

**GENERAL SITE NOTES :**

**STORMWATER** - TO BE CONTAINED ON SITE OR CONNECTED TO MAIN SW VIA ON-SITE STORMWATER PIT SUBJECT TO COUNCIL REQUIREMENTS.

**SEWER** - TO BE CONNECTED TO SEWER MAINS LINE SUBJECT TO WATER CORPORATION REQUIREMENTS. LOCATION OF SEWER JUNCTION POINT TO BE CONFIRMED BY THE BUILDER PRIOR TO CONSTRUCTION.

**EFFLUENT DISPOSAL SYSTEMS** - WHERE NO SEWER MAINS PRESENT, EFFLUENT DISPOSAL TO BE PROVIDED TO PLUMBER AND MANUFACTURER'S STANDARDS. DRAWING IS NOMINAL ONLY AND SHALL BE SUBJECT TO COUNCIL HEALTH REQUIREMENTS.

**FINISHED FLOOR LEVEL** - MAY BE SUBJECT TO ENGINEER, PLUMBING AND COUNCIL REQUIREMENTS.

**VERGE CROSSOVER** - MAY BE SUBJECT TO COUNCIL, ENGINEERING DEPARTMENT REQUIREMENTS. REFER TO COUNCIL DETAILS FOR RECOMMENDED CONSTRUCTION. DRAWING IS DIAGNOSTIC ONLY.

**SURVEY** - IDENTIFICATION OF LOT BOUNDARIES IS THE RESPONSIBILITY OF THE OWNER AND/OR BUILDER.

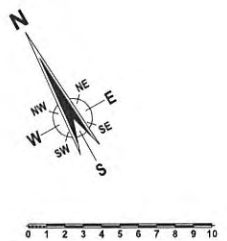
**CHECK DIMENSIONS ON SITE** - PRIOR TO COMMENCEMENT OF CONSTRUCTION.

**DRAWINGS AND DETAILS** - TO BE READ IN CONJUNCTION WITH RELEVANT CONSULTANT DRAWINGS AND SHALL PRECEDE THESE DRAWINGS.

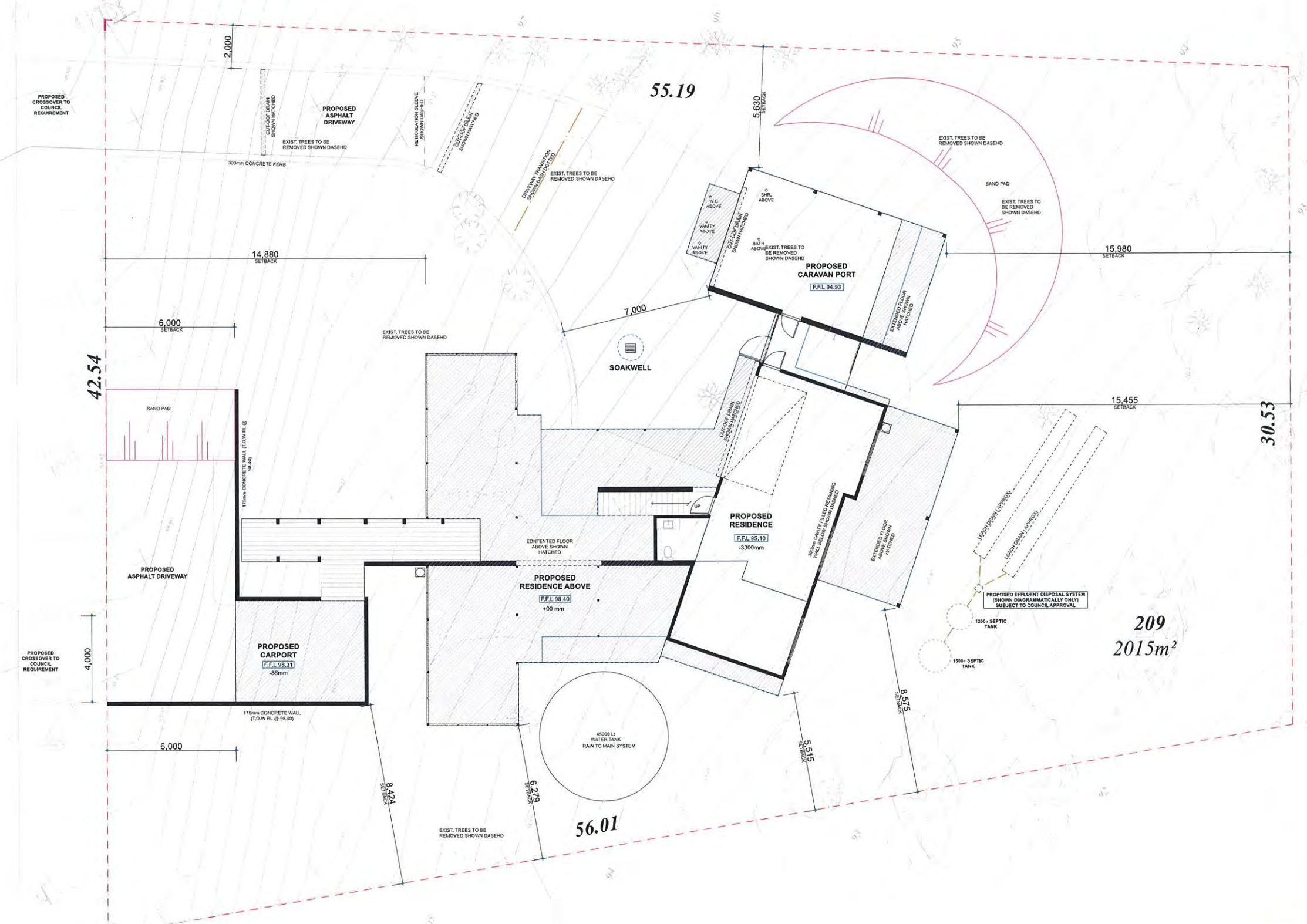
**DRAWINGS TO BE READ** - IN CONJUNCTION WITH ENGINEER DRAWINGS, DETAILS AND SPECIFICATIONS AND SHALL PRECEDE THESE DRAWINGS.

**OWNER AND/OR BUILDER SHALL** - COMPLY WITH ALL STATUTORY AUTHORITY BY-LAWS, AUSTRALIAN STANDARDS, REGULATIONS, RESIDENTIAL DESIGN CODES AND THE BCA AND SHALL PRECEDE THESE DRAWINGS.

BUILDING AREAS	
<b>BASEMENT FLOOR AREAS</b>	
BASEMENT LIVING	27.99
CARPORT	46.33
OUTDOOR SHED	9.62
WORKSHOP & GARAGE	37.34
<b>GROUND FLOOR AREAS</b>	<b>146.32 m<sup>2</sup></b>
ALFRESCO & DECKING	76.90
GROUND LIVING	355.52
<b>TOTAL LIVING AREAS</b>	<b>293.91 m<sup>2</sup></b>
<b>TOTAL BUILDING AREAS</b>	<b>483.14 m<sup>2</sup></b>



**HEATHER ROAD**



209  
2015m<sup>2</sup>



**PROPOSED SITE PLAN**  
Scale 1:100

<b>Project:</b> Proposed Double Storey Residence	<b>Client:</b> Sandy & Greg Marshall	<b>Address:</b> Lot 209 Heather Road Denmark	<b>Date:</b> 29/09/16 11/10/16	<b>Item:</b> ISSUE FOR COMMENT ISSUE FOR COMMENT	<b>CLIENT:</b> CLIENT CLIENT	<b>Drawn:</b> KH	<b>Date:</b> 11/10/2016	<b>Drawing Number:</b> A02 of 05	<b>Job No.:</b> C-1647-16
			<b>Rev. Date</b>	<b>Item</b>	<b>Issued To</b>	<b>Checked:</b> RF	<b>Scale:</b> AS SHOWN		<b>Stage / Revision:</b> DD-E

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**NOTE:**  
 - ALL SNAPSHOTS ARE TAKEN FROM 1500 ABOVE NGL, VIEWS PERPENDICULAR TO B'DRY LINE  
 - ALL TREES ARE 8m HEIGHT APPROX



**PROPOSED SITE PLAN**  
 Scale 1:500



**VIEW FROM LOT 208**



**VIEW FROM LOT 214**

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**VIEW FROM LOT 211**



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 FAX: 9443 1444

Albany Office:  
 338 Middleton Road, Albany WA 6330  
 PH: 9842 1157  
 FAX: 9842 5157  
 admin@cbdd.com  
 www.cbdd.com.au

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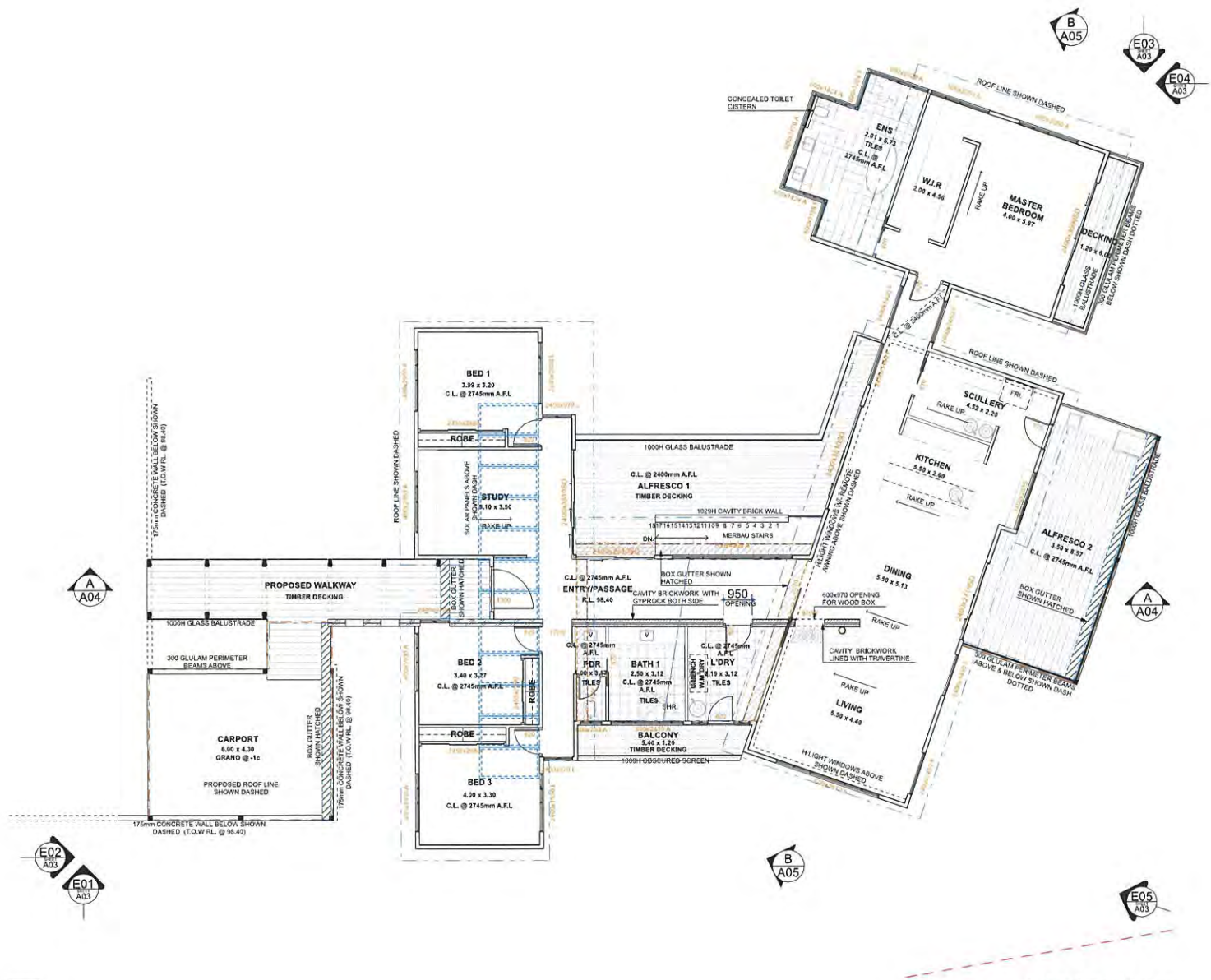
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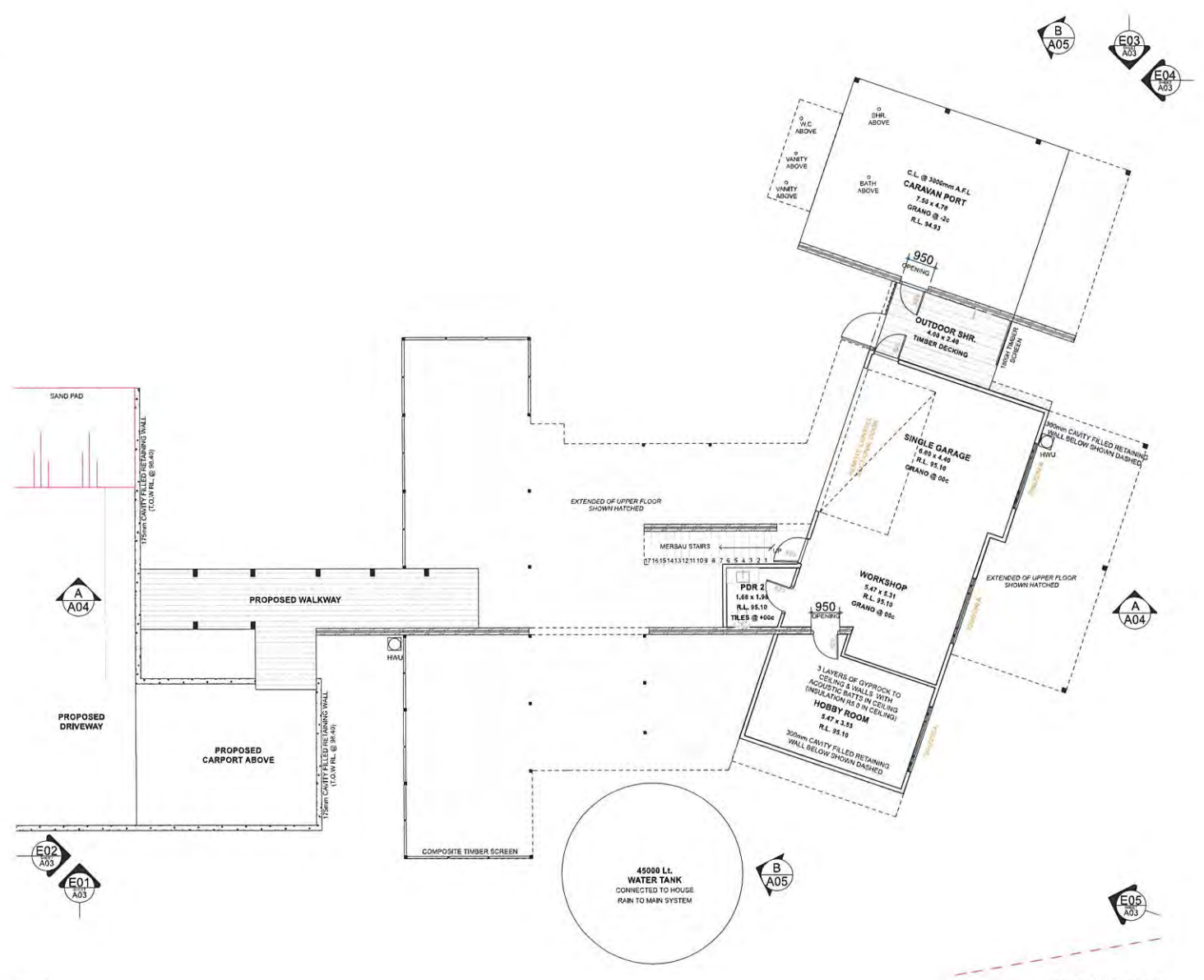
**Address:**  
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Rev.	Date	Item	Issued To
02	07/12/16	NEIGHBOURS VIEW	CLIENT
01	18/11/16	ISSUE FOR COMMENT	CLIENT

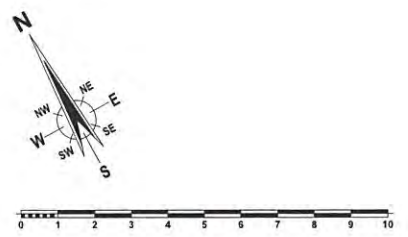
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KH	7/12/2016		C-1647-16
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GROUND FLOOR PLAN  
Scale 1:100



BASEMENT PLAN  
Scale 1:100



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Arch: CFC  
Site: 2016/10/16  
Drawn: KH  
Checked: RF

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Project:  
Proposed Double Storey Residence

Client:  
Sandy & Greg Marshall

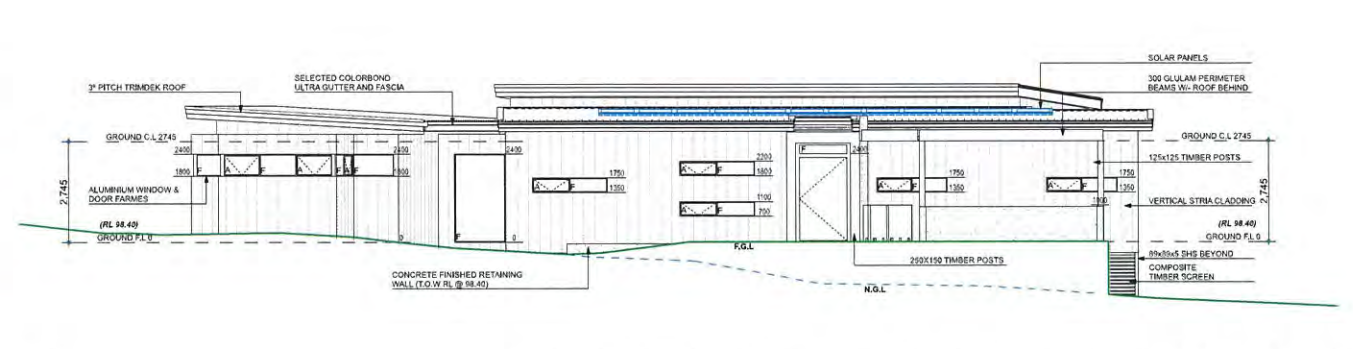
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Lot 209 Heather Road Denmark

D	29/09/16	ISSUE FOR COMMENT	CLIENT
E	11/10/16	ISSUE FOR COMMENT	CLIENT
Rev.	Date	Item	Issued To

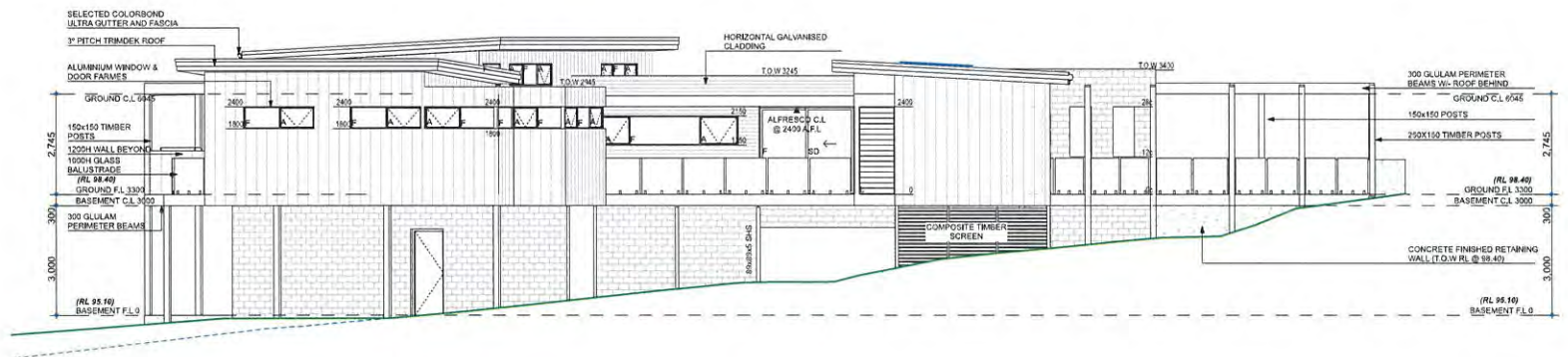
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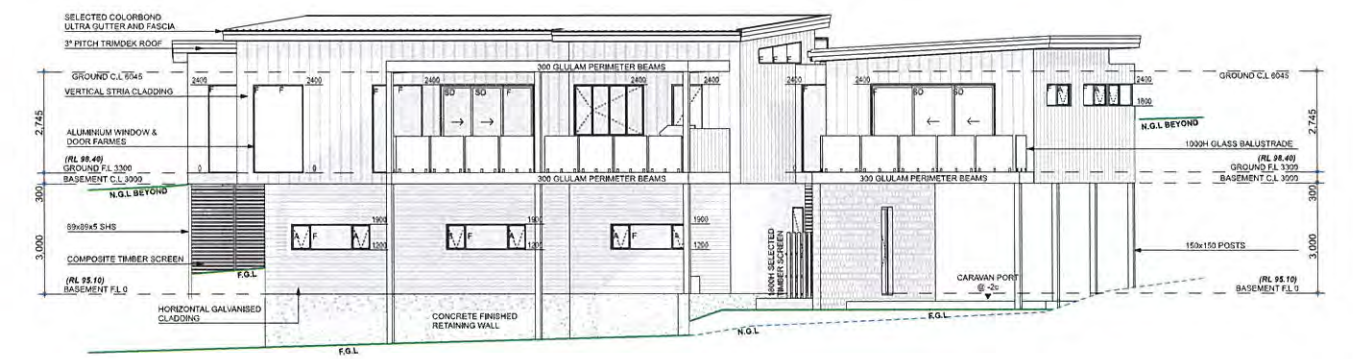
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Scale 1:100



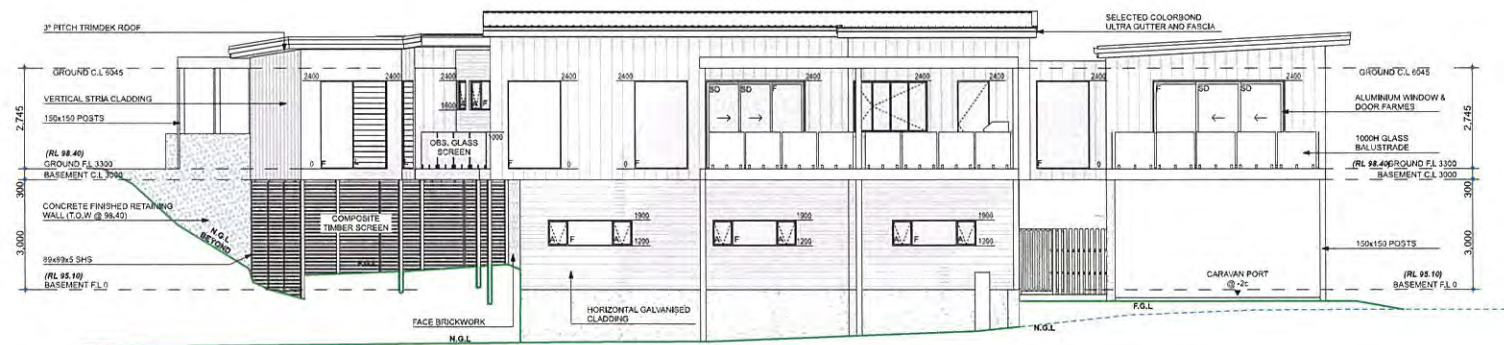
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Scale 1:100



**E03** **ELEVATION 03 - NE**  
Scale 1:100

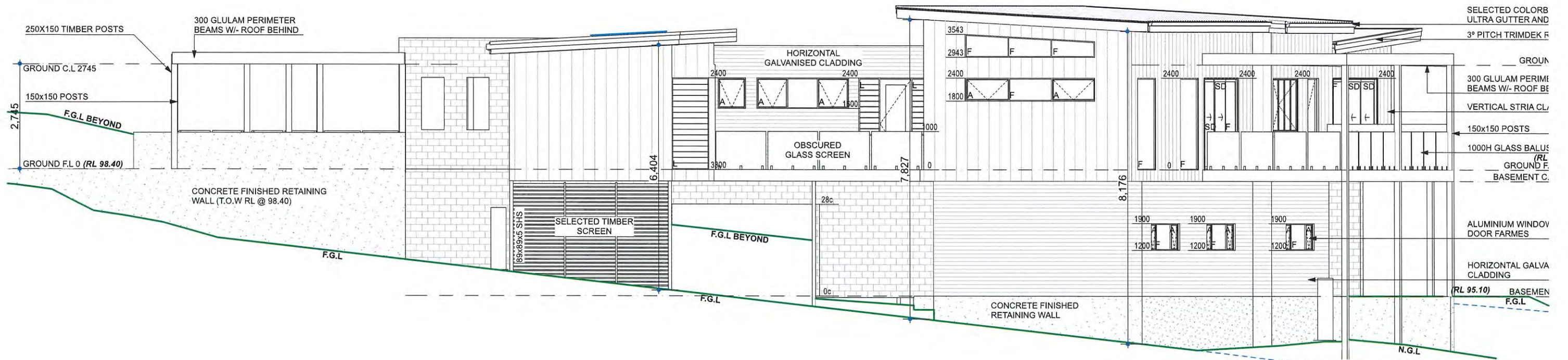


**E04** **ELEVATION 04 - SE**  
Scale 1:100



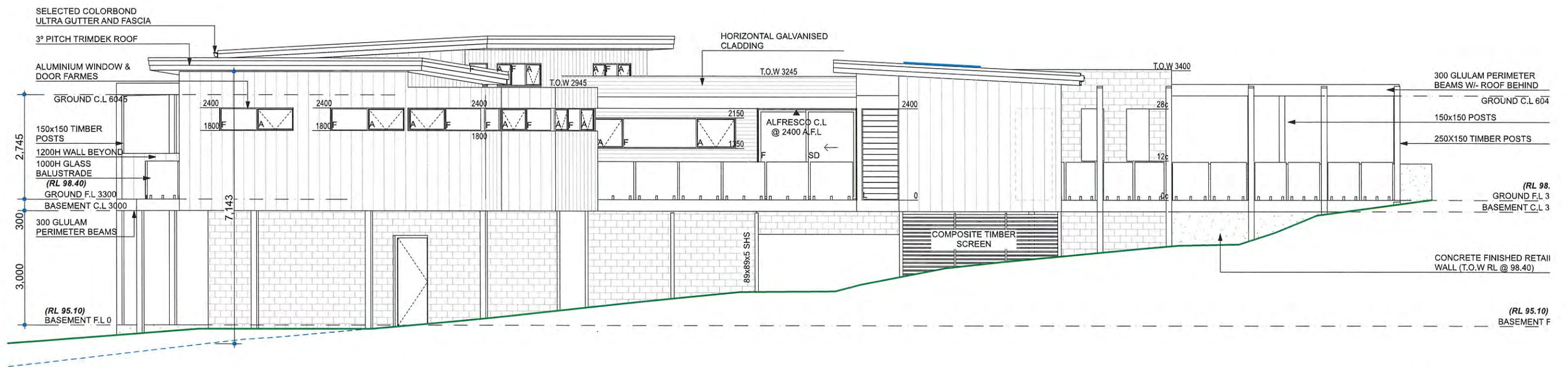
**E05** **ELEVATION 05 - SOUTH**  
Scale 1:100

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E01

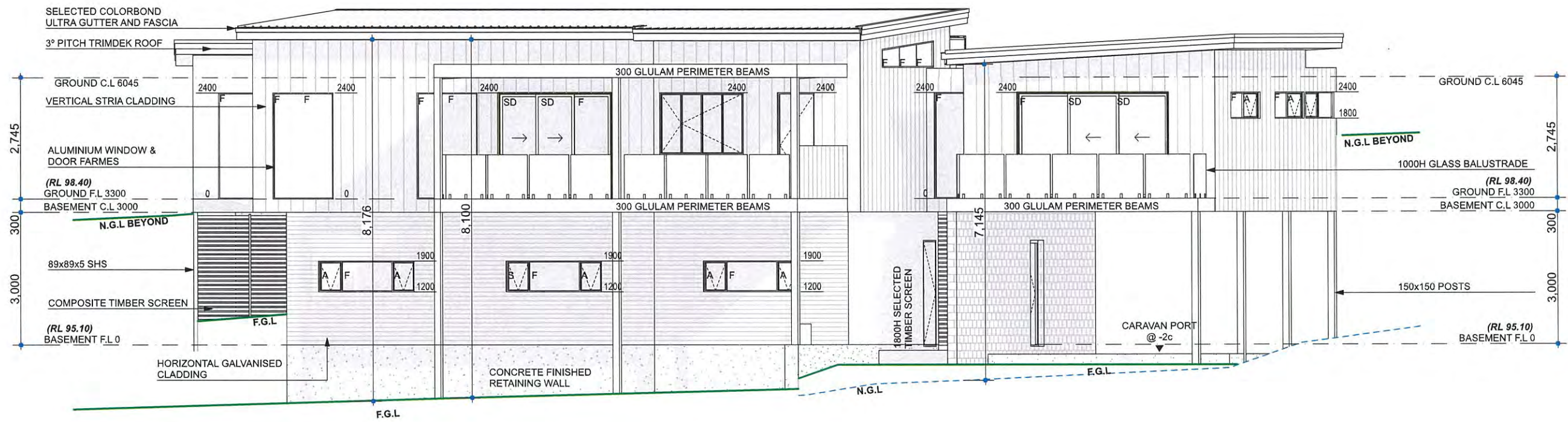
ELEVATION 01 - SW  
Scale 1:100



E03

ELEVATION 03 - NE  
Scale 1:100

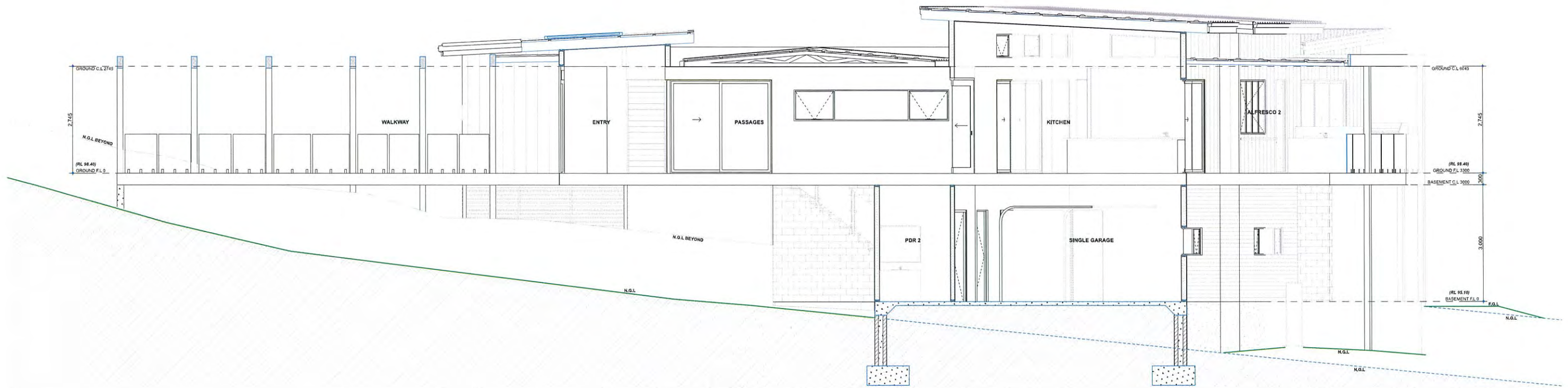
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E04

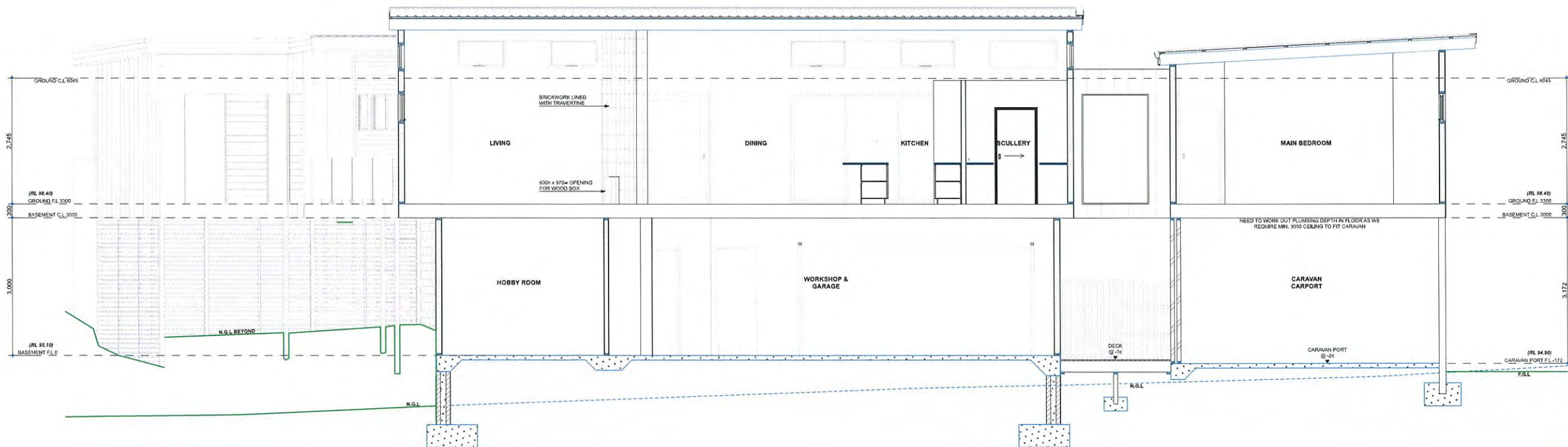
ELEVATION 04 - SE  
Scale 1:100

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A-A

SECTION A-A  
Scale 1:50



B-B

SECTION B-B  
Scale 1:50

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listen. interpret. create.  
concept building design







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This plan has been prepared from a combination of field survey and existing records for the purpose of showing the physical features of the land to assist in designing future development and should not be used for any other purpose.

The title boundaries shown hereon were not verified or marked at the time of survey but were determined by the SCDB (2013) not by field measurement. As such, these dimensions could be out of date and incorrect by modern standards. This plan should not be used for building to boundary, or to prescribed set-back, without further boundary survey.

Only surface features have been located. Underground services have been plotted from service authority records. All services shown from records only will need verification prior to, or during, work on-site.

Before starting any demolition, excavation or construction on the site, the relevant person should make an independent and updated enquiry of 'dial before you dig' and any relevant service providers to ascertain the existence of further services (if any) and the accurate location of those not able to have been surveyed at the time of preparing this plan (or data).



~46618  
8065

Denmark Survey & Mapping  
PO Box 339  
1 / 55 Strickland St, Denmark 6333  
(08) 9848 2262

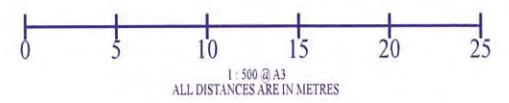
# FEATURE & CONTOUR SURVEY

## LOT 209 HEATHER ROAD

### DENMARK WA 6333

ORIGINAL PLANNER	N/A
ORIGINAL DRAFTER	ABS
CREATED DATE	30/01/2014
AERIAL DATA	N/A
CADASTRAL DATA	SCDB
TOPOGRAPHIC DATA	Survey 29/01/2014

THIS PLAN HAS BEEN PREPARED FOR PLANNING PURPOSES.  
BOUNDARY LINES ARE REPRESENTATIONAL ONLY AND ARE SUBJECT TO SURVEY.



J			
I			
H			
G			
F			
E			
D			
C			
B			
A	ORIGINAL	ABS	30/01/2014
REVISION	DESCRIPTION	DRAFTER	DATE

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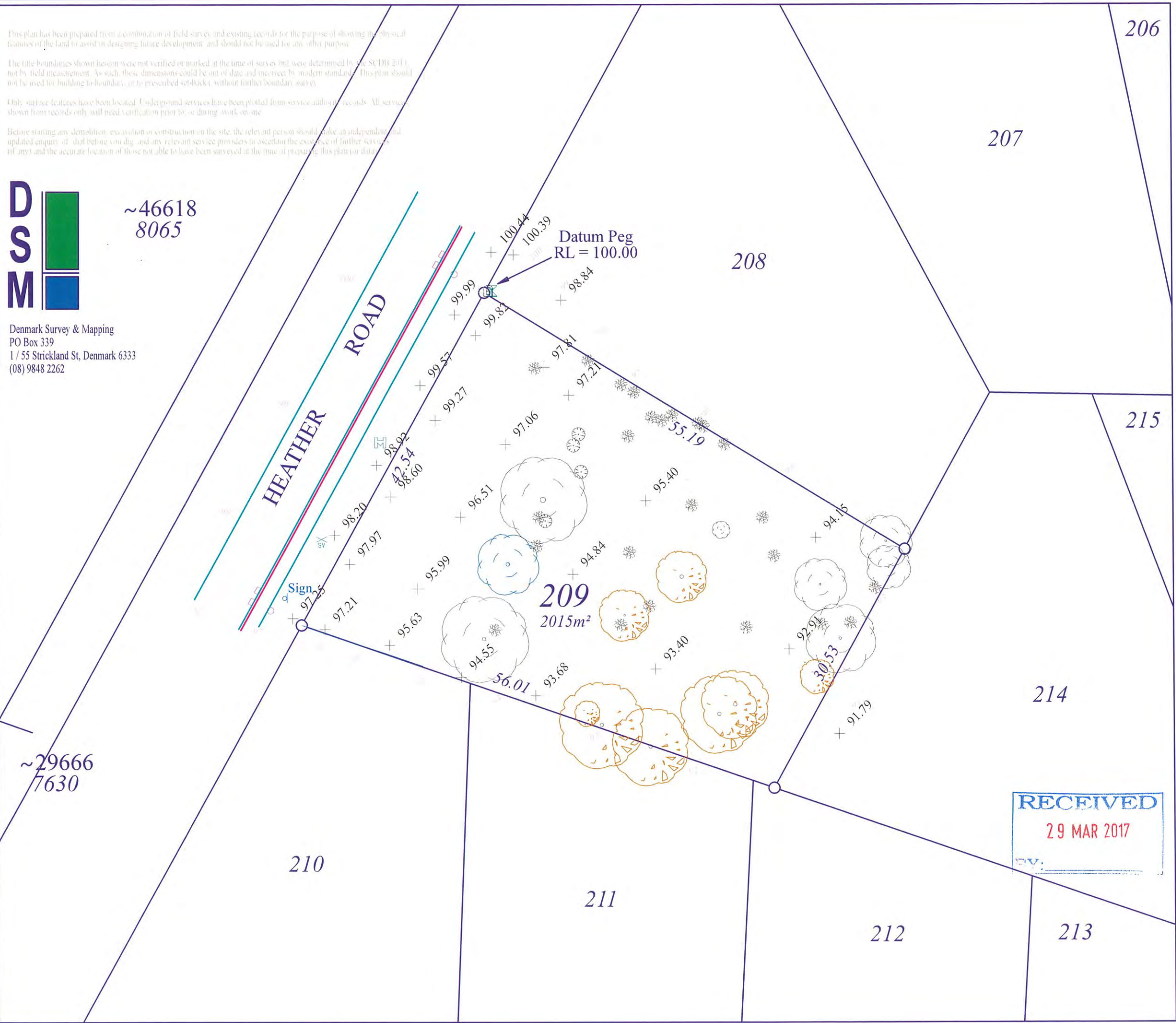
#### LEGEND

- SV
- Hydrant (ground)
- Meter
- Power dome
- Telstra box/pit
- Snottygobble
- Sheoak
- Redgum
- Peppermint
- Grass Tree
- Fence

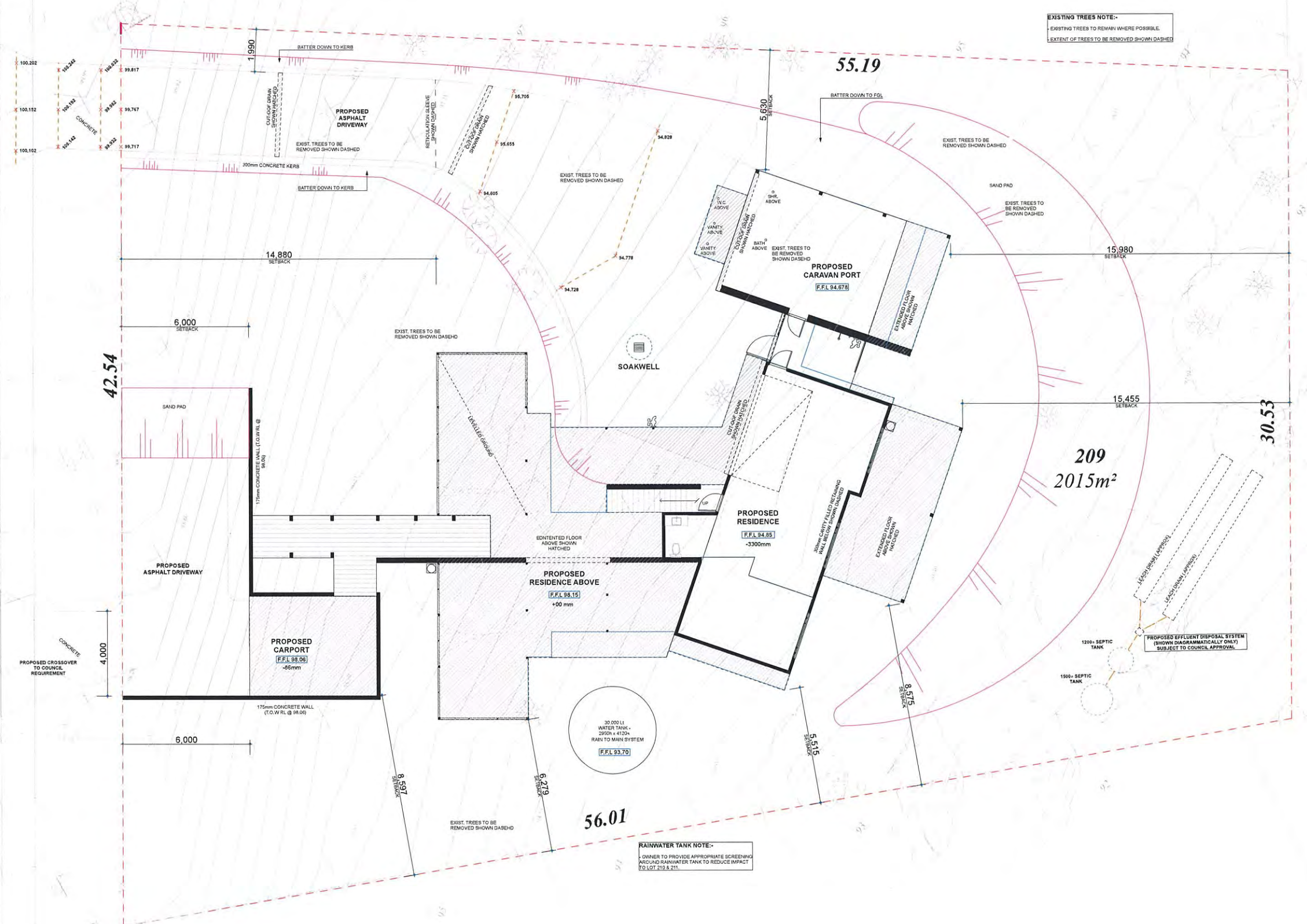
Contour Interval 0.25m  
Assumed Datum

Ref: 1879-01A

20 June 2017 - Attachment 8.1.3b



HEATHER ROAD



EXISTING TREES NOTE:-  
EXISTING TREES TO REMAIN WHERE POSSIBLE.  
EXTENT OF TREES TO BE REMOVED SHOWN DASHED

RAINWATER TANK NOTE:-  
OWNER TO PROVIDE APPROPRIATE SCREENING  
AROUND RAINWATER TANK TO REDUCE IMPACT  
TO LOT 212 & 211.

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PROPOSED SITE PLAN  
Scale 1:100

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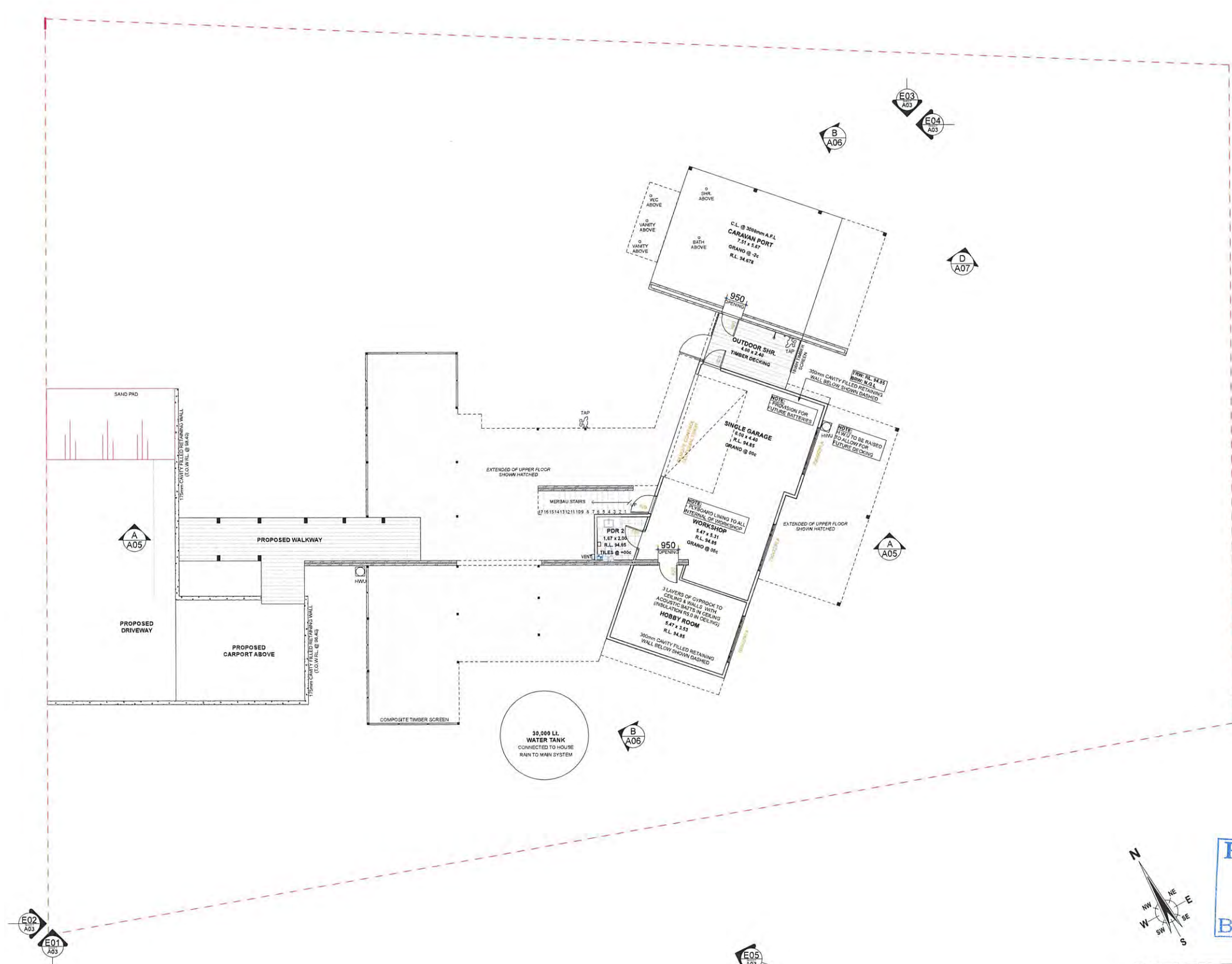
Project: Proposed Double Storey Residence

Client: Sandy & Greg Marshall

Address: Lot 209 Heather Road Denmark

06	17/03/17	WD IN PROGRESS - UPDATE DRIVEWAY GRADES FOR CARAVAN ACCESS	CLIENT
05	17/02/16	BUILDING HEIGHT & NEIGHBOURS VIEW	CLIENT
Rev.	Date	Item	Issued To

Drawn: KHBT	Date: 17/03/2017	Drawing Number: A02 of A08	Job No: C-1647-16
Checked: KF	Scale: AS SHOWN		Stage / Revision: WD-06



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**BASEMENT PLAN**  
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 Email: info@bcd.com.au  
 119 Park St, Fremantle WA 6155  
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**GROUND FLOOR PLAN**  
Scale 1:100

North 06/10  
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WA 6155

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114 242 1817  
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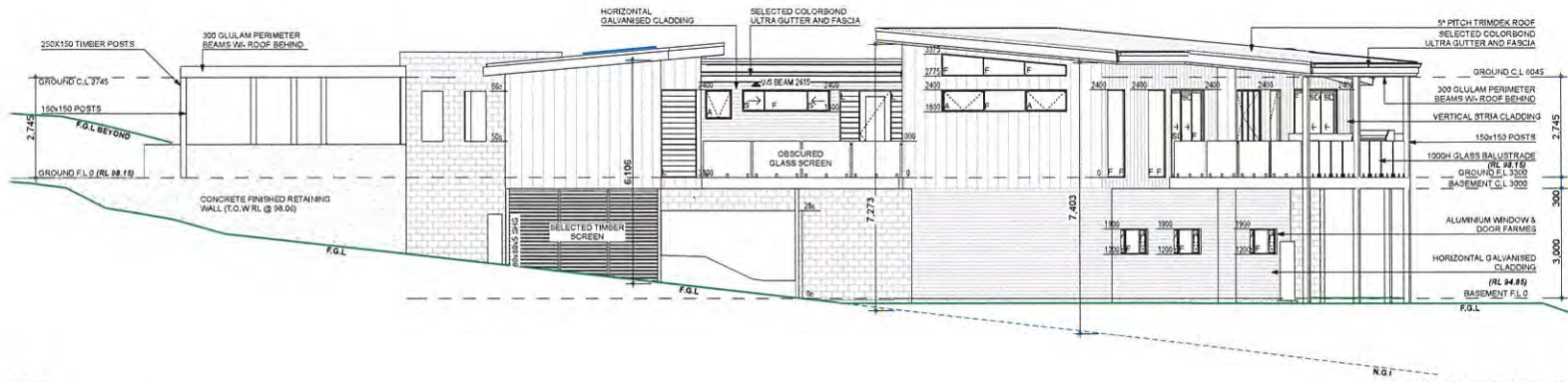
**Project:** Proposed Double Storey Residence

**Client:** Sandy & Greg Marshall

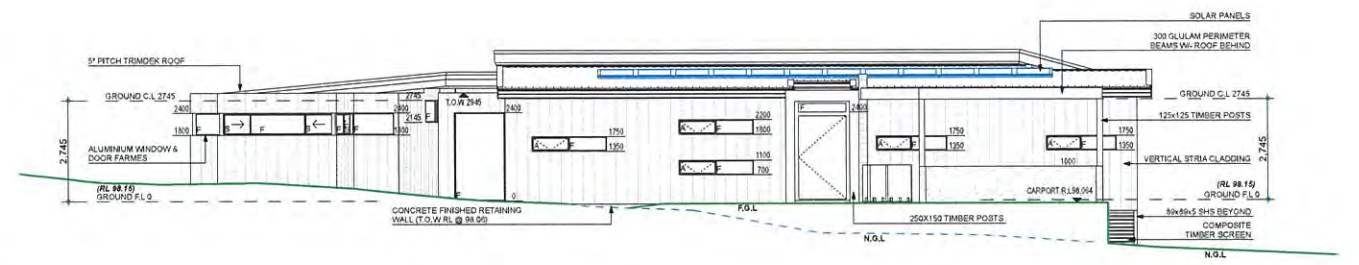
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05	17/02/16	BUILDING HEIGHT & NEIGHBOURS' VIEW	CLIENT
Rev.	Date	Item	Issued To

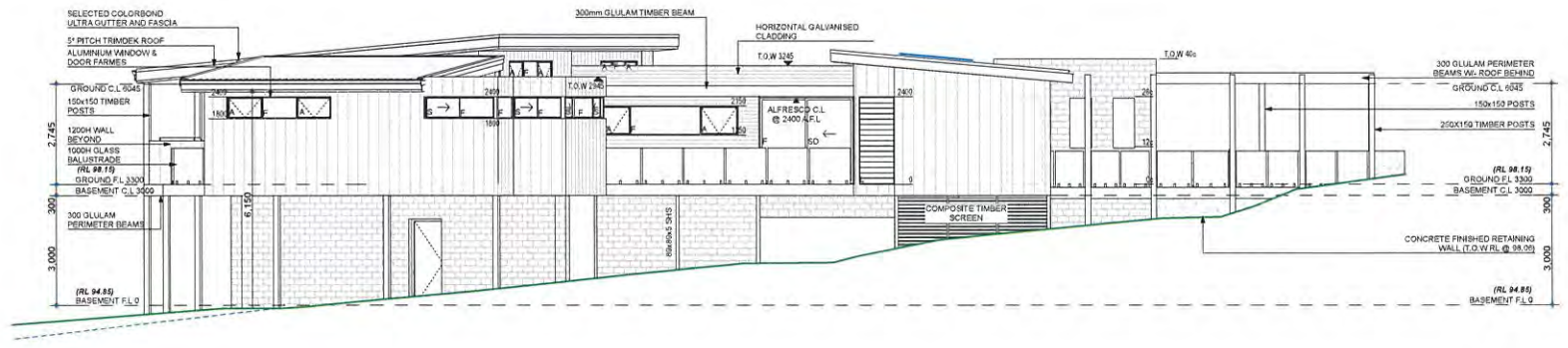
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KHBT	17/03/2017	A04 of A08	C-1647-16
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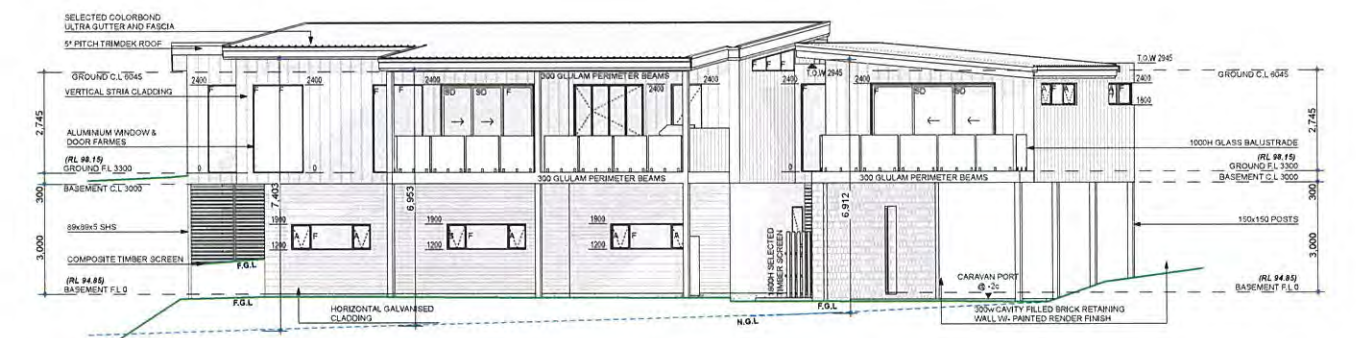
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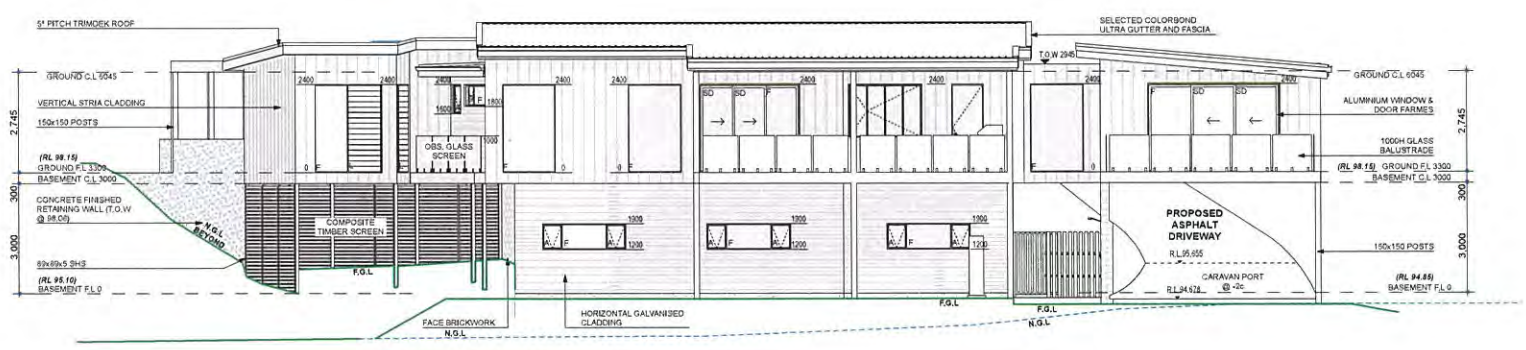
E02 ELEVATION 02 - NW Scale 1:100



E03 ELEVATION 03 - NE Scale 1:100



E04 ELEVATION 04 - SE Scale 1:100



E05 ELEVATION 05 - SOUTH Scale 1:100

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Proposed Double Storey Residence

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Sandy & Greg Marshall

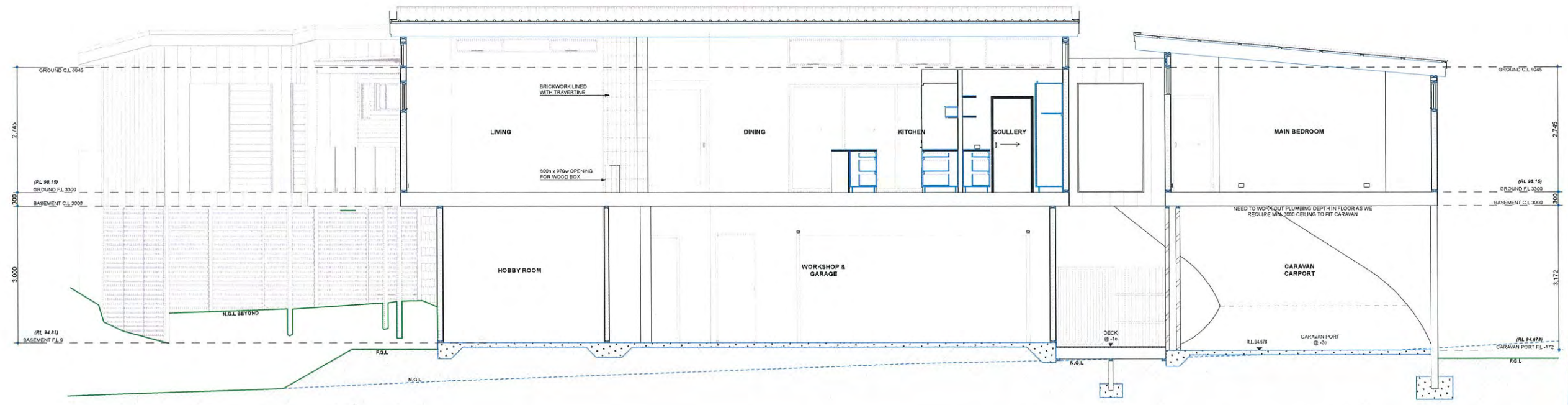
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KH.B.T	17/03/2017	A05 of A08	C-1647-16
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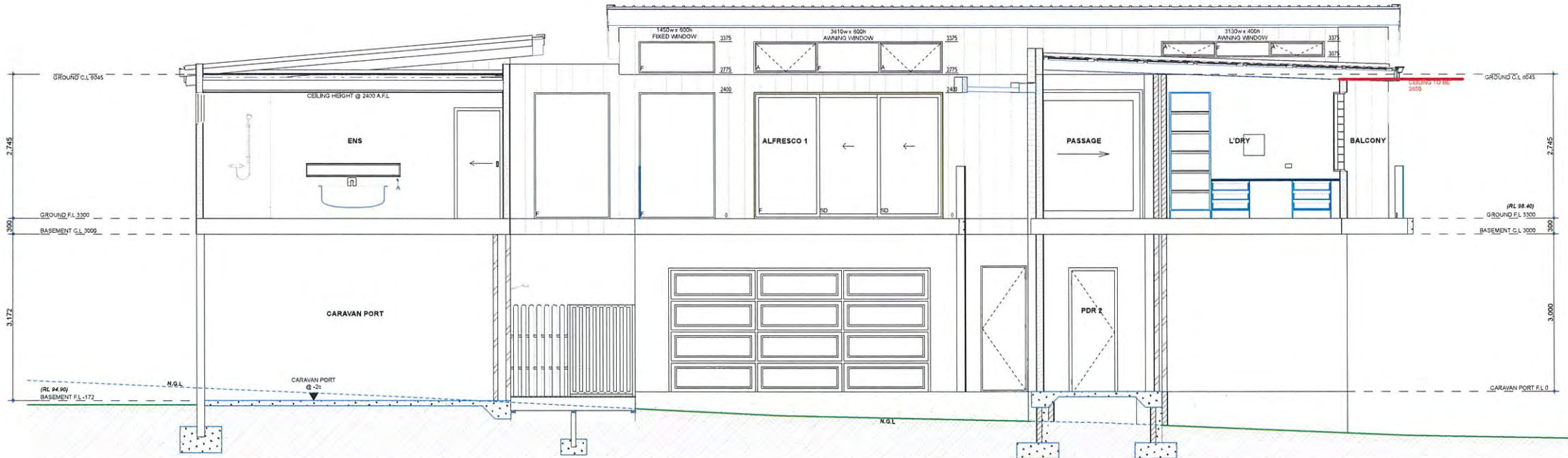
**A-A** SECTION A-A  
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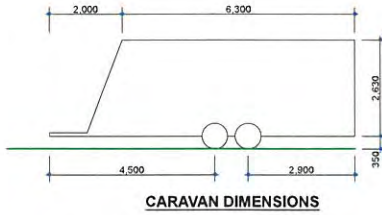
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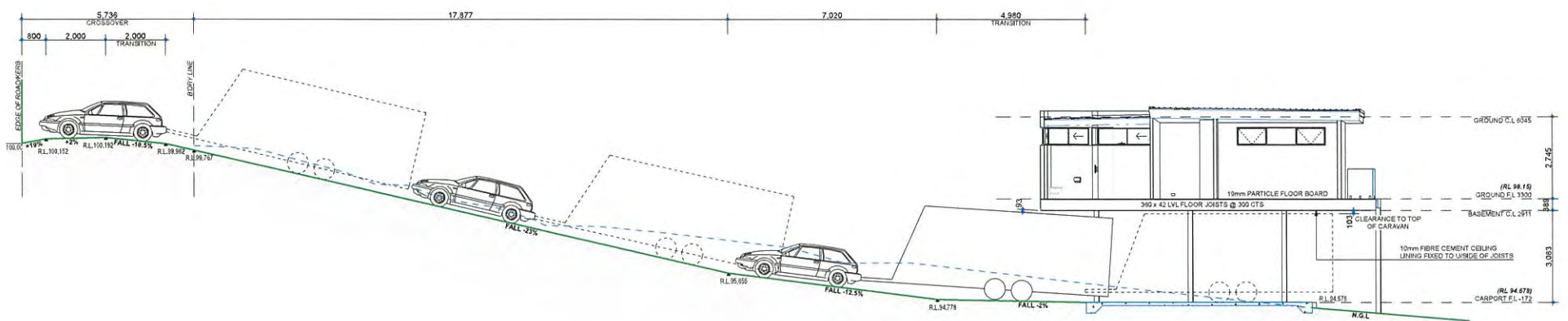


C-C

SECTION C-C  
Scale 1:50



CARAVAN DIMENSIONS



SECTION D-D  
Scale 1:100



D-D

Arch Office  
100/101/102 Heather Road  
Denmark WA 6150  
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Fax: 9433 8444  
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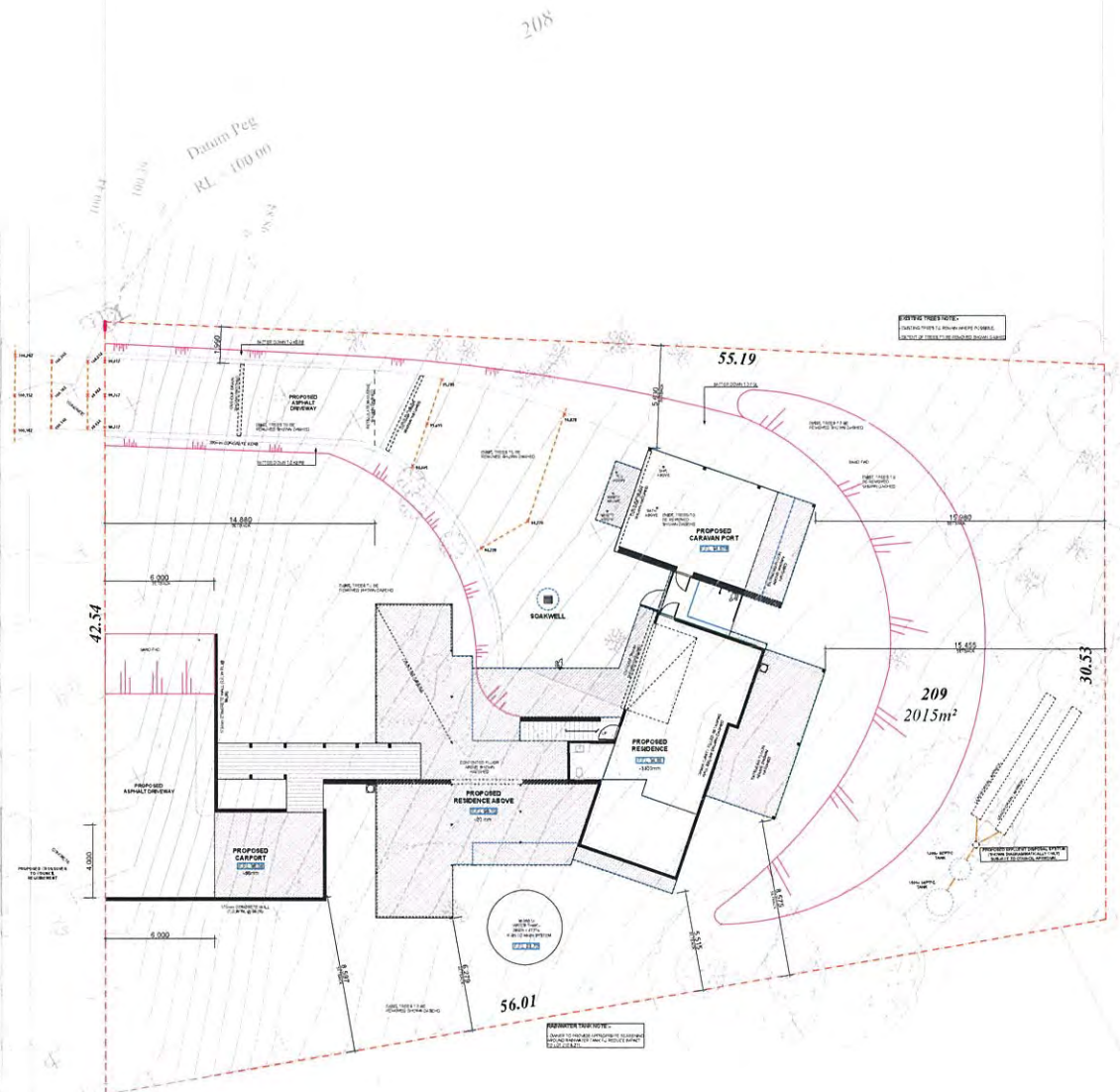
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K/H.B.T	17/03/2017	A07 of A08	C-1647-16
Checked:	Scale:	Stage / Revision:	
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HEATHER ROAD



PROPOSED SITE PLAN  
Scale 1:200



FROM LOT 208



FROM LOT 214



FROM LOT 211

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Fax: 08 9447 1112  
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South Office  
100/102 Wilson St North Perth WA 6150  
Phone: 08 9447 1111  
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Project: Proposed Double Storey Residence

Client: Sandy & Greg Marshall

Address: Lot 209 Heather Road Denmark

Rev	Date	Item	Issued To
06	17/03/17	WD IN PROGRESS - UPDATE DRIVEWAY GRADES FOR CARAVAN ACCESS	CLIENT
05	17/03/16	BUILDING HEIGHT & NEIGHBOURS' VIEW	CLIENT

Drawn: KH/B.T	Date: 17/03/2017	Drawing Number: A08 of A08	Job No.: C-1647-16
Checked: RF	Scale: AS SHOWN	Stage / Revision: WD-06	

**SCHEDULE OF SUBMISSIONS: PROPOSED SINGLE HOUSE – NO. 43 (LOT 209) HEATHER ROAD, OCEAN BEACH (A5345; 2016/196)**

Submission Number	Name & Address	Verbatim Submission	Planning Services Comment
S1	<p>Details omitted as per Council Policy.</p> <p>Submitter is an adjoining landowner.</p>	<p>With respect to the plans of the proposed development of Lot 209 Heather Road I have a few queries and points that may need addressing. These are listed below.</p> <ul style="list-style-type: none"> <li>• There was no View Image from my Lot {address removed by Planning Services} included in the plans, Why?</li> <li>• There is no indication of the elevation from NGL of the proposed water tank.</li> <li>• The plans indicated that the FGL for the development is running from the north western portion of the block to keep the main floor level at street level. However, this design involves retaining walls along the long southern elevation close to 2m in parts, resulting in building levels of 8.5m at the eastern elevation.</li> <li>• The resulting 8.5m “wall “presented is just 6m from the boundary, and presents an imposing overlooking monolith for the neighbouring blocks, including ours. At midday in winter, there will be a 13m shadow cast southwards, into adjoining blocks.</li> <li>• An adjustment downwards of the proposed Finished Ground FL will ameliorate these impacts.</li> <li>• There has been no commitment to reduce visual impacts of this very large residence along northern aspects of neighbours. The residence clearly blocks any previous views north to natural forest.</li> <li>• There are no commitments to reduce impacts of current residences during what would be a protracted construction period, presumably with scaffolding overlooking into the private yards of neighbouring blocks.</li> </ul> <p>I hope these concerns will be taken into account.</p>	<ul style="list-style-type: none"> <li>• View images were provided by the applicant relative to the three (3) main properties abutting the development site. The submitter’s property does abut the development site; noting however that the walls the subject of the height variation do not directly abut the submitter’s property. That said, the view image from Lot 211 shows the development form that would be viewed from the submitters property (just at a different level perspective given the different slope of land that relates to the two properties. Elevations of the development were provided to all submitters and the elevations do provide details of the development relative to the submitter’s property.</li> <li>• The amended plans show a FFL of 93.70 for the rainwater tank; noting the majority of the rainwater tank will be located such that it is ‘cut’ into the existing ground. The applicant has also reduced the size of the rainwater tank from 45,000L to 30,000L, and provided a height dimension for the tank of 2.95 metres. Screening has also been proposed. It should be noted that the rainwater tank complies with the lot boundary setbacks of the R-Codes.</li> <li>• All portions of the building are fully compliant with the lot boundary setback requirements and overshadowing requirements (Clause 5.4.2) as per the R-Codes.</li> </ul>

			<ul style="list-style-type: none"><li>• The walls in question which exceed 6 metres in height do not directly adjoin the submitter's property and are located east of where the submitter's northern boundary adjoins the subject lot. The amended plans provide for a maximum wall height of 7.4 metres above natural ground level at the highest point (achieved by reducing the FFL of the building and a reduction in the upper storey wall heights). The 1.5 metre concrete retaining wall at the rear of the dwelling has also been removed and replaced with natural earth banking, thus reducing the bulk of the building substantially and the appearance of its height in relation to ground level.</li><li>• The portions of the dwelling which exceed 6 metres in wall height do not directly adjoin the submitter's property. While it is appreciated that views may currently be enjoyed by the submitter across the vacant lot, it is likely that any dwelling (including a single storey dwelling) constructed on the property would interfere with existing views to the north. Notwithstanding this, it is clear that the intention of the Heather Road subdivision was to take advantage of views south-east towards Wilson Inlet and Ocean Beach. This is demonstrated by the fact that properties on the streets south-east of the subject sites have restrictive covenants registered against their Certificate of Title limiting building height to 5 metres, so ensure dwellings on Heather Road maintain inlet/ocean views. The proposed dwelling will not impact the existing inlet/ocean views enjoyed by the submitter. Furthermore, given the orientation of the submitter's</li></ul>
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			<p>house on their lot, it is considered unlikely views north/north-west to forested areas will be substantially impacted, if at all.</p> <ul style="list-style-type: none"> <li>• Potential, temporary overlooking from scaffolding during the construction process of a new dwelling is not a valid planning consideration. The dwelling will comply with the Visual Privacy provisions under Part 5.4.1 of the R-Codes once construction of the dwelling is completed.</li> </ul>
S2	<p>Details omitted as per Council Policy.</p> <p>Submitter is an adjoining landowner.</p>	<p>As the owners of {address removed by Planning Services} we do have a concern regarding the request for a variation to the allowed maximum external wall height for the proposed dwelling at No. 43 (Lot 209) Heather Road, Ocean Beach.</p> <p>With the aid of the plans provided by the shire for the proposed new dwelling and the use of a Clino Meter, we have been able to get an accurate visualization of the enormity of the proposed structure. We now understand why the Shire feels it is necessary to advise the adjoining landowners of the height variation.</p> <p>One of our main concerns is the claustrophobic effect of having such a formidable wall of concrete and brick extending along our back boundary line. The sheer size of the southern wall of the dwelling leaves one with the feeling we are living beside a three storey apartment block and is not in keeping with the look of the residential dwellings in the area.</p> <p>Another concern with having such a large wall along our northern boundary line is how it will stop the winter sun from reaching the north facing walls of our home. Plus, putting most of our rear yard in shade for months at a time.</p> <p>At present, there are two mature <i>Agonis flexuosa</i> (Peppy Trees) whose trunks are in the middle of the boundary line between our property and the owners of Lot 209. These trees would obscure a portion of the proposed new dwelling if left in their present state.</p> <p>If we could get a written guarantee that these trees are not removed or altered in any way it would help to alleviate some of our concerns.</p>	<ul style="list-style-type: none"> <li>• The 1.5 metre concrete retaining wall at the rear of the dwelling has been removed and replaced with natural earth banking, substantially reducing the bulk of the building and the appearance of its height in relation to natural ground level. The building is setback a minimum of 5.515 metres from the lot boundary in question and complies with the lot boundary setback requirements of the R-Codes. The portion of the building which adjoins the submitter's property has several articulations (i.e. is not one continuous solid wall), is a mixture of single level (raised on stumps) and two-storey construction; and comprises a mixture of materials including brick, horizontal steel cladding, vertical composite cement cladding, timber screening and obscure glazed balustrading. Overall this portion of the building is not considered unduly bulky and the architectural elements and diversity of materials are considered to break up its appearance. It should be noted that there are several two (2) storey dwellings in the immediate locality.</li> </ul>

			<ul style="list-style-type: none"> <li>• The development complies with the overshadowing provisions of the R-Codes (Clause 5.4.2).</li> <li>• The applicant has marked on the revised plans dated 29 March 2017 which trees are proposed to be removed. The trees in question are indicated to remain. It is a standard condition on all development approvals where Bushfire Attack Level (BAL) Assessments are involved, that any trees not marked as proposed to be removed to achieve a nominated BAL Rating are required to remain. Should the applicant wish to remove these trees in the future, they may need to obtain a clearing permit from the Department of Environment Regulation if removal of the trees is not exempt.</li> </ul>
S3	<p>Details omitted as per Council Policy.</p> <p>Submitter is an adjoining landowner.</p>	<p>I refer to our previous exchange of emails and my telephone conversation with Mr Creedon. The current position is that we as owners of {address removed by Planning Services} have been given until 13 January 2017 to object to the proposed development on lot 209. I shall be down in Denmark between 7 and 21 January 2017, and may then supplement this objection, once I have had an opportunity to inspect the plans and look at the lots again. I shall however have restricted access to email and printing when down in Denmark.</p> <p>We were originally notified of the development by letter dated 9 December, received on 12 December 2016, from your Planning Services, signed by Ms Sampey (the initial letter). This enclosed some information and plans concerning a house to be constructed on lot 209, where an external wall or walls is/are to exceed the maximum height stipulated in the R-Codes, by 2.5 metres, ie go to 8.5 metres above natural ground level rather than 6 metres (the increased wall height). Although the initial letter says the height extension is "at the rear of the house", it is not clear where this extension is to take place, so hence my intention to probably supplement the current objection by 13 January once I have seen the plans at your offices, marked up to show the extension. It does appear to be the case that the extension area faces towards our lot. Further, the part of the house including the increased wall height appears to include living areas, large balconies and an outside bar area on the top storey created through the increased wall height.</p>	<ul style="list-style-type: none"> <li>• Planning Services accommodated the request by the submitters to view the plans even after the closing date and provided additional information via email and over the counter to show the extent of the development that did not comply with the Deemed-to-Comply criteria.</li> <li>• The R-Codes are not designed to be prescriptive as such; they incorporate Deemed-to-Comply criteria which provides for a relatively straightforward path to approval and a design principle approach for developments that do not meet the Deemed-to-Comply criteria such that a proposal can be considered on its merits. In this instance the applicant is seeking approval for a variation to the building height provisions of the R-Codes.</li> <li>• As per the R-Codes, visual privacy setbacks are referenced in the context of a 'cone of vision' setback. For active outdoor habitable spaces (i.e. decks,</li> </ul>

It is not clear from the information provided at what point on our lot one would have the view indicated on the diagram as "view from {address removed by Planning Services} ".

**Summary of objections**

I object, on behalf of the owners of {address removed by Planning Services}, against the development incorporating the increased wall height on the following bases:

1. No proper planning or other considerations have been put forward for the significant increase in wall height which in effect allows for the floor level of an upper story to be significantly increased, ie by some 2.5 metres, extending above the R-Codes height limit. If the prescribed wall height of 6 metres is maintained, then any top storey has to fit into that and end at 6 metres. The floor level will be lower. The proposal creates extra space above 6 metres going up to 8.5 metres. In "old" terms, that is over 8 feet – the height of a "high" ceiling. The structure and purpose of the R Codes militate against such a major deviation.
2. The height addition prejudices our amenity in at least three related aspects:
  - First, it increases overlooking in the direction of our lot from windows which would be positioned higher than would be the case if the R-Codes were applied and balcony areas are similarly higher.
  - Secondly, and conversely, the visibility from our lot of such windows in habitable spaces and, importantly, veranda/balcony areas on the top storey facing us where people can congregate, is increased – by 2.5 metres above the deemed-to-comply standard which should otherwise apply.
  - Thirdly, noise notoriously carries from such elevated balconies and open windows of living areas and this will affect the amenity of our lot.
3. The proposal sent to us by mail sought to present a "hidden behind trees" aspect when purporting to show what we would see when looking at the completed dwelling from our lot. It shows that we would effectively only see trees. But trees on lot 209 which happen to be there at the moment are obviously not a legitimate screening device (and do not deal with noise aspects). Any screening device has to be of a permanent, non-transparent nature and be located on the property of the applicants. Such trees can die, or be removed or trimmed by the owners and do not block sound.
4. There is no evidence or argument presented to us that (for instance) excavation cannot take place on the lot to maintain the R-Codes heights

verandahs, balconies, outdoor living areas) the Deemed-to-Comply criteria 'cone of vision' setback is 7.5 metres from the lot boundary (regardless of the height of development); this proposal provides a setback of 15.455 metres. As stated in the Explanatory Guidelines to the R-Codes, where separation distances accord with the provisions with respect to the cone of vision, the standard of privacy protection is satisfactory. Refer Attachment 8.1.3e for more information from the Explanatory Guidelines about Visual Privacy.

- Potential future noise from an outdoor living area cannot be predicted and is not a valid planning consideration, particularly where no variations to the R-Codes are proposed in relation to visual privacy.
- While it is agreed that trees and other screening vegetation is not a permanent visual screen and can be problematic when poorly maintained or removed in the future, there is no requirement for screening devices to be provided for the proposed development as it complies with the R-Codes deemed-to-comply provisions for visual privacy. The existing vegetation between the subject lots will assist in ameliorating any perceived privacy/overlooking issues between the proposed development and any future dwelling on the adjoining lot. As outlined in the response to Submission S2, it should be noted that the applicant may not be permitted to remove these trees without receiving a clearing permit from the Department of Environment Regulation (if not exempt).

above natural ground level nor that a split roof line cannot be constructed from the street frontage on Heather Rd, down to a line where the wall heights conform with the R-Codes. The R-Codes require:

*Onus on applicant to provide written support of proposal to show how all objectives and design principles are met for any matters that are not deemed-to-comply.*

This information has not been supplied and should not be allowed to be supplied in the applicants' reply if they make one to our present objections. If that happens, there would be a failure to accord us procedural fairness. We should be given an opportunity to comment on any such material or argument as part of our objections.

5. The mere convenience of the owners of lot 209 is not enough for approval nor the obtaining of a height/outlook advantage beyond that allowed by the R-Codes.
6. Lot 209 and our lot {address removed by Planning Services} were both created at the same time as part of the Ocean Beach Estate subdivision. In this process the control of the height of buildings to be constructed has been an important and sensitive matter. Such controls by restrictive covenants are in place in relation to certain lots (like ours but not lot 209), emphasizing the importance of height restrictions to buildings. The height restrictions by covenant operate and should operate in conjunction with the R-Codes restrictions which apply to all lots. We bought our lot on that specific understanding, namely that while the restrictive covenant and the R-Codes govern our lot's building height restrictions, the other lots not having restrictive covenants (like lot 209), would at least be bound by the R-Codes. In buying our lot, we submitted to additional restrictions but did so on the clear and reasonable expectation that the lots not subject to the height restrictive covenants but getting the advantage of them over adjoining or nearby lots (like lot 209 vis-à-vis our lot {address removed by Planning Services}), would at least themselves be kept within reasonable development bounds by the R-Codes. I return to this below when making further observations about the context of the height restrictions.
7. The information I have sought and obtained from your planning department has not produced any example near lot 209 or in the Ocean Beach Estate subdivision where a similar height increase has been approved. I know a number of lots have already had houses built on them in this area. Allowing this increase for lot 209 will set a negative planning precedent in this area and not be in line with the planning history of the Ocean Beach Estate development in this context. On the information made available to me by your Planning Services, this has not occurred in respect of other lots in this Estate.

- The restrictive covenant that exists on the submitter's lot and adjoining lots was not imposed as a planning consideration at the time of subdivision approval; this covenant was placed on the Certificate of Title(s) by the developer – and as referenced in WAPC Planning Bulletin 91: Estate Covenants: New Residential Subdivisions, the existence of a restrictive covenant is not a relevant planning consideration in the determination of a development application except where the restrictive covenant arises from a planning decision.
- Planning Services do not agree with the need for visual privacy screening to be installed given the setback of the development complies with the relevant Deemed-to-Comply criteria. Notwithstanding this, an Advice Note (which is not statutory) has been recommended to be included on the Development Approval which advises the applicant/landowner that they may wish to give due consideration to installing such screening as referenced in the submission.



8. The application should not be approved with reference to the R-Codes:

**2.5.2**

*In making a determination on the suitability of a proposal, the decision-maker shall exercise its judgement, having regard to the following:*

- (a) any relevant purpose, objectives and provisions of the scheme;*
- (b) any relevant objectives and provisions of the R-Codes;*
- (c) ...and*
- (d) orderly and proper planning.*

**Questionable matters in the initial letter apparently raised in support of the proposal**

It is stated in the initial letter that the development will still represent as a single storey when viewed from the street frontage on Heather Rd. But that is not where the height elevation of 2.5 metres above the R-Codes standard is to apply. In any event, the R-Codes restriction of 6 metres above natural ground level can accommodate a double storey house. The issue is not about the proposal being for a single or double storey house. The issue is that a significant increase in floor height of the second storey part is sought for a part of the building which will to a large extent face us our lot.

The initial letter also says that the total proposed (increased) wall height of 8.5 plus a flat roof, is still within the overall wall plus roof height of the R-Codes, namely 6 (wall) plus 3 (roof), ie 9 metres in total. This again, with respect, misses the point. If the proposed house had a roof line up to 9 metres but no wall height above 6 metres, what would not have raised the floor level of any second storey and would not have added any space at an elevation from where our lot could be viewed or where we can look on what other people do on their balconies/verandas or in habitable, elevated spaces.

The initial letter says the Shire has a "discretion" to allow the variation under the R-Codes. This is with respect not correct. The R-Codes specifically does not use the well-known terminology of "discretion". The R-Codes call for the exercise of "judgement" which is a more circumscribed decisional mode than discretion. Thus in the present context the judgement has to be exercised with reference to goals (objectives) of the development and the design principles as provided for in the R-Codes:

**2.5 Exercise of judgement**

**2.5.1**

*Subject to clauses 2.5.2 and 2.5.3, the decision-maker is to exercise its judgement to consider the merits of proposals having regard to objectives and balancing these with the consideration of design principles provided in the R-Codes.*

*The decision-maker, in its assessment of a proposal that addresses the design principle(s), should not apply the corresponding deemed-to-comply provision(s).*

There does not appear to be any "merit" in the proposal which could justify departure from the design principles of the R-Codes.

**The context of height restrictions in the Ocean Beach Estate Subdivision**

I attach the following documents:

1. The original diagram of the proposed subdivision with the lot numbers then used and the contour lines shown.
2. An extract from our purchase contract which shows (at special condition 3) which lots were to be affected by the restrictive covenant on building heights (as that covenant was then formulated). This restrictive covenant affects our lot {address removed by Planning Services} and others but not 209 (then called lot 9), as further detailed below.
3. Our certificate of title which shows the restrictive covenant as imposed by Landgate – again this applies to us but not to lot 209.
4. A contour survey of our lot we had commissioned and paid for to determine relevant AHD height contours. I may supply an A3 version when down in Denmark.

*{NB: documents not attached as they will provide details of the submitters lot}.*

Thus a careful and deliberative determination and trade-off in respect of the building heights in the sub-division has occurred. We had to submit to a height restriction covenant of 5 metres in total in addition to the R Code restrictions, to protect the potential views from lots like 209 across in the direction of the estuary and sea. But we were protected by the R Code restrictions which nevertheless and by law apply to all lots. I still have the R Code heights extract I had obtained at the time on file. It would be unfair and would distort the planning process for us to be kept low by our restrictive covenants (and R-Codes standards) while the owners of lots like 209 can go higher by as much as 2.5 metres above the R-Codes standard.

The lots which have restrictive covenants restricting any development to five metres above the AHD of the lot as determined by survey, are lots 202, 203, 210-226. The full information can be obtained from Mr Andrew LeFort at Denmark Survey and Mapping. If necessary, I can supply a copy of his relevant email dated 25 November 2009 with the survey data.

**The proper approach to issues of overlooking in the context of the current application.**

In light of my telephone conversation with Mr Creedon, I need to make the following points. The upper floor heights are now going to be higher, so overlooking of our lot, looking on to balconies from our lot and being exposed to noise from habitable areas and balconies in the context of the 2.5 metres increased elevation, cannot be condoned merely because the overlooking distances and cone of visions provisions of the R Codes may still be satisfied when applied without more to what is to be constructed. This is so in the first place because the significant height increase sought changes the foundational scenario envisaged by the R Codes as to wall height. It is also the position in general terms – even proper compliance with R-Code provision does not *mandate* approval. The following argument was put to SAT in *Baker Investments Pty Ltd and the City of Vincent* [2016] WASAT 115 at [118] to [120]:

[118] However, before addressing the merits question, we must consider an alternative argument advanced by the applicant to the effect that under the R-Codes, overlooking has been satisfactorily addressed, and that the Tribunal must not, therefore, refuse to grant planning approval. Clause 2.5.4 of the R-Codes (then and now) provides that (emphasis added):

The decision-maker *shall not refuse to grant approval* to an application where the application satisfies the deemed-to-comply provisions of the R-Codes and the relevant provisions of the scheme and any relevant local planning policy.

[119] The applicant contended that the Tribunal could ‘not refuse to grant approval’ for the following reasons:

All 5 bedroom windows in [U]nits 12, 13 and 14, in respect of which the obscure glazing is sought to be removed, comply with the deemed provisions of part 6 [of the R-Codes] dealing with visual privacy. In particular, by reference to clause C 1.1, the major openings to all 5 bedrooms, have a minimum setback of 4.5 metres to the northern boundary of the [subject land] adjacent to the Reed property at 44 Shakespeare Street and the Webber property at 19 Dunedin Street.

[120] The respondent accepts that ‘the upper floor setback of 4.5 [metres] to [the] bedrooms satisfies the deemed-to-comply requirement for visual privacy’ found in the R-Codes at element 5.4.1, C1.1 (‘Visual privacy’).

An experienced tribunal rejected this line of reasoning in emphatic terms. See at [121] to [131], applying the *Kakulas* decision of Her Honour Justice Pritchard and of SAT in the *Bookara Holdings* case.

This is with respect a fortiori applicable on our present case, where the application departs from the height parameters of the R-Codes. It cannot simply then be said that well, the increased height can be ticked off as far as overlooking is concerned by applying the R-Codes. This would also be contrary to the express provisions of paragraph 2.5 of the R-Codes, set out above.

I trust that due consideration will be given to our objections and that you will contact me if any point made herein is unclear.

Addendum to Original Submission Pertaining to Modified Plans Dated 29 March 2017

We maintain our objections to the dwelling in the revised plans put forward and refer to our more extensive letter of 3 January 2017. The objections raised therein continue to apply, as the new plans contain only very minor amendments.

The revised plans presented to us continue to show external wall heights exceeding the R Code height of 6 meters by respectively going to wall heights of 6.9 m and 7.4 meters. These excessive wall heights are on the east/south eastern side of the proposed dwelling thus facing our lot {address removed by Planning Services}. The non-conforming wall heights cause unacceptable overlooking onto our lot. The height of 6.9 meters applies to the wall containing the decking in front of the main bedroom. The height of 7.4 meters applies both in the area of the extensive first floor alfresco area and in respect of two large windows on what appears to be the south-east external wall of the living room, to the south of the alfresco area.

These excessive wall heights in respect of what will be the main indoor and outdoor living and event areas of the house will impact substantially on our privacy and peace and quiet, because the floor level of these areas has in effect been raised by 0.9 m and 1.4 m above the accepted standard. Apart from this causing substantial overlooking of what is likely to be our outdoor deck area and an increase in the transmission of noise, we will also see the people on the elevated decking/alfresco area which will affect our amenity. This is no minor deviation which could be accommodated – deviations of 0.9 m and 1.4 m are a total disregard of the R Codes.

It is disappointing to see that in our view no real effort was made to comply with the R Codes in the revised plans. The reduction in wall heights are really quite trivial and meaningless: from 8.176 m to 7.400 m (776 mm); and from

7.145 m to 6.9 (245 mm), when the R Code heights are being exceeded by 1.4 m and 0.9 m. It should be kept in mind that the limits on the maximum heights in the R Codes are not unusual or unduly restrictive but provide an appropriate and generally enforced design standard.

Moreover, there does not appear any rational reason for the need of excessive deviations from the R Code. As far as we can see, the whole dwelling can for instance be lowered by deeper excavation into what appears to be sandy soil, or if the problem is accommodating the caravan below the main bedroom area, the caravan port can surely be shifted to somewhere else on the large property.

The revised plans again refer to some trees on their property, but this is not an appropriate screening device to counter the increased floor level height of the decking/alfresco areas which brings with it overlooking and increased noise levels. In any event, trees are not a permanent fixture.

The revised plans refer to the “reduction of building bulk” by bringing the roof line on the south east side down. How this reduces “building bulk” is hard to understand, but it is in any event not a proper or recognized principle of planning or design. This argument may suggest that the overall wall height will “look” lower because of the roof overhang. But, for one, this does not address in any way the elevated decking/first floor alfresco area floor height from the ground.

We urge the Council to enforce the R Codes to protect adjoining properties and not to set a bad planning precedent for other properties in the area by approving the plans.

Very much as a fall-back position, should the R Codes not be upheld, then acceptable screening (which we understand is 1.6 m high and has 75% lack of transparency) should be put on the decking area outside the main bedroom on its north-eastern edge, and on the alfresco area outside the dining room/kitchen on its north-eastern edge.

# SITE VISIT RECORD FORM



**Subject Site:** No. 43 (Lot 209) Heather Road, Ocean Beach

**Date:** 8 June 2017

**File Ref:** A5345 (2016/196)

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View of subject property facing south-east



View of subject property facing east. Site slopes 8m from north to south.



View of the subject property facing north-east.



View of adjoining dwelling. Only minor windows face towards Heather Road and Lot 209. Larger windows oriented towards the inlet/ocean views to the SE.



View from Lot 210 facing north. Views to forest unlikely to be impacted by proposed dwelling.





Views to forest across the road will be maintained from adjoining Lot 210.



View of dwelling on Lot 211 from subject lot. Peppermint trees in background are proposed to be retained.



View of Lot 214 from subject lot. Trees in background proposed to remain (noting some trees are situated on the adjoining property).



View of rear boundary adjoining Lot 214. Trees to remain.



View of subject lot taken from inside rear boundary of Lot 214.

## 7 Design elements of the R-Codes – Building design

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### 7 Design elements of the R-Codes – Building design

General

Specific design elements

7.1 Visual privacy

7.2 Solar access for adjoining sites

7.3 Outbuildings

7.4 External fixtures

7.5 Utilities and facilities

7.6 Dwelling size  
– Specific to Part 6 of the R-Codes

### General guidelines

#### 7.1 Visual privacy

[\(Clauses 5.4.1 and 6.4.1 of R-Codes\)](#)

It is recognised that side [setbacks](#) alone cannot achieve absolute visual privacy because the setback distances required are much greater than those which can be feasibly provided in an urban area.

Setbacks need to be complemented by thoughtful design and supplemented by various [screening](#) measures, as appropriate.

Privacy is a valid cause for concern and plays an important role in residential amenity. However, aside from cases of poor design, there is a large degree of subjectivity, often related to cultural perceptions and concerns.

A sufficient level of privacy must be reached by good design to satisfy reasonable concerns. It is not the intent of the R-Codes to require 100 per cent privacy at the expense of inconsistent [building](#) orientation, access to daylight, winter sun, ventilation, security or poor relationship to neighbours.

#### Sources of overlooking

Overlooking from areas on or close to [natural ground level](#) is not subject to control in terms of clauses [5.4.1](#) and [6.4.1](#) of the R-Codes. This applies equally to [outdoor living areas](#) and [habitable rooms](#) which are less than 0.5m above natural ground level. The basis for this is that the view from such areas can be readily limited by a standard 1.8m high boundary fence, and while this may not restrict sight lines in an upward direction, the impact of overlooking [major openings](#) to habitable rooms or [balconies](#) situated above natural ground level would be limited.

While it may be possible to overlook an [adjoining property](#) from many situations, [clauses 5.4.1](#) and [6.4.1](#) only seek to control overlooking between:

- [active habitable spaces](#) and outdoor living areas of the [development site](#); and
- the habitable rooms and outdoor living areas of the adjoining residential properties.

#### Overlooking and the cone of vision for privacy design

The impact of a particular [development](#) on the privacy of a neighbouring property can be assessed by applying the concept of a [cone of vision](#) at any point where a person is likely to be able to look on to that property, as illustrated by [figure series 10](#) of the R-Codes.

The relevance of the cone of vision is readily apparent. The cone of vision is defined by the extent of the opening ([figure 10a](#) of the R-Codes). The concept of a cone of vision is a useful tool also for the design of screening devices.

For the purposes of assessing setbacks and privacy provisions, all balconies, [verandahs](#), terraces and other outdoor living areas raised more than 0.5m above natural ground level should be regarded as habitable rooms with a [wall height](#) of 2.4m above the floor level. All such areas, together with active indoor spaces, should be designed to minimise overlooking of neighbouring properties.

Overlooking from bedrooms and studies, which may be occupied infrequently, mainly at night, without noise, and by relatively few people, is more easily tolerated than overlooking from active areas.

Of most concern are [active habitable spaces](#), for example, living rooms, kitchens, activity rooms, balconies and outdoor living areas that are at levels higher than 0.5m above [natural ground level](#).

#### Prevention of overlooking

There are four basic ways of preventing or ameliorating overlooking:

- designing windows, balconies and decks to face away from boundaries with neighbouring properties, especially side boundaries;
- providing greater than normal setbacks, to achieve an effective privacy separation distance;
- providing intervening screening; or
- ensuring that overlooking windows cannot be opened and are opaque or highlight windows.

Often the most effective results will come from a combination of these.



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Effective location of [major openings](#) and outdoor [active habitable spaces](#) to avoid overlooking is preferred to the use of [screening](#) devices or obscured glass.

Where these are used, they should be integrated with the [building](#) design and have minimal impact on residents' or neighbours' amenity.

Where opposite windows are offset from the edge of one window to the edge of another, the distance of the offset should be sufficient to limit views into adjacent windows (refer to figure 56 and 57).



*Screening devices used to provide for increased visual privacy between developments.*

**Figure 56:** Angled louvre blades on balconies near the property boundary reduce the potential for overlooking while allowing natural daylight into the unit.



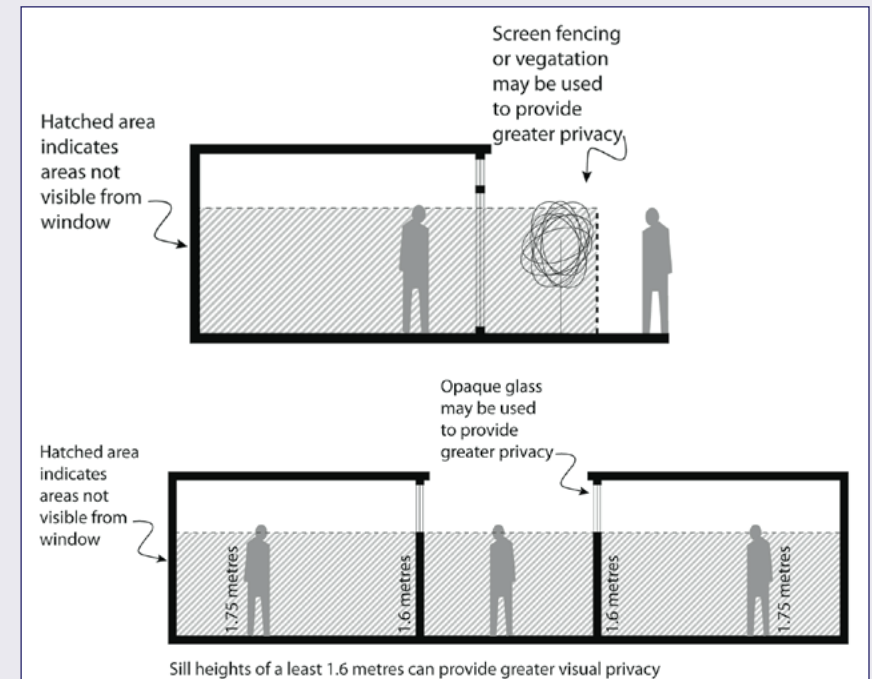
*Screening devices used to limit views between internal spaces of one dwelling and the balcony of the adjoining building.*

**Figure 57:** Screening devices allows developments within close proximity to mitigate direct overlooking.

### Privacy separation distances

A desirable degree of privacy requires a significant separation between the areas concerned, in most cases greater than the [lot boundary setbacks](#) required under [clauses 5.1.3](#) and [6.1.4](#) of the R-Codes. In practice, some degree of compromise is necessary.

Because it is not always possible to predict how a neighbouring [site](#) may be developed in the future, privacy separation distances can most realistically be applied between the proposed [development](#) and the property boundary, that is, as line of direct sight setbacks. The way in which setbacks should be determined is illustrated in [figure 10c](#) of the R-Codes using the [cone of vision](#) (refer to figure 58).



**Figure 58:** Privacy design

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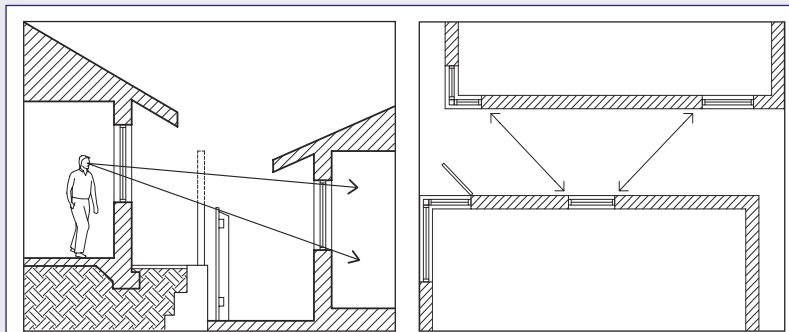
#### General guidelines

The R-Codes provide a set of privacy [setbacks](#), based on these considerations, to operate in the absence of detailed and acceptable consideration of the use and [development](#) of affected properties. These are set out as [deemed-to-comply](#) provisions, which do not require the discretion of the [decision-maker](#). For that reason, they are conservative, providing a relatively high level of protection from overlooking, but not absolute, protection.

In many cases, more effective and mutually beneficial outcomes can be achieved through the application of good design, directed at meeting the relevant [design principles](#) (Refer to figure 59).

Acceptable point-to-point privacy distances can be calculated by aggregating the privacy setbacks of the deemed-to-comply provisions.

In the case of [active habitable spaces](#), including [outdoor living areas](#) and [balconies](#), an effective privacy separation distance would be of the order of 15m or more. Clearly, this is not realistically achievable. An acceptable compromise setback, where intervening [screening](#) is not provided, would be in the order of 7.5m for active habitable spaces, 6m for living areas and 4.5m for bedrooms in areas codes R50 or less and 6m, 4.5m and 3m respectively in areas coded higher than R50.



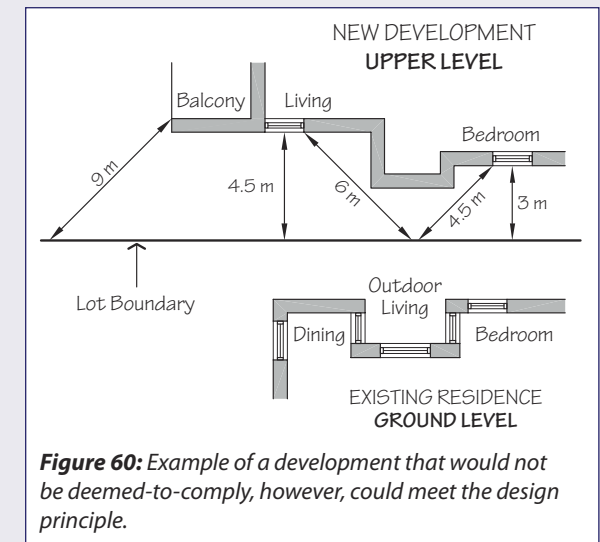
**Figure 59:** Increased fence heights or offsetting of windows are measures that may prevent overlooking.

The deemed-to-comply provisions for this design element provide for the setback of [major openings](#) in the [cone of vision](#) or permanent screening, as the alternative measure to protect the privacy of [adjoining property](#). Measurement of setback distances is to be taken from the major opening to the boundary, and accordingly, should be measured from the external face of the opening. This is illustrated in [figure 10b](#) of the R-Codes.

The measurement of privacy setbacks varies from that used for normal boundary setbacks only in that the line of the measurement in the case of privacy setback is to be based on the cone of vision. Accordingly, there will be situations in which the measurement is not at right angles to the boundary. It is important to understand that the setback distances included in the deemed-to-comply provisions represent minimum separation, which will be measured to the closest point of the boundary in the cone of vision.

Where a proposed development involves a departure from the deemed-to-comply provisions with respect to the separation distances specified in [clauses 5.4.1](#) and [6.4.1 C1.1i](#), assessment should be undertaken in accordance with the [design principle](#), as illustrated by Figure 60. This will involve consultation with potentially affected adjoining property owners, who should be requested to provide comment on the proposal, and information about the location of any [habitable room](#), windows or outdoor living areas which may be affected.

Assessment of applications which involve a proposal that addresses the design principles generally will require plotting the position of the adjacent [dwelling](#),



**Figure 60:** Example of a development that would not be deemed-to-comply, however, could meet the design principle.

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the location of any major openings to [habitable rooms](#) and any associated [outdoor living areas](#). This will enable identification of areas and openings which fall in the [cone of vision](#).

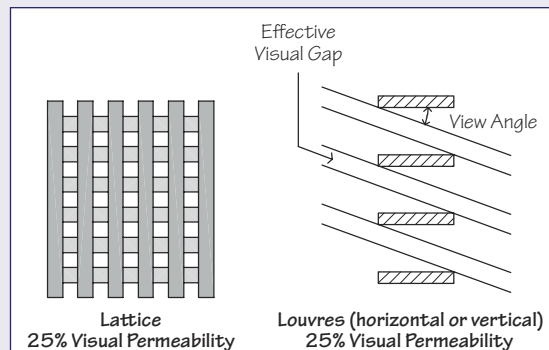
Evaluation of proposals should take into account only the potential impact of sight lines within the cone of vision where separation distances do not meet the deemed-to-comply provisions. Where separation distances accord with the provisions with respect to the cone of vision, the standard of privacy protection is satisfactory.

#### Screening for privacy

[Screening](#) can be employed to limit the cone of vision, and therefore, the privacy distances which otherwise would be required. However, it is important to note that in order for such screening to be taken into account for the purposes of the [deemed-to-comply](#) provisions, it must be regarded as permanent. Proposals that address the [design principles](#) would provide for alternative solutions from the deemed-to-comply provisions, and in such circumstances, alternatives to permanent screening may be considered, subject to appropriate consultation with relevant [adjoining property](#) owners.

Privacy screening can occur in various forms, including:

- vegetation
- permanent elements such as fences, balustrades and louvres
- translucent or opaque (that is, non-transparent) glazing and other similar materials (refer to figure 61).



**Figure 61:** Example of screening by which visual permeability can be limited. Note that a view angle of 45 degrees to the side is the limit of the cone of vision as defined in the R-Codes, and no screening is required outside these limits.

#### Vegetation

Vegetation in the form of screen planting or selective placement of suitable trees or shrubs can provide effective screening for privacy control, and also can enhance development and residential amenity. A drawback of this mitigation is that potentially affected property owners and occupiers may need assurance that the vegetation will remain in place, and any such screening should be assessed in terms of the design principle and in consultation with relevant property owners.

Subject to consultation with the adjoining owner, the necessary planting may be located on the [development site](#), and would be the subject of a condition of planning approval to run with the land. As an alternative, arrangements might be made for the developer to provide or contribute towards the cost of screen planting on the affected property, which would then become the responsibility of the affected property owner to maintain.

#### Fences and balustrades

Fences and balustrades are effective forms of screening and require little further explanation where they take the form of a solid [wall](#). The design and location of such features must not infringe on other relevant requirements for development, such as [setbacks](#), shading, day lighting and in the case of fences, the requirements of the *Dividing Fences Act 1961*, and associated local laws.

Screening may be perforated to some degree to allow the circulation of air, providing it meets the objective of protecting visual privacy. Because of the absence of a prescriptive standard applicable to partial screening, such proposals generally should be assessed in terms of the design principles and in consultation with any potentially affected property owners.

Perforations should constitute no more than about 20 per cent of the total surface area, with an upper limit of 25 per cent. However, it also is important that the size of individual gaps are not such as to prejudice the visual privacy of adjoining properties, and a maximum 50mm visual gap is suggested as reasonable. This compares with a minimum gap of 50mm referred to in the definition of [visually permeable](#).

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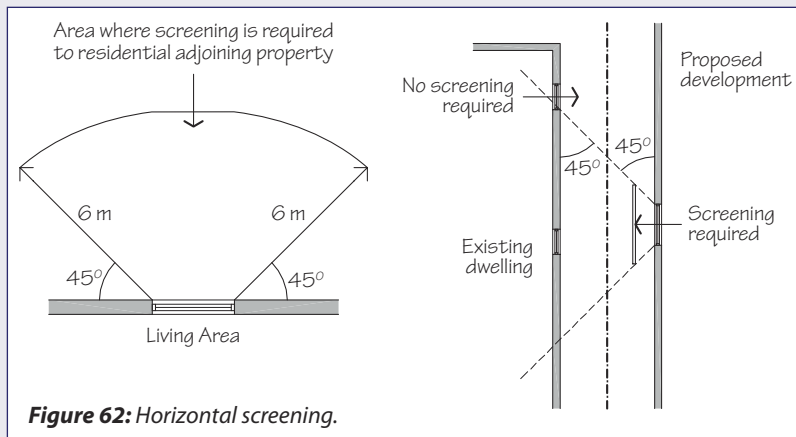
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In the case of lattice [screening](#), the [visual permeable](#) definition would be met by 50mm slats at a spacing of 50mm (that is 75 per cent coverage with gaps no greater than 50mm). Where fixed louvres are used either for vertical or horizontal screening, the spacing required to meet the same visual permeability standards will depend on the angle of view and the width of the louvre blades (refer to figure 62).



**Figure 62:** Horizontal screening.

Louvres, which are proposed to be relied on for screening, must be fixed or have a physical and permanent limitation on opening, to ensure the level of visual permeability does not exceed the specified standard. Such standards may be subject to a discretionary variation taking into consideration any comment and/or agreement from the relevant [adjoining property](#) owner.

### Translucent or opaque

The use of this form of screening generally does not involve the exercise of any discretion on the part of the [decision-maker](#). However, where such measures take the form of sheet glass of the type which could be easily replaced, as distinct from glass block work for example, it generally would be appropriate to apply a condition to ensure the screening remains in place (for example, in the event of breakage, it is replaced to meet the same specification). Because of the limitations on the use of planning conditions through the building permit process, this necessitates an application for planning approval.

### Building to boundaries

Privacy may be enhanced, for both the development and its neighbour, by building a portion of the [dwelling](#) up to the common boundary as provided in [clauses 5.1.4](#) and [6.1.4](#) of the R-Codes. This overcomes the problem of overlooking from that [wall](#), and in most cases allows more freedom of design on the [site](#) to ensure privacy for [outdoor living areas](#) and windows. However, the use of boundary walls does need to consider other aspects of design and neighbour amenity, such as the possibility of overshadowing neighbouring dwellings or outdoor living areas.

#### Part 5 only

### 7.1.1 Visual privacy – Part 5 of the R-Codes

[\(Clauses 5.4.1 of R-Codes\)](#)

#### Location of protected areas

[Habitable rooms](#) and outdoor living areas are identified in [clause 5.4.1](#) of the R-Codes being the areas which are to be the subject of privacy protection. In the case of habitable rooms, [major openings](#) should be the focus of attention, while in the case of outdoor living areas, priority should be given to areas required to be allocated for this purpose under [clause 5.3.1](#) of the R-Codes (an area of [open space](#) directly accessible from a living area and having a minimum dimension of 4m).





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Protection from overlooking is not required for [open space](#) other than that defined as [outdoor living areas](#). Protection from overlooking generally is not necessary for extensive areas of garden which are well separated from the [dwelling](#) to which they relate. Those outdoor areas likely to be occupied for extended periods of time, and where it is reasonable to expect a relatively high degree of privacy, should be the focus of attention in terms of any restrictions to be applied to overlooking from adjoining properties.

A lesser need for privacy protection is usual in the case of front gardens and areas visible from the [street](#), and this principle should also be carried over to other public places, such as parks. The basis for this acceptance is that control of overlooking for areas visible from public places would be largely ineffective in terms of privacy protection and also could limit outlook over, and surveillance of, the public places themselves, thus compromising safety and security.

The [deemed-to-comply](#) provisions are limited to protection of areas of any [adjoining property](#) behind its [street setback line](#).

While the deemed-to-comply provisions do not seek to protect areas in front of the adjoining property's street setback line, a proposal that addresses the [design principles](#) may need to be considered in the case of corner [lots](#) adjacent to a [development site](#).

Prior to development of a corner lot in a greenfield area, the determination of [primary](#) and [secondary streets](#) will generally be unknown and, therefore, deemed-to-comply provisions which relate to the location of the street setback line will be undefined. This indicates the need for the exercise of discretion, and in these circumstances, a proposal that addresses the design principles would be appropriate. In such cases consultation with the relevant adjoining property owners may be required to inform the [decision-maker](#). In circumstances where an outdoor living area (associated with a corner lot) is situated adjacent to the secondary street [frontage](#) and where the street setback line (generally taken to be the line which delineates the street setback area) is only 1.5m from the street alignment, some difficulty would be encountered in meeting the deemed-to-comply provisions. Similar difficulties may arise where the dwelling on a corner [site](#) is built up to the secondary street setback (1.5m) with [major openings](#)

facing the side boundary and subject to overlooking from an adjoining dwelling situated at its standard setback.

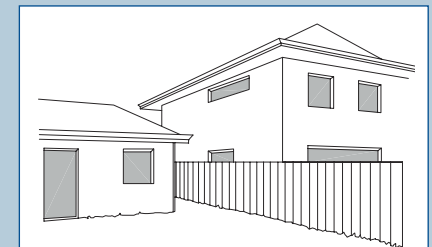
Where there is an [outdoor living area](#) adjacent to the secondary street, or major openings in an area which otherwise might have been the [primary street setback area](#), application of the normal deemed-to-comply provisions could impose unreasonable constraints on the adjoining [development](#), for example, no front [balconies](#) or major openings to habitable spaces above ground level. In such circumstances, consideration should be given to the design principle, with a view to limiting potential conflicts, however, the concessional provisions which allow for reduced secondary street setbacks for corner lots should not be allowed to unduly prejudice development of adjoining property.

#### Taking neighbouring properties into account

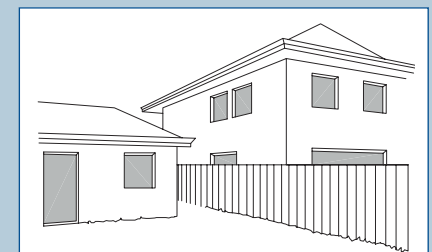
The proponent and the [decision-maker](#) should take into account the effect of the new development on existing or proposed dwellings on adjoining properties.

Design of new development should avoid overlooking into adjacent [habitable room](#) windows, especially of living rooms, balconies, terraces and other outdoor living spaces which are frequently occupied.

Protection from overlooking has high priority where the proposed dwelling has limited outdoor living space, and especially where its location is fixed, for example, adjacent to indoor living areas. Protection from overlooking is not necessary for extensive areas of garden, especially where these can provide their own vegetation screening (refer to figures 63 and 64).



**Figure 63:** Upper windows facing the rear garden are generally acceptable.



**Figure 64:** Upper windows facing a neighbouring property are generally not acceptable.



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#### Part 5 only

#### Application of design principles

Minimisation of overlooking should not be interpreted as an absolute prohibition on visual interaction. The objective for this element is to minimise the impact of [development](#) on the visual privacy of nearby residents. It is clear that absolute protection of privacy is not realistically achievable. Limits to the protection of privacy are also borne out by reference to the general approach to separation, as an alternative to the interruption of sight lines, to achieve an acceptable compromise.

With reference to the application of the [design principles](#) the focus should be on what constitutes a reasonable level of privacy in the circumstances, and what is realistically achievable. This may vary depending on the circumstances, with generally higher levels of visual privacy achievable in low-density areas than is practical in higher-density areas. Differing community expectations in different situations should also be kept in mind.

In some cases, there may be mutual benefit to be gained by a relaxation of the privacy standards, and subject to consultation with potentially affected property owners, alternatives should be considered in this light. For example, where adjoining [sites](#) are orientated east to west with views or outlook to the north, relaxation of privacy standards may enable a better design outcome in which solar access to, and views from, the north side of the site are maximised.

Applicants seeking approval through an application for a proposal that addresses the design principles are required to provide a written submission in support of the proposal. Where a [major opening](#) to an [active habitable space](#) is proposed closer to the nearest point of common boundary in the [cone of vision](#) than the [setbacks](#) specified in [deemed-to-comply clause 5.4.1 C1.1i](#) of the R-Codes, the following additional information is to be provided, in accordance with [clause 3.3.1\(b\)](#) of the R-Codes:

- The position and dimensions of any [balcony](#) or major openings to any [active habitable space](#) in any [wall](#) of an adjoining [building](#) which is visible from the [development site](#) and is located within 6m of a boundary of the development site.
- The position and level of any accessible area (for example, lawn, paving, decking, [balcony](#) or swimming pool) on any [adjoining property](#) and within 6m of a boundary of the development site.
- Provision of additional or marked-up plans and sections showing the [cone of vision](#) and critical lines of sight from those major openings as they relate to the adjoining property.
- Details of [screening](#) or other measures proposed to be used to reduce overlooking.

