



DAP Assessment Report

File Reference DA 2019/723

Applicant Ocean Shire Developments

Property Lot: 61 DP: 1240776, 10 Tidepool Street LENNOX HEAD

Proposal Construction of two dwellings and associated earthworks and

retaining walls to create a Detached Dual Occupancy development and Strata subdivision as depicted in plans by Stroud Homes Project

No. 161TID19

Effect of Planning

Instrument

The land is zoned R3 - Medium Density Residential under the provisions of the Ballina Local Environmental Plan (BLEP) 2012 and

affected by Development Control Plan (DCP) 2012

Locality Plan The subject land is depicted on the locality plan below



Locality Plan

Purpose of Report

The application has been referred to the Development Assessment Panel for a recommendation to the Division Manager as a result of non-compliances with the Ballina Shire Development Control Plan 2012 with a subsequent recommendation of refusal.

The purpose of this report is to provide information to the Development Assessment Panel to enable a collaborative assessment by additional officers of matters relating to the recommendation for refusal.

This report is to be read in conjunction with the assessment that has been carried out in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979.

Introduction

Council has received a Development Application from Ocean Shire Developments (Stroud Homes), for Construction of two dwellings and associated earthworks and retaining walls to create a Detached Dual Occupancy development and Strata subdivision.

An assessment of the application under BLEP and DCP has determined that the proposal does not meet the following objectives of Chapter 4 of the DCP:

- Element C Building Envelopes, and
- Element I Overlooking and Privacy, and
- Element J Solar Access

Previous requests have been made by Council for the applicant to consider the design of the proposed dwellings with the aim of the applicant providing a design that takes the sloping nature of the allotment more fully into consideration and reduce the shadowing impacts.

Reportable political donations

Details of known reportable political donations are as follows:

Applicable Planning Instruments

- Ballina Local Environmental Plan 2012
- Ballina Shire Development Control Plan 2012

Public exhibition and relevant objector details

The application was not required to be displayed on public exhibition and it was not neighbour notified.

Summary of issues raised with any objections/issues of non-compliance

To date no objections or submissions have been received by Council.

Assessment officer report / relevant photographs

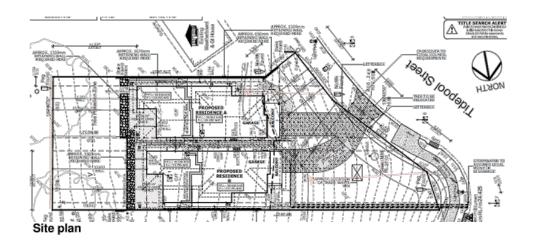
(Note: Officer's EPAA Section 4.15 Evaluation report also attached)

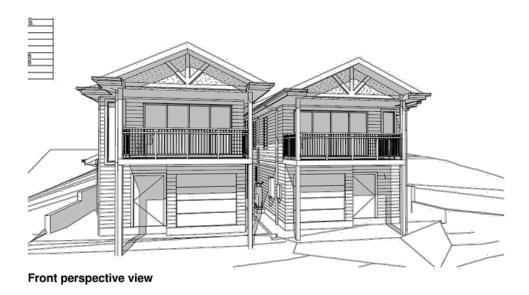
The Proposal

The proposal is for the construction of two detached predominantly rectangular shaped twostorey dwellings and associated earthworks and retaining walls.

The dwellings are to be 1800mm apart and setback 6859mm from the street boundary at the closest point. The northern most dwelling is setback in excess of 10.0 from the street boundary.

Each dwelling has a 600mm step within the slabs and they are oriented to run generally parallel with the side boundaries in a predominantly east/west direction.





The Site

The lot is currently vacant and is a relatively rectangular lot apart from the street frontage that is on an acute angle.

The lot has an area of $814m^2$. The buildable area is reduced by a $10m \times 10m$ Tree Protection Zone located on the north-east corner.

The lot slopes moderately to steeply downward from the rear towards the western street boundary.

The Locality

Existing development in the locality general comprises residential buildings being single dwellings and dual occupancies of one and two-storey construction as shown in the aerial image below.

The adjoining property to the south is a two storey dwelling of generally rectangular shape oriented to run in a south-east/north-west direction.

Relevant issues identified during \$4.15 assessment

Element C Building Envelopes -

Objectives

- Ensure buildings are set back progressively from the side and rear boundaries as building height increases so that buildings do not unduly affect existing or future development on adjoining properties by way of overshadowing, impinging on privacy, or unreasonably obstructing views -
- Ensure that the occupants of residential accommodation have the opportunity to enjoy the optimum use of winter sunlight -
- iii. Enhance opportunities for solar access to both the development site and adjoining properties -
- iv. Achieve varied and interesting streetscapes, good orientation of residential developments with regard to sun, shade, wind and neighbouring development, and effective use of allotments to create usable private open space and courtyards -
- Ensure that buildings are compatible with the bulk, scale and character of the locality V.
- Minimise adverse impacts on the existing or future amenity of adjoining properties νi. and the scenic or landscape quality of the locality, and
- νii. To provide flexibility for steeply sloping to best address streetscape, solar orientation and location for outdoor amenity areas.

The subject allotment is bounded to the south by a residential allotment which contains an existing two storey dwelling.

The proposed development breeches the building envelope on the southern boundary by approximately 1.8m. Shadowing diagrams provided by the applicant indicate substantial shadowing on adjoining property to the south. Refer to images below.

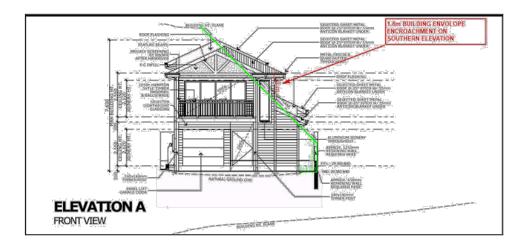
Should the proposed development be approved in its current form, a shadow shall be cast on the dwelling on the adjoining allotment to the south. The shadow cast shall be cast on both living area and bedroom windows for extended periods of time.

The proposed development also casts shadows on habitable areas, other than bedrooms, on the southern dwelling on the development lot (Dwelling A). This is envisaged to be severe with the ground floor children's retreat and first floor living areas windows all receiving less than 3 hours of continuous sunlight at the winter solstice.

Due to the articulation of the proposed development it is considered that the bulk and scale is compatible with other developments in the locality. However, the shadowing impacts as outlined above are not reasonable.

The development site topography provides a challenge for developers. Advice was given to the applicant regarding stepped construction or alternative construction measures aside from cut/fill and slab to compliment the site topography. However, this advice has not been acted upon.

A request to justify the building envelope variations was requested in an RFI dated 13 January 2020. An application to vary the above control has not been received to date.



Solar Access -

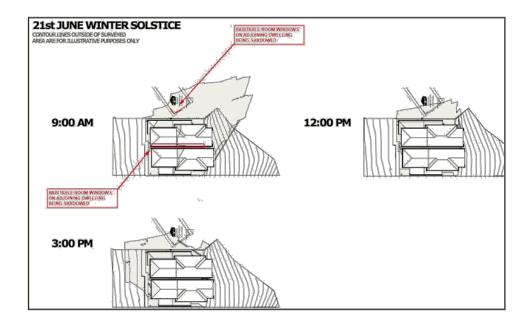
Objectives

- Ensure new dwellings have adequate direct sunlight to living areas (living rooms, lounge rooms, kitchens, dining rooms and the like) and private open space –
- Ensure developments do not significantly overshadow living areas and the private open space of adjacent dwellings and areas of foreshore open space –

Shadow diagrams provided indicate that the windows of the "child's retreat" of Dwelling A and two of the living area windows of the dwelling on the adjoining property shall receive less than 3 hours of continuous sunlight between 9.00am and 3.00pm at the winter solstice.

The proposed development shall cast a significant shadow on ground floor habitable room windows of the dwelling on the adjoining property to the south.

During the DAP meeting it was noted that the dwelling on the adjoining land has an existing deck area (private open space) that would also be shadowed heavily during the winter solstice.







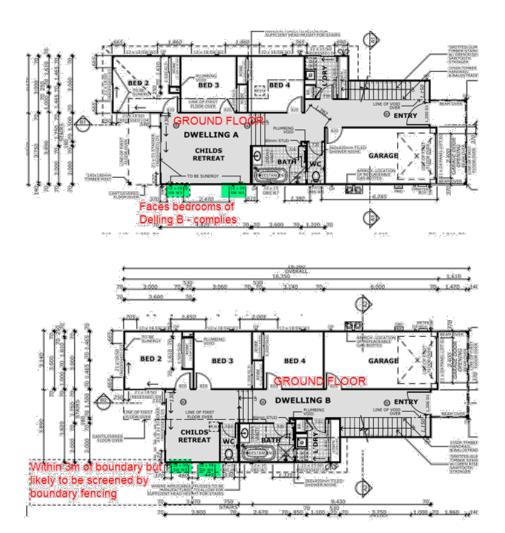
Element I Overlooking and Privacy -Objectives

- Ensure buildings do not unduly affect existing or future development on adjoining properties by impinging on privacy or obstructing views -
- Provide visual privacy for internal and external spaces b.

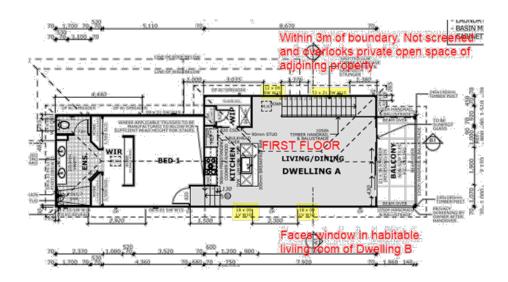
The proposed development has several habitable room windows (excluding bedroom windows) that have a do not meet the privacy criteria of the DCP with respect to the allotment boundary and the other dwelling on the same allotment.

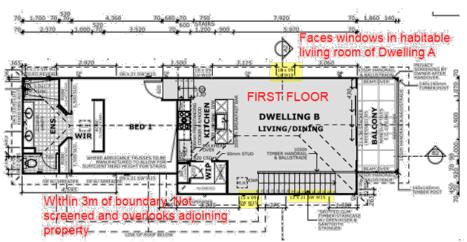
Those that do not meet the privacy criteria are highlighted yellow on the plans below.

The first floor living areas of both Dwelling A and Dwelling B will be impacted by the other dwelling on the lot. In addition, the private open space of the properties located to the north and south will both be adversely impacted as well by the first floor windows.



Compliant windows in habitable rooms other than bedrooms





Non-compliant windows in habitable rooms other than bedrooms

Screening measures were requested to be demonstrated in accordance with Council's DCP. Only screening measures on the elevated decks have been included.

<u>Conclusion</u>
Should the proposed development be approved it is likely that there are impacts not only to the amenity of the adjoining property to the south but also to the southern dwelling on the development site through loss of privacy and natural light to the windows of habitable room.

It should be noted that Council has previously requested the applicant amend the design to suit the nature of the allotment and reduce the adverse impacts as noted in the report. However, the small amendments that have been made are insufficient to provide the level of amenity that would be expected of the occupants of the affected dwellings.

Options

Option 1 – Approve the application as submitted with appropriate conditions.

Option 2 - Refuse the application due to the adverse impacts on the adjoining property and Dwelling A on the development site.

Option 3 - Provide the applicant with an opportunity to amend the design to reduce the impacts as noted in the report.

Conclusion

Should the proposed development be approved it may be deemed that there are impacts not only to the amenity of the adjoining property to the south but also to the southern dwelling on the development site through loss of privacy and natural light to the windows of habitable room.

It should be noted that Council has previously requested the applicant amend the design to suit the nature of the allotment and reduce the adverse impacts as noted in the report. However, the amendments that have been made are insufficient provide the level of amenity that would be expected of the occupants of the affected dwellings.

Option 1 is not recommended due to the unacceptable adverse impacts resulting from noncompliances with the DCP.

As the applicant has already had sufficient opportunity to amend the design and has only made insignificant changes. To resolve the amenity issues as noted in the report is likely to require a substantial redesign of the entire development. Therefore, Option 3 is not recommended.

Assessment Officer Recommendations / Options:

It is recommended that Option 2 be adopted by the panel for the following reasons.

- 1. The proposal does satisfy the controls or objectives of Ballina Shire Development Control Plan 2012 Element C - Building Envelopes.
- The proposal does satisfy the controls or objectives of Ballina Shire Development Control Plan 2012 Element I - Privacy and Overlooking.
- 3. The proposal does satisfy the controls or objectives of Ballina Shire Development Control Plan 2012 Element J - Solar Access.
- 4. The proposal will have unreasonable shadowing and privacy impacts on the amenity of the adjoining property to the south.
- 5. The proposal will have unreasonable shadowing and privacy impacts on the amenity of the southern dwelling on the development site (Dwelling A)
- 6. The proposal will have unreasonable privacy impacts on the amenity of the northern dwelling on the development site (Dwelling A)
- 7. The proposal will have unreasonable privacy impacts on the amenity of the adjoining property to the north.

Minutes of (DAP) Meetings:

The panel consisting of David Tyler, Ryan Slater and Neville McDonald met at the site on 26 February 2020 and discussed the content of the report including the locations of the building, the encroachments of the building envelope, shadowing impacts and privacy impacts.

The panel agreed that the impacts as noted in the report are unreasonable and unnecessary and that a more skilful design with greater regard for the DCP controls and objectives could reduce any impacts to a reasonable level.

DAP Recommendations:

As the applicant has failed to address the design issues, the panel agreed to recommend **Refusal** in accordance with Option 3 of the report.

DAP Members to electronically endorse in Content Manager (CM)

Division Manager/ Comments/ Recommendations/ Endorsement

Comments:

Refusal of the application endorsed subject to inclusion of additional detail in the DAP report regarding the impacts on the proposed dwelling A.

Matthew Wood Director Planning and Environmental Health Division

Director to electronically endorse in Content Manager (CM)

Development Application Assessment Form

(Pursuant to s 4.14 and s.4.15 (1) of the EP & A Act 1979)



Application Details

Development Application No.	2019/723
Property Description	Lot: 61 DP: 1240776, 10 Tidepool Street LENNOX HEAD
Proposed Development	Construction of two dwellings and associated earthworks and retaining walls to create a Detached Dual Occupancy development and Strata subdivision as depicted in plans by Stroud Homes Project No. 161TID19
Building Classification	1(a), 10(a) & 10(b)
Site Inspection Date	28/11/2019

Assessment of the Application

The assessment officer responsible for the preparation of this report, (including recommendations/ determination or advice to any person) has delegated authority to deal with this application has no pecuniary interest or conflict of interest to disclose in respect to the application.

Only those sections applicable to the application need to be completed. Where an item is not applicable the field may be left blank.

Type of Development

The development is not Designated Development

The development is **not Integrated** Development and **no referrals** to any NSW State Government authority required

Land Ownership

The application is not for development on Crown Land

The application is not for development on land owned by Ballina Shire Council

Existing Development

The lot is currently vacant

Section 4.14 Consultation and development consent—certain bush fire prone land (cf previous s 79BA)

The property is not mapped as bushfire prone land, or within 100m of vegetation that may be deemed to be a threat.

Section 4.15(1)(a)(i) - The provisions of any Environmental Planning Instrument State Environmental Planning Policies (SEPP)

Compliance is achieved with the listed SEPP's:

SEPP 55—Remediation of Land

There are no likely contamination issues

SEPP (BASIX) 2004

 A BASIX Certificate has been provided and the commitments included in the documents to be issued with any consent

SEPP (Coastal Management) 2018

Division 3 Coastal environment area

The development is on land within the coastal environment area, although it is not likely to cause an adverse impact on:

- the integrity and resilience of the surface water, groundwater and ecological environment
- the coastal environmental values and natural coastal processes,
- the water quality of any marine estate, including cumulative impacts on any coastal lakes.
- any marine vegetation, native vegetation and fauna and their habitats, any undeveloped headlands and rock platforms,
- any existing public open space and safe access to and along any foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- · any Aboriginal cultural heritage, practices and places,
- the use of any surf zone.

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

The proposed development is not in the vicinity of an existing mine, petroleum production facility or extractive industry

SEPP (Infrastructure) 2007

The proposed development:

- Does not involve penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,
- is not within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists)
- · is not immediately adjacent to an electricity substation
- · is not within 5m of an exposed overhead electricity power line

Local Environmental Plans (LEP)

The land has the following zonings under the BLEP 2012:

R3 Medium Density Residential

The proposed development permissible within this zone.

Part 4 Principal development standards

4.3 & 4.3A The height of the building does not exceed the maximum allowable height

4.4 & 4.5 The gross floor area does not exceed the maximum floor space ratio

Part 5 Miscellaneous provisions

5.10 The development is not in the vicinity of, nor does it does not involve altering a heritage item as listed in Schedule 5 of the LEP or disturbing an aboriginal place of heritage significance

Part 7 Additional local provisions

- 7.4 The development is not likely to impact on the drinking water storage in a drinking water catchment
- 7.5 The development will not penetrate the Limitation or Operations Surface for airspace operations
- 7.6 The development will not increase in the number of dwellings or people affected by aircraft noise
- 7.7 Water, electricity, sewage disposal, stormwater drainage and vehicular access are available

Section 4.15 (1)(a)(ii) - The Provisions of any Draft Environmental Planning Instrument

There are no draft EPI's in relation to the development

<u>Section 4.15(1)(a)(iii)</u> – <u>Ballina Shire's Development Control Plan (DCP) 2012</u> Only those matters of relevance to the application need to be addressed.

Chapter 1 - Administration

The development complies with Council's Building Over Assets Policy -

Subject allotment has registered easement "s" to drain sewage 3m wide to the front of
the allotment. Amended plans provided 03/02/2020 appear to indicate all proposed
retaining walls clear of registered easements. Conditions applies for ZOI to be
considered.

Conditions to be applied in relation to Council's Dual Water Policy

Contributions apply to the Dual Occupancy/Strata Subdivision development.

A plan of the proposed strata lots has been provided.

There are no known private covenant issues (S.88B)

- 3.2.2 There have been **no pre-lodgement meetings** other than possible over the counter advice
- 3.2.3 The assessment of the application was subject to stop the clock provisions.

The following additional information was requested from the applicant.

- Provide plans that demonstrate compliance with Council's building envelope controls or provide a Development Control Plan variation for the proposed building envelope encroachment. Please note – it is unlikely Council shall support a variation of this nature in its current format, redesign should be considered.
- Provide shadow diagrams that clearly depict any shadow caused on both proposed dwellings and the adjoining properties during the winter solstice;
 The plans provided indicate the proposal of a retaining wall and fill material over
- The plans provided indicate the proposal of a retaining wall and fill material over the registered easement to the front of the property. Please provide plans that demonstrate compliance with Council's Building Over Assets Policy - Amended plans revised 03/02/2020 indicate compliance with Council's Policy.
- Provide an amended site plan that clearly indicates the location of the proposed Strata boundary – Provided 03/02/2020.

5. Provide details (location and configuration) of required screening measures in accordance with Council's Development Control Plan.

3.2.4 & 3.2.5 Public Notification, Exhibition & Submissions

It was considered that the development would not create any unreasonable impacts on surrounding properties and therefore the application has not been publicly notified.

3.2.6 All applicable DA related fees have been paid –

All fees paid 13/11/19

Chapter 2- General and Environmental Considerations

The development will comply with the following applicable provisions of this Chapter:

- 3.1 Land Use Conflict - No known issues.
- 3.2 Ridgelines and Scenic Areas - not within mapped layers.
- Natural Areas and Habitat Not within mapped layer or associated buffer. 3.3
- Potentially Contaminated Land Subject allotment is mapped as being potentially contaminated. However, Council records indicate remediation works were completed during subdivision stage.
- 3.5 Land Slip/Geotechnical Hazard - Not within mapped layers.
- Mosquito Management Applies, controls required. 3.6
- Waste Management Applies, controls required. 3.7
- On-site Sewage Management Systems Not applicable, sewage available. 3.8
- Stormwater Management Not applicable to proposal. 3.9
- 3.10 Sediment and Erosion Control - Applies, controls required.
- 3.11 Provision of Services - Present.
- Heritage Not listed as heritage item. 3.12
- Drinking Water Catchments Not within catchment area. 3.13
- Coastal Hazards Not within mapped layer. 3.14
- Crime Prevention through Environmental Design Not applicable to proposal. 3.15
- Public Art Not applicable. 3.16
- Road Widening Not within mapped areas. 3.17
- Protection of Foreshore and Public Open Space Areas Not within mapped areas. 3.18 However, allotment has area of significant urban bushland to rear that is protected by easement.
- 3.19 Car Parking and Access - Number of spaces provided is to be clarified.
- Vibration Not applicable.
- Bushfire Management Refer to assessment under Section 4.14 of the Act above. 3.21

Chapter 2a - Vegetation

3.1 Urban Zones

The development does not involve the removal of any vegetation.

Chapter 2b- Flood Plain Management

Subject allotment is not mapped as being flood prone.

Chapter 4- Residential & Tourist Development

The development will comply with, or can be conditioned to comply with, the following applicable provisions of Section 3.1.3 of this Chapter:

Element A Building Height - Plans indicate building height is less than 8.5m. Complies.

Floor Space Ratios - Less than 0.5:1 indicated on plans. Complies. Element B

Element C Building Envelopes -

Objectives

- a. Ensure buildings are set back progressively from the side and rear boundaries as building height increases so that buildings do not unduly affect existing or future development on adjoining properties by way of overshadowing, impinging on privacy, or unreasonably obstructing views Proposed development breeches the building envelope on the both the northern and southern 2.4m and 2.6m respectively. Shadowing diagrams provided indicate severe shadowing on adjoining. Does not meet objective.
- b. Ensure that the occupants of residential accommodation have the opportunity to enjoy the optimum use of winter sunlight – Should the proposed development be approved in its current form a shadow shall be cast on the dwelling on the adjoining allotment to the south. The shadow cast shall be cast on both living area and bedroom windows for extended periods of time. **Does not meet objective.**
- c. Enhance opportunities for solar access to both the development site and adjoining properties As above, proposed development casts sever shadow on adjoining allotment. Further consideration should be granted to the shadow effect on the southern dwelling of the proposed development. Does not meet objective.
- d. Achieve varied and interesting streetscapes, good orientation of residential developments with regard to sun, shade, wind and neighbouring development, and effective use of allotments to create usable private open space and courtyards As above the proposed development not only casts a shadow on the adjoining land there it is envisaged the shadow on the southern dwelling shall be severe. Does not meet objective.
- Ensure that buildings are compatible with the bulk, scale and character of the locality – Due to the articulation of the proposed development it may be considered that the bulk and scale is compatible with local development. However, shadowing impacts as outlined above should not be overlooked. Complies with objective.
- f. Minimise adverse impacts on the existing or future amenity of adjoining properties and the scenic or landscape quality of the locality – The subject allotment is bounded to the south by a residential allotment which contains and existing dwelling.
- g. To provide flexibility for steeply sloping The development site topography provides a challenge for developers. Advice was given to the applicant regarding stepped construction or alternative construction measures aside from cut/fill and slab to compliment the site topography. However, this advice has not been considered. Does not meet objective.

NOTE – A request to vary the above control was requested in an RFI dated 13/01/2020. No application to vary the above control has been received.

Element D Articulation Zone - Nothing proposed in the articulation zone

Element E Building Lines – 6m indicated on plans complies with minimum setback.

Element F Development Fronting Laneways – Not applicable.

Element G Landscaping and Open Space - Sufficient space is provided.

Element H Vehicular Access and Parking - Two spaces provided, one of which is

covered. Other parking space is stacked. Car parking arrangement is

permissible under DCP.

Element I Overlooking and Privacy -

Objectives

 Ensure buildings do not unduly affect existing or future development on adjoining properties by impinging on privacy or obstructing views – The proposed development has several habitable room windows (excluding bedroom windows) that have a do not

- meet the criteria of the DCP with respect to the allotment boundary and other dwelling on the same allotment. **Does not meet objective.**
- b. Provide visual privacy for internal and external spaces As above the proposed development has several windows that may be deemed to be impinging on the adjoining properties and between he proposed dwellings on the same allotment. Does not meet objective.

Note – Screening measures were required to be demonstrated in accordance with Council's DCP. Only screening measures ion the elevated decks were indicated.

Element J Solar Access – Objectives

- Ensure new dwellings have adequate direct sunlight to living areas (living rooms, lounge rooms,
- b. kitchens, dining rooms and the like) and private open space Shadow diagrams provided indicate that the windows of the "child's retreat" of dwelling a and tow of the living area windows of the dwelling on the adjoining property shall receive less than 3 hours direct sunlight during the winter solstice. Does not meet objective.
- c. Ensure developments do not significantly overshadow living areas and the private open space of adjacent dwellings and areas of foreshore open space As above the proposed development shall cast a significant shadow on habitable room widows of the dwelling on the adjoining property to the south. Does not meet objective.

d.

Element K
Element - Fences and Walls - None proposed.
Element L
Element M
Element M
Element N
Element N
Element O
Element O
Element P
Element P
Element - Fences and Walls - None proposed.
Element - Fences and Walls - Fences and Walls

Section 4.15(1)(a)(iiia) – any Planning Agreement

There is no planning agreement that a developer has offered to enter into fro the property.

Section 4.15(1)(a)(iv) – the provisions of the Regulations

The development does not involve demolition work.

Section 4.15 (1)(a)(v) – any Coastal Zone Management Plan Repealed.

Sections 4.15(1)(b) & (c) -The Likely Impacts of the Development and the Suitability of the Site for the Development

There no likely issues obtaining access or **fall to sewer and stormwater** junctions and discharge points.

There likely unreasonable impacts on other properties with **privacy**, **shadowing**, **noise**, **view loss**, **external lighting**, **surface water run off or glare**.

There are no likely impacts on adjoining Council owned **reserves** (including access onto reserves during or after construction).

Section 4.15 (1)(d) - Consideration of submissions

No submissions have been received.

4.15(1)(e) - The Public Interest

Where relevant, provide comment on any public interest issue including local, state and federal:

Approval of the proposal in its current form is not in the public interest.

Other Comments and Determination

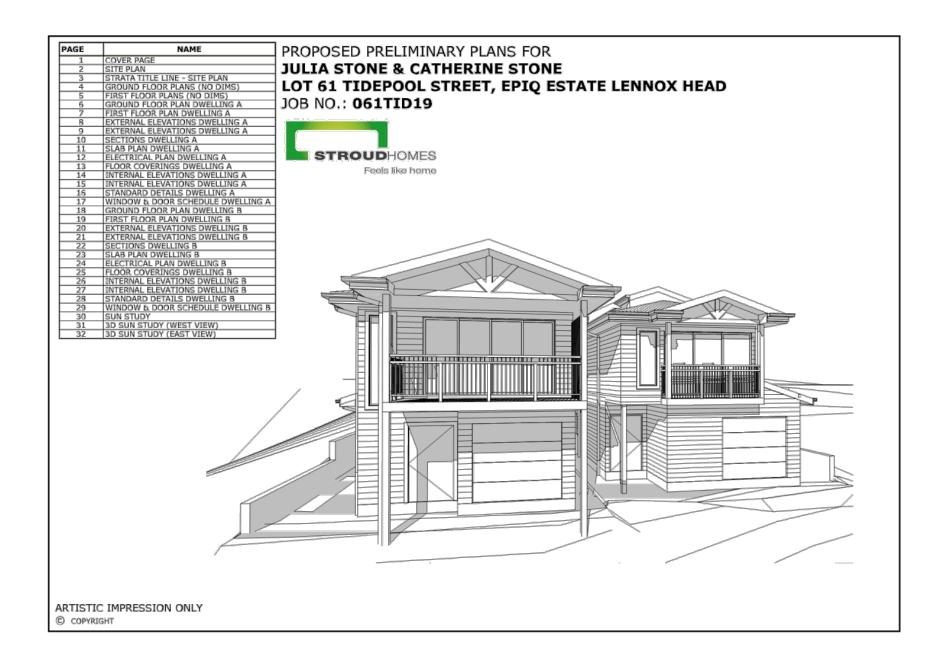
Having inspected the site and assessed the application in terms of relevant matters for consideration within Section 4.15(1) of the EP & A Act 1979 and other pertinent concerns as detailed in the above sections of this report, it is recommended that the application be determined by:

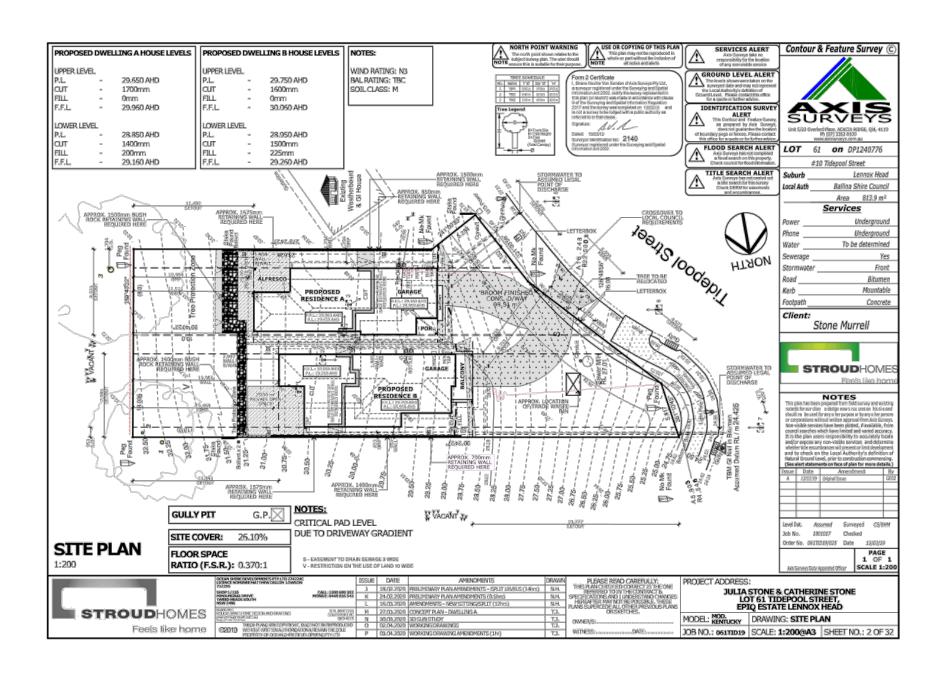
· Refusing of consent

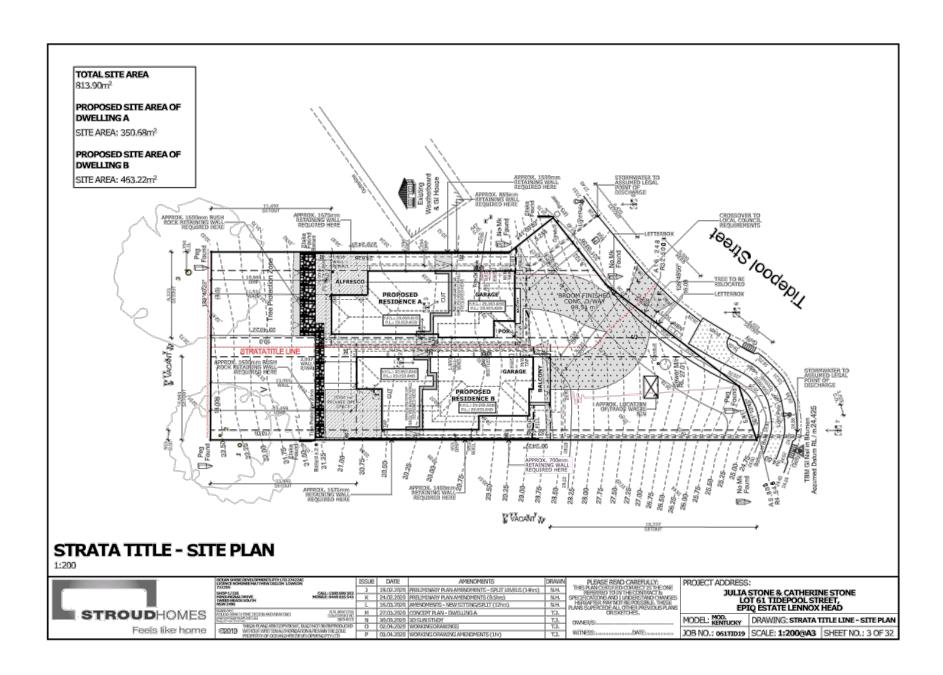
The application has been referred to the Development Assessment Panel.

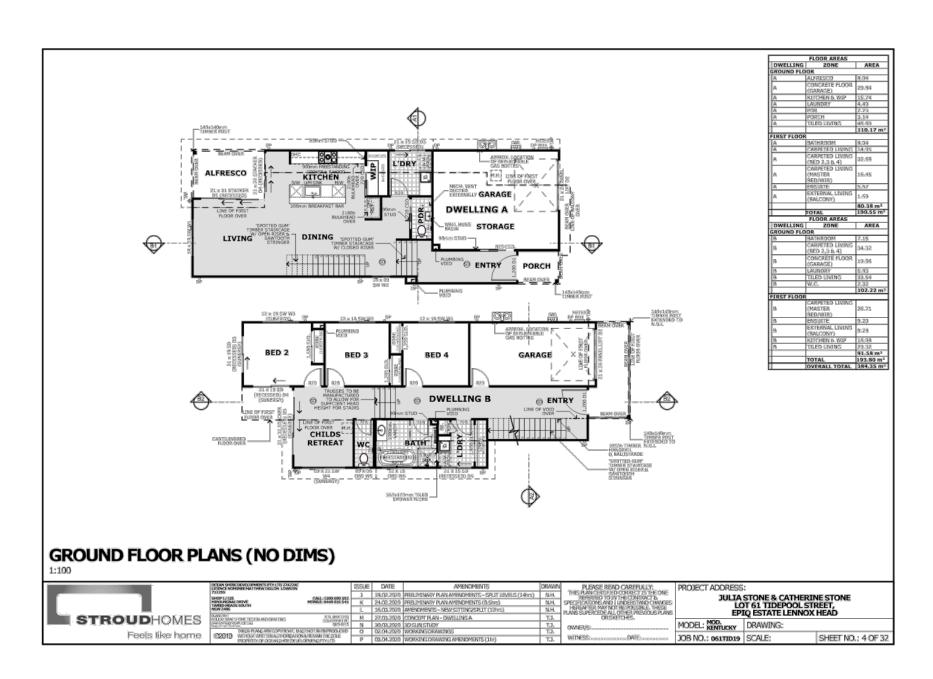
Assessment Officer's Name: Ryan Slater

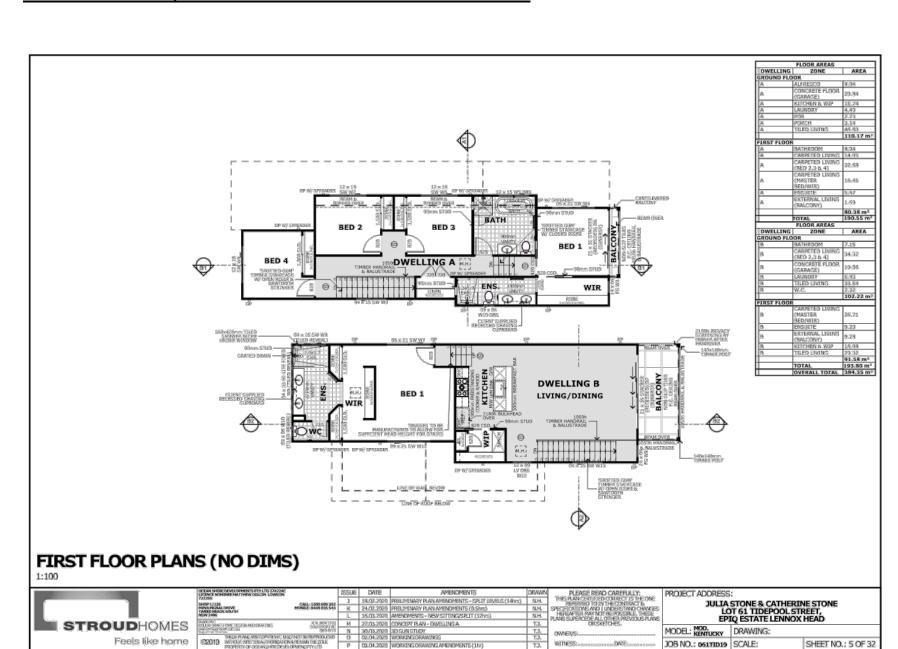
Date: 26 February 2020

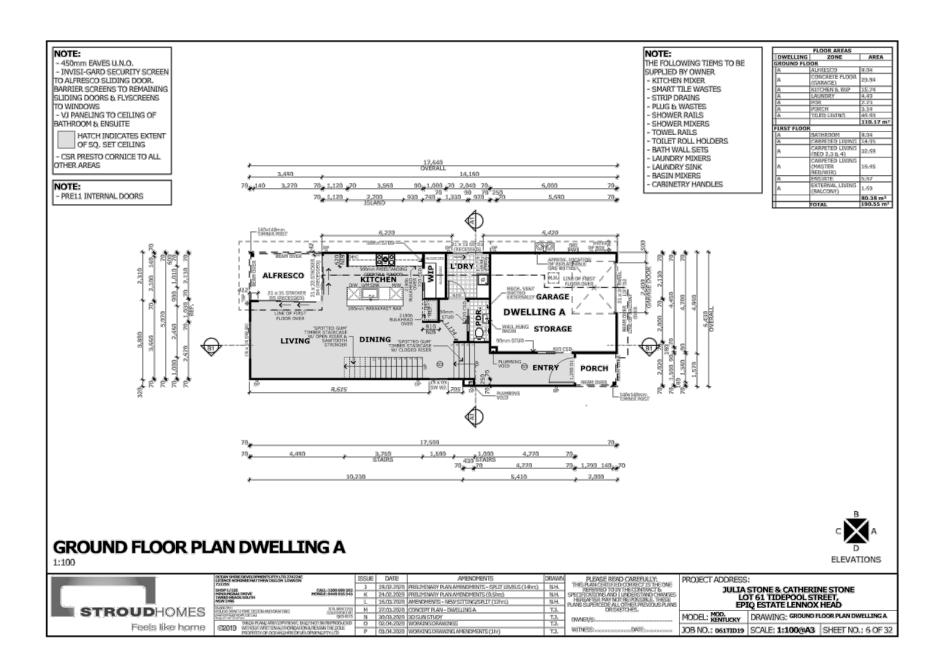


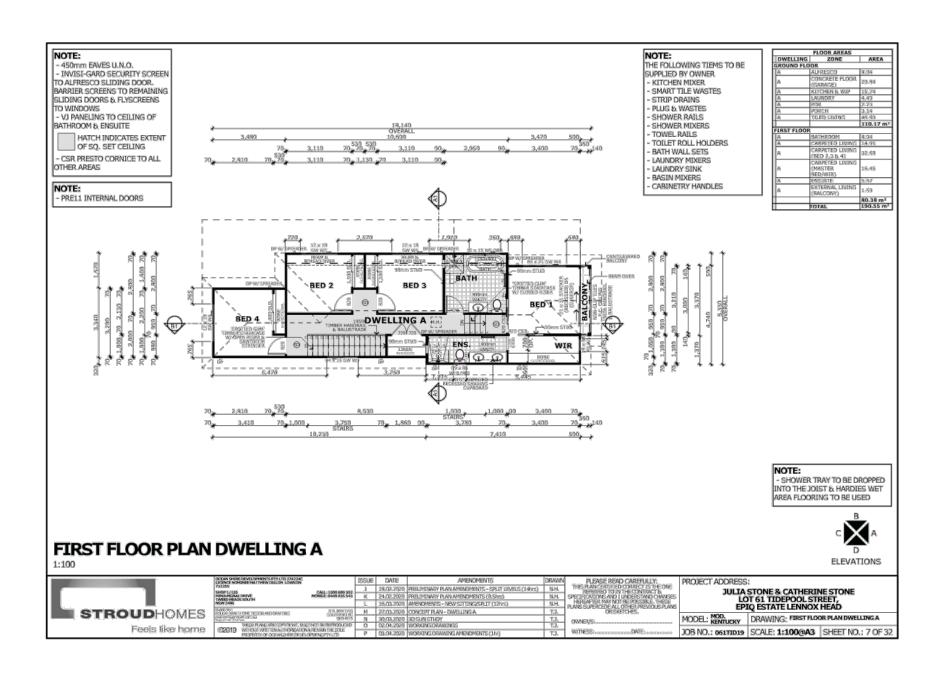


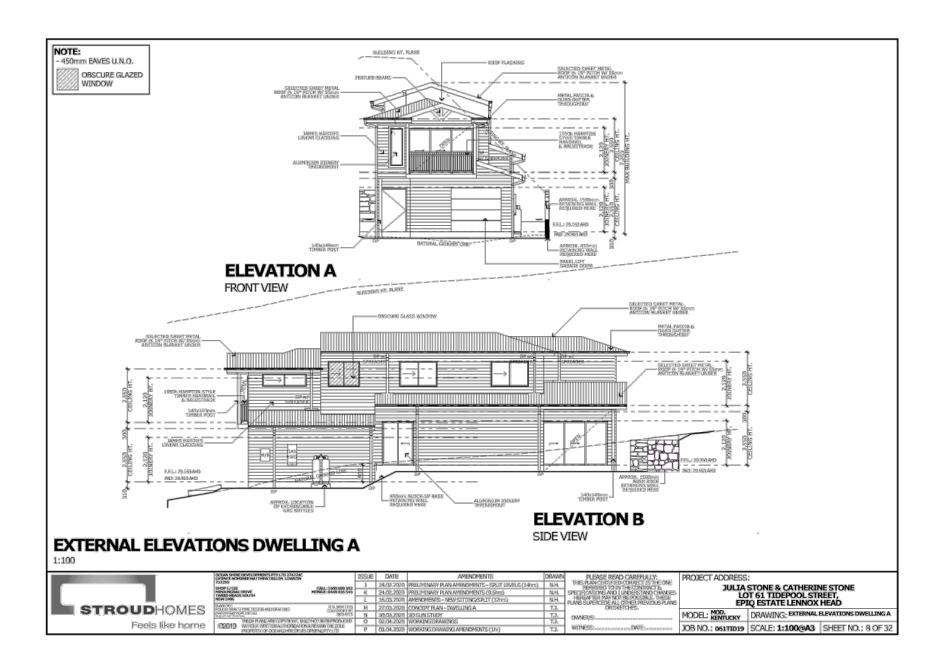


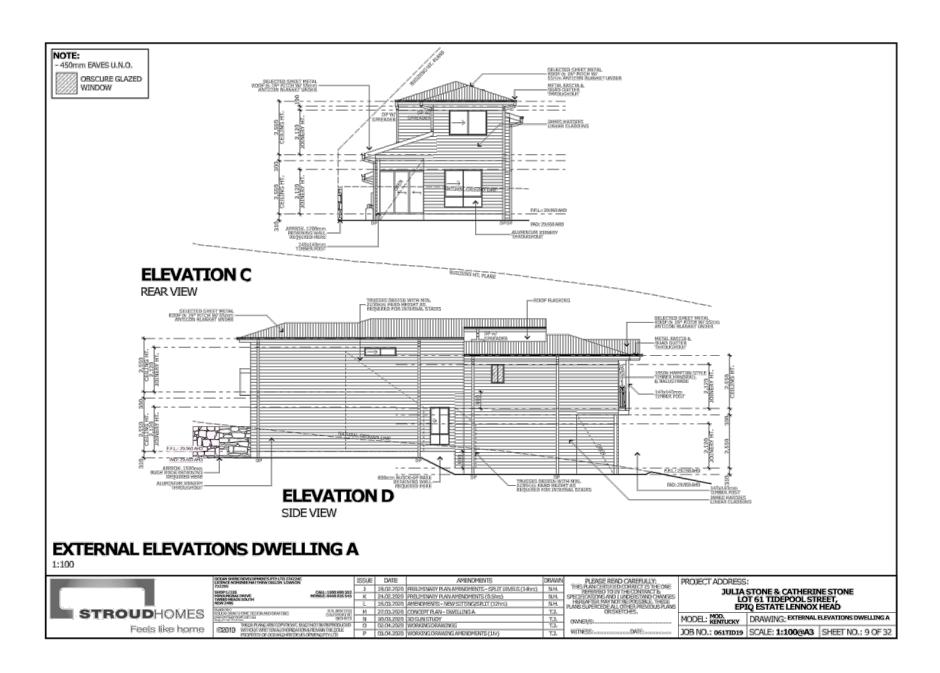


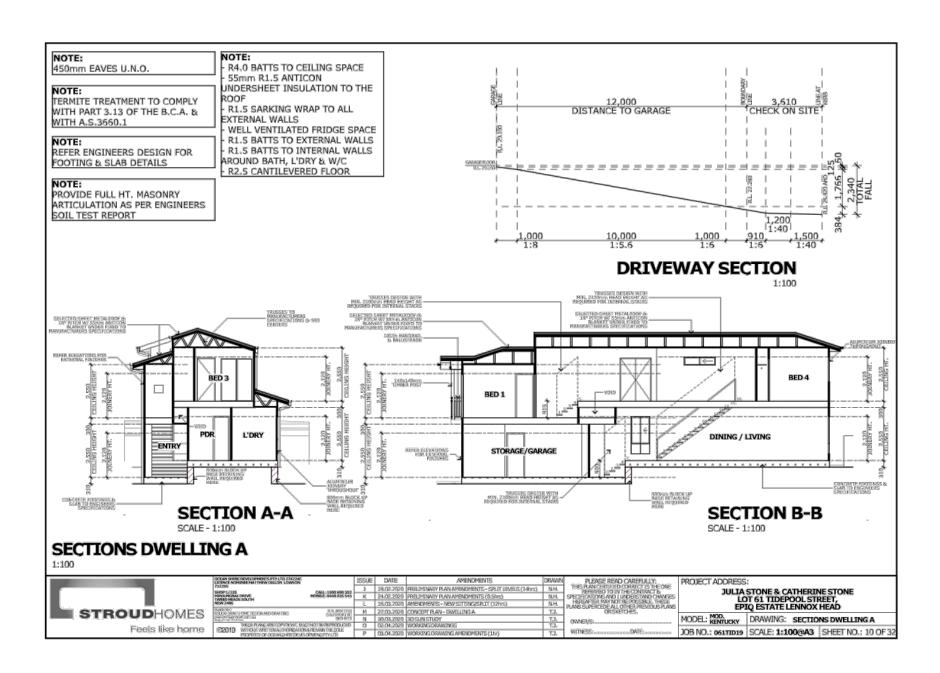


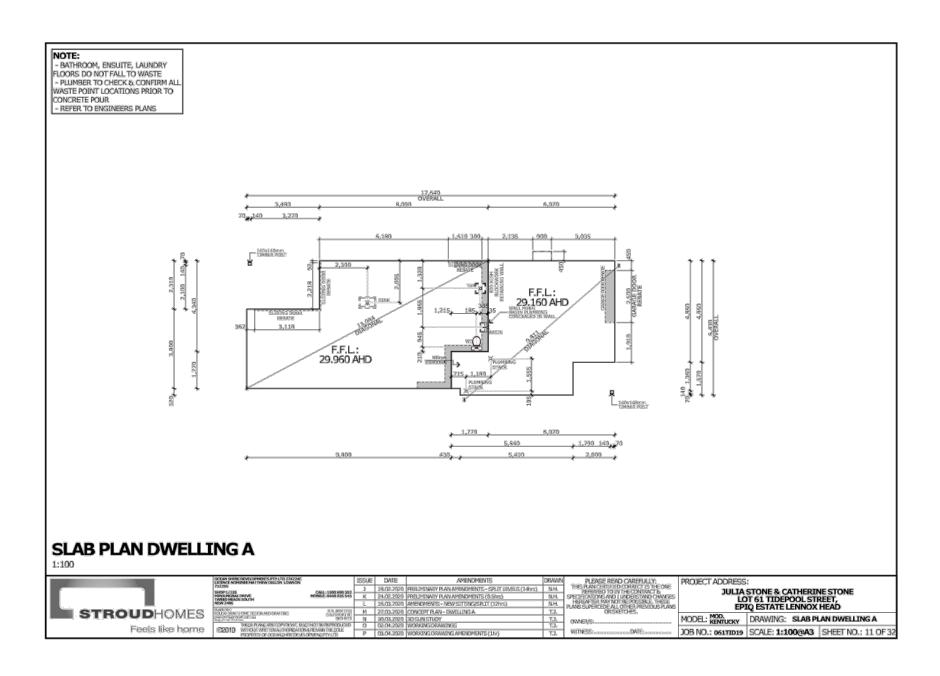


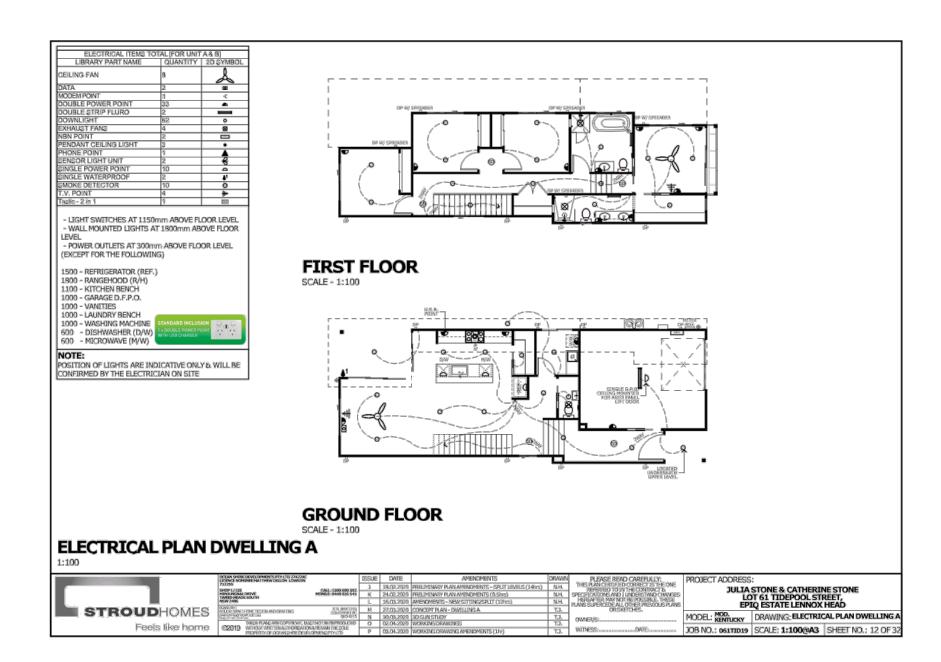


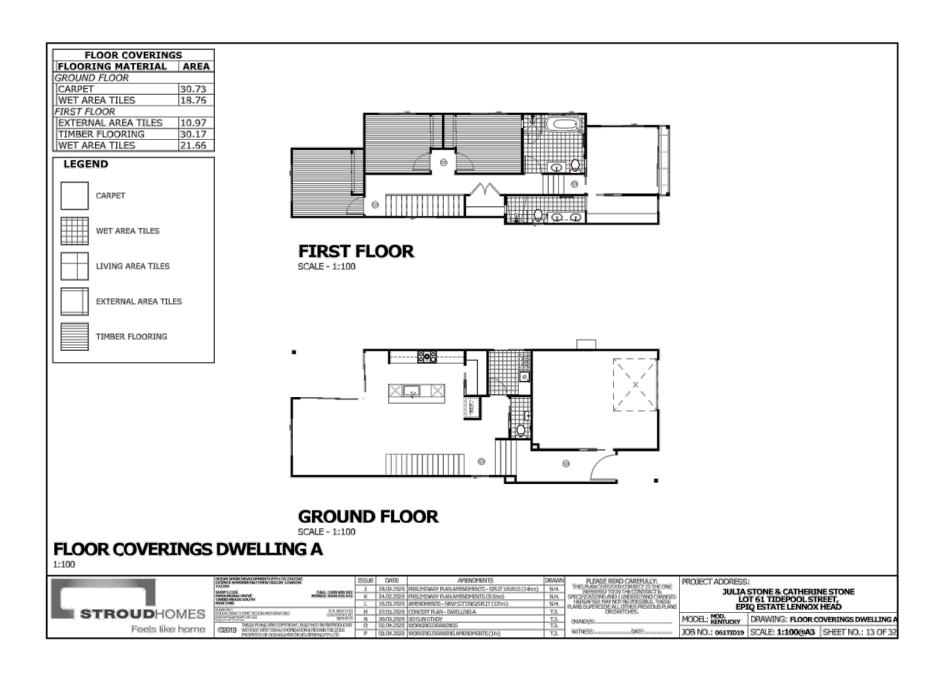


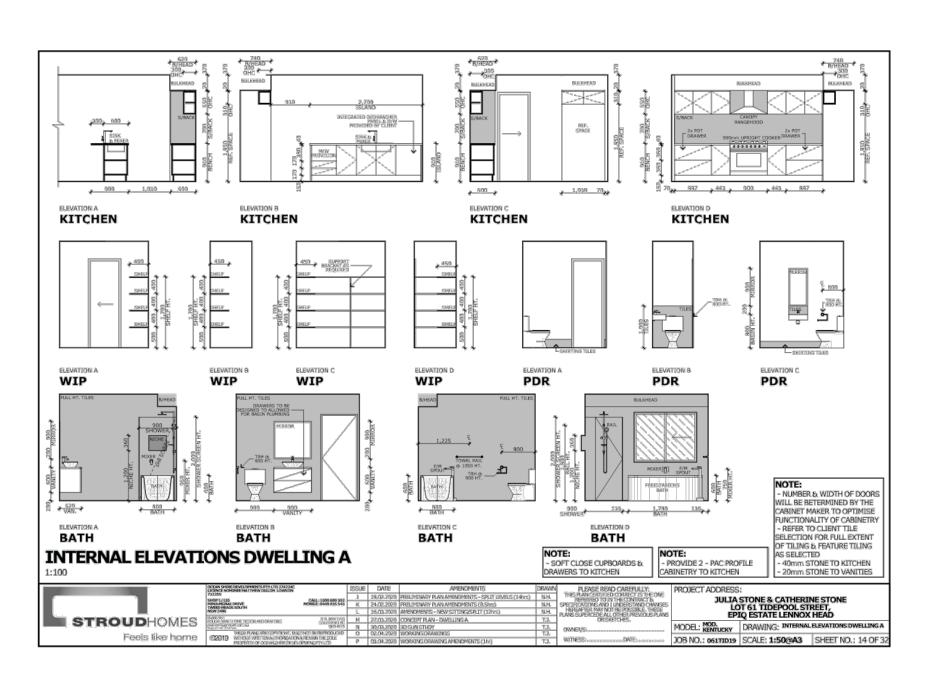


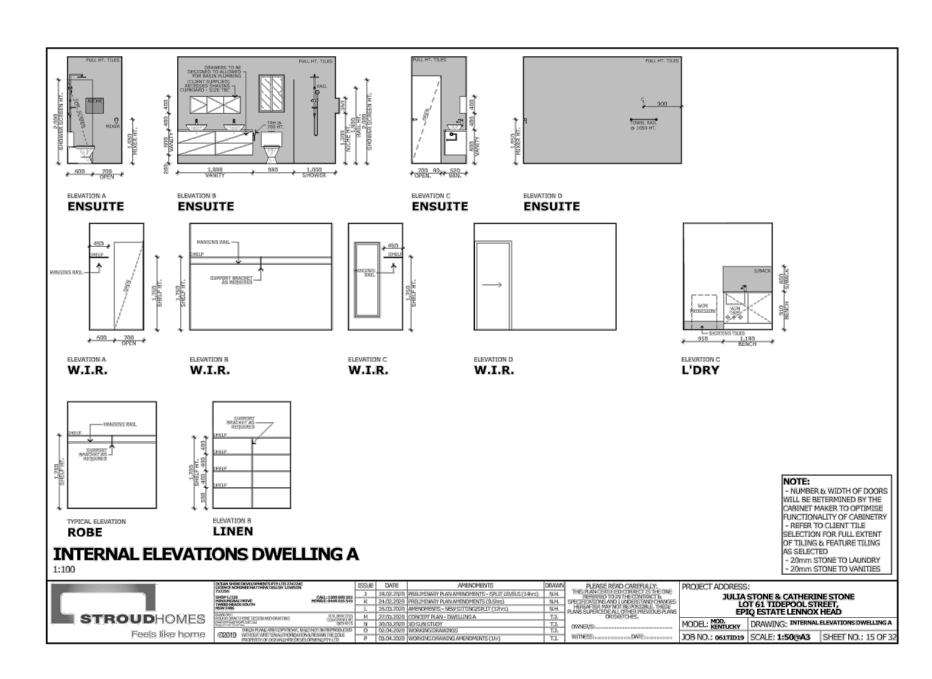


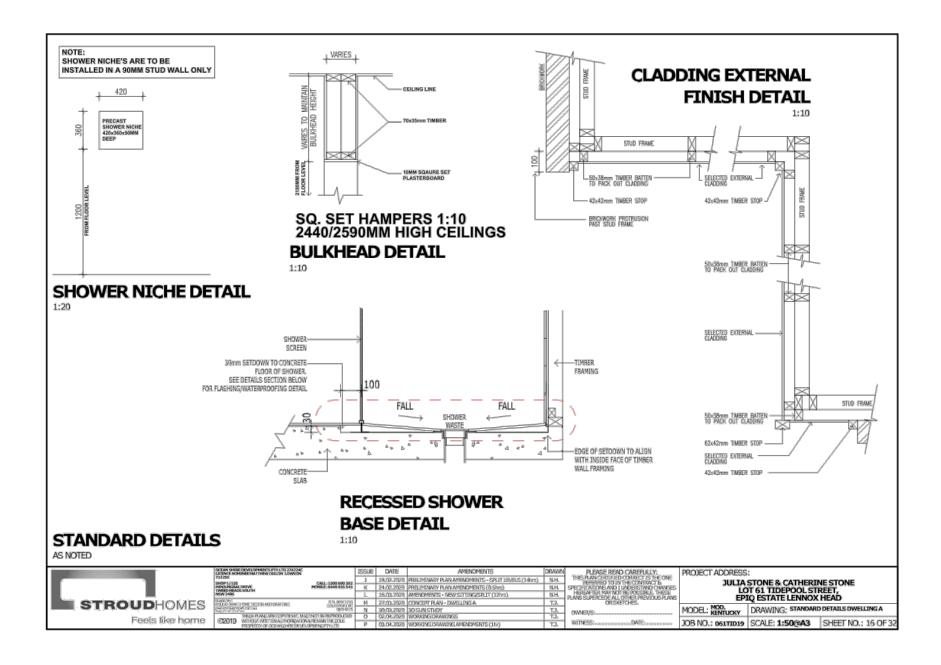












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NOTE: ALL WINDOWS & EXTERNAL DOORS TO BE DOUBLE GLAZED	DOOR SCHEDULE	
	D AD1 AD2 AD3 AD4 AD5 AD6 (SUNERGY)	
	Notes	
	WINDOW SCHEDULE	
	Description AW1 AW2 AW3 FG AW4 AW5 OBS AW6	
	Notice Solice	
	B	
	Notice Solice	
STROUDHOMES	SPORT SALE 1980/9999 3 SALE 1980/99999 3 SALE 1980/9999 3 SALE 1980/9999 3 SALE 1980/9999 3 SALE 1980/9999 3 SALE	
Feels like home	MODEL: KENTUCKY DORACION SOUNCELOUS DRAWING: WINDOW SOOR SCHEDULE	OF 32

