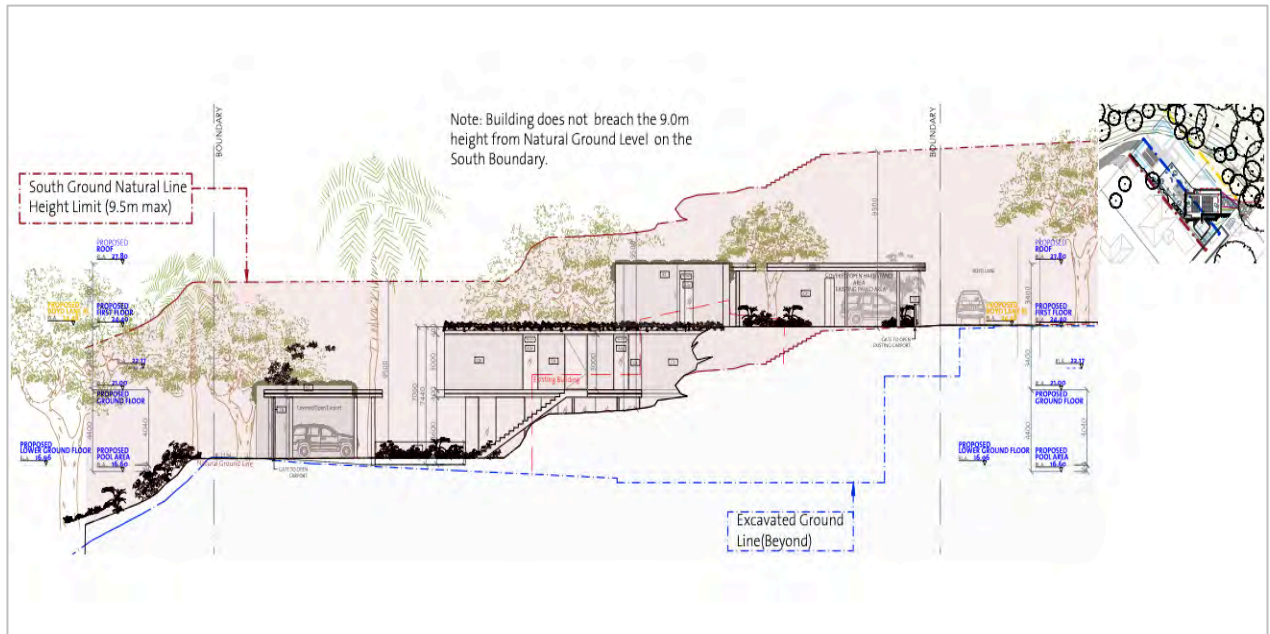


Figure 5: 3D - Height compliance (Natural ground lines-south)

Source: Spicer Architecture

3. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of the Ryde LEP includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of the Ryde LEP are:

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

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority consider a written request from the applicant that seeks to justify the contravention of the development 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)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Planning Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires the Planning Secretary to consider:

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

The concurrence of the Planning Secretary may be assumed to have been granted, for the purpose of this variation request, in accordance with the NSW Department of Planning Circular PS 18–003 'Variations to development standards' dated 21 February 2018. This planning circular is a notice under section 64(1) of the Environmental Planning and Assessment Regulation 2021 and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been granted.

The Planning Secretary may also be assumed to have given concurrence if the matter is determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

This clause 4.6 variation request demonstrates that compliance with the building height prescribed for the subject site via clause 4.3 of the Ryde LEP is unreasonable or unnecessary; there are sufficient environmental planning grounds to justify the requested variation; and approval of the variation is in the

public interest because it is consistent with the objectives relating to the relevant development standard and land use zone.

In accordance with clause 4.6(3), the applicant requests that the building height standard be varied.

4. ASSESSMENT OF THE CLAUSE 4.6 VARIATION

The following sections of this report provide a comprehensive assessment of the request to vary the development standard relating to height of buildings, in accordance with clause 4.3 of the Ryde LEP. Detailed consideration has been given to the following matters within this assessment:

- ‘*Varying development standards: A Guide*’ as prepared by the Department of Planning & Infrastructure (dated August 2011).
- Relevant planning principles and judgements issued by the NSW Land and Environment Court.

The following sections of this report provide detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the Ryde LEP.

4.1 ABILITY TO VARY THE STANDARD

The height of buildings standard as prescribed in Clause 4.3 of the Ryde LEP is a development standard capable of being varied under clause 4.6(2) of that LEP. The proposed variation is not excluded from the operation of clause 4.6(2) of the Ryde LEP, as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of that LEP.

4.2 CONSIDERATION

4.2.1 Clause 4.6(3)(a) – Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires that the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently reaffirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable or unnecessary’ requirement.

▪ ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43]).

The specific objectives of the height of buildings development standard, as specified in clause 4.3(1) of the Ryde LEP, are detailed in the table below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Objectives	Assessment
<p>(a) to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,</p>	<p>The height encroachment will not be readily apparent or obvious to the casual observer at street level nor will it result in a jarring contribution to the character noting that the dwelling is compliant with the prescribed height afforded to the land when measured against the natural ground and in turn, more topographically characteristic site conditions. Furthermore, the strict application of the height standard would impose a greater level of visual discord across the street frontage noting any ensuing built form outcome would be interpreted as far less visually proportionate and contextually incompatible across the street frontage over that tabled as part of this application.</p> <p>The site conditions set by the already excavated land have as a consequence, created a visual disparity across the street setting made evident by the current relationship between the subject and neighbouring properties. The height variation to some degree, assist in the reestablishment of a more conducive and visually responsive built form outcome across Boyd Lane.</p> <p>The proposal complies with the FSR standard and provides for setbacks that either comply with or outperform the minimums prescribed by the DCP. Landscaping is also provided at compliant levels that alongside the suite of other controls, numerically informs what the desired future character should resemble.</p> <p>Having regard to the foregoing commentary, the proposal, despite the height breach, is deemed to present as contextually suitable and consistent in scale along the Boyd Lane frontage. More generally, the proposed design will visually integrate with that of neighbouring development both current and future, serving as an affirmation of the objective and not that of a building that abandons height controls.</p> <p>Accordingly, it is considered that the height, bulk and scale of the dwelling and in turn, its proportions, will present as compatible with adjoining development, the character of the locality and the natural setting. The resultant height breach does not offend this compatibility in any noticeable way.</p>

<p>(b) to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,</p>	<p>With respect to compatibility, we again rely on the foregoing commentary in address of the preceding objective with regards to the current level of streetscape visual discord between the subject and neighbouring sites which has inadvertently resulted from the extent of pre-existing land manipulation that has taken place. The current design scheme which relies, in part, on a departure from the height standard, seeks to reinstate a more orderly design response to the setting and in doing so, will improve the appearance of the area noting the improved built form and spatial relationships that will result.</p> <p>The height non-compliance is a direct result of the need to achieve a functional and visually coordinated built form outcome. The extent of height breach is numerically exacerbated when measured against the excavated ground levels of the land which is not a clear representation of the site's topography. When measured against the natural and better representative land topography, a wholly compliant building height is observed.</p> <p>More generally, the proposal incorporates staggered facades, building recesses and the use of a variety of materials and detailing, to provide a highly articulated built form of contemporary external appearance. This design response ensures that the perceptible volume of the development, most notably the breaching components, will not be identified as an adverse contribution to bulk along the street edge but rather, will facilitate the provision of a more sympathetic streetscape outcome.</p> <p>In terms of overshadowing, Figures 6-8 below this table demonstrate the extent of additional shadowing that will be cast upon the adjoining property at No. 83 Westminster Road at the Winter Solstice (hatched annotation). As demonstrated by the diagrams, the extent of additional shadowing impact is not unreasonable and does not adversely prejudice the extent of available solar access to the neighbouring property across key areas. The adjoining property will continue to receive a reasonable level of solar access with respect to its north facing windows and private open space.</p>
<p>(c) to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,</p>	<p>This objective is not relevant to the development.</p>

<p>(d) to minimise the impact of development on the amenity of surrounding properties,</p>	<p>The height breaching components of the dwelling are such that their siting and location will not result in an adverse impact upon the privacy afforded to neighbouring properties. This lack of impact is also relevant to acoustics whereby the breach will have no bearing on the acoustic privacy of neighbouring properties and or public spaces that adjoin the rear of the site.</p> <p>In terms of view impacts, the landform characteristics relevant to both the subject and neighbouring sites, and the relationship the proposed development will have with those dwellings, ensures that the breaching elements will not have a discernible impact on the extent of view enjoyed. The view loss impacts associated with the development, most notably the breaching elements, are not likely to be significant and have been mitigated through appropriate building design and siting. This has been affirmed in the revised view impact analysis prepared by Spicer Architecture that form part of the architectural plan detail set (DA.13.04.23 View Loss Pack) dated 12 April 2023.</p>
<p>(e) to emphasise road frontages along road corridors.</p>	<p>This objective is not relevant to this development.</p>

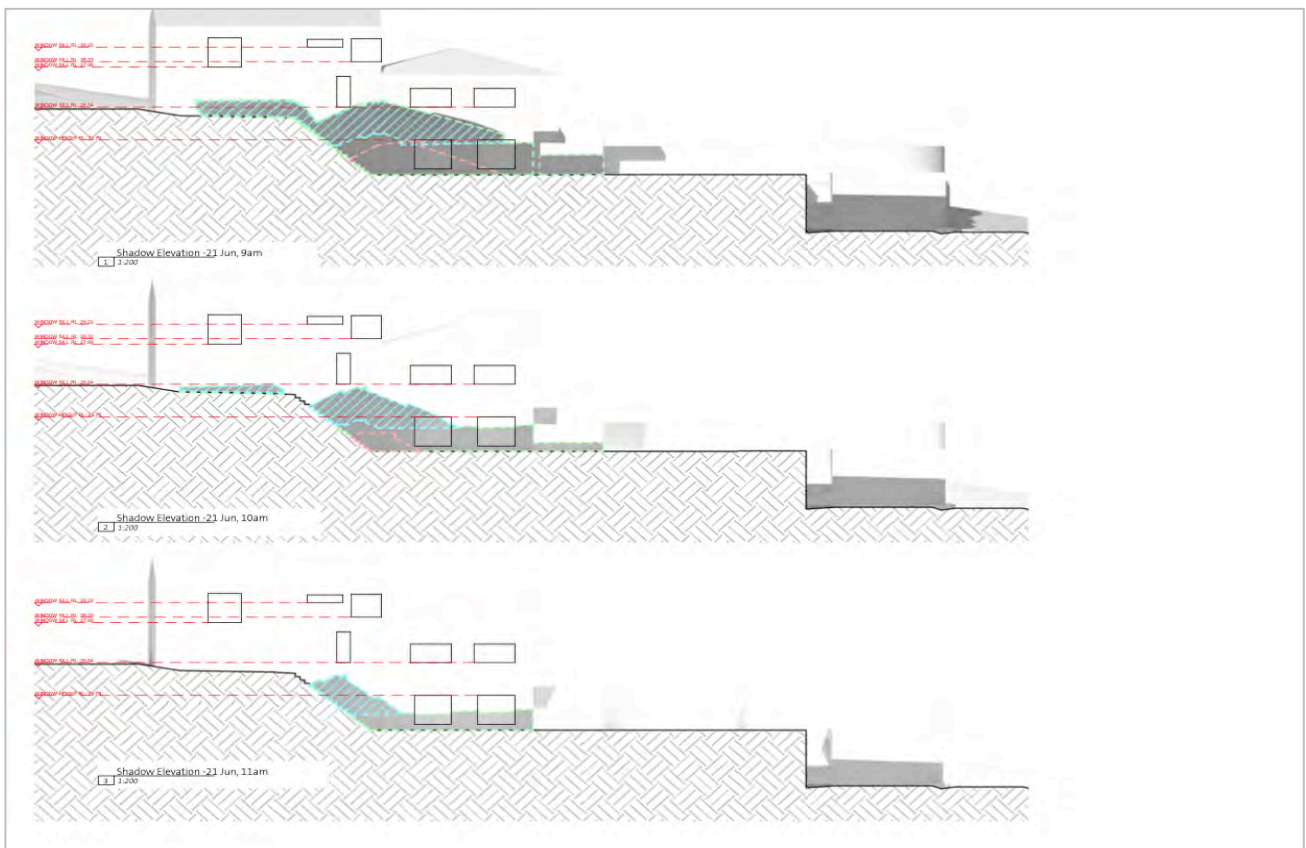


Figure 6: Shadow Diagram - 21st June – 9-11am
Source: Spicer Architecture



Figure 7: Shadow Diagram - 21st June – 12-2pm
Source: Spicer Architecture



Figure 8: Shadow Diagram - 21st June – 3pm
Source: Spicer Architecture

4.2.2 Clause 4.6(3)(b) – Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

Clause 4.6(3)(b) of the Ryde LEP requires the consent authority to be satisfied that the applicant's written request has adequately addressed that clause, by demonstrating:

“that there are sufficient environmental planning grounds to justify contravening the development standard.”

The environmental planning grounds relied upon in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development, as summarised in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] (NSWLEC 118).

There is an absence of environmental harm arising from the contravention of the development standard and positive planning benefits arising from the proposed development, as outlined in detail above. These include:

- The proposal is consistent with the objectives of the development standard and the objectives for development in the R2 Low Density Residential Zone.
- The subject site is in part, affected by a flame zone buffer and therefore, the dwelling needs to be constructed outside of this flame zone. Of the 953.9m² site area, 356.33m² or 37% is located within a flame zone and is therefore, an area of the site that the dwelling floor plates need to avoid. Consequently, only 597m² or 63% of the site is left outside of the flame buffer zone. This limitation has a direct bearing on the developable land area which is therefore, confined to a notably more limited part of the site. This land condition has had a direct bearing on the siting of the floor plates and in conjunction with the other site specific land characteristics, has had a bearing on the extent of height breach observed across the proposed dwelling.
- The proposal readily complies with the remaining development standards applicable to the site including the maximum floor space ratio area standard as prescribed in clauses 4.4 of the Ryde LEP. Therefore, the height variation does not purposely seek to provide any additional gross floor area outside of that prescribed to the development on the land.
- The proposed variation to the height is deemed a necessary outcome to allow for a well resolved and functional floor plate arrangement offering high levels of residential amenity. The height breach will result in no adverse impacts on adjoining properties in terms of visual bulk, views, privacy or overshadowing.
- The location and design of the height breaching elements have been organised to ensure that they do not present as visually jarring to the streetscape and in addition, do not result in any adverse level of amenity impact on neighbouring properties.
- The elements which breach the height do so largely as a result of the sites topography which as observed, displays a significant slope from the street towards the rear. This slope was again exacerbated by the previously undertaken site excavation works which have created a further topographical disparity between the subject and neighbouring sites.
- Prior excavation of the site and the consequent distortion of the height of buildings plane over the site, when compared to the topography, is an environmental planning ground sufficient to justify contravening the development standard. The site's topography and unusual characteristics distinguish this case from the more generic development for which a numeric standard of this kind inevitably must anticipate.

- A compliant scheme would result in a greater height and mass across Boyd Lane. This would create a greater level of perceived bulk from this domain and neighbouring properties. Allowing the non-compliant scheme will reduce overall adverse impacts on third parties and provide better amenity for the future occupiers of the subject development. Any adverse impacts from allowing the variation are very modest and are dwarfed by the significant benefits of allowing the variation.
- The proposed development, notwithstanding non-compliance with the height development standard not only is an orderly and economic use and development of the land, but also promotes good design and amenity of the built environment.
- There is no planning purpose to be served by limiting the height strictly to the maximum height allowable given the site constraints and absence of unreasonable levels of amenity related impacts.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed non-compliance with the height of buildings standard in this instance.

The Objects of the Environmental Planning & Assessment Act 1979 ('EP&A Act') under Section 1.3 of that Act are also relevant to whether grounds exist to warrant a variation. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, in **the table below** we consider whether the proposed development is consistent with each object.

The objects of the EP&A Act and how this proposal responds to each of the objects are detailed as follows:

Object	Comment
To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources	This object is not relevant to this development.
To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The proposal will facilitate an ecologically sustainable development given that no negative impact on environmental and social considerations will arise. This in turn will serve to offer the ongoing sustainment of the economic health of the area.
To promote the orderly and economic use and development of land	The proposed development will promote the orderly and economic use of the land by way of providing a land use typology and intensity, consistent with that envisaged by Council.
To promote the delivery and maintenance of affordable housing	This object is not relevant to this development.
To protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	Given the nature and character of the urban setting the proposed development is located within, no impact on threatened species or ecological communities is likely to result.
To promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	This object is not relevant to this development

To promote good design and amenity of the built environment	The proposed development promotes good design in that it serves to provide a built form and massing arrangement that serves to positively influence the future amenity of the dwelling occupants while adopting an architectural form and language, with an overall silhouette, height and land use intensity compatible with both the established and emerging development and housing typology.
To promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposed development will comply with all relevant BCA codes and will promote the health and safety of occupants.
To promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	This object is not relevant to this development
To provide increased opportunity for community participation in environmental planning and assessment	This proposed development has been publicly notified in accordance with Council's Community Engagement Strategy/DCP.

Based on the above, the consent authority can be satisfied that the proposed development remains consistent with the Objects of the Act despite the height non-compliance.

4.2.3 Clause 4.6(4)(a)(i) - Has the Written Request adequately Addressed the Matters in Sub-Clause (3)?

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the subclause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

4.2.4. Clause 4.6(4)(a)(ii) - Will the Proposed Development be in the Public Interest because it is Consistent with the Objectives of the Particular Standard and Objectives for Development within the Zone in Which the Development is Proposed to be Carried Out?

Clause 4.6(4)(a)(ii) provides that development consent must not be granted for development that contravenes a development standard, unless 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 land use zone in which the development is proposed to be carried out.

In Section 4.2.1 of this request, it was demonstrated that the proposal is consistent with the objectives of the development standard. The proposal (inclusive of the height non-compliance) is also consistent with the objectives of the R2 - Low Density Residential zoning, as follows:

Zone R2 – Low Density Residential

Objective	Comment
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• To provide for the housing needs of the community within a low density residential environment.	The proposal maintains the current use of the subject site for the purpose of a single detached dwelling house, consistent with the prevailing low density residential character of the immediate neighbourhood.
• To enable other land uses that provide facilities or services to meet the day to day needs of residents.	This objective is not relevant to the development.
• To provide for a variety of housing types.	The proposal involves the provision of a dwelling being a contemplated form of development within the zone.

The objectives of the land use zone as detailed above, as well as the objectives of the standard, have been adequately satisfied. Therefore, the proposal is considered to be in the public interest.

4.2.5. Clause 4.6(5)(a) – Would the Non-Compliance raise any Matter of Significance for State or Regional Planning?

The proposed minor non-compliance with the height of buildings development standard will not raise any matter of significance for state or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

4.2.6. Clause 4.6(5)(b) – Is there a Public Benefit of Maintaining the Planning Control Standard?

The proposed development achieves the objectives of the building height development standard and the land use zone objectives. As such, there is no public benefit in maintaining the development standard.

4.2.7. Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Planning Secretary before granting concurrence?

There are no known additional matters that need to be considered within the assessment of this clause 4.6 variation request and prior to granting concurrence, should it be required.

5. CONCLUSION

For the reasons set out in this written request, strict compliance with the height of buildings development standard contained within clause 4.3 of the Ryde LEP 2013 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the height of buildings development standard to the extent proposed, for the reasons detailed within this submission and as summarised below:

- Compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the proposed development.
- The proposal, notwithstanding the non-compliance, is consistent with the objectives of the height of buildings standard and the R2 - Low Density Residential Zone.
- There are sufficient environmental planning grounds to justify the contravention, which results in a better planning outcome than a strictly compliant development in the circumstances of this particular case.
- There is an absence of any environmental impacts arising from the proposed variation.
- The proposed non-compliance with the height of buildings standard will not result in any matter of significance for State or regional environmental planning

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the height of buildings development standard should be applied.