

**NSLPP MEETING HELD ON 02/04/2025****Attachments:**

1. Architectural Plans
 2. Revised Basix
 3. s8.2 Document
2. Panel Determination and Report: 4 December 2024

ADDRESS/WARD: 58 Cowdroy Avenue, Cammeray

APPLICATION No: DA/60/2022/2

PROPOSAL: Section 8.2(1) Review of s.4.55(2) Determination for DA/60/2022/2 for modification of consent for demolition of existing dwelling and ancillary structures and construction of a *dwelling* house and associated site works including a swimming pool.

PLANS REF:

Plan No.	Rev	Description	Prepared by	Dated
4.55 101	A	Site Plan	Coso Architecture	01/06/23
4.55 102	A	Lower Level Floor Plan	Coso Architecture	01/06/23
4.55 103	A	Mid-Level Floor Plan	Coso Architecture	01/06/23
4.55 104	A	Upper Level Floor Plan	Coso Architecture	01/06/23
4.55 104A	A	Upper Level Floor Plan +3m	Coso Architecture	01/06/23
4.55 105	A	Entry Level Floor Plan	Coso Architecture	01/06/23
4.55 106	A	Roof Level Floor Plan	Coso Architecture	01/06/23
4.55 107	A	Section AA	Coso Architecture	01/02/24
4.55 110	A	Section DD	Coso Architecture	01/06/23
4.55 111	A	West Elevation	Coso Architecture	01/06/23
4.55 112	A	North Elevation	Coso Architecture	01/06/23
4.55 113	A	South Elevation	Coso Architecture	01/06/23
4.55 114	A	East Elevation	Coso Architecture	01/06/23

OWNER: P & R Etherington

APPLICANT: P & R Etherington C/- COSO Architecture

AUTHOR: John McFadden, Consultant Planner

DATE OF REPORT: 04/03/2025

DATE LODGED: 22/01/2025

RECOMMENDATION: Change the decision of the LPP at its meeting held 04/12/2024 – Refusal

EXECUTIVE SUMMARY

This application is a review of Council's determination under the provisions of s.8.2 of the *Environmental Planning and Assessment Act 1979*, being the determination of modification of consent to DA60/2022/2 by way of conditional approval.

The application for a review is reported to the North Sydney Local Planning Panel as it involves a review of the Panel's determination of a s.4.55(2) amendment of the design, including conditions imposed by the Panel when the modification application was originally determined.

Development for the purpose of the demolition of the existing dwelling and ancillary structures and construction of a dwelling house and associated site works including a swimming pool is permitted within the C4 Environmental Living zone under *North Sydney Local Environmental Plan 2013 (NSLEP 2013)*.

The proposed modifications to the building to extend a pergola at the upper floor level results in a further non-compliance with the 'height of buildings' development standard in clause 4.3 of the *NSLEP 2013* which was not supported by the Panel.

Further, the enclosure of the car spaces at street level and their conversion into a garage will result in an increase in non-compliance with the site coverage provisions of the North Sydney DCP 2013 and it is noted that the current development (as approved) is already non-compliant.

Renotification of the proposal is not required as no new plans have been submitted. The application involves a review of the Panel's most recent determination. Notwithstanding the above, the s.4.55(2) determination subject to this review did attract 6 objections on first public exhibition between 12-27 July 2024, and a further 2 objections on a second notification period between 23 October and 7 November 2024 following the submission of minor amendments to the design and a view sharing analysis. Notwithstanding, the application under review has been the subject of internal correspondence between Council staff and the adjoining property owners at 56 Cowdroy Avenue, which has reaffirmed their position on the application and the development consent as a whole.

The Panel considered these concerns as well as the performance of the application against Council's planning requirements in a report dated 18 November 2024 and imposed conditions to minimise impact.

Following review of the LPP determination of the s.4.55(2) application D/60/2022/2, the conditions imposed by the Panel are considered to be reasonable in the circumstances, but this review has highlighted inconsistencies, inaccuracies and errors in the submitted review plans leading to a recommendation of **refusal** being appropriate. Accordingly, it is recommended that the Local Planning Panel's approval of the s.4.55(2) modification, together with the imposed conditions, be changed (rather than confirmed) pursuant to s.8.4 of the *Environmental Planning and Assessment Act 1979*.

It should be noted that the Panel's determination is also the subject of a concurrent appeal before the Land and Environment Court. This should not influence the panels determination of this matter.

[illegible]

Property/Applicant ● Submitters - Properties previously Notified to S4.55 modification

DESCRIPTION OF PROPOSAL

This application is a review of the LPP's determination under the provisions of s.8.2 of the *Environmental Planning and Assessment Act 1979*, being the determination of a modification application to DA/60/2022/2 by way of Approval subject to conditions.

The application as originally considered by Council sought consent for ***demolition of the existing dwelling and ancillary structures and construction of a dwelling house and associated site works including a swimming pool*** at 58 Cowdroy Avenue, Cammeray.

The review (as outlined in the 4.55(2) report) involves the determination of a modification of the approved development, to accommodate:

- *'Enclosure of the approved open two-vehicle parking area by installing a door, walls and a roof, converting the open parking area into a garage,*
- *A fixed metal awning/pergola 900mm deep, partly over the balcony on the Mid Level (Section AA, plan 4.55 107 (correct awning depth) and Upper Level Floor Plan, plan 4.55 104 incorrect awning depth detailed on plans)),*
- *An operable metal pergola over the paved terrace on the level above (Upper Level Floor Plan + 3m, plan 4.55 104A),*
- *Replacement of a 1.6m high privacy screen terrace with a glass balustrade, 1.0m high, at the western side of the terrace, (Upper Level Floor Plan, plan 4.55 104),*
- *Raising of the pool and surrounds by 900mm. The western side of the pool will be concealed with a green wall, and*
- *Lower the roof height by 600mm, to reduce building bulk (Section AA, plan 4.55 107).'*

It is noted that the review plans include a return to the originally approved roof profile thus potentially increasing impacts on the neighbouring property compared to those originally contemplated by the Panel.

BACKGROUND

Previous Applications

Application	Details	Determination
DA 2/2020	New House - Demolition of existing house.	Reject by DRP on 10 Jan 2020
DA 56/2020	Demolition of existing structure and construction of a new dwelling, new landscaping and retaining wall.	NSLPP Refused on 5 Aug 2020
DA 56/2020	Appeal to Land and Environment Court of NSW -against the NSLPP refusal of DA 56/20	Refusal Court orders - Appeal dismissed - Refused plans, 7 June 2021
Review 3/2020	Request for Review of Determination (Section 8.2) of DA 56/20 for demolition of existing dwelling and construction of a new dwelling, new landscaping works, swimming pool and earthworks.	NSLPP Refused 3 Feb 2021

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning C4 Environmental Living
- Item of Heritage – No
- In Vicinity of Item of Heritage – No
- Conservation Area – No
- In Vicinity of a Heritage Conservation Area or Heritage Item - No
- Foreshore Building Line – the site is affected, parts of the approved development proposed to be modified are not within the foreshore area (land seaward of the FBL)

SEPP (Biodiversity and Conservation) 2021

SEPP (Resilience and Hazards) 2021

SEPP (Sustainable Buildings) 2022

POLICY CONTROLS

NORTH SYDNEY DCP 2013

DESCRIPTION OF LOCALITY

The site is located at Lot 33 DP 8933 No. 58 Cowdroy Avenue, Cammeray.

The site extends southwards from Long Bay to Cowdroy Avenue. The lot has an irregular shape with parallel side boundaries. The foreshore boundary is partly defined by a seawall and waterfront structures and a boundary with Lot 1 DP 583587 (which is also part of No. 58 Cowdroy Ave although no works are proposed on Lot 1).

Lot 33 has an area of 556m². The front boundary is not perpendicular to the side boundaries and is 12.905m long. The eastern side boundary shared with No. 2 Folly Point is 44.875m. The western side boundary shared with No. 56 Cowdroy Avenue is 45.305m. The site is 12.06m wide.

The site slopes steeply down from the road to the foreshore. The fall from street to shoreline is approximately 22m with the seawall height varying from 1 to 1.5m above Mean High Water Mark (MHW). The site has been significantly altered from its natural surface contours. There are retaining walls and paths throughout the setbacks and on site boundaries as well as significant cut and fill and retaining walls within the building footprint.

Development in the area is characterised by substantial, multi storey dwelling houses, which capitalise on their steep slopes, offering views of Long Bay, an arm of Middle Harbour.

In a broader context, the locality is part of Folly Point which includes a small foreshore public reserve at its easternmost point. Cammeray Marina is approximately 100m west of the site. Further west is Tunks Park and across the bay in Northbridge is a golf course together with a foreshore bushland reserve, directly north of the site.

RELEVANT HISTORY

Date	Action
5 Aug 2020	DA 56/20 refused by the North Sydney Local Planning Panel
12 June 2021	Land and Environment Court NSW dismissed an appeal against refusal, on grounds that the application was not supported by an adequate request to vary the height standard, as required by cl. 4.6 NSLEP 2013. This being a jurisdictional matter, the relative merits of the proposed development did not need to be considered in the Court's decision making.
3 May 2023	<p>North Sydney Local Planning Panel granted deferred commencement consent to DA 60/22, requiring design changes (condition AA) for the reasons set out below:</p> <p>Condition AA1</p> <p>(1) <i>The roof to the upper level (open plan living area Level 03) shall be re-designed to achieve a lower profile as follows:</i></p> <ul style="list-style-type: none"> <i>a. The rooftop garden shall be deleted;</i> <i>b) The maximum floor to ceiling height at the northern edge shall be 2800mm;</i> <i>b. Maximum roof pitch of the roof shall not exceed 5 degrees;</i> <i>d) A step may be provided from the mid-line of the roof to accommodate clerestory windows for natural light and ventilation to the open plan living room.</i> <p>(2) <i>Fixed louvred/slatted privacy screens a minimum 1.6m high, measured from finished floor level shall be installed on the eastern and western edges of the balcony to the Upper Level (Level 03) adjacent to the open plan living room.</i></p> <ul style="list-style-type: none"> <i>a) A fixed privacy screen 1.8m high, measured from the finished floor level of the patio to the eastern side of the outdoor kitchen space at the Lower Level (Level 01).</i> <i>b) The balustrade to the northern edge of the steps and retaining walls below the foreshore building line shall be an open palisade form and finished in black.</i> <i>c) The swimming pool coping level, retaining walls and planter beds surrounding the swimming pool are to be lowered (and or/the pool may be re-oriented). The swimming pool coping level shall be reduced to generally comply with the requirements of Part B Section 1 Control 1.5.10 to the North Sydney Development Control Plan 2013. The swimming pool and associated structures must be setback a minimum 1.2m from the side boundaries. Screen planting is to be provided between the pool and the western site boundary. Details shall be indicated on the amended Landscape Plan.</i>

	<p>d) <i>The landscaped area immediately north of the swimming pool and patio area currently shown at RL 9.8 (approx.) shall include cascading plants along the northern edge of the retaining wall.</i></p> <p>e) <i>All retaining walls including ancillary drainage management and footings must be contained entirely within the site boundaries.</i></p> <p>f) <i>Additional canopy trees that with a mature height of 4 to 5m are to be planted within the foreshore area (between levels RL4.2 to RL4.8). The location and species are to be nominated in the amended Landscape Plan.</i></p> <p>g) <i>The understorey to the 3 x <i>Corymbia maculata</i> (100l) shall be densely planted with suitable species of low maintenance native shrubs in addition to the 3 x <i>Cyathea australis</i> to optimize the variety of planting in the deep soil area. Additional planting shall be included in the amended Landscape Plan.</i></p> <p>h) <i>The pathway from the Cowdroy Avenue boundary to the front door within the tree root zone of this required <i>Angophora costata</i> must remain substantially unpaved to minimise soil compaction and to enable water infiltration for future growth and vitality of the tree. Details of the pathway construction are to be specified in the construction and landscape plans and be approved by the project arborist.</i></p> <p>i) <i>The existing <i>Jacaranda Mimosifolia</i> (Tree 1 in the Arborists Report) shall be retained and protected in accordance with the recommendations of the Jacksons Nature Works report dated 8 March 2021.</i></p> <p>j) <i>The tree protection measures contained in the arborist report shall be shown clearly on the Architectural drawings and amended Landscape Plan.</i></p> <p>Panel Reasons:</p> <p><i>The Panel considers the proposed development subject to the amendments above is satisfactory in the context of the area and surrounding development. Furthermore, with the amendments to the roof line the principle of view sharing has been considered having regard to the extent of views from the waterfront properties in the area. The Panel notes that the steep topography in the vicinity translates into significant variations to the height standard.</i></p> <p><i>The Panel does not support the height of the retaining wall to accommodate the swimming pool on the western boundary is appropriate and amended plans for the pool and associated facilities and landscaping are required.</i></p> <p><i>With respect to the processing of the development application the Panel is satisfied this complies with the necessary requirements. Similarly, the survey levels have been verified.</i></p>
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	<p><i>The Panel has determined that approval is warranted subject to a Deferred Commencement.</i></p> <p><i>Concerning determination of the application, subject to the deferred commencement conditions, the Panel also stated:</i></p> <p><i>The request made in accordance with clause 4.6 of the LEP is considered to adequately demonstrate that strict compliance with the maximum height of building standard is unnecessary, as the objectives of the standard are achieved despite the contravention. The request also demonstrated sufficient environmental planning grounds to vary the development standard.</i></p>
14 Nov 2023	A letter was sent to the applicant advising them that plans submitted on 13 October 2023 had satisfied the terms of the deferred commencement conditions, thereby making the consent operational.

Current application subject of this Review

Date	Action																				
3 July 2024	Subject S.4.55(2) modification application lodged.																				
12-27 July 2024	Application notified and 6 objections received.																				
26 August 2024	The assessing planner met owners/occupants of 56 Cowdroy Avenue at their home to discuss and consider potential impacts of the proposed modifications, and inspect the site.																				
23 Sept 2024	The assessing planner attended a site inspection at 56 Cowdroy, for the applicant’s architect to take photographs to be used in an analysis of the proposal’s potential impacts on views from 56 Cowdroy.																				
11 October 2024	Application amended, with submission of amended plans to lower the roof and make other design adjustments, as described. Included with amended plans is a view sharing analysis using the photos taken by the applicant’s architect from 56 Cowdroy Avenue. These are attached to this report.																				
23 Oct -7 Nov 2024	Objectors were sent copies of amendments to the application and provided an opportunity to make further submissions, for 14 days.																				
18 November 2024	Report prepared for North Sydney Local Planning Panel.																				
04 December 2024	North Sydney Local Planning Panel considered the proposed modification and resolved an approval of the application, subject to conditions.																				
10 December 2024	<p>A consent was issued to the applicant including the following:-</p> <p>‘Your request for the modification of the Development Consent as set out in Notice of Determination dated 3 May 2023, has been determined in the following manner: -</p> <p><i>Development in accordance with Plans</i></p> <p><i>1. Replace the table to Condition A1 with the following table:</i></p> <table><tr><th>Plan No</th><th>Rev No</th><th>Description of works</th><th>Prepared by</th><th>Dated</th></tr><tr><td>4.55 101</td><td>B</td><td>Site Plan</td><td>Coso Architecture</td><td>04.10.2024</td></tr><tr><td>4.55 102</td><td>B</td><td>Lower Floor Plan</td><td>Coso Architecture</td><td>04.10.2024</td></tr><tr><td>4.55 103</td><td>B</td><td>Mid Floor Plan</td><td>Coso Architecture</td><td>04.10.2024</td></tr></table>	Plan No	Rev No	Description of works	Prepared by	Dated	4.55 101	B	Site Plan	Coso Architecture	04.10.2024	4.55 102	B	Lower Floor Plan	Coso Architecture	04.10.2024	4.55 103	B	Mid Floor Plan	Coso Architecture	04.10.2024
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	4.55 104A	B	Upper Floor Plan + 3m	Coso Architecture	04.10.2024
	4.55 105	B	Entry Level Floor Plan	Coso Architecture	04.10.2024
	4.55 106	B	Roof Level Floor Plan	Coso Architecture	04.10.2024
	4.55 107	B	Section AA	Coso Architecture	04.10.2024
	4.55 110	B	Section DD	Coso Architecture	04.10.2024
	4.55 111	B	West Elevation	Coso Architecture	04.10.2024
	4.55 112	B	North Elevation	Coso Architecture	04.10.2024
	4.55 113	B	South Elevation	Coso Architecture	04.10.2024
	4.55 114	B	East Elevation	Coso Architecture	04.10.2024
	<p>2. Insert Condition A3 as follows:</p> <p><i>The proposed pergola to the northern elevation of the Upper Floor Level and the proposed enclosure of the garage is not supported on the basis that:</i></p> <p>A3 a. Pergola: <i>The proposed pergola breached the maximum height of building standard, projects well beyond the prevailing rear building line and would result in unreasonable view impacts and unreasonable bulk and scale impacts</i></p> <p> b. Garage: <i>The proposed garage would reduce the visual permeability of the carport structure, would prevent views through the structure towards prominent local vegetation and would result in excessive and unreasonable impacts on bulk, form and character of the structure to this part of Cowdroy Avenue.</i></p> <p> (Reason: To minimise bulk and scale, and view impacts)</p>				
	<p>3. Amend condition C1 as follows:</p> <p>Design Changes</p> <p>C1. The following design changes are to be included in plans approved with the Construction Certificate to the satisfaction of the Principal Certifier:</p> <p> a) A louvred/slatted privacy screen a minimum 1.6m high from finished floor level shall be affixed to the eastern edge of the balcony to the Upper Level (Level 03) adjacent to the open plan living room to obscure direct lines of sight between the balcony and the neighbouring property east of the site, and the balustrade on northern and western sides of the balcony being finished in clear, unframed glass;</p> <p> b) A fixed privacy screen shall be affixed to the eastern side of the outdoor kitchen space at the Lower Level (Level 01) to obscure direct lines of sight between the outdoor kitchen space and the neighbouring property at No.2 Folly Point;</p>				

	<p>c) <i>The schedule of external materials, colours and finishes shall be amended to replace the zinc roof with a roofing material that is non-reflective and is a colour and tone which matches or complements the natural features of the environment to ensure that excessive glare or reflectivity nuisance from roofing materials does not occur as a result of the development;</i></p> <p>d) <i>The schedule of external materials, colours and finishes shall be amended to change the colour of the render from off-white to a colour and tone which is non-reflective and which matches or complement the tones of the natural environment to ensure a high quality finish to the development in a visually prominent location;</i></p> <p>e) <i>The balustrade to the northern edge of the steps and retaining walls below the foreshore building line shall be open in form to reduce the visual impact of built structures in the foreshore area;</i></p> <p>f) <i>The landscaping area immediately north of the swimming pool and patio area at approximately RL 9.8 is to include planting of cascading plants along the northern edge to screen the outer face (waterway side) of the retaining wall and reduce the visual impact of built structures in the foreshore area;</i></p> <p>g) <i>All retaining walls including ancillary drainage management and footings are to be contained entirely within the site boundaries to protect the integrity of adjoining sites;</i></p> <p>h) <i>One (1) additional canopy tree suitable to reach a mature height of 4 to 5m is to be planted within the foreshore area level (RL4.2 to RL4.8) to improve the quality and diversity of vegetation within the foreshore area and to visually offset the bulk and scale of built structures as viewed from the waterway. The location and species are to be nominated in the amended Landscape Plan to the satisfaction of the PCA prior to the issue of the Construction Certificate;</i></p> <p>i) <i>The understorey to the 3 x Corymbia maculata (100l) shall be densely planted with suitable species of low maintenance native shrubs in addition to the 3 x Cyathea australis to optimize the variety of planting in the deep soil area to compensate for the removal of the variety of existing vegetation. Additional plantings shall be included in the amended Landscape Plan to the satisfaction of the PCA prior to the issue of a Construction Certificate;</i></p> <p>j) <i>The pathway from the front boundary with Cowdroy Avenue to the front entry door within the tree root zone of the new Angophora costata is to be decking or pervious paving to optimize soil depth and infiltration for future growth of the tree. Details of the pathway construction are to be specified in the construction and landscape plans submitted with the Construction Certificate;</i></p>
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	<p>k) The swimming pool must remain as approved under DA60/22 and the plans endorsed on 14 November 2023, being no higher than RL10.10 and the proposed western wall to the pool must remain as approved under DA60/22.</p> <p>l) The awning proposed over the lower level terrace shall be no deeper than 900mm measured outwards from the floor slab to which it will be affixed, as shown on drawing 4.55 107, Revision B, 24 10 2024.</p> <p>m) The open parking area must remain as approved under DA60/22 and the plans endorsed on 14 November 2023, the garage as shown in submitted plans, referred to in the amended condition A1, is not approved.</p> <p>n) A louvred/slatted privacy screen a minimum 1.6m high from finished floor level shall be affixed to the eastern edge of the lower terrace (mid level floor plan) to obscure direct lines of sight between the terrace and the neighbouring property east of the site.</p> <p>o) The proposed operable metal pergola over the upper level paved terrace is to be deleted.</p> <p><i>(Reason: To minimise bulk and scale, view impacts, and provide appropriate landscape treatment)</i></p> <p>No approval is given or implied in this consent for the works proposed to the carport and pergola over the upper level terrace.</p> <p>Reason for approval: The Panel considers that the proposed change to the pool level, the proposed upper level pergola and proposed garage are unreasonable. The applicant seeks further increases in bulk and scale to increase site coverage and decrease landscaped area and significantly reduce unbuilt upon area, and results in unreasonable impacts.</p>
12 December 2024	The Applicant commenced proceedings in Class 1 of the LEC jurisdiction appealing against the approval of the modification application.
24 December 2024	Application submitted on the NSW Planning Portal
22 Jan 2025	Section 8.2 Review of Determination for DA/60/2022/2 for modification of consent for demolition of existing dwelling and ancillary structures and construction of a dwelling house and associated site works including a swimming pool lodged with Council via the NSW Planning Portal.
07 March 2025	The Application was notified for a period of two weeks from 07/03/25 – 21/03/25 in accordance with Council's Community Engagement Protocol.

INTERNAL REFERRALS

Whilst it is noted that there are no engineering changes to the proposal or plans as part of this review, the application was issued internally to Council's Development Engineer who confirmed that conditions shall remain as originally imposed.

EXTERNAL REFERRALS

Not required for this review - no changes to the proposal or plans were proposed.

SUBMISSIONS

The review was notified for 14 days in accordance with Council's Community Engagement Protocol, and no formal submissions were received during this period. However, it is noted that internal correspondence between Council staff and the adjoining property owners at number 56 Cowdroy Avenue, has occurred, which reinforces their position on the application and development consent as a whole.

In particular, it is noted that the site coverage, landscaped area and unbuilt upon plans include errors as the method of calculation does not strictly align with Council's DCP requirements. For example, some areas identified as landscaped area contain paving and some existing paving areas have not been included as unbuilt upon area. In addition, rainwater tanks sitting on the ground beneath the suspended car parking area have not been included in site coverage despite not being an 'exclusion' in Council's DCP.

Furthermore, the s.4.55(2) determination subject to this review did attract 6 objections on first public exhibition between 12-27 July 2024, and a further 2 objections on a second notification period between 23 October and 7 November 2024 following the submission of minor amendments to the design and a view sharing analysis.

COUNCIL'S STATUTORY OBLIGATIONS UNDER DIVISION 8.2

Section 8.3(1) of the *Environmental Planning and Assessment Act 1979* requires Council to review a determination or decision made by the consent authority if requested under Division 8.2. A decision cannot be reviewed after the period in which an appeal can be made (Section 8.3(2)). This review must be completed by 4 May 2025 being six months from the Panel meeting when the determination was made.

Section 8.3(5) provides that a '*review of a determination or decision made by a local planning panel is also to be conducted by the panel*'. This review has been undertaken externally by an independent consultant town planner on behalf of Council.

The application for review can amend the proposed development, but only if Council is satisfied that the proposal remains substantially the same development (Section 8.3(3)). In this case, the applicant has not sought any further amendment of the proposal or plans that were submitted during the s.4.55 modification application, that is the subject of this review.

REVIEW OF THE CONSIDERATION OF PROPOSAL SUBJECT OF REVIEW

The current Section 8.2 review of determination application seeks a review of Council's decision to approve consent to the subject s.4.55 Modification with conditions.

The application, being for the modification of consent to the demolition of existing dwelling and ancillary structures and construction of a dwelling house and associated site works including a swimming pool.

The current s.8.2 review application does not contain any amendments from the scheme that was approved with conditions other than a return to a 900mm, rather than 600mm clerestory step in the upper roof. As such, it is the conditions that were included to modify the plans submitted with the s.4.55(2) modification application that appear to be the reason for the applicant's request for a review.

Notwithstanding, it is relevant for the Panel to be aware that the site coverage, landscaped area and unbuilt upon plans submitted with this review include errors. In particular, the method of calculation does not align with Council's DCP requirements. For example, some areas identified as landscaped area contain paving and some existing paving areas have not been included as unbuilt upon area. In addition, rainwater tanks sitting on the ground beneath the suspended car parking area have not been included in site coverage despite not being an 'exclusion' in Council's DCP.

This amounts to additional site coverage (over and beyond the non-compliant site coverage), less landscaped area (below the required 40%) together with an increase in unbuilt upon area. For these reasons, the conditions imposed by the Panel in which to mitigate the impacts of the proposal are not considered to be sufficient in addressing the impacts from the proposal.

The applicants SEE lists the s.4.55(2) modifications as proposing:-

- *New roof over the hard stand parking area to enclose carport into a garage*
- *New operable metal louvre pergola over part of the external living spaces*
- *New fixed metal pergola over part of the external living spaces*
- *Raise the height of the swimming pool by 900mm so that pool enclosure is at same RL as Lower Ground Floor FFL to provide accessible access. The sides of the pool structure will be concealed with a green wall.'*

The Council assessment report lists the modifications in a similar fashion, but includes the modification to part of the upper level roof and clerestory window:-

- *'Enclosure of the approved open two-vehicle parking area by installing a door, walls and a roof, converting the open parking area into a garage,*
- *A fixed metal awning/pergola 900mm deep, partly over the balcony on the Mid-Level (Section AA, plan 4.55 107 (correct awning depth) and Upper Level Floor Plan, plan 4.55 104 incorrect awning depth detailed on plans)),*
- *An operable metal pergola over the paved terrace on the level above (Upper Level Floor Plan + 3m, plan 4.55 104A),*
- *Replacement of a 1.6m high privacy screen terrace with a glass balustrade, 1.0m high, at the western side of the terrace, (Upper Level Floor Plan, plan 4.55 104),*

- *Raising of the pool and surrounds by 900mm. The western side of the pool will be concealed with a green wall, and*
- *Lower the roof height by 600mm, to reduce building bulk (Section AA, plan 4.55 107).'*

The Section 4.55(2) report was required to assess the s4.55(2) application having regard to the following matters:

'Section 4.55(2)

- a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with—*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Review Comments: With regards to (a) above, the s.4.55(2) report convincingly demonstrated that the proposed modified development could be regarded as 'substantially the same development' by an examination of the proposal having regards to caselaw such as:-

- 1) ***Vacik Pty Ltd v Penrith City Council [1992] (NSWLEC 8)*** in the case of whether the 4.55(2) proposal was '**essentially, materially or has the same essence**' as the original development, and;
- 2) ***Moto Projects No 2 Pty Ltd v North Sydney Council [1999] (NSWLEC 280)***, which outlines a 'qualitative and quantitative' approach to comparing whether the original and proposed modifications are substantially the same development.

In relation to (b) above, the review rightly concluded that the proposal did not require referral to the Minister, or another public authority.

In relation to (c) and (d), the s.4.55(2) was notified in accordance with Council's protocol, and the initial notification did attract 6 objections on first public exhibition between 12-27 July 2024 and a further 2 objections on a second notification period between 23 October and 7 November 2024 (following the submission of minor amendments to the design and a view sharing analysis.)

The s.4.55(2) report took these submissions into consideration when coming to its recommendations. However, the proposal may not be considered substantially the same development if the pergola extension, garage and pool raising were approved without the associated conditions by the panel as these changes, in effect, bring the modification application into line with the key threshold test (of being 'substantially the same development') under s4.55 of the EP&A Act.

Furthermore, the inaccurate representation of landscaped area, site coverage and unbuilt upon area introduce doubt surrounding whether the proposal remains substantially the same development.

Section 4.55 (3)

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

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, were assessed by the report under the following headings:

'SEPP Biodiversity and Conservation 2021

Having regard to the SEPP's Chapter 6 – Regulated Catchments, the development as proposed to be modified is not considered to be detrimental to the harbour and will not unduly impose upon the character of the foreshore. Further, none of the modifications cause the development to impinge upon the foreshore area of the LEP, seaward of the foreshore building line. Compared to the approved development, the modifications do not significantly alter the appearance of the dwelling, when viewed from the waterway and adjacent land, used for residential, recreational and conservation purposes.'

Review Comments: The assessment against the SEPP is noted. However, a raised pool would create an adverse impact when viewed from the waterway and would also be noncompliant with Council's DCP. Therefore, the Panel's decision to delete the proposed raising of the pool by 900mm is agreed.

SEPP Resilience and Hazards 2021

'No modifications affect the previous assessment of the approved development regarding remediation of land.'

Review Comments: In view of the residential nature of the development a reasonable assessment of the SEPP has occurred as no new matters regarding contamination are likely to be relevant.

SEPP Sustainable Buildings 2022

'Given the nature of the works proposed, the modified development does not require a revised BASIX certificate.'

Review Comments: It is noted that Certificate number: 1065835S_04, lodged with the current review, is dated 20 December 2021, (an amended certificate of the original dated 17 March 2020).

Further s.4.15 matters concerning non-compliance with Council's Development Control Plan are noted below.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

1. Permissibility

2. Objectives of the zone

Review Comments: The section 4.55(2) assessment established that the proposed development was both permissible and consistent with the relevant objectives of the zone.

Part 4 – Principal Development Standards

The only Development Standard applicable to the current 4.55(2) modification is that of 'Height of Buildings'.

3. Height of Buildings

The proposed modifications (In particular the proposed pergola structure at the rear of the upper level) would have a height of 11.13m that fails to comply with the permissible height limit of 8.5m in accordance with clause 4.3 in *NSLEP 2013*.

The approved development has already been permitted height variations to the (proposed) garage/entry level structure and the roof structure to the upper floor level to facilitate generous, 4m+ ceiling heights to the living room.

The s.4.55(2) report acknowledged that a minor reduction in height was proposed in the area of the clerestory window (changed from 900mm to 600mm in height) and this would result in 'minor amenity improvements'. However, the further non-compliance of the upper floor level pergola, was not viewed favourably by the Panel.

The report devoted a number of pages to the issue, including a consideration of the proposed modification's performance against height standard objectives and included sections of the building from the originally submitted DA plans, plans issued with the operational consent, and plans submitted with the s.4.55(2) application and as amended to illustrate the issue.

The report also considered the pergola extension/height breach against the objectives of topography, views, solar access, privacy, compatibility and appropriate scale of the development.

Following consideration of the above, and taking into consideration adjoining properties, the report came to the conclusion that:-

‘Notwithstanding, the pergola is a new structure that adds to the perceived bulk when viewed from below at no. 56 Cowdroy. Given the inability to assess its full impacts as part of this modification, it is recommended for deletion. Refer to Condition C1. ‘

Review Comments: It is considered the Panel took a justifiable approach to this issue by supporting the recommended deletion of the pergola. It is to be noted that the ‘Height of Buildings’ development standard is a maximum standard. Not every development is obliged to achieve this numerical value.

Council has already accepted height variations to the current scheme and it should be noted that the proposed dwelling is a ‘new build’ which should comply with development standards and DCP policies, where possible.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

The proposal was considered by the Panel and conditioned accordingly to include only those matters they considered relevant to the s.4.55(2) application for modification under the following headings within NSDCP 2013, namely views, privacy parking and site coverage.

Views

The report considered the ‘view impact analysis’ submitted by the applicant and the Tenacity principles recognised by the NSW Land and Environment Court regarding the modifications, but primarily relating to the Upper Level Pergola extension.

The report noted that the neighbour at 56 Cowdroy Avenue would be the most affected with Nos 54C and 54D less so. The panel concluded that:-

‘As such, while the view impact may be satisfactory, the perceived bulk and scale is not, and therefore the pergola is recommended for deletion. Any structure over this balcony may be considered under a separate development application that considers all impacts, including, but not limited to, height and bulk and scale.’

Review Comments: It is considered that the Panel took an entirely justifiable view that the bulk and scale of the pergola extension is unacceptable and in addition to the previous consideration of its non-compliance with the height development standard, recommended that the pergola should be deleted.

The Panel report also suggested that:-

‘Any structure over this balcony may be considered under a separate development application that considers all impacts, including, but not limited to, height and bulk and scale.’

Although raised in the report, this was not included in the recommendations, unsurprisingly, as the report clearly found the pergola to also be in breach of the height development standard.

The Panel had no issue with the shorter fixed metal pergola projection of 900mm to the Mid-level rear deck and this is agreed.

Privacy

The assessment report found the change from a privacy screen to glass balustrade on the western elevation of the upper level rear terrace acceptable as it involved a 'trade off' between marginally reducing privacy and slightly improving views to 56 Cowdroy Avenue.

The report further noted the difference between floor levels between the proposed dwelling and adjoining properties, and the oblique angles to the living areas of neighbouring development would generally mitigate privacy impacts of the modifications. Design changes in an amended Condition C1 (a) and (b) were proposed to compensate for the changes proposed.

Review Comments: It is considered the assessment report has reasonably addressed the issue and noted the 'trade off' between privacy and views, and recommended additional design modifications to ameliorate the impacts whilst allowing the proposed amendments.

Swimming Pool

The modified plans sought to raise the height of the swimming pool by 900mm, so that pool enclosure is at the same RL as Lower Ground Floor FFL. The reason put forward for this change is to provide 'accessible access'. The sides of the pool structure are proposed to be concealed with a 'green wall.'

Section 1 - Residential Development of the NSDCP 2013

'1.5.10 Swimming pools and spas'

Provision P1 states:-

'Pools, spas and any associated structures (such as pool coping levels, surrounding decks and the like) are not to exceed 500mm above ground level (existing). Compliance with this requirement requires the applicant to illustrate the proposed RLs against spot RL's provided on the site survey plan.'

The previous report of 3 May 2023 that was considered by the Panel which led to the deferred commencement consent, required the pool coping to be lowered by 900mm to reduce the impact of retaining walls on adjoining properties and views from the foreshores and Sydney Harbour.

The Panel revisited the issue and compared levels on the subject and adjoining properties and at the meeting of 4 December 2024 resolved by condition that:-

'The swimming pool must remain as approved under DA60/22 and the plans endorsed on 14 November 2023, being no higher than RL10.10 and the proposed western wall to the pool must remain as approved under DA60/22.'

Review Comments: The Panel appears justified in taking this position as the pool currently projects several metres above natural ground level particularly on the western elevation and northern elevation facing the harbour. Previous Panel decisions have been consistent in requiring the coping level, (already non-compliant with the maximum 500mm requirement) to be retained at RL. 10.10. Swimming pools that project significantly above NGL create not only visual impacts, but noise and privacy impacts that require higher privacy screens, which, in turn, create their own issues for neighbours. The Panel's decision minimises adverse visual impacts when viewed from the waterway.

Site Coverage, Landscaped and Unbuilt upon Areas

(These issues are linked to the following Parking Issue, or more specifically, conversion of the carport into a garage.)

The current approved site coverage is 44%, landscaped area 40% and unbuilt upon area 16%.

However, it is relevant for the Panel to be aware that the site coverage, landscaped area and unbuilt upon plans submitted with this review include errors. In particular, the method of calculation does not align with Council's DCP requirements.

For example, some areas identified as landscaped area contain paving and some existing paving areas have not been included as unbuilt upon area. In addition, rainwater tanks sitting on the ground beneath the suspended car parking area have not been included in site coverage despite not being an 'exclusion' in Council's DCP.

This amounts to additional site coverage (over and beyond the non-compliant site coverage) of 49%, less landscaped area (below the required 40%) of 36.5% together with an increase in unbuilt upon area of 19%. For these reasons, the conditions imposed by the Panel in which to mitigate the impacts of the proposal are not considered to be sufficient in addressing the impacts from the proposal.

As the approved parking area is unroofed, it was previously counted as unbuilt upon area, however enclosing it, as proposed, would convert the roofed section to site coverage.

The Panel's report considered the issue and noted that *'the approved development already varies the numerical control by 10%'*. It found that:-

'Notwithstanding, the additional site coverage and the total degree of variation of this control (22.5%) is unacceptable, as the proposal fails to satisfy objectives, to balance built form with open space and to limit overdevelopment.'

Review Comments: The assessment report appropriately found that the level of site coverage is excessive. As no 'Floor Space Ratio' is applicable for the site, site coverage, landscaped area, unbuilt upon area, setbacks and maximum building heights control residential development in order to prevent overdevelopment. The proposal is a 'new build', and so, in theory, should comply with the applicable development standards and Council DCP provisions. The consent has already permitted variations to height and a number of DCP requirements, so the Panel's position on this issue is justifiable.

This issue has been raised as a matter of concern in correspondence from a nearby resident. Close review of the claims made by the applicant and relied upon by the panel in its earlier determination suggests that paving and stairs were claimed as landscape or unbuilt upon area where they are on review site coverage and/or unbuilt upon area.

The review suggests that the following figures are a more accurate representation:

Site cover claimed:	44%	Actual: 49% (increase of 5%).
Unbuilt upon claimed:	16%	Actual: 19% (increase of 3%).
Landscape claimed:	40%	Actual: 36.5% (decrease of 3.5 %).

If the current approval is upheld landscape area will decrease by 3.5% to 36.5% and unbuilt upon area will increase by 3% to 19% as approved paving will be converted to turf.

Furthermore, the rainwater tanks underneath the hardstand area would appear to add an additional 33m² of site coverage to the Applicant's original calculations further increasing the non-compliance.

Parking

The development was approved on the basis of the carparking area being open and not enclosed, so that site coverage (although non-compliant) could be acceptable.

To enclose the carport would essentially create part two/part three storey structure when viewed from neighbouring properties.

Whilst Council's assessment acknowledges a mixture of carports and garages in Cowdroy Avenue and Folly Point Road, it considered the objectives of the area including site coverage to control overdevelopment and the visual impact as not promoting the character desired for the neighbourhood.

Council's assessment found that in relation to the carport conversion to garage:-

'Notwithstanding, the additional site coverage and the total degree of variation of this control (22.5%) is unacceptable, as the proposal fails to satisfy objectives, to balance built form with open space and to limit overdevelopment.'

Review Comments: It is considered the Panel's report is justified in taking this stance as the site coverage variation is significant and the proposal is a 'new build' – meaning that it could have been designed from the outset to comply with these requirements. As no Floor Space Ratio is applicable, site coverage is an important control to prevent overdevelopment.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

ENVIRONMENTAL APPRAISAL

CONSIDERED

1.	Statutory Controls	Yes
2.	Policy Controls	Yes
3.	Design in relation to existing building and natural environment	Yes
4.	Landscaping/Open Space Provision	Yes
5.	Traffic generation and Carparking provision	Yes
6.	Loading and Servicing facilities	N/A
7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8.	Site Management Issues	N/A
9.	All relevant s.4.15/s.4.55 considerations of <i>Environmental Planning and Assessment Act 1979</i>	Yes

SUBMITTERS CONCERNS

The application for review was notified to adjoining properties and the precinct.

Whilst it is noted that at the close of the notification period, no formal submissions were received during the public exhibition period, there was internal correspondence between Council staff and the adjoining property owners of No. 56 Cowdroy Avenue, which reinforced their position on the proposed works and raised continued concerns over the numerical compliance of the approved development. This relates to site coverage, landscape area and unbuilt upon areas relied upon by the panel in its previous determinations made in regard to this site amongst other matters.

Further erosion of compliance with these controls is not supported.

PUBLIC INTEREST

The proposal is not considered to be in the public interest for the reasons stated throughout this report.

SUITABILITY OF THE SITE

The proposal would be located in a C4 Environmental Living zone under *NSLEP 2013* where dwelling houses and swimming pools are permissible forms of development.

However, the continued erosion of compliance with site coverage, landscaped area and unbuilt upon area controls is not supported and hinders the modification application proposal's ability to remain suitable for the site.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The Application was notified in accordance with Council's Community Engagement Protocol.

No formal submissions were received during the notification period. However, as mentioned herein, the direct adjoining property owners at No.56 Cowdroy have expressed their concerns of the review and overarching parent consent throughout the assessment period of the subject 8.2 Review Application. Their position on the approved and proposed works has been considered throughout the assessment process in the preceding consents, and subject application.

CONCLUSION

The matters for consideration of a review as outlined in section s.4.15(1), s.4.55 and s.8.3 of the Act have been satisfied. The proposed development is permissible and with the conditions previously imposed by the Local Planning Panel generally met the development standards and relevant provisions of *NSLEP 2013*. Consequently, the panel was justified in the conditional determination.

However, this review has highlighted inaccuracies and errors in the submitted review plans with respect to site coverage, landscaped area and unbuilt upon area and these further non-compliances together with the Applicant's proposed changes to the approval conditions (as originally imposed by the panel) would most likely result in unsatisfactory impacts having regard to s.4.15 of the EP&A Act - particularly when viewed from surrounding development and the public domain.

Consequently, it is recommended that the determination be changed, rather than confirmed and given that the submitted review plans have not adopted calculations that are aligned with NSDCP 2013, refusal of the modification application is appropriate in this instance.

RECOMMENDATION

PURSUANT TO SECTION 8.2(1) OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

THAT the North Sydney Local Planning Panel exercising the functions of Council as the consent authority change its decision and **refuse** development consent to DA No. 60/2022/2 for demolition of existing dwelling and ancillary structures and construction of a dwelling house and associated site works including a swimming pool on land at 58 Cowdroy Avenue, Cammeray under the provisions of Section 8.4 of the *Environmental Planning and Assessment Act 1979*, for the reasons outlined below:-

1. Substantially the Same

- a. The application is unacceptable pursuant to the provisions of s.4.15(1)(a)(i), (iii) and (b) of the *Environmental Planning and Assessment Act 1979* in that without the recommended conditions of consent as originally imposed, the modification proposal is no longer considered substantially the same development due to the bulk, scale and massing of the proposal and associated adverse amenity impacts on surrounding development and the public domain.

2. Bulk and Scale

- a. The application is unacceptable pursuant to the provisions of s.4.15(1)(a)(i) and (b) of the *Environmental Planning and Assessment Act 1979* as the height of the pergola of 11.13 metres would result in a breach of the maximum 'height of building' standard of 2.63m which would also impact on views (particularly from 56 Cowdroy Avenue to Middle Harbour), cause additional overshadowing and create streetscape/amenity/visual impacts.
- b. The application is unacceptable pursuant to the provisions of s.4.15(1)(a)(iii) and (b) of the *Environmental Planning and Assessment Act 1979* as the increase in the height of the pool will create unacceptable visual impacts when viewed from Middle Harbour and does not comply with Part B of NSDCP 2013.

3. Content of Application

- a. The application is unacceptable pursuant to the provisions of s.4.15(1)(a)(i), (iii), (iv) and (b) of the *Environmental Planning and Assessment Act 1979* having regard to clause 24 of the *Environmental Planning and Assessment Regulation 2021* and NSDCP 2013 as it contains inaccuracies and errors in the submitted review plans with respect to site coverage, landscaped area and unbuilt upon area.

4. Site Suitability

- a. The application is unacceptable pursuant to the provisions of s.4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* taking into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified, the site is no longer considered suitable for the development.

5. Public Interest

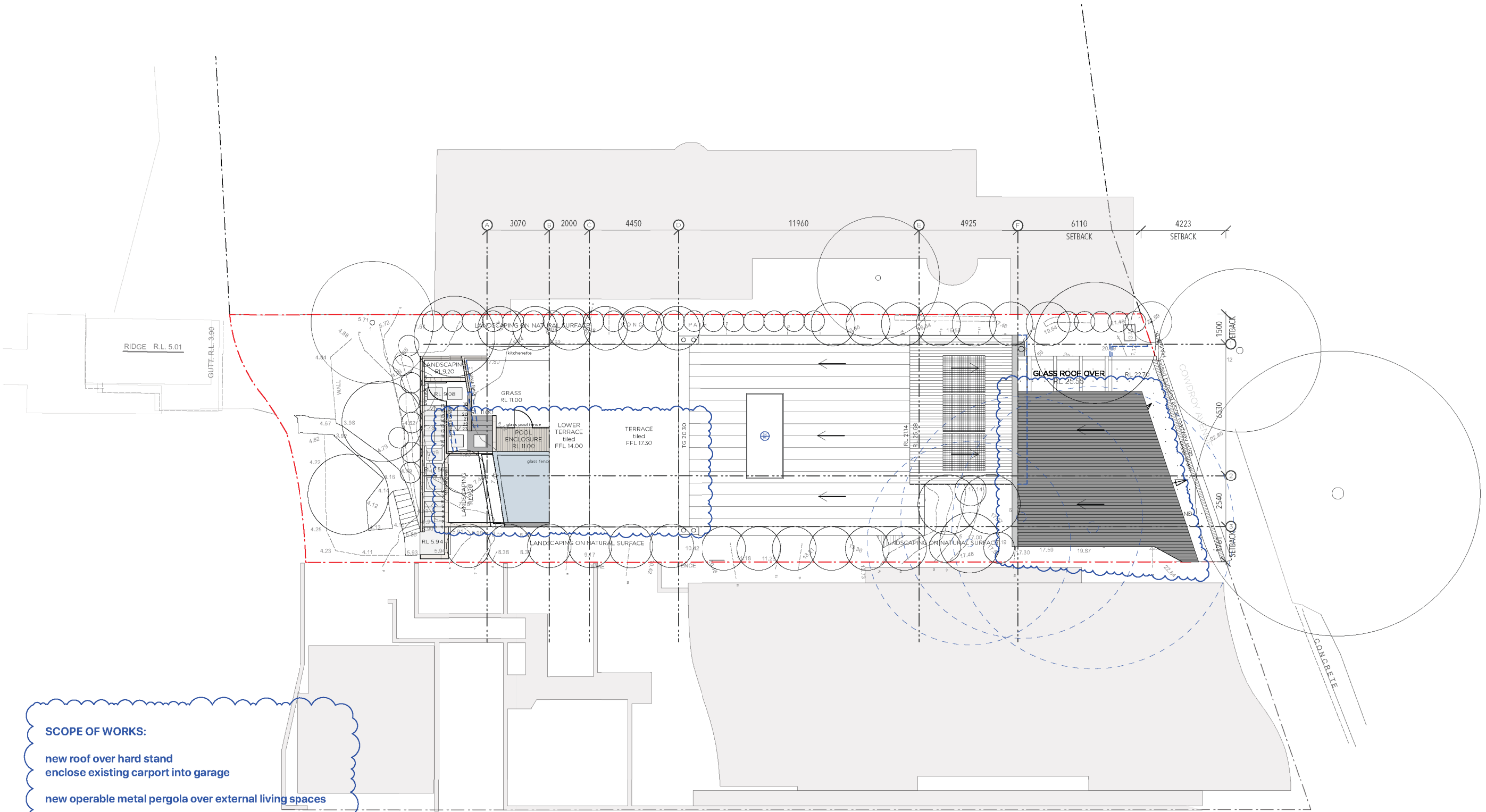
- a. The application is unacceptable pursuant to the provisions of s.4.15(1)(b)(e) of the *Environmental Planning and Assessment Act 1979* , particularly due to its impact on the public domain when viewed from the waterway and on surrounding development, including, but not limited to, No. 56 Cowdroy Avenue, Cammeray and the modified proposal does not satisfy the Objects of the EP&A Act.

JOHN MCFADDEN
CONSULTANT PLANNER

ISOBELLA LUCIC
TEAM LEADER ASSESSMENTS

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES

Managers Note: This report represents the views of the Consultant Planner following a detailed review. It represents an independent assessment of the review application and is placed on the Panels agenda on that basis. The Panel is requested have regard to the appeal currently on foot in relation to the parent application which is subject of this review in the conduct of the public component of the determination meeting.



SCOPE OF WORKS:

- new roof over hard stand
- enclose existing carport into garage
- new operable metal pergola over external living spaces
- new fixed metal pergola over external living spaces
- raise approved swimming pool 900mm so that it is accessible to LGF FFL

LEGEND.

EXISTING

MASONRY

TIMBER

STEEL

CONCRETE

CLADDING

METAL ROOFING/CLADDING

TIMBER FLOOR

CARPET FLOOR

TILE FLOOR

DECKING

S4.55 MOD TO DA_58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933)

PREPARED FOR PAUL + RENATA

COSO

ARCHITECTURE

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AMENDMENTS.	

DRAWING NAME.

SITE PLAN

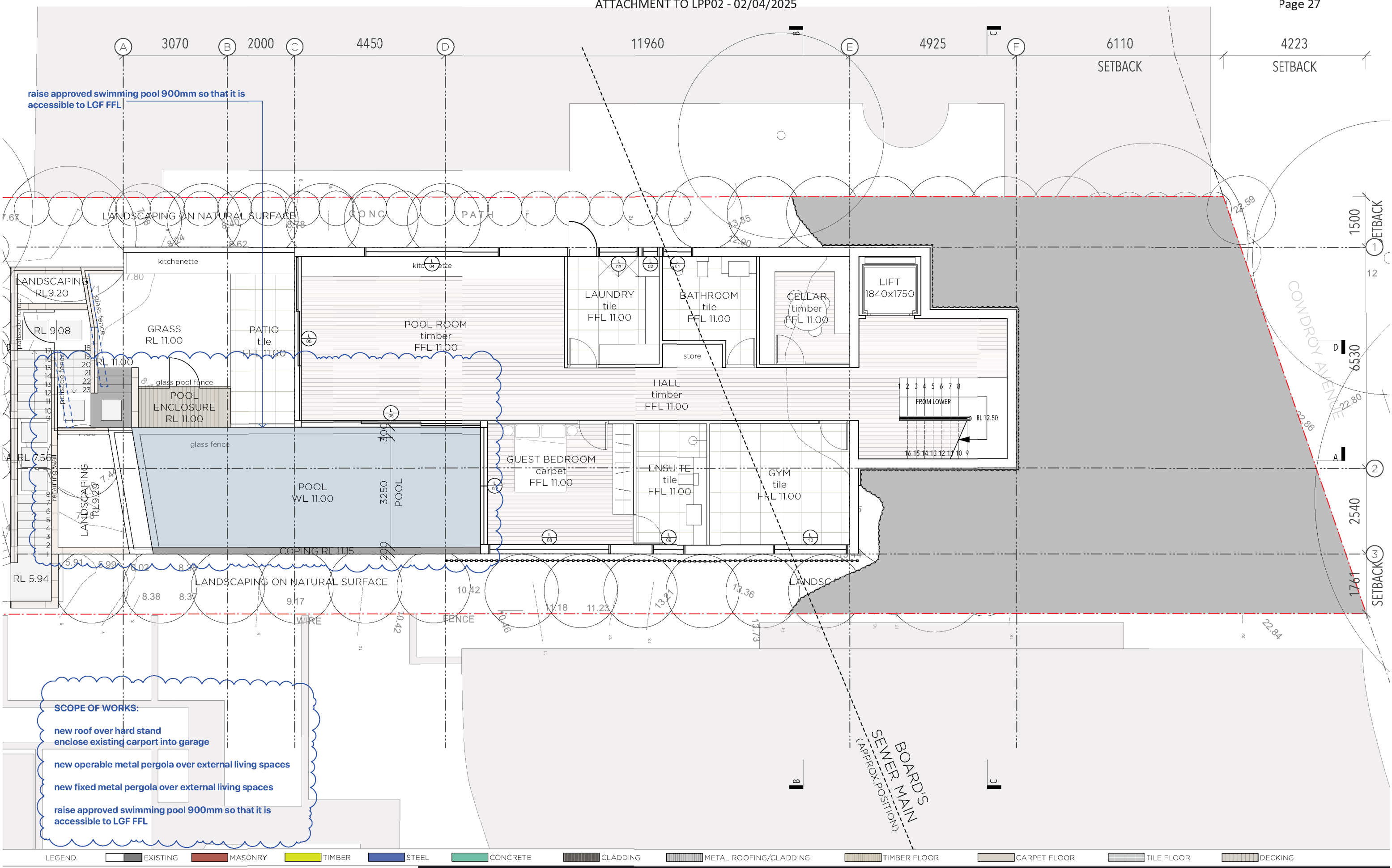
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REVISION. A



S4.55 MOD TO DA_58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933)

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AMENDMENTS.

DRAWING NAME.

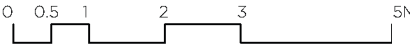
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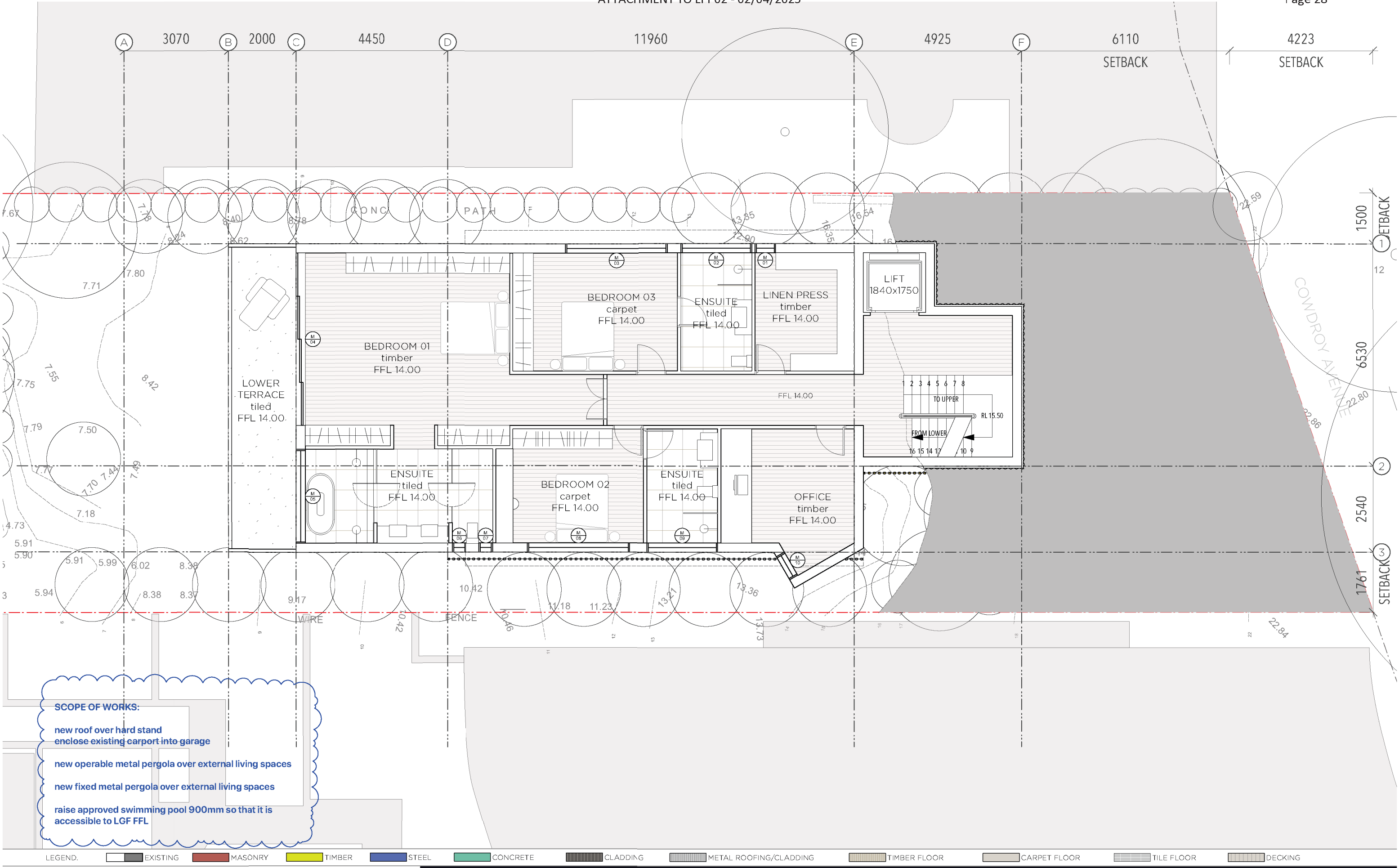
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REVISION. A





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S4.55 MOD TO DA_58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933)

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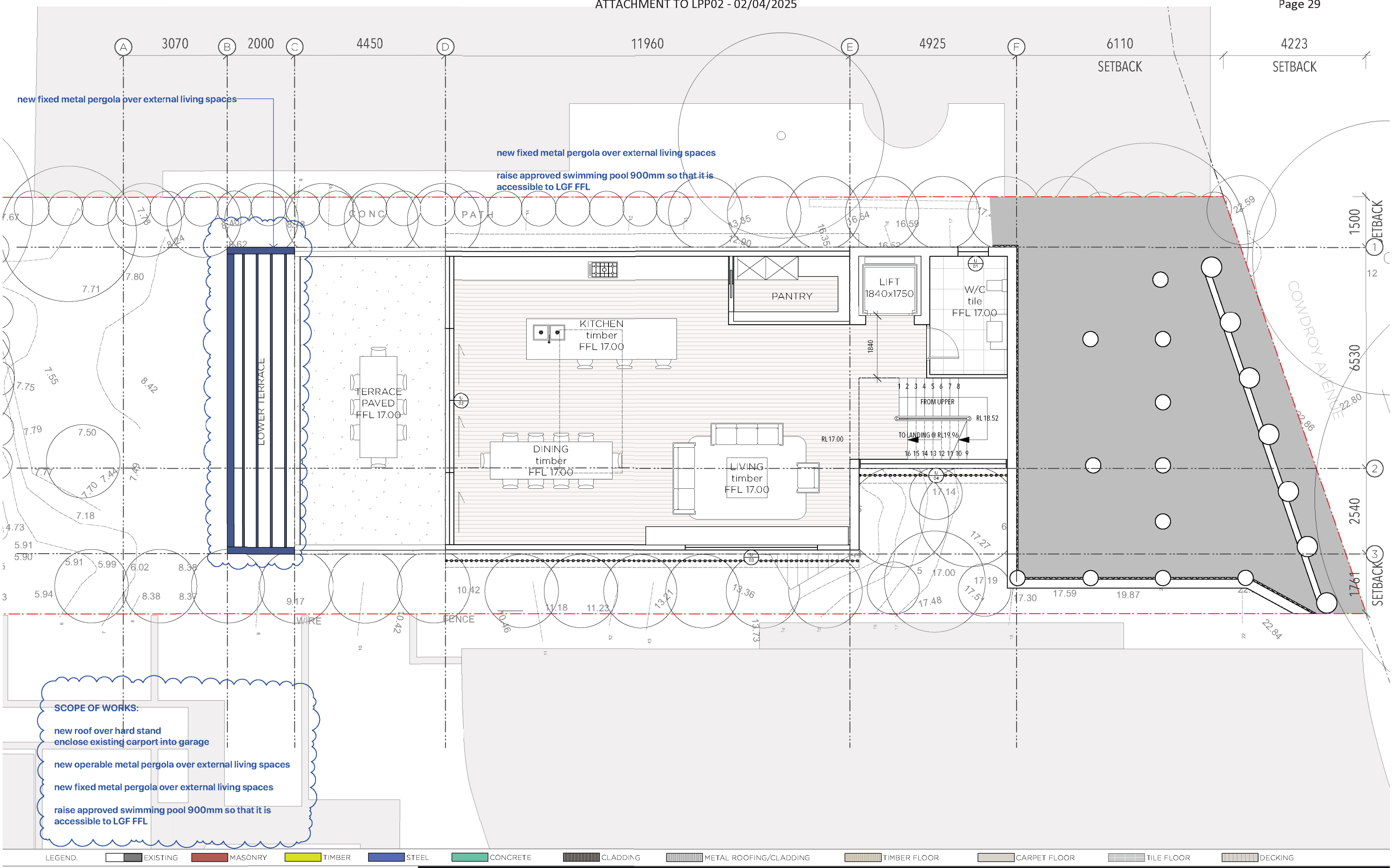
AMENDMENTS.

DRAWING NAME.
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4.55 103

REVISION. **A**



S4.55 MOD TO DA_58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933)

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AMENDMENTS.

DRAWING NAME.

UPPER LEVEL FLOOR PLAN

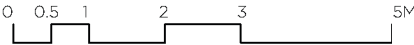
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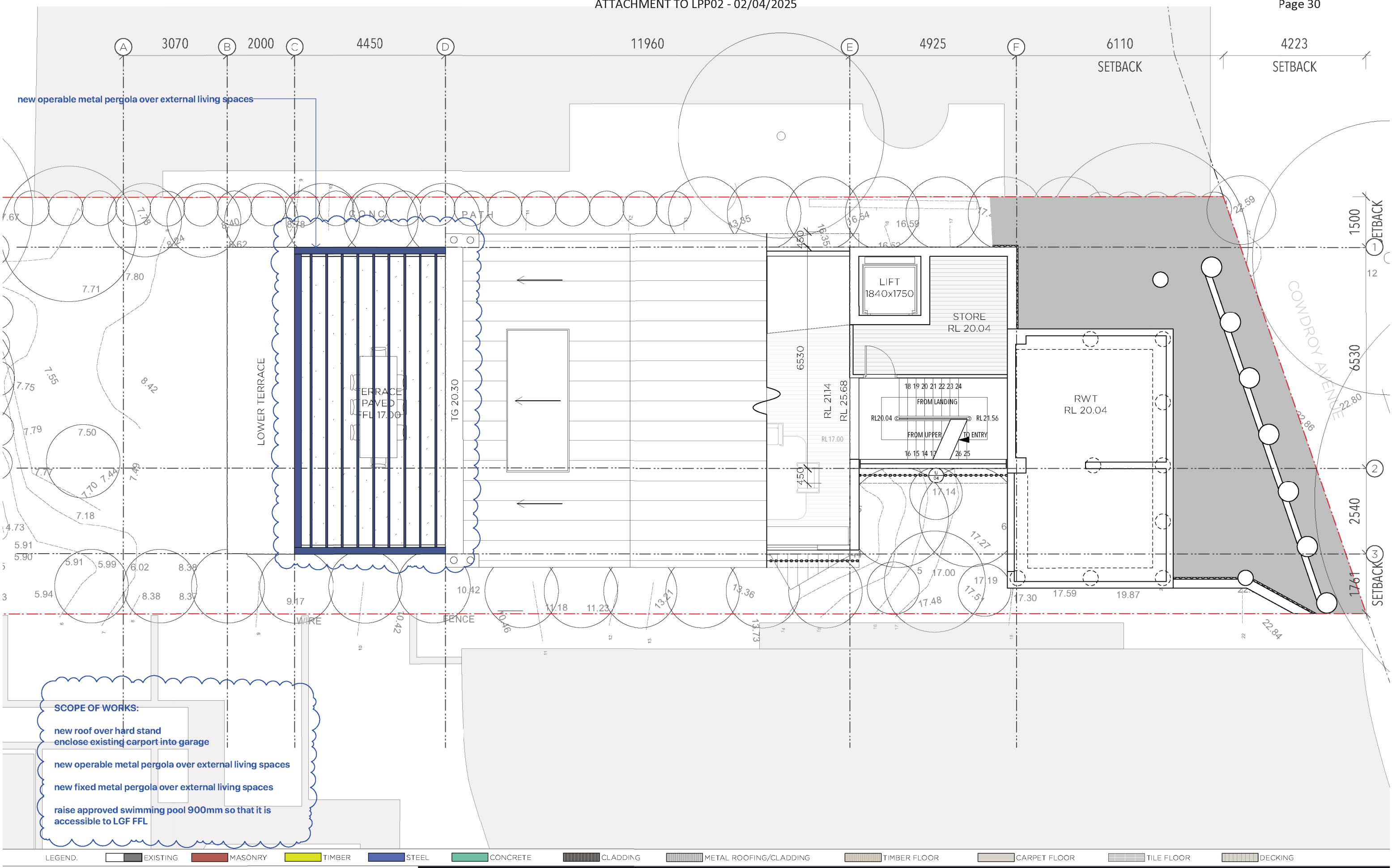


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REVISION. A





SCOPE OF WORKS:

- new roof over hard stand
- enclose existing carport into garage
- new operable metal pergola over external living spaces
- new fixed metal pergola over external living spaces
- raise approved swimming pool 900mm so that it is accessible to LGF FFL

S4.55 MOD TO DA_58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933)

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AMENDMENTS.

DRAWING NAME.

UPPER LEVEL FLOOR PLAN + 3m

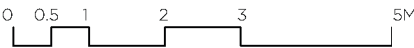
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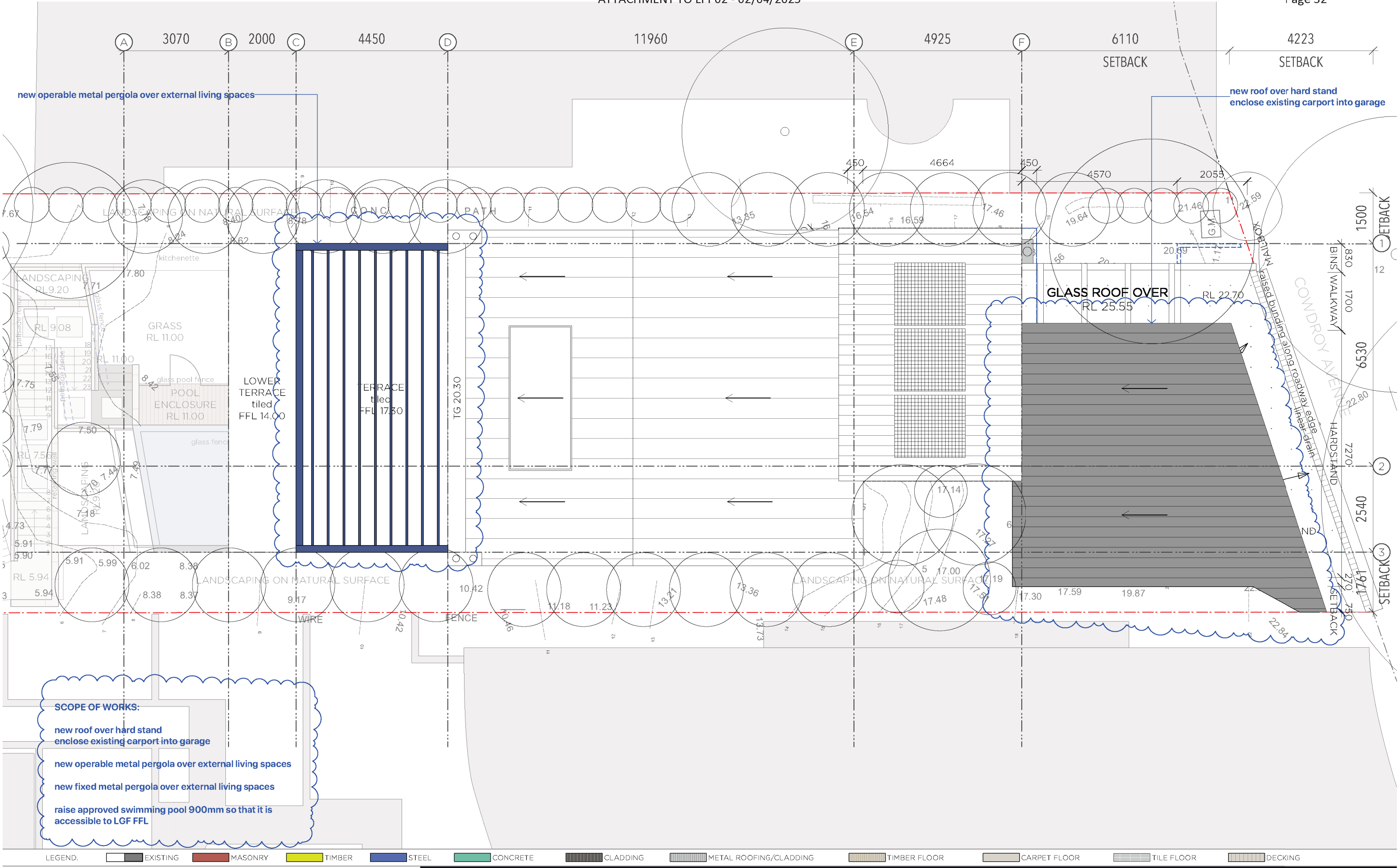
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REVISION. A





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Version: 1, Version Date: 24/12/2024



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enclose existing carport into garage
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LEGEND. EXISTING MASONRY TIMBER STEEL CONCRETE CLADDING METAL ROOFING/CLADDING TIMBER FLOOR CARPET FLOOR TILE FLOOR DECKING

S4.55 MOD TO DA 58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933) PREPARED FOR PAUL + RENATA



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AMENDMENTS.	

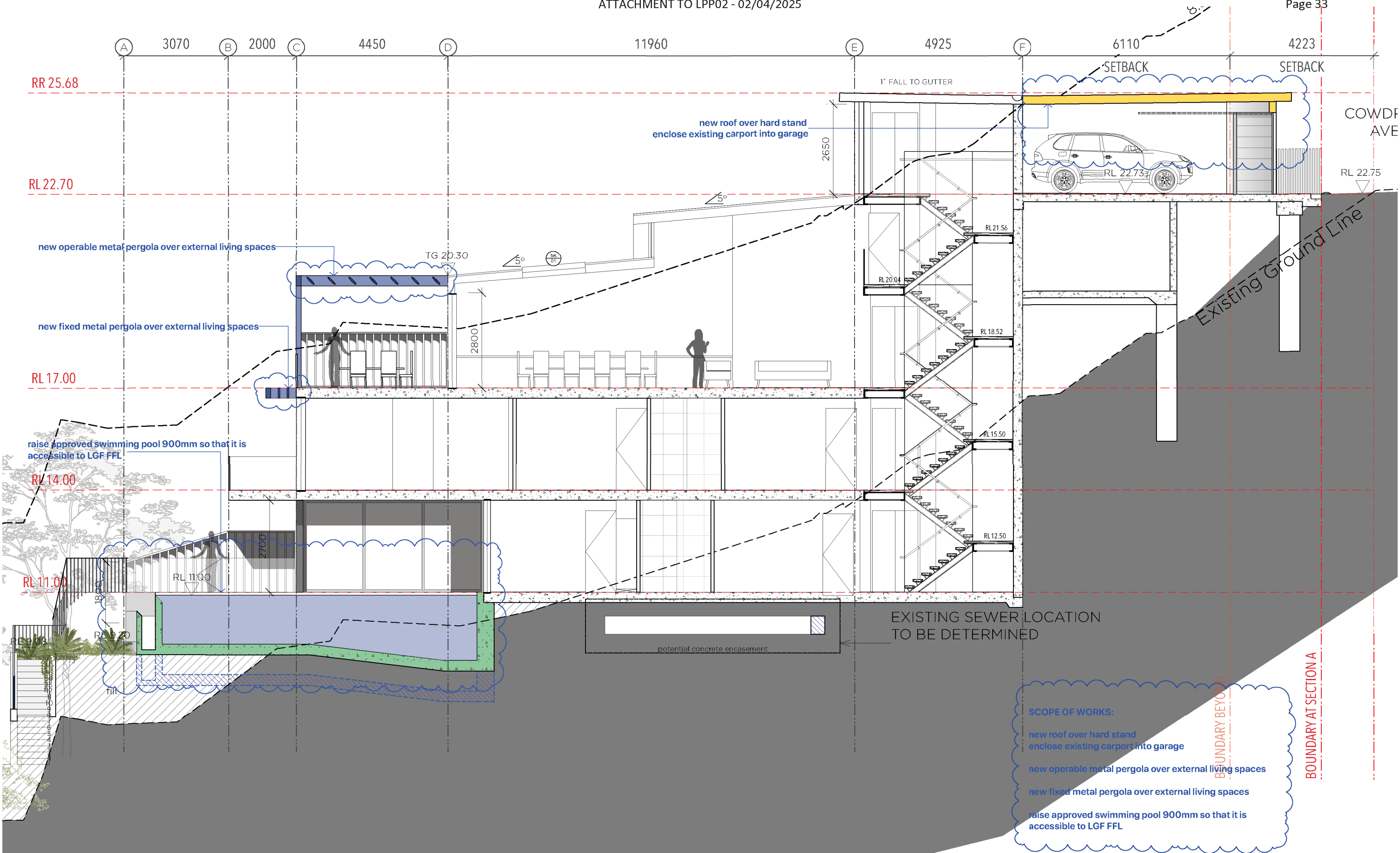
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REVISION. **A**



LEGEND: EXISTING MASONRY TIMBER STEEL CONCRETE CLADDING METAL ROOFING/CLADDING TIMBER FLOOR CARPET FLOOR TILE FLOOR DECKING

S4.55 MOD TO DA 58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933) PREPARED FOR PAUL + RENATA

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AMENDMENTS.	

DRAWING NAME:
SECTION AA

DATE: 01.02.2024
SCALE: 1:100 AT A3

DRAWING NO.
4.55 107

REVISION. **A**

0 0.5 1 2 3 5M

S4.55_MODIFICATION TO D60/22

58 COWDROY AVE, CAMMERAY 2062

AUGUST 2023

ARCHITECTURAL DRAWINGS

REV

ISSUE

DATE

BASIX COMMITMENTS

MOD 01	Site Plan	1:200	A	MOD	02.08.23
MOD 02	Lower Floor Plan	1:200	A	MOD	02.08.23
MOD 03	Mid Floor Plan	1:200	A	MOD	02.08.23
MOD 04	Upper Floor Plan	1:200	A	MOD	02.08.23
MOD 04A	Upper Floor Landing Plan	1:200	A	MOD	02.08.23
MOD 05	Entry Level	1:200	A	MOD	02.08.23
MOD 06	Roof Plan	1:200	A	MOD	02.08.23
MOD 07	Section AA	1:200	A	MOD	02.08.23
MOD 08	Section BB	1:200	A	MOD	02.08.23
MOD 09	Section CC	1:200	A	MOD	02.08.23
MOD 10	Section DD	1:200	A	MOD	02.08.23
MOD 11	Western Elevation	1:200	A	MOD	02.08.23
MOD 12	North Elevation	1:200	A	MOD	02.08.23
MOD 13	South Elevation	1:200	A	MOD	02.08.23
MOD 14	Eastern Elevation	1:200	A	MOD	02.08.23

MOD 15	9am Solstice Shadow Diagram	1:200
MOD 16	12pm Solstice Shadow Diagram	1:200
MOD 17	3pm Solstice Shadow Diagram	1:200
MOD 18	Solstice Elevation Diagram	1:200
MOD 19	Site Coverage Calculation	1:200
MOD 20	Materials Selections	--

S4.55 CHANGES MADE

- ADD GARAGE
- DELETE BIN STORE (NOW LOCATED INSIDE GARAGE)
- RAISE ENTRY RL TO MATCH DRIVEWAY/GARAGE FFL
- INCREASE UPPER FLOOR LEVEL ROOF PITCH
- ADD 900MM AWNING OVER WINDOWS ON MID FLOOR LEVEL

FURTHER DISCUSSION ITEMS TO INCLUDE?

- SECOND SKYLIGHT OVER KITCHEN?
- SKYLIGHT OVER STAIR VOID IN PLACE OF SOLAR?
- RAISE POOL HEIGHT TO LOWER FLOOR PLAN FFL?
- ADD PERGOLA TO UPPER FLOOR BALCONY (WINDOW U02)
- UPDATE BASIX AS NECESSARY

NOTES: TO INCLUDE?

- LGF WINDOW ENS 09 TO BE MADE LONGER?
- GYM WINDOW TO BE MADE LONGER HIGHLIGHT?

DATE	REV	ISSUE
AUG 2022	REV A	CLIENT REVIEW

S4.55_MODIFICATION TO D60/22

58 COWDROY AVE, CAMMERAY 2062

AUGUST 2023

ARCHITECTURAL DRAWINGS

REV ISSUE DATE

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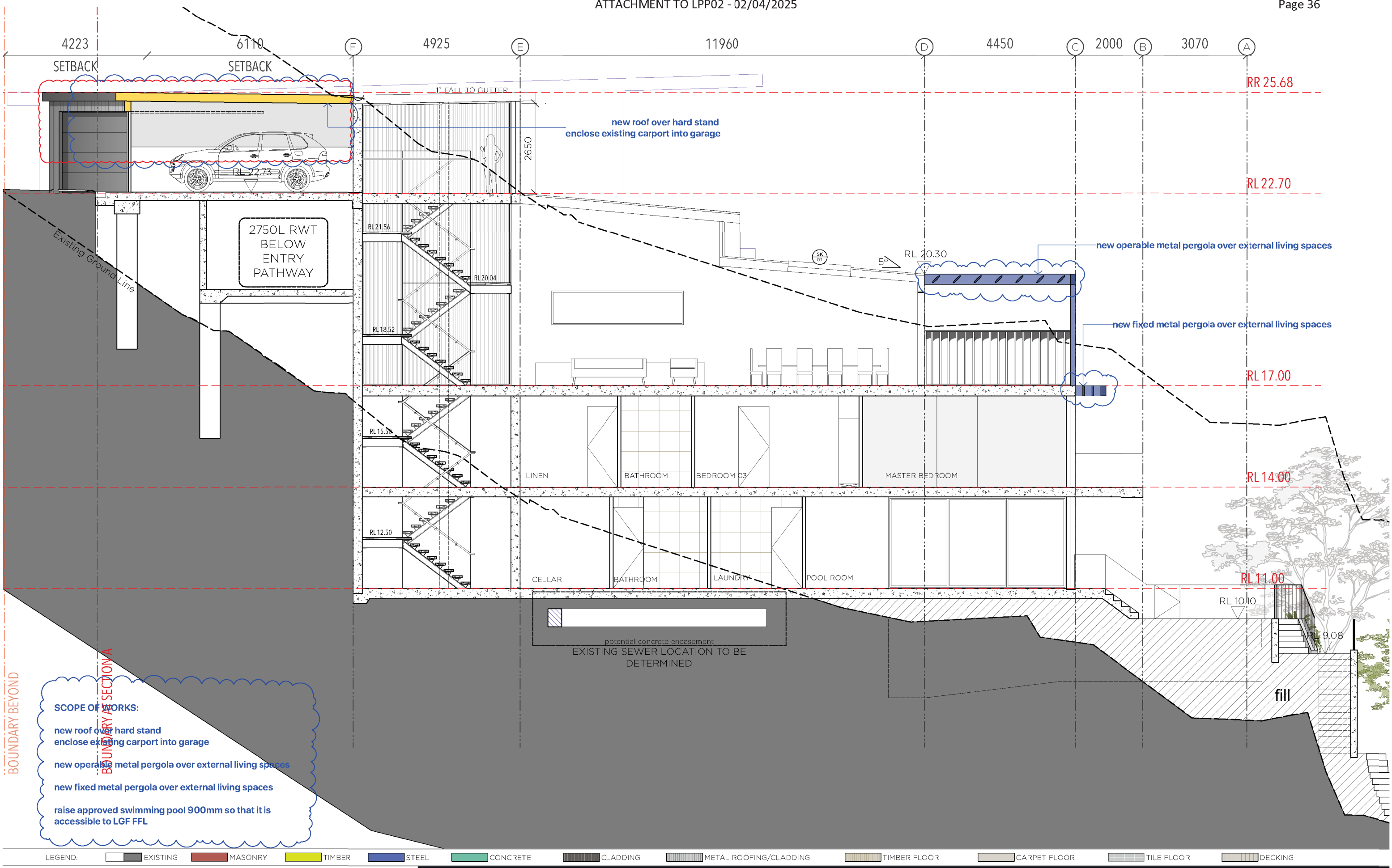
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- UPDATE BASIX AS NECESSARY

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DATE	REV	ISSUE
AUG 2022	REV A	CLIENT REVIEW



S4.55 MOD TO DA_58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933)

PREPARED FOR PAUL + RENATA



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AMENDMENTS.	

DRAWING NAME.
SECTION DD

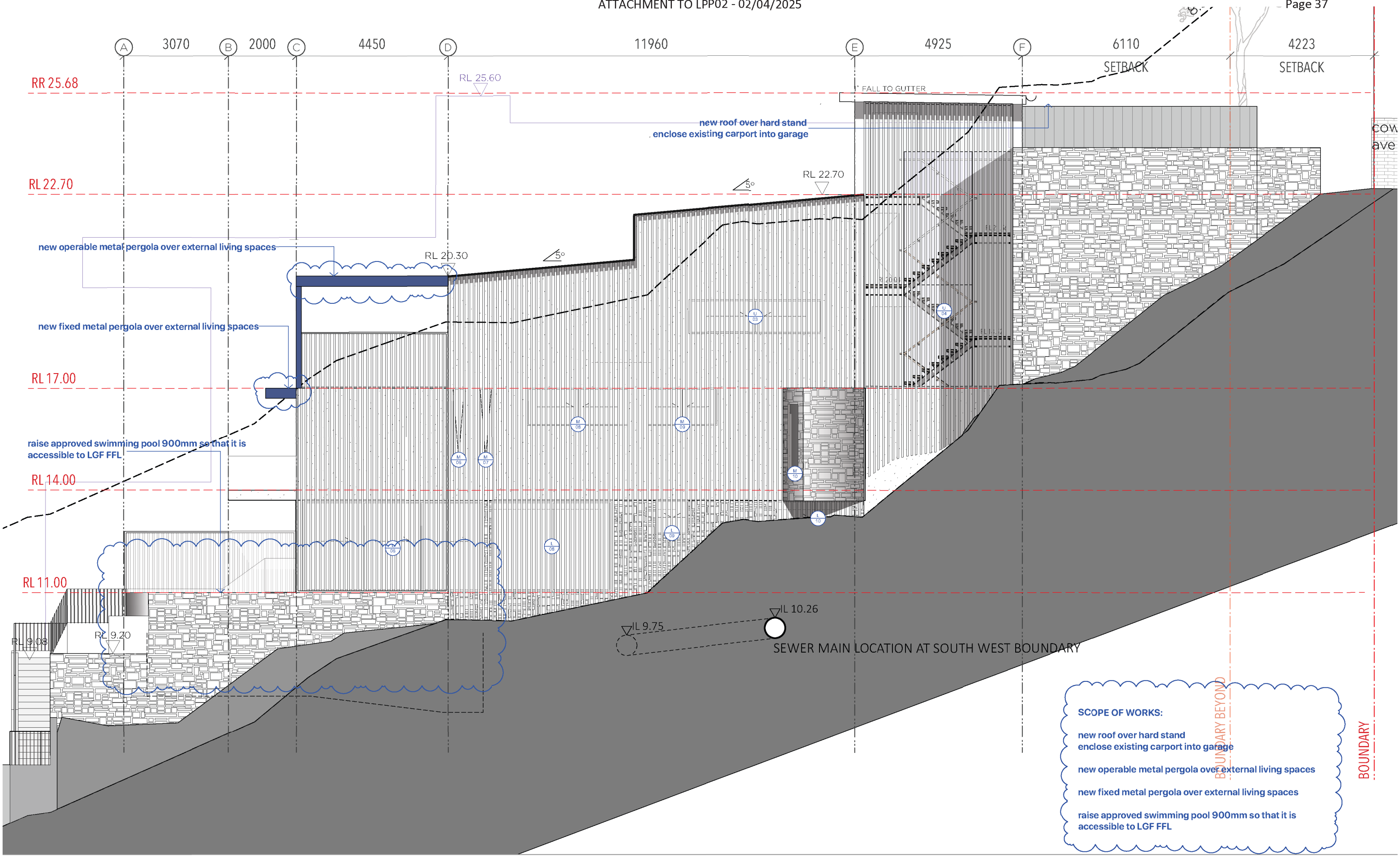
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4.55 110

REVISION. **A**



SCOPE OF WORKS:

- new roof over hard stand enclose existing carport into garage
- new operable metal pergola over external living spaces
- new fixed metal pergola over external living spaces
- raise approved swimming pool 900mm so that it is accessible to LGF FFL

LEGEND. EXISTING MASONRY TIMBER STEEL CONCRETE CLADDING METAL ROOFING/CLADDING TIMBER FLOOR CARPET FLOOR TILE FLOOR DECKING

S4.55 MOD TO DA_58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933)

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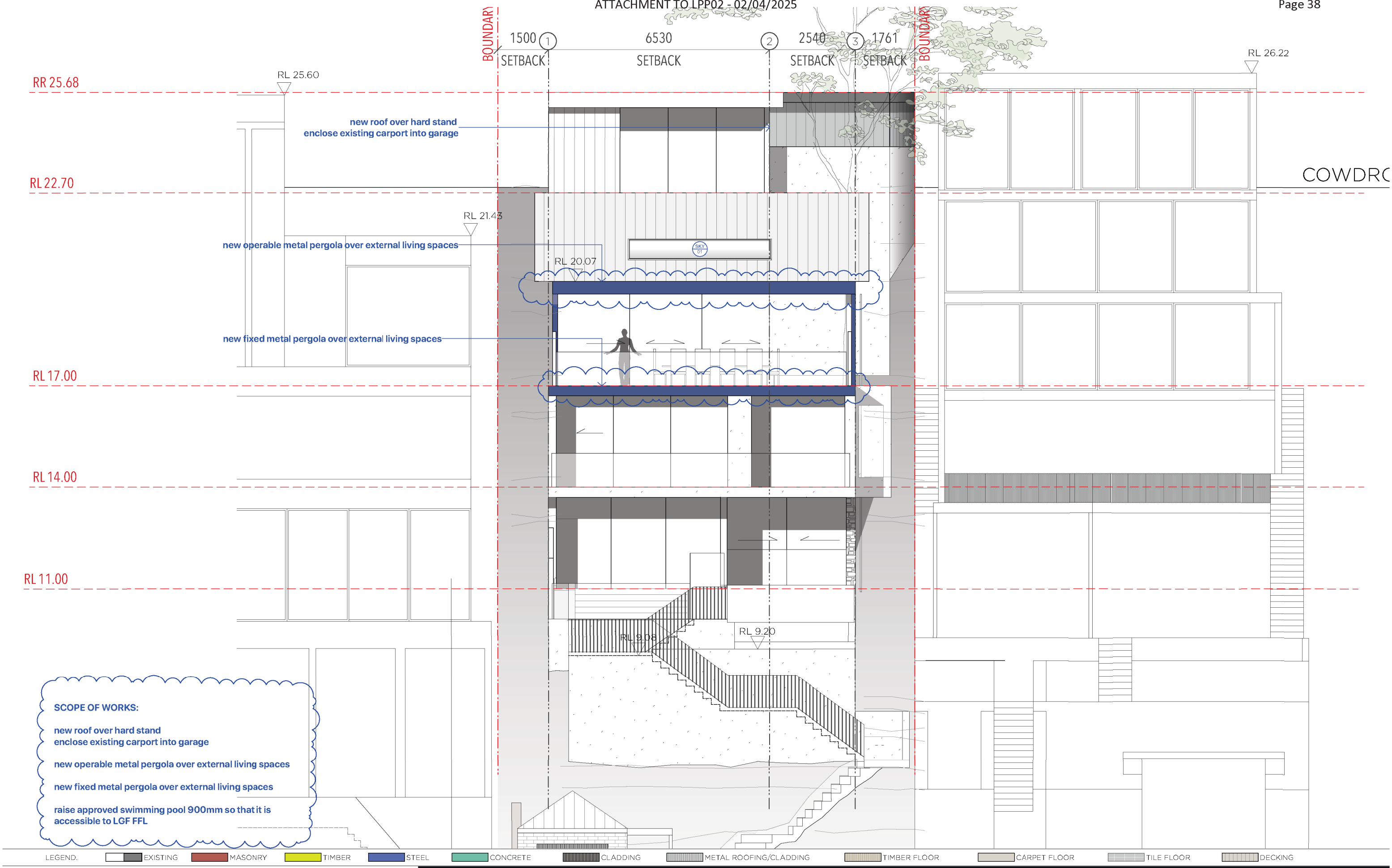
DRAWING NAME.
WEST ELEVATION

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DATE. 01.06.2023
SCALE. 1:100 AT A3

DRAWING NO.
4.55 111

REVISION. **A**



S4.55 MOD TO DA 58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933)

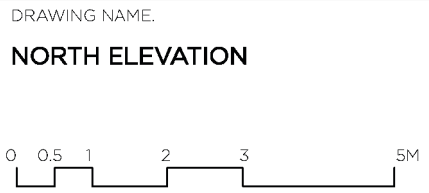
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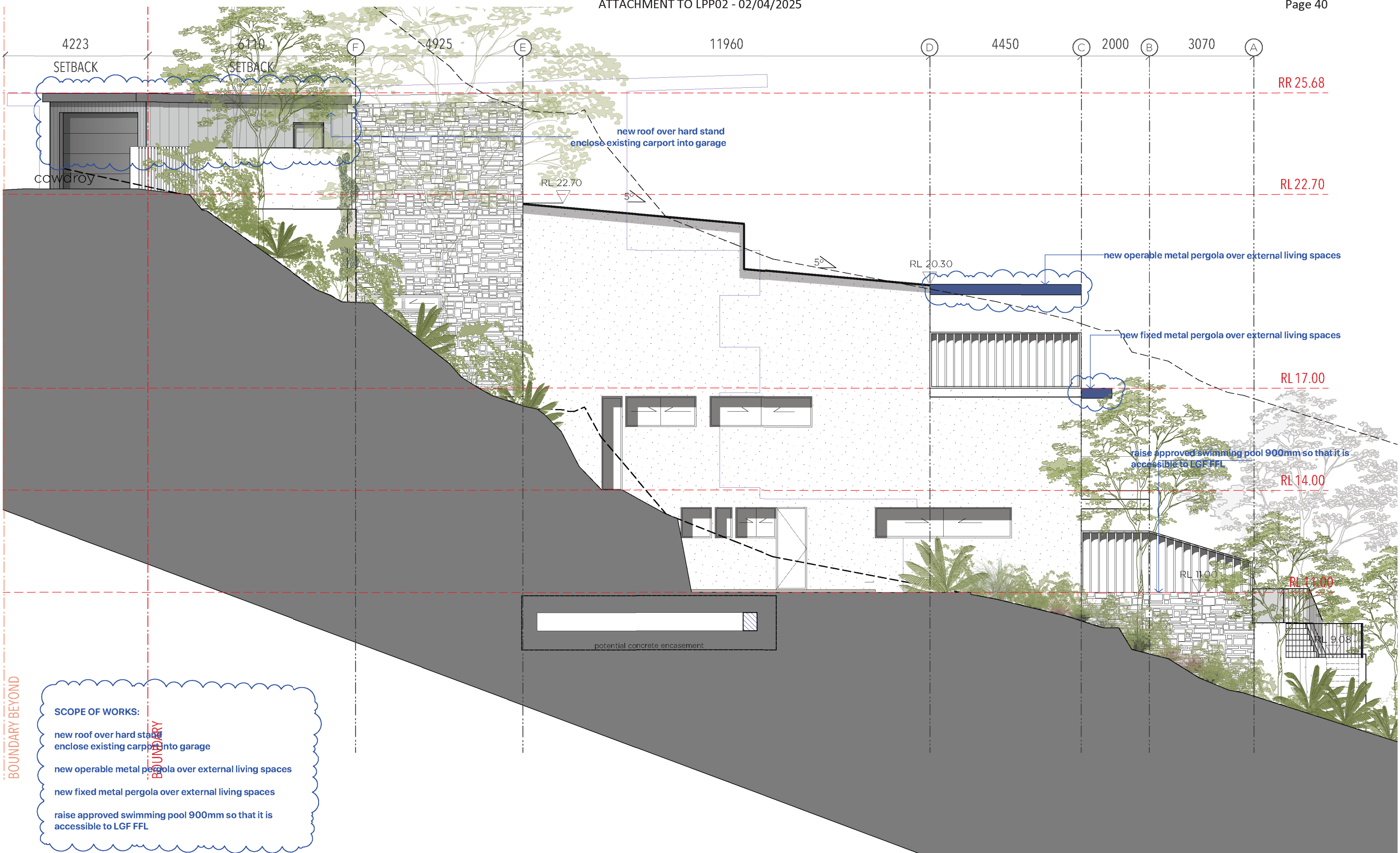
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4.55 112

REVISION. **A**



Document Set ID: 10274223
Version: 1, Version Date: 24/12/2024



COSO

ARCHITECTURE

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S4.55 MOD TO DA_58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933)

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AMENDMENTS.	

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EAST ELEVATION

DATE: 01.06.2023

SCALE: 1:100 AT A3

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DRAWING NO.

4.55 114

REVISION.

A

BASIX[®]Certificate

Building Sustainability Index www.basix.nsw.gov.au

Single Dwelling

Certificate number: 1065835S_04

This certificate confirms that the proposed development will meet the NSW government's requirements for sustainability, if it is built in accordance with the commitments set out below. Terms used in this certificate, or in the commitments, have the meaning given by the document entitled "BASIX Definitions" dated 10/09/2020 published by the Department. This document is available at www.basix.nsw.gov.au

This certificate is a revision of certificate number 1065835S lodged with the consent authority or certifier on 17 March 2020 with application DA56/20.

It is the responsibility of the applicant to verify with the consent authority that the original, or any revised certificate, complies with the requirements of Schedule 1 Clause 2A, 4A or 6A of the Environmental Planning and Assessment Regulation 2000

Secretary

Date of issue: Monday, 20 December 2021

To be valid, this certificate must be lodged within 3 months of the date of issue.



Planning,
Industry &
Environment

Project summary

Project name	58 Cowdroy Ave C011_04
Street address	58 Cowdroy Avenue Cammeray 2062
Local Government Area	North Sydney Council
Plan type and plan number	deposited 8933
Lot no.	33
Section no.	-
Project type	separate dwelling house
No. of bedrooms	6

Project score

Water	✓ 40	Target 40
Thermal Comfort	✓ Pass	Target Pass
Energy	✓ 50	Target 50




Certificate Prepared by

Name / Company Name: Gradwell Consulting

ABN (if applicable): 68 872 791 784

Description of project

Project address	
Project name	58 Cowdroy Ave C011_04
Street address	58 Cowdroy Avenue Cammeray 2062
Local Government Area	North Sydney Council
Plan type and plan number	Deposited Plan 8933
Lot no.	33
Section no.	-
Project type	
Project type	separate dwelling house
No. of bedrooms	6
Site details	
Site area (m²)	556
Roof area (m²)	267
Conditioned floor area (m2)	398.0
Unconditioned floor area (m2)	69.0
Total area of garden and lawn (m2)	160

Assessor details and thermal loads		
Assessor number	DMN/12/1451	
Certificate number	0005563853	
Climate zone	56	
Area adjusted cooling load (MJ/m².year)	18	
Area adjusted heating load (MJ/m².year)	39	
Ceiling fan in at least one bedroom	No	
Ceiling fan in at least one living room or other conditioned area	No	
Project score		
Water	 40	Target 40
Thermal Comfort	 Pass	Target Pass
Energy	 50	Target 50

Schedule of BASIX commitments

The commitments set out below regulate how the proposed development is to be carried out. It is a condition of any development consent granted, or complying development certificate issued, for the proposed development, that BASIX commitments be complied with.

Water Commitments	Show on DA plans	Show on CC/CDC plans & specs	Certifier check
Fixtures			
The applicant must install showerheads with a minimum rating of 3 star (> 6 but <= 7.5 L/min) in all showers in the development.		✓	✓
The applicant must install a toilet flushing system with a minimum rating of 4 star in each toilet in the development.		✓	✓
The applicant must install taps with a minimum rating of 4 star in the kitchen in the development.		✓	
The applicant must install basin taps with a minimum rating of 4 star in each bathroom in the development.		✓	
Alternative water			
Rainwater tank			
The applicant must install a rainwater tank of at least 2750 litres on the site. This rainwater tank must meet, and be installed in accordance with, the requirements of all applicable regulatory authorities.	✓	✓	✓
The applicant must configure the rainwater tank to collect rain runoff from at least 267 square metres of the roof area of the development (excluding the area of the roof which drains to any stormwater tank or private dam).		✓	✓
The applicant must connect the rainwater tank to: <ul style="list-style-type: none"> all toilets in the development at least one outdoor tap in the development (Note: NSW Health does not recommend that rainwater be used for human consumption in areas with potable water supply.) a tap that is located within 10 metres of the swimming pool in the development 		✓ ✓ ✓	✓ ✓ ✓
Swimming pool			
The swimming pool must not have a volume greater than 47.7 kilolitres.	✓	✓	
The swimming pool must have a pool cover.		✓	

Water Commitments

The swimming pool must be outdoors.

Show on
DA plans



Show on CC/CDC
plans & specs


























Certifier
check

Thermal Comfort Commitments	Show on DA plans	Show on CC/CDC plans & specs	Certifier check
Simulation Method			
The applicant must attach the certificate referred to under "Assessor Details" on the front page of this BASIX certificate (the "Assessor Certificate") to the development application and construction certificate application for the proposed development (or, if the applicant is applying for a complying development certificate for the proposed development, to that application). The applicant must also attach the Assessor Certificate to the application for an occupation certificate for the proposed development.			
The Assessor Certificate must have been issued by an Accredited Assessor in accordance with the Thermal Comfort Protocol.			
The details of the proposed development on the Assessor Certificate must be consistent with the details shown in this BASIX certificate, including the Cooling and Heating loads shown on the front page of this certificate.			
The applicant must show on the plans accompanying the development application for the proposed development, all matters which the Assessor Certificate requires to be shown on those plans. Those plans must bear a stamp of endorsement from the Accredited Assessor to certify that this is the case. The applicant must show on the plans accompanying the application for a construction certificate (or complying development certificate, if applicable), all thermal performance specifications set out in the Assessor Certificate, and all aspects of the proposed development which were used to calculate those specifications.	✓	✓	✓
The applicant must construct the development in accordance with all thermal performance specifications set out in the Assessor Certificate, and in accordance with those aspects of the development application or application for a complying development certificate which were used to calculate those specifications.		✓	✓
The applicant must construct the floors and walls of the dwelling in accordance with the specifications listed in the table below.	✓	✓	✓


Floor and wall construction	Area
floor - concrete slab on ground	All or part of floor area square metres


Energy Commitments	Show on DA plans	Show on CC/CDC plans & specs	Certifier check
Hot water			
The applicant must install the following hot water system in the development, or a system with a higher energy rating: gas instantaneous with a performance of 5 stars.	✓	✓	✓
Cooling system			
The applicant must install the following cooling system, or a system with a higher energy rating, in at least 1 living area: 1-phase airconditioning; Energy rating: 2.5 Star (old label)		✓	✓
The applicant must install the following cooling system, or a system with a higher energy rating, in at least 1 bedroom: 1-phase airconditioning; Energy rating: 2.5 Star (old label)		✓	✓
The cooling system must provide for day/night zoning between living areas and bedrooms.		✓	✓
Heating system			
The applicant must install the following heating system, or a system with a higher energy rating, in at least 1 living area: 1-phase airconditioning; Energy rating: 2.5 Star (old label)		✓	✓
The applicant must install the following heating system, or a system with a higher energy rating, in at least 1 bedroom: 1-phase airconditioning; Energy rating: 2.5 Star (old label)		✓	✓
The heating system must provide for day/night zoning between living areas and bedrooms.		✓	✓
Ventilation			
The applicant must install the following exhaust systems in the development:			
At least 1 Bathroom: individual fan, ducted to façade or roof; Operation control: manual switch on/off		✓	✓
Kitchen: individual fan, ducted to façade or roof; Operation control: manual switch on/off		✓	✓
Laundry: individual fan, ducted to façade or roof; Operation control: manual switch on/off		✓	✓
Artificial lighting			
The applicant must ensure that the "primary type of artificial lighting" is fluorescent or light emitting diode (LED) lighting in each of the following rooms, and where the word "dedicated" appears, the fittings for those lights must only be capable of accepting fluorescent or light emitting diode (LED) lamps:			
<ul style="list-style-type: none"> at least 4 of the bedrooms / study; dedicated 		✓	✓


Energy Commitments	Show on DA plans	Show on CC/CDC plans & specs	Certifier check
<ul style="list-style-type: none"> at least 1 of the living / dining rooms; dedicated the kitchen; dedicated all bathrooms/toilets; dedicated the laundry; dedicated all hallways; dedicated 		    	    
Natural lighting			
The applicant must install a window and/or skylight in the kitchen of the dwelling for natural lighting.			
The applicant must install a window and/or skylight in 6 bathroom(s)/toilet(s) in the development for natural lighting.			
Swimming pool			
The applicant must install the following heating system for the swimming pool in the development (or alternatively must not install any heating system for the swimming pool): solar (gas boosted)			
The applicant must install a timer for the swimming pool pump in the development.			
Alternative energy			
The applicant must install a photovoltaic system with the capacity to generate at least 1.9 peak kilowatts of electricity as part of the development. The applicant must connect this system to the development's electrical system.			
Other			
The applicant must install a gas cooktop & gas oven in the kitchen of the dwelling.			
The applicant must install a fixed outdoor clothes drying line as part of the development.			

Legend

In these commitments, "applicant" means the person carrying out the development.

Commitments identified with a  in the "Show on DA plans" column must be shown on the plans accompanying the development application for the proposed development (if a development application is to be lodged for the proposed development).

Commitments identified with a  in the "Show on CC/CDC plans and specs" column must be shown in the plans and specifications accompanying the application for a construction certificate / complying development certificate for the proposed development.

Commitments identified with a  in the "Certifier check" column must be certified by a certifying authority as having been fulfilled, before a final occupation certificate (either interim or final) for the development may be issued.



S4.55(2) APPLICATION PLANNING REPORT

58 Cowdroy Avenue,
CAMMERAY

16 May 2024



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1.0 INTRODUCTION

1.1 This Planning Report accompanies a Section 4.55(2) application to amend the approved development at 58 Cowdroy Ave, Cammeray. The application is submitted to North Sydney Council on behalf of the owners of the property.

1.2 DA60/22 was approved by the North Sydney Local Planning Panel on 3 May 2023 for the following development:

Demolition of existing dwelling and associated works and construction of a dwelling house and associated works.

1.3 The consent was issued as a deferred commencement and the deferred commencement conditions were satisfied on 104 November 2023.

1.4 This application seeks to amend the approved dwelling as follows:

- New roof over the hard stand parking area to enclose carport into a garage
- New operable metal louvre pergola over part of the external living spaces
- New fixed metal pergola over part of the external living spaces
- Raise the height of the swimming pool by 900mm so that pool enclosure is at same RL as Lower Ground Floor FFL to provide accessible access. The sides of the pool structure will be concealed with a green wall.

1.5 This report provides information on the subject site, the proposed development and undertakes an assessment against the relevant heads of consideration set out in the Environmental Planning and Assessment Act 1979. The amended development is considered to be substantially the same development and this will be further addressed in Section 4 of this report.

2.0 SITE DESCRIPTION

Subject Site

- 2.1 The subject site is located in the local government area of North Sydney Council. It has street frontage to Cowdroy Road and water frontage to Long Bay.
- 2.2 The site is positioned on the northern side of Cowdroy Avenue and to the east of the intersection between Cowdroy Avenue and Folly Point.
- 2.3 The site is legally described as Lot 33 DP 8933 and Lot 1 DP 583587. The site is irregular in shape and extends towards the north-east corner of the site, where there is an existing boatshed and jetty.
- 2.4 The site has a steep slope from the Cowdroy Avenue (south) down towards Long Bay, located to the north, the fall is approximately 22 metres. This level change is typical across the residential lots to the east and west, as the properties all have water frontage to Long Bay. The slope represents a constraint for redevelopment within this locality and predominantly results in dwellings stepping down the site to minimise impacts.
- 2.5 The site has the following frontages:
 - Cowdroy Ave (south) = 13m
 - Water frontage (north) = 13m
 - East boundary = 44.875m
 - West Boundary = 45.305m
- 2.6 Eight (8) trees exist on the subject site, with an additional four (4) in close proximity to the subject site, these have been included in the proposed drawings.
- 2.7 The surrounding locality is shown in Figure 1 below:

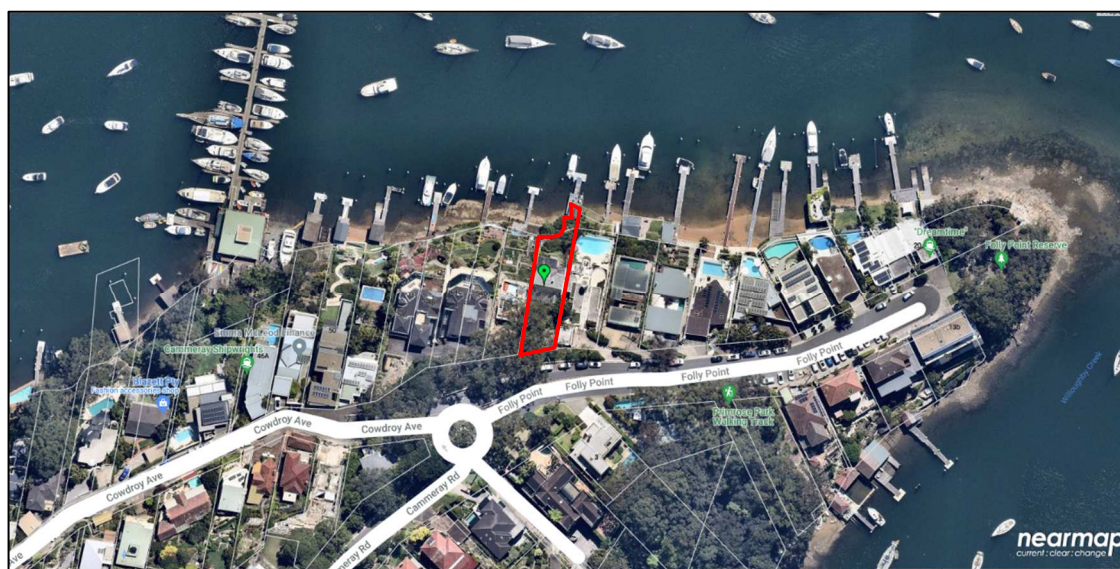


Figure 1: Aerial of site locality (Source: Nearmap)

- 2.8 The site is located within a residential area containing a high proportion of multi-level detached residential dwellings with some semi-detached dwellings.
- 2.9 The subject site contains a split level brick dwelling positioned at the mid-point the allotment. A suspended carport is positioned at the front of the property, adjacent to Cowdroy Avenue. A boatshed, jetty, floating pontoon and mooring pen are located along the water's edge.
- 2.10 The proximity and relationship with surrounding properties is shown in Figure 2 below:



Figure 2: Site (Source: Nearmap)

3.0 PROPOSED AMENDMENTS & JUSTIFICATION

3.1 This Section 4.55(2) application seeks to modify DA60/22 as follows:

- New roof over the hard stand parking area to enclose carport into a garage
- New operable metal louvre pergola over part of the external living spaces
- New fixed metal pergola over part of the external living spaces
- Raise the height of the swimming pool by 900mm so that pool enclosure is at same RL as Lower Ground Floor FFL to provide accessible access. The sides of the pool structure will be concealed with a green wall.

3.2 The following provides a more detailed discussion and justification of the proposed amendments:

Conversion of carport to garage

3.3 As approved the DA provided for an open carport and two parking spaces with a turntable. It is proposed to amend the approved development to provide a garage instead of an open carport. The provision of a garage is highly consistent with the exiting streetscape.

3.4 The dwelling next door to the west at 56 Cowdroy has an attached double garage at zero setback to Cowdroy Ave. 2 Folly Point to the east has a double garage. Cowdroy Street is dominated by garages, most are double garages.

3.5 The provision of a garage will improve safety and security for the residents and maintain consistency with the streetscape. The garage sits below the permitted height control.

Pergolas to external living Space

3.6 It is proposed to provide two external shade structures.

- A fixed metal pergola over the small terrace to the mid level floor plan; and
- An operable metal pergola over the upper level floor plan

3.7 The internal living areas and outdoor areas will be impacted by the harsh western sun in the afternoon. This will increase cooling costs in the summer. The inclusion of light weight structures that can provide some sun and harsh weather protection will enhance the residential amenity by protecting residents against harmful UV rays that can lead to melanoma. The larger pergola includes operable louvres that will enable the occupant to open and close to allow the winter sun to penetrate but shield the harsh summer sun.

3.8 There are no enclosing walls and therefore the minimal structures will not adversely impact views or shadow impacts to adjoining properties.

- 3.9 The operable pergola will breach the height control as this is an extension of the roof to the living area that as approved breached the height control. This variation was deemed appropriate and the addition of the pergola is also considered reasonable. The variation to the height control is further addressed in Section 4 LEP assessment.

Height of swimming pool

- 3.10 As approved a condition was imposed as a deferred commencement that required the lowering of the swimming pool as follows:

Condition AA1 (2)

- c) The swimming pool coping level, retaining walls and planter beds surrounding the swimming pool are to be lowered (and or/the pool may be re-oriented). The swimming pool coping level shall be reduced to generally comply with the requirements of Part B Section 1 Control 1.5.10 to the North Sydney Development Control Plan 2013. The swimming pool and associated structures must be setback a minimum 1.2m from the side boundaries. Screen planting is to be provided between the pool and the western site boundary. Details shall be indicated on the amended Landscape Plan.
- d) The landscaped area immediately north of the swimming pool and patio area currently shown at RL 9.8 (approx.) shall include cascading plants along the northern edge of the retaining wall.

- 3.11 The plans were amended to address the above condition and deferred commencement approval granted on 14 November 2023. This application seeks to amend the plans to remove the requirement to lower the height of the pool. The lowering of the pool means that the water level is 900mm lower than the adjacent patio that provides access. This is a very unsafe arrangement, especially for younger children using the pool. This increases safety risks as there is no direct access to the water level from the adjacent patio. It also makes it difficult for older or disabled persons to access. The arrangement does not work from a practicality and safety perspective and therefore we request this requirement be removed.
- 3.12 The swimming pool is located in excess of the required 1.2m setback as required from the condition. The setback is 1.76 meters which provides additional area for landscaping. No change is proposed to the landscape screening requirements between the pool and the side boundary. A new green wall is proposed to the side of the pool to enhance its visual outlook from the neighbouring property.

Amendments to Conditions

- 3.13 As a result of these modification, the following conditions will need to be amended:
- Condition A1 to reflect the amended plans that form part of this application.
- 3.14 There are no other conditions that require amendment as a result of this application. It is noted that the deferred commencement Conditions and in particular Condition

AA1(2)(c) was addressed. We are now seeking to remove this requirement. As the condition was addressed, the condition does not require removal, the change is shown on the amended plans. We have no objection to the deletion of this condition if deemed necessary.

4.0 ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979 ASSESSMENT

4.1 Consideration of Section 4.55 Applications

4.1.1 This Section 4.55(2) application is not subject to the complying, prohibited, designated, or advertised development provisions of the Act. There are no issues relating to endangered flora or fauna, watercourses or bush fire.

4.1.2 The application is submitted pursuant to the provisions of Section 4.55(2) of the Act which states:

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

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

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

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

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

4.1.3 An assessment of the requirements of Section 4.55(2) is contained in the following section.

4.1.4 The Environmental Planning and Assessment Act 1979, requires the assessment of development proposals against the relevant 'heads of consideration' set out in Section 4.15 and the requirements of 4.55(2) of the EPA Act. These are addressed below.

4.2 Requirements of Section 4.55(2)

- 4.2.1 The proposed amendments are considered to satisfy the test for a section 4.55(2) application for the following reasons:

Substantially the same development

- 4.2.2 Whether a development is substantially the same development is a question of fact. This involves a qualitative and quantitative analysis. The analysis involves a comparison between the development as modified and the development originally approved. In the case of *Scrap Realty v Botany Bay City Council* [2008] the Chief Judge described the exercise as being:

“The power of a consent authority to modify a consent is a power to alter without radical transformation of a consent”

- 4.2.3 The comparison of the approved v proposed development is both as qualitative and quantitative.
- 4.2.4 In terms to the quantitative analysis, the test for substantially the same development does not limit the change that may occur. The question is whether the difference would radically transform the consent. Notwithstanding the amendments proposed, the development consent remains substantially the same as originally approved. It facilitates the demolition of the existing dwelling and construction of a new dwelling house. The modifications do not change the intensity of development or key approved elements of the dwelling such as height, floor space, setbacks and overall bulk and scale.
- 4.2.5 In terms of the qualitative analysis, the development stills involves the construction of a new dwelling with the same number of levels, bedrooms, living areas and design.
- 4.2.6 This modification embodies the essence of the original consent. It is therefore considered that the impacts of the development are not substantially different.
- 4.2.7 The application as amended is considered ‘substantially the same development’ and therefore meets the test under Section 4.55(1A) of the Environmental Planning & Assessment Act 1979.

Notification of the amendments

- 4.2.8 Council will notify the amendments as required by the Council’s notification policy.

Any submissions made

- 4.1.5 Given the nature of the amendments which will have no increased impacts on adjoining properties, it is unlikely this modification would generate submissions.

4.2 Planning Controls and Regulations

- 4.2.9 The relevant planning controls applicable to the development application are listed below:

- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Housing) 2021
- State Environmental Planning Policy (BASIX) 2007
- State Environmental Planning Policy (Coastal Management) 2018
- Deemed SEPP – Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- North Sydney Local Environment Plan 2013
- North Sydney Development Control Plan 2013

- 4.2.10 Compliance with the provisions of the above-mentioned planning controls is discussed below.

State Environmental Planning Policy (Resilience and Hazards) 2021

- 4.2.11 State Environmental Planning Policy (Resilience and Hazards) provides a framework for the assessment, management and remediation of contaminated land.

- 4.2.12 The site contains residential uses and is unlikely to be contaminated based on historical uses. The site is considered suitable for the continued residential use.

- 4.2.13 There is no further change as a result of this modification.

State Environmental Planning Policy (Building Sustainability Index) 2004

- 4.2.14 State Environmental Planning Policy (BASIX) 2004 applies to all residential dwellings. It is an online assessment process that requires a development to meet water and energy targets. There are no amendments that form part of this application that require an amended BASIX assessment. The submitted BASIX assessment remains unchanged.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

- 4.2.15 The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 applies to the subject site.

- 4.2.16 The aims of this Policy are:

- (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and*
- (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.*

4.2.17 Council may authorise vegetation clearing provided that:

- (a) The clearing does not exceed the biodiversity offsets scheme threshold.*
- (b) Vegetation is not part of a heritage item or within a heritage conservation area.*
- (c) Vegetation is not part of an Aboriginal object or that is an Aboriginal place of significance.*

4.2.18 There are no changes under this modification that impact the clearing of vegetation.

State Environmental Planning Policy (Coastal Management) 2018

4.2.19 The State Environmental Planning Policy (Coastal Management) 2018 applies to the subject site, as the subject site is identified as being within the Coastal Environment Area and Coastal Use Area.

4.2.20 There are no changes under this modification that impact the clearing of vegetation.

Deemed SEPP – Sydney Regional Environmental Plan (Sydney Harbour Catchment)

4.2.21 The aims of the deemed SEPP are as follows:

- (1) This plan has the following aims with respect to the Sydney Harbour Catchment—*
 - a) to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained—*
 - i. as an outstanding natural asset, and*
 - ii. as a public asset of national and heritage significance, for existing and future generations,*
 - b) to ensure a healthy, sustainable environment on land and water,*
 - c) to achieve a high quality and ecologically sustainable urban environment,*
 - d) to ensure a prosperous working harbour and an effective transport corridor,*
 - e) to encourage a culturally rich and vibrant place for people,*
 - f) to ensure accessibility to and along Sydney Harbour and its foreshores,*
 - g) to ensure the protection, maintenance and rehabilitation of watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity,*
 - h) to provide a consolidated, simplified and updated legislative framework for future planning.*
- (2) For the purpose of enabling these aims to be achieved in relation to the Foreshores and Waterways Area, this plan adopts the following principles—*

- a) *Sydney Harbour is to be recognised as a public resource, owned by the public, to be protected for the public good,*
- b) *the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores,*
- c) *protection of the natural assets of Sydney Harbour has precedence over all other interests.*

4.2.22 There are no changes under this modification that impact the clearing of vegetation.

North Sydney Local Environmental Plan 2013

Zoning

4.2.23 The subject site is zoned E4 Environmental Living pursuant to the provisions of the LEP. The proposed development is defined as 'dwelling house' which continues to be permissible with development consent.

4.2.24 The primary objectives of the C4 zone are:

- (a) To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- (b) To ensure that residential development does not have an adverse effect on those values.*
- (c) To ensure that a high level of residential amenity is achieved and maintained.*

4.2.25 The amendments sought under this application have no impact on compliance with the objectives of the zone. The amendments will enhance the residential of the dwelling without increasing any impacts to adjoining properties.

Minimum Lot Sizes

4.2.26 Clause 4.1A of the LEP requires a minimum lot size of 450m².

4.2.27 The subject site is 556m² in size and is not affected by this modification.

Height

4.2.28 Clause 4.3 of the LEP specifies the maximum Height of Buildings and objectives for development. The subject site has a maximum height limit of 8.5 metres under the LEP.

4.2.29 The approved height of the dwelling was 10.75 metres which exceeded the height control. This application does not change the approved height of the dwelling. The new garage is below the permitted height control.

4.2.30 The additional of the operable metal pergola on the upper level floor plan will breach the height control. As this is a modification pursuant to Section 4.55 of the Environmental Planning and Assessment Act, the provisions of Clause 4.6 do not

apply. In any event the proposed height is justified and considered reasonable in the following assessment.

4.2.31 The internal living areas and outdoor areas will be impacted by the harsh western sun in the afternoon. This will increase cooling costs in the summer. The inclusion of the light weight pergola structure will provide some sun and harsh weather protection to enable the useability of the spaces. This enhances the residential amenity for the occupants. The pergola that breaches the height control includes operable louvres that will enable the occupant to open and close to allow the winter sun to penetrate but shield the harsh summer sun. The pergola has simple support structures at the corners and no enclosing walls. Therefore in my opinion notwithstanding the breach to the height control, will not adversely impact views or shadow impacts to adjoining properties.

4.2.32 The operable pergola will breach the height control as this is an extension of the roof to the living area that as approved breached the height control. This variation was deemed appropriate and the addition of the pergola is also considered reasonable.

4.2.33 The pergola is located on a part of the site that has varying existing ground levels. They range from approximately RL 13.44 to RL 16.35. The change inground level RL's happens sporadically due to the ground improvements, introduction of stairs etc that have been made on site. Therefore the variation is also sporadic and ranges due to spot levels between approximately 1.6m to 4.5 metres. This not a fair representation of the variation due to these varying spot levels but provides a true account of the variation. Notwithstanding this breach, the development as modified meets the objectives of the height control as follows:

(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,

4.2.34 The form of the dwelling considers and adapts to the natural fall of the land. The dwelling has been designed over multiple levels to work with the natural topography and steps down to follow this natural gradient. The introduction of the pergola improves the amenity of the dwelling but maintains the steeping of the overall building form.

(b) to promote the retention and, if appropriate, sharing of existing views,

4.2.35 The dwelling has been designed to ensure high levels of view sharing for adjacent dwellings. The form of the dwelling considers and adapts to the natural fall of the land. Given the lightweight nature of the pergola, it will not have an increased adverse impact on view sharing.

(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,

4.2.36 The shadow diagrams demonstrate that notwithstanding the approved variation to the height control, the adjacent properties receive the required 3 hours of solar access

between the hours of 9am to 3pm to the main living areas and open space. The introduction of the pergola does not change the compliant solar access given the nature of the structure.

(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,

4.2.37 The dwelling has been designed with its primary orientation to the north towards the water which assists in minimising potential impacts to neighbouring dwellings. The side elevations have been treated with a combination of features to ensure a high level of privacy including highlight windows to the eastern elevation and the incorporation of timber louvres to the western elevation. The DA consent requires additional screening to the side elevation. The introduction of the pergola will have no impact on maintaining privacy.

(e) to ensure compatibility between development, particularly at zone boundaries,

4.2.38 The site is not located at the zone boundary. It is still compatible with the scale and height of the surrounding dwellings.

(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,

4.2.39 The desired future character of the Cammeray Neighbourhood is to maintain the low-density residential living with lower density along the foreshore. Buildings near the foreshore areas should address the waterway and be designed to follow the slope of land. The form, scale and density of the proposed dwelling as approved conforms with the desired future character of the area. The building is of an appropriate scale to ensure the low density character of the area is maintained. The introduction of the pergola does not impact this.

*(g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.**

*It is noted that as of 1 December 2021 the reference to E4 Environmental Living is now referred to as C4 Environmental Living.

4.2.40 The dwelling achieves a built form that is complimentary to the slope of the land. The central portion of the dwelling sits over three storeys; however, this maintains a consistent built form that steps down towards the north. The built form presents as a one storey dwelling to Cowdroy Avenue. The variation to the height of the pergola does not impact the stepping to the water or the single storey presentation to Cowdroy Ave.

4.2.41 For the reasons discussed above, the variation to the height control will still achieve the building height objectives. It is therefore considered that the proposed height (that is not subject to Clause 4.6) still achieves the intent of the provisions and is appropriate on this site.

Floor Space Ratio

4.2.42 Clause 4.4 of the LEP provides for the maximum floor space ratio (FSR). This clause does not apply to the subject site.

Exceptions to Development Standards

4.2.43 As this is a modification application the requirements of Clause 4.6 do not apply.

Heritage Conservation

4.2.44 Clause 5.10 of the LEP outlines the requirements for development of or within close proximity of heritage items and within or nearby heritage conservation areas. The subject site is not heritage listed, is not located near a listed heritage items and is not within a conservation area.

Limited Development on Foreshore

4.2.45 The subject site is identified as being affected by a foreshore building line, as shown in Figure 3 below:



Figure 3: Subject site and foreshore building line (shown in pink) (Source: NSW Government Eplanning Spatial Viewer)

4.2.46 The objective of this clause is:

to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.

4.2.47 Development may be granted, within the foreshore area, for the following purposes only:

- (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,*
- (b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,*
- (c) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

4.2.48 However, the consent authority needs to be satisfied the development will:

- not have any adverse impacts by way of environmental harm;
- Satisfy the zone objectives;
- be compatible with the surrounding area;
- not cause conflict in using open space;
- not compromise public access along the foreshore; and
- not affect amenity or aesthetic of the foreshore.

4.2.49 There are no changes proposed to areas within the foreshore building line.

Earthworks

4.2.50 Clause 6.10 of the LEP would require development consent for earthworks.

4.2.51 There are no changes to earthworks proposed.

4.2.52 There are no other provisions in the plan relevant to the subject modification application.

North Sydney Development Control Plan 2013

4.2.53 The DCP supplements the provisions of the LEP but provides more detailed controls. Part A and B apply to residential dwelling houses and development within the Cammeray Planning Area.

4.2.54 Table 4, below, provides a summary of the requirements applicable to the development:

Table 4: Assessment against requirements of North Sydney DCP 2013

Clause	Control	Comment	Complies
Part B Development Controls			
Section 1 Residential Developments			
1.2 Social Amenity			
1.2.3 Maintain residential accommodation	No loss of residential accommodation.	A new dwelling replaces an existing dwelling. No change	<input checked="" type="checkbox"/>
Environmental Criteria			
1.3.1 Topography	Development that includes excavation must not be carried out unless: (a) the development is in accordance with and promotes the objectives to this subsection; and (b) land stability of the site and adjoining land is preserved; and (c) the natural drainage patterns of the land and catchment will not be disrupted; and (d) adverse effects on other properties are avoided or minimised. Min of 50% of un-excavated area located to rear. Min 30% un-excavated area within front setback. Min 1.5m strip along the side boundaries.	No change.	<input checked="" type="checkbox"/>
1.3.4 Foreshore Frontage Property	Have regard to sea level rise. Assess against SREP (Sydney Harbour Catchment) 2005. Do not alienate public access to foreshore. Dwelling to respect topographical features.	No change.	<input checked="" type="checkbox"/>
1.3.5 Visual Impact – Access	Landscaping to soften built form.	No change	<input checked="" type="checkbox"/>
1.3.6	Maximise view sharing.	No change to view sharing. The change to a garage will not affect	<input checked="" type="checkbox"/>

Clause	Control	Comment	Complies
Visual Impact - Access	Maintain outlook to trees and sky. Consideration of L&EC view sharing principles	views and the addition of the pergolas will not have an increased impact given the minor nature of the structures.	
1.3.7 Solar Access	Developments should be designed and sited such that solar access at the winter solstice (21st June) provides a minimum of 3 hours between the hours of 9.00am and 3.00pm to: (a) any solar panels; (b) the windows of main internal living areas; (c) principal private open space areas; and (d) any communal open space areas. located on the subject property and any adjoining residential properties	No change.	<input checked="" type="checkbox"/>
1.3.8 Acoustic Privacy	Maintain acoustic privacy to all residents.	No change.	<input checked="" type="checkbox"/>
1.3.9 Visual Privacy	Window placement and screening should be used to maintain privacy.	No change.	<input checked="" type="checkbox"/>
	Limit the width and depth of any deck, patio or terrace located greater than 1m above ground level (existing) where privacy and loss of views is an issue and consider using screen devices where relevant.	No change.	<input checked="" type="checkbox"/>
Quality Built Form			
1.4.1 Context	Proposed developments must be designed to respond to the issues identified in the site analysis and in the relevant area character statement (refer to Part C of the DCP)	No change.	<input checked="" type="checkbox"/>
1.4.3 Streetscape	Retain Street trees.	All street trees are retained. No change.	<input checked="" type="checkbox"/>
1.4.5 Siting	Buildings are to be sited to relate to neighbouring buildings.	The conversion of the carport to a garage will improve the presence to the street which is consistent with surrounding dwellings.	<input checked="" type="checkbox"/>
	Site buildings within a single building form, addressing the street		

Clause	Control	Comment	Complies
	Orient each external wall parallel to the corresponding boundary of the site, unless another orientation is characteristic.	There is no change to the setbacks to the dwelling.	
1.4.6 Setbacks	Front – match alignment of adjoining	The conversion of the carport to a garage is consistent with the adjacent dwellings and general character of Cowdroy Ave Folly Point Road.	x <input checked="" type="checkbox"/>
	Side : 1 st storey = 900mm 2 nd storey = 1.5m 3 rd storey = 2.5m	No change	
	Rear = match adjoining.	No change .	
1.4.7 Form, massing and scale	Comply with LEP.	See height discussion above, as approved the height is exceeded. The operable louvre pergola will exceed the height control, refer to discussion above in LEP assessment.	<input checked="" type="checkbox"/>
	The finished floor height of the ground floor level should not exceed 1m above ground level (existing), measured vertically at any point.	No change	<input checked="" type="checkbox"/>
	Minimum 2.7m floor to ceiling height.	All levels will achieve 2.7m. No change.	<input checked="" type="checkbox"/>
1.4.8 Built Form Character	Balconies are to be incorporated within the building envelope.	No change	<input checked="" type="checkbox"/>
1.4.9 Dwelling Entry	The front door of dwellings and at least one window to a habitable room must be oriented to the street. Dwelling entries to be clearly identifiable.	Given the constraints of the site with the steep fall of the land, an existing car port is positioned at the street front. This carport will be replaced with a garage which is consistent with the streetscape and provides improved amenity for residents.	<input checked="" type="checkbox"/>
1.4.10 Roofs	Buildings should incorporate a pitched roof, except where another roof form is identified in an area		<input checked="" type="checkbox"/>

Clause	Control	Comment	Complies
	character statement (refer to Part C of the DCP) for the neighbourhood, or as being compatible with the characteristic roof form for the neighbourhood.	No change to the pitch of the roof as amended by the condition of consent.	
	Flat roofs will be considered to maintain views or to correspond to a particular building design.		
1.4.12 Colours and Materials	Buildings should use colours, finishes and materials identified in the relevant area character statement (refer to Part C of the DCP), if provided. Neutral colours to be used and avoid extensive glass, reflective metal and plastics on exterior of building.	No change	<input checked="" type="checkbox"/>
1.5 Quality Urban Environment			
1.5.3 Safety and Security	Design buildings to maximise views to the street and maintain sightlines.	No change.	<input checked="" type="checkbox"/>
1.5.4 Vehicular Access and Car Parking	Provide 2 car spaces.	2 car spaces with a turntable are retained with the garage.	<input checked="" type="checkbox"/>
1.5.5 Site Coverage	Max 40%	No change	x
1.5.6 Landscaped Area	Min Landscape area = 40%	No change	<input checked="" type="checkbox"/>
	Max unbuilt upon area = 20%	No change	<input checked="" type="checkbox"/>
1.5.7 Landscaping	Appropriate native landscaping required that won't adversely impact on upon amenity and usability of adjoining properties.	No change	<input checked="" type="checkbox"/>
1.5.8 Front Gardens	Entire front setback to be landscaped.	The garage and entry will occupy 2/3 of the frontage. This results from constraints of the steep slope.	x <input checked="" type="checkbox"/>

Clause	Control	Comment	Complies
		Landscaping is provided for the remaining third. No change	
1.5.9 Private and Communal Open Space	Min 50m ² at ground level.	No change	<input checked="" type="checkbox"/>
1.5.10 Swimming Pools and Spas	<p>Not to exceed 500mm above natural ground level.</p> <p>1.2m setback from boundary.</p> <p>Min 6m setback from any habitable room on an adjoining property.</p> <p>Pool equipment to be installed in close proximity to principal dwelling.</p> <p>A water tank must be installed and be of sufficient capacity to ensure that the pool can be topped up to the manufacture's recommended level without the need to rely on potable water supplies.</p>	The pool is proposed to be raised so it is accessible to the ground level. As approved, a condition was imposed requiring the pool to be lowered by 900mm. This was accommodated for the deferred commencement, however upon review this is not a reasonable outcome for the family and the useability of the pool. No change is proposed to the landscape screening required between the pool and the neighbouring property. An additional green wall is proposed to the side of the swimming pool as shown on the plans to further enhance the visual outlook from the neighbouring property and conceal the pool.	x <input checked="" type="checkbox"/>
1.5.12 Garbage Storage	<p>General waste = 1 x 80L per dwelling</p> <p>Recycling waste = 1 x 140L comingled bin per dwelling</p>	A garbage bins will be relocated to within the proposed garage.	<input checked="" type="checkbox"/>
1.5.13 Site Facilities	<p>Open air clothes drying area.</p> <p>Lockable mail box</p> <p>1 x antenna</p>	No change	<input checked="" type="checkbox"/>
1.6 Efficient Use of Resources			
1.6.1 Energy Efficiency	Provided BASIX	No change	<input checked="" type="checkbox"/>
1.6.2 Passive Solar Design	Maximise solar access.	The proposed dwelling is orientated with living areas facing north. No change. The	<input checked="" type="checkbox"/>

Clause	Control	Comment	Complies
		proposed pergolas will provide increase weather protection.	
1.6.3 Thermal Mass and Insulation	To achieve more even, year-round average temperature, making the dwelling more comfortable to live in and resulting in less demand for artificial heating or cooling.	No change	<input checked="" type="checkbox"/>
1.6.4 Natural Ventilation	Locate windows and openings in line with each other on opposing walls and with prevailing breezes.	No change	<input checked="" type="checkbox"/>
	Provide ceiling fans for use in summer (fans produce a cooling air movement that is preferable to letting in the hot daytime air).	No change	<input checked="" type="checkbox"/>
1.6.5 Colours and Materials	Buildings should use lighter coloured materials and finishes on main external parts of the building.	No change	<input checked="" type="checkbox"/>
1.6.6 Hot water Systems	New hot water systems installed in dwellings must not solely rely on electrical mains power to heat the water (n.b. sole electrical hot water systems are not permitted in new dwellings).	No change	<input checked="" type="checkbox"/>
	Install solar powered water heaters on any residential development. Solar powered water heaters may be either gas or electrically boosted, but boosting should be limited to a maximum of 50% of total heating requirement with the remainder of heating requirements achieved through solar gain.		
1.6.7 Water Conservation	Comply with BASIX.	No change	<input checked="" type="checkbox"/>
1.6.8 Stormwater Management	Provide: <ul style="list-style-type: none"> Erosion and sediment control plan Stormwater plan that complies with Council requirements. 	No change	<input checked="" type="checkbox"/>
1.6.9	Provide a waste management plan.	No change	<input checked="" type="checkbox"/>

Clause	Control	Comment	Complies
Waste Management & Minimisation			
Section 10 Car Parking and Transport			
	Provide 2 car spaces. Comply with AS2890.1	2 car spaces are retained.	<input checked="" type="checkbox"/>
Section 11 Construction Management			
	<p>The objectives of this Section of the DCP are to:</p> <ul style="list-style-type: none"> Establish suitable time periods within which demolition, earthworks, construction or remediation activities can be undertaken; Establish a framework for the approval of out of hours permits for development works; Establish circumstances where a modification to the consent may be required to allow out of hours works; Establish the instances when a Construction Management Plan is required; Outline the matters for consideration in the preparation of Construction Management Plans. 	No change	<input checked="" type="checkbox"/>
Section 16 Tree and Vegetation Management			
16.2 Controls for Management of Trees and Vegetation			
16.2.2 Provisions Approvals General	Permit required for removal.	No change	<input checked="" type="checkbox"/>
16.4 Protection of Trees During Construction			
16.4.2 Protection of Trees During Construction	Trees not approved for removal or on adjoining properties are to be protected during construction.	No change	<input checked="" type="checkbox"/>

Clause	Control	Comment	Complies
16.5 New Tree Planting			
	<ul style="list-style-type: none"> To ensure that the current level of canopy cover in North Sydney is maintained and enhanced over the long term. To ensure that sustained amenity is achieved by establishing a range of age classes within the urban tree population. To ensure a species diversity that maintains or enhances the current urban character of North Sydney. To enhance biodiversity through the strategic connectivity of canopy and habitat plantings between areas of bushland remnants (i.e. wildlife corridor creation). 	No change	<input checked="" type="checkbox"/>
Part C – Character Statements			
Section 4 – Cammeray Planning Area			
4.0 Cammeray Planning Area Character Statement			
	<p>The surrounding residential neighbourhoods are diverse in nature, where:</p> <ul style="list-style-type: none"> most of the existing dwelling houses and dual occupancies are retained capacity exists to accommodate some attached dwellings, multi dwelling housing and residential flat buildings close to existing public transport, services and facilities the density of residential development generally reduces the further away from Miller and Falcon Streets a property is located. 	No change. As amended the demolition of a dwelling and replacement with a dwelling is consistent with the surrounding neighbourhood.	<input checked="" type="checkbox"/>
Environmental Criteria	<ul style="list-style-type: none"> the natural foreshores and water courses of Willoughby and Long 	No change	<input checked="" type="checkbox"/>

Clause	Control	Comment	Complies
	<p>Bay are conserved and protected, with pedestrian access to these areas is extended and improved</p> <ul style="list-style-type: none"> the scale and form of foreshore development protects and enhances the scenic, environmental and cultural qualities of the foreshore and adjoining lands major views from lookouts and other vantage points are not obscured by buildings or landscaping existing natural features such as rock outcrops and sandstone cliffs are conserved bushland and wetlands are protected from the adverse effects of development – such as stormwater runoff, spread of exotic plants and weeds, and visual impact of buildings and structures use of locally indigenous flora extends habitats for native birds and other fauna man-made noise is limited, especially near foreshore areas and bushland noise insulation and orientation minimise noise impacts on developments close to the Warringah Expressway and main roads 		
Quality Built Form	<ul style="list-style-type: none"> any development that occurs, reflects and reinforces the existing distinctive built form/ landscape areas and distribution of accommodation types the significance of heritage items and Conservation Areas are maintained 	No change.	<input checked="" type="checkbox"/>

Clause	Control	Comment	Complies
Quality Urban Environment	<ul style="list-style-type: none"> public transport, cycling and walking are the preferred means of transport parking is managed to reduce impacts to local residents from regional commuter parking comfortable and safe pedestrian routes are maintained and extended cohesiveness throughout the area and its many built forms is achieved through landscaping and street tree planting backyards are provided for a variety of social and recreational activities public plazas provide a vibrant focal point for the local community 	No change	<input checked="" type="checkbox"/>
Efficient Use of Resources	<ul style="list-style-type: none"> existing buildings and materials are conserved. stormwater is retained for re-use onsite. 	No change	<input checked="" type="checkbox"/>
4.1 Cammeray Neighbourhood			
4.2.1 Significant Elements	<p>Mainly residential development.</p> <p>Steep topography.</p> <p>Natural vegetation.</p> <p>Long Bay is an icon.</p> <p>Carports built to street.</p> <p>Narrow roads.</p>	No change	<input checked="" type="checkbox"/>
4.2.2 Desired Future Character	Primarily low-density residential development consisting of dwelling houses, semidetached houses concentrated long the foreshore areas.	No change. Detached dwelling is proposed.	<input checked="" type="checkbox"/>
	Multi dwelling housing and residential flat buildings concentrated towards the tops of the ridges.	Not proposed.	<input checked="" type="checkbox"/>

Clause	Control	Comment	Complies
	The density of development along foreshore areas and in areas of steep terrain must be kept to a minimum.	No change, as modified the dwelling maintains the same density.	<input checked="" type="checkbox"/>
	Buildings should provide adequate separation to bushland and foreshore areas.	Noted. Development complies with foreshore building line, as discussed above.	<input checked="" type="checkbox"/>
	Buildings should not obstruct views from neighbouring properties. This is especially important in foreshore areas or sites that enjoy water views.	No change. The inclusion of pergolas will not impact on view sharing given the light weight construction.	<input checked="" type="checkbox"/>
	Buildings should not obstruct views and vistas from public places to the waterway	No change. No views obstructed from public places.	<input checked="" type="checkbox"/>
	Buildings near foreshore areas should address the waterway	No change	<input checked="" type="checkbox"/>
	Buildings on sloping land should be designed to follow the slope of the land, with minimum cut and fill to be undertaken.	No change. The dwelling is stepped down the site.	<input checked="" type="checkbox"/>
	Boat sheds are small in scale and do not dominate the foreshore frontage.	No change to existing boat shed.	<input checked="" type="checkbox"/>
	Development associated with boating activity is kept to minimum and is compatible with the surrounding uses.	Not proposed.	<input checked="" type="checkbox"/>
	Development adjoining foreshore or bushland areas (such as Tunks and Primrose Parks) use muted colours and non-reflective materials to ensure the scenic and environmental Qualities are enhanced.	No change	<input checked="" type="checkbox"/>
	Walls and fences along the foreshore should be kept low enough to allow views of private gardens from the waterway.	No change .	<input checked="" type="checkbox"/>

4.2.55 Overall, the proposed development as amended generally satisfies the intent and controls within the DCP.

4.3 The Likely Impacts

3.15 This Section 4.55 report has considered the potential impact of the proposed amendments as they relate to the construction of a new dwelling at 58 Cowdroy Ave, Cammeray. The amendments are generally minor in nature and maintain the overall intent of the approval, the massing and scale of the dwelling and relationship with adjoining dwellings.

4.3.1 Overall, the building design as amended is contextually appropriate for the site and is of appropriate height and scale. The dwelling as amended maintains the unique architecturally designed form that will contribute positively to the streetscape.

4.4 The Suitability of the Site for the Development

4.4.1 As with the original assessment with the Development Application, the site is ideally suitable for the proposed development.

4.5 Submissions

4.5.1 We will consider any issues raised at the close of exhibition.

4.6 The Public Interest

4.6.1 The amendments sought under this modification application seek to enhance and improve the residential amenity of the approved development. It has been done without increasing potential impacts on surrounding properties and therefore this is in the public interest.

5.0 CONCLUSION

5.1 This report has provided a detailed assessment of the proposed modifications to the approved dwelling at 58 Cowdroy Ave Cammeray approved under DA 60/22.

5.2 This application seeks to amend the approved dwelling as follows:

- New roof over the hard stand parking area to enclose carport into a garage
- New operable metal louvre pergola over part of the external living spaces
- New fixed metal pergola over part of the external living spaces
- Raise the height of the swimming pool by 900mm so that pool enclosure is at same RL as Lower Ground Floor FFL to provide accessible access. The sides of the pool structure will be concealed with a green wall.

5.3 The amendments sought will enhance the residential amenity of the dwelling in the following ways:

- Provide weather protected and enclosed garage for the convenience and safety of the residents. The presence of a garage is consistent with the streetscape where garages are dominant.
 - Provide weather protection in the form of light weight pergolas to improve the usability of internal and external living spaces.
 - Enables safe use of the swimming pool.
- 5.4 The dwelling as amended will continue to make a substantial contribution to the area and offer a high standard of residential amenity.
- 5.5 Accordingly, it is recommended that the modification application be recommended for approval.



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Item **LPP01** - REPORTS - **04/12/2024**

N O R T H S Y D N E Y C O U N C I L R E P O R T S



NSLPP MEETING HELD ON 04/12/2024
SECTION 4.55 APPLICATION REPORT

Attachments:

1. Site Plan
2. Architectural Plans
3. View sharing analysis

ADDRESS: 58 Cowdroy Avenue Cammeray

APPLICATION No: D60/22/2

PROPOSAL: To modify a consent for demolition of existing dwelling and ancillary structures and construction of a dwelling house and associated works including a swimming pool.

PLANS REF:

Plan Nos.	Rev. No	Description of works	Prepared by	Dated
4.55 101	B	Site Plan	Coso Architecture	04 10 2024
4.55 102	B	Lower Level Floor Plan	Coso Architecture	04 10 2024
4.55 103	B	Mid Level Floor Plan	Coso Architecture	04 10 2024
4.55 104	B	Upper Level Floor Plan	Coso Architecture	04 10 2024
4.55 104A	B	Upper Level Floor Plan + 3m	Coso Architecture	04 10 2024
4.55 105	B	Entry Level Floor Plan	Coso Architecture	04 10 2024
4.55 106	B	Roof Level Floor Plan	Coso Architecture	04 10 2024
4.55 107	B	Section AA	Coso Architecture	04 10 2024
4.55 110	B	Section DD	Coso Architecture	04 10 2024
4.55 111	B	West Elevation	Coso Architecture	04 10 2024
4.55 112	B	North Elevation	Coso Architecture	04 10 2024
4.55 113	B	South Elevation	Coso Architecture	04 10 2024
4.55 114	B	East Elevation	Coso Architecture	04 10 2024

OWNER: P & R Etherington

APPLICANT: P & R Etherington C/- COSO Architecture

AUTHOR: Isobella Lucic A/ Service Unit Manager Development Services

DATE OF REPORT: 18 November 2024

DATE LODGED: 3 July 2024

AMENDED: 11 October 2024

RECOMMENDATION: Approval (Part)

EXECUTIVE SUMMARY

This application under Section 4.55 (2) of the *Environmental Planning and Assessment Act 1979* seeks to modify Council's consent to demolish an existing house and to construct and new dwelling and associated works, including a swimming pool.

The application is reported to the North Sydney Local Planning Panel as it involves amendment of the design which is affects conditions imposed by the Panel when the application was originally determined.

The application was notified between 12 and 27 July 2024, and 6 objections were received, in relation to:

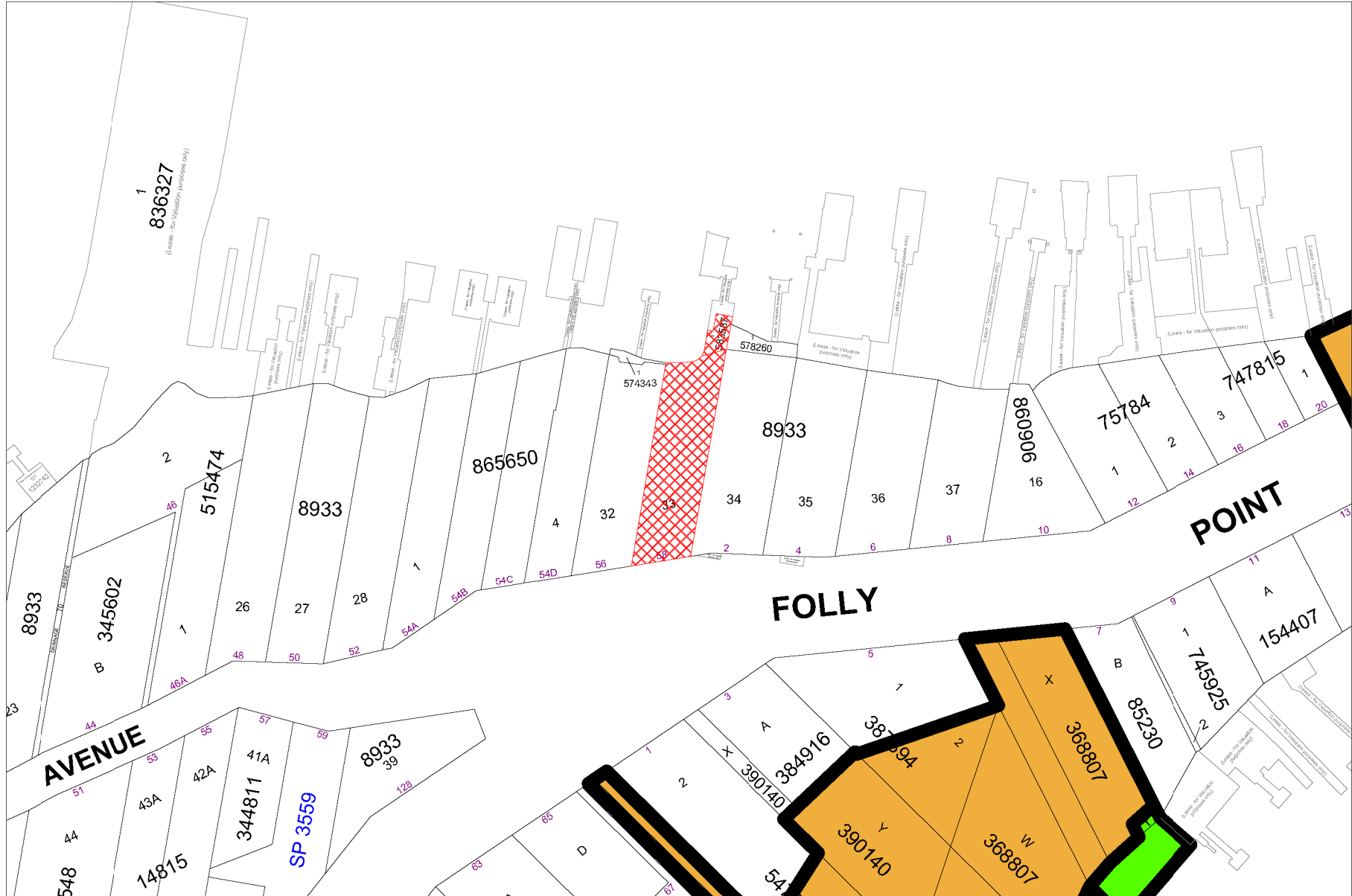
- Impacts on local amenity, specifically increased site coverage causing excessive bulk and scale, increased impacts on views, loss of views and reduced access to sunlight, and
- Insufficient information to allow a proper assessment.

Minor amendments to the design and a view sharing analysis were submitted 11 October 2024. These were distributed to the objectors, who were provided another 14 days, between 23 October and 7 November 2024, to make further submissions, two were received raising these concerns.

- The amended design is less compatible with the area and reduces foreshore amenity.
- There is no setback to the carport, proposed to be enclosed as a garage.
- Discrepancy in plans regarding a proposed awning's depth over the balcony on the Mid-level floor plan.

An assessment of the amended application concludes that the proposed modification of the consent is satisfactory and partial approval is accordingly recommended, subject to conditions.

LOCATION MAP



Property/Applicant ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

The proposal involves modification of the approved development, to accommodate:

- Enclosure of the approved open two-vehicle parking area by installing a door, walls and a roof, converting the open parking area into a garage, *
- A fixed metal awning/ pergola 900mm deep, partly over the balcony on the Mid Level (Section AA, plan 4.55 107 (correct awning depth) and Upper Level Floor Plan, plan 4.55 104 incorrect awning depth detailed on plans)),
- An operable metal pergola over the paved terrace on the level above (Upper Level Floor Plan + 3m, plan 4.55 104A),
- Replacement of a 1.6m high privacy screen terrace with a glass balustrade, 1.0m high, at the western side of the terrace, (Upper Level Floor Plan, plan 4.55 104),
- Raising of the pool and surrounds by 900mm. The western side of the pool will be concealed with a green wall, and
- Lower the roof height by 600mm, to reduce building bulk (Section AA, plan 4.55 107).

In summary, these amendments are intended to:

- Improve amenity and convenience by enclosing the open parking area into a garage, adding additional built form to the approved development,
- Improve amenity by shading the openings from direct sunlight during warmer months,
- Provide shade for the terrace accessible from the main living space of the house,
- Replace a privacy screen with a glass balustrade next to this deck “to promote neighbour views”, from 56 Cowdroy Avenue,
- Raise the pool, to improve accessibility from the house and adjacent open space. This modification is contrary to a condition imposed by the Panel when first approved, which required lowering the pool to reduce the height of a retaining wall near the western boundary, and
- Lower the roof height to make the approved development more consistent with a deferred commencement condition imposed by the Panel.

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning C4 Environmental Living
- Item of Heritage – No
- In Vicinity of Item of Heritage – No
- Conservation Area – No
- In Vicinity of a Heritage Conservation Area or Heritage Item - No
- Foreshore Building Line –the site is affected, parts of the approved development proposed to be modified are not within the foreshore area (land seaward of the FBL)

SEPP (Biodiversity and Conservation) 2021

SEPP (Resilience and Hazards) 2021

SEPP (Sustainable Buildings) 2022

POLICY CONTROLS

North Sydney Development Control Plan 2013

DESCRIPTION OF SITE & LOCALITY

The site is located at 58 Cowdroy Avenue, Cammeray, with a real property description of Lot 33 DP 8933.

The site extends southwards from Long Bay to Cowdroy Avenue. The lot has an irregular shape with parallel side boundaries. The foreshore boundary is partly defined by a seawall and waterfront structures and a boundary with Lot 1 DP 583587 (which is also part of No.58 Cowdroy Ave although no works are proposed on Lot 1).

Lot 33 has an area of 556m². The front boundary is not perpendicular to the side boundaries and is 12.905m long. The eastern side boundary shared with No.2 Folly Point is 44.875m. The western side boundary shared with No.56 Cowdroy Avenue is 45.305m. The site is 12.06m wide.

The site slopes steeply down from the road to the foreshore. The fall from street to shoreline is approximately 22m with the seawall height varying from 1 to 1.5m above Mean High Water Mark (MHW). The site has been significantly altered from its natural surface contours. There are retaining walls and paths throughout the setbacks and on site boundaries as well as significant cut and fill and retaining walls within the building footprint.

Development in the area is characterised by substantial, multi storey dwelling houses, which capitalise on their steep slopes, offering views of Long Bay, an arm of Middle Harbour.

In a broader context, the locality is part of Folly Point which includes a small foreshore public reserve at its easternmost point. Cammeray Marina is approximately 100m west of the site. Further west is Tunks Park and across the bay in Northbridge, are a golf course and a foreshore bushland reserve, directly north of the site.

CHECKING OF PLANS

This application has been checked to ensure that the changes being sought are the only changes included in the submitted plans.

RELEVANT HISTORY

Previous Applications

Date	Action
5 August 2020	DA 56/20 refused by the North Sydney Local Planning Panel
12 June 2021	Land and Environment Court NSW dismissed an appeal against refusal, on grounds that the application was not supported by an adequate request to vary the height standard, as required by cl. 4.6 <i>NSLEP 2013</i> . This being a jurisdictional matter, the relative merits of the proposed development did not need to be considered in the Court's decision making.
3 May 2023	North Sydney Local Planning Panel granted deferred commencement consent to DA 60/22, requiring design changes (condition AA) for the reasons set out below:

	<p>Condition AA1</p> <p>(1) <i>The roof to the upper level (open plan living area Level 03) shall be re-designed to achieve a lower profile as follows:</i></p> <ul style="list-style-type: none"> a) <i>The rooftop garden shall be deleted;</i> b) <i>The maximum floor to ceiling height at the northern edge shall be 2800mm;</i> c) <i>Maximum roof pitch of the roof shall not exceed 5 degrees;</i> d) <i>A step may be provided from the mid-line of the roof to accommodate clerestory windows for natural light and ventilation to the open plan living room.</i> <p>(2) <i>Fixed louvred/slatted privacy screens a minimum 1.6m high, measured from finished floor level shall be installed on the eastern and western edges of the balcony to the Upper Level (Level 03) adjacent to the open plan living room.</i></p> <ul style="list-style-type: none"> a) <i>A fixed privacy screen 1.8m high, measured from the finished floor level of the patio to the eastern side of the outdoor kitchen space at the Lower Level (Level 01).</i> b) <i>The balustrade to the northern edge of the steps and retaining walls below the foreshore building line shall be an open palisade form and finished in black.</i> c) <i>The swimming pool coping level, retaining walls and planter beds surrounding the swimming pool are to be lowered (and or/the pool may be re-oriented). The swimming pool coping level shall be reduced to generally comply with the requirements of Part B Section 1 Control 1.5.10 to the North Sydney Development Control Plan 2013. The swimming pool and associated structures must be setback a minimum 1.2m from the side boundaries. Screen planting is to be provided between the pool and the western site boundary. Details shall be indicated on the amended Landscape Plan.</i> d) <i>The landscaped area immediately north of the swimming pool and patio area currently shown at RL 9.8 (approx.) shall include cascading plants along the northern edge of the retaining wall.</i> e) <i>All retaining walls including ancillary drainage management and footings must be contained entirely within the site boundaries.</i> f) <i>Additional canopy trees that with a mature height of 4 to 5m are to be planted within the foreshore area (between levels RL4.2 to RL4.8). The location and species are to be nominated in the amended Landscape Plan.</i>
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- g) *The understorey to the 3 x Corymbia maculata (100l) shall be densely planted with suitable species of low maintenance native shrubs in addition to the 3 x Cyathea australis to optimize the variety of planting in the deep soil area. Additional planting shall be included in the amended Landscape Plan.*
- h) *The pathway from the Cowdroy Avenue boundary to the front door within the tree root zone of this required Angophora costata must remain substantially unpaved to minimise soil compaction and to enable water infiltration for future growth and vitality of the tree. Details of the pathway construction are to be specified in the construction and landscape plans and be approved by the project arborist.*
- i) *The existing Jacaranda Mimosifolia (Tree 1 in the Arborists Report) shall be retained and protected in accordance with the recommendations of the Jacksons Nature Works report dated 8 March 2021.*
- j) *The tree protection measures contained in the arborist report shall be shown clearly on the Architectural drawings and amended Landscape Plan.*

Panel Reasons:

The Panel considers the proposed development subject to the amendments above is satisfactory in the context of the area and surrounding development. Furthermore, with the amendments to the roof line the principle of view sharing has been considered having regard to the extent of views from the waterfront properties in the area. The Panel notes that the steep topography in the vicinity translates into significant variations to the height standard.

The Panel does not support the height of the retaining wall to accommodate the swimming pool on the western boundary is appropriate and amended plans for the pool and associated facilities and landscaping are required.

With respect to the processing of the development application the Panel is satisfied this complies with the necessary requirements. Similarly, the survey levels have been verified.

The Panel has determined that approval is warranted subject to a Deferred Commencement.

Concerning determination of the application, subject to the deferred commencement conditions, the Panel also stated:

	<i>The request made in accordance with clause 4.6 of the LEP is considered to adequately demonstrate that strict compliance with the maximum height of building standard is unnecessary, as the objectives of the standard are achieved despite the contravention. The request also demonstrated sufficient environmental planning grounds to vary the development standard.</i>
14 November 2023	A letter was sent to the applicant advising them that plans submitted on 13 October 2023 had satisfied the terms of the deferred commencement conditions, thereby making the consent operational.

Current application

Date	Action
3 July 2024	Subject modification application lodged.
12 – 27 July 2024	Application notified and 6 objections received.
26 August 2024	The assessing planner met owners/occupants of 56 Cowdroy Avenue at their home to discuss and consider potential impacts of the proposed modifications, and inspect the site.
23 September 2024	The assessing planner attended a site inspection at 56 Cowdroy, for the applicant's architect to take photographs to be used in an analysis of the proposal's potential impacts on views from 56 Cowdroy.
11 October 2024	Application amended, with submission of amended plans to lower the roof and make other design adjustments, as described. Included with amended plans is a view sharing analysis using the photos taken by the applicant's architect from 56 Cowdroy Avenue. These are attached to this report.
23 October – 7 November 2024	Objectors were sent copies of amendments to the application and provided an opportunity to make further submissions, for 14 days.

SUBMISSIONS

The Application was notified in accordance with Council's Community Engagement Protocol. The 6 submissions received raised the following issues regarding the proposed modifications to the consent, summarised below:

- Application seeks reinstatement of rejected elements.
- The proposal's scale will diminish local amenity, the pergola/awnings and enclosure of the carport to form a garage increases the bulk and scale of the approved development.
- Proposed modifications will impact water views, access to sunlight, cause loss of privacy and involve removal of vegetation.
- Insufficient information has been provided with the application, to assess impacts on 2 Folly Point, on the site's eastern boundary.
- There is a discrepancy in the plans regarding the depth of the fixed awning over the Mid Level Terrace.
 - Comment: the applicant clarified that the depth of the awning is 900mm, a condition is recommended to require this maximum dimension be complied with.

- Details of finished levels and need for retaining walls at side boundaries is unclear.
 - Comment: elevations indicate a paved area on eastern side of dwelling from the laundry to the window north of the laundry. Plans show that there is a set of steps next to this boundary at this location, at 2 Folly Point.

Minor amendments were made to the design and a view sharing analysis prepared, which were submitted on 11 October 2024. These were distributed to the objectors, who were offered another 14 days to comment. Two further submissions were received, regarding:

- The amended design is less compatible with the area and reduces foreshore amenity.
- There is no setback to the carport, proposed to be enclosed as a garage.
- Discrepancy in plans regarding a proposed awning's depth over the balcony the Mid-level floor plan.

Full consideration of submissions are detailed further within this report.

REFERRALS

No referrals were required.

CONSIDERATION

Council is required to assess the s4.55 (2) application having regard to the following matters:

Section 4.55 (2)

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) *it has notified the application in accordance with—*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Section 4.55 (3)

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

Comments are provided on the above matters in cl 4.55 (2) as follows:

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

The proposed modifications have been considered against the provisions of s.4.55(2)(a) and having regard for relevant caselaw which sets out the circumstances where modified development can be regarded as substantially the same development.

- 1. Whether the proposed development is essentially, materially, or has the same essence as the original development. (*Vacik Pty Ltd v Penrith City Council [1992] NSWLEC 8*)**

The essence of the consent as originally granted, (and subsequently satisfied by the plans addressing the terms of conditions AA1), was for demolition of the existing dwelling and construction of a new split-level dwelling over three stepped levels, with an attached carport and entry foyer above, north facing terraces, a vehicle turntable and a swimming pool to the western (side) elevation that is partially elevated due to topography.

From a whole of development perspective, the Modification Application proposes changes that are broadly consistent with the overall scale of the development, albeit with the some modifications proposing new impacts. Whilst the particular impacts of these changes and new elements must be assessed separately against applicable planning controls, the changes taken together, would retain the essence of the original approval. That is; the resulting development would remain a large dwelling with elevated swimming pool and integrated car parking.

The essence of the original consent would therefore be maintained.

- 2. "An appreciation qualitative as well as quantitative, of the developments being compared in their proper context" (*Moto Projects No 2 Pty Ltd v North Sydney Council C [1999] NSWLEC 280*).**

A qualitative and quantitative comparison can provide indicative guidance whether the original and proposed development are substantially the same.

Qualitative changes could include a differing architectural style or loss of privacy, whereas quantitative changes include increased building height or gross floor area. Any comparison completed should bear in mind Preston CJ's conclusion in *Realize Architecture*: "The opinion of satisfaction that s 4.55(2)(a) requires is that the two developments being compared are substantially the same development, not that either the quantitative features or the qualitative features of the two developments are substantially the same."

In qualitative terms, the proposed changes to external form of the building would be preserved as the new building elements reflect the form and scale of the originally approved development and do not drastically alter its overall form or change various uses within the development. While some changes will involve greater environmental impact, such as the proposed pergola and works to enclose the approved carport space, the overall height, bulk, and scale, such as views, solar access, noise, and privacy will be similar to that which was originally approved.

When quantitative outcomes are considered, the Application will introduce new elements which are in breach of the height control, as they apply to the land, but these structures also reflect the site topography and do not substantially alter the scale of the development.

This assessment however does not presume that the various modifications proposed are otherwise acceptable on their own merit, only that the works would retain the essence of the original consent. It remains open to the Panel to form a different view on this point, however it is the author's view that the modifications satisfy the substantially the same requirements.

(b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

The proposal did not require referral to another public authority.

(c) & (d) *Whether the application has been notified and, if so, were there any submissions*

As outlined above the application has been notified and further consultation undertaken. Matters raised by submissions have been considered in this assessment.

(4) *Consideration of reasons for the granting of consent to the development application*

Reasons for the Panel granting consent were:

The Panel considers the proposed development subject to the amendments above is satisfactory in the context of the area and surrounding development. Furthermore, with the amendments to the roof line the principle of view sharing has been considered having regard to the extent of views from the waterfront properties in the area. The Panel notes that the steep topography in the vicinity translates into significant variations to the height standard.

The Panel does not support the height of the retaining wall to accommodate the swimming pool on the western boundary is appropriate and amended plans for the pool and associated facilities and landscaping are required.

With respect to the processing of the development application the Panel is satisfied this complies with the necessary requirements. Similarly, the survey levels have been verified.

Assessment:

Matters identified in the above reasoning have been considered:

Building height

The revised building height is consistent with the Panel's rationale as outlined above, noting the lowering roof height by 600mm reduces the bulk of the building.

Views, Bulk and Scale

The upper part of the pergola is above the height limit and the structure will impact water views from the vantage point from which the photos were taken, at 56 Cowdroy Avenue. Installing glass balustrades around the terrace below the pergola would improve this view.

It is also noted that views from other vantage points from the neighbouring residence, would have no impact on views across the site.

The view impacts arising from the proposed pergola to the Upper Floor Level terrace are addressed in detail below, having regard for relevant view sharing principles, however it is considered that the new structure is not consistent with the reasons given in the original Panel's decision to support the proposal.

View sharing principles applied to the originally proposed development required the terrace to the Upper floor level remained open and uncovered to maintain views across boundaries. The introduction of this new element will impact on highly valued cross-boundary views. The pergola structure also projects beyond its neighbouring buildings to the extent that the structure will unreasonably impact on views at this level.

On this basis that impact on views is not supported and it is recommended that the Pergola Structure be deleted. To achieve this, it is recommended that Condition C1 of the consent be amended to delete this structure.

Privacy

Privacy effects are altered, when proposed installing of weather protection and glass balustrades is compared with the approved development, which did not provide weather protection and a 1.6m high privacy screen fitted on the western side of the terrace, a condition of the Panel's deferred commencement condition. There is a trade-off proposed wherein privacy is reduced, acceptably, and the view impacts reduced. This is a reasonable response to conditions and the amenity of the neighbours and occupants of the approved dwelling.

Pool level

The development was recommended for approval by the preceding report to the Panel, with the pool height as proposed in the application. This view is concurred with, given the landscaping at the boundary and the green wall on the western edge of the pool will screen and soften the pool's structure, noting the difference in finished heights between the site and the neighbouring land at No 56 Cowdroy Avenue.

Oblique viewing angles assist in maintaining reasonable privacy, as was the case in the original design, in conjunction with the setback of the pool from the side boundary of 1.76m and with just over half the pool being concealed beneath the house above. The purpose of raising the level 900mm to the originally proposed height to is provide safe access from the adjacent ground and floor level.

The reason the Panel conditioned the approval to lower the pool, stemmed from the Panel forming the view that the retaining wall was too high. To lower the pool 900mm may improve the view of the pool from the front (waterside) of adjacent properties. Raising the pool and including a green wall (hanging garden) with a lip of 150mm, is considered an improved outcome, improving amenity and safety for the occupants while having reasonable impacts on the western neighbour, provided some form of screening is considered, between the pool and the neighbour's private open space.

Survey plans submitted with the DA for the alterations and additions to No 56 Cowdroy Avenue (DA 153/19) indicate a difference in levels near the boundary with No 58 of between about 1.4m and 2.0m, adjacent to where the pool is approved to be located.

With the pool being proposed at RL 11.0m, and ground levels at the southwestern and northwestern corners of the pool being approximately 10.38m and 8.06m respectively, the pool coping will be between about 600mm and 2.9m above existing ground levels.

Existing ground levels on the site, the drop down to No 56's front yard of between 1.4m and 2.0m, and the finished level of the pool suggest screening above and along the pool coping's edge is necessary. With the difference in ground levels, a screen of 1.0m would be more than adequate to provide visual separation between the pool and the neighbour's open space. This would logically be achieved by raising the height of the green wall by 1.0m. A screen taller than this would enclose the pool, reducing its amenity and utility. A condition is recommended accordingly.

This analysis also indicates that dropping the pool 900mm as conditioned by the original approval, would achieve a similar result in reducing the pool's retaining wall height, but reduces amenity and safety for users of the pool.

Matters for consideration prescribed by s. 4.15 of the Act are considered below.

MATTERS FOR CONSIDERATION – s. 4.15 EP&A Act

SEPP Biodiversity and Conservation 2021

Having regard to the SEPP's Chapter 6 – Regulated Catchments, the development as proposed to be modified is not considered to be detrimental to the harbour and will not unduly impose upon the character of the foreshore. Further, none of the modifications cause the development to impinge upon the foreshore area of the LEP, seaward of the foreshore building line. Compared to the approved development, the modifications do not significantly alter the appearance of the dwelling, when viewed from the waterway and adjacent land, used for residential, recreational and conservation purposes.

SEPP Resilience and Hazards 2021

No modifications affect the previous assessment of the approved development regarding remediation of land.

SEPP Sustainable Buildings 2022

Given the nature of the works propose, the modified development does not require a revised BASIX certificate.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN 2013

1. Permissibility

The proposed works are for the purpose of a dwelling house, permissible with consent in the C4 Environmental Living zone that applies to the site.

2. Objectives of the zone

The objectives for the C4 zone are stated below:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The modifications proposed do not alter the approved development's consistency with these objectives. The scale and nature of the proposal is commensurate with other residential buildings in the locality.

Principal development standards

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area - #m ²	Proposed	Control	Complies
Clause 4.1 – Subdivision lot size			N/A
Clause 4.3 – Heights of Building	11.13m	8.5m	No
Clause 4.4 – Floor Space Ratio			N/A
Clause 4.4a – Non residential FSR			N/A

Height of Buildings

Height measurement

The modified development's maximum height of 10.75m is the same as the approved development, according to the submitted statement of environmental effects.

The maximum height in the table, 11.13m, relates to the proposed pergola, details of this measurement are outlined below.

Additionally, two key elements of the design have been changed in relation to height, being:

- Lowering of the section of the roof above the Upper Level Floor Plan (RL 17.0m), and
- Addition of an operable pergola over the terrace at the same level.
 - NB – further changes to the pergola are required as detailed herein.

Height of roof above upper level

Deferred commencement condition AA1 (1) required the roof to be adjusted to lower its overall height and provide a clerestory window in the roof's centre to break up the size of and therefore articulate the roof plane. The condition also stipulated that the floor below must not have a floor to ceiling height of more than 2.8m and that the roof angle not exceed 5 degrees above horizontal.

Plans were submitted and subsequently approved, having been assessed as satisfying the deferred commencement conditions. These plans show the height of the upper section of the roof to create an effective clerestory, with a window height of 900mm, and to maintain the maximum ceiling height of 2.8m, as required by the Panel's deferred commencement condition.

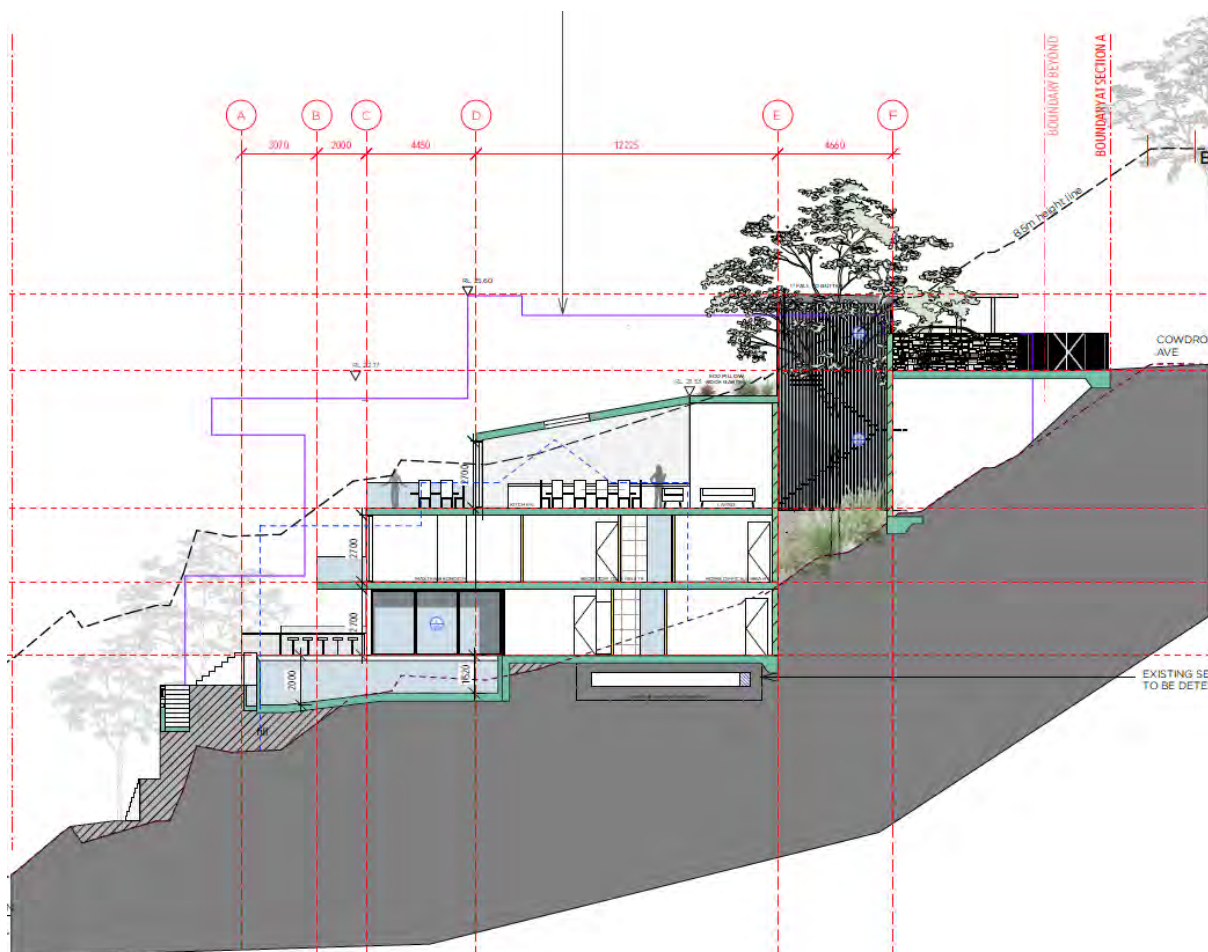
The design of the upper roof level and inclusion of the clerestory window was amended to achieve compliance with internal ceiling height requirements of the Building Code of Australia (2.4m).

Plans submitted with the subject modification are consistent with the height approved when operational consent was issued. Following notification and consideration of submissions, the above was discussed with the applicant, who later submitted plans lowering the height of the clerestory from 900mm to 600mm, reducing the upper roof plane's height.

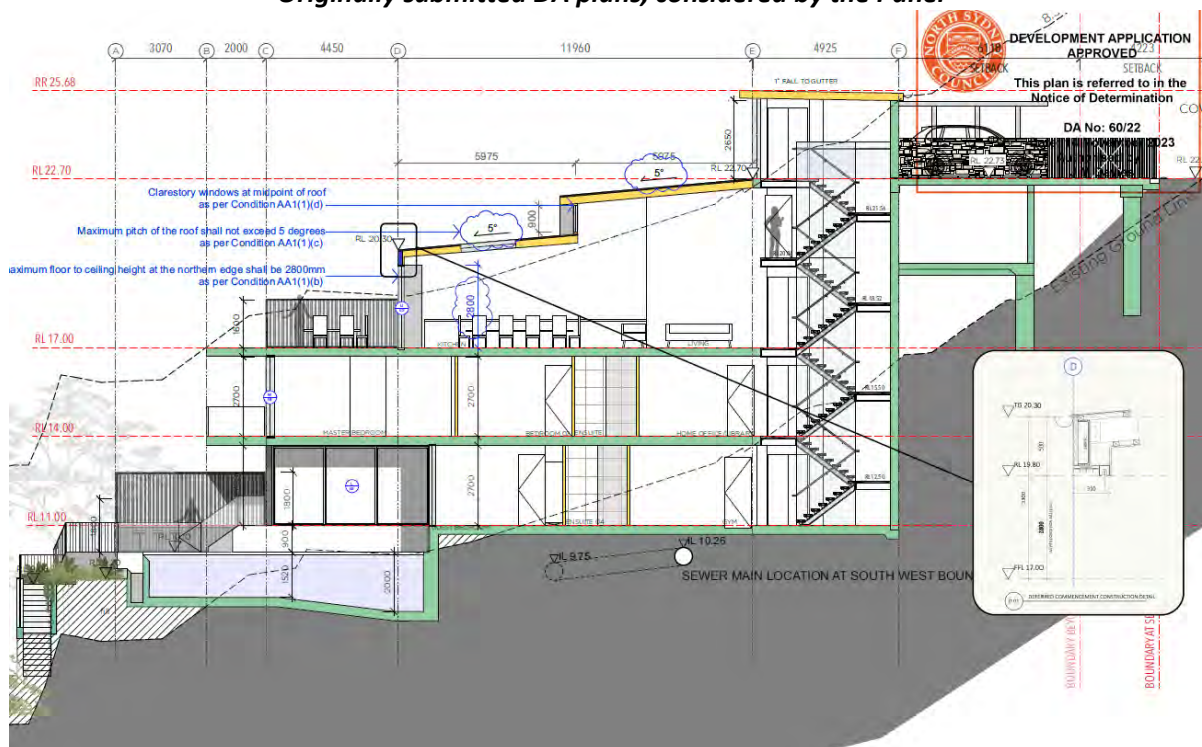
These adjustments reduce building bulk, with minor amenity improvements when compared with the building considered and conditionally approved by the Panel, when the original application was determined.

Below is a series of section-extracts which illustrate the sequence of design adjustments to the roof, from:

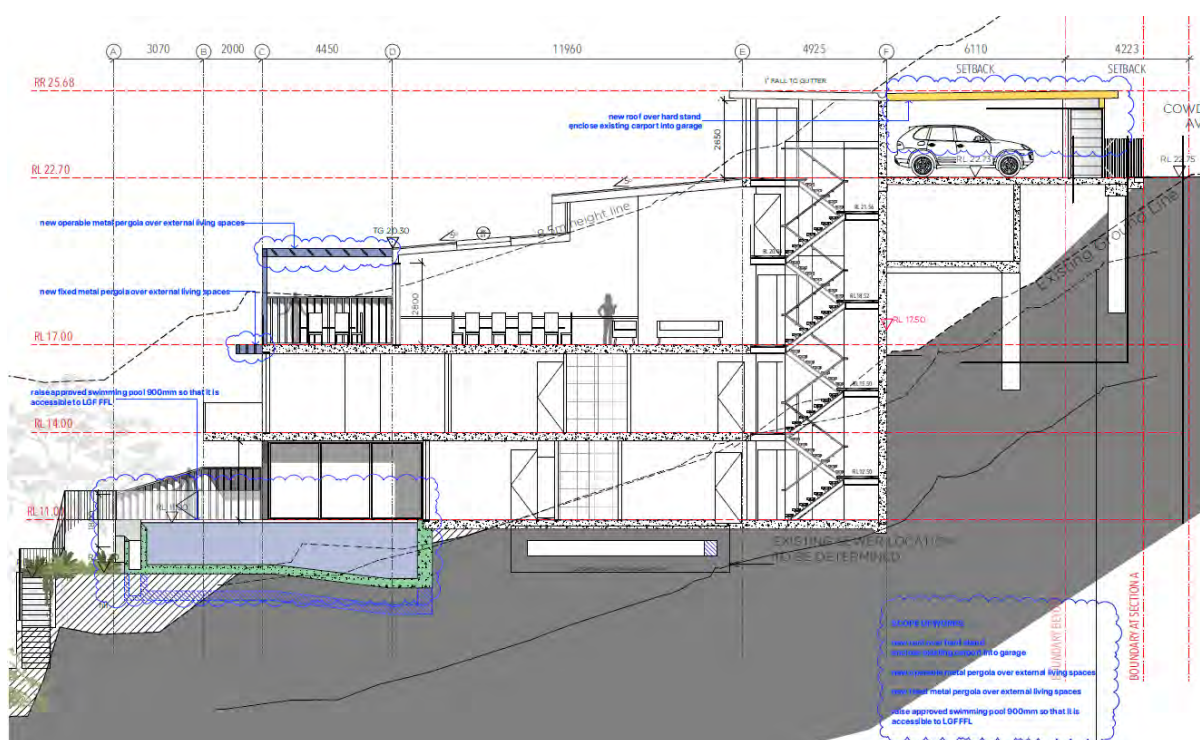
- the originally submitted DA plans, considered by the Panel, to
- the plans approved for issue of operational consent, to
- those submitted with the subject application, and
- the amended plans indicating subsequent reduction of the clerestory, which are the subject of this report and recommendation.



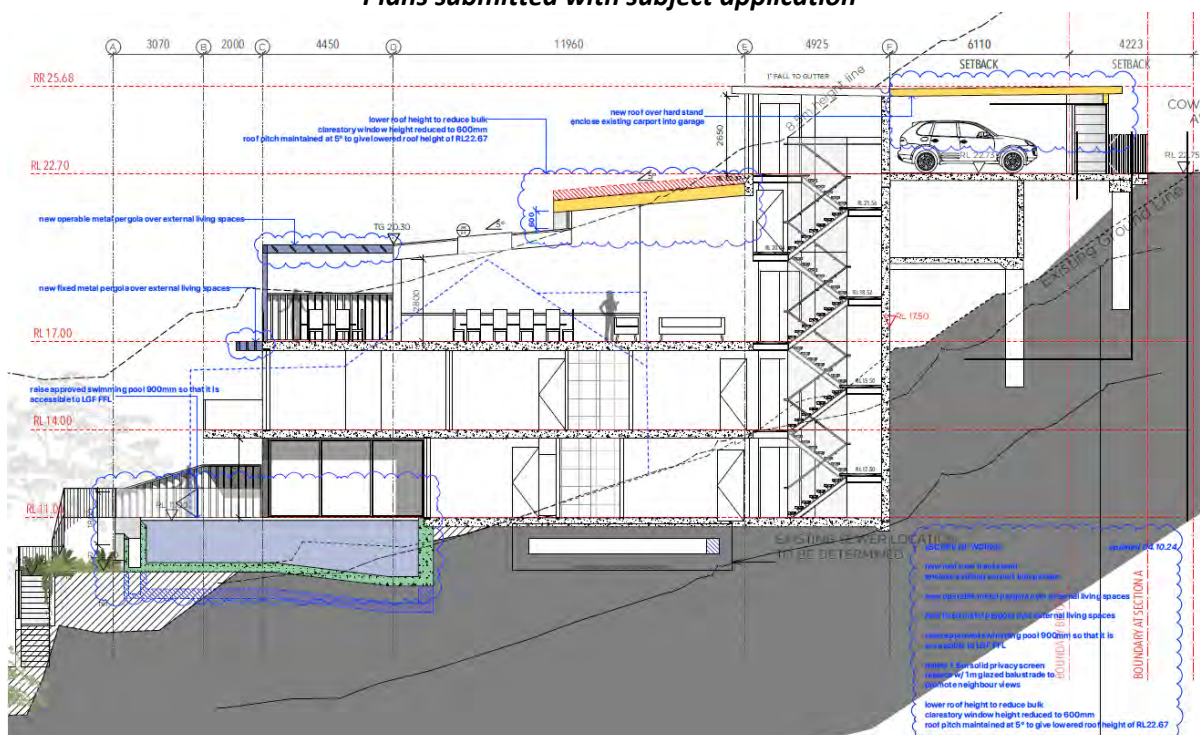
Originally submitted DA plans, considered by the Panel



Plans issued with operational consent



Plans submitted with subject application



Plans amended following consideration of submissions

Height of pergola

The pergola as shown on the floor level at RL 17.0m exceeds the height maximum, according to the submitted SEE. The pergola's maximum height is RL 20.3m.

The basement floor level below is RL8.3m, making the height of the pergola 12.0m above existing ground level, as defined by the LEP. This measurement represents a departure from the standard of 3.5m or 41%.

Adopting the Court's alternative interpretation (the "Merman" case) of the LEP's building height definition, contours indicate an assumed level under the terrace (with the pergola above) of between RL9.17m and RL10.41m (taken from spot levels on the survey plan, adjacent to the building envelope). Taking the maximum height between the structure and the lowest assumed ground level immediately below, the height of the pergola would be 11.13m, a variation of 2.63m or 31%.

To allow comparison, the highest approved structure was the privacy screen on the terrace's western side, now proposed to be replaced by a 1.0m high glass balustrade. Adopting the Merman method, the height of the screen would have been RL18.6m, yielding a height above ground level of 9.43m, resulting in a departure of 0.93m or 11%.

Further consideration of the proposed pergola structure is discussed herein.

Consideration of proposed modification's performance against height standard objectives

The following objectives for the permissible height limit are stated below:

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) to promote the retention and, if appropriate, sharing of existing views,*
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) to ensure compatibility between development, particularly at zone boundaries,*
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*

Overall, adjustments to the roof above the height standard are considered reasonable, applying the comparative assessment method adopted by the Court requiring comparison of modifications, including potential impacts, having regard to the standard's objectives, with the originally approved development. The proposed modifications are assessed below with regard to the standard's objectives.

Notwithstanding, the pergola is a new structure that adds to the perceived bulk when viewed from below at no. 56 Cowdroy. Given the inability to assess its full impacts as part of this modification, it is recommended for deletion. Refer to Condition C1.

Topography (objective a)

The adjusted roof height does not significantly alter the approved development's alignment with topography noting that, as discussed in the assessment of the original DA, local landform has been modified by previous development.

Views (objective b)

Numerically, the proposed variations to height of the pergola are significant (>10%) using either method of measurement.

Qualitatively, potential impacts on views are offset by the opaque privacy screen (required by the Panel's deferred commencement conditions) being replaced by a lower balustrade of transparent glass and the pergola presenting as an outline or framework when viewed from neighbouring properties, as opposed to a solid structure. It also however notes that when viewed from above, when the pergola's roof-louvres are closed, the roof will have a solid form.

The SEE mentions the pergola is necessary for climate control to prevent afternoon summer sun from entering the dwelling's main living area.

View impacts are further examined later, in relation to the DCP. This examination indicates the modifications do not alter the development's consistency with the objective to retain and share views.

Notwithstanding, the pergola is a new structure that adds to the perceived bulk when viewed from below at no. 56 Cowdroy. Given the inability to assess its full impacts as part of this modification, it is recommended for deletion. Refer to Condition C1.

The main roof of the house, as adjusted, does not impact any significant views from neighbouring properties.

Solar access (objective c)

The roof section's adjustment will have negligible overshadowing effects on neighbouring properties, only being partially above the maximum height plane by less than 1.0m, mainly due to the common northern exposure to midwinter sunlight.

Solar access and overshadowing will be acceptable.

Privacy (objective d)

Privacy impacts of the modified proposal are acceptable, as discussed previously, and below in relation to the DCP.

Compatibility of development (objective)

This objective was, as were the others, considered by the Panel when determining the original application. Citing the reasons for the panel's conditional approval, the development was held by the panel to be:

"...satisfactory in the context of the area and surrounding development. Furthermore, with the amendments to the roof line the principle of view sharing has been considered having regard to the extent of views from the waterfront properties in the area. The Panel notes that the steep topography in the vicinity translates into significant variations to the height standard."

The proposed modifications, as recommended are consistent with these findings, being substantially the same as the approved development.

Appropriate scale and density of development (objective f)

The above quote from the Panel's reasons for granting approval to the initial application indicate the Panel's satisfaction that the development has a suitable scale and density compared to other buildings in the area. The proposed amendments do not alter this position, in that:

- several other dwellings in the locality have garages close to the street, such as that proposed,
- the original and modified design have a similar overall height and number of storeys as other residential buildings in the locality, which are typically built to minimum setbacks or less, optimising the potential building envelope established by LEP and DCP controls and their corresponding objectives and performance criteria. On the northern, waterfront side of Cowdroy Avenue and Folly Point, most residences have a single storey facing the street and utilise the dramatic fall to the water to achieve multi-level dwellings, a common characteristic of many harbourside locales.

Earthworks

Proposed earthworks are reduced by the raising of the pool as proposed. Conditions have been imposed by the original consent, which help to protect adjoining land and infrastructure from potential damage. These conditions will remain.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

Most controls relevant to dwelling houses, from Part B Section 1 of the DCP remain complied with or are irrelevant to the proposed modifications.

The author, having reviewed the proposal in relation to applicable provisions of this section of the DCP, concludes that only views, privacy, parking and site coverage require detailed consideration.

Views

The applicant submitted a view impact analysis (attached), focusing on the potential impacts of the proposed addition of the pergola over the approved upper level terrace on views from the dwelling at No 56 Cowdroy Avenue.

Having reviewed this document, addition of the pergola impacts views from the affected property, satisfactorily, for the following reasons:

- The pergola is a lightweight structure, its impacts ameliorated by replacing a privacy screen on the western side with glass balustrading, despite the screen being originally conditioned by the Panel's deferred commencement consent.
- The view is over a side boundary. According to the Land and Environment Court's "Tenacity" decision, an expectation that existing views will be retained over side boundaries, and from seated viewpoints, is "often unrealistic". However, the impact on existing views should not be ignored and does not mean that reasonable design refinements could not assist in sharing of views over a side boundary.

- High quality views are available from multiple levels and viewpoints from the neighbouring dwellings. Again, according to “Tenacity”, the impact of the development should be considered for the whole of the property. The availability of views from multiple vantage points (three were photographed and used in the submitted analysis, from one level of the building) indicates the overall impact of views from No 56 is reasonable, from a view loss perspective. The view impact would be reduced, as the viewer moves from the eastern to the western side of the dwelling’s rooms and adjacent balconies. Westward movement of the viewer on other levels of the dwelling were observed to have the same effect during site inspection.
- The impact of the pergola structure however should also be assessed as ‘*moderate*’, using the terms expressed in Tenacity, given the expanse of the existing view from No. 56 and the projection of the pergola into the eastern extent of that view.
- The impact on views should also be regarded as ‘unreasonable’, again in the terms of ‘*Tenacity*’, given the size, depth and projection of the pergola should be substantially reduced to achieve its intent, and given its location well beyond the rear building line at the upper levels of dwellings at Nos. 54C, 54D & 56 Cowdroy Avenue;
- When the viewer is on a lower or higher level of the building, the view impact is also respectively increased or decreased.
- The perceived impact on no. 56 Cowdroy with regards to bulk and scale when looking upwards from their private open space has not been considered by the Applicant and it is not clear as to if the reduction in size would be a more appropriate proposal.
- As such, while the view impact may be satisfactory, the perceived bulk and scale is not, and therefore the pergola is recommended for deletion. Any structure over this balcony may be considered under a separate development application that considers all impacts, including, but not limited to, height and bulk and scale.

Privacy

The change from a privacy screen to a glass balustrade on the western side of the terrace on the upper level will affect privacy with the dwelling at 56 Cowdroy Avenue. The effect is reasonable given the change in materials (solid to transparent) and height (lower) will help maintain views for occupants of the proposed dwelling and the neighbouring dwelling over the shared boundary.

This modification involves a trade-off between marginally reducing privacy and slightly improving views, with privacy between the dwellings already being reduced, due to the oblique angles between the living levels of the proposed dwelling and No 56 to the west, which is setback well to the south, compared to the siting of the approved subject dwelling and its approved terrace.

Further, the proposed terrace and principal living areas in the subject approved dwelling are at RL 17.0m. The level closest in height at No 56, at RL 16.87m, which contains a family room and bedrooms. No 56’s principal living area is a level above, with a floor level of RL 17.75m, 750mmm above the proposed main living spaces proposed at No 58. Differences in levels are adjudged to assist in reducing privacy impacts, compared to when rooms are at the same height, thus allowing views directly between rooms or outdoor living spaces in adjacent buildings.

To the east, level 3 at 2 Folly Point has a balcony indirectly adjacent to the proposed terrace, although it is about 1.6m lower than the proposed terrace. Level 4 above has a bathroom with what appears to be a spa/bath tub about 1.5m above and adjacent to the proposed terrace. The privacy screen is suitably maintained to the east, as originally approved, noting that privacy impacts are also ameliorated by the difference in levels between the approved development and the easterly neighbour.

Regarding the pool height, as discussed above, privacy of open space and the proposed pool requires a condition to increase the height of the green wall along the pool's edge.

Parking

The approved development included a raised carport, like the existing structure, except with a turntable, to enable movement into and out of the carport, due to the available manoeuvring area being limited by the narrow width of Cowdroy Avenue (about 2.5m - 3.0m). The site is at the termination of the public roadway and turning space is limited by retaining walls on southern and eastern sides. The subject application seeks to amend the approved development to convert the carport into a double garage, adding walls on two sides (the northern side is already walled) and a door to the southern side facing the lane. The garage door is setback about 1.0m from the boundary with the roadway, to assist vehicle parking. Such a structure is reasonable, being like several others in the locality.

Site coverage

According to the report considered by the North Sydney Local Planning Panel, the approved development has:

- Site coverage of 44% - exceeding the maximum by 4%,
- Landscaped area of 40% - complying with minimum, and
- Unbuilt upon area of 16% - below the 20% maximum.

The proposed modifications:

- Increase site coverage to 49%
- Increase landscape area to 42%, and
- Reduce unbuilt upon area to 9%.

For the approved development, variation to the site coverage was considered reasonable, the planner's report stating that:

The proposed un-built upon area is greater than that for both neighbouring properties. The quality and quantity of deep soil planting below the FSBL is greater than for the majority of waterfront properties in the immediate locality. Conditions are recommended for deep soil, dense and canopy tree planting to be improved.*

* The report also noted the site coverage at 56 Cowdroy Avenue was 60.2% (however this is incorrect, the consent granted to alter and add to the dwelling at No 56, DA 153/19, required the site coverage to be reduced to 40.3%. At 2 Folly Point, according to the original report for the subject proposal, site coverage is about 55% (excluding the pool, which would be greater if the pool were included, as required by the site coverage definition).

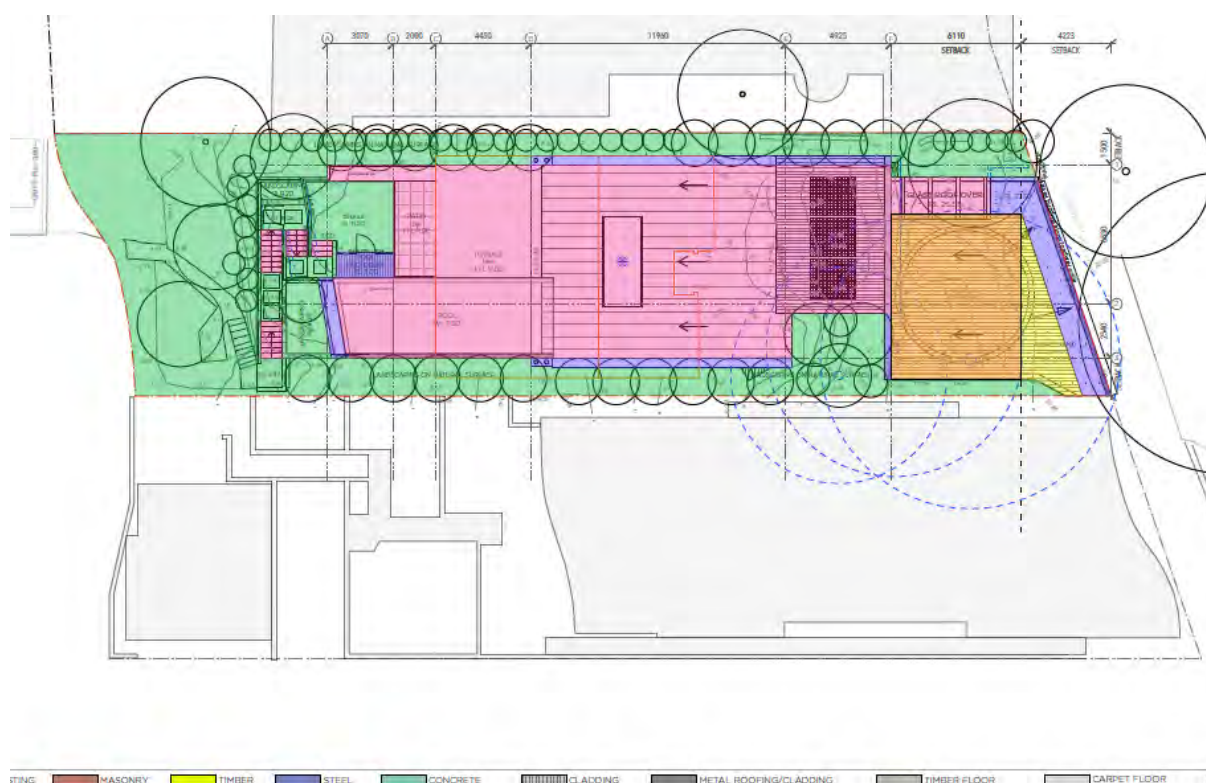
The report also observed that although the approved development has a site coverage of 44%, this had been reduced from 60%, as originally proposed.

The modification proposal

The subject modification application, referring to the submitted statement of environmental effects, does not change the approved figures. This statement is incorrect.

According to the definition of site coverage in the DCP, its calculation includes both garages and carports. Hardstand parking areas and driveways count as unbuilt upon area.

As the approved parking area is unroofed, it was counted as unbuilt upon area. Enclosing most of this area into a garage would convert the roofed section into site coverage. The applicant was approached regarding this, who subsequently advised Council converting the open parking structure into a garage increases the site coverage to 49% including reducing the roofed area as shown below in orange. Adding the yellow to the purple would result in an unbuilt upon area of about 9%.



The applicant was contacted to clarify details of the calculations. In doing so the applicant submitted that allowance should be made to relax building height and site coverage for sites on steep gradients. To comply with building height limits, the building envelope needs to be stepped, leading to non-compliance with site coverage. And on land with lower gradients, a building is able to comply with site coverage by stacking floorplates on top of each other, however in this case that would result in a greater breach of the building height maximum.

While the comments above from the applicant are logical, flexibility is built into the planning framework to account for individual nuances of site and context, and to enable the design response to satisfy performance criteria (objectives) if strict observance of numerical controls is impractical (i.e. unreasonable or unnecessary).

The approved parking structure is raised above the steep slope, also accommodating rainwater storage below, enabling vehicle parking at the same level as the road. Arguably, what has been approved already constitutes site coverage. Despite this, compared to the approved parking structure, the proposed enclosure of the car park needs to be considered with regard to key objectives, to control site density and prevent overdevelopment, and to promote the character desired for the neighbourhood.

Appraisal

The following appraisal suggests that conversion of the open parking area to a garage compromises the development's performance having regard to these objectives, noting the approved development already varies the numerical control, by 10%.

In the below image, to the left of the site (orange marker) is Cowdroy Avenue, to the right is Folly Point. On sites on the northern side of Cowdroy Avenue, west of the site, there is a balance between open space and built form on most lots (site coverage/landscaped area). Eastwards, on Folly Point's northern waterfrontage, there is a marked increase in site coverage, four lots east of the site.

An inspection of the site's immediate locality indicates numerous examples of garages and carports close and adjacent to the street frontage.

Taking abovementioned planning objectives into account, to balance built form and open space, prevent over development and promote desired character, the proposed conversion of the parking area into a garage should not be supported.

However, the proposal could be considered consistent with local character, in so far as the street is flanked and dominated by open parking areas or parking structures. That the proposal's visual exposure is limited by topography and vegetation in the road reserves, is another mitigating factor.

Notwithstanding, the additional site coverage and the total degree of variation of this control (22.5%) is unacceptable, as the proposal fails to satisfy objectives, to balance built form with open space and to limit overdevelopment.



Site indicated by an orange marker (Nearmaps 30 October 2024).

CHARACTER STATEMENTS – PART C

Cammeray Planning Area, Cammeray Neighbourhood

An assessment of the original proposal was undertaken regarding the character statement and design criteria for the area, concluding the proposal was consistent with these provisions.

As the proposed modified development is found to be substantially the same as that approved (subject to conditions), it is deemed consistent with these requirements.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The modified development does not require the adjustment of the contribution payable per the original consent, the estimated cost not changing.

ENVIRONMENTAL APPRAISAL	CONSIDERED
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	Yes
5. Traffic generation and Carparking provision	Yes
6. Loading and Servicing facilities	Yes
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	N/A
9. All relevant s. 4.15 (1) considerations of <i>Environmental Planning and Assessment Act 1979</i>	Yes

PUBLIC INTEREST

The proposal is in the public interest for reason it is substantially the same as the approved development (subject to conditions), and the impacts of the development as proposed to be modified are satisfactory.

SUITABILITY OF THE SITE

For the same reason as above, the site is suitable for the modified proposal.

CONCLUSION & REASONS

The subject application is consistent with the originally approved development application and s.4.55 of the *EP&A Act 1979*. Proposed modifications do not result in any unreasonably detrimental amenity impacts to adjoining properties or the surrounding area. The proposed modifications are also consistent with the reasons for development consent being granted to the original development application.

Having regard to the provisions of section 4.55 & 4.15(1) of the *Environmental Planning and Assessment Act 1979*, the development as proposed to be modified is substantially the same development as originally consented to. The application is therefore recommended for **approval in part**.

RECOMMENDATION

PURSUANT TO SECTION 4.55 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the North Sydney Planning Panel exercising the functions of Council approve the modification of development consent DA 60/22 for demolition of existing dwelling and ancillary structures and construction of a dwelling house and associated works including a swimming pool at 58 Cowdroy Avenue under the provisions of Section 4.55 of the Environmental Planning and Assessment Act as detailed below:

Development in accordance with Plans

a. Replace the table to Condition A1 with the following table:

Plan Nos.	Revision No	Description of works	Prepared by	Dated
4.55 101	B	Site Plan	Coso Architecture	04 10 2024
4.55 102		Lower Level Floor Plan		
4.55 103		Mid Level Floor Plan		
4.55 104		Upper Level Floor Plan		
4.55 104A		Upper Level Floor Plan + 3m		
4.55 105		Entry Level Floor Plan		
4.55 106		Roof Level Floor Plan		
4.55 107		Section AA		
4.55 110		Section DD		
4.55 111		West Elevation		
4.55 112		North Elevation		
4.55 113		South Elevation		
4.55 114		East Elevation		

2. The proposed pergola to the northern elevation of the Upper Floor Level and the proposed enclosure of the garage is not supported on the basis that:

- a. Pergola:** The proposed pergola breached the maximum height of building standard, projects well beyond the prevailing rear building line and would result in unreasonable view impacts and unreasonable bulk and scale impacts

- b. **Garage:** *The proposed garage would reduce the visual permeability of the carport structure, would prevent views through the structure towards prominent local vegetation and would result in excessive and unreasonable impacts on bulk, form and character of the structure to this part of Cowdroy Avenue.*

3. Amend condition C1 as follows:

Design Changes

C1. The following design changes are to be included in plans approved with the Construction Certificate to the satisfaction of the Principal Certifier:

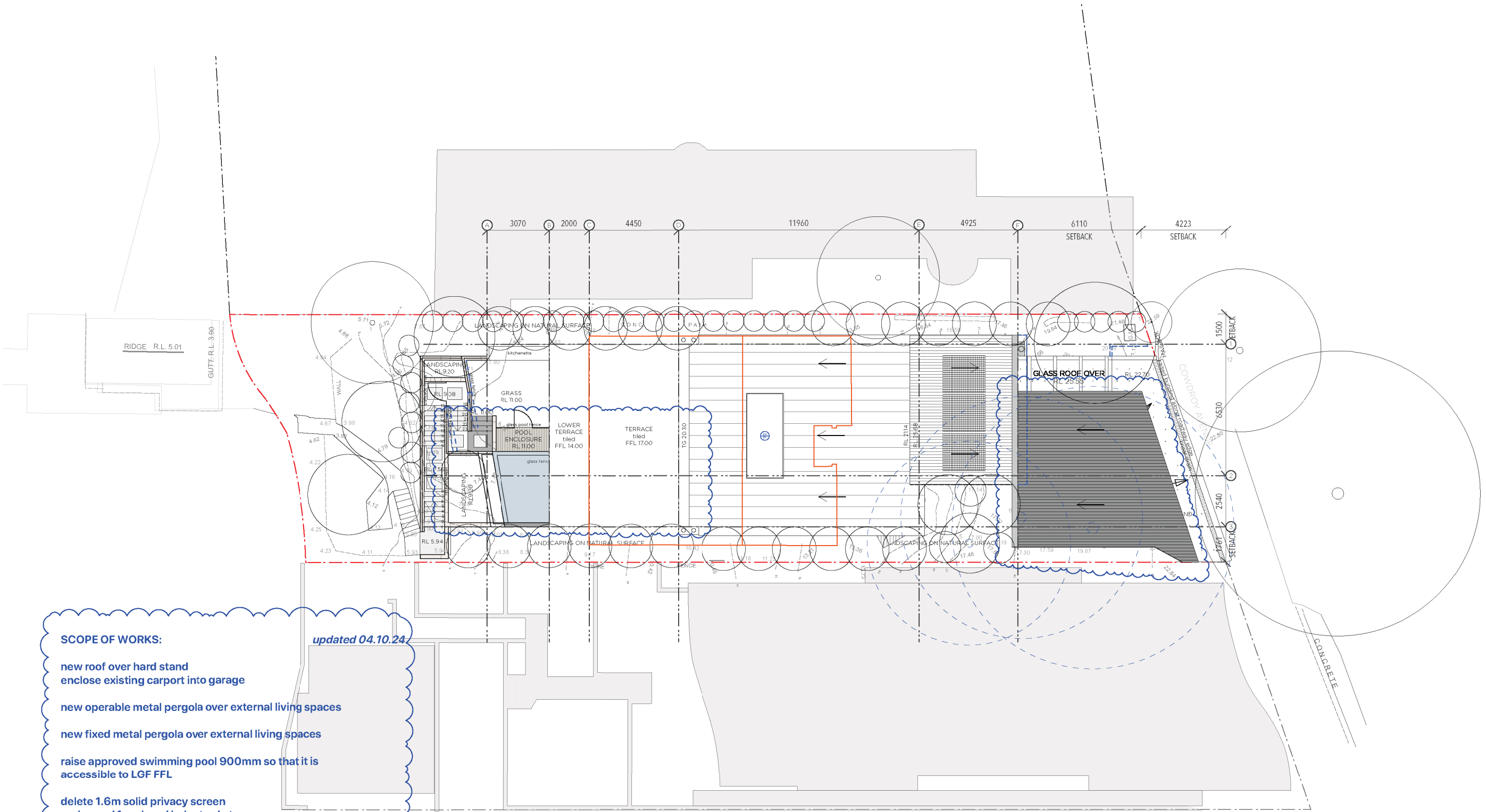
- a) ~~A Louvred/slatted privacy screens~~ a minimum 1.6m high from finished floor level shall be affixed to the eastern ~~and western~~ edges of the balcony to the Upper Level (Level 03) adjacent to the open plan living room to obscure direct lines of sight between the balcony and the neighbouring properties ***east of the site, and the balustrade on northern and western sides of the balcony being finished in clear, unframed glass;***
- b) A fixed privacy screen shall be affixed to the eastern side of the outdoor kitchen space at the Lower Level (Level 01) to obscure direct lines of sight between the outdoor kitchen space and the neighbouring property at No.2 Folly Point;
- c) The schedule of external materials, colours and finishes shall be amended to replace the zinc roof with a roofing material that is non-reflective and is a colour and tone which matches or complements the natural features of the environment to ensure that excessive glare or reflectivity nuisance from roofing materials does not occur as a result of the development;
- d) The schedule of external materials, colours and finishes shall be amended to change the colour of the render from off-white to a colour and tone which is non-reflective and which matches or complement the tones of the natural environment to ensure a high quality finish to the development in a visually prominent location;
- e) The balustrade to the northern edge of the steps and retaining walls below the foreshore building line shall be open in form to reduce the visual impact of built structures in the foreshore area;
- f) The landscaping area immediately north of the swimming pool and patio area at approximately RL 9.8 is to include planting of cascading plants along the northern edge to screen the outer face (waterway side) of the retaining wall and reduce the visual impact of built structures in the foreshore area;
- g) All retaining walls including ancillary drainage management and footings are to be contained entirely within the site boundaries to protect the integrity of adjoining sites;
- h) One (1) additional canopy tree suitable to reach a mature height of 4 to 5m is to be planted within the foreshore area level (RL4.2 to RL4.8) to improve the quality and diversity of vegetation within the foreshore area and to visually offset the bulk and scale of built structures as viewed from the waterway. The location and species are to be nominated in the amended Landscape Plan to the satisfaction of the PCA prior to the issue of the Construction Certificate;

- i) The understorey to the 3 x *Corymbia maculata* (100l) shall be densely planted with suitable species of low maintenance native shrubs in addition to the 3 x *Cyathea australis* to optimize the variety of planting in the deep soil area to compensate for the removal of the variety of existing vegetation. Additional plantings shall be included in the amended Landscape Plan to the satisfaction of the PCA prior to the issue of a Construction Certificate;
- j) The pathway from the front boundary with Cowdroy Avenue to the front entry door within the tree root zone of the new *Angophora costata* is to be decking or pervious paving to optimize soil depth and infiltration for future growth of the tree. Details of the pathway construction are to be specified in the construction and landscape plans submitted with the Construction Certificate;
- k) ***The green wall (hanging garden) along the western side of the pool being raised in height by 1.0m, and any safety fencing or balustrading being adjusted accordingly; and***
- l) ***The awning proposed over the lower level deck shall be no deeper than 900mm measured outwards from the floor slab to which it will be affixed, as shown on drawing 4.55 107, Revision B, 24 10 2024.***
- m) ***the open parking area must remain as approved, the garage as shown in submitted plans, referred to in the amended condition A1, is not approved.***

No approval is given or implied in this consent for the works proposed to the carport and pergola over the upper level terrace.

ISOBELLA LUCIC
A/MANAGER DEVELOPMENT SERVICES

NEAL McCARRY
A/DIRECTOR PLANNING AND ENVIRONMENT



- SCOPE OF WORKS:**
- new roof over hard stand
 - enclose existing carport into garage
 - new operable metal pergola over external living spaces
 - new fixed metal pergola over external living spaces
 - raise approved swimming pool 900mm so that it is accessible to LGF FFL
 - delete 1.6m solid privacy screen
 - replace w/ 1m glazed balustrade to promote neighbour views
 - lower roof height to reduce bulk
 - clarestorey window height reduced to 600mm
 - roof pitch maintained at 5° to give lowered roof height of RL22.67
- updated 04.10.24

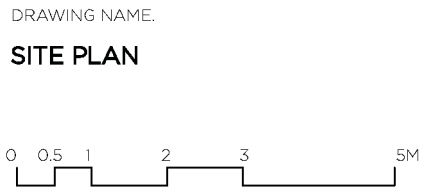
LEGEND. EXISTING MASONRY TIMBER STEEL CONCRETE CLADDING METAL ROOFING/CLADDING TIMBER FLOOR CARPET FLOOR TILE FLOOR DECKING

S4.55 MOD TO DA_58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933)

PREPARED FOR PAUL + RENATA

NOTE. All work to comply with Building Code of Australia, requirements of relevant Statutory Authorities & Local Government & relevant Australian Building Standards. Builder to ensure compliance with all Work Cover requirements. Check all timber sizes with a Structural Engineer and have all structural steelwork & concrete work designed by a Structural Engineer. When proprietary products are referred to, install in accordance with the manufacturers written instructions. Check all dimensions on site prior to construction. If in doubt, check with Architect. All discrepancies and omissions to be reported to Architect.

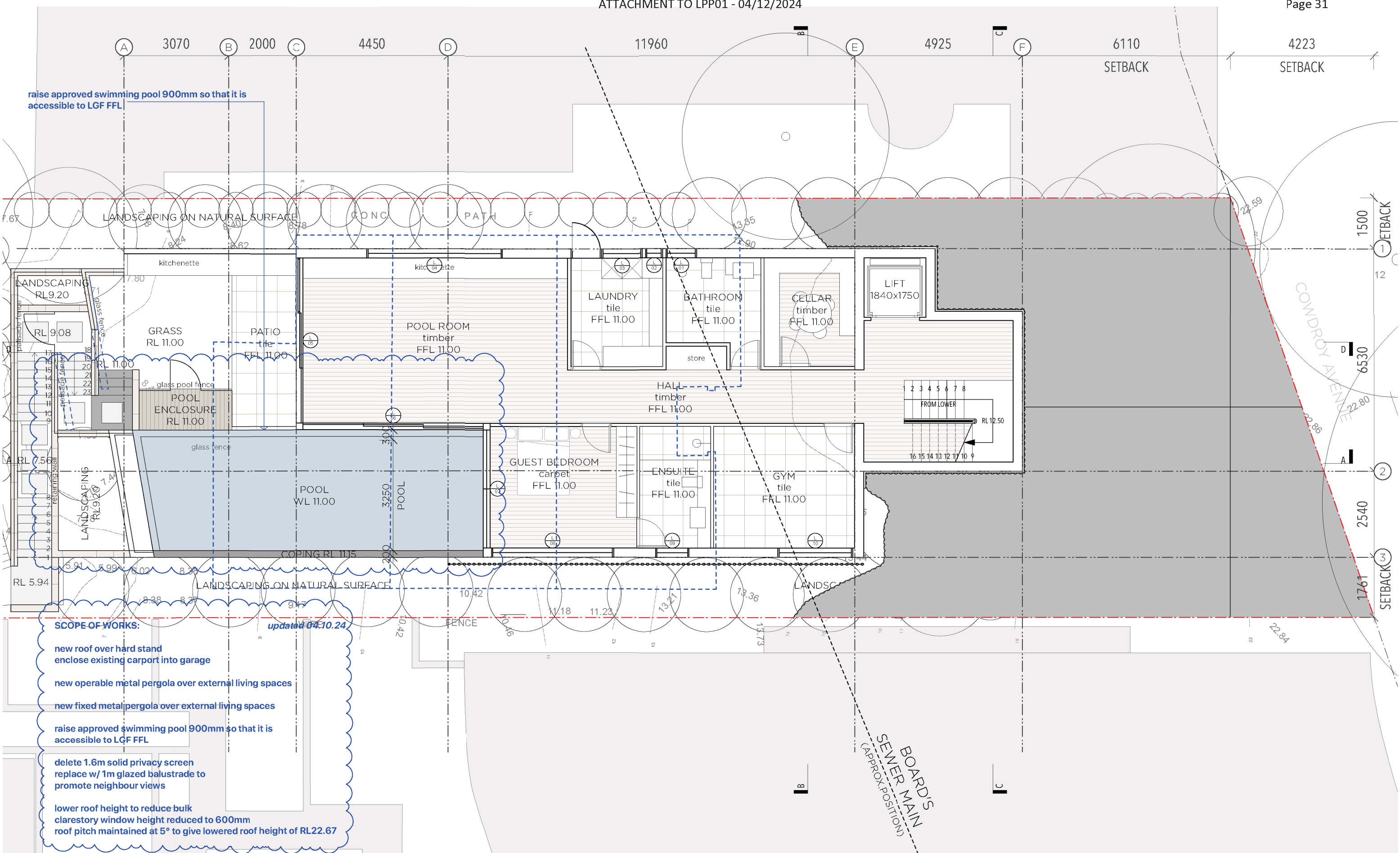
AMENDMENTS.	
241004	B COUNCIL RESUBMISSION



DRAWING NO.

4.55 101

REVISION. **B**



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 - enclose existing carport into garage
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S4.55 MOD TO DA_58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933)

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AMENDMENTS.

241004	B	COUNCIL RESUBMISSION
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DRAWING NAME.

LOWER LEVEL FLOOR PLAN

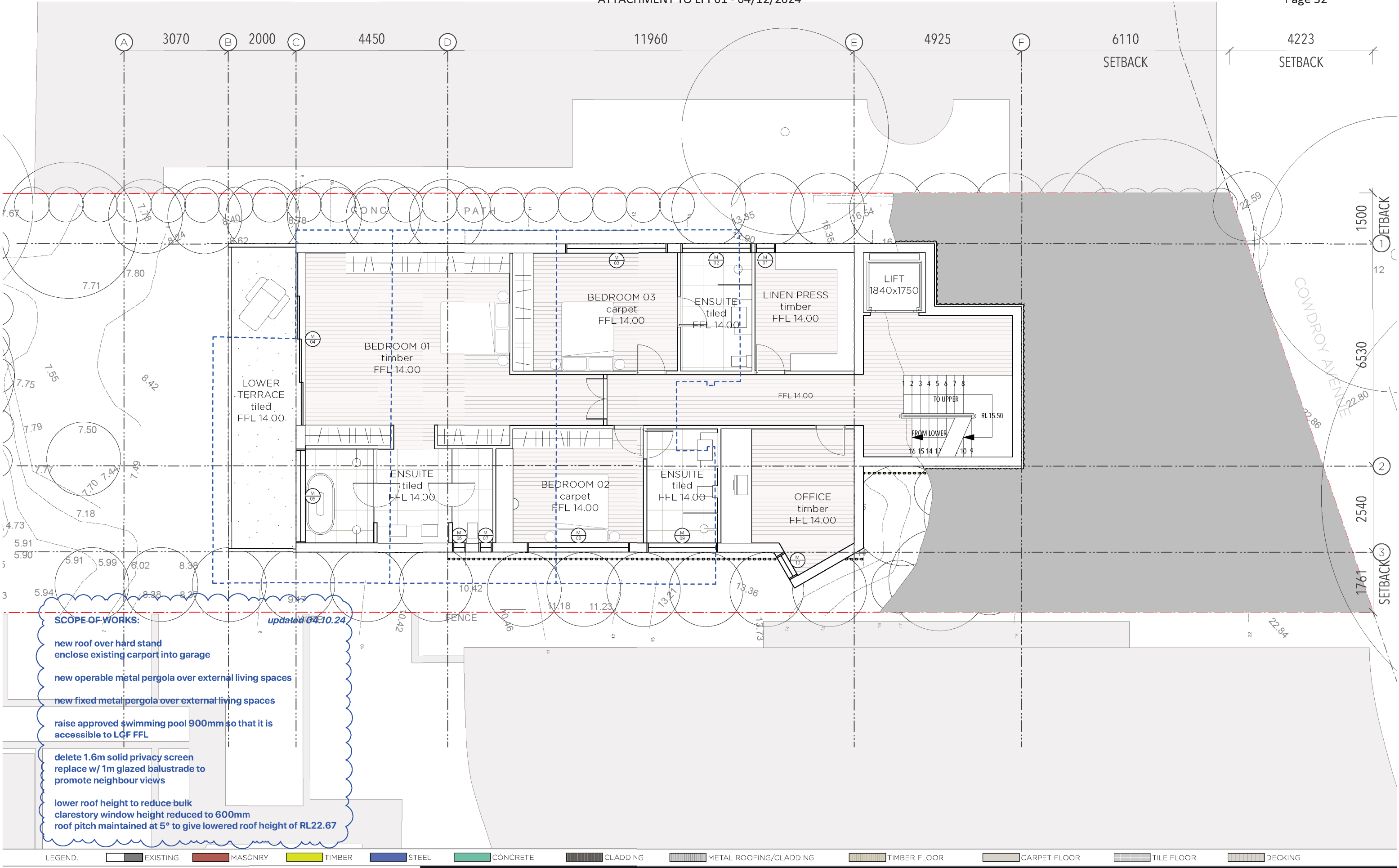
DATE. 04.10.2024

SCALE. 1:100 AT A3

DRAWING NO.

4.55 102

REVISION. **B**



SCOPE OF WORKS:

updated 04.10.24

- new roof over hard stand
enclose existing carport into garage
- new operable metal pergola over external living spaces
- new fixed metal pergola over external living spaces
- raise approved swimming pool 900mm so that it is accessible to LQF FFL
- delete 1.6m solid privacy screen
replace w/ 1m glazed balustrade to promote neighbour views
- lower roof height to reduce bulk
clarestory window height reduced to 600mm
roof pitch maintained at 5° to give lowered roof height of RL22.67

S4.55 MOD TO DA_58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933)

PREPARED FOR PAUL + RENATA

NOTE: All work to comply with Building Code of Australia, requirements of relevant Statutory Authorities & Local Government & relevant Australian Building Standards. Builder to ensure compliance with all Work Cover requirements. Check all timber sizes with a Structural Engineer and have all structural steelwork & concrete work designed by a Structural Engineer. When proprietary products are referred to, install in accordance with the manufacturers written instructions. Check all dimensions on site prior to construction. If in doubt, check with Architect. All discrepancies and omissions to be reported to Architect.

AMENDMENTS.

241004	B	COUNCIL RESUBMISSION

DRAWING NAME.

MID LEVEL FLOOR PLAN

DATE: 04.10.2024
SCALE: 1:100 AT A3

DRAWING NO.

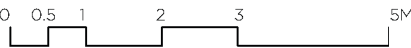
4.55 103

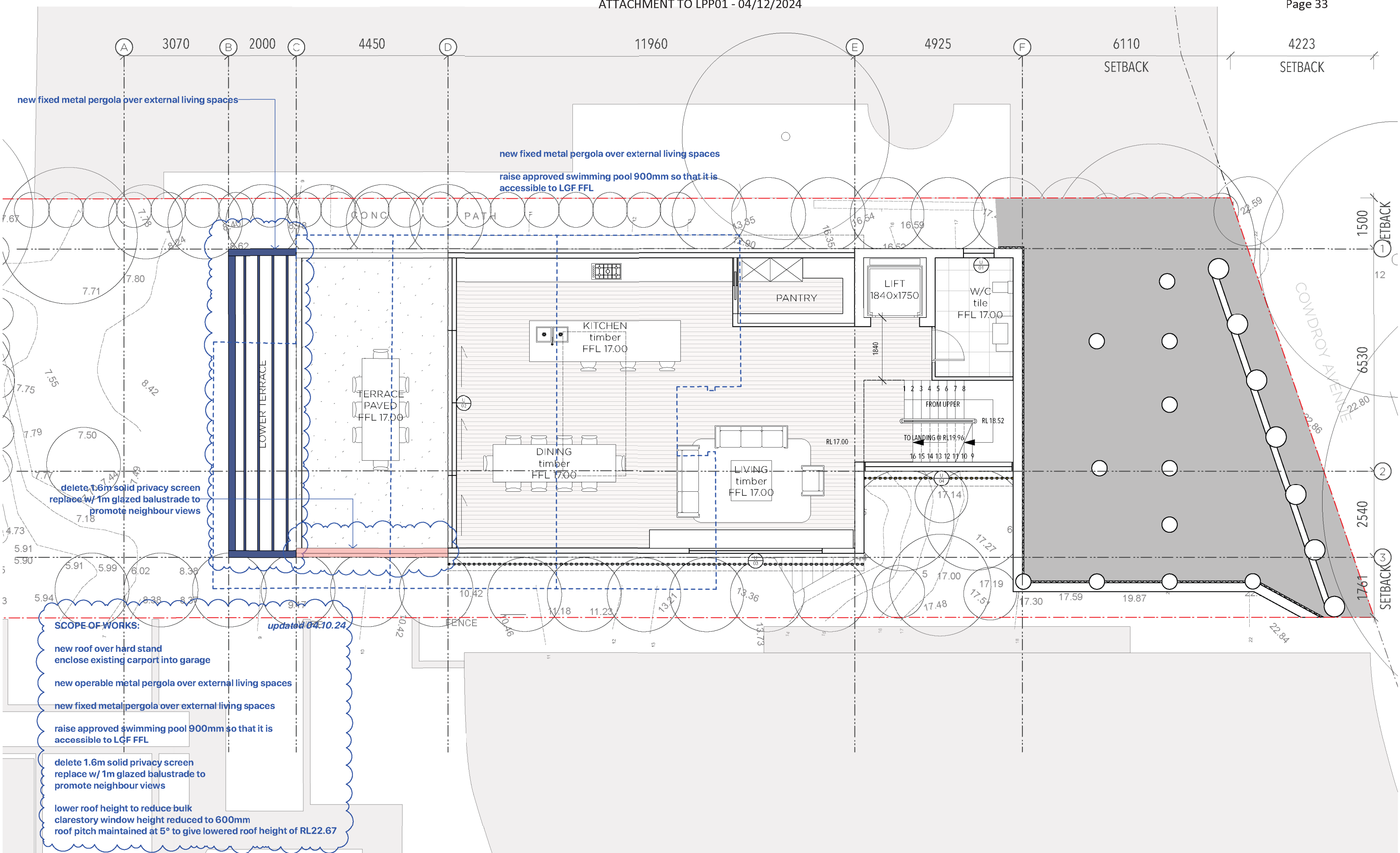
REVISION.

B



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S4.55 MOD TO DA_58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933)

PREPARED FOR PAUL + RENATA



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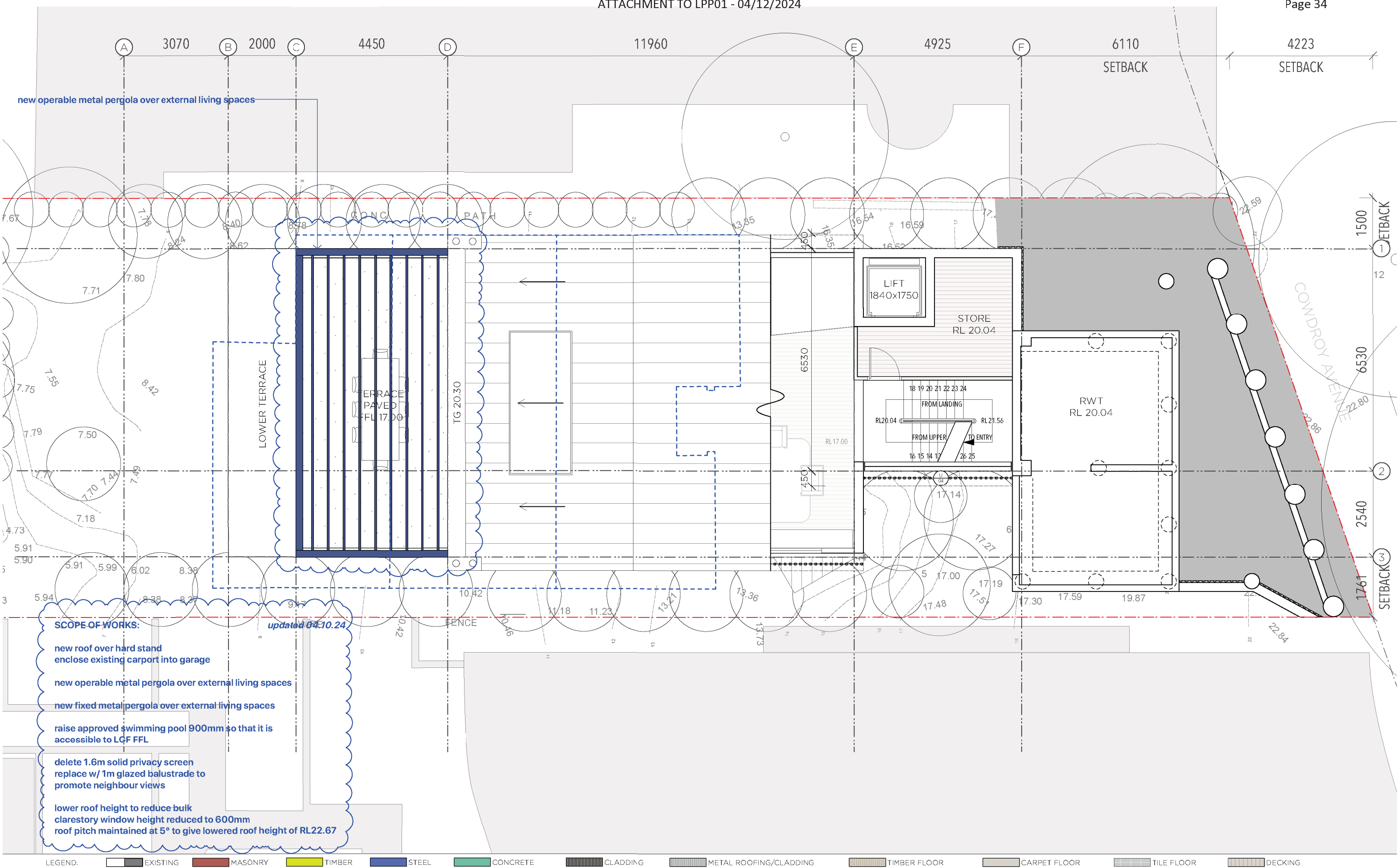
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AMENDMENTS.	
241004	B COUNCIL RESUBMISSION



DRAWING NO.
4.55 104

REVISION. **B**



S4.55 MOD TO DA_58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933)

PREPARED FOR PAUL + RENATA

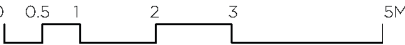


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AMENDMENTS.	
241004	B COUNCIL RESUBMISSION

DRAWING NAME.
UPPER LEVEL FLOOR PLAN + 3m

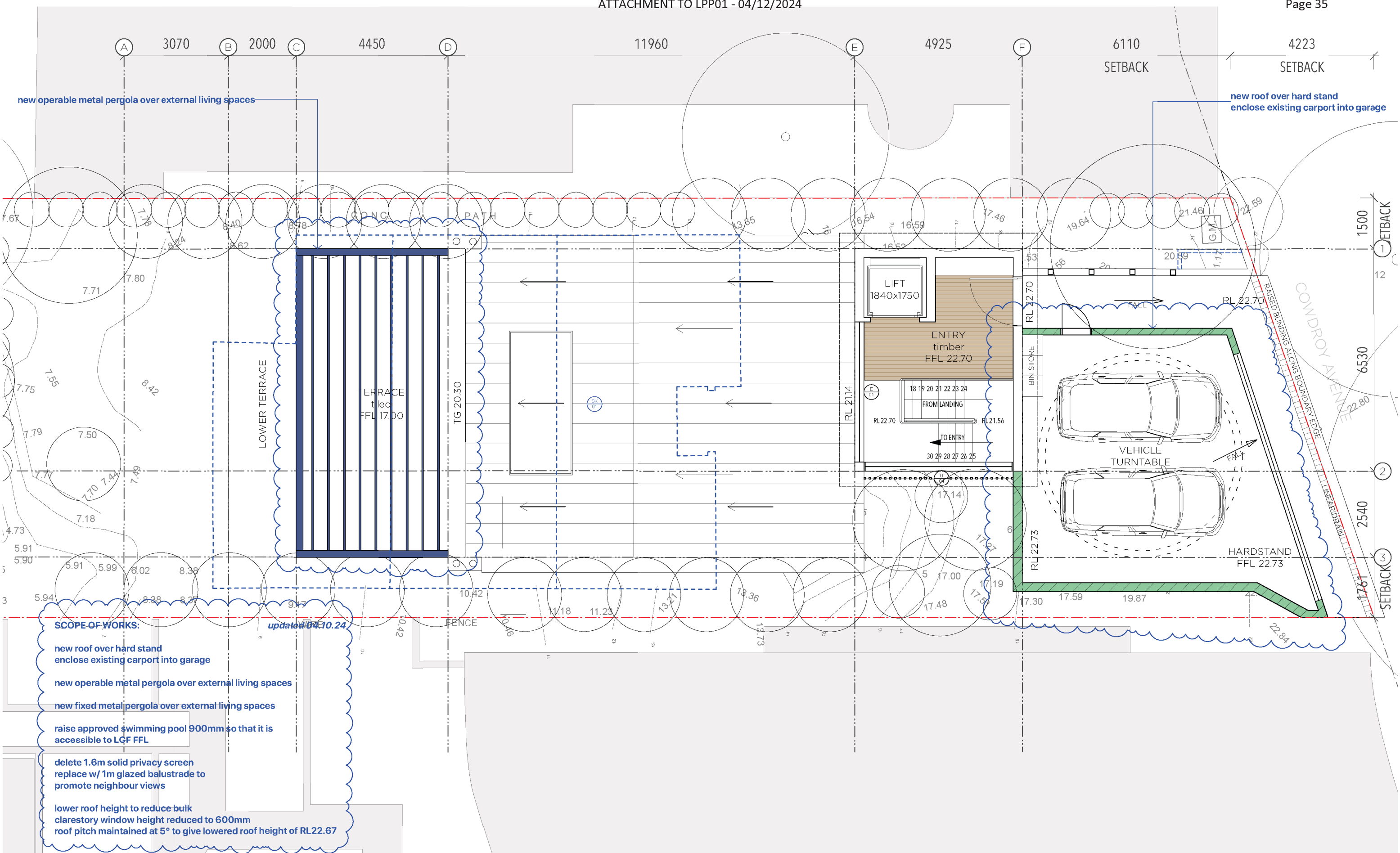


DATE: 04.10.2024
SCALE: 1:100 AT A3



DRAWING NO.
4.55 104A

REVISION. **B**



S4.55 MOD TO DA_58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933)

PREPARED FOR PAUL + RENATA



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AMENDMENTS.	
241004	B COUNCIL RESUBMISSION

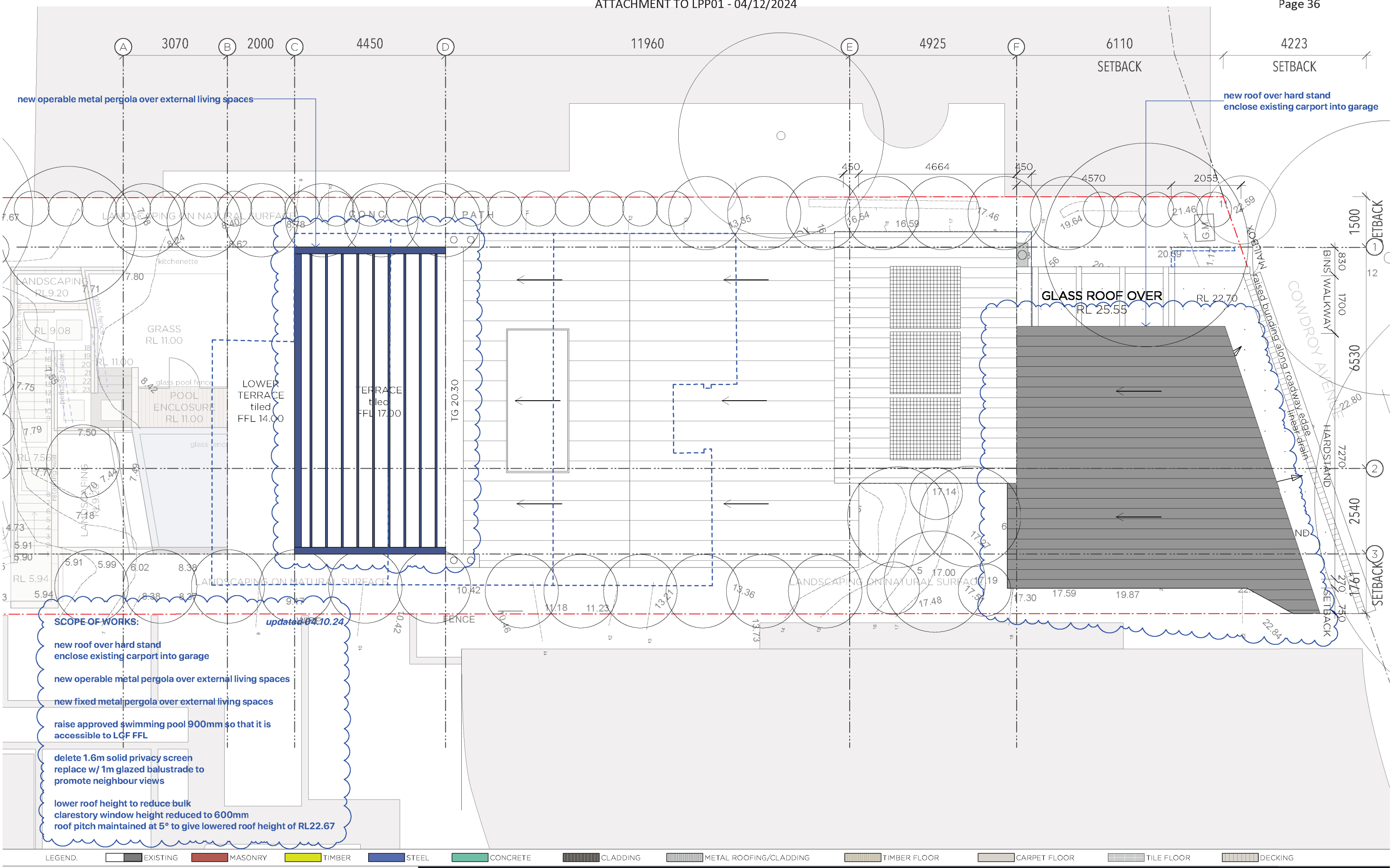
DRAWING NAME.
ENTRY LEVEL FLOOR PLAN

0 0.5 1 2 3 5M

DATE: 04.10.2024
SCALE: 1:100 AT A3

DRAWING NO.
4.55 105

REVISION. **B**



SCOPE OF WORKS:

- new roof over hard stand
enclose existing carport into garage
- new operable metal pergola over external living spaces
- new fixed metal pergola over external living spaces
- raise approved swimming pool 900mm so that it is accessible to LQF FFL
- delete 1.6m solid privacy screen
replace w/ 1m glazed balustrade to promote neighbour views
- lower roof height to reduce bulk
clarestory window height reduced to 600mm
roof pitch maintained at 5° to give lowered roof height of RL22.67

updated 04.10.24

S4.55 MOD TO DA 58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933)

PREPARED FOR PAUL + RENATA



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AMENDMENTS.

241004	B	COUNCIL RESUBMISSION

DRAWING NAME.

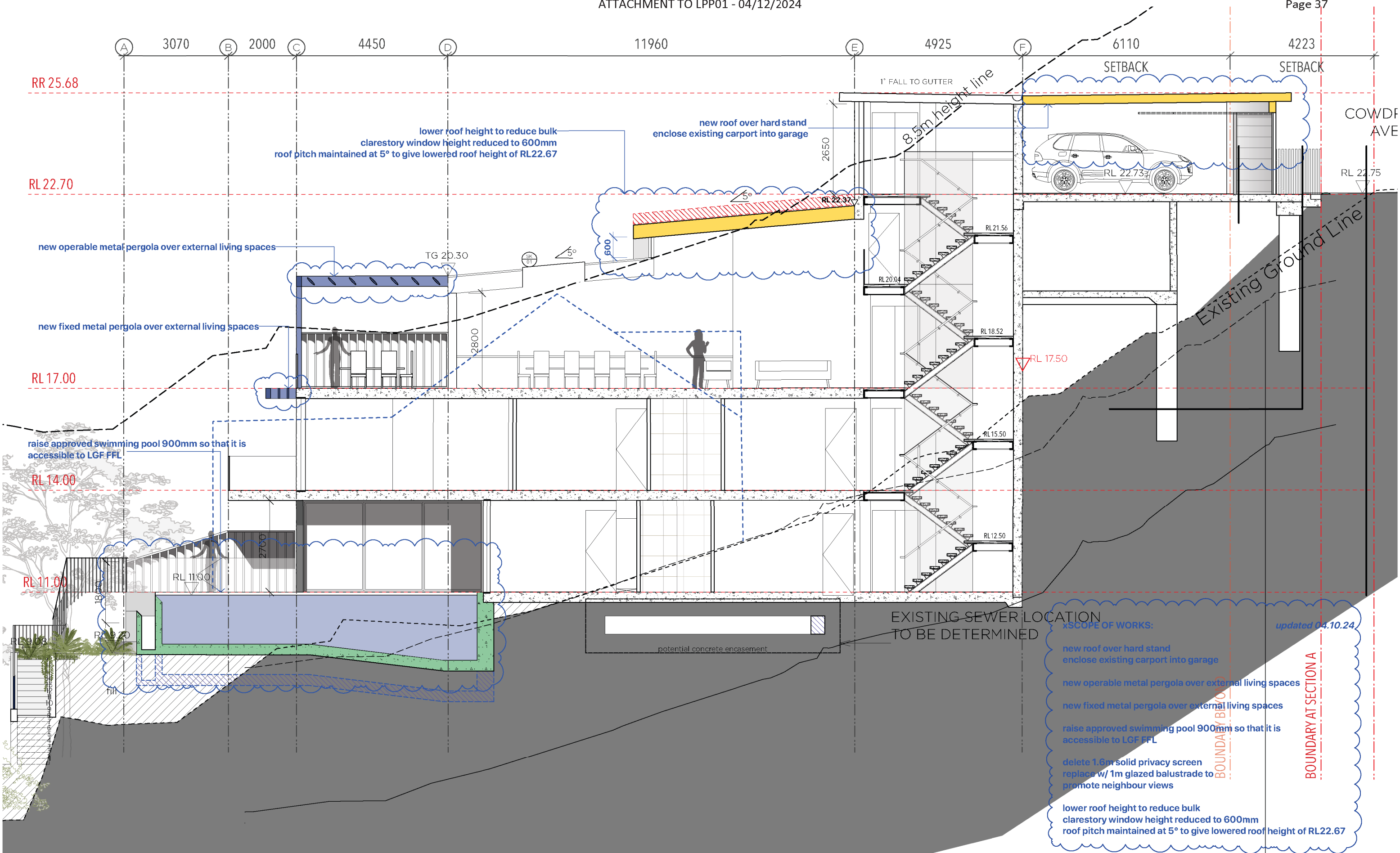
ROOF LEVEL FLOOR PLAN

DATE: 04.10.2024
SCALE: 1:100 AT A3

DRAWING NO.

4.55 106

REVISION. **B**



LEGEND: EXISTING MASONRY TIMBER STEEL CONCRETE CLADDING METAL ROOFING/CLADDING TIMBER FLOOR CARPET FLOOR TILE FLOOR DECKING

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S4.55 MOD TO DA_58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933)

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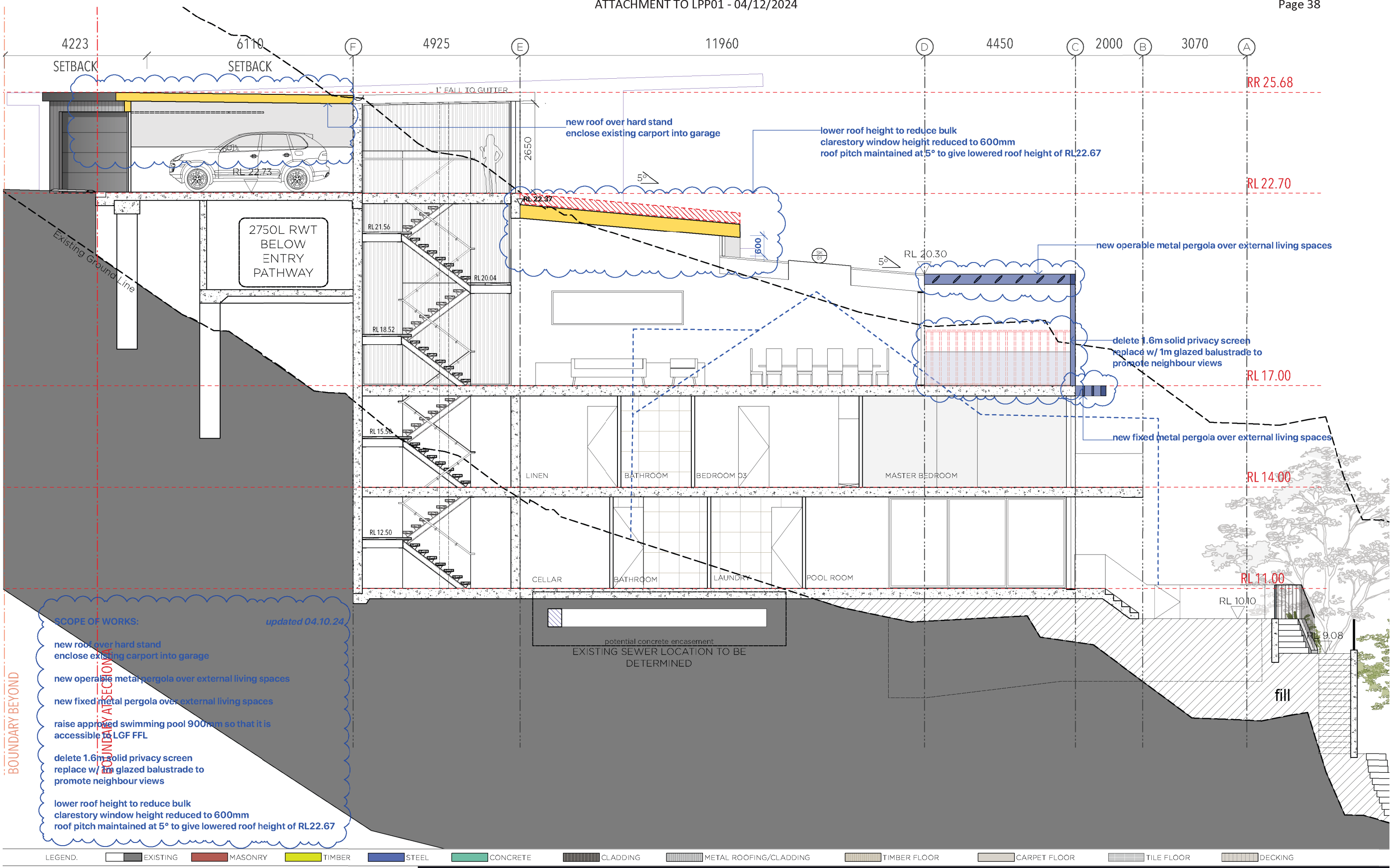
AMENDMENTS.	
241004	B COUNCIL RESUBMISSION

DRAWING NAME.
SECTION AA

DATE: 04.10.2024
SCALE: 1:100 AT A3

DRAWING NO.
4.55 107

REVISION. **B**



BOUNDARY BEYOND

- SCOPE OF WORKS: updated 04.10.24
- new roof over hard stand
enclose existing carport into garage
 - new operable metal pergola over external living spaces
 - new fixed metal pergola over external living spaces
 - raise approved swimming pool 900mm so that it is accessible to LGF FFL
 - delete 1.6m solid privacy screen
replace w/ 1m glazed balustrade to promote neighbour views
 - lower roof height to reduce bulk
clarestory window height reduced to 600mm
roof pitch maintained at 5° to give lowered roof height of RL22.67

LEGEND: EXISTING MASONRY TIMBER STEEL CONCRETE CLADDING METAL ROOFING/CLADDING TIMBER FLOOR CARPET FLOOR TILE FLOOR DECKING

S4.55 MOD TO DA_58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933)

PREPARED FOR PAUL + RENATA



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AMENDMENTS.	
241004	B COUNCIL RESUBMISSION

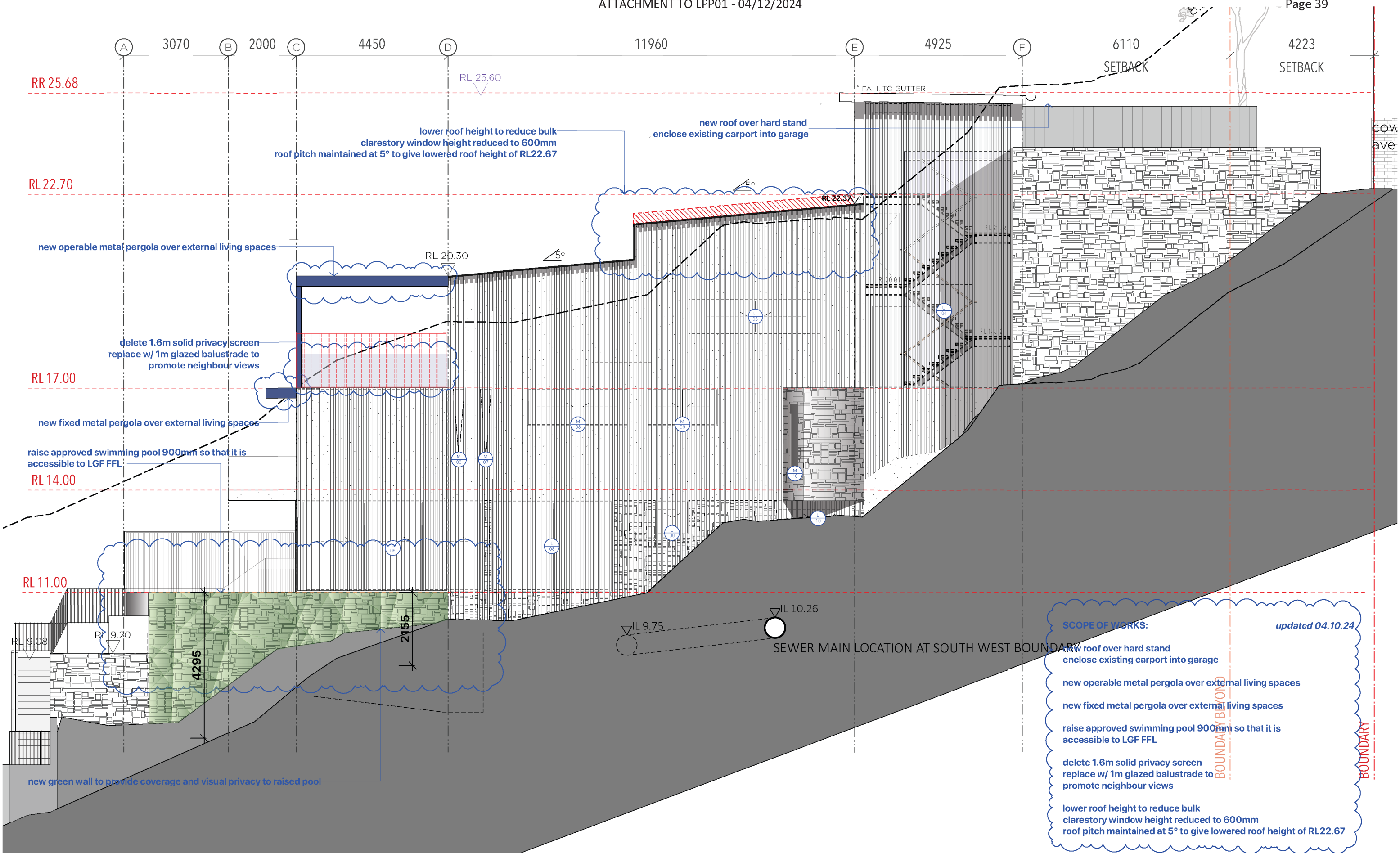
DRAWING NAME.
SECTION DD

0 0.5 1 2 3 5M

DATE: 04.10.2024
SCALE: 1:100 AT A3

DRAWING NO.
4.55 110

REVISION. **B**



LEGEND: EXISTING MASONRY TIMBER STEEL CONCRETE CLADDING METAL ROOFING/CLADDING TIMBER FLOOR CARPET FLOOR TILE FLOOR DECKING

COSO
ARCHITECTURE

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S4.55 MOD TO DA 58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933)

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AMENDMENTS.	
241004	B COUNCIL RESUBMISSION

DRAWING NAME.
WEST ELEVATION

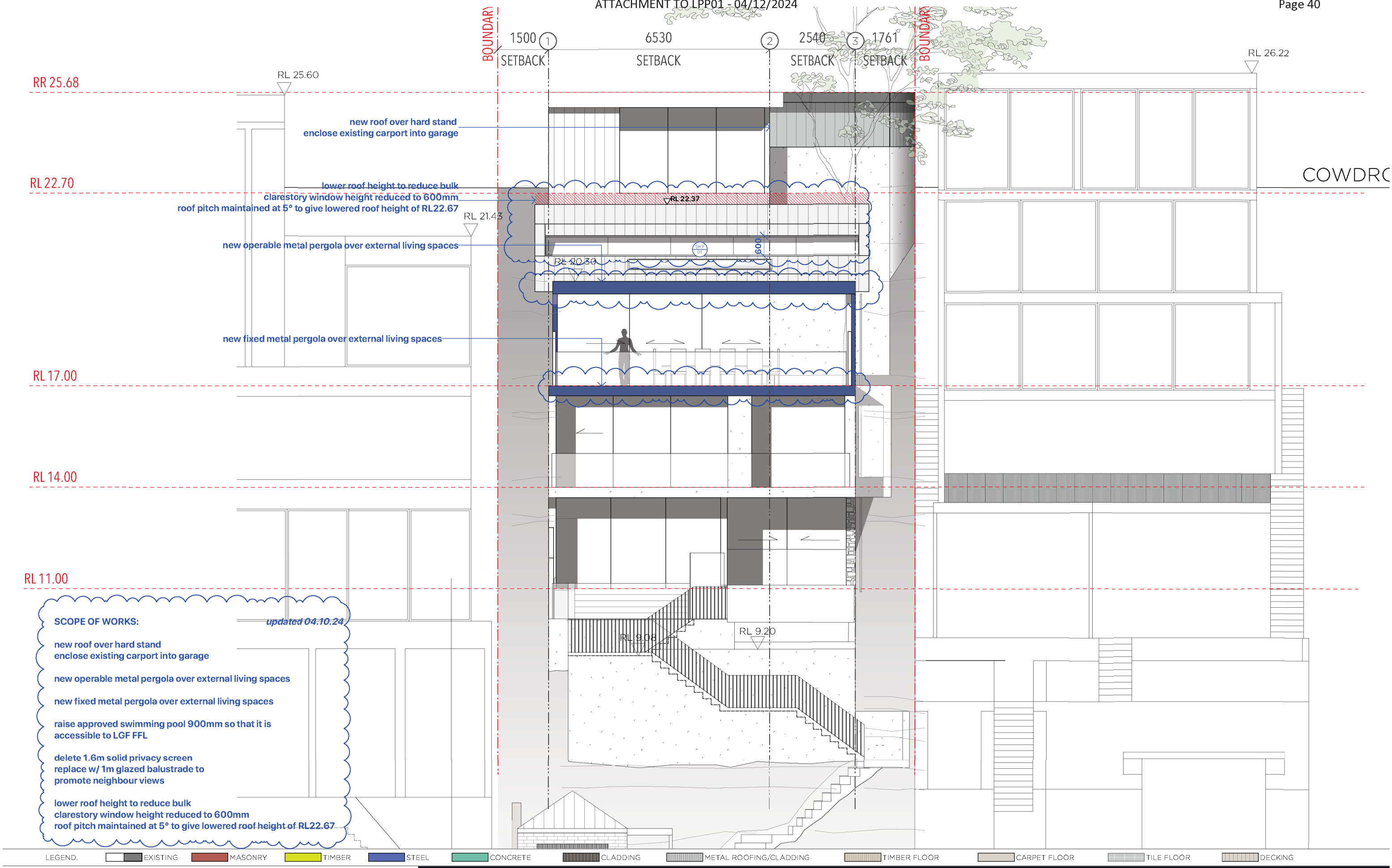
0 0.5 1 2 3 5M

PREPARED FOR PAUL + RENATA

DATE: 04.10.2024
SCALE: 1:100 AT A3

DRAWING NO.
4.55 111

REVISION. **B**



SCOPE OF WORKS:

updated 04.10.24

- new roof over hard stand enclose existing carport into garage
- new operable metal pergola over external living spaces
- new fixed metal pergola over external living spaces
- raise approved swimming pool 900mm so that it is accessible to LGF FFL
- delete 1.6m solid privacy screen replace w/ 1m glazed balustrade to promote neighbour views
- lower roof height to reduce bulk clarestorey window height reduced to 600mm roof pitch maintained at 5° to give lowered roof height of RL22.67

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ARCHITECTURE

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S4.55 MOD TO DA_58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933)

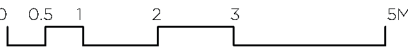
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AMENDMENTS.

241004	B	COUNCIL RESUBMISSION

DRAWING NAME.

NORTH ELEVATION



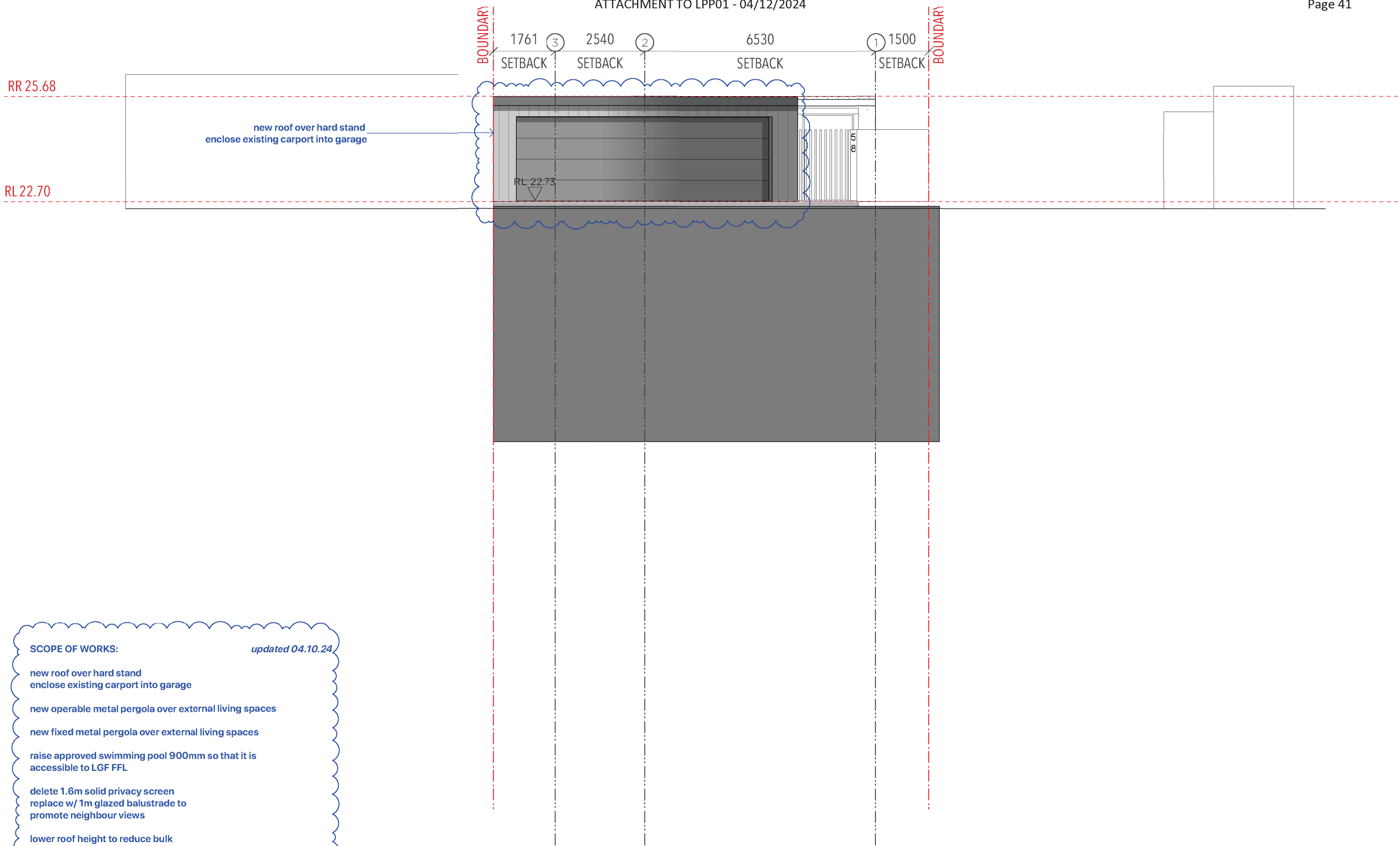
PREPARED FOR PAUL + RENATA

DATE: 04.10.2024
SCALE: 1:100 AT A3



DRAWING NO.
4.55 112

REVISION. B



SCOPE OF WORKS:

updated 04.10.24

new roof over hard stand
enclose existing carport into garage

new operable metal pergola over external living spaces

new fixed metal pergola over external living spaces

raise approved swimming pool 900mm so that it is
accessible to LGF FFL

delete 1.6m solid privacy screen
replace w/ 1m glazed balustrade to
promote neighbour views

lower roof height to reduce bulk
clarestory window height reduced to 600mm
roof pitch maintained at 5° to give lowered roof height of RL22.67

LEGEND:

EXISTING MASONRY TIMBER STEEL CONCRETE CLADDING METAL ROOFING/CLADDING TIMBER FLOOR CARPET FLOOR TILE FLOOR DECKING

COSO
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S4.55 MOD TO DA_58 COWDROY AVENUE, CAMMERAY, 2062 (LOT 33 / - / DP 8933)

PREPARED FOR PAUL + RENATA

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AMENDMENTS.

241004	B	COUNCIL RESUBMISSION

DRAWING NAME.

SOUTH ELEVATION

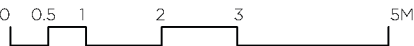
DATE: 04.10.2024
SCALE: 1:100 AT A3

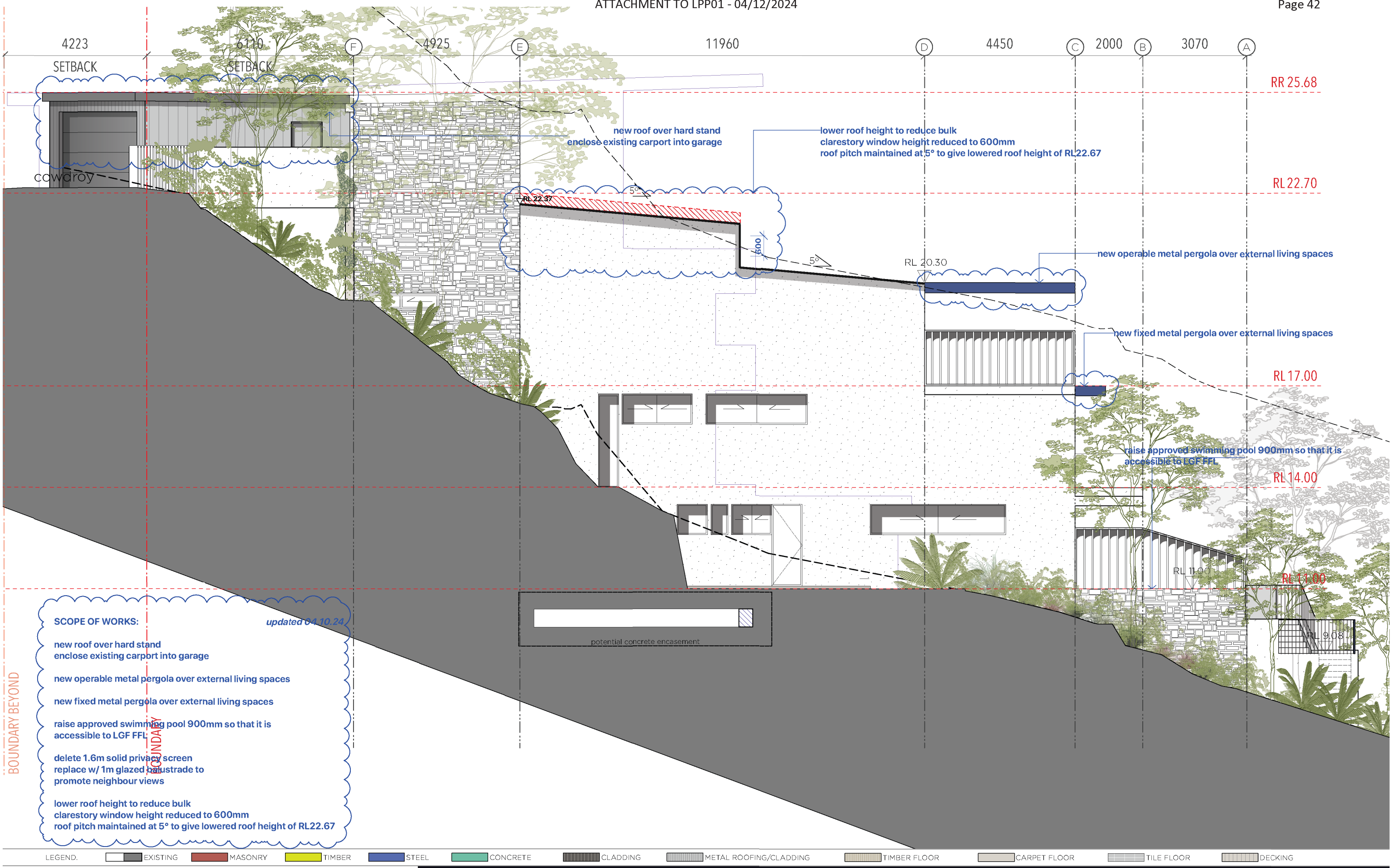


DRAWING NO.

4.55 113

REVISION. **B**







Camera 01
RL 19.75
Camera RL 21.25
Focal Length 50mm
ƒ 1.8



Camera 02
RL 19.75
Camera RL 21.25
Focal Length 50mm
ƒ 1.8



Camera 03
RL 19.75
Camera RL 21.25
Focal Length 50mm
ƒ 1.8



Contact

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Nominated Architect

Anthony Solomon RAIA 5884

Compliance

Comply with all relevant authorities, NCC and Australian Standards. Dimensions in mm. Do not scale from drawings - use figured dimensions only and notify Architect if discrepancy exists.

Legend

- Approved Development
- Proposed Development
- Existing Structure
- Approved for demolition



Date	Rev.	Description
02/10/2024	A	PRELIMINARY - Client Review

Project

New Single Residential Development at
58 Cowdroy Avenue, Cammeray NSW 2062

Client

Paul & Renata Etherington

Status

Modification to Development Consent (4.55)

Scale

1:100 @ A3

North

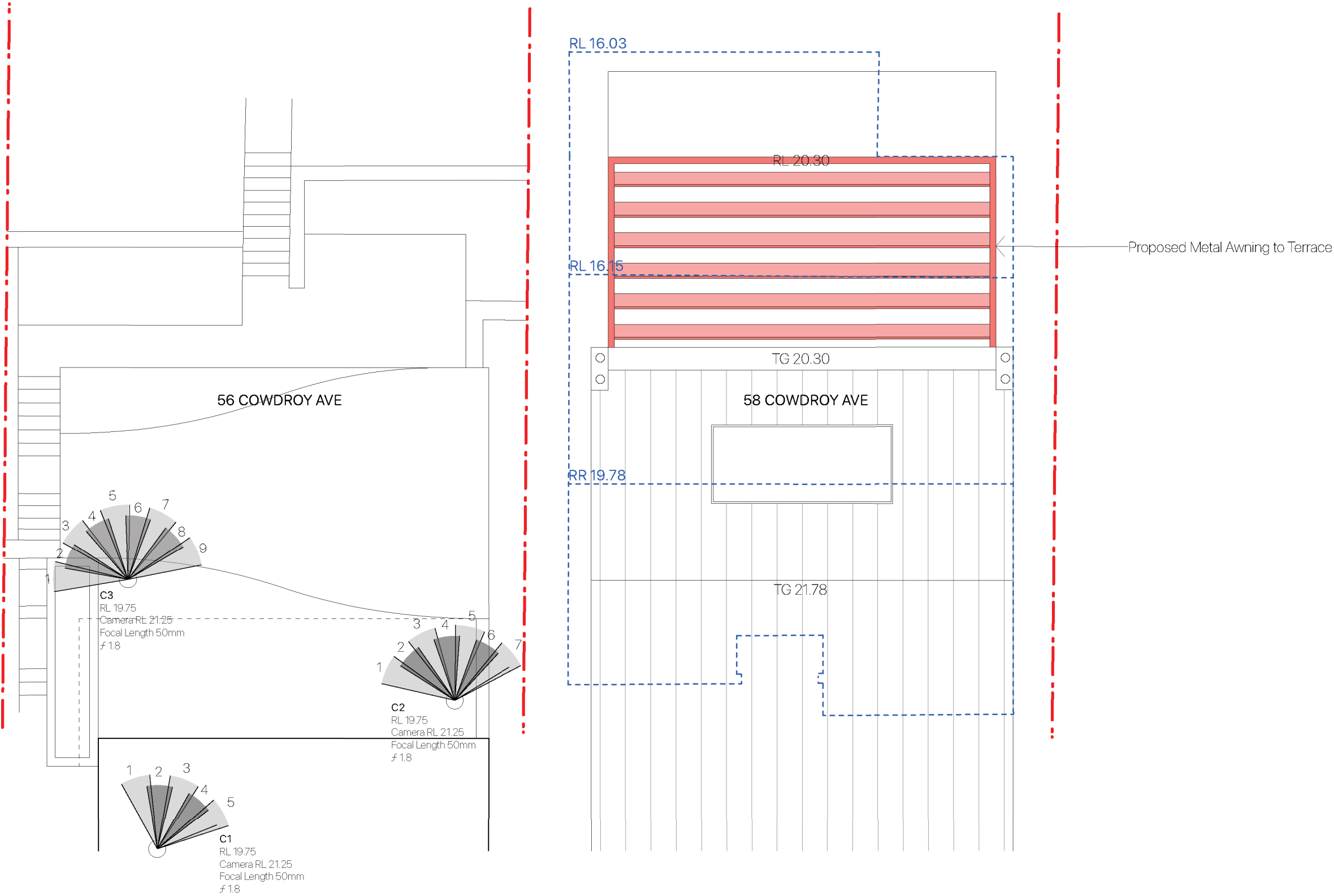


Drawing

View Sharing Analysis Diagram
taken from 56 Cowdroy Ave Cammeray

Sheet

4.55 - 202



Contact

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Nominated Architect

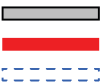
Anthony Solomon RAlA 5684

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Legend

Approved Development
Proposed Development
Existing Structure
- Approved for demolition



Date

02/10/2024

Rev. Description

A PRELIMINARY - Client Review

Project

New Single Residential Development at
58 Cowdroy Avenue, Cammeray NSW 2062

Client

Paul & Renata Etherington

Status

Modification to Development Consent (4.55)

Scale

1:100@A3

North



Drawing

View Sharing Analysis Diagram

Sheet

4.55 - 201