

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.	2020/446
Property Description	Lot: 20 DP: 1250165, 28 Mosman Chase LENNOX HEAD
Proposed Development	Construction of a two storey dwelling and associated earthworks and retaining walls as depicted in plans by Eco-Essence Homes, Project No. 1749 insert plan details
Building Classification	1(a) & 110(a)
Site Inspection Date	23/07/2020

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.

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.

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 with the land zoned and subdivided for the purposes of residential development.

SEPP (BASIX) 2004

- A BASIX Certificate has been provided and the commitments included in the documents to be issued with any consent –
 - Current valid certificate provided.
 - BASIX commitments indicated on plans accordingly.

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.

Division 4 Coastal use area

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

- safe access to and along any foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- overshadowing, wind funnelling or loss of views from any public places to foreshores,
- the visual amenity and scenic qualities of the coast, including any coastal headlands,
- any Aboriginal cultural heritage, practices and places,
- any cultural and built environment heritage, and

The surrounding coastal and built environment, and the bulk, scale and size of the proposed development has been taken into account.

Local Environmental Plans (LEP)

The land has the following zoning under the BLEP 2012:

- R2 Low Density Residential

The proposed development is permissible and suitable within this zone –

- Permitted with consent – Dwelling houses.
- The proposed development is consistent with the objectives of the and the objectives of the BLEP 2012
 - *To provide for the housing needs of the community within a low density residential environment.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
 - *To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.*
 - *To provide for development that meets the social and cultural needs of the community.*
 - *To encourage development that achieves the efficient use of resources such as energy and water.*

Part 4 Principal development standards

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

- 1) *The objectives of this clause are as follows—*
 - a) *to ensure that the height of buildings is compatible with the bulk, scale and character of the locality,*
 - b) *to minimise adverse impacts on existing or future amenity of adjoining properties and the scenic or landscape quality of the locality,*
 - c) *to protect significant views from public places.*
- 2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

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

- 1) *The objectives of this clause are as follows –*
 - a) *to ensure that buildings are compatible with the bulk, scale and character of the locality.*
 - b) *to minimise adverse impacts on existing or future amenity of adjoining properties and the scenic or landscape quality of the locality.*
- 2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*
- 3) *Despite subclause (2), a dwelling house, a dual occupancy, a semi-detached dwelling or a secondary dwelling must not exceed a floor space ratio of 0.5:1.*

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

7.5 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

Section 4.15(1)(a)(iii) – Ballina Shire's Development Control Plan (DCP) 2012

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 no know registered easements.
- Council's WAX indicates the sewer main is located in the south-eastern corner of the allotment and has an approximated depth of .75m.
- Plans provided indicate proposed dwelling to be clear of sewer main as required.

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

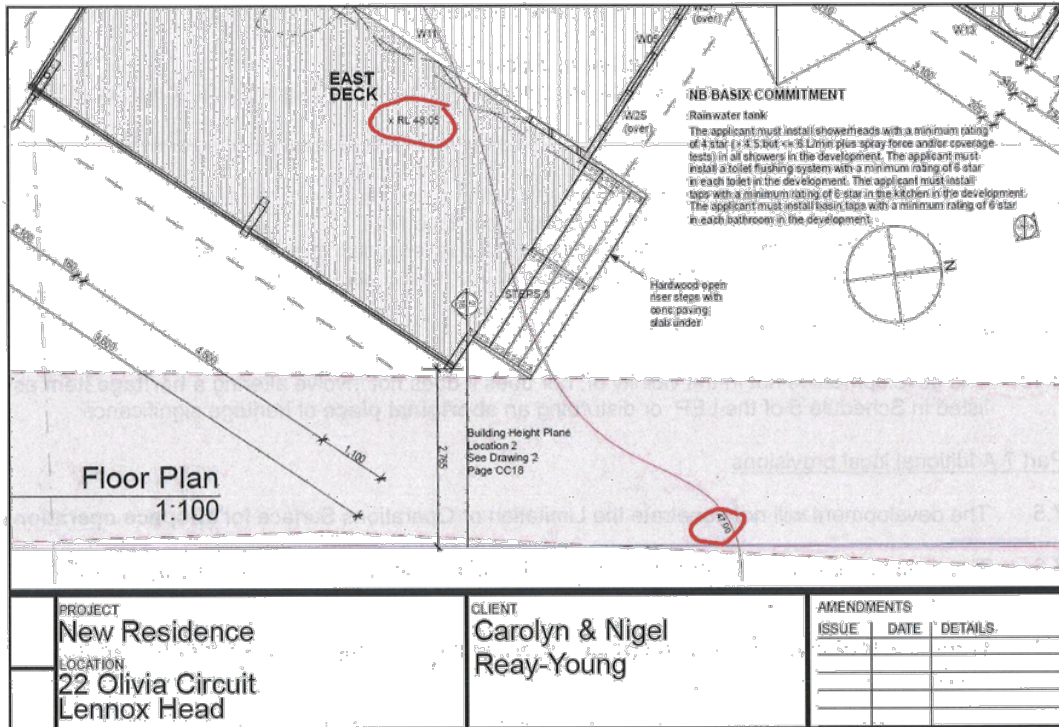
The subject allotment is affected by restrictions under S88B

- Subject allotment is covered by three private restrictions as listed on the relevant S88B.
- The proposed development does not conform with the standards of Restriction 10 of the S88B –

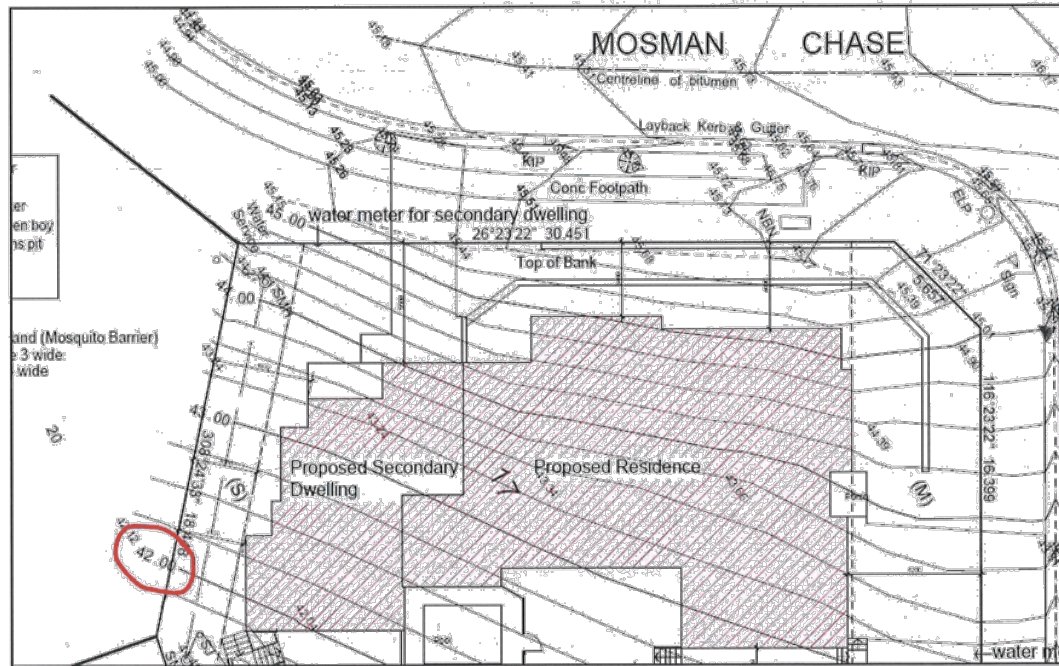
6. Terms of Restriction on the Use of Land tenthly referred to in the Plan

The Owner of the Lot Burdened must not erect, construct, place or permit to remain on the Lot Burdened any building comprising more than a single storey and the floor level of that storey must not be elevated above natural ground level by any more than a metre.

- The above restriction applies to Lots 9, 10, 11, 17 & 20. Council records indicate elements of the above restriction have been varied on Lots 10 and 17 as may be seen below.
- The Sub-division consent DA 2016.166.2 does not carry any conditions that relate to the above Restriction. However, it should be acknowledged that the Restriction has been applied in attempt to maintain a viewing corridor. Impact on view loss is addressed in further detail below.



Lot 10, 22 Olivia Circuit NGL/FFL.



Lot 17, 26 Olivia Circuit NGL.

habitable room (space, including balconies/terraces) and a further 6m to other habitable spaces. While the proposal is not directly a habitable to habitable scenario, it should be acknowledged the proposal is habitable to principle private open space. The proposed roof terrace is setback to the following allotment boundaries –

- 6.3m to Lot 21, 26 Mosman Chase;
 - 10.5m to Lot 101, 21 Kellie-Ann Crescent;
 - 11.9m to Lot 102, 23 Kellie-Ann Crescent; and,
 - 14.3m to Lot 19, 32 Olivia Circuit.
- **Design** – The design of the proposed roof terrace may be altered to provide privacy, specifically to Lot 21, 26 Mosman Chase, in such a manner that would not reduce the amenity of the occupants of the terrace.
 - **Use** – It may be considered that Lot 21, 26 Mosman Chase is the only property affected by the proposed roof terrace. While the other referenced properties area generally less than 12m from the proposed terrace (therefore overlooking of POS may occur) it is unlikely any overlooking shall impact habitable room windows of those properties.

Privacy control measures provided for roof terrace.

Element J	Solar Access – Applies. Shadow diagrams provided indicate Lot 21, 26 Mosman Chase will have shadow cast during the winter solstice. However, plans provided indicate Lot 21, 26 Mosman Chase shall receive more than 3 hours direct sunlight during the winter solstice.
Element K	Element - Fences and Walls – None proposed.
Element L	Roof Pitch – Proposed roof pitch is 20 & 25 Deg. Complies with controls.
Element M	Adaptable Housing – Not applicable to dwellings.
Element N	Minimum Lot Area – No subdivision proposed
Element O	Dwelling Density – Not applicable to dwellings or dual occupancies
Element P	Earthworks & Slope Sensitive Design Controls – Proposed dwelling design incorporates retaining walls due to sloping nature of allotment. However all retaining works are greater than 1m from the allotment boundaries. Complies with controls.
Element Q	Screening Underfloor Space of Buildings – Not applicable.
Element R	Tourist Accommodation Length of Stay – Not applicable.
Element S	Tourist Accommodation Building Design – Not applicable.

View Loss Assessment – Four Part Test

Following objections being made for the proposed development, specifically with regard to the above referenced S88B Restriction, a site inspection was conducted 29 July 2020 to determine any view loss impact.

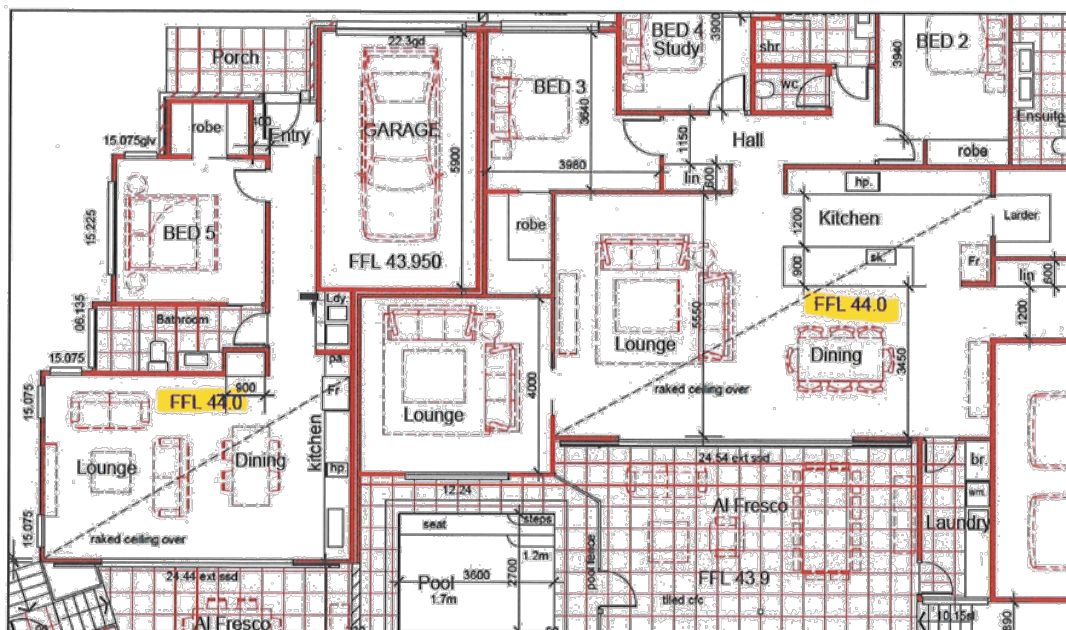
The four part test as set out in *Tenacity v Waringah* is the recommended test when applying Principles of View Sharing – The Impact on Neighbours.

Lot 9, 19 Mosman Chase –

- **What is the view of?**
 - The subject allotment presently enjoys partial views of ocean/land interface to the east and south-east. The views to the south-east of Skennars Head, while not 'iconic' may be deemed valuable. To the east the view is of the ocean through native bush.
- **Which part of the property are the views enjoyed from? Are the views obtained from a sitting or standing position?**
 - The view of Skennars Head and ocean is from the front (primary) boundary. While the view of the ocean through the trees to the west is from the side (secondary road frontage).
 - At present views are enjoyed from both seated and standing positions.
- **The extent of impact, which rooms are the views enjoyed from?**
 - The lounge/dining/kitchen areas and master bedroom are the only rooms on Lot 9 that enjoy views. However, the views from the dining/kitchen area are predominantly to the east due to the configuration of the dwelling.
 - At present the lounge room and master bedroom enjoy views from both seated and standing positions. In my opinion there will be no impact through the proposal on the view obtained from the master bedroom.
 - Should the proposed development be approved, views from both seated and standing positions, to the south-east from the lounge room will be reduced, though not completely obliterated due to the proposed dwelling side setbacks. Furthermore, the proposed dwelling roof has a RL of 48.87m AHD while Lot 9 has a FFL of 47.45m AHD at lounge room level (1.42m variance). The view to the east is unaffected through the proposal and is unlikely to be further compromised in the future.
- **Assess the reasonableness of the proposal, is the proposed development unreasonable?**
 - The proposed development is permissible under the Ballina Local Environmental Plan (BLEP 2012) and meets the relevant controls of Ballina Development Control Plan (BDGP 2012).
 - Furthermore, the scale of the proposed dwelling is relatively modest in comparison to other dwellings in this locality. Therefore, it may be considered that the proposal is completely reasonable.
- **Quantify –**
 - While there may be potential reduction in viewing plane from the lounge room of Lot 9 it may be considered that views shall be retained and/or shared especially from a standing position. Further consideration should be applied to the views to the east which, while not as valuable, are unlikely to ever be comprised. **Impact considered minor.**

Lot 10, 22 Olivia Circuit –

- **What is the view of?**
 - As with Lot 9 the subject allotment presently enjoys moderately expansive views of ocean/land interface to the south-east of Skennars Head headland, while not 'iconic' these views may be deemed valuable.
- **Which part of the property are the views enjoyed from? Are the views obtained from a sitting or standing position?**
 - The view of Skennars Head and ocean is over the side boundary shared with Lot 9.
 - At present views are enjoyed from both seated and standing positions from areas referenced below.
- **The extent of impact, which rooms are the views enjoyed from?**
 - The lounge/dining/kitchen areas, main deck and studio room and deck are the only rooms on Lot 10 that enjoy views.
 - Should the proposed development be approved, views from both seated and standing positions, to the south-east from the lounge/dining/kitchen areas, main deck and studio



Lot 17, 26 Olivia Circuit FFL.

In accordance with **Clause 1.9A of the LEP**, the restrictions on use described in the 88B can be set aside to enable the development to occur in accordance with the relevant LEP and DCP provisions.

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 has been put on hold under the **Stop the Clock** provisions of the Act and these matters have now been addressed satisfactorily.

The following **additional information** has been requested from the applicant.

- All BASIX commitments to be indicated as required.
- Driveway width to be provided.
- Elevation 2 Sheet 305 ground level to reflect site characteristics.
- Privacy measures to roof terrace – solid balustrade and privacy screen to western elevation.

3.2.4 & 3.2.5 **Public Notification, Exhibition & Submissions**

The application has **not been publicly notified** as there is no requirement under the EPI or CCP that requires the proposed to be publicly notified.

Nevertheless, seven submissions have been received in objection to the proposed development. These relate to –

- The proposed variation to a Restriction as listed on the relevant S88B;
- View loss;
- Building height and overshadowing; and,
- Privacy loss.

3.2.6 All applicable DA related **fees have been paid – 17/07/2020**

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 areas.
- 3.3 Natural Areas and Habitat – not within mapped areas or associated buffer.
- 3.4 Potentially Contaminated Land – Subject allotment is not mapped as contaminated.
- 3.5 Land Slip/Geotechnical Hazard – not within mapped areas.

- 3.6 Mosquito Management – Applies, controls required.
- 3.7 Waste Management – Applies, controls required.
- 3.8 On-site Sewage Management Systems – Not applicable, sewage available.
- 3.9 Stormwater Management – Not applicable.
- 3.10 Sediment and Erosion Control – Applies, controls required.
- 3.11 Provision of Services – Present.
- 3.12 Heritage – Not listed as item.
- 3.13 Drinking Water Catchments – Not within catchment areas.
- 3.14 Coastal Hazards – Not within mapped areas.
- 3.15 Crime Prevention through Environmental Design – Not applicable to proposal.
- 3.16 Public Art – Not applicable.
- 3.17 Road Widening – Not within mapped areas.
- 3.18 Protection of Foreshore and Public Open Space Areas – Not on or adjoining foreshore areas or areas of significant urban bushland.
- 3.19 Car Parking and Access – Provided.
- 3.20 Vibration – Not applicable.
- 3.21 Bushfire Management – Refer to assessment under Section 4.14 of the Act above.

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 – Less than 8.5m complies.
- Element B Floor Space Ratios – 0.255:1 indicated on plans, complies with controls.
- Element C Building Envelopes –
 - Proposed development meets side and rear setback controls. However, a minor encroachment on the western elevation has been proposed. Element C – Variations permits eaves up to 700mm wide. Proposed encroaching eave width is 450mm, therefore, a permissible encroachment.
 - Furthermore, shadow diagrams provided indicate does not negatively impact on optimum winter sunlight during the winter solstice or adversely impact solar access of the adjoining lands.
 - The objectives of Element C include unreasonable obstruction of views. Potential view loss is discussed in detail below.
- Element D Articulation Zone – Proposed veranda within articulation area permissible.
- Element E Building Lines – 6m indicated on site plan, complies with minimum setback requirements.
- Element F Development Fronting Laneways – Not applicable to proposal.
- Element G Landscaping and Open Space – Sufficient space is provided.
- Element H Vehicular Access and Parking – Two spaces provided, both covered. Garage meets design controls. Driveway gradient complies.
- Element I Overlooking and Privacy –
 - No proposed elevated habitable room windows or deck areas within 3m of allotment boundary.
 - The proposed roof terrace may be addressed by the following –
 - **Space** – Is the proposed terrace an area of principle private open space (POS)? Unlikely due to the terraces size and other, adequate, areas of POS available for this purpose.
 - **Density** – The subject allotment is zoned R2 – Low Density Residential. It is considered that privacy expected more in low density locations such as the locality.
 - **Separation** – While there is no distance recommended for rooftop terraces, the Apartment Design Guide provides some numerical guidance on the matter. Using the above document it is recommended that 6m is provided between a

deck area will be reduced, though not completely obliterated due to the proposed dwelling side setbacks. Furthermore, the proposed dwelling roof has a RL of 48.87m AHD while Lot 10 has a FFL of 48.05m AHD for the above areas (0.82m variance).

- **Assess the reasonableness of the proposal, is the proposed development unreasonable?**
 - The proposed development is permissible under the Ballina Local Environmental Plan (BLEP 2012) and meets the relevant controls of Ballina Development Control Plan (BDCP 2012).
 - Furthermore, the scale of the proposed dwelling is relatively modest in comparison to other dwellings in this locality. Therefore, it may be considered that the proposal is completely reasonable.
- **Quantify RL's –**
 - While there may be potential view loss from the lounge/dining/kitchen area, main deck and studio room and deck of Lot 10 it may be considered that significant views may still be retained and/or shared especially from standing positions. **Impact considered negligible.**

Lot 11, 13 Mosman Chase –

- **What is the view of?**
 - The subject allotment presently enjoys views of ocean/land interface to the south-east and south. The partial view south-east to the ocean and Skennars Head, while not 'iconic' may be deemed valuable. The view to the south is moderately expansive over bushland between Skinners Head and East Ballina, however, this view is not impacted through the proposal.
- **Which part of the property are the views enjoyed from? Are the views obtained from a sitting or standing position?**
 - The view of Skennars Head and ocean is over the front and side boundaries. The side boundary shared with Lot 10.
 - At present views are enjoyed from both seated and standing positions from areas referenced below. However, it should be noted that views are enjoyed more from a standing position in the lounge/dining areas. While the kitchen provides views from a seated position.
- **The extent of impact, which rooms are the views enjoyed from?**
 - The lounge/dining/kitchen areas are the only rooms on Lot 11 that enjoy views.
 - Should the proposed development be approved views, from both seated and standing positions, to the south-east from the above areas will be reduced, though not completely obliterated due to the side setbacks of the proposed development. In my opinion the view loss impact is most significant on this property due to the alignment of the view, development allotment and affected allotment
- **Assess the reasonableness of the proposal, is the proposed development unreasonable?**
 - The proposed development is permissible under the Ballina Local Environmental Plan (BLEP 2012) and meets the relevant controls of Ballina Development Control Plan (BDCP 2012).
 - Furthermore, the scale of the proposed dwelling is relatively modest in comparison to other dwellings in this locality. Therefore, it may be considered that the proposal is completely reasonable.
- **Quantify –**
 - It is probable that significant view loss shall occur from the lounge/dining area of Lot 11, while the view from the kitchen is largely unaffected. While the viewing plane will be reduced through the proposal there is still, in my opinion, sufficient view sharing potential should the proposal be approved. **Impact considered moderate/severe.**

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

There is no planning agreement that a developer has offered to enter into for 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 are no likely issues obtaining access or fall to sewer and stormwater junctions and discharge points.

There are no 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).

Conditions will be applied in relation to possible impacts on adjoining Council owned reserves (including access onto reserves during or after construction).

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

Seven submissions have been received.

The application has been referred to the Development Assessment Panel. The application has also been reported to Council for determination. The issues raised in the submissions have been addressed in detail.

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 is in Public Interest.

Other Comments and Determination

Approval is recommended with conditions appropriate to address those matters as identified above.

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:

- **Granting of consent subject to conditions**

STATEMENT OF REASONS FOR DECISION AND IMPOSITION OF CONDITIONS

(NB: please copy and paste into consent notice)

1. The subject development is permissible with consent in the R2 – Low Density Residential zone of the Ballina Local Environmental Plan 2012.
2. The subject development has been assessed against the relevant considerations under the Environmental Planning and Assessment Act 1979, including the provisions of all relevant Environmental Planning Instruments, the objectives of the Ballina Local Environmental Plan 2012 and the objectives of the above zone. It has been determined that the site is suitable for the subject development and that the development is unlikely to have a significant adverse impact on the natural and built environments and is unlikely to have a significant adverse economic or social impact on the locality.
3. The application was not required to be placed on public exhibition in accordance with Environmental Planning and Assessment Act 1979 or Environmental Planning and Assessment Regulations 2000, an Environmental Planning Instrument or Local Exhibition Policy.
4. Seven public submissions were received in objection. The submissions related to –
 - The proposed variation to a Restriction as listed on the relevant S88B;
 - View loss;
 - Building height and overshadowing; and,
 - Privacy (loss of).

The issues raised in the submissions have been addressed in the assessment of the development, and in the formulation of the conditions of consent.

5. The application has been determined by Council.
6. Approval of the development is in the public interest.
7. The reasons for the conditions listed in this determination notice are:
 - To ensure compliance with the requirements of the Environmental Planning & Assessment Act, 1979;
 - To ensure compliance with the objectives of the Ballina Local Environmental Plan 2012;
 - To ensure an appropriate level of amenities and services is available;
 - To protect the existing and likely future amenity of the locality;
 - To maintain, as far as practicable, the public interest;
 - To ensure compliance with the Building Code of Australia and relevant Australian Standards;
 - To ensure satisfactory compliance with relevant Council plans, codes and policies.

PROPOSED NEW DWELLING FOR:

TARA & CHRIS

**AT: LOT 20 #28 MOSMAN CHASE,
LENNOX HEAD NSW 2478**

IBD PROJECT # 1749

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BASIX CERTIFICATE #1116006S
HWS : Steibel Eltron WVK302H (28 STCs in climate zone 3)
SOLAR PV : 6.6kW minimum

Cover Sheet

THIS DOCUMENT IS UNFIT FOR CONSTRUCTION. ALL DIMENSIONS AND COORDINATES TO BE CHECKED BY THE CLIENT PRIOR TO CONSTRUCTION. ALL WORKS TO COMPLY WITH LOCAL AUTHORITY REGULATIONS AND NCC.

REAL PROPERTY DESCRIPTION ROAD NUMBER: CP 432089 LOCAL AREA: BELDERRIDGE ADEL: 0341	PROJECT ADDRESS LOT 20 #28 MOSMAN CHASE, LENNOX HEAD NSW 2478	CLIENT TARA & CHRIS	SUBJECT  Eco-Essence Homes	STATUS CUSTOM	SCALE H	PROJECT DESCRIPTION 2 STOREY RESIDENTIAL DWELLING WITH VIEWING DECK 2 STOREY RESIDENTIAL DWELLING WITH VIEWING DECK 2 STOREY RESIDENTIAL DWELLING WITH VIEWING DECK 2 STOREY RESIDENTIAL DWELLING WITH VIEWING DECK 2 STOREY RESIDENTIAL DWELLING WITH VIEWING DECK	DATE 07/01/20	DRAWN BY MB	CHECKED BY MB	SCALE 101	DATE A3	PROJECT ADDRESS LOT 20 #28 MOSMAN CHASE, LENNOX HEAD NSW 2478	PROJECT DESCRIPTION 2 STOREY RESIDENTIAL DWELLING WITH VIEWING DECK 2 STOREY RESIDENTIAL DWELLING WITH VIEWING DECK 2 STOREY RESIDENTIAL DWELLING WITH VIEWING DECK 2 STOREY RESIDENTIAL DWELLING WITH VIEWING DECK 2 STOREY RESIDENTIAL DWELLING WITH VIEWING DECK	ELEVATION 3  Elevation 3 Elevation 4 Elevation 1
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GENERAL NOTES:

- All dimensions in millimetres.
- Dimensions take preference to scale and are to structure not finish.
- Check and verify dimensions and confirm any existing dimensions marked.
- Work shall comply with the National Construction Code and all relevant current Australian Standards. Any outdated Standards listed in these notes are to be taken to refer to the current editions.
- Manufacturers specification means a current approved specification for use under the conditions applicable.
- UNO = Unless Noted Otherwise.
- DPO = Damp Proof Course.
- OMP = Outer Mast Point.
- It is at the Builders discretion to position bulkheads or service panels under floor framing to accommodate plumbing services.

SITEWORKS

- Site to be excavated and/or filled to levels shown.
- Footings shall be placed on per builders advice or engineers details.
- Footings to be on non expansive natural material having a minimum allowable bearing capacity of 100kPa.
- Ground surface to be sloped 1:20 (1m) away from building for 900mm (min) and to a point where ponding will not occur near the building.
- Drain drains and sags pipes to be provided as indicated to facilitate discharge of water away from building into drainage system.

POOL FENCING

All pool fencing shall be a min. 1200mm high and in accordance with AS 1926-1

RETAINING WALLS

- All retaining walls are to comply with Council policy on retaining walls and embankments on residential building sites.
- Position of retaining walls may vary and must be verified by builder prior to commencement.
- Any variation at construction stage to comply with Council policy.

These plans are to be read in conjunction with any structural and civil engineering computations and drawings

All buildings shall be protected against termite attack in accordance with AS 3602.1 and a double notice shall be left in the meter box indicating type of barrier and depth of perimeteral inspection

Smoke detectors to be hard wired with emergency backup and comply with AS 3786

Wind speed as nominated on bracing plan or as listed

Provide lift off hinges to WC organ outdoor or min. 1200mm clearance from door to pan.

All construction materials supplied must take into account proximity to coastal or industrial environments in accordance with manufacturer specifications

All works shall comply with but not limited to the National Construction Code and the Australian standards listed below.

- AS 1288 - 2009 GLASS IN BUILDINGS SELECTION AND INSTALLATION
- AS 1562 - 2008 DESIGN AND INSTALLATION OF SHEET ROOF AND WALL CLADDING
- AS 1684 - 2018 NATIONAL TIMBER FRAMING CODE
- AS 2845 - 2002 ROOF TILES
- AS 2050 - 2002 INSTALLATION OF ROOF TILES
- AS 2810 - 2011 RESIDENTIAL SLAB AND FOOTINGS - CONSTRUCTION
- AS IN2S-2004 - 1995 DAMP-PROOF COURSES AND FLASHINGS
- AS 8050 - 2009 CONCRETE STRUCTURES
- AS 3660 - 2000 BARRIERS FOR SUBTERRANEAN TERMITES
- AS 3700 - 2011 MASONRY STRUCTURES
- AS 3740 - 2019 WATERPROOFING OF WET AREAS IN RESIDENTIAL BUILDINGS
- AS 4056 - 2008 WIND LOADING FOR HOUSES
- AS 4100 - 1998 STEEL STRUCTURES

TILED DECKS:

Tiled decks over livable areas are to be, in the following order over the floor joists a 15mm compressed F20 sheet with one layer of parchem emeproof 750 with a second layer of sand seal with a DFT of 1300 micron, installed to manufacturer specifications, and floor tiles over, all corners to have 20mm mastic sealant under parchem emeproof 750

SAFETY GLAZING TO BE USED IN THE FOLLOWING CASES:

- All access - within 500mm vertical of the floor
- Bathrooms - within 1500mm vertical of the floor
- Fully glazed doors
- Screened openings
- Within 500mm of a door and <1200mm above floor level
- Window sizes are nominal only, actual sizes will vary with manufacturer, flashing all round

STAIR REQUIREMENTS

Min. tread 240mm Min. clear 115mm Max. rise 180mm Space between open treads Max. 125mm Treads to be a non slip surface. Balustrades: min. 1200mm above landings with max. opening of 125mm and in accordance with NCC 3.9.1. For stainless steel balustrade, refer to table 3.9.2.1 (Wire balustrade construction - required wire tension and maximum permissible deflection) of the NCC

REINFORCED CONCRETE

- AS PER ENGINEERS DETAILS

BLOCKWORK

- AS PER ENGINEERS DETAILS

BRICKWORK

- Brickwork to conform to AS 3700 2011 Masonry in buildings
- Walls to have a continuous cavity kept clear of mortar drippings
- Brick face openings under timber floors to have vertical 7500 sq mm per metre length of external wall. (Approx. 1 brick sized vent every 2 metres)
- Provide wall ties at 600mm spacing both vertical and horizontal and within 20mm of articulation joints. Brick ties to be galvanneal.

STEELWORK

- AS PER ENGINEERS DETAILS

FRAMING TIMBER

- AS PER AS 1684, 2010 National timber framing code

WET AREA SURFACES

- Floor surfaces to bath & laundry shall be impervious, with junctions between wall and floor flashed to prevent moisture penetration into walls.
- All wet areas to comply with NCC 3.9.1 and AS 3740. Spigot back shall be impervious for 150mm above sink, trough and hand basins within 75mm of the wall.
- Ceramic tiles or other approved impervious material on walls above showers to 1800mm min above floor.

LEGEND

WIR	Walk in Ride	SD	Ionization Smoke Alarm
LDRY	Laundry	LB	Load Bearing
ENS	Entrance	CU	Construction Joint
PRD	Power Room	AHD	Australian Height Datum
BRM	Broom Cupboard	RFL	Finished Floor Level
UBO	Under Bench Oven	AS	Australian Standards
WO	Wall Oven/Tower	BCA	Building Code of Australia
OHG	Over Head Cupboard	TBC	To Be Confirmed
DW	Dishwasher	DEB	Deep Edge Beam
MW	Microwave	LBW	Load Bearing Wall
BBAR	Breakfast Bar	RL	Relative Level
FW	Floor Waste	NCL	Natural Ground Level
HWS	Hot Water System	DP	Down Pipe
TAP	Ext. 12mm Rose Cook	SMS	Square Hollow Section
DTR	Double Towel Rail	AFPL	Above Finished Floor Level
STR	Single Towel Rail	FC	Foeder Coated
TBR	Towel Rail Holder	RC	Reinforced Concrete

DESIGN LOADS

- All sizes of timber members deducted from AS 1684
- All remaining sizes of items deducted from Australian Domestic Construction Manual or relevant manufacturer specification
- Sizes of timber members may vary when complying requirements but must remain within the guidelines of the said reference material.

MATERIALS AND CONSTRUCTION

AS APPLICABLE - REFER DWG FOR MATERIALS USED.

All material shall be new UNO. Reused items to be checked for soundness etc. prior to use.

3D Perspectives

USE FOR PRELIMINARY PLANNING ONLY. ALL DIMENSIONS, MATERIALS AND COLOURS ARE TO BE CONFIRMED WITH THE ARCHITECT PRIOR TO CONSTRUCTION. ALL WORKS TO COMPLY WITH LOCAL AUTHORITY REGULATIONS AND NCC.

REAL PROPERTY DESCRIPTION ROAD NUMBER: CP 932089 LOCAL AREA: BELKNAP RD AREA: 0.76m ²		PROJECT ADDRESS LOT 20 #28 MOSMAN CHASE, LENNOX HEAD NSW 2478		CLIENT TARA & CHRIS		SUBJECT ECO-ESSENCE HOMES 1/100-1/101 GARDENS ROAD LENNOX HEAD NSW 2478 PHONE: 02 9320 8100 FAX: 02 9320 8100 WEB: www.eco-essence.com.au		STYLE CUSTOM FINISHES: WORKING DRAWINGS		ROOMS H 1. CHOCOLATE WOOD VENEER PLASTER STUDIOS 2. 100% POLYURETHANE PAINTED CEILING 3. 100% POLYURETHANE PAINTED WALLS 4. 100% POLYURETHANE PAINTED FLOORS 5. 100% POLYURETHANE PAINTED DOORS 6. 100% POLYURETHANE PAINTED WINDOWS 7. 100% POLYURETHANE PAINTED SKIRTS 8. 100% POLYURETHANE PAINTED TRIMS		Elevation 3 Elevation 2 Elevation 1	
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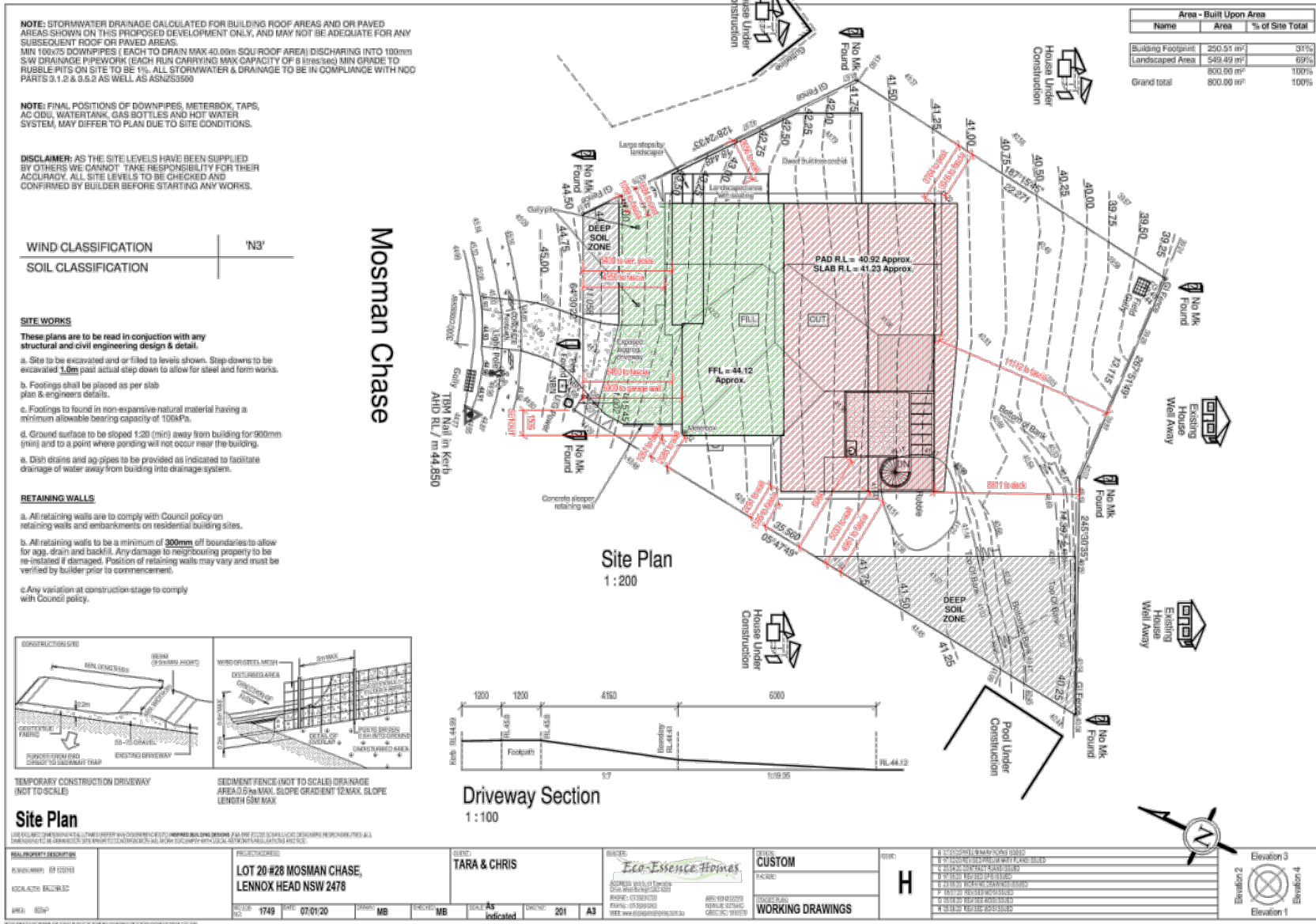


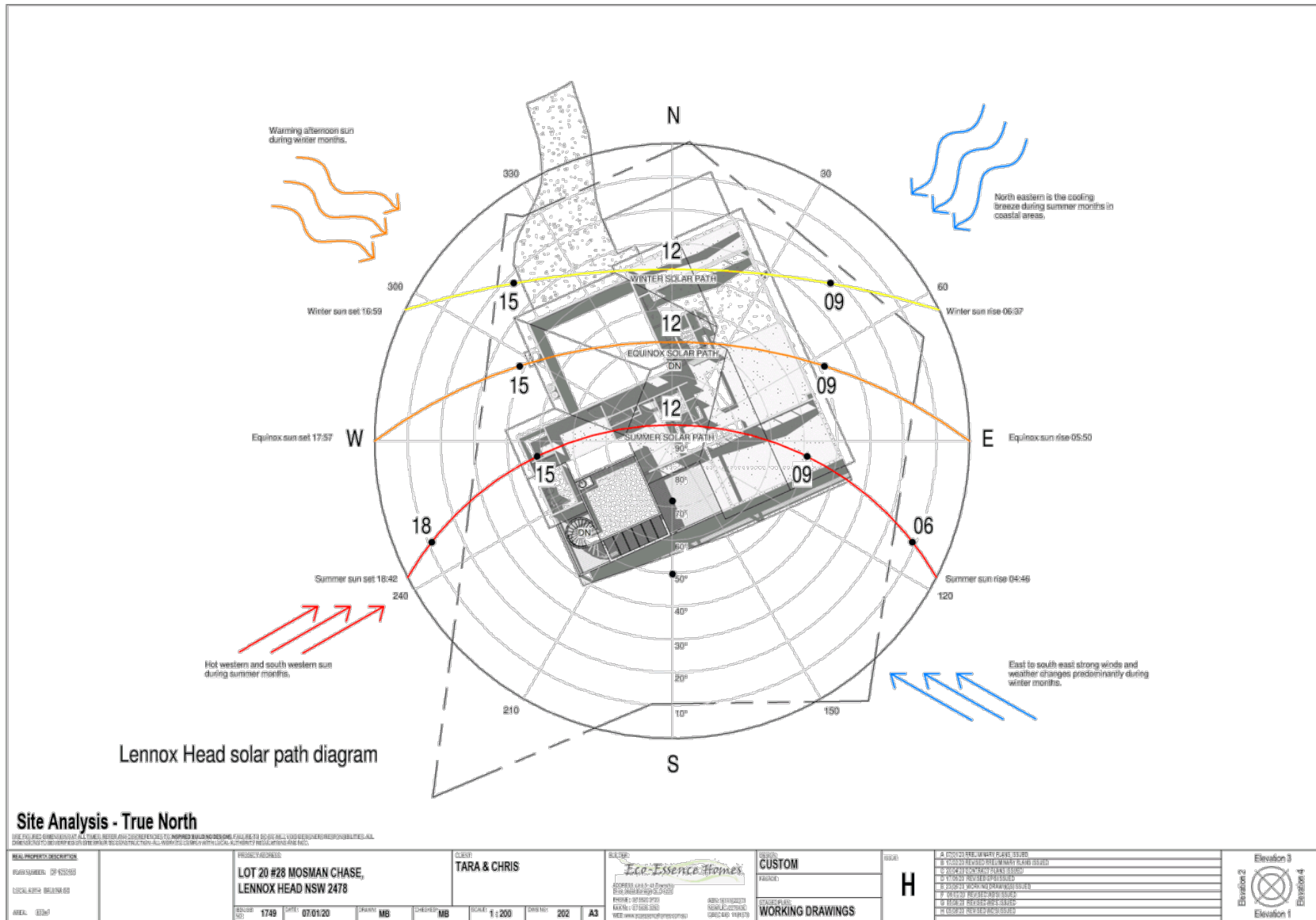
3D Model

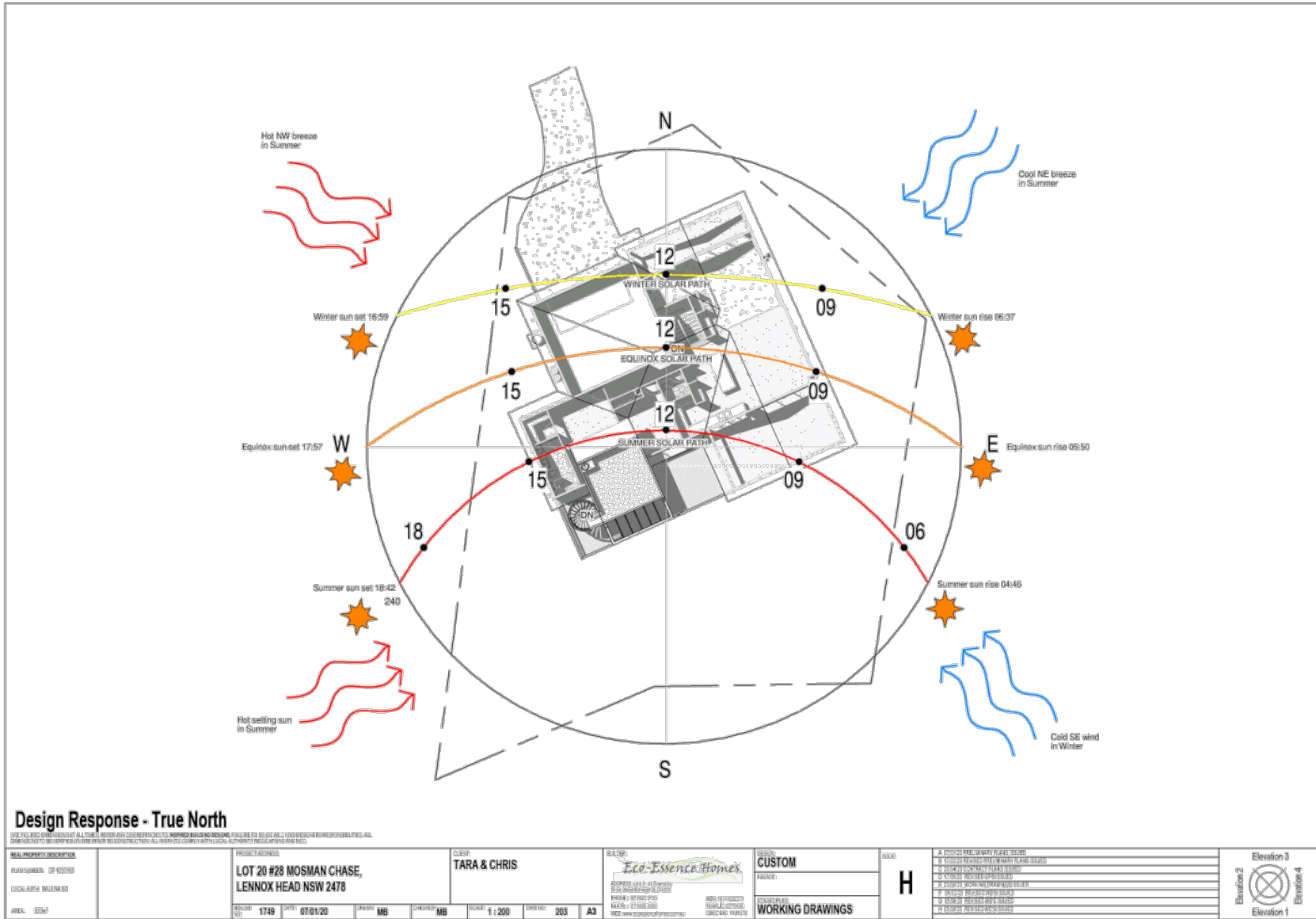
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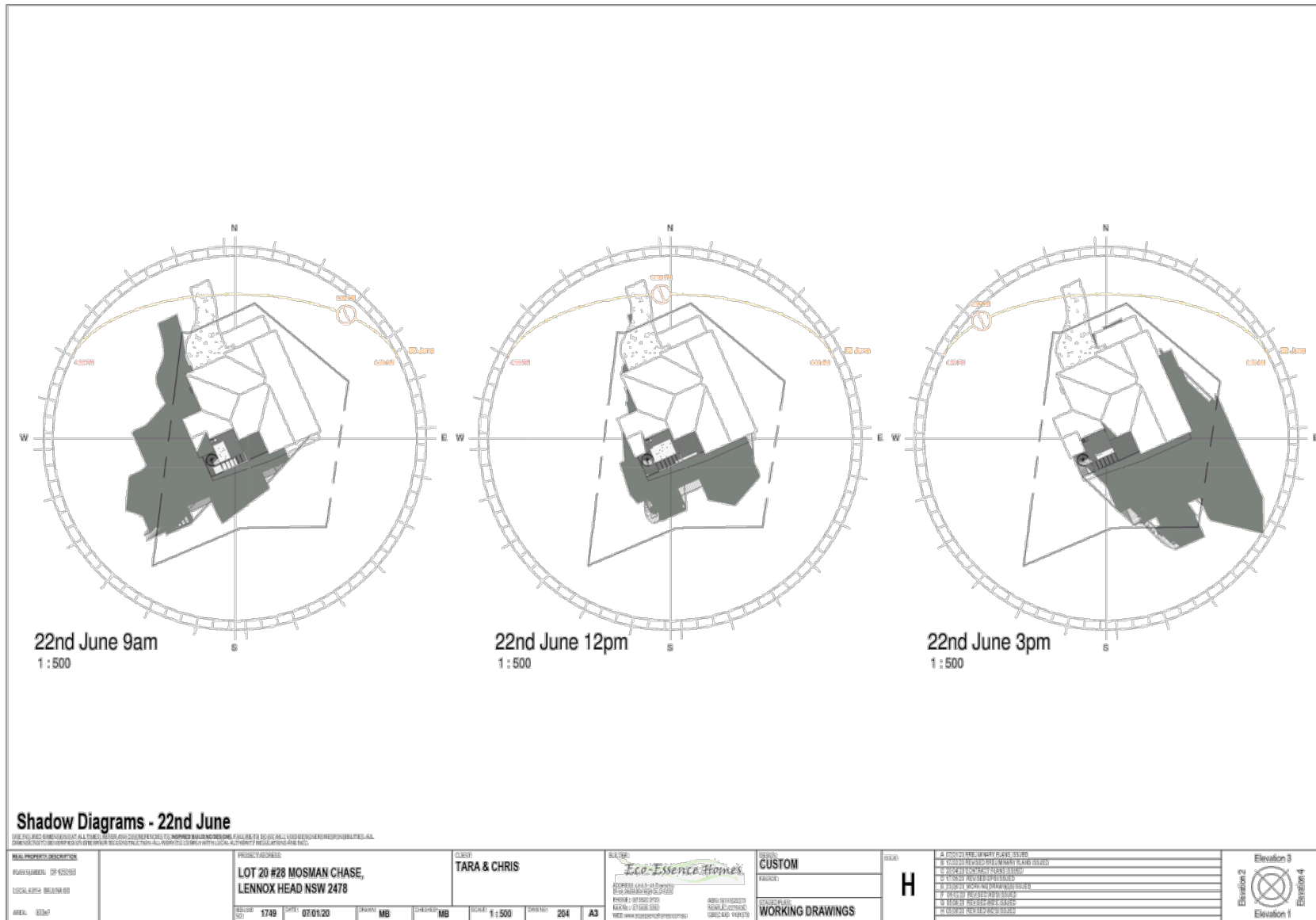
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ROAD NUMBER: CP 932089		LOT 20 #28 MOSMAN CHASE, LENNOX HEAD NSW 2478		TARA & CHRIS		Eco-Essence Homes		CUSTOM		H		103 A3		A. CHECK FOR UNARY PLANE BEING B. CHECK FOR UNARY PLANE BEING C. CHECK FOR UNARY PLANE BEING D. CHECK FOR UNARY PLANE BEING E. CHECK FOR UNARY PLANE BEING F. CHECK FOR UNARY PLANE BEING G. CHECK FOR UNARY PLANE BEING H. CHECK FOR UNARY PLANE BEING		Elevation 3 Elevation 2 Elevation 4 Elevation 1	
LOCAL AUTH: BELLINGHAM		DRAWN: MB		CHECKED: MB		DATE: 07/01/20		PROJECT NO: 1749		DWA NO: 103		A3		WORKING DRAWINGS			

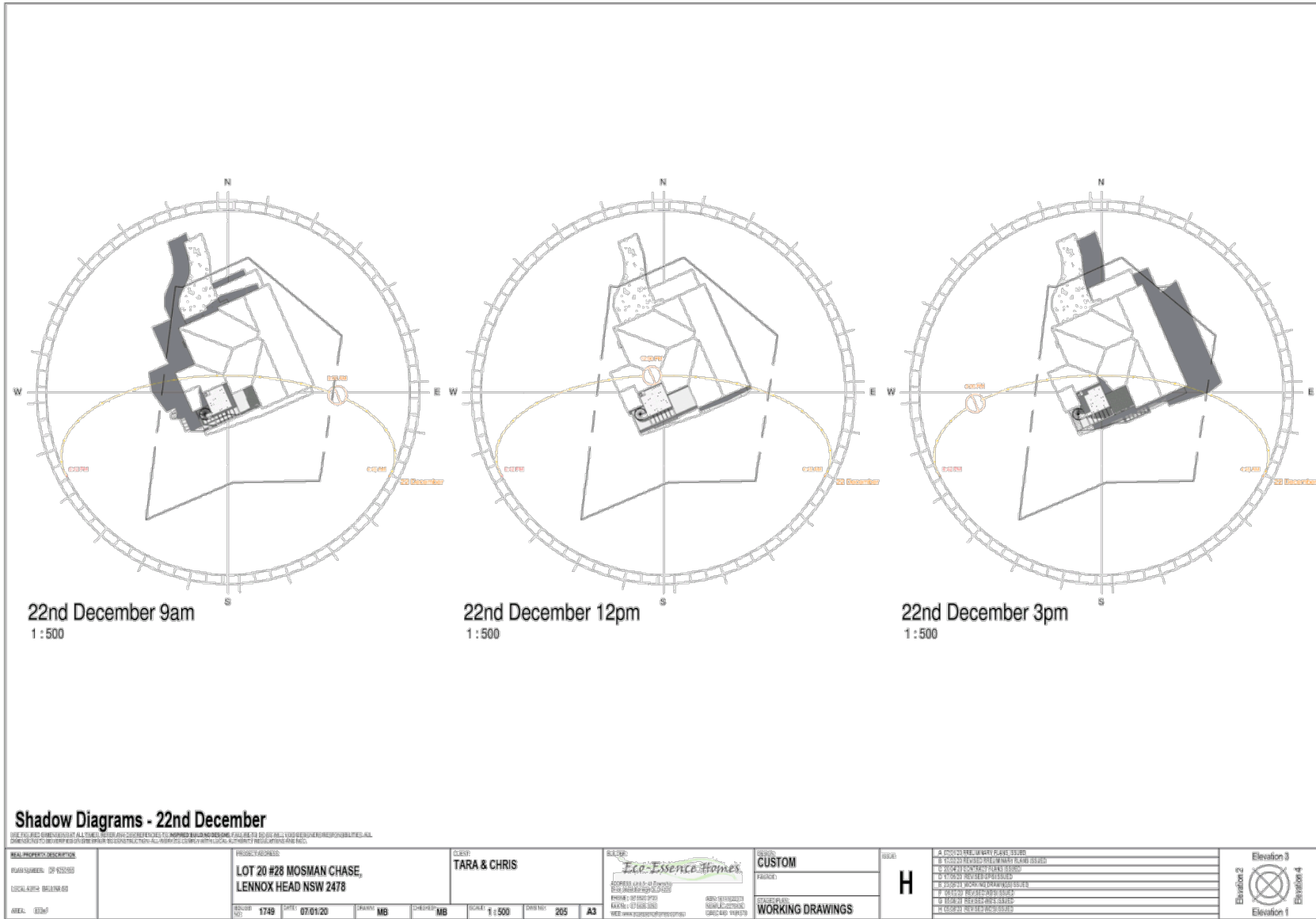
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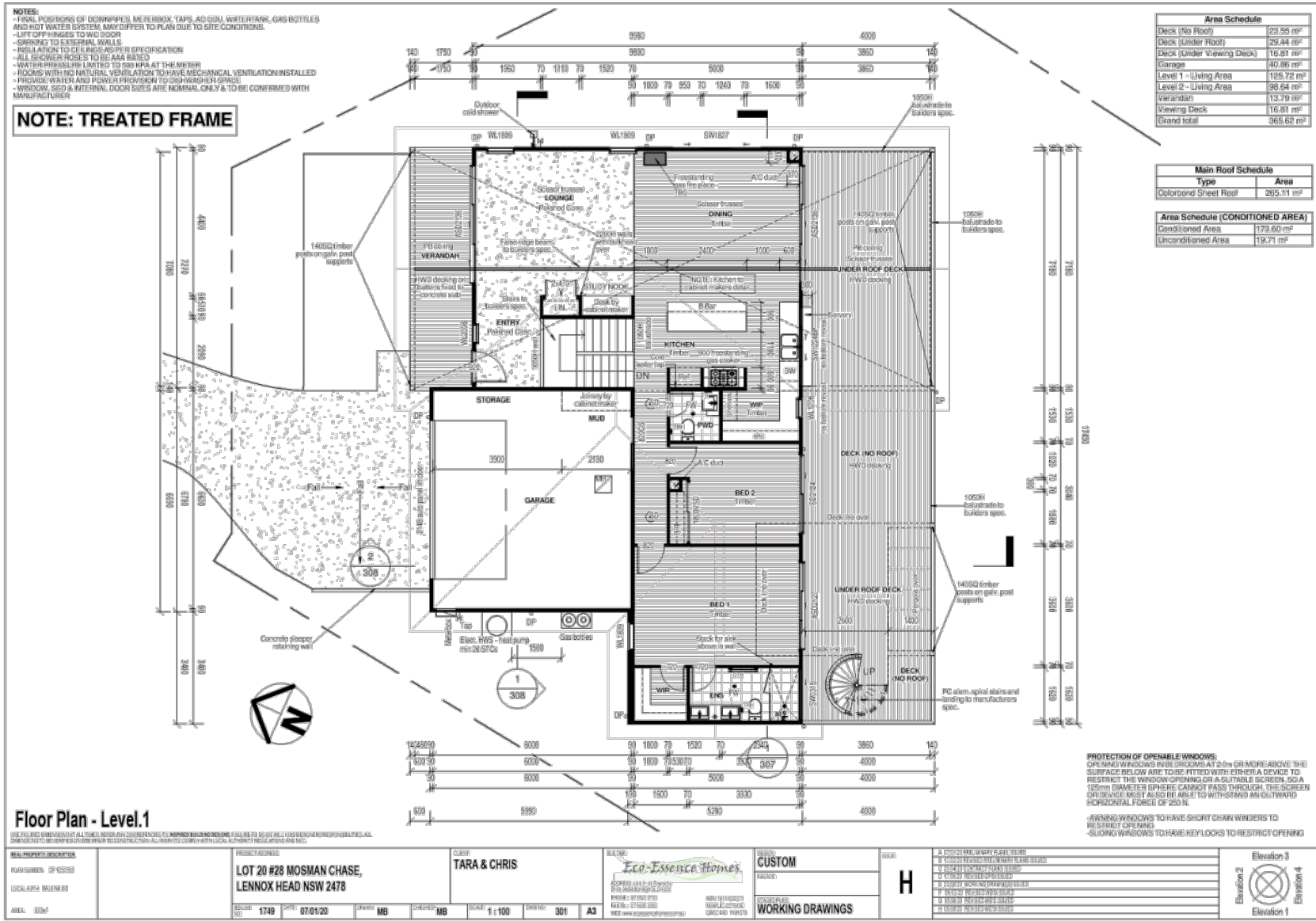


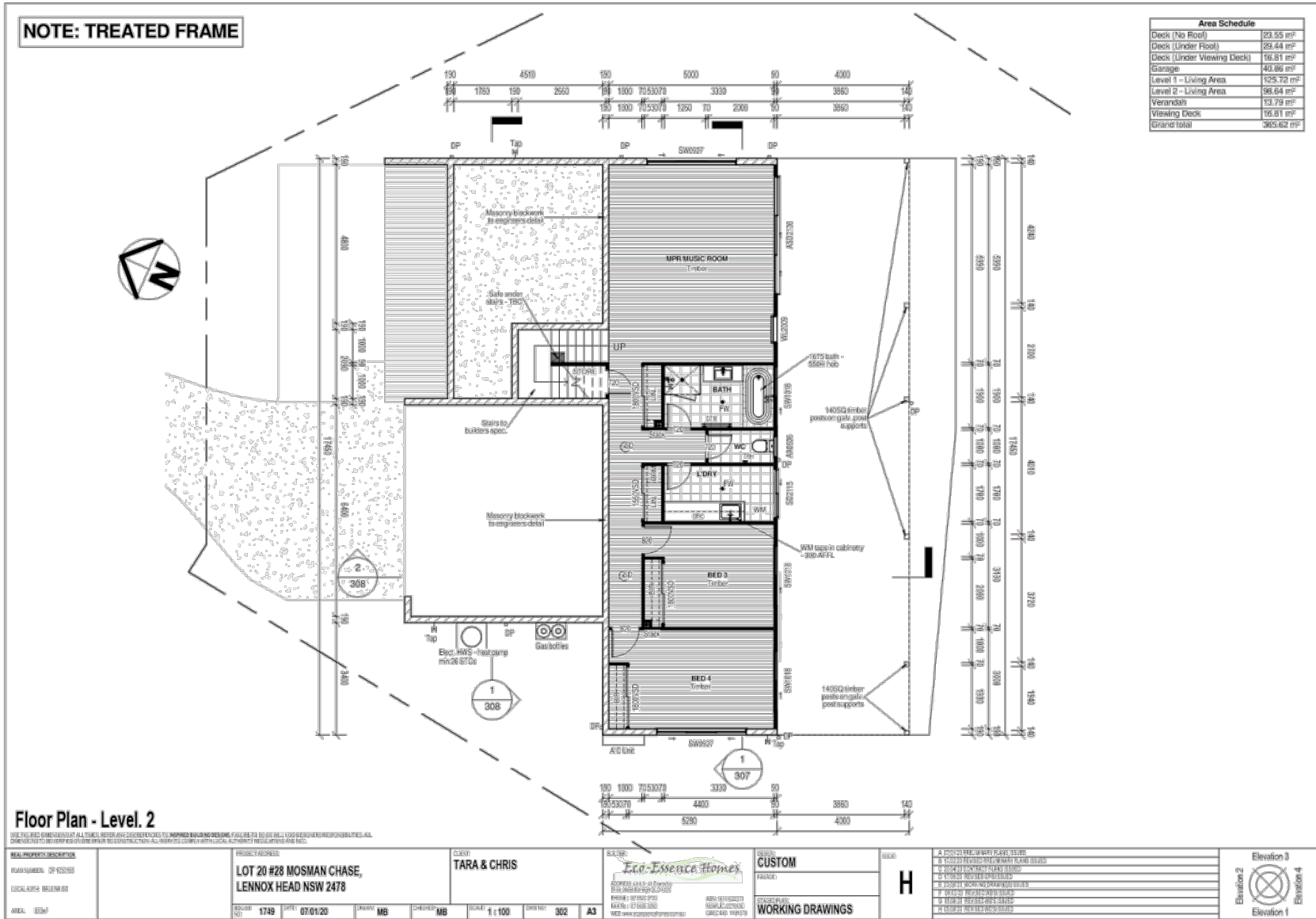






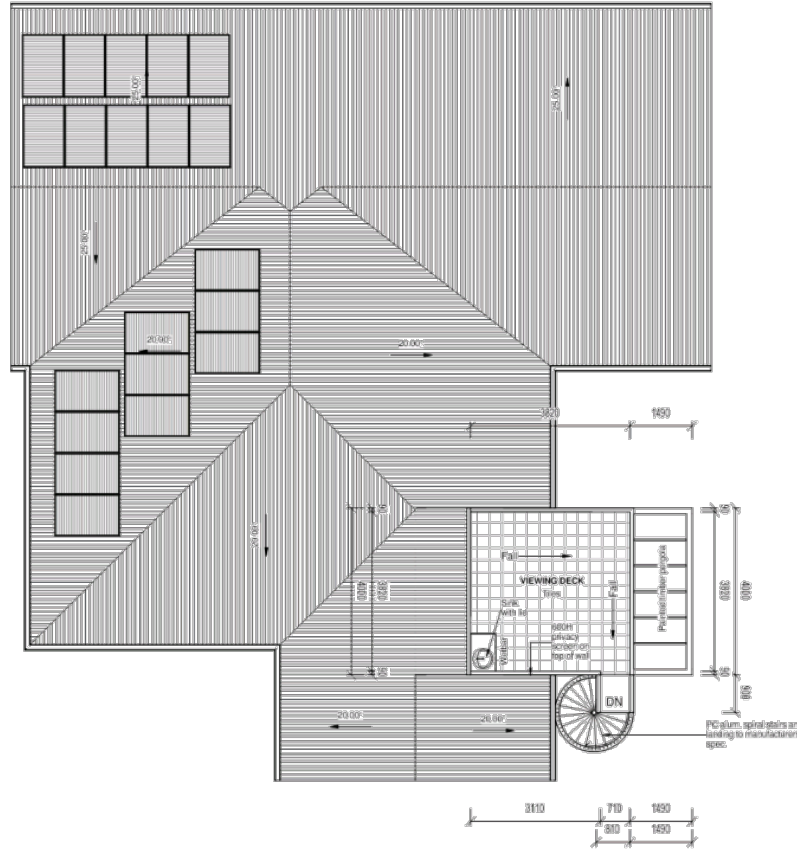






NOTE: TREATED FRAME

Area Schedule	
Deck (No Riser)	23.55 m ²
Deck (Under Hoist)	29.44 m ²
Deck (Under Viewing Deck)	16.81 m ²
Garage	40.98 m ²
Level 1 - Living Area	125.72 m ²
Level 2 - Living Area	96.64 m ²
Verandah	13.79 m ²
Viewing Deck	16.81 m ²
Grand total	365.62 m²

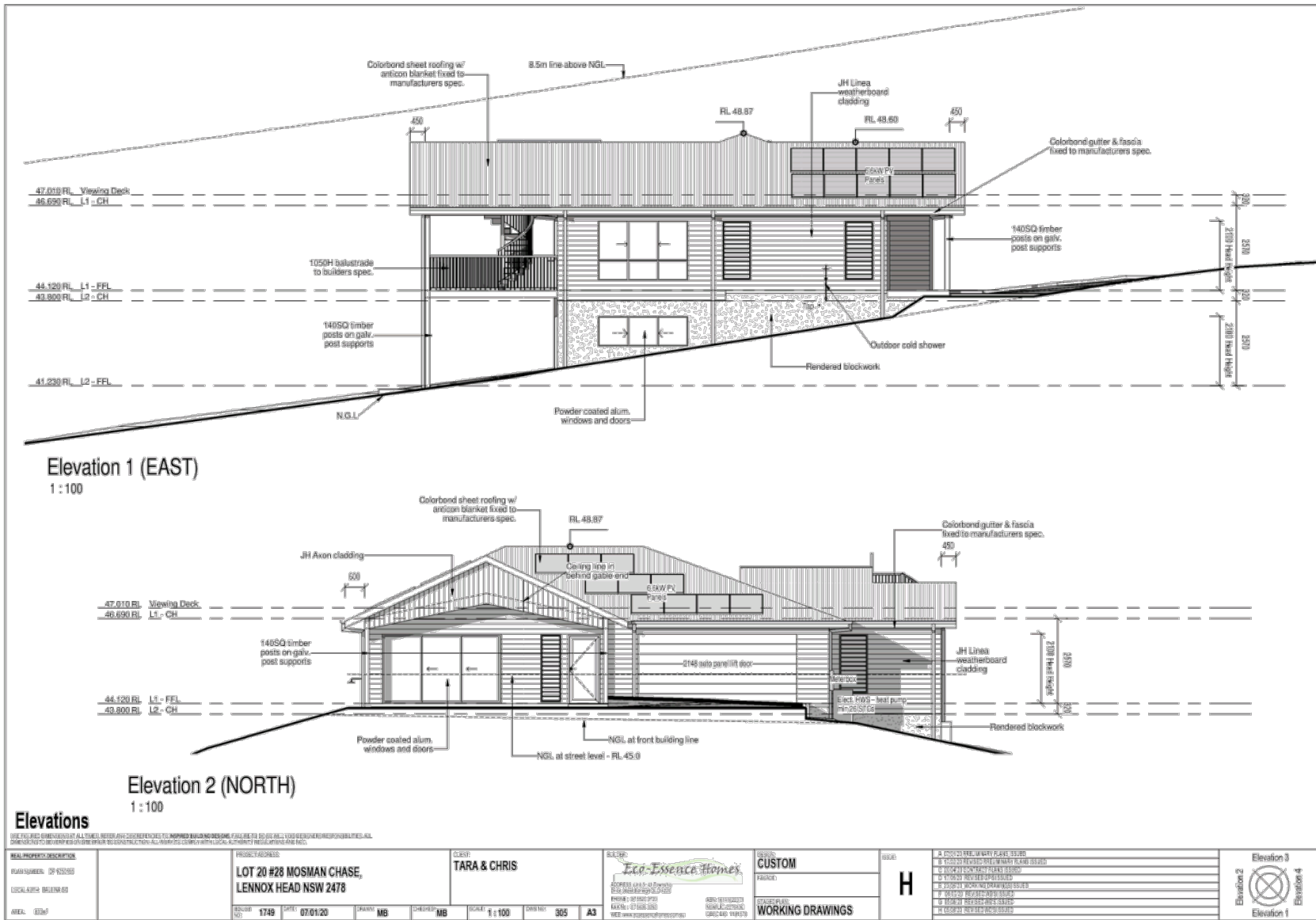


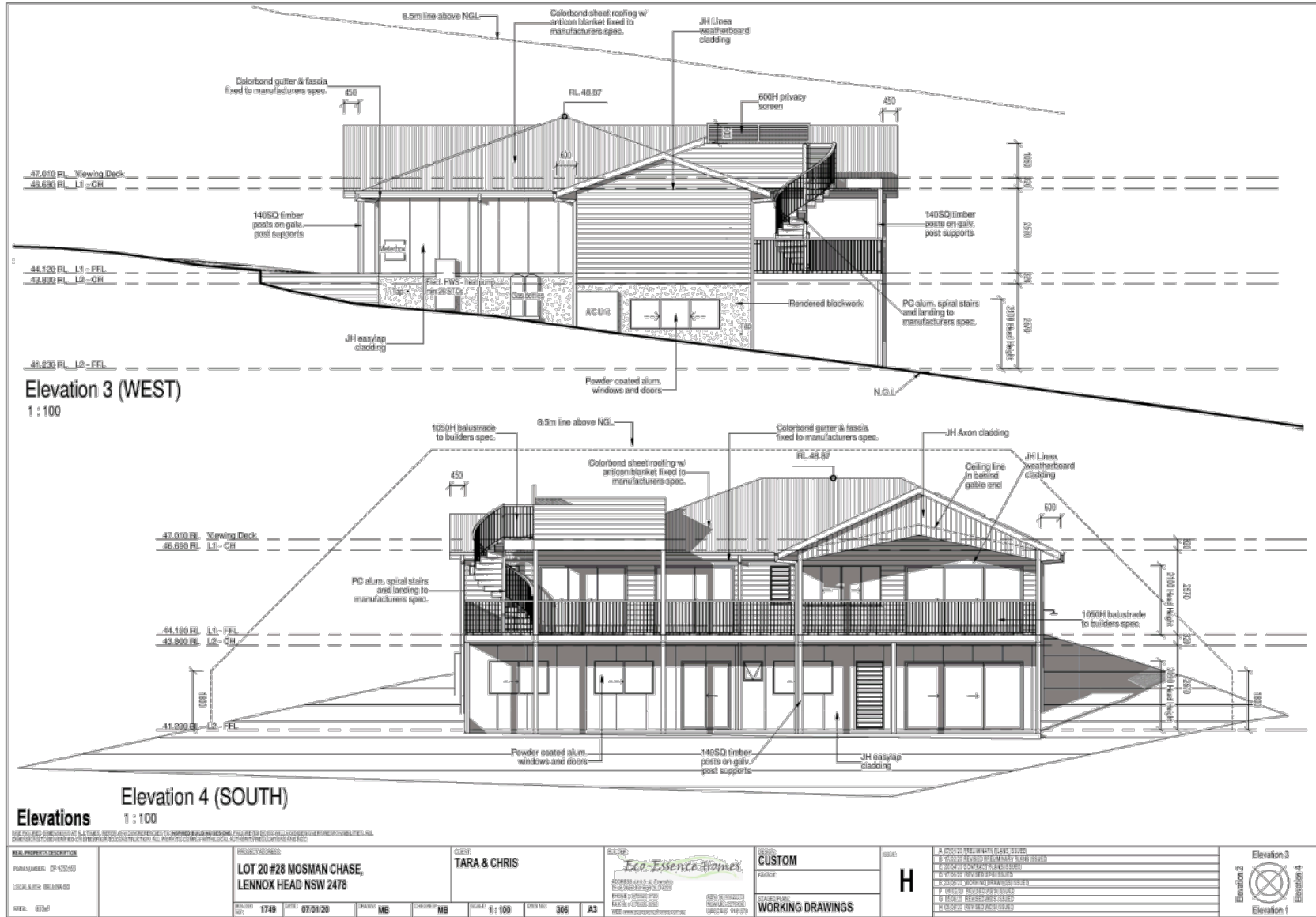
Floor Plan - Viewing Deck

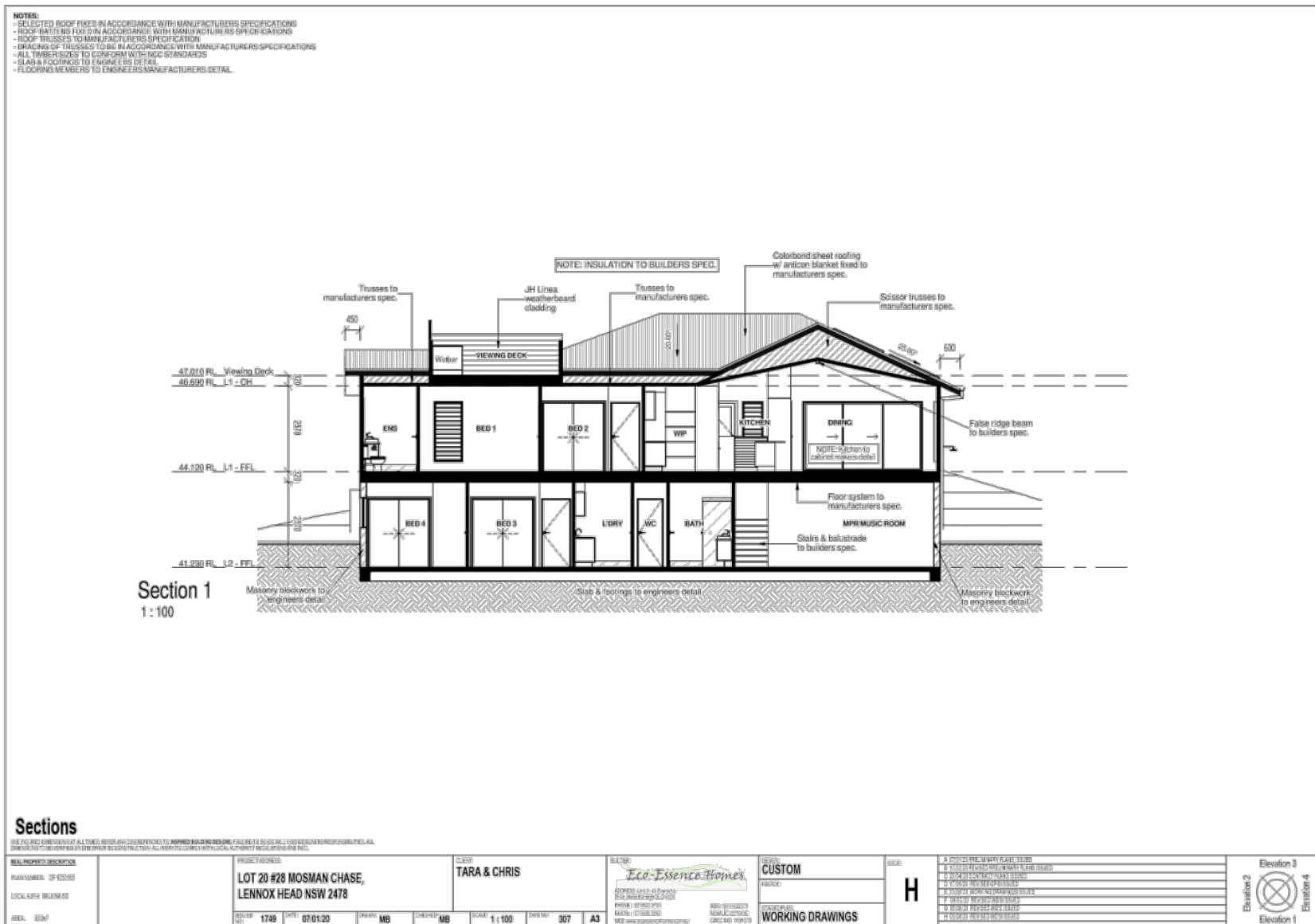
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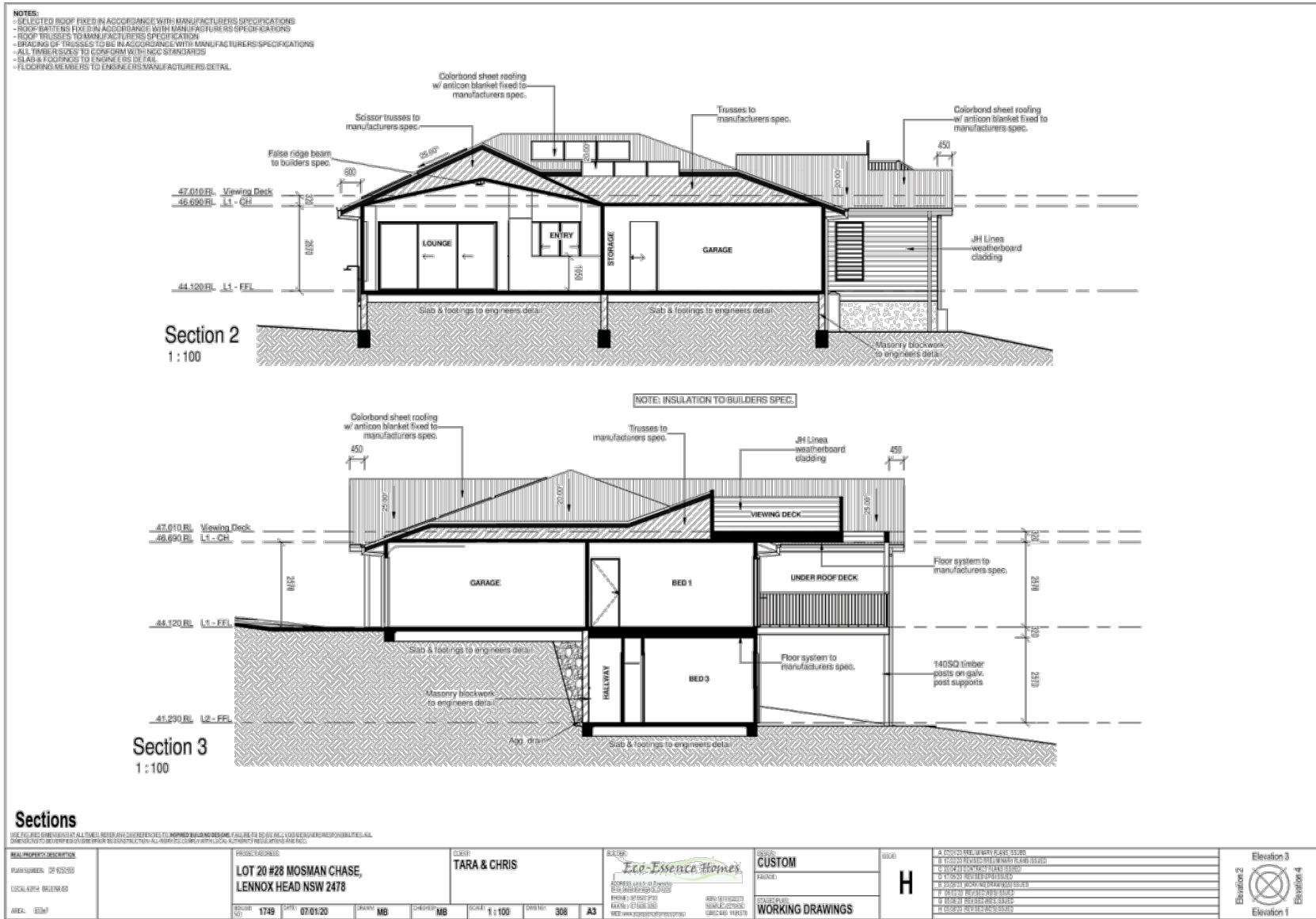
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ROAD NUMBER: CP 422083		LOT 20 #28 MOSMAN CHASE, LENNOX HEAD NSW 2478		TARA & CHRIS			Eco-Essence Homes		1:100		CUSTOM		H		Elevation 3	
LOCAL AUTH: Bellingen Shire Council							APPROVED FOR CONSTRUCTION BY: [Signature]		DRAWN BY: MB		CHECKED BY: MB		DATE: 07/01/20		Elevation 2	
DATE: 07/01/20							APPROVED FOR CONSTRUCTION BY: [Signature]		DRAWN BY: MB		CHECKED BY: MB		DATE: 07/01/20		Elevation 4	
DRAWN BY: MB							APPROVED FOR CONSTRUCTION BY: [Signature]		DRAWN BY: MB		CHECKED BY: MB		DATE: 07/01/20		Elevation 1	

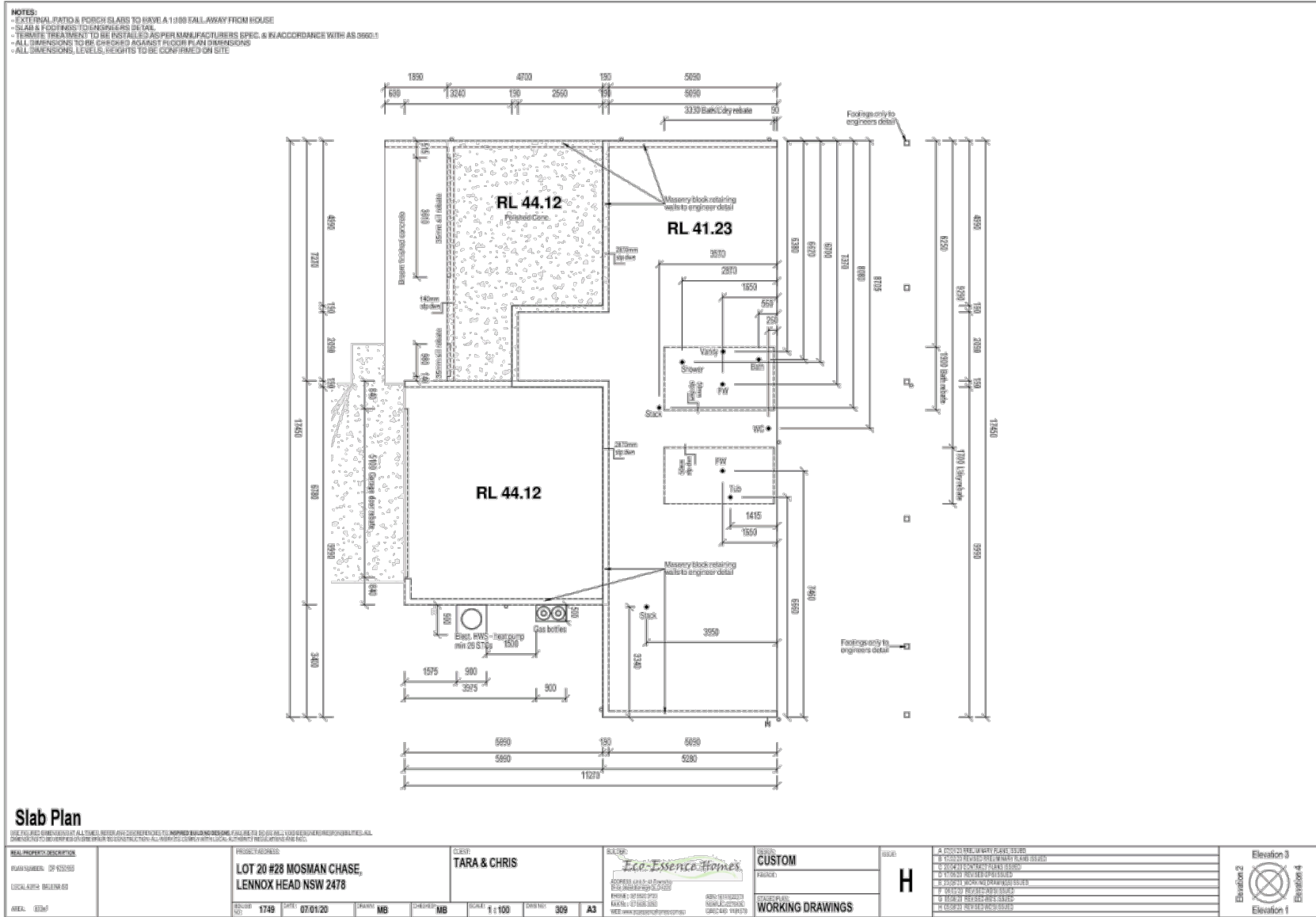
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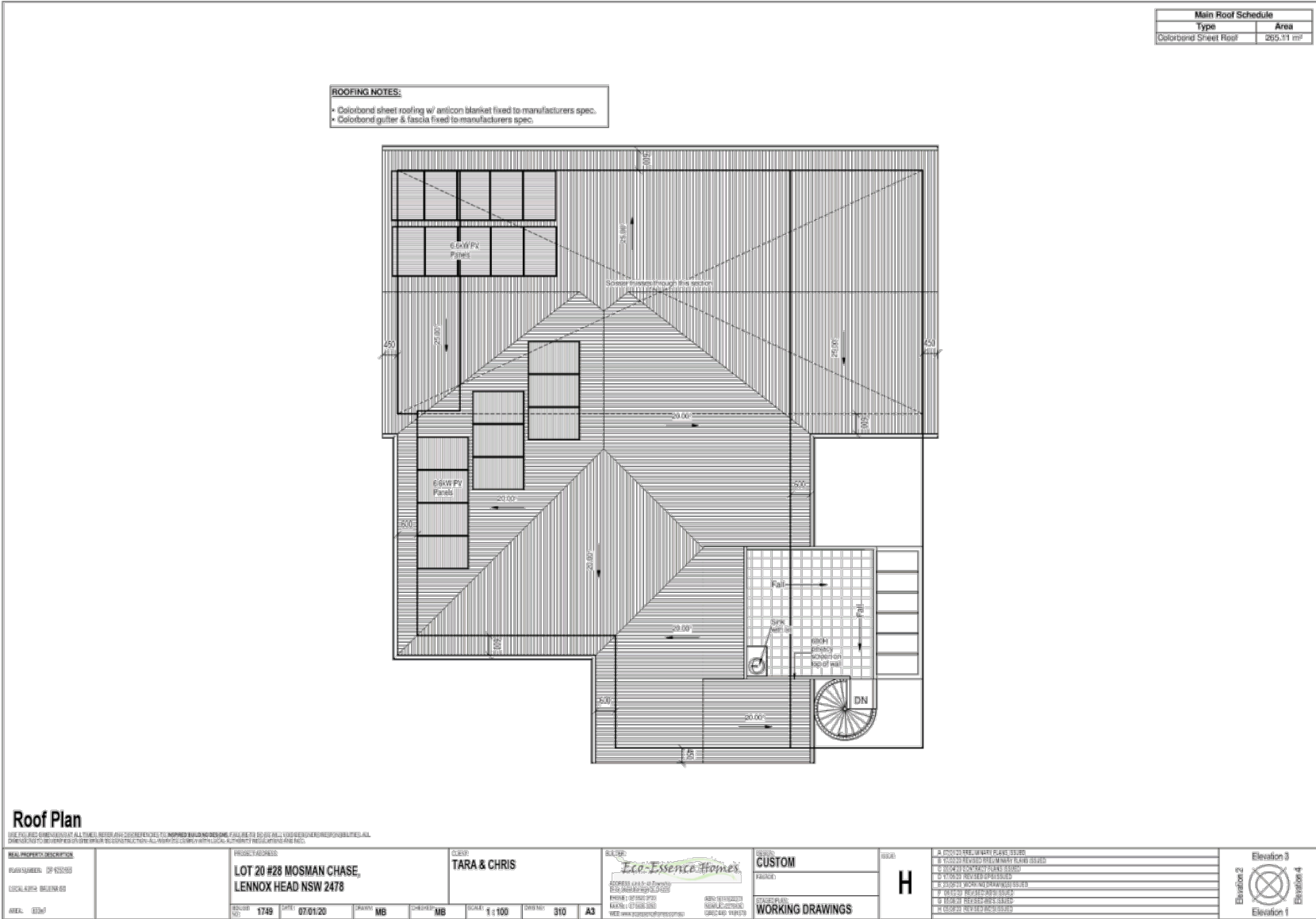












NOTES:
 - ALL BRACING TO BE CHECKED BY BUILDER PRIOR TO CONSTRUCTION
 - ALL TIMBER SIZES NOMINATED TO BE CHECKED PRIOR TO CONSTRUCTION
 - BRACING CALCULATED USING TABLES DEDUCED FROM AS1684.2
 - FOR LINTEL SIZES - REFER TO MANUFACTURERS SPECIFICATION

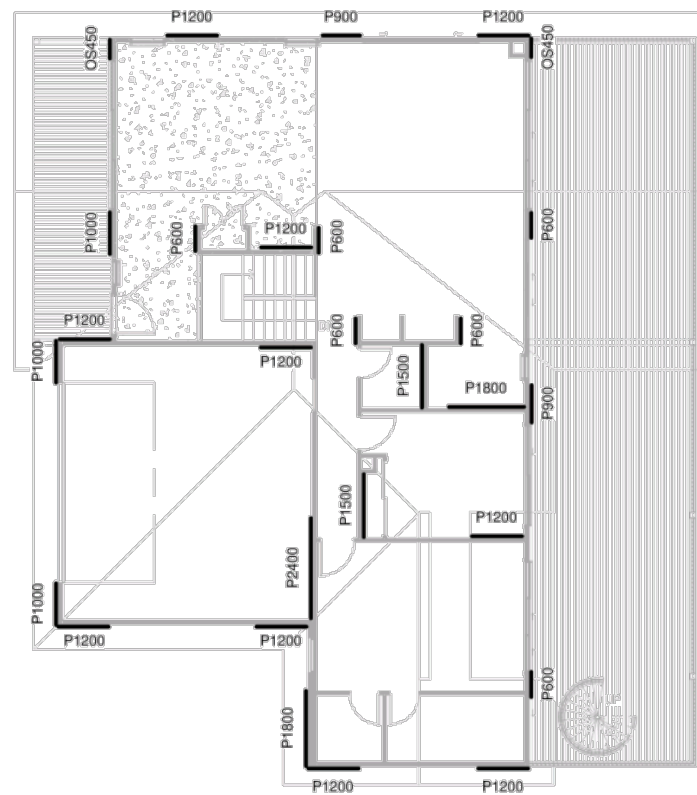
WIND BRACING CALCULATIONS - LEVEL 1

Wind Category N3 Roof Load Width 7500

➔ Direction A Bracing Required 65.65
 ➔ Direction A Bracing Provided 88.2

⬆ Direction B Bracing Required 67.31
 ⬆ Direction B Bracing Provided 82.44

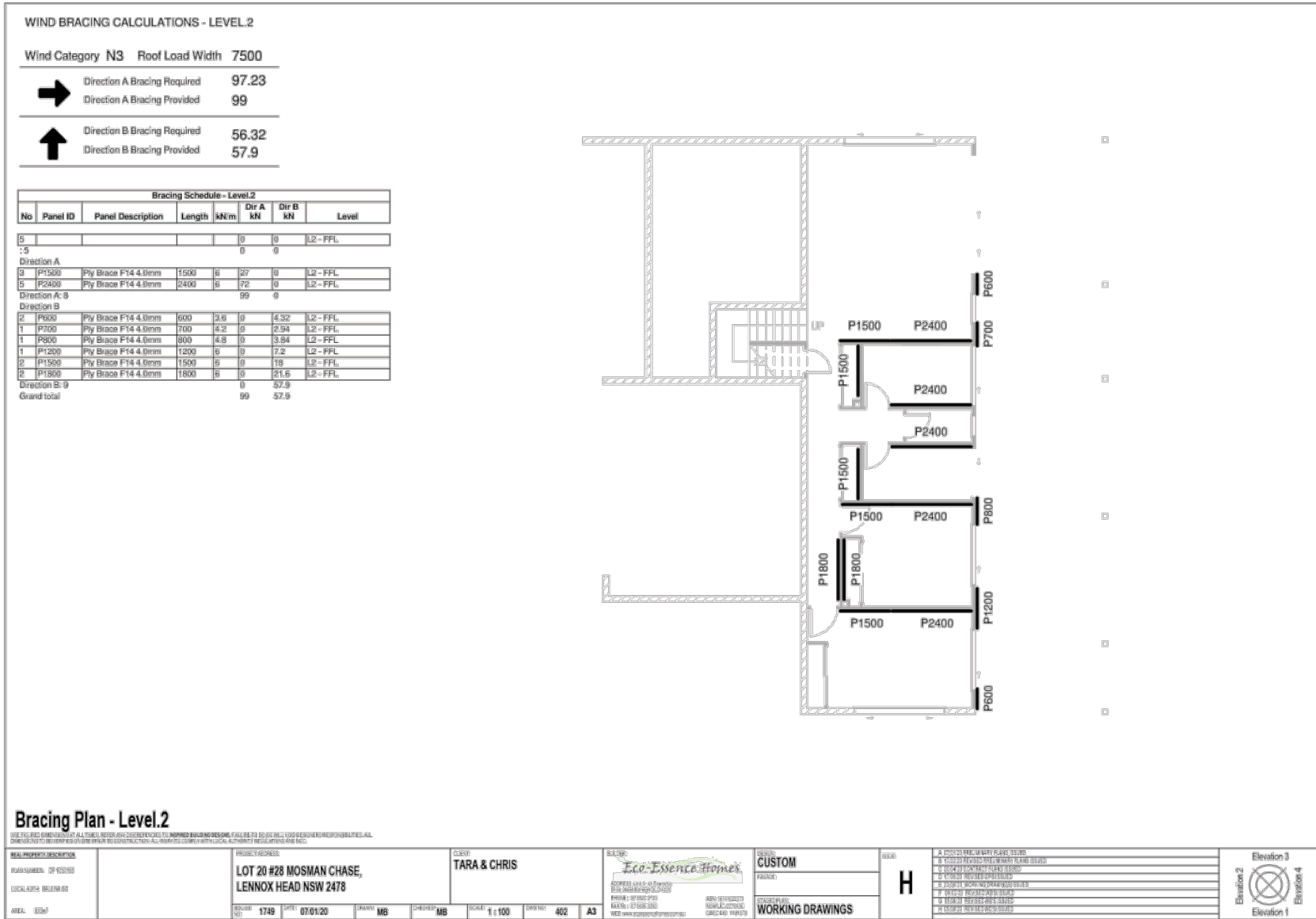
Bracing Schedule - Level 1						
No	Panel ID	Panel Description	Length	kN/m	Dir A kN	Dir B kN
Direction A						
1	P900	Ply Brace F14 4.0mm	900	0	5.4	0
10	P1200	Ply Brace F14 4.0mm	1200	0	72	0
1	P1800	Ply Brace F14 4.0mm	1800	0	10.8	0
Direction A: 12					88.2	0
Direction B						
2	OS450	OS/brace 6.0mm w/ rods each end	450	3.2	0	2.88
8	P900	Ply Brace F14 4.0mm	900	3.6	0	12.96
1	P900	Ply Brace F14 4.0mm	900	0	5.4	0
3	P1000	Ply Brace F14 4.0mm	1000	0	18	0
2	P1500	Ply Brace F14 4.0mm	1500	0	18	0
1	P1800	Ply Brace F14 4.0mm	1800	0	10.8	0
1	P2400	Ply Brace F14 4.0mm	2400	0	14.4	0
Direction B: 16					0	82.44
Grand total					88.2	82.44



Bracing Plan - Level 1

USE FOR CONSTRUCTION BY ALL TRADES. DESIGNER ACCEPTS RESPONSIBILITY FOR DESIGN. ENGINEER ACCEPTS RESPONSIBILITY FOR DESIGN. DESIGNER AND ENGINEER DO NOT ACCEPT RESPONSIBILITY FOR CONSTRUCTION. ALL WORKS TO COMPLY WITH LOCAL AUTHORITY REGULATIONS AND ETC.

REAL PROPERTY DESCRIPTION	PROJECT ADDRESS	CLIENT	SCALE	STATUS	WIND	ELEVATION
DAW NUMBER: DP 432089	LOT 20 #28 MOSMAN CHASE, LENNOX HEAD NSW 2478	TARA & CHRIS	1:100	CUSTOM	H	Elevation 3 Elevation 2 Elevation 1
DATE	DRAWN	CHECKED	DRAWN NO	DATE	STATUS	WIND
17/09	MB	MB	401	07/01/20	WORKING DRAWINGS	A3



WALL BRACING TYPES

MAB METAL ANGLE BRACE = 1.5 kN/m (AS1684.2:2010) REFER DIAGRAM

PLY F14 4mm THICK MIN. STRUCTURAL PLYWOOD ON OUTER FACE OF STUD WALL. NAILED TO FRAME WITH 30x2.8mm DIA. FLATHEAD NAILS OR EQUIVALENT. STUDS @ 450 CRS BEHIND PANELS = 6.0 kN/m (AS1684.2:2010) REFER DIAGRAM

OS BRACE 60mm THICK MIN. OS BRACE SHEET ON OUTER FACE OF STUD WALL. NAILED TO FRAME WITH 30x2.8mm DIA. FLATHEAD NAILS OR EQUIVALENT. STUDS @ 450 CRS BEHIND PANELS WITH M12 ROD AT EACH END = 3.2 kN/m (AS1684.2:2010) REFER DIAGRAM

900mm MIN. PLY LENGTHS

NAILING CRS:
 TOP & BOTTOM PLATES - 50mm
 VERTICAL EDGES - 150mm
 INTERMEDIATE STUDS - 500mm

FIXINGS:
 TOP - METHOD A,B,C OR D PER 900mm LENGTH
 BOTTOM - 1/2" BOLT EACH END @ 1200 CRS MAX. (150mm SCREWBOLT)

< 900mm MIN. PLY LENGTHS

NAILING CRS:
 TOP & BOTTOM PLATES - 80mm
 VERTICAL EDGES - 150mm
 INTERMEDIATE STUDS - 600mm

FIXINGS:
 TOP - METHOD A,B,C OR D PER 900mm LENGTH
 BOTTOM - 1/2" FULL HEIGHT ROD EACH END (150mm COUPLER SCREWBOLT)

kN WALLS

PLY BRACE AS TIE-DOWN (PAA LIMIT STATE DESIGN MANUAL)
 50mm TOP & BOTTOM PLATE NAILING CRS + FLOOR FIXING (12/150mm SCREW BOLT (SLAB) OR M12 BOLTS (FLOOR FRAME) AT MAX. 1800 CRS) AT EACH END OF MIN. 900 LONG PLY SHEET = 16.7kN UPLIFT RESISTANCE

VB VILLABOARD INTERNAL LINING = 2.9 kN/m
JAMES HARDIE'S PRODUCT IDENTIFICATION BOOK
 FIXED TO FRAME WITH 30x2.8mm DIA. FLATHEAD NAILS OR EQUIVALENT. NAILS TO BE DRIVEN JUST BELOW SURFACE - MUST NOT BE PUNCHED
 FULL HEIGHT ANCHOR RODS AT EACH END OF SHEETING & AT NOT LESS THAN 2400mm CRS
 NAILING CRS - CORNERS - 50mm GENERAL - 150mm

NOMINAL WALL BRACING = 0.45/0.75 kN/m (AS1684.2:2010)
 WALL FRAMING LINED WITH PLYWOOD, PLASTERBOARD, FO SHEET OR HARDBOARD SHEETING WITH WALL FRAMED NOMINALLY FIXED TO FLOOR & ROOF FRAME
 ONE SIDE ONLY - 0.45 kN/m
 BOTH SIDES - 0.75 kN/m

BRICK PIER =
 UPTO 800H - 4 kN EACH DIRECTION
 800H TO 1200H - 3 kN EACH DIRECTION
 OVER 1200H - 1.5 kN EACH DIRECTION
 350x350mm (MIN. DIMENSIONS) GROUT FILLED BRICK PIER WITH 1/2" THREADED ROD TO BEAM AND MASONRY ANCHORED TO FOOTING OR GROUT FILLED WITH SIS POST ANCHORED TO FOOTING

SUB FLOOR (IF APPLICABLE)
 SINGLE LEAF BRICK WALL WITH 1/350x450mm (MIN. DIMENSIONS) GROUT FILLED ENGAGED PIER WITH 1/2" THREADED ROD FIXED TO BEAM AND MASONRY ANCHORED TO FOOTING EACH END:

LENGTH OF SUB FLOOR WALL (m)	0.6	0.9	1.2	1.8	2.4	3.0	3.6	4.2
BRACING VALUE (kN)	2.7	4.2	5.9	9.6	13.9	18.7	24.1	30.0

NOTE:
 - COMBINED LENGTHS OF BRACING PANELS REQUIRE A COMBINATION OF TOP FIXINGS TO ACHIEVE REQUIRED VALUE (EQUIVALENT TO PANEL VALUE) REFER TO DETAILS IN "WALL BRACING TYPES"
 - TEMPORARY BRACING TO BE 60% OF PERMANENT BRACING
 - ROOF BRACING TO BE FIXED IN ACCORDANCE WITH AS1684.2-1999 & BCA CLAUSES 3.4.3.8

NOTE:
 ANY UNTEL SUPPORTING CONCENTRATED LOADS FROM GIRDER TRUSSES OR TRUNCATED GIRDER TRUSSES SHALL BE DESIGNED AND CERTIFIED BY THE STRUCTURAL ENGINEER RESPONSIBLE FOR THE DESIGN OF THE ROOF.

MIN. 900 STRUCTURAL PLYWOOD = 6.0 kN/m
>900 STRUCTURAL PLYWOOD = REFER REDUCTION FACTOR

Stress grade	Shell spacing (mm)	
	450	600
F8	7	9
P11	6	7
P16	4	6
F27	4	4.5

Fastener spacing, S (mm)
 Top and Bottom Plate: 50
 Vertical Edges: 150
 Intermediate studs: 300

FIXING TOP OF BRACING WALLS

TYPE A
 Internal bracing wall, External wall, Top plate, 200 x 0.8 mm O.L. straps with 4.2 dia. nails to all members (5.5kN)

TYPE B
 63.33 dia. nails each block (5.5kN), Blocking pieces large enough to avoid splitting, Gap between top plate and truss, Bracing wall

TYPE C
 63.33 DIA. NAILS EACH BLOCK (5.5kN), Truss, Top plate, Gap to truss, Bracing wall

TYPE D
 Nails or screws through the top plate shall be placed in holes that permit free vertical movement of the trusses. 4.75 mm dia. nails as per table or 3 No. 14 type 17 screws. Provide clearance where roof is trussed. 30 x 35 mm F8 noggins on flat. 2/75 mm dia. nails each end as per table or 2/75 mm No. 14 type 17 screws. Bracing wall

REFER TO AS1684.2-1999 FOR OTHER METHODS

Bracing Details

METAL ANGLE BRACE = 1.5 kN/m

Timber and metal braces. The maximum depth of a notch or saw cut shall not exceed 20mm. Saw cut studs shall be designed as notched.

Min. 75 x 15mm F8 brace or metal angle min. nominal section 18 x 16 x 3.2mm

No end or split allowed, drill necessary

30 x 0.8mm galvan. strap 330 x 2.8mm nails to each end to stud

250 x 2.8mm nails to each stud and plate

1800mm min. to 2700mm max.

Tie down to floor (Nominal fixing only)

30 x 0.8mm galvan. strap 330 x 2.8mm nails to each end to stud

30 x 0.8mm galvan. strap 330 x 2.8mm nails to each end to stud

Full height M12 rods at each end of brace
 Ext wall - Screwbolt/150 embedment
 Int wall - Truss/80 hole depth

Tie down to floor (Nominal fixing only)

Top & Bottom plates & any horizontal joints - 50mm

Vertical Edges - 150mm

Noggings - 150mm

TIEDOWN MEMBER	TABLE No.	UPLIFT FORCE	FIGURE No.	ALLOW LOAD (kN)	DESCRIPTION/TYPE OF FIXING
BATTEN TO TRUSS OR RAFTER, GENERAL EDGES	9.14	1.2	TABLE 9.2d	4.5	1.75mm NO 14 TYPE 17 SCREW - GENERAL EDGES
TRUSS OR RAFTER TO TOP PLATE	9.13	9.9	TABLE 9.2i c	8.4	30x35mm G.I LOOP STRAP, 9/2.8d NAIL PER END
TOP PLATE TO FLOOR FRAME/ OR SLAB	9.11	9.0	TABLE 9.19 f	20.0	M12 ANCHOR BOLT, TOP PLATE TO FLOOR FRAME, OR SLAB @ SIDES OF OPENINGS, ENDS OF WALLS @ 1800mm. REFER TIMBER NOTE 113
BEARER TO TIMBER STUMP OR POST	9.9	91.0	TABLE 9.15a	32.0	2/M16 BOLTS @ MAX. 4200c/s
FLOOR JOISTS TO SUPPORTS	9.10	10.0	TABLE 9.17c	13.0	30x0.8mm G.I LOOP STRAP, 4/2.8 dia NAIL PER END, @ MAX 1350c/s
BEAMS UNITS TO STUDS (POSTS SINGLE UPPER, OPENINGS <980)	9.13	9.9	TABLE 9.20 b	12	2/30x35mm G.I LOOP STRAP, 4/2.8d NAIL PER END & M10 BOLT TO FLOOR
BEAMS UNITS TO STUDS (POSTS SINGLE UPPER, OPENINGS <980)	9.13	17	TABLE 9.20 b	17	2/30x35mm G.I LOOP STRAP, 6/2.8d NAIL PER END & M10 BOLT TO FLOOR
BEAMS UNITS TO STUDS (POSTS SINGLE UPPER, OPENINGS <980)	9.13	24.9	TABLE 9.20 d	35	2/30x35mm G.I LOOP STRAP, 6/2.8d NAIL PER END & M12 BOLT TO FLOOR

UPTO 900 WIDE OPENING	1
1200 TO 2100 WIDE OPENING	2
2400 TO 3600 WIDE OPENING	3
3300 TO 3600 WIDE OPENING	4

NOTE: THE DOWN MEMBERS NOT IN THIS TABLE - REFER NOMINAL FIXINGS TABLES

TIMBER NOTES:

- ALL WORKMANSHIP AND MATERIALS SHALL BE IN ACCORDANCE WITH AS 1720 AS 1684
- ALL TIMBER CONNECTIONS TO BE IN ACCORDANCE WITH AS 1684, UNLESS NOTED OTHERWISE. ALL PROPRIETARY CONNECTORS ARE TO BE INSTALLED IN ACCORDANCE WITH MANUFACTURERS DETAILS.
- ROOF TRUSSES TO MANUFACTURERS SPECIFICATION
- FRAMING LINTEL BEAMS TO MANUFACTURERS SPECIFICATION
- ALL TIMBER TO BE MAX JOINT GROUP JO4 WALL FRAMING CYPRESS F5 OR F7
- TRIM OPENINGS IN CEILINGS AND ROOFS FOR SKYLIGHTS, EXHAUST DUCTS, FLUES AND SIMILAR. PROVIDE SUITABLE NOGGING AND UPSTANDS AS REQUIRED.
- BLOCKING AT 1800mm AND OVER SUPPORTS, FIXED AS PER MANUFACTURERS SPECIFICATIONS
- HANGING BEAMS TO ROOF TO BE IN ACCORDANCE WITH TRUSS DESIGN AND SPECIFICATION
- BINDER TO BE IN ACCORDANCE WITH TRUSS MANUFACTURERS DESIGN & SPECIFICATION AND AT MAX 3000mm CRS.
- BATTENS - 25x35mm (TILE) OR 30x35mm (SHEET) HWD F14 (2) ROOF BATTENS AT 930mm/c/s (TILE) OR 900mm/c/s (SHEET), FIXED TO TRUSS OR RAFTERS WITH NAIL OR SCREW AS PER TIE DOWN TABLE
- BOTTOM CHORD BRACING WHICH IS STRUCTURALLY ADEQUATE TO TRANSFER THE WIND LOADS FROM THE ROOF TRUSSES TO THE NOMINATED BRACING WALLS IS TO BE INSTALLED.
- PLY BRACING SHEET CAN BE USED AS TIE DOWN PROVIDING:
 - PLY SHEET MIN 900
 - PLY SHEET HAS 13X CONNECTION BOTTOM PLATE TO SLAB/FLOOR
 - THE NEXT TIE DOWN SHEET 1200 FROM EDGE OF BRACING SHEET
 - NOT TO BE USED FOR N4

WALL FRAMING

LOWER FLOOR (2740 MAX. WALL HEIGHT)		UPPER FLOOR (2700 MAX. WALL HEIGHT)	
LOAD BEARING WALL (EXTERNAL AND INTERNAL)		LOAD BEARING WALL (EXTERNAL AND INTERNAL)	
COMMON STUD	1/70x35 SMART PINE 12 STUDS @ 450 MAX. CRS	COMMON STUD	1/70x35 SMART PINE 12 STUDS @ 450 MAX. CRS
JAMB STUD	70x35 SMART PINE 12 JAMB STUDS (REFER JAMB STUD SCHEDULE)	JAMB STUD	70x35 SMART PINE 12 JAMB STUDS (REFER JAMB STUD SCHEDULE)
BOTTOM PLATE	1/70x35 SMART PINE 12	BOTTOM PLATE	1/70x35 SMART PINE 12
TOP PLATE	2/70x35 SMART PINE 12	TOP PLATE	2/70x35 SMART PINE 12
NOGGINGS	70x35 SMART PINE 12 NOGGINGS @ 1350 MAX. CRS	NOGGINGS	70x35 SMART PINE 12 NOGGINGS @ 1350 MAX. CRS

Tie Down Details

HAZARD LEVEL	SERVICE CONDITIONS	POSSIBLE HAZARDS
H1	INSIDE, ABOVE GROUND, FULLY PROTECTED	INSECTS OTHER THAN TERMITES
H2	INSIDE, ABOVE GROUND, PROTECTED FROM WEATHER, NO TERMITE PROTECTION	BORERS AND TERMITES
H3	OUTSIDE, ABOVE GROUND, (EXPOSED TO WEATHER)	MODERATE DECAY (ROT), BORERS AND TERMITES
H4	IN-GROUND CONTACT, NON STRUCTURAL	SEVERE DECAY (ROT), BORERS AND TERMITES
H5	IN CONTACT WITH GROUND OR FRESH WATER, STRUCTURAL	SEVERE DECAY (ROT), BORERS AND TERMITES
H6	SALT WATER CONTACT	MARINE BORERS AND DECAY

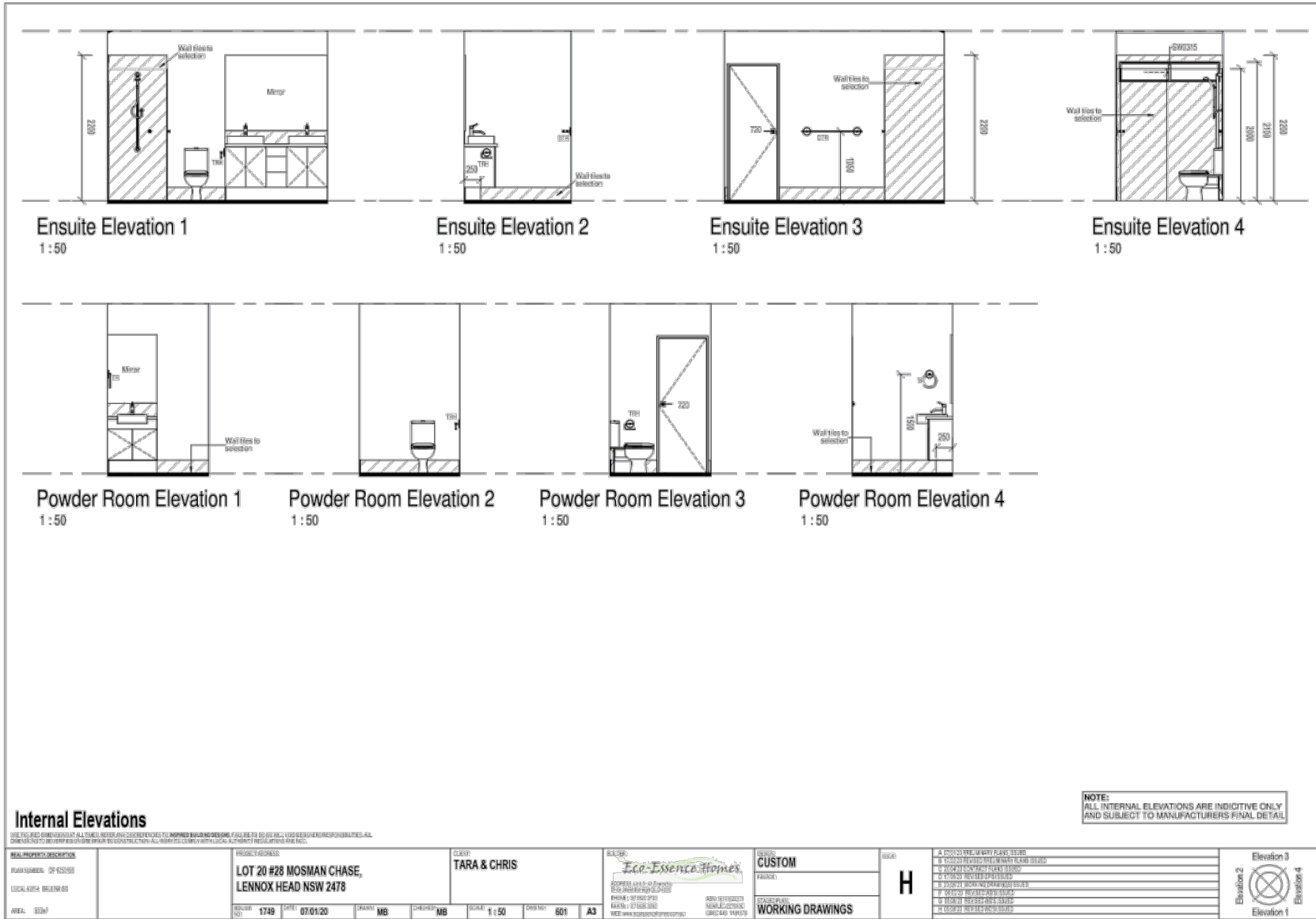
HAZARD LEVEL	SERVICE CONDITIONS	POSSIBLE HAZARDS
H1	INSIDE, ABOVE GROUND, FULLY PROTECTED	INSECTS OTHER THAN TERMITES
H2	INSIDE, ABOVE GROUND, PROTECTED FROM WEATHER, NO TERMITE PROTECTION	BORERS AND TERMITES
H3	OUTSIDE, ABOVE GROUND, (EXPOSED TO WEATHER)	MODERATE DECAY (ROT), BORERS AND TERMITES
H4	IN-GROUND CONTACT, NON STRUCTURAL	SEVERE DECAY (ROT), BORERS AND TERMITES
H5	IN CONTACT WITH GROUND OR FRESH WATER, STRUCTURAL	SEVERE DECAY (ROT), BORERS AND TERMITES
H6	SALT WATER CONTACT	MARINE BORERS AND DECAY

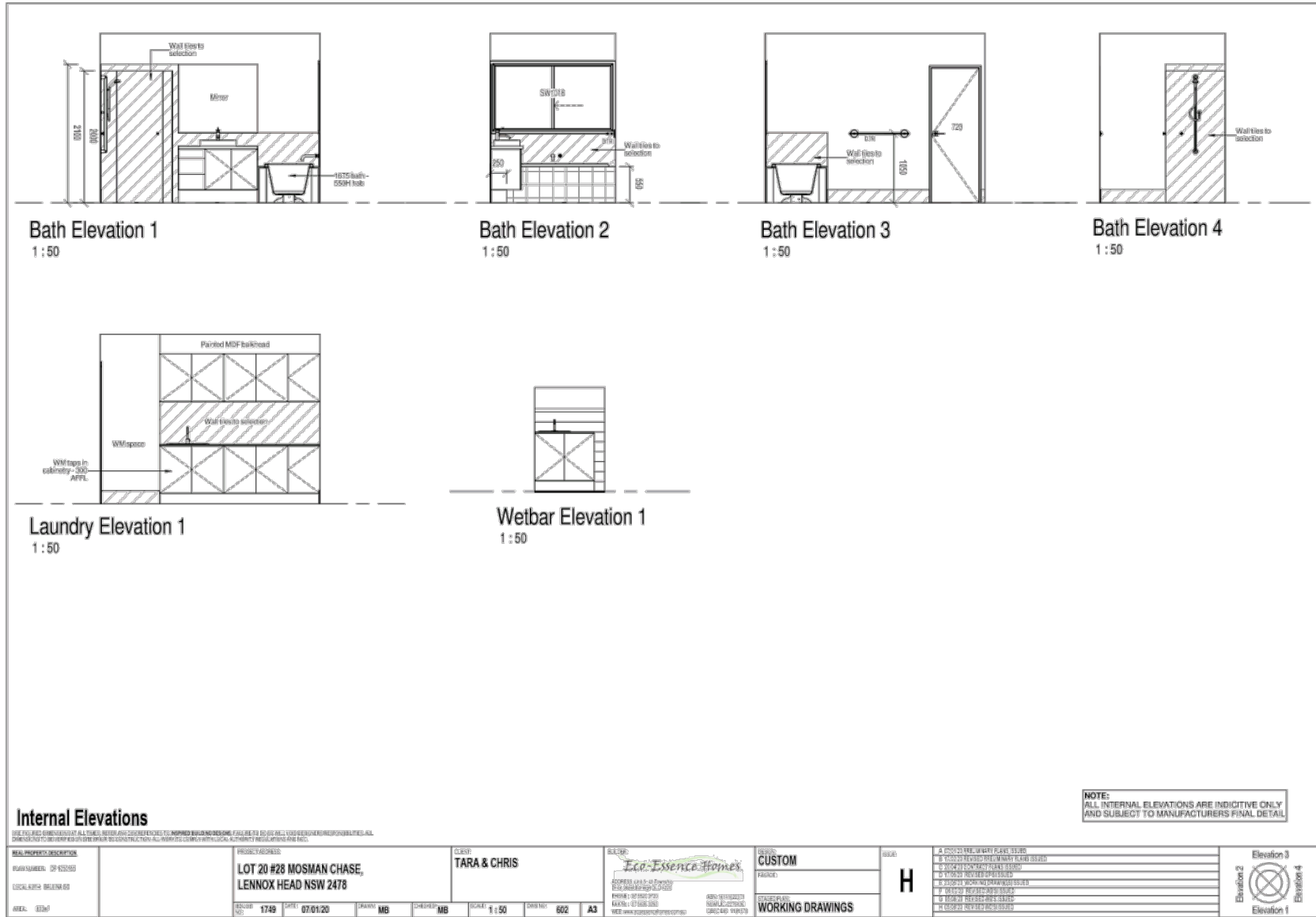
Tie Down Details

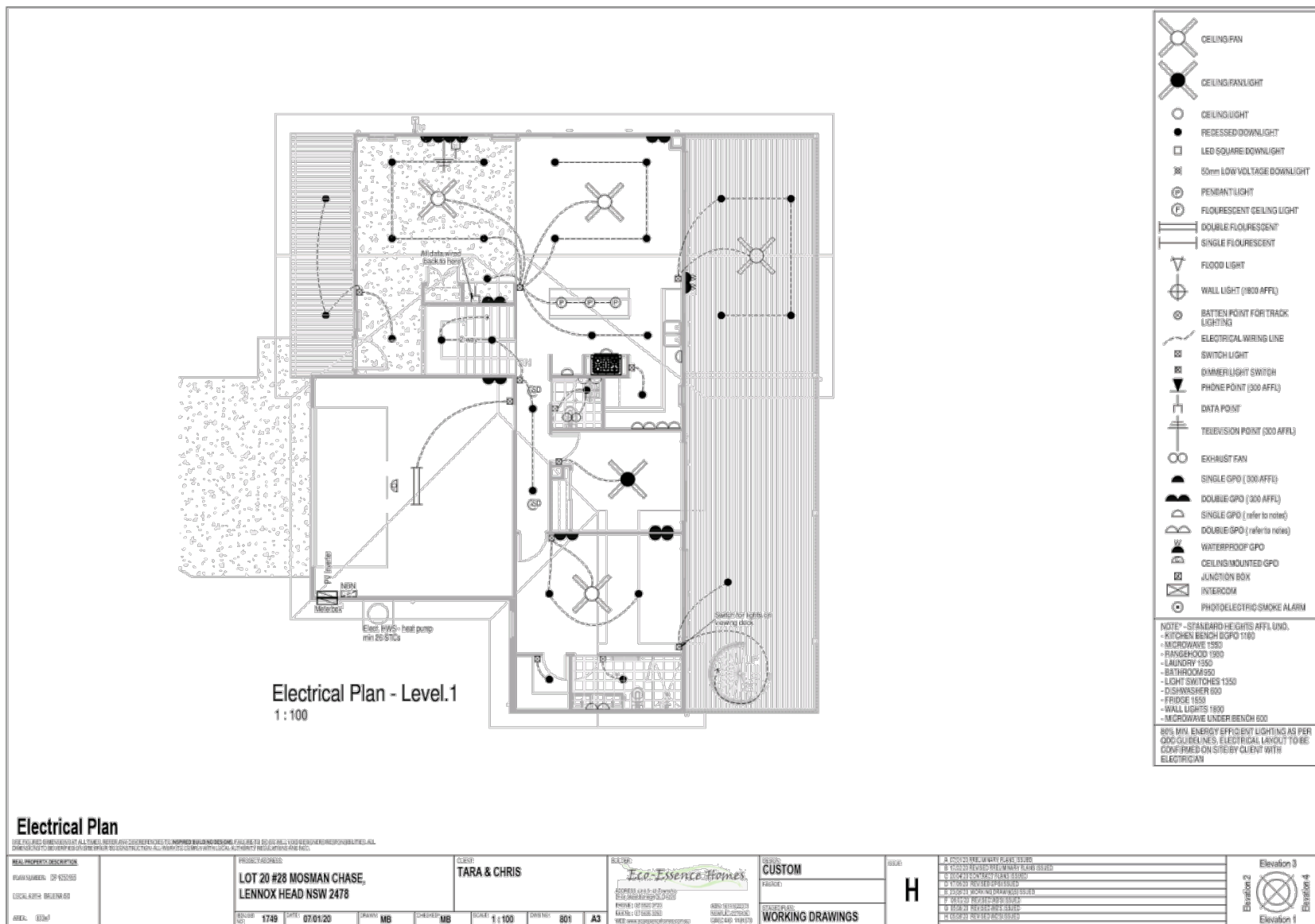
PROJECT DESCRIPTION	CLIENT	DATE	SCALE	DRAWN BY	CHECKED BY	DATE	STATUS
LOT 20 #28 MOSMAN CHASE, LENOX HEAD NSW 2478	TARA & CHRIS	07/01/20	As indicated	MB	MB	07/01/20	WORKING DRAWINGS

PROJECT ADDRESS	CLIENT	DATE	SCALE	DRAWN BY	CHECKED BY	DATE	STATUS
LOT 20 #28 MOSMAN CHASE, LENOX HEAD NSW 2478	TARA & CHRIS	07/01/20	As indicated	MB	MB	07/01/20	WORKING DRAWINGS

HAZARD LEVEL	SERVICE CONDITIONS	POSSIBLE HAZARDS
H1	INSIDE, ABOVE GROUND, FULLY PROTECTED	INSECTS OTHER THAN TERMITES
H2	INSIDE, ABOVE GROUND, PROTECTED FROM WEATHER, NO TERMITE PROTECTION	BORERS AND TERMITES
H3	OUTSIDE, ABOVE GROUND, (EXPOSED TO WEATHER)	MODERATE DECAY (ROT), BORERS AND TERMITES
H4	IN-GROUND CONTACT, NON STRUCTURAL	SEVERE DECAY (ROT), BORERS AND TERMITES
H5	IN CONTACT WITH GROUND OR FRESH WATER, STRUCTURAL	SEVERE DECAY (ROT), BORERS AND TERMITES
H6	SALT WATER CONTACT	MARINE BORERS AND DECAY







Electrical Plan - Level 2
1:100

Electrical Plan - Veiving Deck
1:100

	CEILING FAN
	CEILING FANLIGHT
	CEILING LIGHT
	RECESSED DOWNLIGHT
	LED SQUARE DOWNLIGHT
	50mm LOW VOLTAGE DOWNLIGHT
	PENDANT LIGHT
	FLUORESCENT CEILING LIGHT
	DOUBLE FLUORESCENT
	SINGLE FLUORESCENT
	FLOOD LIGHT
	WALL LIGHT (800 AFFL)
	BATTEN POINT FOR TRACK LIGHTING
	ELECTRICAL WIRING LINE
	SWITCHLIGHT
	DIMMER LIGHT SWITCH
	PHONE POINT (300 AFFL)
	DATA POINT
	TELEVISION POINT (300 AFFL)
	EXHAUST FAN
	SINGLE GPD (300 AFFL)
	DOUBLE GPD (300 AFFL)
	SINGLE GPD (refer to notes)
	DOUBLE GPD (refer to notes)
	WATERPROOF GPD
	CEILING MOUNTED GPD
	JUNCTION BOX
	INTERCOM
	PHOTOELECTRIC SMOKE ALARM

NOTE: STANDARD HEIGHTS APPL. UND. KITCHEN BENCH (GPD 100)
 - MICROWAVE 1550
 - RANGEHOOD 1900
 - LAUNDRY 1550
 - BATHROOM 550
 - LIGHT SWITCHES 1350
 - DISHWASHER 800
 - FRIDGE 1550
 - WALL LIGHTS 1800
 - MICROWAVE UNDER BENCH 800

80% MIN. ENERGY EFFICIENT LIGHTING AS PER 6000 GUIDELINES. ELECTRICAL LAYOUT TO BE CONFIRMED ON SITE BY CLIENT WITH ELECTRICIAN

Electrical Plan		PROJECT ADDRESS: LOT 20 #28 MOSMAN CHASE, LENNOX HEAD NSW 2478		CLIENT: TARA & CHRIS		DRAWN BY: MB		CHECKED BY: MB		DATE: 07/01/20		SCALE: 1:100		DRAWING NO: 802		SHEET NO: A3	
REAL PROPERTY DESCRIPTION: ROAD NUMBER: CP 432080 LOCAL AUTH: BALLINA SH		PROJECT ADDRESS: LOT 20 #28 MOSMAN CHASE, LENNOX HEAD NSW 2478		CLIENT: TARA & CHRIS		DRAWN BY: MB		CHECKED BY: MB		DATE: 07/01/20		SCALE: 1:100		DRAWING NO: 802		SHEET NO: A3	

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 WARNING: Electronic Document Supplied by NSW LRS for Your Internal Use Only

ePlan

Instrument setting out terms of Easements or Profits à Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.

(Sheet 1 of 17 sheets)

Plan: DP1250165

Plan of subdivision of lot 7 DP1216761, lot 12 In DP814039, lot 52 in DP864764 and lot 1 in DP1217906 covered by Subdivision Certificate No. 166.1/2016

Full name and address of the owners of the land:

Negrada Pty Ltd ACN 137 350 362 of 92 Riverside Drive, West Ballina NSW 2478
Ruth Linda Bennett and Malcolm Francis Bennett of 13 Kellie-Ann Crescent, Lennox Head NSW 2478
New Hope Group (Aust) Pty Ltd ACN 129 345 535 of 545 The Coast Road, Lennox Head NSW 2478

Part 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, profit prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
1.	Easement for Overhead Powerlines 10 wide (E)	Lot 27	Essential Energy
2.	Easement to Drain Sewage 3 wide (S)	Lots 17, 18, 19, 25 & 26	Ballina Shire Council
3.	Easement to Drain Sewage 4 wide (S4)	Lots 1-6 inclusive & 19	Ballina Shire Council
4.	Easement to Drain Sewage variable width (SV)	Lots 7, 7-11 inclusive, 13-16 inclusive, 21-24 inclusive & 26	Ballina Shire Council
5.	Easement to Drain Water 3 wide (W)	Lot 2 Lot 6 Lot 8 Lot 18 Lot 21 Lot 24	Lots 3-8 inclusive Lots 7 & 8 Lot 7 Lot 17 Ballina Shire Council Lot 25
6.	Easement to Drain Water 4 wide (W4)	Lot 2 Lot 3	Lots 3-8 inclusive Lots 4-8 inclusive

[Handwritten signatures]
 Ruth Bennett
 Malcolm Bennett
 J. Hooper

NWT



CONFIDENTIAL SUBMISSIONS

**DA 2020/446 – 28 Mosman Chase, Lennox
Head**

Please note private and identifying information has been removed from this submission in accordance with the Privacy & Personal Information Protection Act 1998 at the request of the submitter.

Ordinary Meeting 26/11/2020

Dear David and building team

We as property owners in the Visions estate, Lennox Head are concerned about the recently submitted plans of Lot 20, 28 Mosman Chase. We had a look at the plans in the submission and it does not comply with the S88B instrument that has been created for this estate. Namely the one below:

6. Terms of Restriction on the use of the land tenthly referred to in the plan.

The owner of the lot burdened must not erect, construct, place or permit to remain on the lot burdened any building comprising more than single storey and the floor level of that storey must not be elevated above natural ground level by more than a metre.

Definition of a single storey:

single-storey

adj

(Architecture) (of a building) having only one floor or level

There are five lots burdened by this restriction, Lots 9,10,11,17 and 20

Lots 5,6,7,8,9,10,12 and 13 are benefactors to this burden on Lot 20, (this is not indicated in figure 3 of Evolve's planning submission)

█(lot 9) as a benefactor to the burden on lot 20 would like to enact █rights associated with the covenant created to preserve █views.

Lots 9,10,11,17 has already been built and has complied with this restriction, we all have only built single storey houses with our floor levels up to a metre above natural ground level

Lot 20 is proposing a design without cutting (or filling too much) into the slope of the land causing their floor height to start at 1.1 meters above ground (at the garage) reaching up to 3 meters above natural ground level (on the southern side)

They also have a two storey design, with habitable rooms above and below their main floor level.

Their lot height is at 44 at its highest point and their floor level at 44.10 throughout the build, no effort has been made to comply with the covenant of the lot

The already built single storeys had to cut into the land to be able to comply with the one metre above ground requirement. Lot 17 (also burdened by the covenant) needed to cut to a depth of 2 meters to comply with this. In comparison to Lot 20; Lot 17's natural ground level was at 45 and had a floor level at 43.(please see attached picture)

Lot 20's design (not cutting into the land to comply with the covenant of having a floor level no more than a metre above ground) take their roof level to **48.83** which is approximately at the same height as the double storey next to them on Lot 21 currently nearing completion. Parts of lot 20's roof is pitched at 25 degrees compared to the majority of roofs in the estate which is 20 degrees or less. Please note that their roof plan differs from written documentation, where they make note that their roof pitch is 20 degrees, part of the roof has a 25 degree pitch (Ballina development control plan, roof pitch heading)

With their current house design, if they complied as we expected, their roof line should be at a much lower level, closer to **47**

With the current design ocean views will be lost by Lots 9,10,11 and affected by others lots behind them to the North. These buildings have been built assuming that Lot 20 would comply with the restrictions of section 88B. We have all complied with the covenant and built single storey houses. Lots 17,18,19 and lots 102, 103 Kellie Ann Crescent would adversely be affected by privacy concerns seeing that Lot 20 will overlook their backyards with the floor level at 3 meters above ground level instead of the allowed 1 meter under the covenant. Lot 21 will loose privacy and views from their rooftop terrace. They would have all bought their lots knowing of the restriction on this lot to be a single storey house with floor level not more than 1 meter above ground.

Lot 20 is the main ocean viewing corridor to the South East over Skennars Head and Sharpes beach in the estate (please see the attached photo)

Without these views, properties will be devalued and the Vision estate will loose its character (as intended with the S88B)

By not complying with the covenant imposed on it, it will set a precedent whereby the other lots burdened by the covenant would be able to make alterations to floor levels as they please

This was the response below from local architect Paul Gray on the proposed lot 20 design:

Yes it certainly looks to be double storey and the upper level floor is more than 1 metre out of the ground in parts..

This appears to be in contravention of the Terms of restrictions and easements intended to be created pursuant to Section 88B Conveyancing Act. that you provided to me at the design stage, dated 18/1/19. Attached.

The wording of goes like-

6. Terms of Restriction on the use of the land tenthly referred to in the plan.

The owner of the lot burdened must not erect, construct, place or permit to remain on the lot burdened any building comprising more than single storey and the floor level of that storey must not be elevated above natural ground level by more than a metre.

The lot burdened is Lot 20 (with others), and lot benefited is lot 9 (and others)."

Please see my highlighted comments to the points raised by Evolve planning for reasons not complying with the covenant in their proposed design, below:

Clause 1.9A Suspension of Covenants, agreements and instruments: For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose. Discussion The subject site is constrained by a number of covenants within the 88B instrument relating to the site.

Covenant restriction numbered 10 states that 'the burdened lot must not erect, construct, place or permit to remain on the burdened lot any building comprising more than a single floor level and that level of that storey must not be elevated above nature ground level more than a metre'. Council is empowered to vary the covenant pursuant to Clause 1.9A, as the proposed covenant would prevent the reasonable development of the land pursuant to the Ballina LEP 2012.

I was under the impression that it is an enforceable covenant for lots 5,6,7,8,9, 10, 12 and 13 to the burdened lot 20 and therefore council is not the authority that could vary the covenant, but the lots that are benefited by it can enforce or vary it

The intent of the covenant however, which is to maintain views over the site, can be achieved in the current design and is consistent with current approvals.

That is incorrect, views will actually be lost by lot 9,10 (both are beneficiaries to the burdened lot 20) and also lot 11 and 21 (most affected) and to a lesser extent lots 5,6,7,8,12 and 13 (all also beneficiaries to the covenant)

The subject site is affected by a moderate slope to the rear of the site, and as such, will adopt a single storey presentation to the street however has utilised the subfloor area for additional floor area.

Effectively making it a double storey, not complying with the covenant requirement of a single storey

As these spaces relate to the dwelling subfloor, they will result in no additional height impacts and will appear consistent with the existing and establishing streetscape. By creating this "subfloor" the main floor level has to be at a height that's not compliant with the covenant, up to three times what is allowed at its highest point

Statement of Environmental Effects 28 Mosman Chase, Lennox Head Page 6 **CLAUSE PROPOSED COMPLIANCE** Given the slope of the site, limiting the height of the floor level to less than 1m above ground level is unachievable, as it would prevent vehicle access and the reasonable development of the land.

This would certainly be achievable. By a different design that complies with the covenant, instead of the current proposed two storey design. Please compare the driveways of lot 17, 21, 22 and other homes on the low side of Henderson drive and Kellie ann to see their driveway designs/gradients and how it is achievable to comply with the covenant in this instance. The currently proposed Lot 20 driveway has a very slight gradient because no effort has been made to comply with the floor height restriction.

Lot 17 next door to Lot 20 has a driveway that drops 1.54 meter over five meters compared to Lot 20 proposal of 0.83 over six meters. Vehicle access concerns are not a reason for not making an attempt to comply with the covenants

Lots 9,10,11 and 17 provide prime examples of "reasonable development of the land" using house designs that comply with the covenants. Lot 20 is a 800sqm lot without any easements.

This is demonstrated through the approvals at lots 9,10 and 17, all of which, exceed a height of 1m above ground level and are all subject to the same covenant. These builds are all single storey

designs and have very minimal variation to the 1 meter above ground level, I refer to burdened lots 9,10,11 and 17 already built. No objections have been made by benefited lots at DA stage. The views are obtained across the site in a south easterly direction as demonstrated below. This is not the case, views are lost by lots 9, 10,11 and lots 5, 6, 7, 8, 12 and 13 are affected, which is not indicated in figure 3

The proposed ridge height is below those approved in the surrounding burdened lots (the surrounded burdened lots's natural ground level is significantly higher, it cannot be used as a comparison or justification for non compliance, see the attached contour plan of the estate) and appears as a single storey dwelling from the street.

There would be no benefit in stepping the dwelling down the site as the single storey component of the building (at the front of the site) is the only element of the building that has the potential to cause any view obstruction.

This proposed dwelling starts at 1.1 meters above ground level and reaches 1.85 meters above ground level where the "subfloor" area starts and the main floor then continues to almost 3 meters above ground level. If we assume that the "single storey element" as suggested complies with the covenant, shouldn't it end closer to 1 meter above ground level where the subfloor area (double storey part of the house) starts? Surely it needs to be cut into the ground to be close to complying? (at least up to a meter) The 25 degree roof pitch design in combination with what I mentioned above pushes the roof line to a level comparable to the double storey next to it (lot 21, who has no restrictions on them) so I have to disagree that it will be similar to a single storey from the street.

The current design have a fill of 1.2 meters at its high point and cut of 1.3 meters at the low point of the lot, this will need to be altered to comply

There would be great benefit in cutting (or filled less) the single storey component of the building into the ground. The high section of the lot should be cut instead of filled as proposed (or filled less), to allow the "single level component" to "comply", although the whole design doesn't comply. I refer back to Lot 17 that had to cut up to 2 meters to comply with the covenant. They have a cut from 45 street level to 43 floor level. The current design have a level driveway compared to adjacent lots 17, 21, 22 due to not cutting (or filling too much) on the North side (street end)

Please see attached contour plan of lot 20 which shows that the floor level at 44.1 starts around the highest point of the lot where the natural ground level is 44 and continues all the way down the lot where the ground level reaches 41, this shows a total disregard for the covenant that restricts the build to be a maximum 1 meter above natural ground level. Where the building starts, it is already higher than 1 meter and where it ends it is 3 meters above ground level

The second storey component of the design has been excavated into the subfloor space of the dwelling, and as such, has absolutely no impact on the height of the dwelling when viewed from the street, and in turn, will have no impact on views across the site from the northern allotments. I refer back to how this subfloor space was created with not complying with the main floor level. The building should be at least 2 meters lower than what it is on the south side of the lot, if it was complying with the covenant. This will have significant impacts on lots to the East and West and South, privacy will be a concern for neighboring lots 17,18,19, 21 and lots 101 and 102 Kellie Ann Crescent

I know lot 20 has spent a substantial amount of money on their rooftop terrace design and build, expecting lot 17 to build a single storey design, Lot 19 will have overshadowing in their backyard in winter due to the increased building height with the non compliance to the covenant. Both lots 17 and 19's backyard pools will have overlooking concerns.

Figure 3: Aerial view of the site noting the lots burdened and benefited and approved ridge levels. (As previously mentioned, these ridge levels cannot be used to justify non compliance with the

covenant. In figure 3, lots 10 and 17 are built on higher natural ground level (more than a meter higher, see attached estate contour plan that details natural ground level) and 21 aren't burdened by any covenant. Please note lots 5,6,7,8,9,10, 12 and 13 are also benefited by the burden on lot 20 as per S88B instrument. In this figure 3, lots 5,6,7,8,9,10 12 and 13 should be coloured yellow (benefited) and lot 20 (burdened) and the red arrows also placed on lots 9 and 10 to make things clearer

The proposed dwelling takes a similar approach to that approved at Lot 17 (No.26 Olivia Court, Lennox Head) which presents as a single storey dwelling to the street and has an open subfloor space below.

This space of lot 17 has a height of 1.6 meters and is non habitable, it is not a two storey design with two floor levels as proposed by lot 20, this was specified in their DA submission for this space.(DA 2019_72) Lot 17 had a much steeper gradient to their lot to work and only exceeded the one meter requirement on the south western corner.

In this circumstance, rather than providing an open subfloor, it is proposed to undertake additional excavation works to utilise this space for additional floor area (the covenant only allows for a single storey dwelling, same as lots 9,10,11 and 17 this has been very clear from the outset of the development) and reduce the overall footprint of the dwelling.

This lot has an area of more than 800sqm without any easements so footprint is not an obstacle to the design

To conclude: We have all paid substantial amounts of money for our lots and builds and would like to see that our homes retain their value, views and privacy with builds complying with the covenants imposed on them. These covenants were created to preserve views and privacy and are very clear in the S88B which formed part of the purchase contracts when we bought our lots. This proposed design will adversely affect [REDACTED] properties and we are objecting to it in its current design. We are very disappointed [REDACTED] for the complete disregard of the covenants that protect our property values and enjoyment in this unique development.

Thank you for your time assessing this

We will be happy to have discussions with you/your team and the owners of Lot 20 to help resolve our objections. We have made several failed attempts to discuss the design with [REDACTED] (owners). A meeting onsite might be helpful.

Please see attached, if the covenant on the lot is not complied with:

Photo of the views that will be obstructed

Photo of homes that will lose their views

Lots with red will lose their views, lots with blue will have serious privacy concerns

I have attached the S88B instrument

Survey plan of the estate for your reference.

Also a photo showing roof heights to the south east of lot 20

Contour plan of lot 17

Photos of the cut and the driveway of lot 17 referred to in my submission





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 20160083 /Src:M DP1250165

ePlan

Instrument setting out terms of Easements or Profits à Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.

(Sheet 1 of 17 sheets)

Plan: DP1250165

Plan of subdivision of lot 7 DP1216761, lot 12 In DP814039, lot 52 in DP864764 and lot 1 in DP1217906 covered by Subdivision Certificate No. 166.1/2016

Full name and address of the owners of the land:

**Negrada Pty Ltd ACN 137 350 362 of
 92 Riverside Drive, West Ballina NSW 2478
 Ruth Linda Bennett and Malcolm Francis
 Bennett of 13 Kellie-Ann Crescent, Lennox
 Head NSW 2478
 New Hope Group (Aust) Pty Ltd ACN 129
 345 535 of 545 The Coast Road, Lennox
 Head NSW 2478**

Part 1 (Creation)

Number of Item shown in the Intention panel on the plan	Identity of easement, profit prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
1.	Easement for Overhead Powerlines 10 wide (E)	Lot 27	Essential Energy
2.	Easement to Drain Sewage 3 wide (S)	Lots 17, 18, 19, 25 & 26	Ballina Shire Council
3.	Easement to Drain Sewage 4 wide (S4)	Lots 1-6 inclusive & 19	Ballina Shire Council
4.	Easement to Drain Sewage variable width (SV)	Lots 7, 7-11 inclusive, 13-16 inclusive, 21-24 inclusive & 26	Ballina Shire Council
5.	Easement to Drain Water 3 wide (W)	Lot 2 Lot 6 Lot 8 Lot 18 Lot 21 Lot 24	Lots 3-8 inclusive Lots 7 & 8 Lot 7 Lot 17 Ballina Shire Council Lot 25
6.	Easement to Drain Water 4 wide (W4)	Lot 2 Lot 3	Lots 3-8 inclusive Lots 4-8 Inclusive

[Handwritten signatures: Ruth Linda Bennett, Malcolm Francis Bennett, and Negrada Pty Ltd]

MT

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 20160083 /Src:M LP 1200100 ePlan

Plan: DP1250165

Plan of subdivision of lot 7 DP1216761, lot 12 in DP814039, lot 52 in DP864764 and lot 1 in DP1217906 covered by Subdivision Certificate No. 1661/2016

(Sheet 2 of 17 Sheets)

Full name and address of the owners of the land:

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Ruth Linda Bennett and Malcolm Francis Bennett of 13 Kellie-Ann Crescent, Lennox Head NSW 2478
New Hope Group (Aust) Pty Ltd ACN 129 345 535 of 545 The Coast Road, Lennox Head NSW 2478

Number of item shown in the intention panel on the plan	Identity of easement, profit prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
		Lot 4 Lot 5 Lot 6 Lot 19	Lots 5-8 inclusive Lot 6-8 inclusive Lots 7 & 8 Lot 20
7.	Easement to Drain Water variable width (DV)	Lot 9 Lot 10 Lot 13 Lot 14 Lot 15 Lot 21 Lot 22 Lot 23 Lot 24	Lots 10 & 11 Lot 11 Lot 12 Lots 12 & 13 Lots 12 - 14 inclusive Lots 22-26 inclusive and Ballina Shire Council Lots 23-26 inclusive Lots 24-26 inclusive Lots 25 & 26
8.	Restriction on the Use of Land (N)	Part Lots 25 and 26	Ballina Shire Council
9.	Restriction on the Use of Land (M)	Part Lots 1 to 10 inclusive, 17 to 19 inclusive & 25 & 26	Ballina Shire Council
10.	Restriction on the Use of Land	Lot 9	Lots 5, 6, 7, 8, 10, 12 & 13



MP

Plan: DP1250165

Plan of subdivision of lot 7 DP1216761, lot 12 In DP814039, lot 52 in DP864764 and lot 1 in DP1217906 covered by Subdivision Certificate No. 166-1/2016

(Sheet 3 of 17 Sheets)

Full name and address of the owners of the land:

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 92 Riverside Drive, West Ballina NSW 2478
 Ruth Linda Bennett and Malcolm Francis
 Bennett of 13 Kellie-Ann Crescent, Lennox
 Head NSW 2478
 New Hope Group (Aust) Pty Ltd ACN 129
 345 535 of 545 The Coast Road, Lennox
 Head NSW 2478**

Number of item shown in the intention panel on the plan	Identity of easement, profit prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
		Lot 10 Lots 11, 17 & 20	Lots 5, 6, 7, 8, 9, 12 & 13 Lots 5, 6, 7, 8, 9, 10, 12 & 13
11.	Restriction on the Use of Land	Lots 1 to 15 inclusive and lots 17 to 26 inclusive	Every other lot except lots 16 & 27
12.	Restriction on the Use of Land	Lots 1 to 15 inclusive and Lots 17 to 26 inclusive	Every other lot except lots 16 & 27
13.	Restriction on the Use of Land (single dwelling)	Lots 2 to 6 inclusive, Lots 8 to 14 inclusive and Lots 17 to 26 inclusive	Ballina Shire Council
14.	Restriction on the Use of Land	Lots 1 to 15 inclusive and 17 to 26 inclusive	Ballina Shire Council
15.	Restriction on the Use of Land (R)	Part Lots 9, 10,11, 22-24 inclusive & 26	Ballina Shire Council
16.	Positive Covenant	Lots 1 to 15 inclusive and 17 to 25 inclusive	Ballina Shire Council
17.	Easement for Overland Flow Path 3 wide (O)	Lot 21	Ballina Shire Council

[Handwritten signatures: Ruth Bennett, Malcolm Bennett, and a third signature]

[Handwritten initials]

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 20160083 /Src:M LPT1200103 ePlan

Plan: DP1250165

Plan of subdivision of lot 7 DP1216761, lot 12 In DP814039, lot 52 in DP864764 and lot 1 in DP1217906 covered by Subdivision Certificate No. *166.1/2016*

(Sheet 4 of 17 Sheets)

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Ruth Linda Bennett and Malcolm Francis Bennett of 13 Kellie-Ann Crescent, Lennox Head NSW 2478
New Hope Group (Aust) Pty Ltd ACN 129 345 535 of 545 The Coast Road, Lennox Head NSW 2478.

Number of item shown in the intention panel on the plan	Identity of easement, profit prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
18.	Easement for Overland Flow Path variable width (OV)	Lot 21	Ballina Shire Council
19.	Easement for Water Supply 3 wide (z)	Lot 27	Lot 11 in DP814039

[Handwritten signatures]
 Ruth Bennett, Malcolm Francis Bennett, [Signature]

ePlan

Plan: DP1250165

Plan of subdivision of lot 7 DP1216761, lot 12 in DP814039, lot 52 in DP864764 and lot 1 in DP1217906 covered by Subdivision Certificate No. 166.1/2016


(Sheet 5 of 17 Sheets)

Full name and address of the owners of the land:

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 92 Riverside Drive, West Ballina NSW 2478
 Ruth Linda Bennett and Malcolm Francis
 Bennett of 13 Kellie-Ann Crescent, Lennox
 Head NSW 2478
 New Hope Group (Aust) Pty Ltd ACN 129
 345 535 of 545 The Coast Road, Lennox
 Head NSW 2478**

Part 1A (Release)

Number of item shown in the intention panel on the plan	Identity of easement, profit prendre, restriction or positive covenant to be released and referred to in the plan.	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
1.	Easement to drain sewage 3 wide and variable width numbered 2 in DP1191558	Lots 103 & 105 in DP1191558 and Lot 7 in DP1216761	Ballina Shire Council
2.	Easement to drain water 3 wide and variable width numbered 3 in DP1191558	Lots 103 & 105 in DP1191558 and Lot 7 in DP1216761	Ballina Shire Council
3.	Easement for water supply 3 wide and variable width numbered 9 in DP1191558	Lot 105 in DP1191558 and Lot 7 in DP1216761	Ballina Shire Council


 Ruth Bennett


 Malcolm Francis Bennett


 Negrada Pty Ltd

R840827 /Doc:DP 1250165 B /Rev:18-Jan-2019 /Sts:SC.OK /Pgs:ALL /Prt:21-Jan-2019 19:19 /Seq:6 of 17
 20160083 /Src:M DP1250165 ePlan

Plan: DP1250165

Plan of subdivision of lot 7 DP1216761, lot 12 In DP814039, lot 52 in DP864764 and lot 1 in DP1217906 covered by Subdivision Certificate No. 166.1/2016

(Sheet 6 of 17 Sheets)

Full name and address of the owners of the land:

**Negrada Pty Ltd ACN 137 350 362 of
 92 Riverside Drive, West Ballina NSW 2478
 Ruth Linda Bennett and Malcolm Francis
 Bennett of 13 Kellie-Ann Crescent, Lennox
 Head NSW 2478
 New Hope Group (Aust) Pty Ltd ACN 129
 345 535 of 545 The Coast Road, Lennox
 Head NSW 2478**

Part 2 (Terms)

1. Terms of Easement for Overhead Power Lines 10 wide

The terms of Part A of Memorandum AG189384 are incorporated.

Name of person empowered to release, vary or modify the easement, covenant or restriction

Essential Energy

2. Terms of Easement to Drain Sewage 3 wide secondly referred to in the Plan, Easement to Drain Sewage 4 wide thirdly referred to in the Plan and Easement to Drain Sewage variable width fourthly referred to in the Plan

(a) The Authority Benefited may:

- (i) drain sewage, sullage and other fluid wastes in pipes through each Lot Burdened, but only within the Easement Site, and
- (ii) do anything reasonably necessary for that purpose, including:
 - entering the Lot Burdened, and
 - taking anything on to the Lot Burdened, and
 - using any existing line of pipes, and
 - carrying out work, such as constructing, placing, repairing or maintaining pipes, channels, ditches and equipment.

(b) In exercising those powers, the Authority Benefited must:

- (a) ensure all work is done properly, and
- (b) cause as little inconvenience as is practicable to the Owner and any occupier of the Lot Burdened, and
- (c) cause as little damage as is practicable to the Lot Burdened and any improvement on it, and
- (d) restore the Lot Burdened as nearly as is practicable to its former condition, and
- (e) make good any collateral damage.

Plan: DP1250165

Plan of subdivision of lot 7 DP1216761, lot 12 In DP814039, lot 52 in DP864764 and lot 1 in DP1217906 covered by Subdivision Certificate No. 166.1/2016

(Sheet 7 of 17 Sheets)

Full name and address of the owners of the land:

**Negrada Pty Ltd ACN 137 350 362 of 92 Riverside Drive, West Ballina NSW 2478
Ruth Linda Bennett and Malcolm Francis Bennett of 13 Kellie-Ann Crescent, Lennox Head NSW 2478
New Hope Group (Aust) Pty Ltd ACN 129 345 535 of 545 The Coast Road, Lennox Head NSW 2478**

- (c) The Owner of the Lot Burdened must not erect, construct or place upon the Easement Site any building, outbuilding, garden shed or other structure without the prior written consent of the Owner of the Lot Benefited or the Authority Benefited, as the case may be.

Name of person empowered to release, vary or modify the easement, covenant or restriction on use.

Ballina Shire Council

3. Terms of Easement to Drain Water 3 wide fifthly referred to in the Plan, Easement to Drain Water 4 wide sixthly referred to in the Plan and Easement to Drain Water variable width seventhly referred to in the Plan

- (a) The Owner of the Lot Benefited or the Authority Benefited (as the case may be) may:
 - (i) drain water from any natural source through each Lot Burdened, but only within the Easement Site, and
 - (ii) do anything reasonably necessary for that purpose, including:
 - entering the Lot Burdened, and
 - taking anything on to the Lot Burdened, and
 - using any existing line of pipes, and
 - carrying out work, such as constructing, placing, repairing or maintaining pipes, channels, ditches and equipment.
- (b) In exercising those powers, the Owner of the Lot Benefited or the Authority Benefited (as the case may be) must:
 - (a) ensure all work is done properly, and
 - (b) cause as little inconvenience as is practicable to the Owner and any occupier of the Lot Burdened, and
 - (c) cause as little damage as is practicable to the Lot Burdened and any improvement on it, and
 - (d) restore the Lot Burdened as nearly as is practicable to its former condition, and
 - (e) make good any collateral damage.



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20160083 /Src:M DP1250165 ePlan

Plan: **DP1250165**

Plan of subdivision of lot 7 DP1216761, lot 12 In DP814039, lot 52 in DP864764 and lot 1 in DP1217906 covered by Subdivision Certificate No. 166/2016

(Sheet 8 of 17 Sheets)

Full name and address of the owners of the land:

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Ruth Linda Bennett and Malcolm Francis Bennett of 13 Kellie-Ann Crescent, Lennox Head NSW 2478
New Hope Group (Aust) Pty Ltd ACN 129 345 535 of 545 The Coast Road, Lennox Head NSW 2478**

- (c) The Owner of the Lot Burdened must not erect, construct or place upon the Easement Site any building, outbuilding, garden shed or other structure without the prior written consent of the Owner of the Lot Benefited or the Authority Benefited, as the case may be.

Name of person empowered to release, vary or modify the easement, covenant or restriction on use.

Ballina Shire Council

4. Terms of Restriction on the Use of Land eighthly referred to in the Plan.

No building or structure, including swimming pools, pergolas, sheds, outbuildings or dwellings may be constructed on the Lot Burdened within the Easement Site ~~and the Owners of the Lot Burdened.~~

Name of Authority empowered to release, vary or modify the easement, covenant or restriction on use.

Ballina Shire Council.

5. Terms of Restriction on the Use of Land ninthly referred to in the Plan

The Owner of the Lot Burdened may not do or allow the construction of any habitable buildings within the Easement Site or do or permit any vegetation plantings within the Easement Site other than maintained short grass.

Name of Authority empowered to release, vary or modify the easement, covenant or restriction on use.

Ballina Shire Council.

6. Terms of Restriction on the Use of Land tenthly referred to in the Plan

The Owner of the Lot Burdened must not erect, construct, place or permit to remain on the Lot Burdened any building comprising more than a single storey and the floor level of that storey must not be elevated above natural ground level by any more than a metre.



Plan: DP1250165

Plan of subdivision of lot 7 DP1216761, lot 12 In DP814039, lot 52 in DP864764 and lot 1 in DP1217906 covered by Subdivision Certificate No. **1661/2016**

(Sheet 9 of 17 Sheets)

Full name and address of the owners of the land:

**Negrada Pty Ltd ACN 137 350 362 of
92 Riverside Drive, West Ballina NSW 2478
Ruth Linda Bennett and Malcolm Francis
Bennett of 13 Kellie-Ann Crescent, Lennox
Head NSW 2478
New Hope Group (Aust) Pty Ltd ACN 129
345 535 of 545 The Coast Road, Lennox
Head NSW 2478**

Name of person empowered to release, vary or modify the easement, covenant or restriction on use.

The Owner of the Lot Benefited

7. Terms of Restriction on the Use of Land eleventhly referred to in the Plan

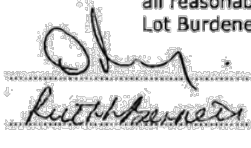

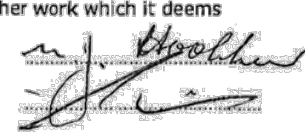
No dividing fence shall be erected on the Lot Burdened to divide it from any adjoining Lot owned by the Developer without the prior consent of the Developer. Such consent shall not be withheld if such fence is erected without expense to the Developer and is otherwise in accordance with this Instrument.

Name of Authority empowered to release, vary or modify the easement, covenant or restriction on use.

The Developer while it owns any Lot.

8. Terms of Restriction on the Use of Land twelfthly referred to in the Plan

- (a) No part of the Lot Burdened shall be used for:
 - (i) any industrial manufacturing or retailing purposes; or
 - (ii) any offensive or noisy trade or activity.
- (b) No fence shall be erected on the Lot Burdened having a height exceeding 1.8 metres.
- (d) No building erected on the Lot Burdened shall have a roof of any material other than a material of non-reflective nature and no roof shall be of white Colorbond steel, fibrous cement or similar materials.
- (e) The Owner of the Lot Burdened must not allow any grass and other vegetation growing upon the Lot Burdened to remain unmowed or unmaintained and the Owner of the Lot Burdened must not allow rubbish, refuse or garbage to remain on the Lot Burdened.
- (f) The Owner of the Lot Burdened must not do anything to prevent the Developer by its servants and agents having access to the Lot Burdened at all reasonable times prior to commencement of building operations on the Lot Burdened to undertake mowing and other work which it deems

Plan: DP1250165

Plan of subdivision of lot 7 DP1216761, lot 12 In DP814039, lot 52 in DP864764 and lot 1 in DP1217906 covered by Subdivision Certificate No. 166.1/2016

(Sheet 10 of 17 Sheets)

Full name and address of the owners of the land:

Negrada Pty Ltd ACN 137 350 362 of 92 Riverside Drive, West Ballina NSW 2478
Ruth Linda Bennett and Malcolm Francis Bennett of 13 Kellie-Ann Crescent, Lennox Head NSW 2478
New Hope Group (Aust) Pty Ltd ACN 129 345 535 of 545 The Coast Road, Lennox Head NSW 2478

necessary for the purpose of maintaining the overall estate in a neat and tidy condition.

- (g) No building or part thereof may be moved onto the Lot Burdened and neither may any main building be erected or permitted to remain on the Lot Burdened unless constructed of all new materials.
- (h) No building erected on or permitted to remain on the Lot Burdened shall have an overall floor area measured to the external base of the walls of the building of less than one hundred and eight (180) square metres.
- (i) No structure of a temporary character including, but not limited to, any tent, metal garden shed, trailer, camper, caravan, motorhome or any other form of outbuilding (**Temporary Structure**) shall be placed, used or permitted to remain as a dwelling on the Lot Burdened. This restriction does not prohibit the use of a Temporary Structure for use during daylight hours in connection with the construction of a dwelling, PROVIDED THAT any such structure must be removed within 14 days of receipt of a final certificate of occupation issued by the Council.
- (j) No commercial vehicles shall be parked on any Lot Burdened or on any street or access way adjacent to a Lot Burdened. In this provision commercial vehicle shall include coach, bus, articulated vehicle and earthmoving machinery. This restriction does not apply to commercial vehicles engaged in the carrying out of residential building work upon or providing services to the Lot Burdened.

Name of Authority empowered to release, vary or modify the easement, covenant or restriction on use.

Developer while it owns a Lot and the Owner of each Lot Benefited

9. Terms of Restriction on the Use of Land thirteenthly referred to in the Plan

Not more than one single dwelling house intended to be used as a residence may be erected on each Lot Burdened other than a secondary dwelling permitted under State Environmental Planning Policy (Affordable Rental Housing) 2009. No further subdivision (including a strata subdivision) of the Lot Burdened is permitted.



Plan: DP1250165

Plan of subdivision of lot 7 DP1216761, lot 12 In DP814039, lot 52 in DP864764 and lot 1 in DP1217906 covered by Subdivision Certificate No. 166.1/2016

(Sheet 11 of 17 Sheets)

Full name and address of the owners of the land:

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Ruth Linda Bennett and Malcolm Francis Bennett of 13 Kellie-Ann Crescent, Lennox Head NSW 2478
New Hope Group (Aust) Pty Ltd ACN 129 345 535 of 545 The Coast Road, Lennox Head NSW 2478

Name of person empowered to release, vary or modify the easement, covenant or restriction on use.

Ballina Shire Council

10. Terms of Restriction on the Use of Land fourteenthly referred to in the Plan

- (a) The Owner of the Lot Burdened must not plant or permit anything to be planted or to grow upon the Lot Burdened which would prevent the Lot Burdened complying with the Standards.
- (b) No dwelling may be constructed on the Lot Burdened unless all windows, external doors and other openings are provided with effective insect screenings in accordance with the requirements of the Authority Benefited from time to time. At the date of creation of this restriction on use of land the requirements of the Authority Benefited are set out in Ballina Council's Development Control Plan 2012 chapter 2 section 3.6 'Mosquito Management'. Where habitable rooms contain large openings that are impractical to effectively screen (e.g. bi-fold doors), such openings may remain unscreened provided that when the opening is closed the room meets the requirements for light and ventilation required by the Building Code of Australia

Name of Authority empowered to release, vary or modify the easement, covenant or restriction on use.

Ballina Shire Council.

11. Terms of Restriction on the Use of Land fifteenthly referred to in the Plan

- (a) The Owner of the Lot Burdened may not do or permit in respect of the dry stone walls within the Easement Site (**Stone Walls**):
 - (i) any excavation below or near the Stone Walls (other than for the provision of services); or
 - (ii) the placement of superimposed loads near the Stone Walls; or
 - (iii) the construction of any improvements close to the Stone Walls,

Plan DP1250165

Plan of subdivision of lot 7 DP1216761, lot 12 In DP814039, lot 52 in DP864764 and lot 1 in DP1217906 covered by Subdivision Certificate No. 166.1/2016

(Sheet 12 of 17 Sheets)

Full name and address of the owners of the land:

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New Hope Group (Aust) Pty Ltd ACN 129 345 535 of 545 The Coast Road, Lennox Head NSW 2478**

which would detrimentally affect the integrity or zone of influence of the Stone Walls as determined by a suitably qualified engineer,

- (b) The Owner of the Lot Burdened must not itself or allow anyone else to dismantle the Stone Walls at any time.

Name of Authority empowered to release, vary or modify the easement, covenant or restriction on use.

Ballina Shire Council.

12. Terms of Positive Covenant sixteenthly referred to in the Plan

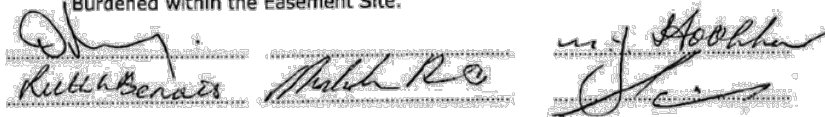
- (a) All plumbing installed on the Lot Burdened must have provision for recycled (non-potable) water service plumbing and facilities to the approval of Ballina Shire Council Regulatory Services Group.
- (b) Once improvements have been constructed on the Lot Burdened, the Owner of the Lot Burdened may not complete any contract for sale of the Lot Burdened until a Dual Water Supply Cross-Connection Audit Certificate of Compliance (as referred to in Ballina Shire Council's Dual Water Supply Plumbing Policy) in respect of the Lot Burdened has been issued by Ballina Shire Council.

Name of Authority empowered to release, vary or modify the easement, covenant or restriction on use.

Ballina Shire Council

13. Terms of Easement for Overland Flow Path 3 wide seventeenthly referred to in the Plan and Easement for Overland Flow Path variable width eighteenthly referred to in the Plan

The Authority Benefited shall be authorised to carry out whatever works are required to accept surface stormwater within the Easement Site including earth mounds, earth drains, vegetating or paving the Easement Site to prevent scouring. The Owner of the Lot Burdened must not alter any works established by the Authority Benefited and no structures, fences, landscaping, walls, filling or any other improvements are permitted to be established by the Owner of the Lot Burdened within the Easement Site.



ePlan

Plan: DP1250165

Plan of subdivision of lot 7 DP1216761, lot 12 In DP814039, lot 52 in DP864764 and lot 1 in DP1217906 covered by Subdivision Certificate No. 166.1/2016

(Sheet 13 of 17 Sheets)

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Ruth Linda Bennett and Malcolm Francis Bennett of 13 Kellie-Ann Crescent, Lennox Head NSW 2478
New Hope Group (Aust) Pty Ltd ACN 129 345 535 of 545 The Coast Road, Lennox Head NSW 2478**

Name of Authority empowered to release, vary or modify the easement, covenant or restriction on use.

Ballina Shire Council

14. Interpretation

For the purposes of this Instrument:

Authorised User means each person or authority authorised to use an Easement Site by the owner of the Lot Benefited or the Authority Benefited.

Authority Benefited means the authority benefited by any easement or restriction on use in this instrument.

Council means Ballina Shire Council.

Developer means Negrada Pty Ltd ACN 137 350 362 or its successor in title.

Easement Site means the area affected by the easement or restriction on use as delineated in the Plan.

Lot means a lot in the Plan.

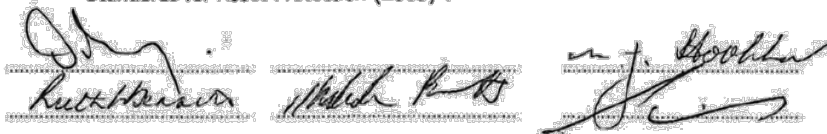
Lot Benefited means the Lot benefited by the easement or restriction on use.

Lot Burdened means the Lot burdened by the easement or restriction on use.

Owner means the registered proprietor or person having exclusive possession from time to time of the Lot Benefited or the Lot Burdened, as the case may be.

Plan means the plan lodged for registration at Land and Property Information NSW with this instrument.

Standards means the requirements for inner protection zones as outlined in section 4.1.3 and Appendix 5 of the NSW Rural Fire Service publication "Planning for Bush Fire Protection 2006" and the NSW Rural Fire Services publication "Standards for Asset Protection (2005)".



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20160083 /Src:M LP1250165

ePlan

Plan: **DP1250165**

Plan of subdivision of lot 7 DP1216761, lot 12 in DP814039, lot 52 in DP864764 and lot 1 in DP1217906 covered by Subdivision Certificate No. 166.1/2016

(Sheet 14 of 17 Sheets)

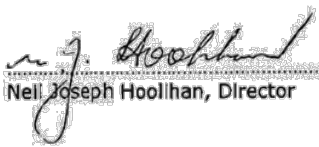
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Ruth Linda Bennett and Malcolm Francis Bennett of 13 Kellie-Ann Crescent, Lennox Head NSW 2478
New Hope Group (Aust) Pty Ltd ACN 129 345 535 of 545 The Coast Road, Lennox Head NSW 2478

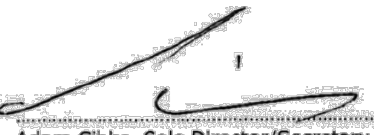
EXECUTION:

EXECUTED by Negrada Pty Ltd ACN 137 350 362 in accordance with section 127(1) of the Corporations Act 2001


David Perry, Director


Neil Joseph Hoollhan, Director

EXECUTED by New Hope Group (Aust) Pty Ltd ACN 129 345 535 in accordance with section 127(1) of the Corporations Act 2001


Adam Gibbs, Sole Director/Secretary

EXECUTED in my presence by MALCOLM FRANCIS BENNETT who is personally known to me


Signature of witness


Malcolm Francis Bennett

ADAM RICHARD GIBBS
SOLICITOR
Full name of witness No. 36932
5/37-41 Cherry Street
Ballina NSW 2478
Address of witness



ePlan

Plan: **DP1250165**

Plan of subdivision of lot 7 DP1216761, lot 12 In DP814039, lot 52 in DP864764 and lot 1 in DP1217906 covered by Subdivision Certificate No. 166.1/2016

(Sheet 15 of 17 Sheets)

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Bennett of 13 Kellie-Ann Crescent, Lennox
Head NSW 2478
New Hope Group (Aust) Pty Ltd ACN 129
345 535 of 545 The Coast Road, Lennox
Head NSW 2478**

EXECUTED in my presence by RUTH LINDA BENNETT who is personally known to me)
)
)


Signature of witness


Ruth Linda Bennett

ADAM RICHARD GIBBS
SOLICITOR
Full name of witness
Law Society No. 36932
5/37-41 Cherry Street
Ballina NSW 2478
Address of witness

EXECUTED by Commonwealth Bank of Australia)
)

Signed at Sydney on 12 day of December 2018 For Commonwealth Bank of Australia ABN 48 123 123 124 by its Duly appointed Attorney under Power of Attorney Book 4297 No 297

Witness: 
Mikayla Aplitt

Elisa Jiang
150 George Street Parramatta NSW 2150





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Plan: **DP1250165**

Plan of subdivision of lot 7 DP1216761, lot 12 in DP814039, lot 52 in DP864764 and lot 1 in DP1217906 covered by Subdivision Certificate No. 166.1 | 2016

(Sheet 16 of 17 Sheets)

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New Hope Group (Aust) Pty Ltd ACN 129 345 535 of 545 The Coast Road, Lennox Head NSW 2478

SIGNED for and on behalf of Ballina Shire Council by its authorised delegate in the presence of:)))

R Gutter
Signature of Witness

AS
Delegate of Ballina Shire Council

ROBYN GUTTER
Name

ANDREW SMITH (DEVELOPMENT SERVICES MANAGER)
Name and position

40 CHERRY STREET BALLINA NSW
Address of witness

[Signature]
[Signature]
[Signature]

NMA

R840827 /Doc:DP 1250165 B /Rev:18-Jan-2019 /Sts:SC.OK /Pgs:ALL /Prt:21-Jan-2019 19:19 /Seq:17 of 17
20160083 /Src:M DP 1250165 ePlan

Plan: **DP1250165**

Plan of subdivision of lot 7 DP1216761, lot 12 In DP814039, lot 52 in DP864764 and lot 1 in DP1217906 covered by Subdivision Certificate No. 166.1/2016

(Sheet 17 of 17 Sheets)

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Bennett of 13 Kellie-Ann Crescent, Lennox
Head NSW 2478
New Hope Group (Aust) Pty Ltd ACN 129
345 535 of 545 The Coast Road, Lennox
Head NSW 2478**

Michelle Martin
am authorised to make the alteration
14/12/18

SIGNED for and on behalf of
Essential Energy by its duly appointed
attorney under power of attorney Book
#195 No. 85 the presence of:

[Handwritten Signature]
Signature of Witness

[Handwritten Signature]
Signature of attorney

Melinda White
Name

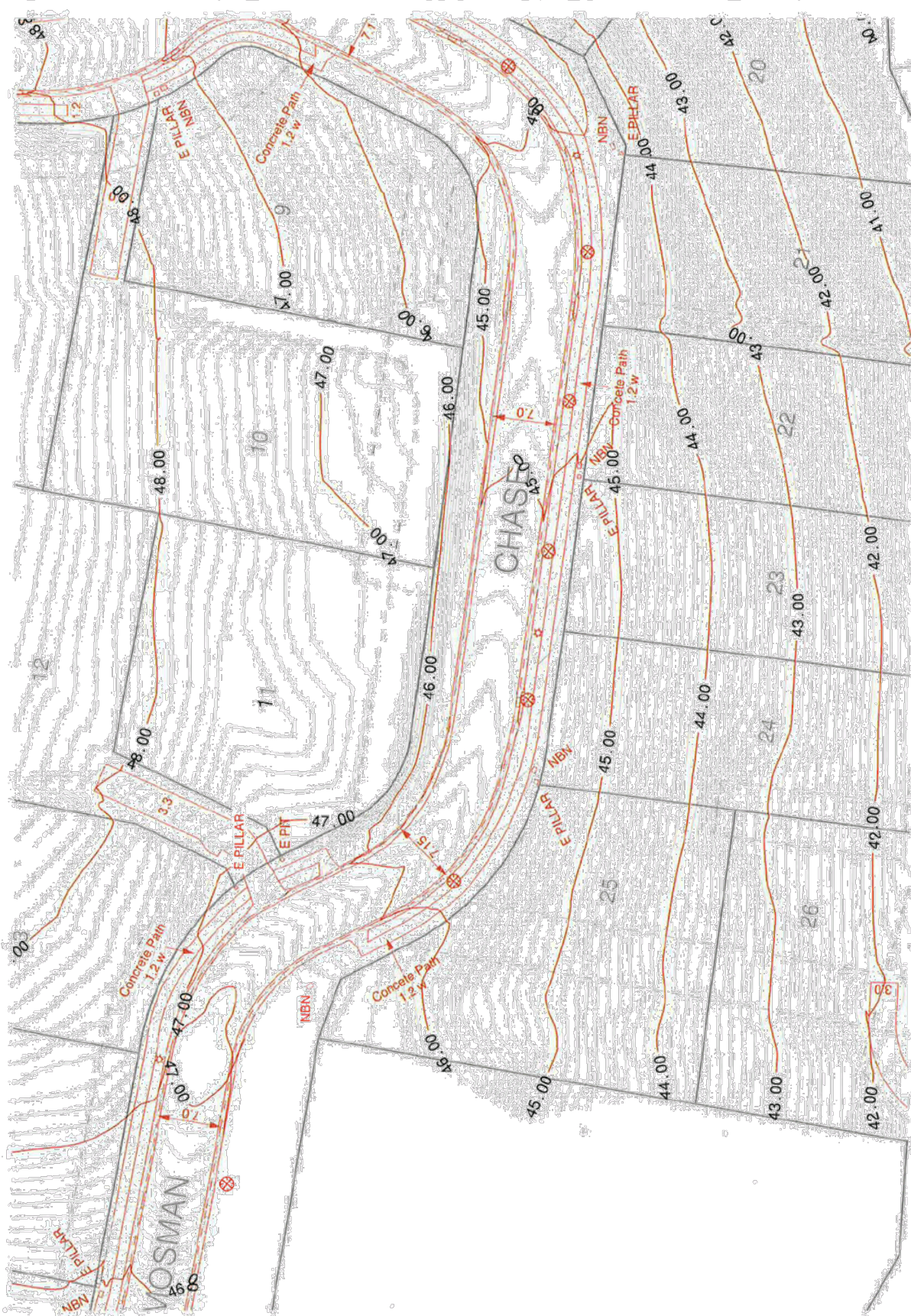
Mark English
Name and title of attorney
Head of Legal

**8 Butler Street
Port Macquarie NSW 2444**

Address of Witness

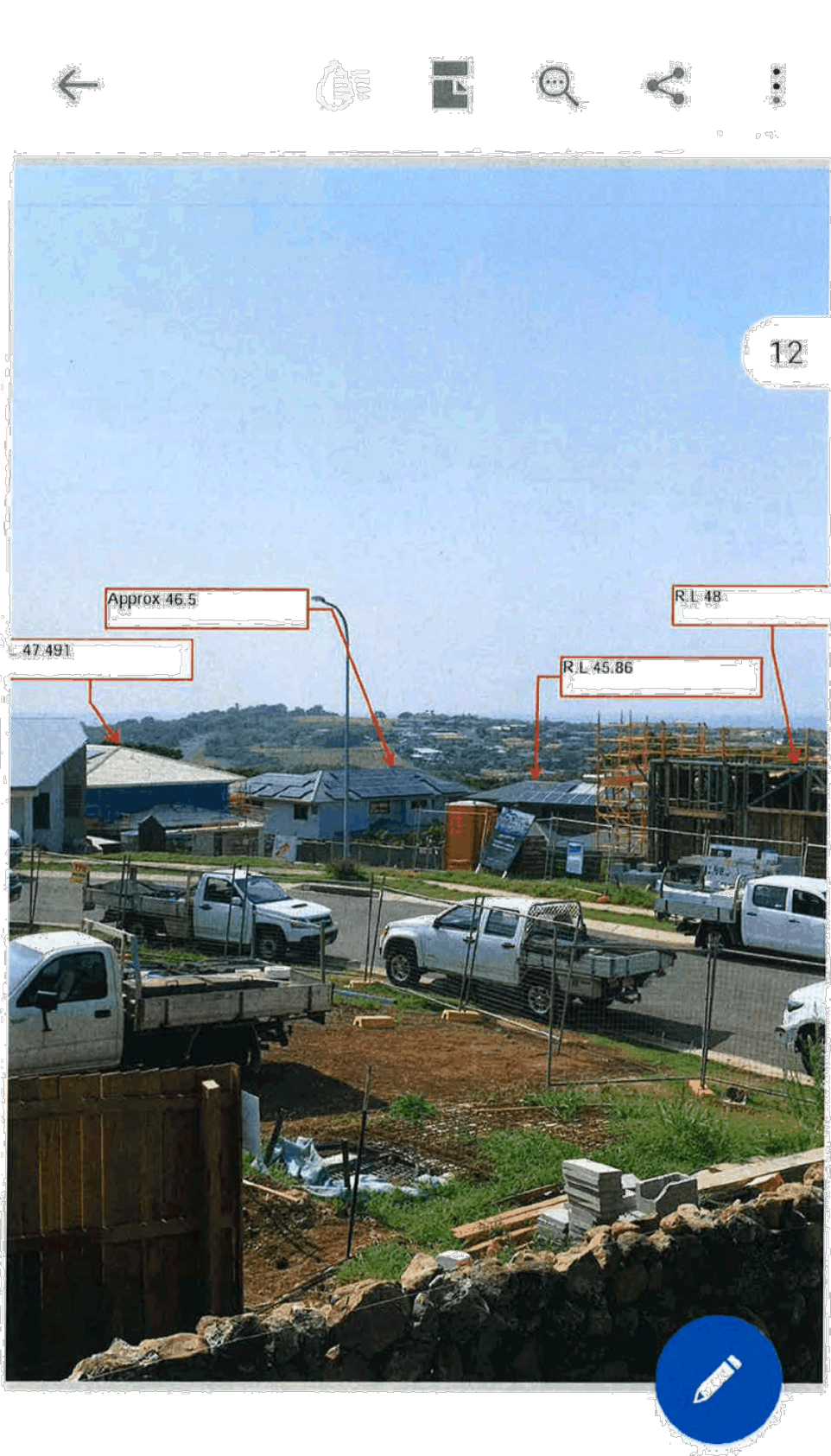
[Handwritten Signatures]

REGISTERED  18.1.2019











Address of the land:

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92 Riverside Drive, West Ballina NSW 2478
Ruth Linda Bennett and Malcolm Francis
Bennett of 13 Kellie-Ann Crescent, Lennox
Head NSW 2478
New Hope Group (Aust) Pty Ltd ACN 129
345 535 of 545 The Coast Road, Lennox
Head NSW 2478**

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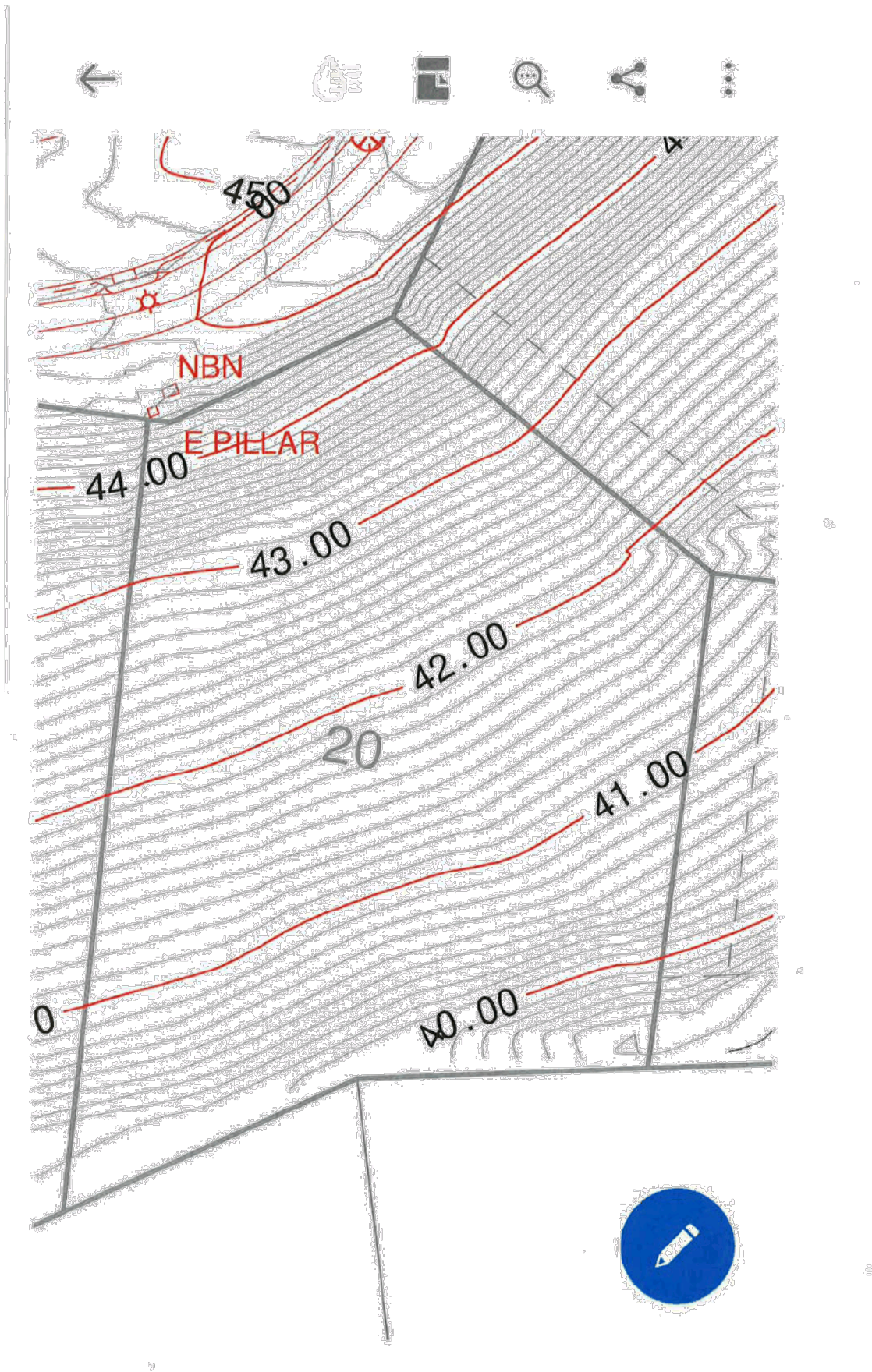
Identity of easement, profit prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
	Lot 10 Lots 11, 17 & 20	Lots 5, 6, 7, 8, 9, 12 & 13 Lots 5, 6, 7, 8, 9, 10, 12 & 13
Restriction on the Use of Land	Lots 1 to 15 inclusive and lots 17 to 26 inclusive	Every other lot except lots 16 & 27
Restriction on the Use of Land	Lots 1 to 15 inclusive and Lots 17 to 26 inclusive	Every other lot except lots 16 & 27
Restriction on the Use of Land (single dwelling)	Lots 2 to 6 inclusive, Lots 8 to 14 inclusive and Lots 17 to 26 inclusive	Ballina Shire Council
Restriction on the Use of Land	Lots 1 to 15 inclusive and 17 to 26 inclusive	Ballina Shire Council
Restriction on the Use of Land (R)	Part Lots 9, 10, 11, 22-24 inclusive & 26	Ballina Shire Council
Positive Covenant	Lots 1 to 15 inclusive and 17 to 25 inclusive	Ballina Shire Council
Easement for Overland Flow Path 3 wide (O)	Lot 21	Ballina Shire Council

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Subject: CM - Fw: Submission for application (2020/446.1). Lot 20, 28 Mosman Chase

CYBER SECURITY WARNING - This message is from an external sender - be cautious, particularly with links embedded within the message and/or attachments.

To BSC,

We [REDACTED] would like to also object to the DA 2020/446 based on the attached and below commentary.

The proposal doesn't comply with the original S88B outline for Visions Estate and of particular concern to ourselves

is the overshadowing [REDACTED] due to the proposed height of the build on Lot 20 and privacy issues.

Regards,

Dear David and building team

We as property owners in the Visions estate, Lennox Head are concerned about the recently submitted plans of Lot 20, 28 Mosman Chase. We had a look at the plans in the submission and it does not comply with the S88B instrument that has been created for this estate. Namely the one below:

6. Terms of Restriction on the use of the land tenthly referred to in the plan.

The owner of the lot burdened must not erect, construct, place or permit to remain on the lot burdened any building comprising more than single storey and the floor level of that storey must not be elevated above natural ground level by more than a metre.

Definition of a single storey:

single-storey

adj

(Architecture) (of a building) having only one floor or level

There are five lots burdened by this restriction. Lots 9,10,11,17 and 20.

Lots 5,6,7,8,9,10,12 and 13 are benefactors to this burden on Lot 20, (this is not indicated in figure 3 of Evolve's planning submission)

[REDACTED] (lot 9) as a benefactor to the burden on lot 20 would like to enact [REDACTED] rights associated with the covenant created to preserve [REDACTED] views.

Lots 9,10,11,17 has already been built and has complied with this restriction, we all have only built single storey houses with our floor levels up to a metre above natural ground level.

Lot 20 is proposing a design without cutting (or filling too much) into the slope of the land causing their floor height to start at 1.1 meters above ground (at the garage) reaching up to 3 meters above natural ground level (on the southern side)

They also have a two storey design, with habitable rooms above and below their main floor level.

Their lot height is at 44 at its highest point and their floor level at 44.10 throughout the build, no effort has been made to comply with the covenant of the lot.

The already built single storeys had to cut into the land to be able to comply with the one metre above ground requirement. Lot 17 (also burdened by the covenant) needed to cut to a depth of 2 meters to comply

with this. In comparison to Lot 20; Lot 17's natural ground level was at 45 and had a floor level at 43. (please see attached picture)

Lot 20's design (not cutting into the land to comply with the covenant of having a floor level no more than a metre above ground) take their roof level to **48.83** which is approximately at the same height as the double storey next to them on Lot 21 currently nearing completion. Parts of lot 20's roof is pitched at 25 degrees compared to the majority of roofs in the estate which is 20 degrees or less. Please note that their roof plan differs from written documentation, where they make note that their roof pitch is 20 degrees, part of the roof has a 25 degree pitch (Ballina development control plan, roof pitch heading)

With their current house design, if they complied as we expected, their roof line should be at a much lower level, closer to 47

With the current design ocean views will be lost by Lots 9,10,11 and affected by others lots behind them to the North. These buildings have been built assuming that Lot 20 would comply with the restrictions of section 88B. We have all complied with the covenant and built single storey houses.

Lots 17,18,19 and lots 102, 103 Kellie Ann Crescent would adversely be affected by privacy concerns seeing that Lot 20 will overlook their backyards with the floor level at 3 meters above ground level instead of the allowed 1 meter under the covenant. Lot 21 will lose privacy and views from their rooftop terrace. They would have all bought their lots knowing of the restriction on this lot to be a single storey house with floor level not more than 1 meter above ground.

Lot 20 is the main ocean viewing corridor to the South East over Skennars Head and Sharpes beach in the estate (please see the attached photo)

Without these views, properties will be devalued and the Vision estate will lose its character (as intended with the S88B)

By not complying with the covenant imposed on it, it will set a precedent whereby the other lots burdened by the covenant would be able to make alterations to floor levels as they please

This was the response below from local architect Paul Gray on the proposed lot 20 design:

Yes it certainly looks to be double storey and the upper level floor is more than 1 metre out of the ground in parts..

This appears to be in contravention of the Terms of restrictions and easements intended to be created pursuant to Section 88B Conveyancing Act, that you provided to me at the design stage, dated 18/1/19. Attached.

The wording of goes like-

6. Terms of Restriction on the use of the land tenthly referred to in the plan.

The owner of the lot burdened must not erect, construct, place or permit to remain on the lot burdened any building comprising more than single storey and the floor level of that storey must not be elevated above natural ground level by more than a metre.

The lot burdened is Lot 20 (with others), and lot benefited is lot 9 (and others)."

Please see my highlighted comments to the points raised by Evolve planning for reasons not complying with the covenant in their proposed design, below:

Clause 1.9A Suspension of Covenants, agreements and instruments. For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.

Discussion The subject site is constrained by a number of covenants within the 88B instrument relating to the site:

Covenant restriction numbered 10 states that 'the burdened lot must not erect, construct, place or permit to remain on the burdened lot any building comprising more than a single floor level and that level of that storey must not be elevated above nature ground level more than a metre'. Council is empowered to vary the covenant pursuant to Clause 1.9A, as the proposed covenant would prevent the reasonable development of the land pursuant to the Ballina LEP 2012.

I was under the impression that it is an enforceable covenant for lots 5,6,7,8,9, 10, 12 and 13 to the burdened lot 20 and therefore council is not the authority that could vary the covenant, but the lots that are benefited by it can enforce or vary it

The intent of the covenant however, which is to maintain views over the site, can be achieved in the current design and is consistent with current approvals.

That is incorrect, views will actually be lost by lot 9,10 (both are beneficiaries to the burdened lot 20) and also lot 11 and 21 (most affected) and to a lesser extent lots 5,6,7,8,12 and 13 (all also beneficiaries to the covenant)

The subject site is affected by a moderate slope to the rear of the site, and as such, will adopt a single storey presentation to the street however has utilised the subfloor area for additional floor area.

Effectively making it a double storey, not complying with the covenant requirement of a single storey. As these spaces relate to the dwelling subfloor, they will result in no additional height impacts and will appear consistent with the existing and establishing streetscape. By creating this "subfloor" the main floor level has to be at a height that's not compliant with the covenant, up to three times what is allowed at its highest point

Statement of Environmental Effects 28 Mosman Chase, Lennox Head Page 6 CLAUSE PROPOSED COMPLIANCE Given the slope of the site, limiting the height of the floor level to less than 1m above ground level is unachievable, as it would prevent vehicle access and the reasonable development of the land. This would certainly be achievable. By a different design that complies with the covenant, instead of the current proposed two storey design. Please compare the driveways of lot 17, 21, 22 and other homes on the low side of Henderson drive and Kellie ann to see their driveway designs/gradients and how it is achievable to comply with the covenant in this instance. The currently proposed Lot 20 driveway has a very slight gradient because no effort has been made to comply with the floor height restriction.

Lot 17 next door to Lot 20 has a driveway that drops 1.54 meter over five meters compared to Lot 20 proposal of 0.83 over six meters. Vehicle access concerns are not a reason for not making an attempt to comply with the covenants

Lots 9,10,11 and 17 provide prime examples of "reasonable development of the land" using house designs that comply with the covenants. Lot 20 is a 800sqm lot without any easements.

This is demonstrated through the approvals at lots 9,10 and 17, all of which, exceed a height of 1m above ground level and are all subject to the same covenant. These builds are all single storey designs and have very minimal variation to the 1 meter above ground level, I refer to burdened lots 9,10,11 and 17 already built. No objections have been made by benefited lots at DA stage

The views are obtained across the site in a south easterly direction as demonstrated below.

This is not the case, views are lost by lots 9, 10,11 and lots 5, 6, 7, 8, 12 and 13 are affected, which is not indicated in figure 3

The proposed ridge height is below those approved in the surrounding burdened lots (the surrounded burdened lots's natural ground level is significantly higher, it cannot be used as a comparison or justification for non compliance, see the attached contour plan of the estate) and appears as a single storey dwelling from the street.

There would be no benefit in stepping the dwelling down the site as the single storey component of the building (at the front of the site) is the only element of the building that has the potential to cause any view obstruction.

This proposed dwelling starts at 1.1 meters above ground level and reaches 1.85 meters above ground level where the "subfloor" area starts and the main floor then continues to almost 3 meters above ground level. If we assume that the "single storey element" as suggested complies with the covenant, shouldn't it end closer to 1 meter above ground level where the subfloor area (double storey part of the house) starts? Surely it needs to be cut into the ground to be close to complying? (at least up to a meter) The 25 degree roof pitch design in combination with what I mentioned above pushes the roof line to a level comparable to the double storey next to it (lot 21, who has no restrictions on them) so I have to disagree that it will be similar to a single storey from the street.

The current design have a fill of 1.2 meters at its high point and cut of 1.3 meters at the low point of the lot, this will need to be altered to comply

There would be great benefit in cutting (or filled less) the single storey component of the building into the ground. The high section of the lot should be cut instead of filled as proposed (or filled less), to allow the "single level component" to "comply", although the whole design doesn't comply. I refer back to Lot 17 that had to cut up to 2 meters to comply with the covenant. They have a cut from 45 street level to 43 floor level.

The current design have a level driveway compared to adjacent lots 17, 21, 22 due to not cutting (or filling too much) on the North side (street end)

Please see attached contour plan of lot 20 which shows that the floor level at 44.1 starts around the highest point of the lot where the natural ground level is 44 and continues all the way down the lot where the ground level reaches 41, this shows a total disregard for the covenant that restricts the build to be a maximum 1 meter above natural ground level. Where the building starts, it is already higher than 1 meter and where it ends it is 3 meters above ground level

The second storey component of the design has been excavated into the subfloor space of the dwelling, and as such, has absolutely no impact on the height of the dwelling when viewed from the street, and in turn, will have no impact on views across the site from the northern allotments.

I refer back to how this subfloor space was created with not complying with the main floor level. The building should be at least 2 meters lower than what it is on the south side of the lot, if it was complying with the covenant. This will have significant impacts on lots to the East and West and South, privacy will be a concern for neighboring lots 17,18,19, 21 and lots 101 and 102 Kellie Ann Crescent

I know lot 20 has spent a substantial amount of money on their rooftop terrace design and build, expecting lot 17 to build a single storey design, Lot 19 will have overshadowing in their backyard in winter due to the increased building height with the non compliance to the covenant. Both lots 17 and 19's backyard pools will have overlooking concerns.

Figure 3: Aerial view of the site noting the lots burdened and benefited and approved ridge levels. (As previously mentioned, these ridge levels cannot be used to justify non compliance with the covenant. In figure 3, lots 10 and 17 are built on higher natural ground level (more than a meter higher, see attached estate contour plan that details natural ground level) and 21 aren't burdened by any covenant. Please note lots 5,6,7,8,9,10, 12 and 13 are also benefited by the burden on lot 20 as per S88B instrument. In this figure 3, lots 5,6,7,8,9,10 12 and 13 should be coloured yellow (benefited) and lot 20 (burdened) and the red arrows also placed on lots 9 and 10 to make things clearer

The proposed dwelling takes a similar approach to that approved at Lot 17 (No.26 Olivia Court, Lennox Head) which presents as a single storey dwelling to the street and has an open subfloor space below. This space of lot 17 has a height of 1.6 meters and is non habitable, it is not a two storey design with two floor levels as proposed by lot 20, this was specified in their DA submission for this space.(DA 2019_72) Lot 17 had a much steeper gradient to their lot to work and only exceeded the one meter requirement on the south western corner.

In this circumstance, rather than providing an open subfloor, it is proposed to undertake additional excavation works to utilise this space for additional floor area (the covenant only allows for a single storey dwelling, same as lots 9,10,11 and 17 this has been very clear from the outset of the development) and reduce the overall footprint of the dwelling.

This lot has an area of more than 800sqm without any easements so footprint is not an obstacle to the design

To conclude: We have all paid substantial amounts of money for our lots and builds and would like to see that our homes retain their value, views and privacy with builds complying with the covenants imposed on them. These covenants were created to preserve views and privacy and are very clear in the S88B which formed part of the purchase contracts when we bought our lots. This proposed design will adversely affect [REDACTED] properties and we are objecting to it in its current design. We are very disappointed [REDACTED] for the complete disregard of the covenants that protect our property values and enjoyment in this unique development.

Thank you for your time assessing this

We will be happy to have discussions with you/your team and the owners of Lot 20 to help resolve our objections: We have made several failed attempts to discuss the design with [REDACTED] (owners). A meeting onsite might be helpful.

Please see attached, If the covenant on the lot is not complied with:

Photo of the views that will be obstructed

Photo of homes that will loose their views

Lots with red will loose their views, lots with blue will have serious privacy concerns

I have attached the S88B instrument

Survey plan of the estate for your reference.

Also a photo showing roof heights to the south east of lot 20

Contour plan of lot 17

Photos of the cut and the driveway of lot 17 referred to in my submission.

From: Beverley Chapman <mumaandpa@gmail.com>
Sent: Monday, 20 July 2020 10:20 AM
To: Ballina Shire Council
Subject: Fwd: Submission for Application 2020 (446.1)

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----- Forwarded message -----

From: Carolyn Reay-Young <carolyn.reayyoung@gmail.com>
Date: Mon, 20 Jul. 2020, 10:06 am
Subject: Submission for Application 2020 (446.1)
To: Beverley Chapman <mumaandpa@gmail.com>

Lot 20 - No.28 Mosman Chase, Lennox Head
DA 2020/446.1
Ballina Council
Building Section

To whom it may concern:

My wife and I would like to comment on the D.A. Application No. 2020/446.1 made to council recently.

We are the owners of Lot 11, 28 Mosman Chase, Lennox Head. We are not happy with the proposed development of Lot 20 in its present form. We wish to point out that as part of the conditions of the land purchase the developer placed covenants on various blocks, namely 9, 10, 11, 17 & 20 instrument S88B item 6 which allowed for a single level dwelling with a floor level no higher than one metre above natural ground. It is very apparent that the proposal for Lot 20 is in contravention of this covenant as it is clearly not a single storey dwelling and it exceeds the maximum one-metre floor level restriction by 2 metres in some areas.

We purchased our block primarily because of the uniqueness of the estate but more importantly, we were very impressed with the developer's attitude in his vision to give as many blocks as possible a view and that was a deciding factor why we progressed with the purchase. If the proposal for Lot 20 was to go ahead our view would be obliterated. This would result in devaluing our property and making us extremely upset that the effort we have put into our development would be totally comprised. We also were under the same covenant as Lot 20.

We hope that you take our objection seriously and act in a manner which will be in the best interests of all residents of the estate and not just the owners of Lot 20.

Yours faithfully,

From: Carolyn Reay-Young <carolyn.reayyoung@gmail.com>
Sent: Sunday, 19 July 2020 2:43 PM
To: Ballina Shire Council
Cc: Emile du Plessis; Beverley Chapman
Subject: Submission for Application 2020 (446.1)

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To whom it may concern:

We would just like to bring to council's attention submitted plans for Lot 20, 28 Mosman Chase in the Vision Estate. We are situated on the other side of Mosman Chase at 22 Olivia Circuit (Lot 10). Our understanding is that the above plans do not comply with the S88B instrument that has been created for this Estate which is namely item 6.

6. Terms of Restriction on the use of the land tenthly referred to in the plan.

The owner of the lot burdened must not erect, construct, place or permit to remain on the lot burdened any building comprising more than single storey and the floor level of that storey must not be elevated above natural ground level by more than a metre.

There are five lots covered by this restriction - Lots 9,10,11,17 and 20. Lots 9,10,11 & 17 have all complied with this building requirement in the belief that Lot 20 would do the same. Our understanding of this restriction by the developer was to make sure we all got a view and although we know we don't own a view the restriction was put in for a purpose & was the reason for us buying this particular lot.

Firstly, Lot 20 is not a single floor design it is a two-story design & is in fact 3 metres above natural ground level on the southern side when it should only be a metre. For more details on this please see submission put in by Emile du Plessis. This design completely wipes out any view for Lot 11 & severely restricts views for Lots 9 & 10. We all built with the consideration that Lot 20 would only affect us very slightly as it had to be a single storey. Lots 9, 10 & 11 all conferred with each other at the beginning for the best outcome for all of us.

On the grounds that the plans for Lot 20 do not comply with S88B we believe these plans should not be approved as they are in their present state. We are not trying to be unreasonable we just want what is correct. Maybe, it would be a good idea if the council & the owners of Lot 20 & all those affected by this development met onsite.

Kind regards,

Carolyn & Nigel Reay-Young

From: Emile du Plessis <emileduplessis@yahoo.com>
Sent: Wednesday, 11 November 2020 8:30 AM
To: Ryan Slater <Ryan.Slater@ballina.nsw.gov.au>
Subject: Objectors VIA, (2020/446.1)

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Hi Ryan

Thanks for speaking to my wife on Friday and your work on this so far.
We have decided not to go ahead with our own VIA seeing that you have done one already.
The height poles gives a good perspective of where the view loss is, it would have helped if they placed poles for the North South ridge too. This roof ridge runs across the lot from a North Western to South Eastern direction, blocking our views to the South and lots 10 and 11 to the East

I would like to highlight the following out of the Tenacity consulting case in the LEC:

"With a complying proposal, the question should be asked whether a more skillful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable"

I believe changes can be made without reducing the applicants development potential or amenity and reducing the impact on neighbours.

I discussed ways of improving views for the objectors with a local architect and he calculated that:
If the roof pitch is decreased on the 25 degree pitch roof to 22.5 degrees the ridge will lower by approximately 300mm, resulting in a RL 48.30
If the roof pitch is decreased on the 20 degree pitch roof to 18 degrees the ridge will lower by approximately 250mm, resulting in a RL 48.62

Other design changes would be to lower the floor level, change the roof design, changing the placement/orientation of the building on the lot or a combination of the above.

I hope this could be considered by council

Regards,
Emile

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From: Jonathan Marquet <jonathan@my-lawyers.com.au>
Sent: Tuesday, 11 August 2020 3:53 PM
To: Ballina Shire Council
Subject: Objection – DA 2020/446 - 28 Mosman Chase, Lennox Head
Attachments: Electronic Letter to Ballina Shire Council - 11 August 2020.pdf

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Dear Sir/Madam,

Please see our letter **attached**, being a submission (objection) in relation to DA 2020/446.

Kind regards

Jonathan Marquet
Solicitor/Director

McCartney Young Lawyers
Direct line: 02 6683 5592

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McCartney Young Lawyers

Directors: Michelle McCartney | Michael Young | Jonathan Marquet

Our Ref: JM:20200469
Your Ref: Ryan Slater

11 August 2020

The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Dear Sir/Madam

Objection – DA 2020/446
Property: Lot 20 DP 1250165, 28 Mosman Chase LENNOX HEAD

1. I act for Emile and Karin Du Plessis in this matter. My clients are the owners of 19 Mosman Place, Skennars Head (**Du Plessis Property**).
2. I note that my clients have already submitted an objection to DA 220/446 (**DA**), being the construction of dwelling at the property known as 28 Mosman Chase, Lennox Head (**Development Site**).
3. This letter should be regarded as supplementary to my clients' objection.

View Loss

4. The Du Plessis Property will experience significant view loss should the DA be approved.
5. Below are photographs of the current view from the Du Plessis Property:

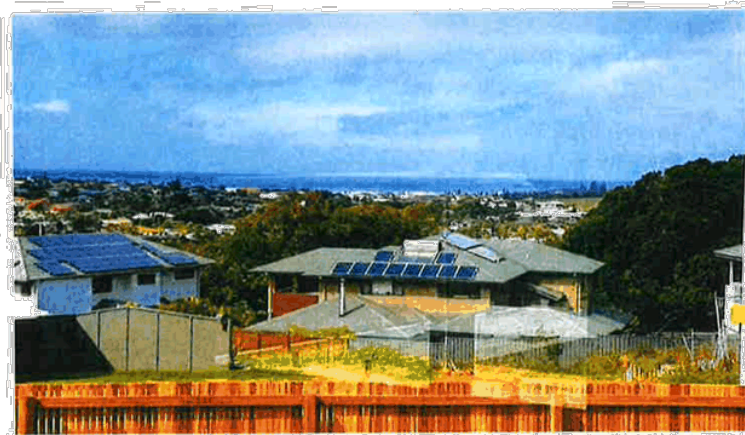
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2



6. The planning principles concerning view loss as set out in *Tenacity Consulting v Waringah* [2004] NSWLEC 140 are well known. Having regard to the significant view loss arising from the DA, Council must have regard to the principles set out in *Tenacity Consulting* as part of its assessment.
 - a. **Assessment of the View:** It cannot be in dispute that the view enjoyed by the Du Plessis Property is extremely valuable. It is an ocean (water) view and it is a full view – being a clearly visible interface between land and water.
 - b. **The parts of the property from which the views are obtained:** The views from the Du Plessis Property are obtained from the dwelling through the front

boundary and are therefore more significant. The views are available from both a standing and sitting position.

- c. **The extent of the impact:** The views from the Du Plessis Property are enjoyed from the main living area and from the front veranda. Accordingly, as per the planning principles from *Tenacity Consulting* the impact on the views by the DA is more significant – at least severe, if not categorised as devastating. This is not about protecting a glimpse of ocean through an upstairs attic. The dwelling on the Du Plessis Property has been designed and orientated to maximise the ocean views from the front boundary.
- d. **The reasonableness of the proposal:** Whilst the DA appears to comply with the planning controls, significantly, it does not comply with the positive covenant in regards to height of the development. As to the key question of whether “a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of the neighbours”, my clients’ detailed submission demonstrates that alternative designs are feasible. It is telling that the SEE for the DA glosses over this crucial aspect with the following statement:

Given the slope of the site, limiting the height of the floor level to less than 1m above ground level is unachievable, as it would prevent vehicle access and the reasonable development of the land

It is difficult to see how this genuinely seeks to address alternative design to minimise the view loss. My clients have demonstrated that a lower floor level – that complies with the terms of the positive covenant – are achievable in a reasonable fashion.

Inadequate Information

7. It is somewhat puzzling that the DA does not address the view loss principles set out in *Tenacity Consulting*. This would suggest that the proponents of the DA have not properly considered the view/visual impacts of the development in sufficient detail.
8. In our view, there is insufficient information provided with the DA for Council, as consent authority, to be satisfied that the height objectives of the LEP and DCP are satisfied. The view loss issues highlight issues of scale and adverse impacts on properties and the scenic quality of the locality.
9. Accordingly, it is submitted that Council ought to make request for further information from the proponent in relation to the view loss issues. Without limitation, Council should require a visual impact assessment or similar study to demonstrate the visual impacts and to suggest means of minimising those impacts.
10. I note that Council has already issued an RFI to the proponent in relation to a number of inadequacies in the DA documentation.

Public Interest

11. Without limitation to the matters raised above, it is submitted that it is not in the public interest to approve the DA in its current form.
12. The approval of the DA without sufficient amendment will set out an undesirable precedent for this new development in Skennars Head and adjacent localities. It is

very relevant that this subdivision is a relatively new development in which lots have been designed to maximise and share views to as many properties as possible. This is the basis for the positive covenant being registered by the developer as part of the subdivision design. It serves a proper purpose in managing the amenity of the area.

13. This matter can be distinguished from clashes or conflicts between old and new land uses and subdivisions. The Du Plessis Property and surrounding properties, including the Development Site are new lots, having been created with clear ocean views in mind. The positive covenant was put in place by the developer and has been an important factor in how current dwellings have been designed – and created a reasonable expectation as to how future dwellings would be approved and constructed.

14. I trust that Council will consider the above information along with my clients' submissions in assessing the DA.

Yours faithfully



Jonathan Marquet
Solicitor/Director
Direct Line: 6683 5592
jonathan@my-lawyers.com.au

Submission for Application (2020/446.1), Lot 20, 28 Mosman Chase

Dear Ryan Slater and Ballina Council Building team

Thanks for taking time to consider my submission

I refer to Ballina Local Environmental Plan 2012:

4.3 Height of buildings

(1) The objectives of this clause are as follows—

- (a) to ensure that the height of buildings is compatible with the bulk, scale and character of the locality,
- (b) to minimise adverse impacts on existing or future amenity of adjoining properties and the scenic or landscape quality of the locality,
- (c) to protect significant views from public places.

Our existing property lot 9, 19 Mosman Chase currently has ocean views with a land water interface from the south side of Skennars Head to the North Side of Flat rock. We value this view greatly.

These views are enjoyed from a sitting position in our living room, which includes a southern veranda. Our floor height is 47.45 these views are over lot 20, which is the main ocean viewing corridor for the Visions estate

If the proposed design is unaltered we will experience a severe loss in ocean views and amenity from our property

The loss of views is contrary to the Land and Environment Court Planning Principles established via Land and Environment Court case: Tenacity Consulting v Warrinagh Council (2004) NSWLEC 140

Lot 20 is proposing a North South ridgeline of 48.56 (25 degree roof pitch) and an East West ridgeline of 48.83 (20 degree roof pitch)

With Lot 20's proposal their floor level at 44.1, they will not have ocean views due to the existing buildings to their South and East, they will enjoy panoramic ocean views from their Roof top terrace at 46.97

Particularly important to this view loss is that this development proposal has asked for their restrictions under the S88B to be varied or released by council, resulting in a higher building height

They have maximized their floor level height for what the land allows. If they did comply with their S88 restriction, their floor level and resultant roof level would be much lower.

I did make an attempt to show that a reasonable development is possible (later in my submission), which would allow for vehicle access at a lower floor level, thus not requiring council to vary the restrictions on the lot. Their current driveway has a gradient of 8% compared to their neighbour on lot 17, 12.2% and lot 19, 17%

I don't think Council should vary a covenant to the extent whereby the views and amenities of properties are severely affected if it is shown that a reasonable development is possible within the scope of the restrictions

The current design of lot 20 significantly and unreasonably reduces the views and amenity enjoyed by their neighbours on Lots 9, 10, 11 and others.

I believe that some minor changes to their design for example changing the roof pitch, roof design, setback, floor level etc. that lot 20 can achieve the same development potential and amenity and reduce the impact on their neighbours views, they should be able to keep their roof top terrace at the height it is at, (the South Western part of their roof does not significantly obstruct views from the North) which will allow for view sharing with their neighbours to the North.

By my estimation, if they can lower their building height by 0.8m, all neighbours would maintain some of our views, without affecting their development potential

There are some great examples of homes built on Henderson drive and Kellie Ann crescent that have achieved the view sharing principle.

Please see below, this is some of the points I wanted to highlight. I know council has the power to vary or release any covenant if a reasonable development is not possible within the restrictions.

6. Terms of Restriction on the use of the land tentatively referred to in the plan

The owner of the lot burdened must not erect, construct, place or permit to remain on the lot burdened any building comprising more than single storey and the floor level of that storey must not be elevated above natural ground level by more than a metre.

Some highlights from Evolve's statement below:

Council is empowered to vary the covenant pursuant to Clause 1.9A, as the proposed covenant would prevent the reasonable development of the land pursuant to the Ballina LEP 2012.

As these spaces relate to the dwelling subfloor, they will result in no additional height impacts and will appear consistent with the existing and establishing streetscape.

Statement of Environmental Effects 28 Mosman Chase, Lennox Head Page 6 **CLAUSE PROPOSED COMPLIANCE** Given the slope of the site, limiting the height of the floor level to less than 1m above

ground level is unachievable, as it would prevent vehicle access and the reasonable development of the land.

There would be no benefit in stepping the dwelling down the site as the single storey component of the building (at the front of the site) is the only element of the building that has the potential to cause any view obstruction.

The second storey component of the design has been excavated into the subfloor space of the dwelling, and as such, has absolutely no impact on the height of the dwelling when viewed from the street, and in turn, will have no impact on views across the site from the northern allotments.

My discussion:

My understanding is if lot 20 want to keep the same setback their floor level needs to be at around 41.25 to fully comply with the covenant over the length of the building

If they argue that the "single storey component" of the double storey complies, their floor level needs to be at 43.3 to be at a maximum of 1 meter above NGL at the 42.3 contour line where the subfloor starts (start of the Double storey). With this they comply with the 1 meter above NGL component of the covenant, for the single storey component, which makes the building 0.8m lower than the current design.

They have asked for the covenant to be released or varied to allow for this.

It is not a single storey and the floor level is substantially higher than 1m .

Please see attached line drawings (in the pdf document) showing the Current design (number 1) and a Split level design (number 2).

I have used the same wall heights, same roof pitch and same setback on the lot to show how a building can comply with the covenants and the result on the roof heights.

I would like to contest the opinion of Evolve planning that the current covenant on the lot should be varied or released by council due to not being able to comply with the 1 meter above ground floor level requirement not allowing for a reasonable development as it will prevent vehicle access

The split level design, which complies with the floor level requirement, has a driveway fall of 1.7m over 10.16 meters, giving it a driveway gradient of 16.7%

There are various examples of driveways with similar gradients in the area. Transition zones could be added or the house could be setback on the lot further lengthen the driveway. For example Lot 19 has a 17% gradient

I would like to contest the idea that the single storey component at the front presents as a compliant single storey and the rear double storey design does not affect the roof level and views from the North.

The "single storey component" with floor level 44.1 already exceeds the 1m requirement at the 43 contour line and by 0.8m by the start of the subfloor.

The single storey component needed to be filled 0.3m instead of 1.2m at the front of the garage to cause the floor level to be at 1m above NGL at the 42.30 NGL point (This is where the Subfloor, Double storey starts) This relates to the covenant that states that the floor level can only be a maximum of 1m above NGL

This requires a 43.30 FFL which is 0.8m lower than the current design

The rear double storey does affect the roof level in its height and also in its width

The building walls are 2550mm high and the roof with the highest roof ridge in the current design spans the walls from the front of the garage to the walls at the back of bedroom 1 and 2. This rear wall is built on the upper level of the double storey, on a non-compliant floor level. This causes the roof to span 6.6m at 20 degrees till it reaches its highest point of 48.83 RL, with the split level design that complies, the roof will only be able to span 3.6m (half of the single storey component length, using the same roof design)

On the same wall heights 2550 and roof pitch the roof height will be 3.78m above floor level; this is 0.95m lower than the current design.

This combination of floor level compliance and roof run shortening results in a 47.08RL maximum ridge height for a compliant building starting at the same setback as the current design. The current design has a maximum roof height of 48.83 RL

My floor level is 47.350, if the building partially complies to the covenant I will retain my ocean views, if it does not, I will lose my views. The covenant was created to protect my views and others

Lot 10 has floor level at 48.05 and Lot 11, similar to mine

Interestingly there would be no benefit for Lot 20 to have a floor height at 44.1 versus 43.3 due to the roof heights in front of them Lot 19 at 47.49, 103 Kellie Ann at 46.5, 102 Kellie Ann at 45.86. If they have any views at these heights, it would be between buildings

Panoramic views will be from their roof top terrace in the current design

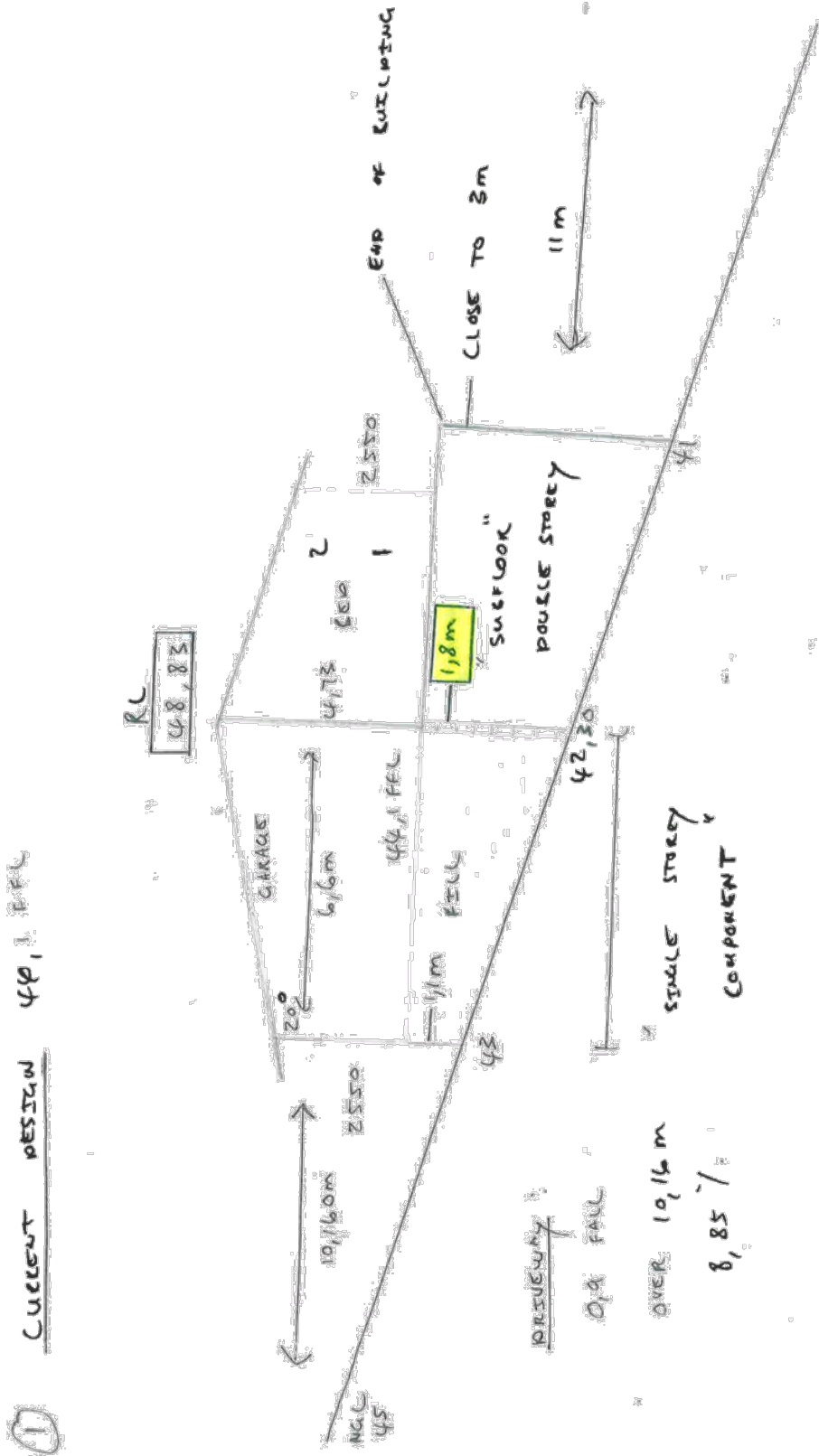
Please refer to my discussion on view loss at the start of this submission.

I am sure there are numerous ways to change the design to give everyone a good outcome for example lowering the floor level, changing the roof pitch, changing the roof design, increase the setback or doing a whole redesign to a split level.

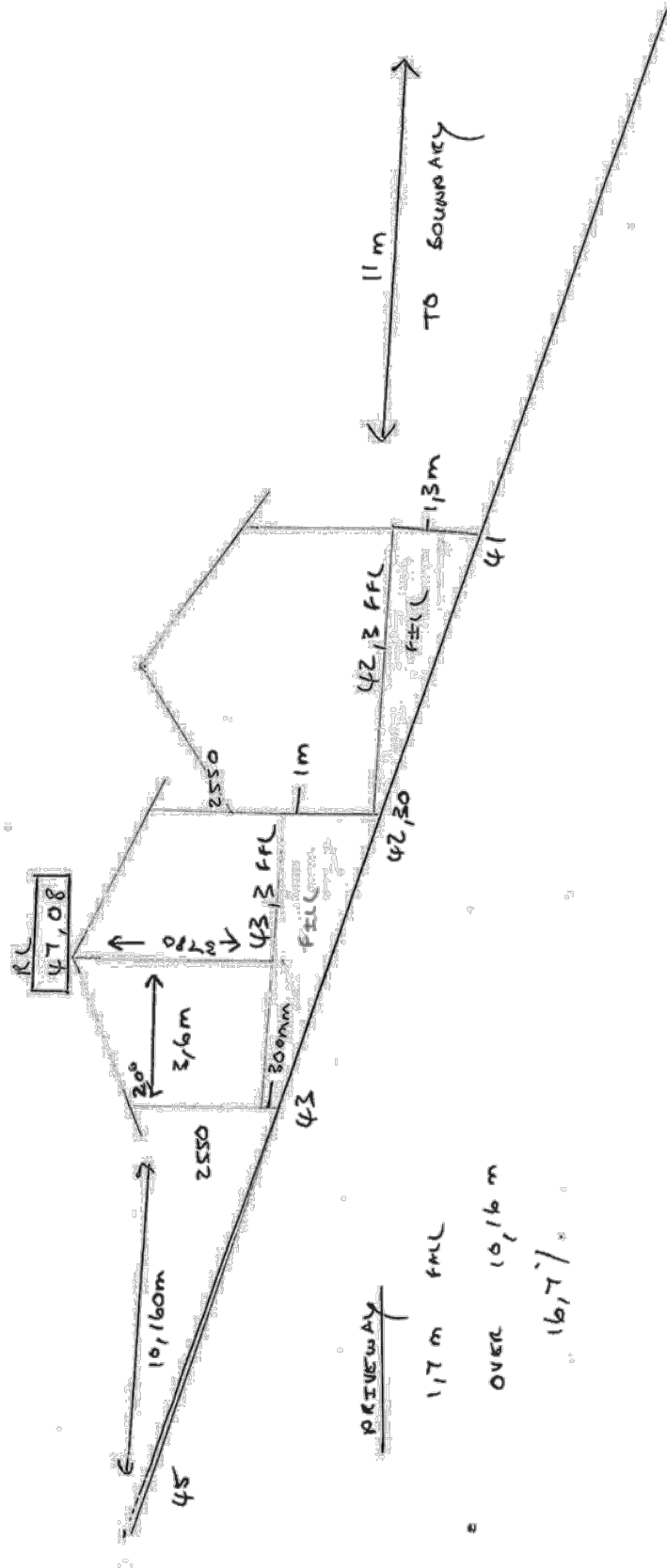
A reasonable compromise would be to allow the double storey design, but to lower the building height, this will allow for view sharing with neighbours to the North, whereby the view loss would be more acceptable, also satisfying the BLEP 2012 and view sharing principles.

I am confident that all the neighbours would be able to come up with a compromise that works for everyone

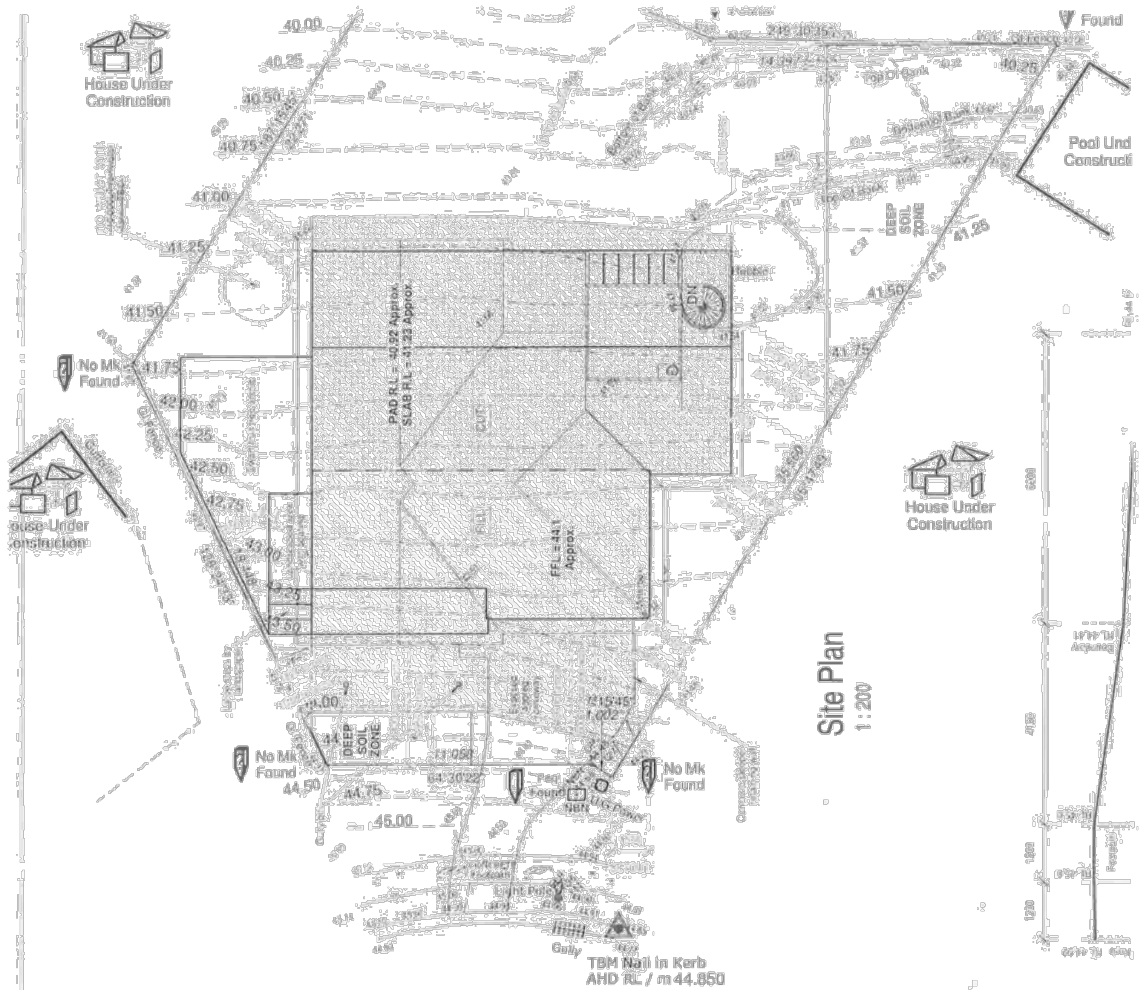




② SPLIT SECTION (COMPLIANT TO SINGLE LEVEL + 1m ABOVE NGL)



DRIVEWAY
 1,7 m FALL
 OVER 10,16 m
 16,7' / *



Site Plan
1 : 200

Mosman Chase

NOTE: STORMWATER DRAINAGE CALCULATED FOR BUILDING ROOF AREAS AND OR PAVED AREAS. DRAIN ON THIS PROPOSED DEVELOPMENT ONLY, AND MAY NOT BE ADEQUATE FOR ANY SUBSEQUENT ROOF OR PAVED AREAS.
 MIN 100mm DOWNPIPES, EACH TO DRAIN MAX 40L/min SOU ROOF AREA DISCHARGING INTO 100mm S/W DRAINAGE PIPEWORK. LEACH RUN CARRYING MAX CAPACITY OF 8 L/100mm MIN GRADE TO RIBBLE PITS ON SITE TO BE 1%. ALL STORMWATER & DRAINAGE TO BE IN COMPLIANCE WITH NCC PARTS 3.12 & 3.5.7 AS WELL AS ASSESSED

NOTE: FINAL POSITIONS OF DOWNPIPES, METREBOX, TANKS, AG COLLECTOR/TANK, GAS BOTTLES AND HOT WATER SYSTEM, MAY DIFFER TO PLANS DUE TO SITE CONDITIONS

DISCLAIMER: AS THE SITE LEVELS HAVE BEEN SUPPLIED BY OTHERS WE CANNOT TAKE RESPONSIBILITY FOR THEIR ACCURACY. ALL LEVELS AND DIMENSIONS SHOWN AND COMPARED BY SURVEYOR BEFORE STARTING ANY WORKS.

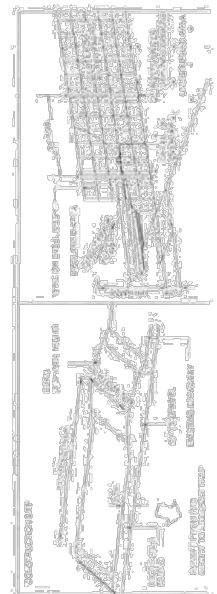


SITE WORKS

- a. These plans are to be read in conjunction with any structural and civil engineering design & details.
- b. Site to be excavated and/or filled to levels shown. Slope areas to be excavated 1:1m vertical: 1m horizontal to allow for staked and lawn vehicles.
- c. Footings shall be placed as per site plan & engineering details.
- d. Footings to be laid in consecutive natural material having a minimum allowable bearing capacity of 100kPa.
- e. Ground surface to be sloped 1:20 (min) away from building for storm (rain) and to a point where parking will not occur near the building.
- f. Dish drains and appliances to be provided as indicated to facilitate drainage of water away from building into drainage system.

RETAINING WALLS

- a. All retaining walls are to comply with Council policy on retaining walls and encumbrance on residential building sites.
- b. All retaining walls to be a minimum of 200mm off boundary (to allow for egg-chin and backfill). Any damage to neighbouring property to be rectified if damaged. Position of retaining walls may vary and must be verified by survey prior to commencement.
- c. Any variation to construction steps to comply with Council policy.





ENGINEERS · PLANNERS · SURVEYORS ENVIRONMENTAL PROJECT MANAGEMENT

10515- View Assessment October 2020

14 October 2020

The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Dear Sir/Madam

re: Development Application 2020/446 – Proposed New dwelling – Lot 20 DP 1250165, No 28 Mosman Chase, Lennox Head.

Please find a response to Council's request for a View Impact Assessment (VIA) for the subject development application currently being considered for conditional consent. This VIA has been requested due to objections received from land owners to the North West on the opposite side of Mosman Chase to the subject site. The primary objector immediately to the north currently has a view to the south east through the subject vacant lot. Objectors to the North West have an acute view across side boundaries to the east. Both angles are demonstrated below noting such have been taken from the road reserve and not within the subject adjoining properties.



View from Lot 9 to the South East over the subject site.

BALLINA
45 River Street
PO Box 20
BALLINA NSW 2478
02 6686 3280

ARDILLPAYNE.COM.AU
info@ardillpayne.com.au
abn: 51 808 558 977

GUNNEDAH
Germane House
285 Conadilly Street
GUNNEDAH NSW 2380
02 6742 9955



View from Lot 11, past Lot 9 and 10 to the South East over the subject site.

Section 4.15 Environmental Planning and Assessment Act 1979 Assessment

It is considered that in conjunction with this View Impact Assessment (VIA), a review of the development against Ballina Shire Councils development control provisions is relevant to provide context to the VIA.

Ballina Local Environmental Plan 2012

Clause 4.3 -Height – The maximum height limit for the subject site is 8.5m. The dwelling has a maximum height limit of 6.83m. The proposed dwelling is well below the maximum height permissible and is compliant with this control.

Clause 4.4 (2A) – Floor Space Ratio – The maximum floor space ratio for dwellings upon the subject site is 0.5:1. The dwelling has a proposed floor space ratio of 0.28:1. The development is compliant with this control and well below the nominated maximum.

Ballina Development Control Plan 2012

Chapter 4 – Residential and Tourist Development

Building Lines–5.5m to Mosman Chase (Garage) – Compliant



Side and Rear Boundary Setback- Minimum of 900mm to side boundary required – proposed Minimum is 1.821m on north east corner noting the western side boundary setback is a minimum of 2.085m- Compliant

Building Height Plane – Compliant

Landscaping – 61% of the site is proposed as soft landscaping – this percentage significantly exceeds the 25% minimum prescribed by this control

Carparking – Two Spaces Provided - Compliant

Section 88B Covenant

It is noted that Council has received several submissions from adjoining landowners raising objections to the subject proposal. These submissions referenced Item 6 and the Terms of Restriction on the Use of the land tentatively referred to in the Deposited Plan Section 88B Covenant, applicable to a number of Lots, including the subject site. These objections were received from the landowners at Lots 9, 10 and 11, Mosman Chase on the northern side of this residential street, being at a higher NGL to the subject site. Council was duly advised by these submitters that in fact these Lots were also the subject of Item 6 of the subject 88B imposed by the developer, providing as follows:

The Owner of the Lot Burdened must not erect, construct, place or permit to remain on the Lot Burdened any building comprising more than a single storey and the floor level of that storey must not be elevated above natural ground level by any more than a metre.

In addition to these submissions from landowners identified by this Covenant it is noted that Lot 17, immediately adjoining the subject site to the north east, and to the east of Lots 9, 10 and 11 was also the subject of this restriction on title.

This restriction was placed upon a total of 5 lots by the developer, with beneficiaries being Lots to the north/north west at a higher RL or natural ground level.

Given submitters and others were indeed the subject of this restriction, an examination of the approved dwellings on these sites is considered relevant to this submission in support of the subject single dwelling.

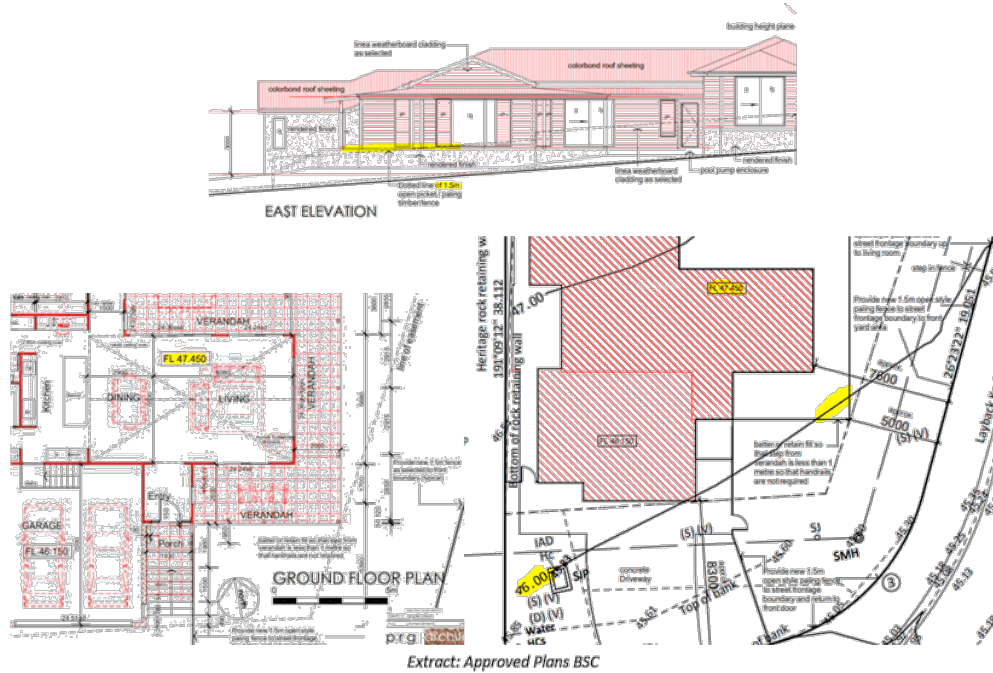
Lot 9 DP1250165 No 19 Mosman Chase, Lennox Head – (DA2019/333)

The primary objector is the landowner of No. 19 Mosman Chase. The dwelling upon this site was approved in accordance with DA2019/333. A brief examination of this development consent and approved plans has revealed this dwelling is contrary to, and not compliant with, the nominated 88B covenant that forms the basis of this adjoining owner's objection. The applicable covenant restricts the floor level of the single storey dwelling to no more than 1m above natural ground level. Below is the eastern elevation of the approved plan set. The portion of the dwelling in the south east corner of the subject site has a FFL of 47.45m. The natural ground level immediately below this section of the approved dwelling is AHD 46m. The approved dwelling, primarily the verandah and living areas is greater than 1m above natural ground level and contrary to the covenant in the south eastern corner of the site. This is confirmed by the below elevation indicating a 1.5m high, side boundary fence will be



at an equivalent height of the adjacent floor level, demonstrating a FFL greater than 1m above natural ground.

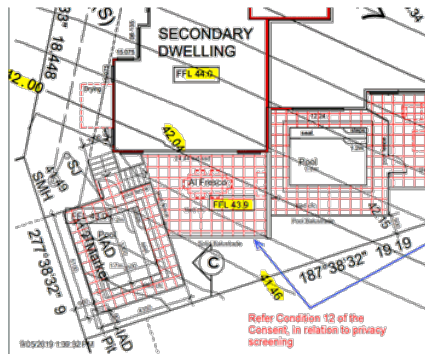
Council have not considered this departure in the assessment of the application, as the restriction is not a planning control. Further, pursuant to Clause 1.9A of the BLEP 2012, Council is not bound by restrictions on title imposed by developers, supporting the approval of the dwelling upon this Lot, despite the 88B restriction.



Extract: Approved Plans B5C

Lot 17 DP1250165 30 Mosman Chase – (DA2019/72)

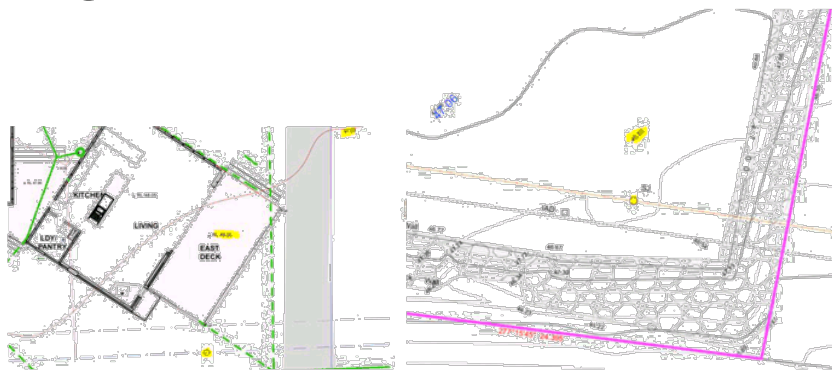
This lot is subject to the 88B restriction on title imposed by the land developer, restricting floor levels to no greater than 1m above NGL. This site is the subject of Council approved development consent DA2019/72. This approval includes a single dwelling with pool and attached secondary dwelling. The secondary dwelling is located in the south eastern corner of the subject site. This small dwelling has a FFL of 44m AHD. The natural ground level immediately below this secondary dwelling living area is approximately AHD 42m. As with No. 19 Mosman Chase, this development consent is contrary to this covenant. Again, it is most likely that no consideration was given to the proposed height above natural ground level, given this is not a consideration under Section 4.15 of the Environmental Planning and Assessment Act, being a developer imposed covenant on the title.



Extract: Approved Plans BSC

Lot 10 DP1250165 17 Mosman Chase – (DA2019/59)

The landowners of this site submitted an objection to the proposed dwelling at No. 28 Mosman Chase. This Lot is also subject to the covenant restricting dwelling floor levels to no more than 1m above natural ground level to benefit dwellings to the north/north west. The approved plans are not clear, however it appears the approved development is not compliant with the 88B restriction in the south eastern corner of the site. The approved FFL of the main living area and eastern deck of this dwelling is RL 48.05m while the survey plans have a NGL of 46.83m directly below the subject eastern deck. Again Council have not closely considered this aspect of the development given the lack of detail on the approved plans. Further, given this restriction is not a relevant planning control that Council is obligated to consider, no condition of consent has been imposed limiting the approved floor level to 1m above natural ground level.



Extract: Approved Plans BSC

View Impact Assessment

It is noted that the primary objector engaged a legal representative to lodge a submission on their behalf. This submission refers to the planning principles concerning view loss as set out in *Tenacity*



Consulting v Warringah [2004] NSWLEC 140. It is noted that this planning principle refers to **view sharing**, not view loss as stated by this submission. These planning principles have been adopted to decide whether or not view sharing is reasonable, using the four step assessment as follows.

Step 1- Views to Be Affected – The submitters claim that distant water and headland views will be affected the south east. These views are considered valuable, particularly when a water view includes an interface between land and water.

Step 2- From what part of the property are the views maintained – Lots 10 and 11 are located to the north west of the subject Lot. The views from these properties are achieved looking across side boundaries of multiple properties and Mosman Chase, including the subject site. The view loss these properties are objecting to are not directly forward of the subject site. The current narrow view corridor is from primary living areas and outdoor living spaces of these adjoining properties on the northern side of Mosman Chase at a higher NGL. The properties have been designed to achieve views to the south east to the ocean, however are extremely reliant upon side boundary views (shown below with orange and blue arrows), which as stated by the planning principles are more difficult to protect.

Lot 9 has a street frontage of 48m to Mosman Chase, being a corner lot. This Lot therefore has a significant frontage that may be considered the ‘front’ boundary. However, given the front boundary is typically considered as where the street access for vehicles is located, this lots front boundary could be considered to be the south facing frontage of the subject site, being the location of the driveway. This would suggest the primary view is directly to the south, rather than to the south east across the subject site and across the adjoining Lot 17.

It is noted that Lot 21 is directly to the south of the primary frontage of Lot 9. Lot 21 is not subject to the 88B restriction and is similar in design, bulk and scale of the proposed dwelling upon Lot 20. Given Lot 9 has such a significant frontage, it is not considered reasonable to place the burden of views upon the subject Lot 20, given Lot 21 is not burdened with any covenants and Lot 17 has an approved dwelling contrary to the 88B, despite being subject to this covenant.



Extract Google maps



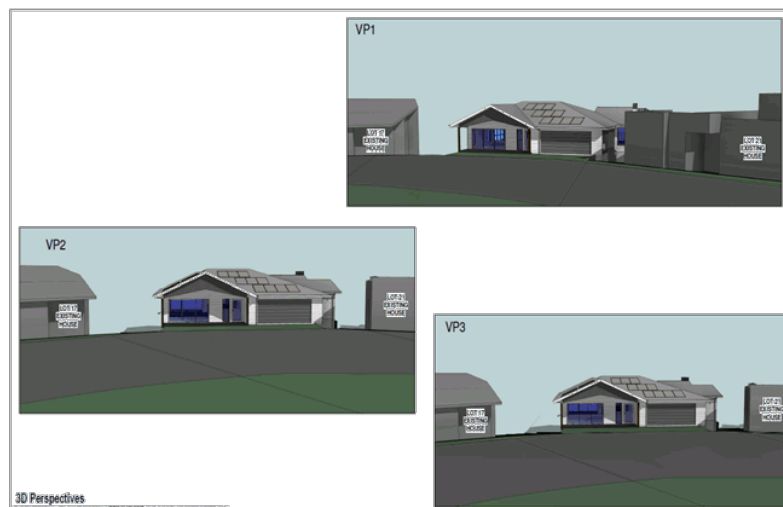
This fourth planning principle further states that a view from a sitting position is also more difficult to protect than standing views. The impact of the proposed dwelling from the living areas of the 3 submitters is assessed below;

The proposed dwelling upon Lot 20 will have a maximum RL of 48.87m, being the hip roof central to the subject lot, with the roof progressively becoming lower in height towards the respective side boundaries of the subject site, parallel with the front boundary.

The approved dwellings at Lots 9, 10 and 11 have the following Finished Floor Levels (FFL):

Lot 9 (No. 19) –AHD 47.450m – This existing dwelling upon Lot 9 has an approved FFL 1.42m below the highest point, (being a hip roof) of the proposed dwelling. The consequences of the proposed dwelling on this Lot would be as follows: Views from a sitting position within the dwelling upon Lot 9 would be affected when looking directly at the hip ridge section of the proposed roof upon Lot 20. However, **views from a standing position would be maintained** for an average height person (1.6m) for the entire frontage of Lot 20 when standing in the living area of Lot 9, based on approved FFLs and the proposed ridge height.

It is noted that the ridge section of this hip roof is 4m in width, with the roof reducing in height across the street frontage. Only 4m or 36% of the street frontage will be impacted by this 48.87m height. The balance of the street frontage of Lot 20, being 7m or 64% of the frontage, is reduced in height providing more viewing opportunities for Lot 9, including occupants in a sitting position. These views will also be maintained within both side boundary setbacks of Lot 20, ensuring the approved dwelling upon Lot 9 will retain views between houses upon Lots 21, 20 and 17 to the south east, ensuring views are shared from a sitting and standing position. These view corridors are demonstrated in the 3D perspectives below. Accordingly, while it is acknowledged that if the entire corner frontage of Lot 9 is to be considered the primary frontage, views will be impacted. However, significant view corridors will be maintained between dwellings due to generous side setbacks. Further the hip roof will still enable the existing view to be enjoyed from a standing position within the home upon Lot 9, when viewing directly across this highest point. Some views from Lot 9 will also be maintained in a sitting position given the approved FFL of the existing dwelling upon Lot 9 house and side boundary setbacks.



It is noted that the approved dwelling upon Lot 17 is not compliant with the 88B restriction, despite the covenant being imposed upon this Lot. The dwelling has an approved FFL over 2m above NGL in the south eastern corner. This approved and constructed dwelling and secondary dwelling has ultimately impacted the view corridor to the east from Lots 9, 10 and 11. It is not considered reasonable that the subject Lot 20 is scrutinized against the developer imposed 88B instrument when other properties have been exempt from such. This is particularly relevant when the view corridor has been reduced within existing lot 17 for these properties as a result of an approved dwelling, reducing the viewing corridor between the constructed dwelling up Lot 17 and proposed dwelling upon Lot 20.

Lot 10 (No. 17) – 48.05m – The FFL of this dwelling is 0.82m below the highest point of the proposed dwelling upon Lot 20. Views will be maintained from this dwelling at a sitting and standing position, having regard to these nominated height differences, despite these views being across the site boundary of the subject Lot 10.

Lot 11 (No. 13) - 46.475m (approx.) – Given the proposed dwelling is 48.87m, the views from Lot 11, No 13 Mosman Chase will be impacted by this dwelling. However, given the narrow viewing window across No. 13s side boundary located over 50m from the subject site, retention of this view is an unreasonable expectation, particularly having regard to the approved dwellings located at upon Lots 17 and 21.

Step 3 - Extent of impact – Each of the three properties claiming to be impacted have designed the new homes to facilitate views from living areas and outdoor areas towards the south east across side boundaries.

Step 4 - Reasonableness of proposal causing Impact – The proposed single storey dwelling, as submitted, is completely and entirely reasonable. The dwelling is single storey to the street frontage



with the rear being elevated, consistent with dwellings on either side of the subject Lot. The dwelling is compliant with the nominated maximum height limit, floor space ratio and building height plane for the site. The dwelling has side boundary setbacks that exceed the nominated minimum, despite the 'pie' shaped lot, providing view corridors on either side of the subject dwelling. The dwelling is completely consistent with the bulk and scale of similar dwellings within the locality, inclusive of the proposed viewing platform consistent with Lot 21 to the west.

It is considered completely unreasonable to expect the subject dwelling to comply with a building covenant that has not been applied to adjoining impacted lots and is not an applicable development control pursuant to the EPA Act 1979.

No one has a right to a view to be maintained for their property indefinitely. It is unfortunate that the property owners based dwelling designs on a developer imposed restriction that has clearly and rightly not been applied to affected properties. It is also considered unreasonable to expect the subject land owner to bear the weight of a view corridor that has been eroded due to Lot 17 not complying with this developer imposed restriction. If Council considers this restriction a necessary development control, such should have applied such to all dwellings in the locality rather than one of the last dwellings to commence the approval process.

It must also be noted that this property can gain an approval for a substantial two storey single dwelling pursuant to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. This planning instrument contains a clause which is similar to Clause 1.9A of the BLEP 2012 in that only restrictions imposed by the Council have to be applied (Clause 1.20).

To summarise, it is considered the proposed dwelling is completely acceptable in regards to view sharing with adjoining properties for the following reasons:

- The dwelling is completely compliant with all applicable planning controls.
- In accordance with Clause 1.9A of the BLEP 2012, *for the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.* To clarify, Council is not bound by the developer imposed condition.
- Lot 9's view will be impacted by the dwelling. However, this impact is not considered unreasonable having regard to the views that will be maintained and the design of the proposed dwelling upon Lot 20. The dwelling upon Lot 9 also does not comply with the 88B restriction.
- Lot 10 will retain views across the subject Lot 20, for residents sitting and standing, due to FFLs within the approved dwelling, relative the roof height of the proposed dwelling. This dwelling upon Lot 10 also does not comply with the 88B restriction.
- Lot 11 will be impacted by the proposed dwelling upon Lot 20. However, this view corridor is across a side boundary and a number of properties rather than directly in front of the subject Lot 11. Retention of this view considering the proposed dwelling is not considered reasonable.



-
- The approved dwelling upon Lot 17 immediately adjoining Lot 20 includes a significant departure from the developer imposed covenant, impacting the view corridor for the subject Lots 9, 10 and 11 when looking toward the east.

Should you have any questions in respect of this matter, please contact me on 6686 3280 or joannek@ardillpayne.com.au.

Yours faithfully

A handwritten signature in black ink that reads "Joanne Kay".

Joanne Kay

ARDILL PAYNE & PARTNERS

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