



SUPREME COURT PROCEEDING

8 Yvonne Court, Wheelers Hill

August 2015

S CI 2015 02973

**COMPLIANCE WITH RESTRICTIVE
COVENANT**

TOWN PLANNING EVIDENCE
PREPARED BY
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Expert Evidence | Strategic Advice | Development Approvals

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- 1 Expert Witness Statement
- 2 Curriculum Vitae
- 3 Plans for the previous development
- 4 Plans for the present development
- 5 Letter instructions

1 INTRODUCTION

1.1 Instructions and purpose

- 1 This proceeding has been brought against the owner of the land, Eva Bedelis of 8 Yvonne Street, Wheelers Hill (subject site), by beneficiaries of Covenant Number A133970 that applies to the subject site.
- 2 The plaintiffs claim, in a Writ lodged by Best Hooper Solicitors dated 10 June 2015, that the construction of a dwelling on the subject site is in breach of the covenant, given that it is alleged to be more than one storey in height and does not have walls of brick or stone.
- 3 I have been instructed by Bedelis Lawyers to provide an expert opinion to be used in support of the owner's:
 - a) Defence of the Writ from Best Hooper in matter S Cl 2015 02973 dated 10 June 2015 (Writ); and
 - b) Planned application to modify the Covenant pursuant to Section 84(1) of the Property Law Act 1958 to expressly permit the construction of the present dwelling.
- 4 More particularly, I have been asked for my opinion, on the following questions:
 - a) *"What you believe the purpose of the Covenant to be;*
 - b) *Having regard to this purpose, whether the Previous Dwelling and the Present Dwelling are similar in form and materials;*
 - c) *Whether there will be substantial injury to the beneficiaries of the covenant if the covenant is expressly modified to allow the dwelling under construction, including:*
 - i) *Impact on views;*
 - ii) *Whether there will be any impact on neighbourhood character;*
 - [a] if the present dwelling is constructed using brick veneer rather than double brick; or*

(b) if the subfloor area is used for parking and other non-habitable rooms such as a lift well, cellar, storage and workshop;

iii) Whether the modification of the Covenant to expressly allow the construction of the Present Dwelling would likely create a precedent having regard to the existing and potential built form and materials of other buildings in the neighbourhood; and

d) Some brief observations on the ostensible degree of compliance with other restrictive covenants throughout the neighbourhood”.

- 5 In the preparation of this report I have had regard to the report prepared by Easton Consulting titled 'Planning Report – Covenant Modification / Removal' (Easton Report), and the results of his title searches.
- 6 An Expert Witness Statement and Curriculum Vitae is included at Attachment 1 and Attachment 2 of this report, respectively.

2 THE RESTRICTIVE COVENANT

2.1 Context

- 7 The subject site, being Lot 46 on Plan of Subdivision 026647, is subject to a restrictive covenant described in Instrument Number A133970 dated 28 March 1956. Refer Figure 1.
- 8 The covenant, states that the proprietor of the land, inter alia:
-will not erect or cause to be erected on the said land hereby transferred any dwelling other than one having walls of brick or stone and such house not to be more than one storey in height and all outbuildings to be of similar construction.....*
- 9 As outlined in the Easton Report, the parent title was Volume 7964 Folio 012 and related to all land contained in LP26647 and LP26845 (Refer p. 6 and Appendix p.19 of the Easton Report).
- 10 The transfers from the parent title are set out in the table on page 6 and 7 of the Easton Report, and his report states that there are a total of 37 beneficiaries of the covenant on the subject land.
- 11 The parent title and beneficiaries are shown in Figure 1.
- 12 The Easton Report also describes other similar restrictive covenants that exist on lots contained within the original parent title. (Figure 2)
- 13 Figure 3 details the plaintiffs in this matter.
- 14 A review of these covenants on lots shown in the surrounding neighbourhood shows that:
- Of the 50 lots that have covenants, all specify that construction material must be of brick and/or stone construction.
 - Of these, 29 also specify that brick veneer may be used in construction.

- The dwellings along View Mount Road affected by covenants did not have a single storey restriction. All other covenants within the parent title did, with the exception of 3 Mackintosh Road.
- The covenants that relate to 1 and 2 Eric Court both have covenants that provide for single storey construction '*except any garage may be built under the house...*'. These covenants were created on 5/12/60 and 20/12/62 respectively.
- There is one covenant within the parent title that specifically allows for two storey construction, being that which applies to 20 View Mount Road and states that, "*any dwelling house other than one of up to two storey construction....*".

15 Figure 2 below shows which lots in the surrounding neighbourhood are affected by covenants, including those that restrict dwellings to single storey; and which allow for brick veneer construction.



Figure 1 Subject Site and beneficiaries to Covenant A133970

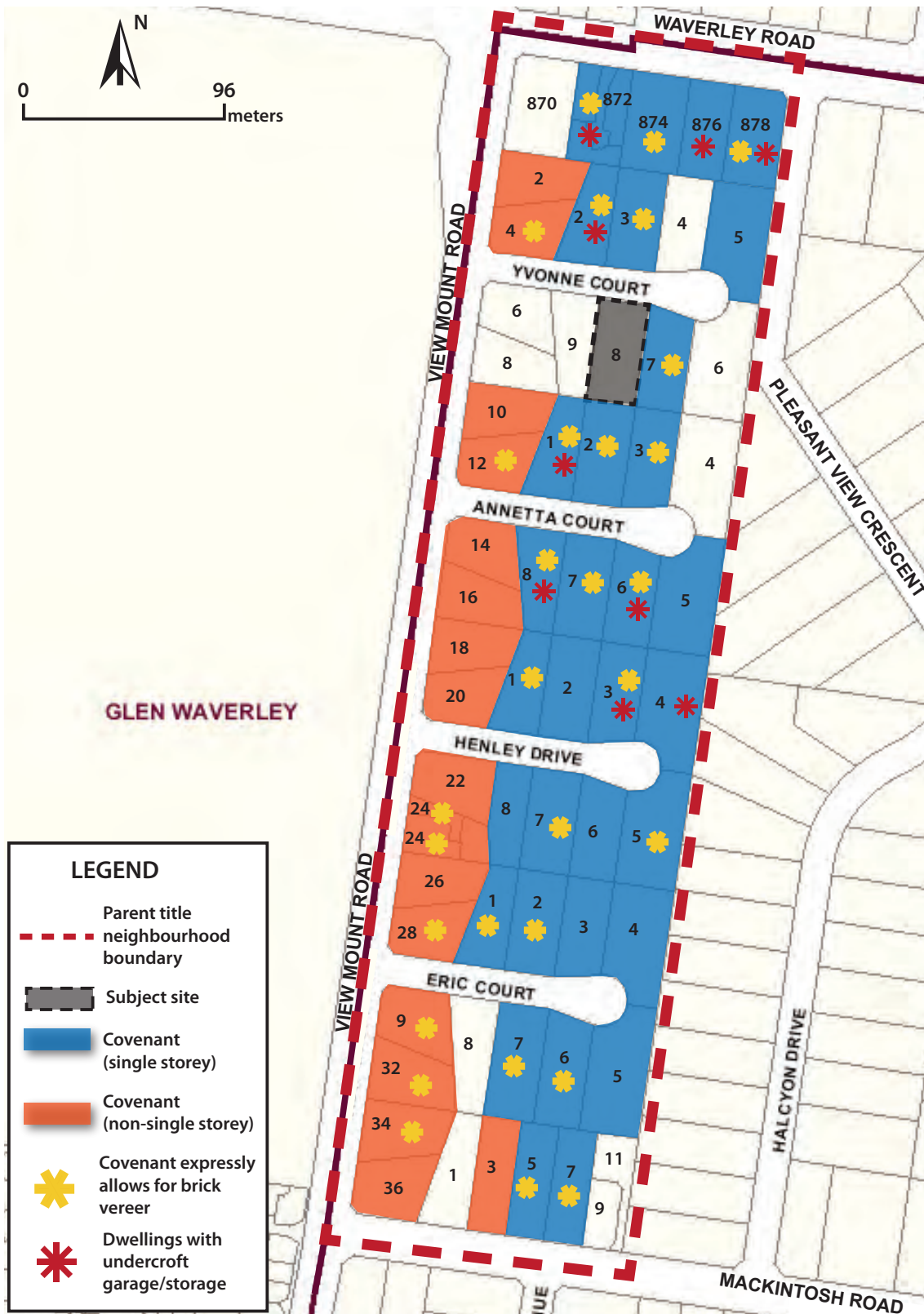


Figure 2 Covenants in the surrounding neighbourhood



Figure 3 Plaintiffs in Proceeding

2.2 Summary of Opinion

16 In summary, it is my opinion that:

- The purpose of the covenant that relates to the subject site was to provide a level of control over the development of the land in terms of its contribution to the character and appearance of the immediate neighbourhood; to provide for view sharing; and to ensure a particular quality of building stock.
- Having reviewed plans for the previous dwelling that was developed on the site and the dwelling currently under construction, the dwellings have a very similar building footprint and building envelope, and are very similar in construction materials, style, character and imposition on the landscape.
- A variation of the covenant to allow the construction of the present dwelling would not have a substantial injury to the beneficiaries of the covenant.
- The modification of the covenant to allow the construction of the present dwelling may create a precedent for a variation to other single storey covenants to allow for non-habitable areas beneath a dwelling, or to allow for brick veneer construction. However, it is not likely to create a precedent for other variations to covenants that would impact on the character or appearance of dwellings in the neighbourhood; allow for double storey dwellings that may impact on view sharing; or allow for the introduction of other building materials to the area.
- There are many examples of dwellings with a single storey covenant that have an undercroft garage or other area sited below the main dwelling, in a similar form as the former dwelling on the site and the dwelling currently under construction.

3 BACKGROUND

- 17 The brief by Bedelis Lawyers outlines the following background.
- 18 When the current owner purchased the property in 2013, the subject site was developed with a dwelling as shown in the architectural plans prepared by Peter M Kelly dated 25 November 1989, being Plans 01A, 02A, 03A, 04A, 05A, 06A, 07A, 08A, 09, 10, 11, and 12. (Attachment 3)
- 19 An application for the construction of a new dwelling was made with building surveyor, Teckon Group Pty Ltd, on or about the 16 April 2014 in accordance with plans prepared by Bellemore Homes.
- 20 Building Permit No. BSU-16991/20140267/0 was issued by Teckon Group Pty Ltd on 13 June 2014. An amended set of plans were endorsed, on 5 August 2014 under this permit being Ref Number 1307-504, WD01 – WD26, dated 11.07.2014, Revision D (Attachment 4).
- 21 The former dwelling was demolished on or about August 2014.
- 22 Construction of the new dwelling commenced on or about August 2014 and the roof structure was erected on or about 14 April 2015.
- 23 The Writ prepared by Best Hooper Lawyers, dated 10 June 2015 on behalf of the plaintiffs, alleges that the plaintiffs requested the defendant to cease all works on 27 April 2015, on the basis that they considered the dwelling was in breach of the covenant.
- 24 The Writ now seeks a permanent injunction restraining the defendant and her servants and agents from erecting a dwelling on the property that is more than one storey in height, and/or which does not have walls of brick or stone. They also seek the demolition of the dwelling currently under construction.

4 THE SUBJECT SITE – CONTEXT

4.1 The Subject Site

- 25 The subject site is located at 8 Yvonne Court, Wheelers Hill (Figure 1 and Figure 4). It is a regular, rectangular parcel of land that has a frontage to Yvonne Court of 23.77 metres, depth of 48.77 metres and an overall site area of 1,159 square metres.
- 26 The site has historically been developed with a single detached dwelling. A new single detached dwelling is currently under construction. (Figure 5, Figure 6, Figure 7, and Figure 8)
- 27 There is a single driveway access from Yvonne Court at the north/east corner of the property and the dwelling is setback approximately 11.8 metres from the street.
- 28 There is a fall of approximately 2.4 metres from the rear of the site (south) towards Yvonne Court (north) and also a fall of approximately 2 metres across the site from the west to the east. This cross fall has an inherent implication on the form of any dwelling built on the site.

4.2 The surrounding neighbourhood

- 29 The subject site is located within the residential suburb of Wheelers Hill, approximately 20.5 kilometres east of central Melbourne. (Figure 4).
- 30 Yvonne Court is one of several courts that extend east from View Mount Road, between Ferntree Gully Road to the south and Waverley Road to the north.
- 31 The area is residential in nature and is characterised by predominately detached housing on lots generally larger than 500 square metres. (Figure 9 - photographs)
- 32 The neighbourhood character of Monash's residential areas is described in Monash Council's Urban Character Study 1997 and the Monash Planning Scheme at Clause 21.04 *Residential Development* and Clause 22.01 *Residential Development and Character Policy*.

33 These provisions identify five residential character types throughout the municipality. The subject site is identified in '*Residential Character Type "E"- Character derived from Post 1955 development sloping topography to Dandenong Creek and a curvilinear subdivision pattern*'.

34 The 'Current Character Statement' for Area E, as described in the Planning Scheme [Clause 22.01] is as follows:

This area is characterised by a variety of building types. Most are one and two storey 1970's and 1980's brick veneer single and double fronted villas. A range of brick colours are used but the palette is often consistent within neighbourhoods. The roofs are varied but in most areas have low pitched hip forms.

New buildings constructed post 1985 are often extremely large, up to 3 storeys high and eclectic in architectural style. Generally, the smaller buildings are on the lower slopes of the valley-side, the flatter land of the valley floor and plateau tops.

The interaction of the buildings with the topography creates a variety of levels in the steepest neighbourhoods and a need for retaining walls to the front of some properties.

Few properties have walls or fences. Some however have large prominent walls combined with metal railings.

Gardens are well planted and horticulturally diverse. Large stand-alone trees are common in front gardens, especially on the steeper slopes. Rockeries delineate the edges of some gardens.

This Character Type has a large proportion of open space and a close relationship to the semi-natural landscape of the Dandenong Creek valley.

35 Elements that contribute to this character are listed as follows:

- *Sloping topography towards Dandenong Creek.*
- *Curvilinear subdivision pattern.*
- *Varied building style, scale and architectural quality.*
- *Consistent building setback.*

- *Well maintained, well-planted but open front gardens integrated with the street landscape.*
- *Underground services in some neighbourhoods.*
- *Concrete footpaths.*
- *Nature strips 2-3 metres wide.*
- *In situ concrete kerb and channel.*
- *Parking on the street and driveways.*

- 36 I am aware that Planisphere (consultant planners), is undertaking a Neighbourhood Character Review for the City of Monash. The 'Consultation Draft' is dated February 2015.
- 37 This revised neighbourhood character statement within the Planisphere draft report also recognises the key neighbourhood character elements of the curvilinear subdivision layout, hilly topography, well vegetated gardens and mixed architectural styles, with predominately detached buildings from the 1970's through to the 1990's, and contemporary infill.

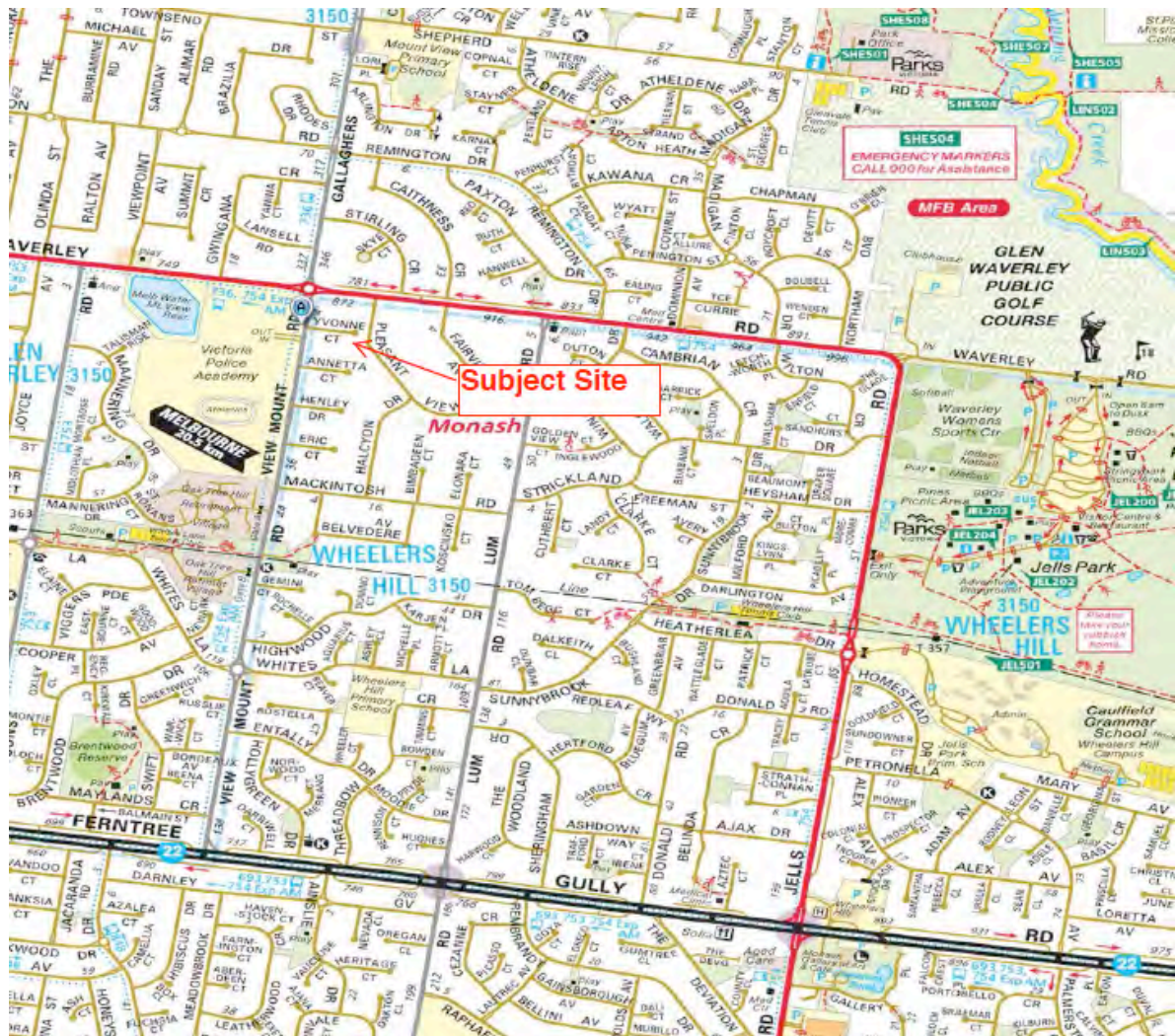


Figure 4 Location Plan, Melways online

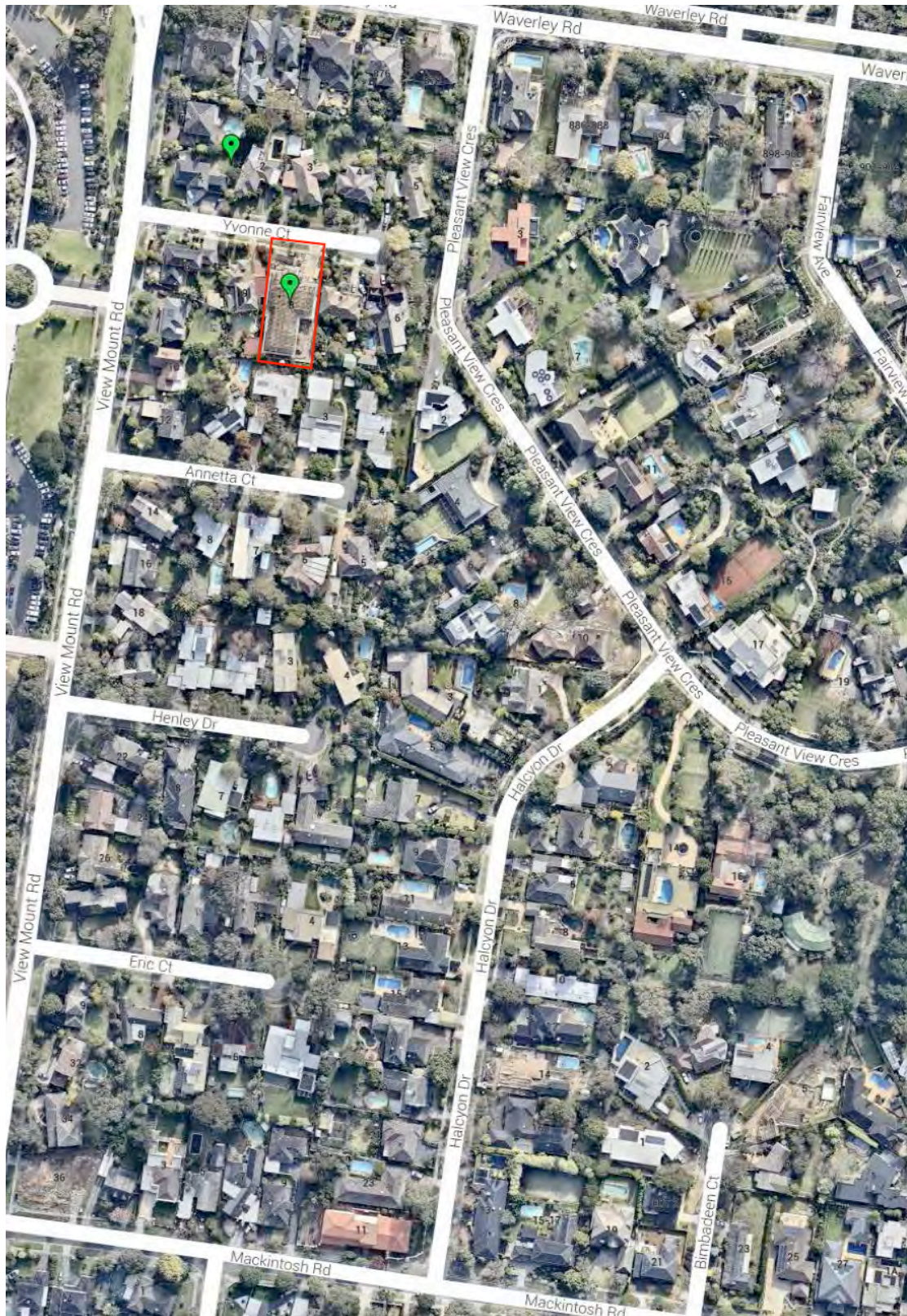


Figure 5 Aerial Photo of Site and Surrounds, nearmap

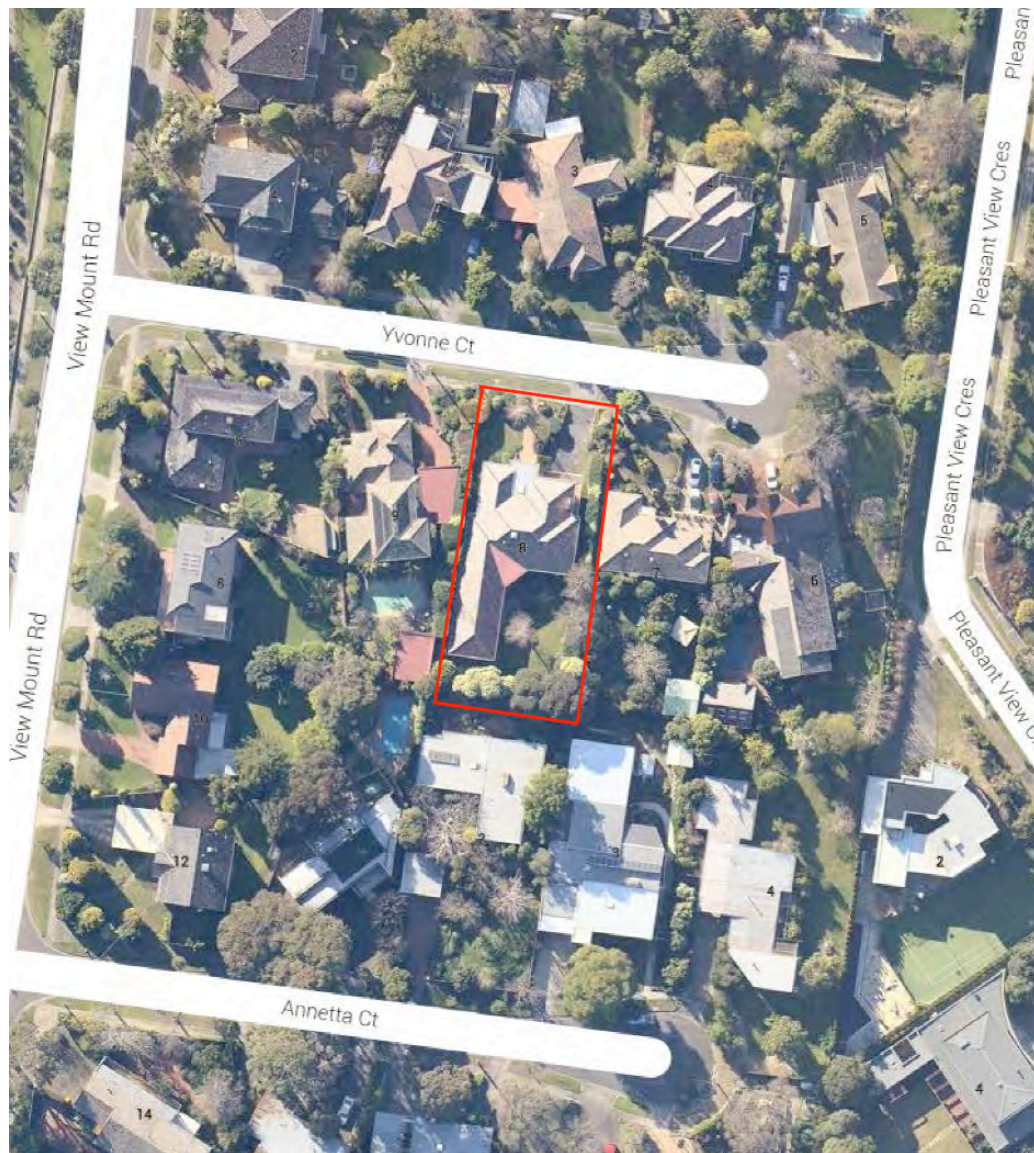


Figure 6 Aerial Photo, dated 3 August 2014 showing the former house on site, nearmap



Figure 7 Aerial Photo, dated 26 May 2015, showing house under construction, nearmap

Figure 8 The dwelling under construction and the interface with 2 Annetta Court



1 : Yvonne Court Frontage



2: Rear eastern boundary



3: View to south east corner and dwelling at 2 Annetta Court



4: View to the interface with 2 Annetta Court



5: Rear of new dwelling, adjacent to 2 Annetta Court



6: The garage and utility spaces under the dwelling

Figure 9 Photos of dwellings in the neighbourhood which have a single storey covenant as well as an undercroft area beneath the dwelling. Source nearmap



1. Former dwelling at 8 Yvonne Court



2. 2 Yvonne Court



3. 1 Annetta Court



4. 6 Annetta Court



5. 8 Annetta Court



6. 3 Henly Drive



7. 4 Henly Drive



8. 878 Waverley Road

5 STATUTORY FRAMEWORK

5.1 Basis of Approval

- 38 At the time of the issue of the building permit, on 13 June 2014, the new Residential Zones were introduced to the Monash Planning Scheme (Amendment C119 Monash Planning Scheme, approved 13/06/14). This rezoned the subject site from the Residential 1 Zone to the General Residential Zone, Schedule 2 (GRZ2) pursuant to Clause 32.08 of the Monash Planning Scheme.
- 39 Pursuant to the GRZ2 no planning permit was required for either the demolition of the existing dwelling or the construction of a new dwelling, given that the site was greater than 500 square metres.
- 40 A building permit was the only approval required for the construction of the new dwelling and the provisions of the Building Act 1993, Building Regulations 2006 and the Building Code of Australia (BCA) applied.
- 41 Part 1.3 of the BCA sets out the classifications of buildings.
- 42 Class 1a –relates to a single dwelling being:
- (i) a detached house; or*
 - (ii) one of a group of two or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, town house or villa unit.*
- 43 Class 10 relates to a non-habitable building or structure being:
- (a) Class 10a – a non-habitable building being a private garage, carport, shed, or the like.*
 - (b)*
- 44 The building permit was issued for a building class 1a, new building, detached house and for building class 10a, new building, garage. (Attachment 4).
- 45 Section A1.1 of the BCA Volume 1, provides definitions.

46 The definition of a 'storey' is as follows:

"Storey means a space within a building which is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but not-

(a) A space that contains only –

(i) A lift shaft, stairway or meter room; or

(ii) A bathroom, shower room, laundry, water closet, or other sanitary compartment; or

(iii) Accommodation intended for not more than 3 vehicles; or

(iv) A combination of the above; or

(b) A mezzanine.

5.2 Property Law Act 1958

47 The relevant legislation applicable to an application to remove or modify a restrictive covenant is set out in Section 84 of the Property Law Act 1958.

48 Section 84(1) provides that the Court may, by order, wholly or partially discharge or modify a covenant if it is satisfied:

a) That by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the Court deems material the restriction ought to be deemed obsolete or that the continued existence thereof would impede the reasonable user of the land without securing practical benefits to other persons or (as the case may be) would unless modified so impede such user; or

b) That the persons of full age and capacity for the time being or from time to time entitled to the benefit of the restriction whether in respect of estates in fee-simple or any lesser estates or interests in the property to which the benefit of the restriction is annexed have agreed either expressly or by implication by their acts or omissions to the same being discharged or modified; or

c) That the proposed discharge or modification will not substantially injure the persons entitled to the benefit of the restriction.

6 OPINION

49 My brief by Bedelis Lawyers has requested my expert opinion on the following questions.

6.1 The purpose of the Covenant

50 The covenant applying to 8 Yvonne Court provides that the proprietor, his heirs, executors administrators and transferees:

.....will not erect or cause to be erected on the said land hereby transferred any dwelling other than one having walls of brick or stone and such house not to be more than one storey in height and all outbuildings to be of similar construction.....

51 Covenants such as these were traditionally used to provide a level of control over the development of land, in terms of neighbourhood character and also the quality of building stock.

52 The beneficiaries to the covenant gain protection or a benefit from the restriction that the covenant provides.

53 Historically these covenants were applied to land prior to the introduction of more contemporary planning controls, namely Planning Schemes and permits that are now the primary tool to control land use and development.

54 The reference to walls of brick or stone construction, would have been used to create a consistency in character and appearance in building stock in the neighbourhood and also to provide a certain quality and value of housing.

55 At the time the covenant was applied, brick or stone would have been considered superior with implied value of more 'substantial' construction, to other building materials, such as weatherboard.

56 I also consider that the reference to materials was principally directed at the nature of the facing material and not a requirement of the structure.

57 The covenant, as it applies to materials, is appropriately interpreted in the context of the methods of construction when the covenant was drafted.

- 58 By 1956 brick veneer had almost replaced double brick construction in Victoria, having been recognised as a standard building method of house construction as early as 1928¹.
- 59 I consider that the restriction on number of storeys as outlined in the covenant, would have also have been applied to control the neighbourhood character, and to control amenity impacts on surrounding land, in particular given the topography of the area, to promote and enable view sharing.
- 60 The site and surrounding land is located on the upper slopes of Wheelers Hill, offering panoramic views of the Dandenongs to the east. The covenants would have had the effect of protecting views of those properties on the higher part of the hill.
- 61 From the Easton report I am aware that the majority of houses in the parent title, and in the area that I define as the subject site's 'neighbourhood' were affected by a covenant (Refer Section 1.2 of my report and Figure 2).
- 62 The covenants that applied to those properties on the east side of View Mount Road, that is the highest land, did not restrict dwellings to single storey, and the covenant on the property at 20 View Mount Road expressly allowed 'of up to two storey construction'.
- 63 Almost all other covenants within the neighbourhood (with the exception of 3 Macintosh Road) limited dwellings to single storey. This suggests that the restriction on single storey dwellings sought to promote an equitable sharing of development opportunities, including of views from Wheelers Hill to the east.
- 64 I note however, that the beneficiaries to the covenant that affects the subject site, include lots fronting Mackintosh Road, Henley Drive and Annetta Court to the south and 2 and 4 View Mount Road to the north. A dwelling constructed on the subject site would not have any impact on views from these properties, and therefore I consider that the restriction to single storey to the benefit of these properties, was also to contribute to the neighbourhood character.

¹ ¹ 'The History and Design of the Australian House', Robert Irving O.U.P, Melbourne 1985.

65 Furthermore, the views from some properties most affected by development on the subject site, namely 9 Yvonne Court immediately to the west, and also at 6 and 8 View Mount Road to the west, are not beneficiaries to the covenant that applies to the subject site.

66 On this basis, I consider that the single storey aspect of the covenant, like the restriction on building material, was also to control the neighbourhood character more generally, and was not just limited to controlling views.

6.2 Whether the Previous and Present Dwelling are similar in form and materials.

67 I have been provided with plans of the previous dwelling that was developed on the site, being plans showing alterations and additions to the existing dwelling dated 25 November 1989, prepared by Peter M Kelly Architect. These are included at Attachment 3.

68 An aerial photo of the previous dwelling is also included at Figure 6 and a photo from the street is included at Figure 9.

69 The 'Existing Basement Plan' provide for an existing house that comprised a garage and workshop accessed from street level and partially cut into the land further to the rear (south).

70 The 'Existing Ground Plan' shows steps from the street leading up to the habitable rooms of the dwelling, comprising two bedrooms, bathroom, kitchen, sitting, family room and laundry. A terrace / balcony was sited along the northern part of the dwelling, oriented to Yvonne Court, and steps lead down the rear garden.

71 The plans provide for alterations and additions to the dwelling, including a reconfigured layout of the existing dwelling and an addition to the rear.

72 The addition provided for three additional bedrooms and a bathroom.

73 The workshop at the lower level was also re-configured to provide internal stairs leading up to the dwelling above, and a new entry and storage area.

74 The plans specify that the extension was of brick veneer construction, with brickwork and roof tiles to match existing.

- 75 Overall, all habitable rooms within the dwelling were on a single level, partially built above the garage and store, responding to the land's topography.
- 76 I have also been provided with the plans of the house currently under construction, as prepared by Bellemore Homes. These are included at Attachment 4.
- 77 An aerial photo of the dwelling under construction is included at Figure 7, and images of the construction are included at Figure 8.
- 78 The Bellemore plans provide for a new dwelling, comprising garage, store, workshop and cellar at street level and partially cut into the land to the rear (south).
- 79 The habitable rooms of the dwelling above, comprise 5 bedrooms, open plan lounge, family meals and kitchen area and associated utilises such as bathrooms and laundry.
- 80 Again the dwelling is accessed via steps from the street leading to a centrally located entrance, and is also accessed via both lift and stairs from the garage.
- 81 The present dwelling, while larger than the previous dwelling, occupies a similar building footprint and overall building envelope to the previous dwelling on the site.
- 82 All habitable rooms within the dwelling are on a single level, partially built above the garage, store, workshop and cellar.
- 83 Materials specified are brickwork to the walls; selected roof tiling; and windows to be double glazed with aluminium frames, some with obscure glazing. Again the roof form is a pitched roof, albeit in a slightly different form than the previous dwelling.
- 84 The Easton report notes that the comparative heights of the 'previous' and 'present' dwellings reveal that the main floor level of the present dwelling is approximately 0.12 metres (RL148.1 AHD) above the previous dwelling (147.99). The maximum ridge height of the present dwelling is 0.3 metres (154.0 AHD) higher than the previous dwelling (153.7 AHD).

85 Overall it is my opinion that the previous and present dwelling are similar in form and materials.

6.3 Substantial injuries arising from a modification

86 In this question, I have been asked whether there will be substantial injury to the beneficiaries of the covenant if the covenant is expressly modified to allow the dwelling under construction, including the following considerations:

6.3.1 Impact on views.

87 The topography of the locality is such that the land falls away from View Mount Road to the east, along the courts and cul-de-sacs. The land also falls away to the north.

88 Long distant views of the Dandenong Ranges are available from areas in the public and private domain, although dwellings and mature vegetation deny unobstructed views in all directions.

89 I do not consider there will be any substantial injury to the beneficiaries of the covenant by way of loss of views, if the covenant is expressly modified to allow the dwelling under construction.

90 As noted above, the land most affected by impact on views through the development of the subject site is the land to the west, being the adjoining property at 9 Yvonne Court. This land however is not a beneficiary to the covenant (Figure 3).

91 Land further to the west at 6 and 8 View Mount Road could also possibly have an imposition on their views by development of the subject site. However again, these properties are not beneficiaries of the covenant.

92 The dwelling at 9 Yvonne Court is a substantial dwelling between the subject site and these properties on View Mount Road, and therefore this dwelling would have a greater and more immediate impact on their views.

93 The only beneficiaries where views might be impacted on by the dwelling under construction, are at 1 and 2 Annetta Court, to the immediate south of the subject site. 3 Annetta Court is also a beneficiary, however is sited to the south-east of the subject site and therefore would not be impacted by development on the subject site.

- 94 While the primary view aspect is to the east, there are some views available to the north/east from these properties across the subject site.
- 95 I note that both of these properties are developed with single dwellings and are affected by covenants that also restrict a dwelling to single storey construction or one storey in height.
- 96 Levels undertaken by BR Smith and Associates Surveyors as described in the Easton Report, note that the top of the roofs of 1 and 2 Annetta Court are approximately 0.3 metres and 3.3 metres below the ridge of the dwelling under construction, respectively.
- 97 On this basis, these roofs would have been level with and approximately 3 metres below the previous dwelling on site.
- 98 That part of the dwelling under construction closest to 1 and 2 Annetta Court has a wall height of just over 3 metres and has no undercroft structure.
- 99 Any single storey dwelling constructed on the subject site would have a similar height on this part of the site.
- 100 Subject to meeting the building regulations, a dwelling could be built closer to the southern boundary, and partially on the boundary; have the same or greater walls height close to this boundary; adopt the same extent of walls; and the same roof profile. The overall height and impact on view would therefore be the same or similar.
- 101 A form of development that provided for no car parking or utility rooms, as proposed, could have been built on the site in exactly the same manner, height, layout and location as the dwelling under construction and had the same impact on views.
- 102 As such, the variation of the covenant to allow for the dwelling under construction would not cause any additional or different impact on views than would be allowed without the modification, and therefore would not have any substantial injury in terms of views from these neighbouring properties.
- 103 All other beneficiaries are sited further from the subject site and located to the south or north of the site, and therefore would not be impacted on views to the east. On this basis, the construction of the present dwelling would not have any impact on their views.

104 On this basis, having regard to views, I do not consider that there would be a substantial injury to the beneficiaries of the covenant if the covenant was expressly modified to allow the dwelling under construction.

6.3.2 Impact on neighbourhood character.

105 'Neighbourhood character' and what area spatially constitutes the neighbourhood are common and relevant considerations of an application to remove or modify a covenant.

106 In particular, Section 84(1)(a) of the Act establishes that one test to determine if a covenant should be discharged or modified is; *'by reason of changes in the character of the property or the neighbourhood...'*

107 In *Freilich v Wharton* (2013) VSC 533 ('Freilich'), Bell J applied the following principles to establish the relevant neighbourhood:

"First, in cases under s84(1), the court does not apply a preconceived concept of neighbourhood; second, where relevant, the court should have regard to the concept of neighbourhood which is reflected in the benefits conferred by the covenant; and third, a broader concept of neighbourhood is demanded by the evidence in the case."

108 Based on these principles, I consider that the relevant neighbourhood in this proceeding should be described by the area in the parent title, Certificate of Title Volume 7964 Folio 012.

109 This is defined by Mackintosh Road to the south; Waverley Road to the north; View Mount Road to the west and Pleasant View Crescent and the rear of properties fronting Halcyon Drive to the east. I note that this area includes all beneficiaries to the covenant. (Figure 1, Figure 2 and Figure 4).

110 This area comprises the allotments within the four courts extending off View Mount Road, that are of a similar size and arrangement.

111 From my inspection of this neighbourhood, and my description provided at Section 3.2 of my report, I consider that the prevailing characteristics of the area is predominately detached dwellings, set within landscaped gardens, and built in a manner that responds to the undulating topography and curvilinear subdivision pattern of the area.

- 112 The majority of dwellings are single storey in form, however there are several two storey dwellings; almost all have at least a face brick finish; and the majority have a pitched roof form.
- 113 Properties typically have a single crossover to the street, often with a carport or garage built beneath part of the dwelling above or adjacent to the dwelling.
- 114 Established trees, rear and front gardens, often with low or no front fencing, also contributes to the neighbourhood's character.
- 115 Many dwellings have long distant views to the east, where the land falls away to the Dandenong Creek and associated parklands and the Ranges beyond.
- 116 As described above, I consider that the present dwelling under construction is similar in character and form to the previous dwelling that was developed on the site, and I also consider that it is similar in character to much of the surrounding building stock. Figure 2 highlights the extent of properties with undercroft garage or storage areas and Figure 9– photos of dwellings in the neighbourhood with similar building envelopes.
- 117 The dwelling under construction adopts the key neighbourhood character attributes being a detached dwelling; comprises the habitable rooms across a single level; adopts a setback from the street that is consistent with neighbouring housing; is to be brick veneer construction and adopts a pitched roof form. There is no front fence and the front setback allows for vegetation to present to the street.
- 118 As shown in photographs at Figure 9, these characteristics are typical of the area.
- 119 On this basis, I do not consider that if the covenant was expressly modified to allow the present dwelling, there would be a material impact on the neighbourhood character.

6.3.3 Creation of a precedent

- 120 I have been asked whether the modification of the Covenant to expressly allow the construction of the present dwelling would likely create a precedent having regard to the existing and potential built form and materials of other buildings in the neighbourhood.

- 121 Judgments in relation to modifications of covenants commonly accept that each application needs to be considered on its individual facts and circumstances. In the decision of Else-Mitchell J in *Re Roseblade; Re Foenander (1964-5) NSW 2044* the judge stated:

It is not safe to generalise and each case will have to be determined on its own merits in light of the evidence and, in particular, whether the evidence shows that the modification will not substantially injure the persons entitled to the benefit of the restriction.

- 122 Notwithstanding this, if the covenant was modified to expressly allow for the construction of the present dwelling, I do not consider that it would be likely to create a precedent for modifications to the covenants in the surrounding neighbourhood.
- 123 This is on the basis that the built form under construction is consistent in form, scale and materials to the prevailing character of housing in the neighbourhood.
- 124 The dwelling under construction does not seek to introduce 'alien' elements into the neighbourhood, such as metal building materials, nor does it allow for two or more levels of habitable living spaces.
- 125 As stated above, I consider that the form of the dwelling under construction is consistent with the neighbourhood characteristics that the covenant seeks to protect.
- 126 On this basis, I do not consider that modification of the covenant to expressly allow for the construction of the present dwelling would create a precedent in the area.

6.4 Compliance with other comparable restrictive covenants throughout the neighbourhood.

- 127 As outlined in the Easton report, and as shown in Figure 2, the majority of lots in the neighbourhood are affected by a comparable covenant that restricts dwellings to a single storey and brick or stone construction.
- 128 There are 9 lots that have a single dwelling covenant with similar wording to that which applies to the subject site, and have a dwelling constructed on site with a garage positioned in a similar manner to the previous house on the

subject site and the dwelling under construction. Refer to Figure 2 and photos at Figure 9.

129 These are:

- 2 Yvonne Court
- 872 Waverley Road
- 876 Waverley Road
- 878 Waverley Road
- 1 Annetta Court
- 6 Annetta Court
- 8 Annetta Court
- 3 Henly Drive.
- 4 Henley Drive

130 This either highlights that there is a significant level of non-compliance with covenants in the area, or alternatively, that a “garage” structure for non-habitable rooms, with a single level of dwelling above has been previously accepted as consistent with the intent of these covenants.

131 All dwellings affected by a covenant that restricts building materials to brick or stone, appear to have been built from brick. As such, this aspect of the covenant appears to have remained intact.

132 I do note however, it is not clear whether dwellings are constructed from brick, or brick veneer, and I note that some covenants expressly allow for ‘brick or brick veneer’, while others simply refer to ‘brick’.

133 I have not been able to determine whether each dwelling is constructed in double brick or brick veneer. Brick veneer is a form of construction, that instead of another internal layer of brick, is attached to a timber frame. This is not visually evident from the exterior of the dwelling, and particularly from the street.

134 On this basis, I am not able to comment on whether those properties that have a covenant that does not expressly allow for brick veneer, are in fact double brick or brick veneer.

135 Overall, it is evident that a significant number of dwellings have been built responding to the slope of the land and include structures below the

habitable spaces above. There appears to be a high level of compliance of brick construction, however it is not clear as to whether this is brick or brick veneer.

7 CONCLUSIONS

136 In conclusion, it is my opinion that:

- The purpose of the covenant that relates to the subject site was to provide a level of control over the development of the land in terms of its contribution to the character and appearance of the immediate neighbourhood; to provide for view sharing; and to ensure a particular quality of building stock.
- Having reviewed plans for the previous dwelling that was developed on the site and the dwelling currently under construction, the dwellings have a very similar building footprint and building envelope, and are very similar in construction materials, style, character and imposition on the landscape.
- A variation of the covenant to allow the construction of the present dwelling would not have a substantial injury to the beneficiaries of the covenant.
- The modification of the covenant to allow the construction of the present dwelling may create a precedent for a variation to other single storey covenants to allow for non-habitable areas beneath a dwelling, or to allow for brick veneer construction. However, it is not likely to create a precedent for other variations to covenants that would impact on the character or appearance of dwellings in the neighbourhood; allow for double storey dwellings that may impact on view sharing; or allow for the introduction of foreign building materials to the area.
- There are many examples of dwellings with a single storey covenant that have an undercroft garage or other area sited below the main dwelling, in a similar form as the former dwelling on site and the dwelling currently under construction.

Robert Milner

August 2015

Attachment

1 Expert Witness Statement

Expert Witness Statement

The following outlines the information requirements of *Form 44A Expert Witness Code of Conduct*.

- a. My name is Robert Milner, Director of 10 Consulting Group located at 3/2 Yarra Street, South Melbourne, 3205, Victoria.
- b. I have read the code and agree to be bound by it.
- c. I have an honours diploma in Town and Country Planning from Liverpool Polytechnic and I am a Life Fellow of the Planning Institute of Australia and a Fellow of the Victorian Planning and Environmental Law Association. I have a broad range of experience in planning and development matters. My curriculum vitae is attached in full as Attachment 2 of this report.
- d. There are no assumptions upon which this report relies other than those explicitly stated in the report or as outlined in my letter of instruction dated 16th July 2015. (Attachment 5)

The facts and matters on which my opinions are based are contained within the briefing material that I was provided, a review of the *Monash Planning Scheme* and relevant building legislation and inspections of the subject site and its immediate neighbourhood.

- e. The reasons for my opinions; any literature or other materials utilised in support of those opinions, and a summary of each such opinion are detailed in the body of the evidence.
- f. I have not been briefed to provide evidence on any matters outside of my expertise;
- g. Annabel Paul has assisted me in the research and drafting of this evidence. Annabel Paul is a qualified town planner with 15 years of experience in the planning profession and is a senior consultant with 10 Consulting Group.
- h. I have made all of the enquiries which I believe are desirable and appropriate, and no matters of significance have, to my knowledge, been withheld from the Court.

Robert Milner

August 2015

Attachment

2 Curriculum Vitae

ROBERT MILNER – DIRECTOR

Qualifications and Positions

- Director 10 Consulting Group Pty Ltd and The Milner Group Pty Ltd
- Diploma in Town and Country Planning (First Class Honours) Liverpool Polytechnic
- Life Fellow Planning Institute of Australia
- Fellow of the Victoria Planning and Environmental Law Association
- Former State and National President of the Planning Institute of Australia
- Member, Planning and Local Government Advisory Council (1994 – 1999)
- Deputy Chairman, Future Farming Expert Advisory Group (2009)

Employment History

2010 – Current	Director 10 Consulting Group Pty Ltd
1999 – 2010	General Manager, Senior Principal and Adjunct Senior Planning Counsel – Planning, CPG Australia Pty Ltd (Formerly the Coomes Consulting Group)
1994 – 1999	Director, Rob Milner Planning Pty Ltd and Savage Milner
1991 - 1994	Project Director, Collie Planning and Development Services
1988 – 1991	General Manager, Town Planning, Jones Lang Wootton
1980 - 1988	City Planner, City of Box Hill
1977 – 1980	Planner, Perrott Lyon Mathieson, Architects and Planners
1976 – 1977	Planner, Kirklees Metropolitan Borough Council

Career Overview

Rob Milner is a respected strategic and statutory planner. He is equally competent in urban and regional practice.

He is recognised as a leader of the planning profession in Victoria. He has had a high profile career spanning 40 years with extended periods of experience working for local government and private practice.

Until 2010 he worked with CPG Australia building that planning team to be one of the larger and most respected strategic and statutory practices in Victoria. The team was twice awarded planning consultant of the year in Victoria.

He now directs 10 Consulting Group, as a small boutique consultancy offering the highest level of advice and service to clients wanting the benefit of Rob's considerable experience, knowledge and understanding of planning in Victoria.

He is regularly retained to provide expert evidence to courts, panels and tribunals on the broadest range of land use and development planning issues. He is usually involved in 4 or 5 different matters monthly and has a reputation for objectivity, an original style of evidence and for providing clear and fearless advice. Particular expertise is in complex and controversial projects, gaming matters, acquisitions and compensation and restrictive covenants.

He is an acknowledged advocate and negotiator and is regularly engaged in development approval and rezoning projects where process and relationships need to be carefully nurtured to ensure a viable and timely outcome.

His ability to communicate effectively among a broad range of stakeholders means that he is regularly engaged to facilitate workshops, conferences, consultation and other situations where leadership and engagement of groups is required.

His clients have included many State government agencies (including planning, community development, justice, roads, growth areas and regional development), municipalities throughout metropolitan Melbourne and regional Victoria, as well as a broad range of corporate and other private sector interests.

Robert Milner brings a high level of integrity to his work, choosing to participate on those projects that accord with his professional opinion.

Areas of Expertise and Experience

Strategic studies, policy development and statutory implementation

Rob is widely acknowledged for his capacity to take a strategic perspective to urban and regional and planning challenges and provide direction and leadership that is responsive, creative and thoughtful in its strategic intent and detail.

When combined with his depth of experience with strategic policy based planning schemes he is powerfully equipped to deliver sound advice on the spectrum of land use and development planning issues.

His strategic planning skills are ground in work experience at the State, regional, local and site specific levels dealing with the issues that affect a town or sub region or examining themes or subjects that span geographical areas.

While working for CPG Australia he lead multi disciplinary planning teams that worked for clients that included DPCD, Department of Justice, Department of Innovation, Industry and Regional Development, and many municipal councils in metropolitan Melbourne and regional Victoria.

In 1994 he lead the planning consultancy that recommended the model for the Victorian Planning Provisions, the strategic policy driven planning scheme that is now consistently used throughout Victoria.

In 2009 Robert served as the Deputy Chairman on the Future Farming Expert Advisory Group reporting to the Minister for Planning. That work addressed a broad range of issues facing the next three decades of land use and development in regional Victoria.

Expert evidence and advocacy

Rob is regularly called upon to provide expert evidence and reports to clients, courts, Independent Panels and VCAT. He has acted in this capacity or as an advocate in over 1,200 cases during his career.

He is often retained to provide the strategic perspective to planning disputes. He is equally capable in commenting on matters of urban design, and compliance with planning policy and provisions.

The scope of matters that he has addressed in this capacity is extremely diverse and includes:

- Medium density and high rise residential development,
- Greenfield, master planned communities in growth areas,
- Waste management, quarries and landfill proposals,
- Major shopping centres and mixed use developments,
- Industrial and residential subdivisions,
- Hotels, motels, restaurants and other leisure facilities

- Retirement villages,
- Rail projects,
- Coastal developments,
- Office and CBD projects
- Heritage projects
- Compensation and land acquisition matters,
- Liquor licence and gaming proposal,
- Freeway service centres and petrol stations,
- Agribusiness centres.

Legislative and planning scheme reviews and amendments

Aside from Rob's leadership of the consultant planning team that conceived the model for the Victorian Planning Provisions, he has been associated with many reviews of municipal planning schemes and amendments.

Planning scheme review usually takes the form of comprehensive research examining both the merits of the strategic policies as well as the statutory provisions. Wide ranging consultation is involved in the task.

Work associated with planning scheme amendments usually includes strategic justification of the proposal as well as statutory documentation and management of the process. The provision of expert evidence to independent panels is often involved.

In more recent times Rob has been involved in projects that entail a review of allied legislation as well as amendments to planning schemes. Recent relevant projects have included the following:

Reviews of Victorian planning provisions and allied legislation

- Activity Centre Zone construction and application in Footscray, Doncaster, Knox and Sunshine
- Tramway infrastructure and the VPP's,
- Higher density living adjacent to tramway corridors
- Liquor Licensing legislation and planning provisions
- Gaming (EGM) policy and provisions for Councils

- Review of the Farming and Green Wedge zones for their economic implications

Planning scheme reviews

- Shire of Surf Coast 2007
- Shire of Wellington 2009 -10
- Rural City of Horsham 2010
- Borough of Queenscliff 2011- current

Organisation audits and process reviews

Rob has a long and established career providing reviews of planning documents, teams and processes, particularly in a local government environment.

Trained as a LARP facilitator in 1990 as part of a Commonwealth Government initiative his experience in this area commenced with the development of planning and building specifications for tenders as part of Compulsory Competitive tendering process and the coaching of bid teams.

Since then Rob has developed a specialisation in providing reviews and recommendations to State and Local Government, which audit planning schemes, the performance of planning teams and departments and development approvals processes.

In the last 20 years he has worked with the majority of metropolitan councils and many regional municipalities; he prepared the model audit process for the Department of Sustainability and Environment in 2003 and recently provided a facilitated program for the Department of Planning and Community Development reviewing how it processes planning scheme amendments.

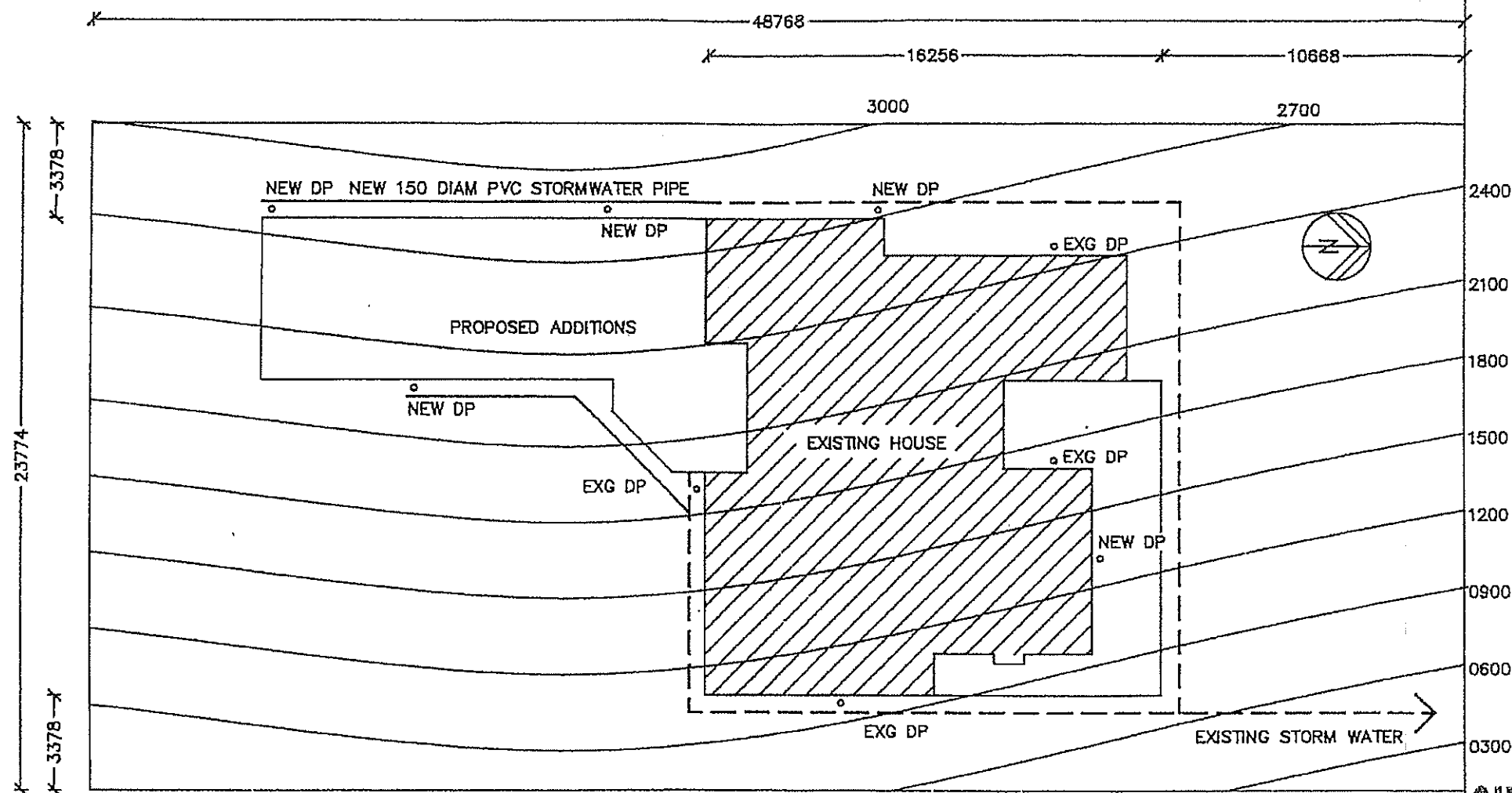
He has worked with Councils in Victoria, New South Wales and South Australia.

He uses a range of audit techniques, extensive consultation with users of the processes and provides detailed strategies on necessary reforms.

His most recent work has been as a major contributor to the VicSmart program.

Attachment

3 Plans for the previous development



REFER TO ATTACHED COPY OF CERTIFICATE OF TITLE
FOR DISTANCE TO NEAREST INTERSECTION

JOIN NEW ROOF DRAINAGE SYSTEM INTO
EXISTING ROOF DRAINAGE SYSTEM

MAX SPACING OF NEW DOWNPIPES 12 METRES

01A
SITE PLAN 1=200

PROPOSED ALTERATIONS AND ADDITIONS
8 YVONNE COURT GLEN WAVERLEY
DWG 121-01 25 NOV 89

PETER M KELLY ARCHITECT
c/- TECTONIQUE Pty Ltd
126 RUSSELL ST MELBOURNE 3000
PH 650-3846 FAX 650-3848

CITY OF WAVERLEY

"Victoria Building Regulations"

APPROVED

Approval No. 100.016

Per. [Signature]
Building Surveyor

29/11/1989

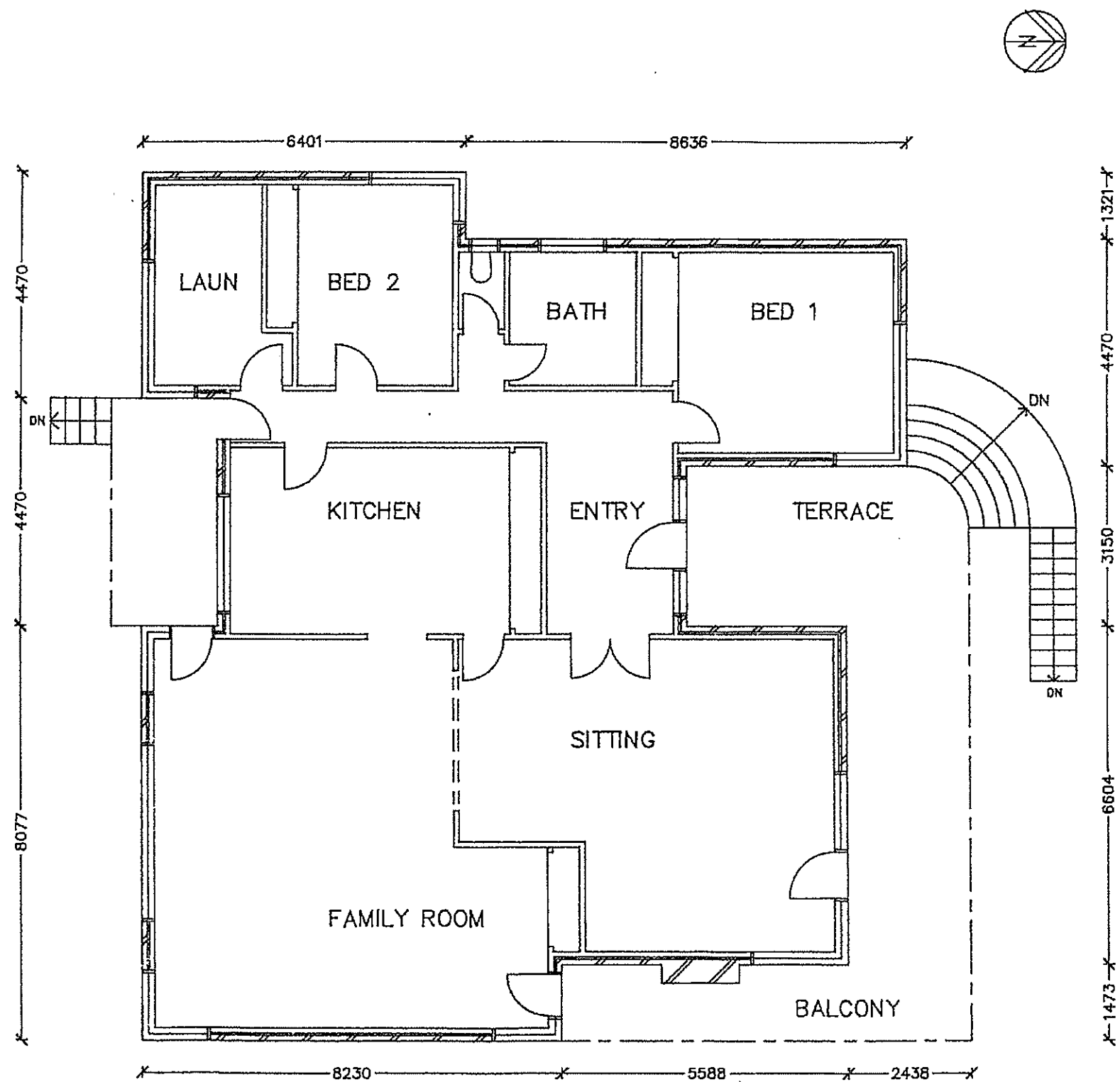
The House Contracts
Guarantee Act 1987
applies to this work.

01A

02_A
EXISTING GROUND PLAN 1=100

PROPOSED ALTERATIONS AND ADDITIONS
8 YVONNE COURT GLEN WAVERLEY
DWG 121-02 25 NOV 89

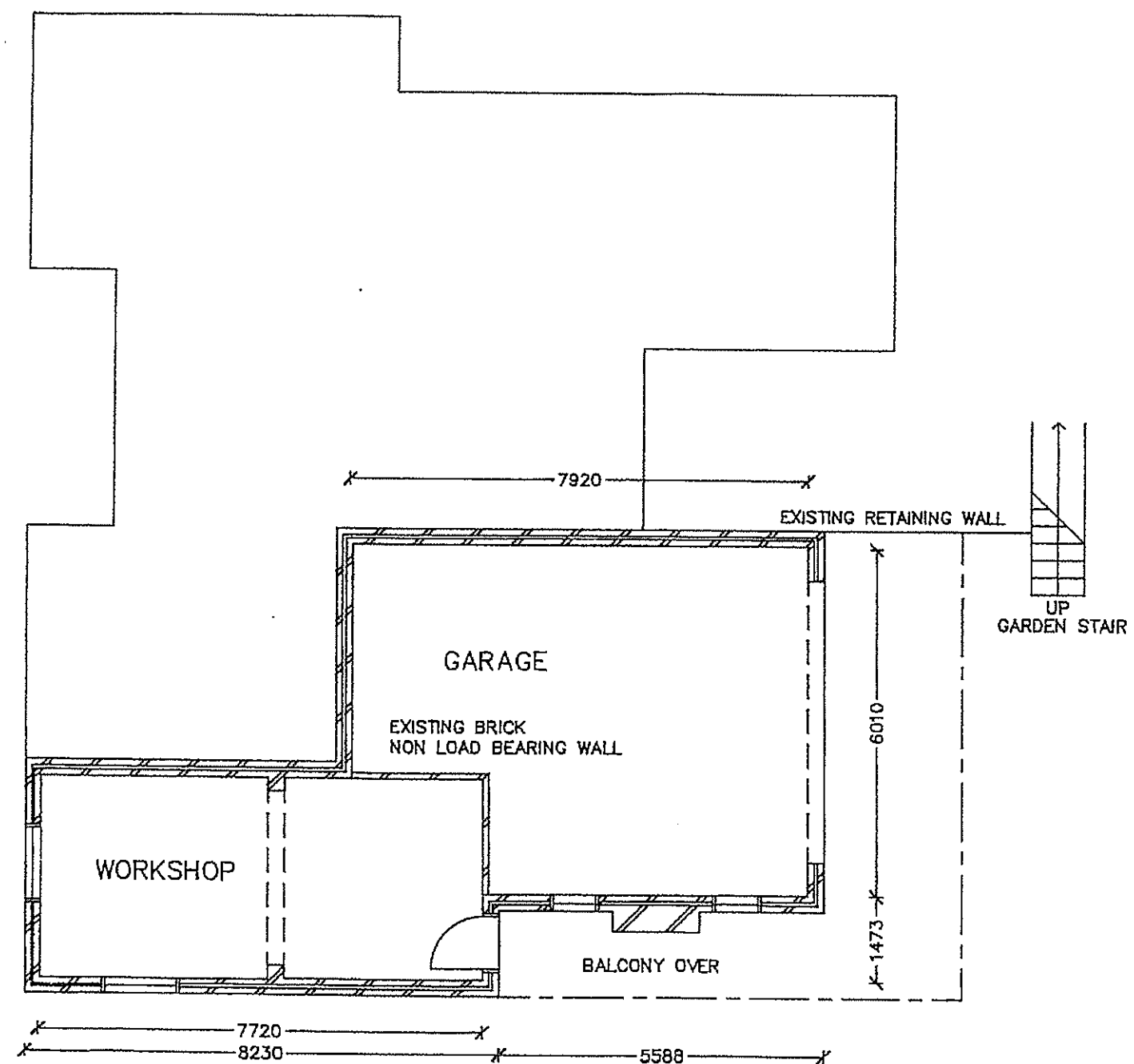
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PH 650-3846 FAX 650-3848



03^A
EXISTING BASEMENT PLAN 1=100

PROPOSED ALTERATIONS AND ADDITIONS
8 YVONNE COURT GLEN WAVERLEY
DWG 121-03 25 NOV 89

PETER M KELLY ARCHITECT
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STAGE 2 EXTENSION

ITEMS OF WORK WITHIN EXISTING HOUSE

- 1 REBUILD BATHROOM AND WALKIN ROBE (SHIFT 2 NON-LOADBEARING WALLS)
NEW DIMENSIONS: BATHROOM 2400x2600 ROBE 1800x2600
 - 2 REFIT KITCHEN AND CLOSE EXG OPENINGS
 - 3 FORM ARCHES IN WALL TO CONNECT DINING WITH LIVING (SHIFT 2 NON-LOADBEARING WALLS)
NEW DIMENSIONS DINING ROOM 4150x4400
 - 4 NEW WALL TO SEPERATE FAMILY ROOM
NEW DIMENSIONS FAMILY ROOM 4100x7550
 - 5 REMOVE EXG WINDOWS, LOWER SILLS TO FLOOR, FIT NEW WINDOWS
INSERT SASHLESS OPENING WINDOWS AT FRONT
ELSEWHERE TIMBER SASHES TO MAINTAIN 5% OPENING AREA
 - 5a LIVING ROOM (INCLUDE SLIDING DOORS TO EAST)
 - 5b BEDROOM 1
 - 5c BEDROOM 2
 - 5d DINING ROOM (REMOVE EXG DOOR)
 - 6 FIT NEW BAR
NEW DIMENSIONS 1800x3050
 - 7 CREATE OPENING AND FORM STAIR TO BASEMENT (CUT THRO' EXISTING TIMBER FLOOR)
 - 8 FORM NEW EXTERNAL DOOR AND WINDOW TO LAUNDRY
 - 9 REBUILD EXG FIREPLACE AND HEARTH AND INSERT STEEL FIREPLACE LINER
 - 10 COVER EXG BALUSTRADE WITH CEMENT SHEET AND RAIDE HEIGHT TO 1000
 - 11 REPLACE EXG CANOPY OVER ENTRY
- EXTERNAL LANDSCAPING WORKS UNDER SEPERATE APPLICATION
REFER STAGE 2 DRGS FOR ADDITIONS

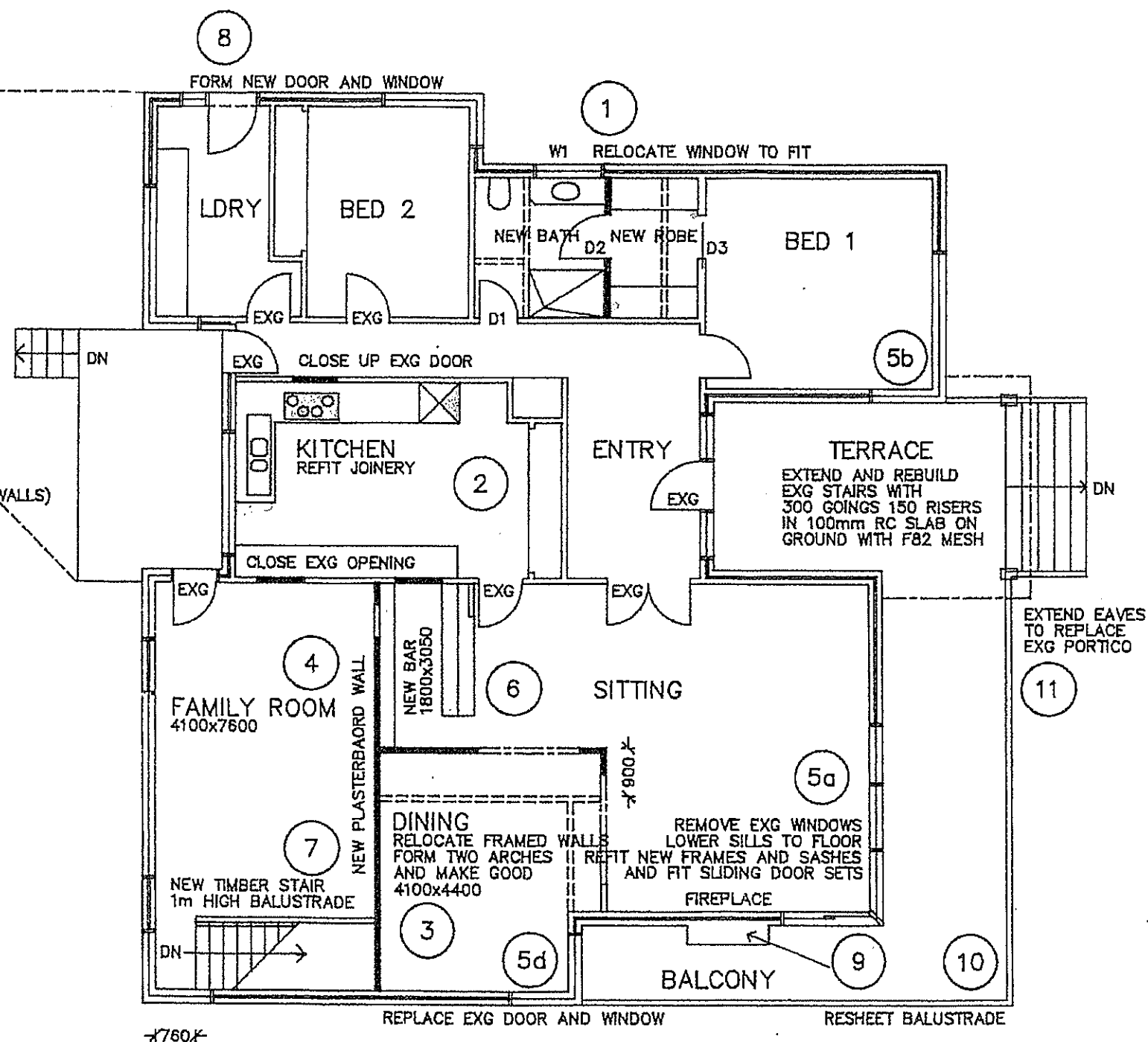
04 A

STAGE 1

-LOOR PLAN 1=100

PROPOSED ALTERATIONS AND ADDITIONS
8 YVONNE COURT GLEN WAVERLEY
DWG 121-04 25 NOV 89

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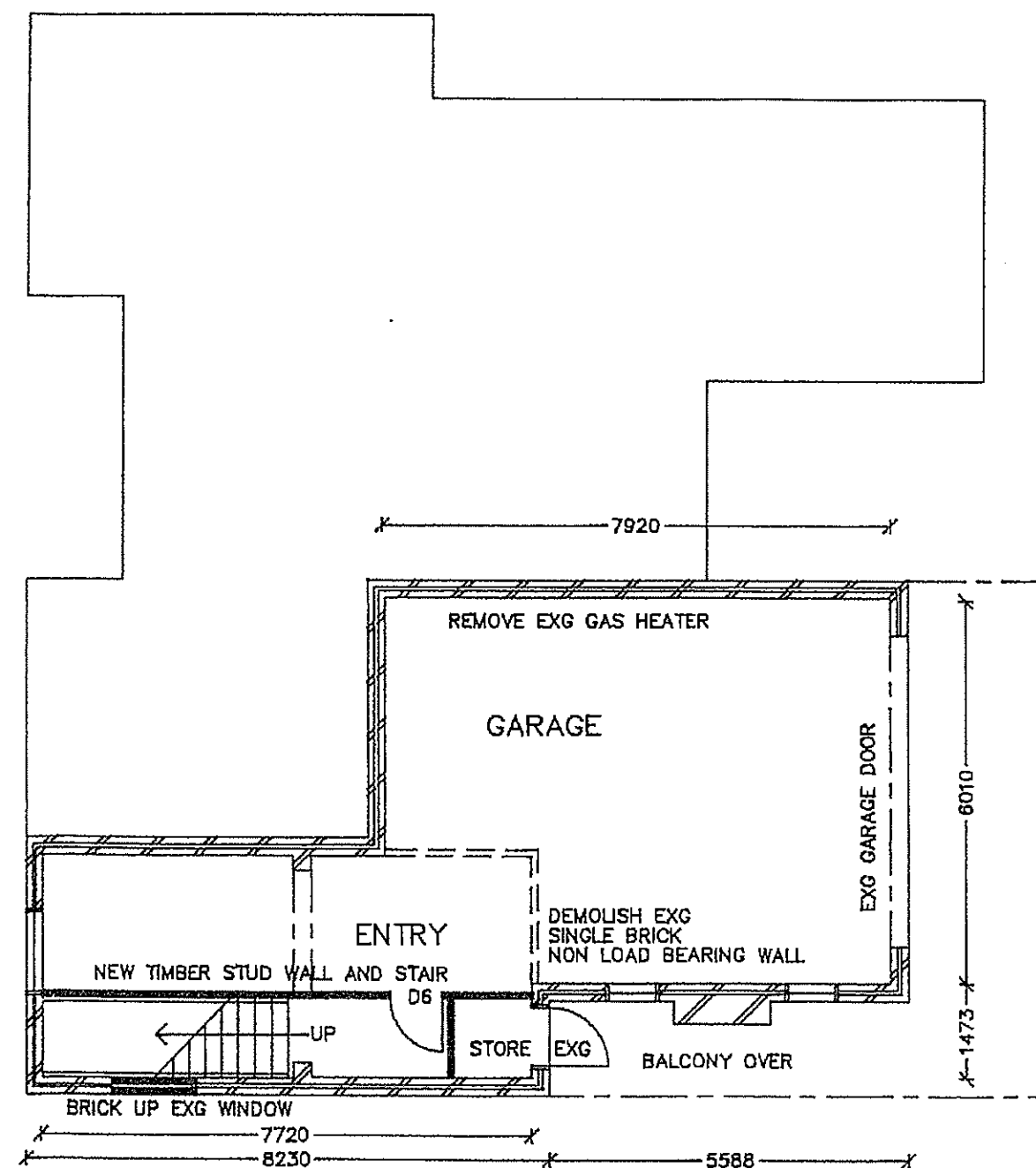


NEW TIMBER STAIR CASE AS FOLLOWS
TOTAL RISE 2400
RISERS 185mm GOINGS 250mm TREADS 290mm 2R+G=630
TREADS O/O 35 THICK VIC ASH
STRINGERS O/O 250 x 38 VIC ASH
AS PER VIC TIMBER FRAMING MANUAL (SUPP TABLES)
BALUSTER SPACING NOT MORE THAN 150mm
NEW STUD WALL O/O 90 X 45 F5 TO SUPPORT END
OF UPPER FLOOR WHERE CUT AWAY

05^A
STAGE 1
PROPOSED BASEMENT 1=100

PROPOSED ALTERATIONS AND ADDITIONS
8 YVONNE COURT GLEN WAVERLEY
DWG 121-05

PETER M KELLY ARCHITECT
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STAGE 2 - PROPOSED ADDITION

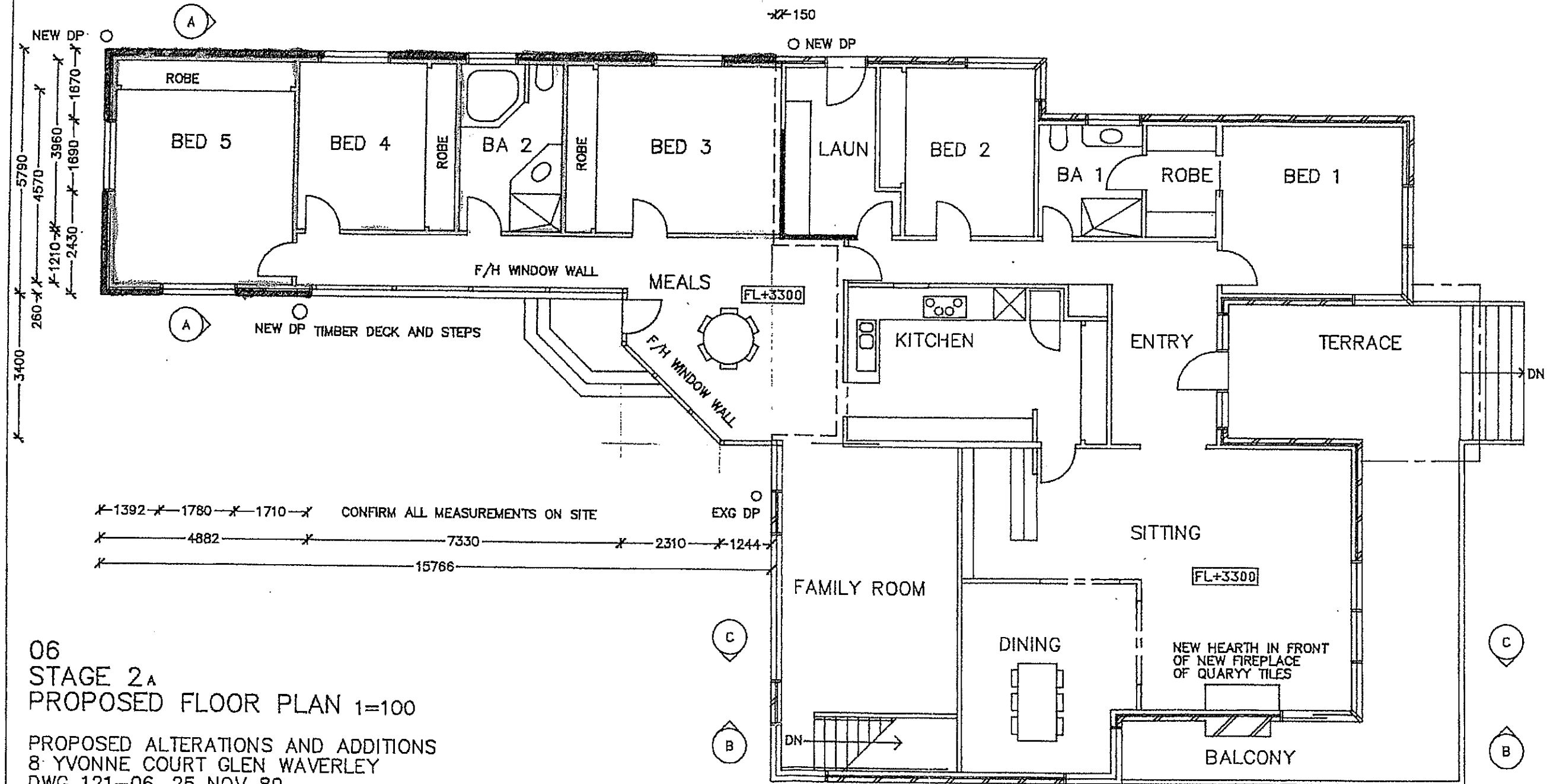
4200 3700 2400 4900 15760

5002 3000 1690 1790 1210 3130 4200 1690 1248

REMOVAL EXG EXTERNAL BRICK SKIN WHERE
NEW WORK ABUTS EXISTING BUILDING
RESHEET EXISTING WALL FRAMES
FILL IN OPENINGS AND MAKE GOOD

FLOORING GENERALLY 19mm PARTICLE BOARD
WET AREA QUALITY FOR BATHROOM
WP PLASTERBOARD FOR BATHROOM
PROVIDE FLASHINGS VANITY, BATH ETC

CARPET GENERALLY, TILES TO BATHROOM
WALL TILES IN WET AREAS TO 1800mm



06
STAGE 2A
PROPOSED FLOOR PLAN 1=100

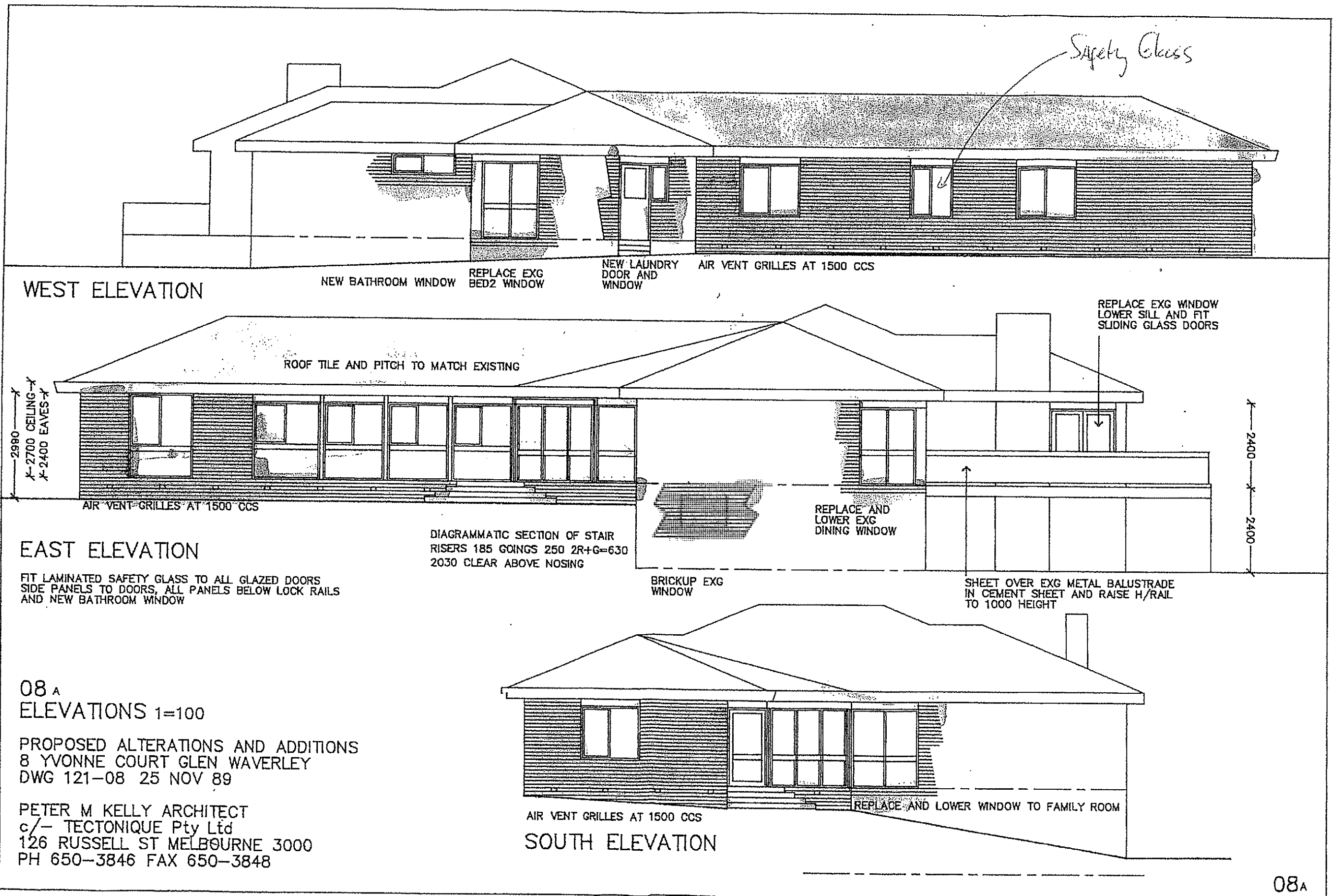
PROPOSED ALTERATIONS AND ADDITIONS
8 YVONNE COURT GLEN WAVERLEY
DWG 121-06 25 NOV 89

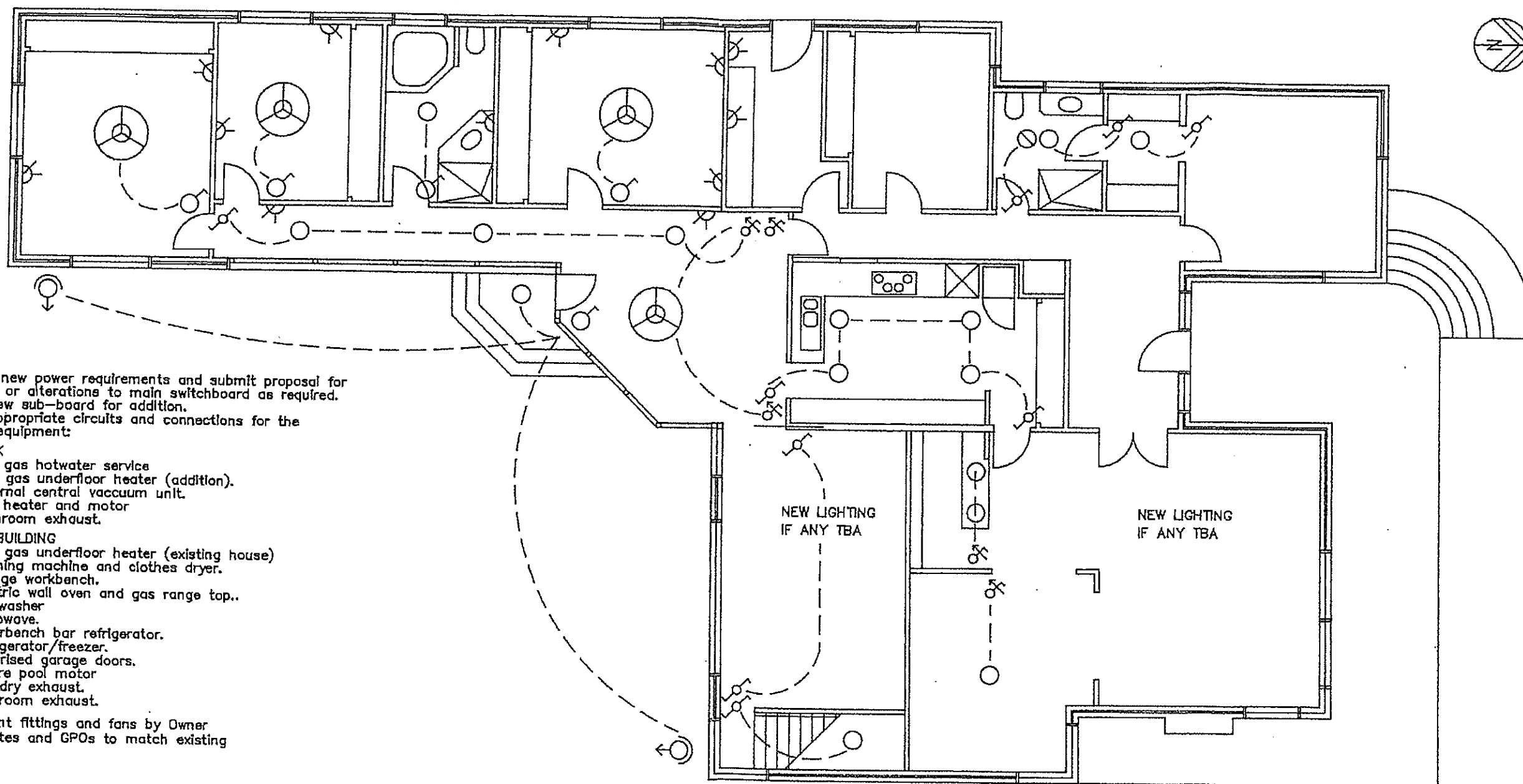
PETER M KELLY ARCHITECT
c/- TECTONIQUE Pty Ltd
126 RUSSELL ST MELBOURNE 3000
PH 650-3846 FAX 650-3848

PROPOSED EXTENSION IS OF
BRICK VENEER CONSTRUCTION
ON STRIP FOOTINGS WITH TIMBER FLOOR
BRICKWORK AND ROOF TILES TO
MATCH EXISTING

ALL WALL FRAMING 90x45 F5
WITH 90x90 F5 POSTS IN WINDOW WALL
AT 1350 MAX CCS
10mm PLASTERBOARD LININGS THROUGHOUT
CEILING HEIGHT 2700

EAVES OVERHANG GENERALLY TO MATCH EXG
EXCEPT 1100 O/HANG ON EAST SIDE
145x35 F17 LINTELS GENERALLY
SPANNING 2000 FOR TILED ROOF EL=6000
BRICKWORK LINTELS 76x76x6.5 MS T/OUT
SUBFLOOR VENTILATION GRILLE EVERY 1500mm





Calculate new power requirements and submit proposal for upgrading or alterations to main switchboard as required. Provide new sub-board for addition. Provide appropriate circuits and connections for the following equipment:

NEW WORK

- 1 New gas hotwater service
- 2 New gas underfloor heater (addition).
- 3 External central vacuum unit.
- 4 Spa heater and motor
- 5 Bathroom exhaust.

EXISTING BUILDING

- 5 New gas underfloor heater (existing house)
- 6 Washing machine and clothes dryer.
- 7 Garage workbench.
- 8 Electric wall oven and gas range top.
- 9 Dishwasher
- 10 Microwave.
- 11 Underbench bar refrigerator.
- 12 Refrigerator/freezer.
- 13 Motorised garage doors.
- 14 Future pool motor
- 15 Laundry exhaust.
- 16 Bathroom exhaust.

Special light fittings and fans by Owner
Switch plates and GPOs to match existing

09

STAGE 2

ELECTRICAL LAYOUT 1=100

PROPOSED ALTERATIONS AND ADDITIONS

8 YVONNE COURT GLEN WAVERLEY

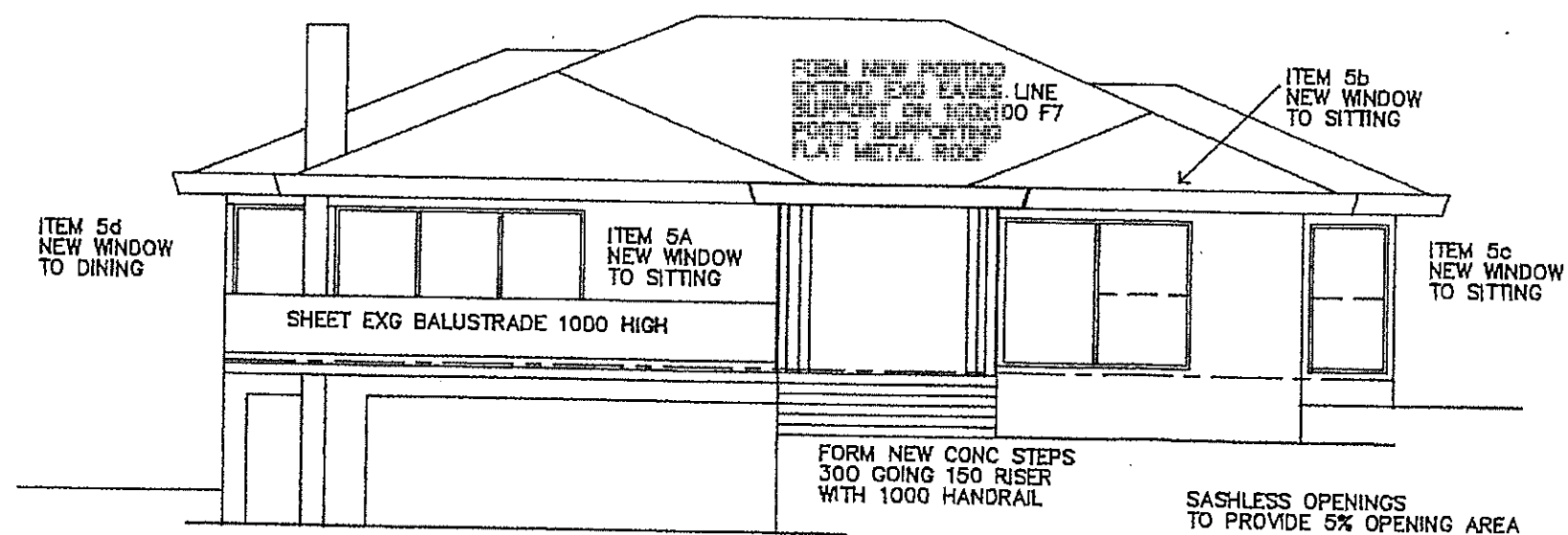
DWG No 121-09 16 NOV 89

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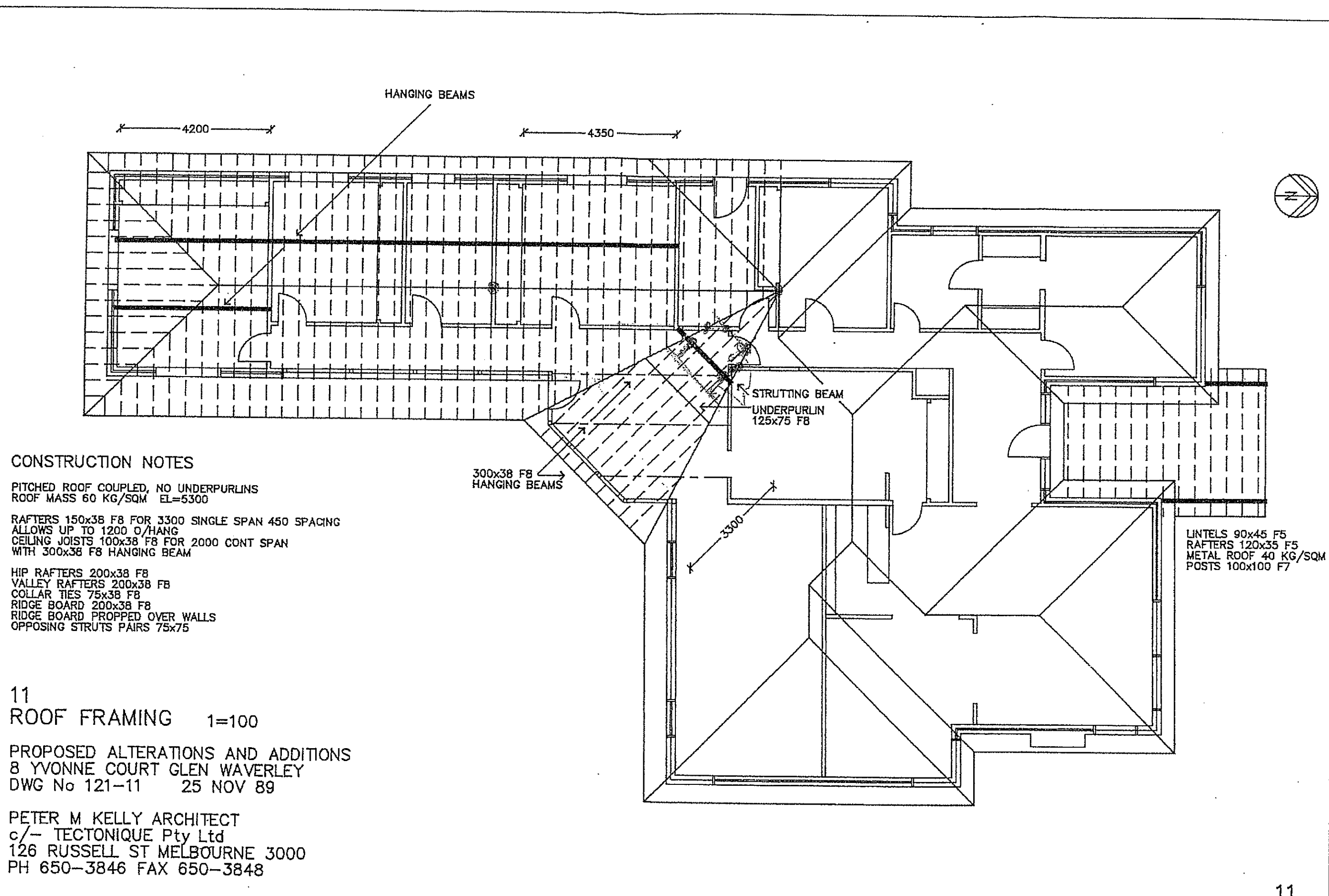
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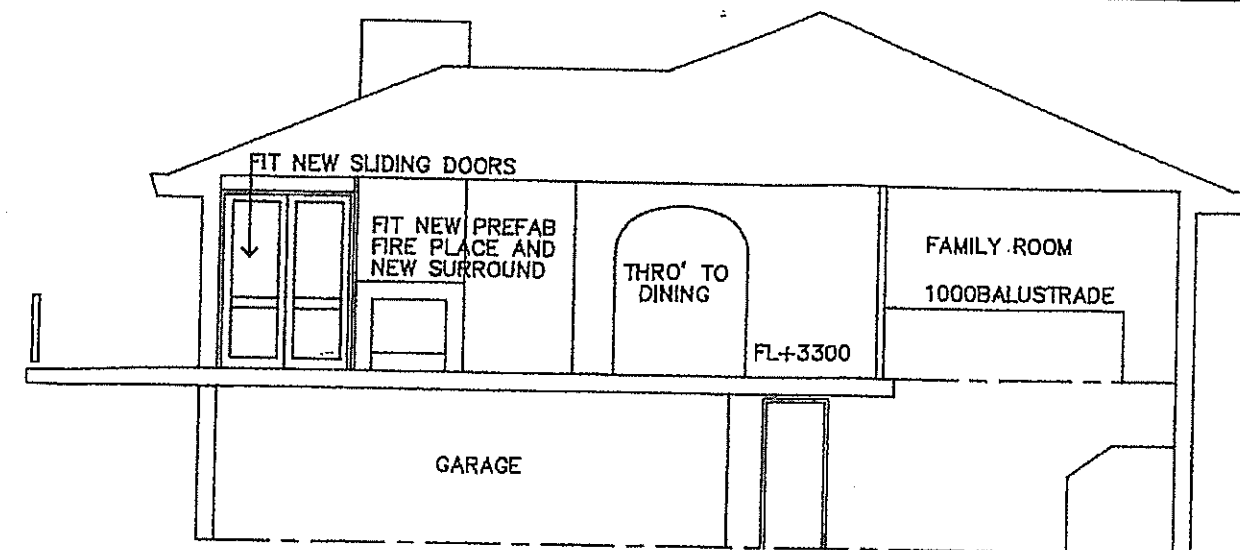


10
ELEVATIONS 1=100

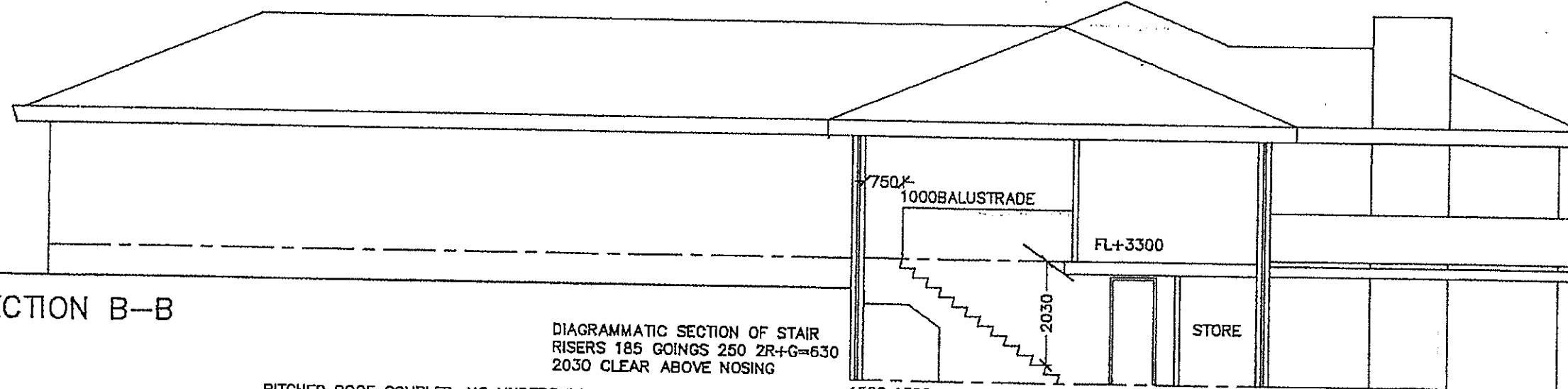
PROPOSED ALTERATIONS AND ADDITIONS
8 YVONNE COURT GLEN WAVERLEY
DWG 121-08 25 NOV 89

PETER M KELLY ARCHITECT
c/- TECTONIQUE Pty Ltd
126 RUSSELL ST MELBOURNE 3000
PH 650-3846 FAX 650-3848





SECTION C-C



SECTION B-B

DIAGRAMMATIC SECTION OF STAIR
RISERS 185 GOINGS 250 2R+G=630
2030 CLEAR ABOVE NOSING

PITCHED ROOF COUPLED, NO UNDERPURLINS
ROOF MASS 60 KG/SQM EL=5300

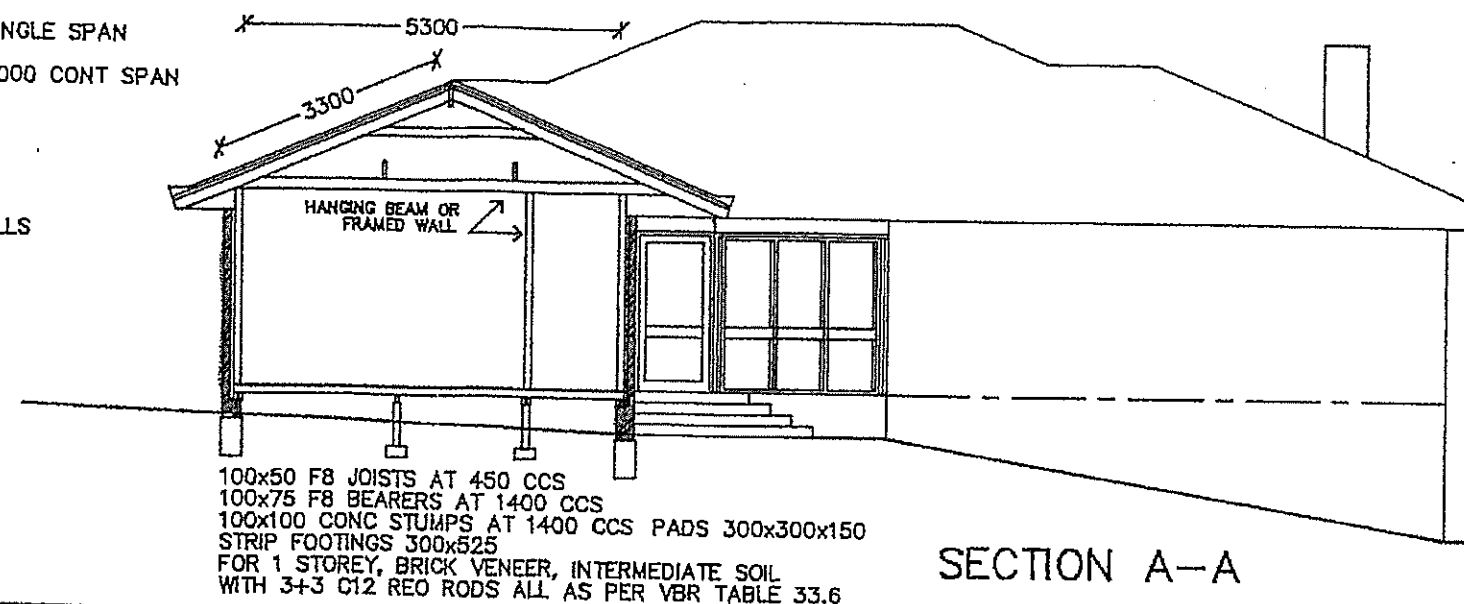
RAFTERS 150x38 F8 FOR 3300 SINGLE SPAN
ALLOWS UP TO 1200 O/HANG
CEILING JOISTS 100x38 F8 FOR 2000 CONT SPAN
WITH 300x38 F8 HANGING BEAM

HIP RAFTERS 200x38 F8
VALLEY RAFTERS 200x38 F8
COLLAR TIES 75x38 F8
RIDGE BOARD 200x38 F8
RIDGE BOARD PROPPED OVER WALLS
OPPOSING STRUTS PAIRS 75x75

12
SECTIONS 1=100

PROPOSED ALTERATIONS AND ADDITIONS
8 YVONNE COURT GLEN WAVERLEY
DWG 121-12 25 NOV 89

PETER M KELLY ARCHITECT
c/- TECTONIQUE Pty Ltd
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PH 650-3846 FAX 650-3848



SECTION A-A

Attachment

4 Plans for the present development

COURT

1. 1.000
 2. 1.000
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 98. 1.000
 99. 1.000
 100. 1.000

BY:

TBM RIVET IN PATH
RL 144.70
AUSTRALIAN HEIGHT DATUM

LEGEND

- | | |
|--------------------------|--------------------------------|
| | ELECTRICITY PIT |
| | HYDRANT |
| | SIDE ENTRY PIT |
| | TELECOM PIT |
| | TELECOM PIT (LARGE) |
| | SEWERAGE PIT |
| | POLE & LIGHT |
| | ELECTRIC POLE |
| | SHRUB |
| | SH SIGNIFICANT TREE AND HEIGHT |
| | LEVEL POSITION |
| | SURVEY MARK |
| | WATER METER |
| | CLOTHES LINE |
| | GAS METER / FITTING |
| | JUNCTION PIT |
| | SIGN |
| | STOP VALVE |
| | GRATED PIT |
| | PIT |
| HW WINDOW/HABITABLE ROOM | |
| W WINDOW | |
| D DOOR | |
| V VERANDA/PERGOLA | |

The diagram illustrates a street frontage with several horizontal lines representing different boundaries. From top to bottom, the lines are labeled as follows:

- CONTOUR LINE**: The topmost line, representing the ground surface.
- TITLE BOUNDARY**: A line below the contour line, representing the boundary of the land title.
- FENCE**: A line below the title boundary, representing the location of a fence.
- STRUCTURE ON ADJOINING PROPERTY**: A line below the fence, representing the boundary of a structure on the adjacent property.
- RELATIONSHIP OF TITLE TO FENCING NOT TO SCALE**: A note indicating that the distance between the title boundary and the fence is not to scale.
- SEE CERTIFICATE OF TITLE FOR STREET CONNECTION**: A note indicating that the street connection is detailed in the certificate of title.
- KERB LEVELS ARE TO TOP/BACK OF KERB**: A note indicating that the kerb levels are measured to the top or back of the kerb.

APPROXIMATE
TRUE NORTH

EXPLANATORY NOTES:

DATA ON THIS PLAN MAY ONLY BE MANIPULATED WITH THE
PERMISSION OF G.R. SMITH & ASSOCIATES SURVEYORS

ACCURACY OF DETAIL LOCATION $\pm 0.05\text{m}$
ACCURACY OF REDUCED LEVELS $\pm 0.02\text{m}$

LOCATION OF ABUTTING BUILDINGS AND ENVIRONS IS

INDICATIVE ONLY UNLESS OTHERWISE SHOWN

ONLY SIGNIFICANT TREES HAVE BEEN LOCATED AND SHOWN

ONLY VISIBLE SERVICES ARE SHOWN ON THIS PLAN

1 P.O.S. PRIVATE OPEN SPACE

D	AMENDED SITING	RF	11/07/14
C	BUILDING PERMIT	RF	16/04/14
B	WORKING DRAWINGS	RF	17/02/14
A	PRELIMINARY WORKING DRAWINGS	RF	17/12/13

RF 11/07/14

RF 16/04/14
RF 17/02/14

RF 17/02/14
RF 17/12/13

TABLE 1



BELEMORE
HOMES

—HOMER

Level 1 / 2 Centreway Mount Waverley Vic 3149
Tel 9887 8984 Fax 9887 6079
enquiries@bellemorehomes.com.au

Client **BEDELIS**

Project	PROPOSED DWELLING 8 YVONNE COURT WHEELERS HILL
---------	--

Dwg Title EXISTING SITE PLAN

Ref No	1307-504	Page	01
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Dwg No	WDO1	Scale	1:200	Rev	D
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Date	11.07.2014	Drawn	RF	Checked
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11/08/2011

PRELIMINARY

Client: [Redacted]

Project: [Redacted]

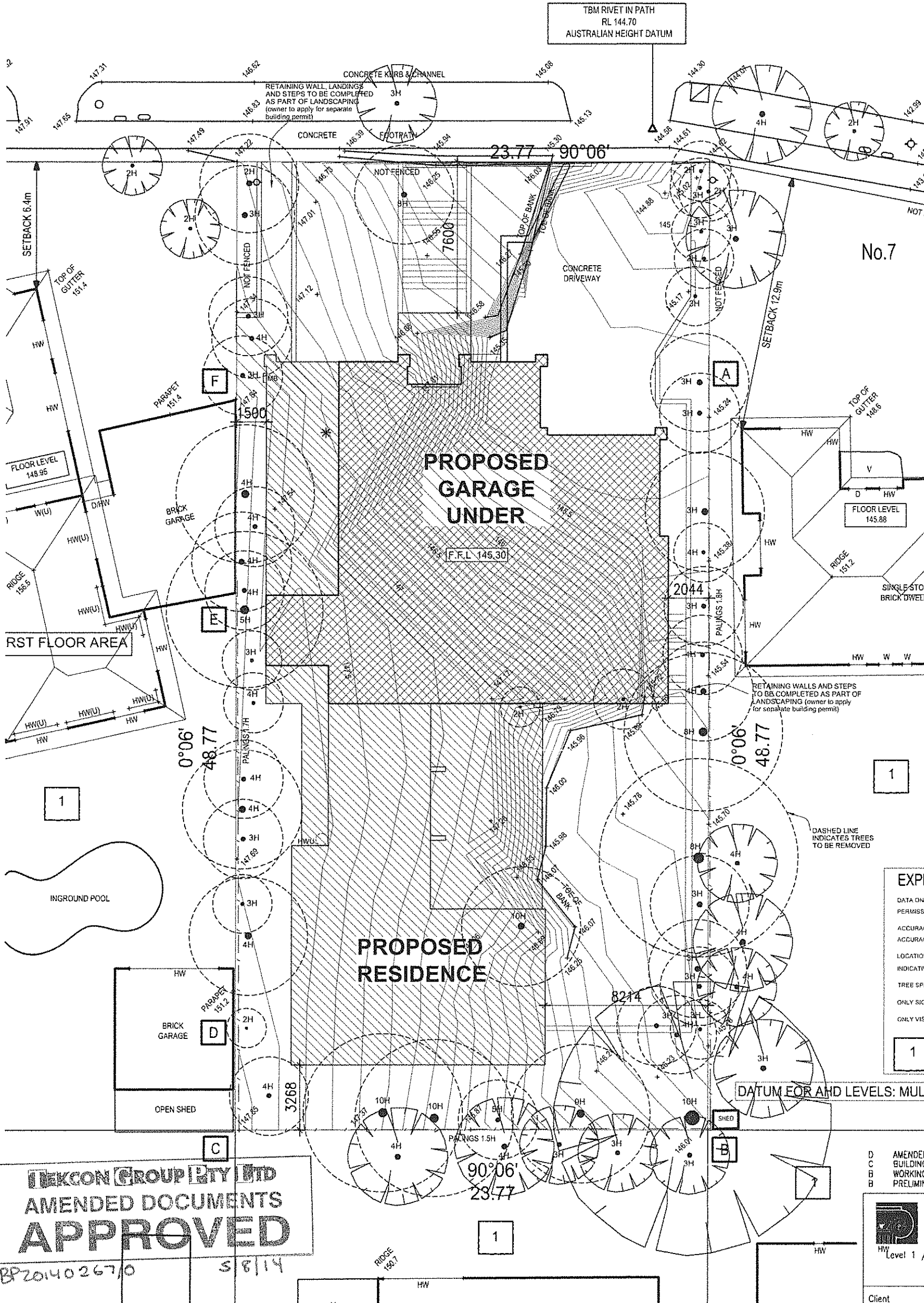
Level 1

HEKCON GROUP PTY LTD
AMENDED DOCUMENTS
APPROVED

DATUM FOR AHD LEVELS: MULGRAVE PM 161 - RL 144.170 AHD

YVONNE

COURT



LEGEND

- ELECTRICITY PIT
- HYDRANT
- SIDE ENTRY PIT
- TELECOM PIT
- TELECOM PIT (LARGE)
- SEWERAGE PIT
- POLE & LIGHT
- ELECTRIC POLE
- SHRUB
- SIGNIFICANT TREE AND HEIGHT
- LEVEL POSITION
- SURVEY MARK
- WATER METER
- CLOTHES LINE
- GAS METER (FITTING)
- JUNCTION PIT
- SIGN
- STOP VALVE
- GRATED PIT
- PIT
- HW WINDOW/HABITABLE ROOM
- W WINDOW
- D DOOR
- V VERANDA/PERGOLA
- CONTOUR LINE
- TITLE BOUNDARY
- FENCE
- STRUCTURE ON ADJOINING PROPERTY

RELATIONSHIP OF TITLE TO FENCING NOT TO SCALE
SEE CERTIFICATE OF TITLE FOR STREET CONNECTION
KERB LEVELS ARE TO TOP/BACK OF KERB

EXPLANATORY NOTES:

DATA ON THIS PLAN MAY ONLY BE MANIPULATED WITH THE PERMISSION OF B.R. SMITH & ASSOCIATES SURVEYORS

ACCURACY OF DETAIL LOCATION $\pm 0.05m$
ACCURACY OF REDUCED LEVELS $\pm 0.02m$

LOCATION OF ABUTTING BUILDINGS AND ENVIRONS IS INDICATIVE ONLY UNLESS OTHERWISE SHOWN

TREE SPREAD SHOWN ON THIS PLAN IS INDICATIVE ONLY

ONLY SIGNIFICANT TREES HAVE BEEN LOCATED AND SHOWN ON THIS PLAN

ONLY VISIBLE SERVICES ARE SHOWN ON THIS PLAN

1 P.O.S. PRIVATE OPEN SPACE

DATUM FOR AND LEVELS: MULGRAVE PM 161 - RL 144.170 AHD

BEKCON GROUP PTY LTD
AMENDED DOCUMENTS
APPROVED

BP20140267/0

5/8/14

D AMENDED SITING RF 11/07/14
C BUILDING PERMIT RF 16/04/14
B WORKING DRAWINGS RF 17/02/14
A PRELIMINARY WORKING DRAWINGS RF 17/12/13



BELLEMORE
HOMES

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enquiries@bellemorehomes.com.au

Client **BEDELIS**

Project **PROPOSED DWELLING
8 YVONNE COURT
WHEELERS HILL**

Dwg Title **SITE PLAN**

Ref No **1307-504** Page **02**

Dwg No **WD02** Scale **1:200** Rev **D**

Date **11.07.2014** Drawn **RF** Checked

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RELATIONSHIP OF TITLE TO FENCING
NOT SHOWN TO SCALE

A

B

C

D

E

F

0.03m

0.14m

0.19m

ON TITLE

0.10m

0.10m

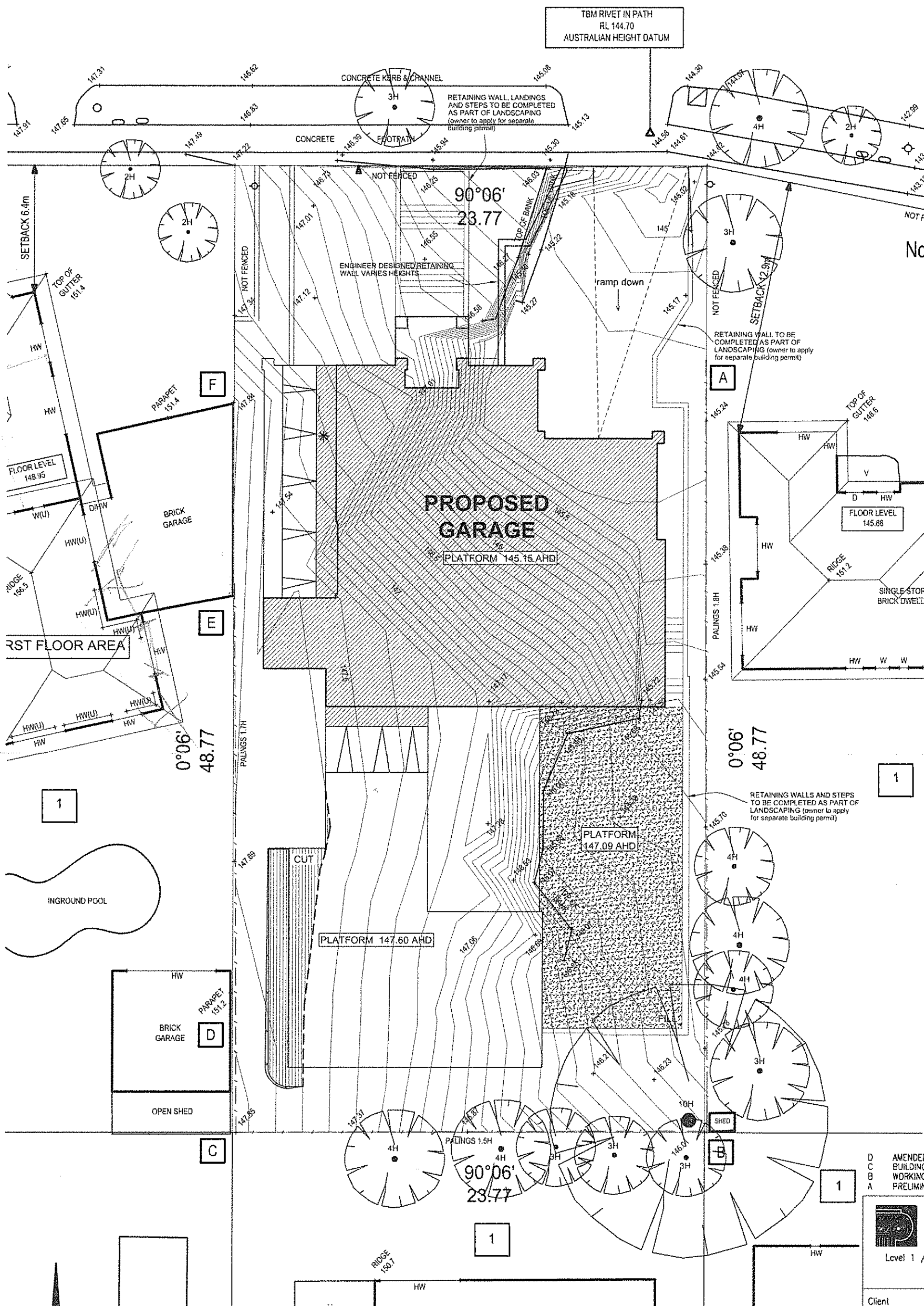
0.06m

0.05m

0.07m

YVONNE

COURT



LEGEND	
	ELECTRICITY PIT
	HYDRANT
	SIDE ENTRY PIT
	TELECOM PIT
	TELECOM PIT (LARGE)
	SEWERAGE PIT
	POLE & LIGHT
	ELECTRIC POLE
	SHRUB
	SIGNIFICANT TREE AND HEIGHT
	LEVEL POSITION
	SURVEY MARK
	WATER METER
	CLOTHES LINE
	GAS METER / FITTING
	JUNCTION PIT
	SIGN
	STOP VALVE
	GRATED PIT
	PIT
HW	WINDOW/HABITABLE ROOM
W	WINDOW
D	DOOR
V	VERANDAH/PERGOLA
—	CONTOUR LINE
---	TITLE BOUNDARY
- - - -	FENCE
—	STRUCTURE ON ADJOINING PROPERTY
RELATIONSHIP OF TITLE TO FENCING NOT TO SCALE	
SEE CERTIFICATE OF TITLE FOR STREET CONNECTION	
KERB LEVELS ARE TO TOP/BACK OF KERB	

CUT AND FILL HEIGHTS	
Garage:	
Platform:	145.15 AHD
F.F.L.:	145.30 AHD
	Cut: 2470mm
Rear House:	
Platform:	147.60 AHD
F.F.L.:	148.42 AHD
	Cut: 150mm
Alfresco Landscaping:	
Platform:	147.09 AHD
	Fill: 1460mm

NEKCON GROUP PTY LTD
AMENDED DOCUMENTS
APPROVED

EXPLANATORY NOTES:

DATA ON THIS PLAN MAY ONLY BE MANIPULATED WITH THE PERMISSION OF B.L.S.MITH & ASSOCIATES SURVEYORS

ACCURACY OF DETAIL LOCATION $\pm 0.05m$
 ACCURACY OF REDUCED LEVELS $\pm 0.02m$

LOCATION OF ABUTTING BUILDINGS AND ENVIRONS IS INDICATIVE ONLY UNLESS OTHERWISE SHOWN

TREE SPREAD SHOWN ON THIS PLAN IS INDICATIVE ONLY

ONLY SIGNIFICANT TREES HAVE BEEN LOCATED AND SHOWN ON THIS PLAN

ONLY VISIBLE SERVICES ARE SHOWN ON THIS PLAN

1

P.O.S. PRIVATE OPEN SPACE

D	AMENDED SITING	RF	11/07/14
C	BUILDING PERMIT	RF	16/04/14
B	WORKING DRAWINGS	RF	17/02/14
A	PRELIMINARY WORKING DRAWINGS	RF	17/12/13

BELLEMORE
 HOMES
 Level 1 / 2 Centroway Mount Waverley Vic 3149
 Tel 9887 8984 Fax 9887 6079
 enquiries@bellemorehomes.com.au

Client	BEDELIS		
Project	PROPOSED DWELLING 8 YVONNE COURT WHEELERS HILL		
Dwg Title	EXCAVATION PLAN		
Ref No	1307-504	Page	03
Dwg No	WD03	Scale	1:200
Date	11.07.2014	Drawn	RF
		Checked	D

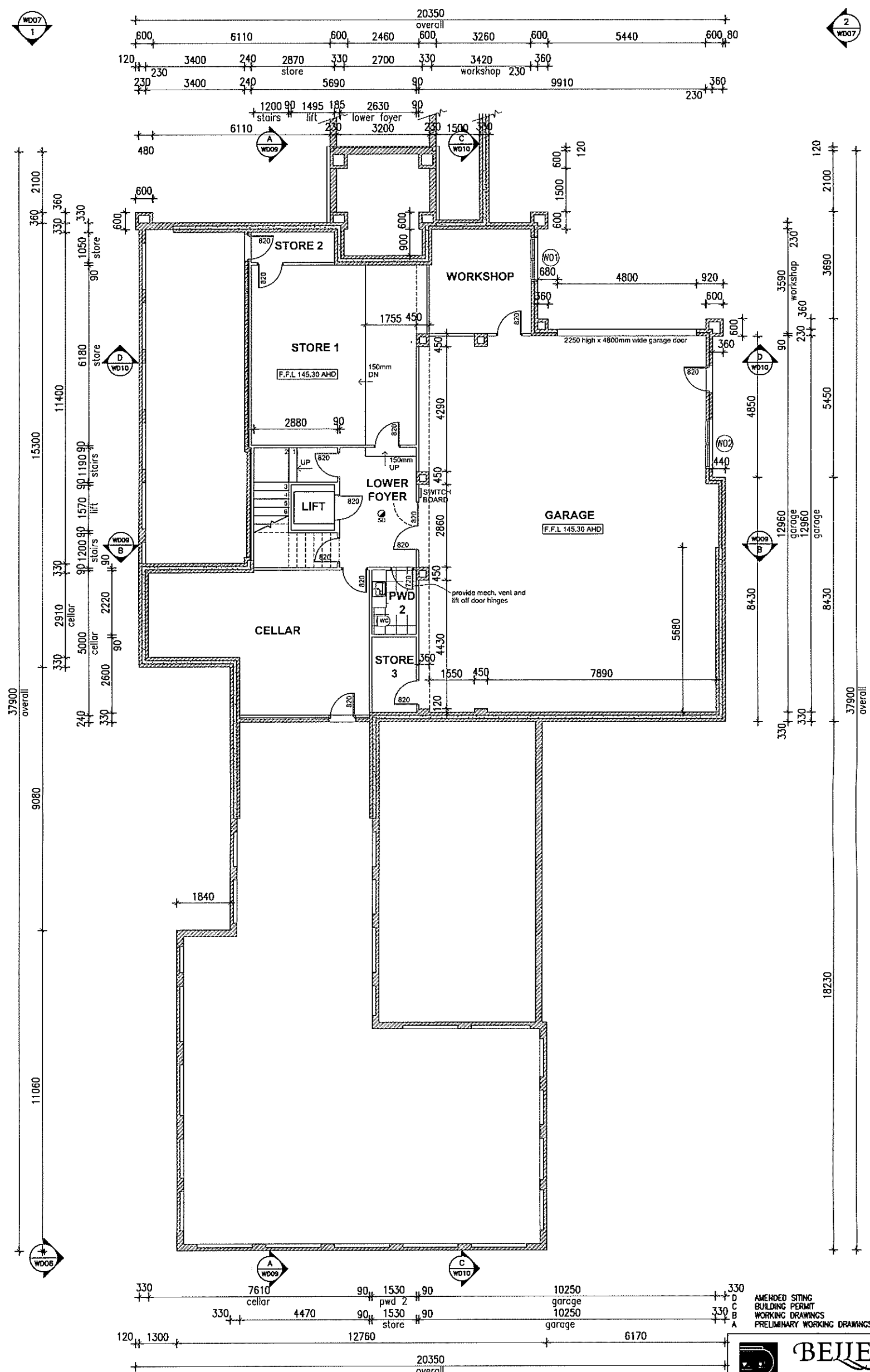
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DATUM FOR AHD LEVELS: MULGRAVE PM 161 - RL 144.170 AHD

PLAN CERTIFICATION
 THE OWNERS HEREBY AGREE THAT THESE WORKING DRAWINGS ARE FINAL. ANY VARIATIONS MUST BE MUTUALLY AGREED IN WRITING BETWEEN THE OWNERS AND BELLEMORE HOMES. CHANGES MAY INCUR A COST VARIATION.
 DATE:
 SIGNED:
 OWNERS:
 BUILDERS:

NOTE:
 Refer to energy rating report and note for specific insulation requirements for ceilings, walls & floors

LEGEND
 b basin
 dp downpipe
 ref refrigerator
 shr shower
 sd smoke detector
 sk sink
 sl stove
 wm washing machine
 dr dryer
 fw floor waste
 mh roof access
 dw dishwasher
 mw microwave



BUILDING AREAS	
SUB FLOOR LIVING:	131.13 SQM
GROUND FLOOR LIVING:	473.52 SQM
TOTAL LIVING:	604.65 SQM (65.09 IMP SQS)
PORCH:	11.01 SQM
PORCH 2:	19.19 SQM
ALFRESCO:	58.39 SQM
GARAGE:	140.09 SQM
TOTAL BUILDING:	833.33 SQM (89.70 IMP SQS)
SITE AREA:	1159.00 SQM
SITE COVERAGE:	48.26 %

NOTE:

- Masonry articulation joints to be installed at max 6 metre spacing in accordance with the soil report and compliance with building code of Australia provisions or as confirmed by the structural engineer.
- Steps to be provided where door threshold is greater than 190mm above external ground level or between dwelling and garage sections
- No part of structure including footings, fascia, and gutters are to project over the allotment tilted boundaries. walls abutting allotment boundaries to be constructed to achieve 60/60/60 FRL including non combustible fascia and gutters.
- Windows to be installed in compliance with AS1288 & AS2047 provisions. safety glazing to be provided to upper level bathroom windows.
- A full floor waterproof membrane installed in accordance with AS3740 is to be provided to all new bathrooms and/or ensuites
- Lift off door hinges to be provided to bathrooms and ensuites that do not comply with Building Code of Australia 3.8.3.3 requirements
- All dimensions are to timber frame only, plasterboard has not been included.

BELLEMORE HOMES	
Level 1 / 2 Centreway Mount Waverley Vic 3149 Tel 9887 8984 Fax 9887 6079 enquiries@bellemorehomes.com.au	
Client	BEDELIS
Project	PROPOSED DWELLING 8 YVONNE COURT WHEELERS HILL
Dwg Title	SUB-FLOOR PLAN
Ref No	1307-504
Page	04
Dwg No	WD04
Scale	1:100
Rev	D
Date	11.07.2014
Drawn	RF
Checked	

SUB-FLOOR PLAN

PLAN CERTIFICATION

THE OWNERS HEREBY AGREE THAT THESE WORKING DRAWINGS ARE FINAL. ANY VARIATIONS MUST BE MUTUALLY AGREED IN WRITING BETWEEN THE OWNERS AND BELLEMORE HOMES. CHANGES MAY INCUR A COST VARIATION.

DATE:

SIGNED:

OWNERS:

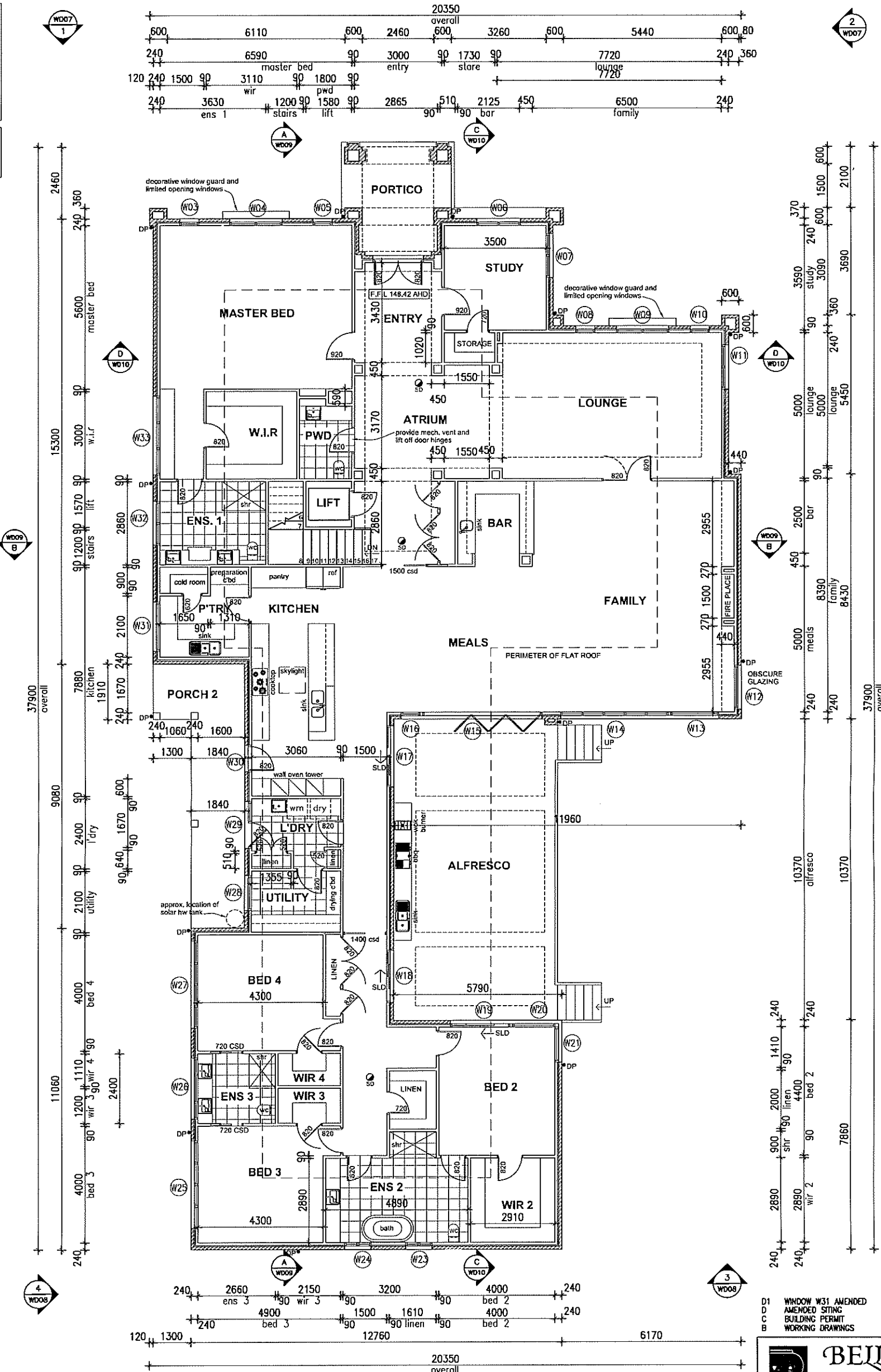
BUILDERS:

NOTE:

Refer to energy rating report and note for specific insulation requirements for ceilings, walls & floors

LEGEND

b basin
dp downpipe
ref refrigerator
shr shower
sd smoke detector
sk sink
st stove
wm washing machine
dr dryer
fw floor waste
mh roof access
dw dishwasher
mw microwave



GROUND FLOOR PLAN

NOTE:

- Masonry articulation joints to be installed at max 6 metre spacing in accordance with the soil report and compliance with building code of Australia provisions or as confirmed by the structural engineer.
- Steps to be provided where door threshold is greater than 190mm above external ground level or between dwelling and garage sections.
- No part of structure including footings, fascia, and gutters are to project over the allotment tilted boundaries. walls abutting allotment boundaries to be constructed to achieve 60/60/60 FRL including non combustible fascia and gutters.
- Windows to be installed in compliance with AS1288 & AS2047 provisions, safety glazing to be provided to upper level bathroom windows.
- A full floor waterproof membrane installed in accordance with AS3740 is to be provided to all new bathrooms and/or ensuites
- Lift off door hinges to be provided to bathrooms and ensuites that do not comply with Building Code of Australia 3.8.3.3 requirements
- All dimensions are to timber frame only, plasterboard has not been included.

WINDOW & DOOR SCHEDULE

NOTE:
* (la) denotes limited opening windows. ie the window cannot open more than 125mm
* (ag) denotes obscure glazing
* (mt) measure on site prior to order
* (dg) denotes double glazing

W1	1500 x 1500	CASEMENT WINDOW (ARCHED)	W18	2400 x 1800	SLIDING DOOR
W2	1800 x 1680	CASEMENT WINDOW	W19	2400 x 2050	SLIDING DOOR
W3	1840 x 650	CASEMENT WINDOW (ARCHED)	W20	2400 x 1460	FIXED WINDOW
W4	1940 x 1800	CASEMENT WINDOW (ARCHED)	W21	2400 x 1200	FIXED WINDOW
W5	1840 x 650	CASEMENT WINDOW (ARCHED)	W22		DELETED - 14-8-14-
W6	1940 x 1500	CASEMENT WINDOW (ARCHED)	W23	2100 x 900	CASEMENT WINDOW (ARCHED) dg
W7	1940 x 1500	CASEMENT WINDOW (ARCHED) dg	W24	2100 x 900	CASEMENT WINDOW (ARCHED) dg
W8	1840 x 650	CASEMENT WINDOW (ARCHED) dg	W25	2400 x 3000	CASEMENT/FIXED WINDOW
W9	1940 x 1800	CASEMENT WINDOW (ARCHED) dg	W26	500 x 2100	AWNING/FIXED WINDOW
W10	1840 x 650	CASEMENT WINDOW (ARCHED) dg	W27	2400 x 3000	CASEMENT/FIXED WINDOW
W11	1940 x 1500	CASEMENT WINDOW (ARCHED) dg	W28	1200 x 1200	AWNING WINDOW
W12	2400 x 1500	FIXED WINDOW dg	W29	2400 x 1605	820MM DOOR, 1200MM HIGH AWNING WINDOW
W13	2400 x 1650	FIXED WINDOW	W30	2400 x 920	820MM DOOR
W14	2400 x 3700	AWNING/FIXED WINDOW	W31	600 x 1690	AWNING WINDOW
W15	2400 x 4100	BI-FOLD DOOR (5 LEAF)	W32	2100 x 1500	CASEMENT WINDOW (ARCHED) dg
W16	2400 x 650	FIXED WINDOW	W33	700 x 2700	FIXED WINDOW
W17	2400 x 2100	SLIDING DOOR			

D1 WINDOW W31 AMENDED RF 19/09/14
D AMENDED SITING RF 11/07/14
C BUILDING PERMIT RF 16/04/14
B WORKING DRAWINGS RF 17/02/14

BELLEMORE HOMES

Level 1 / 2 Centenary Mount Waverley Vic 3149
Tel 9887 8984 Fax 9887 6079
enquiries@bellemorehomes.com.au

Client: **BEDELIS**

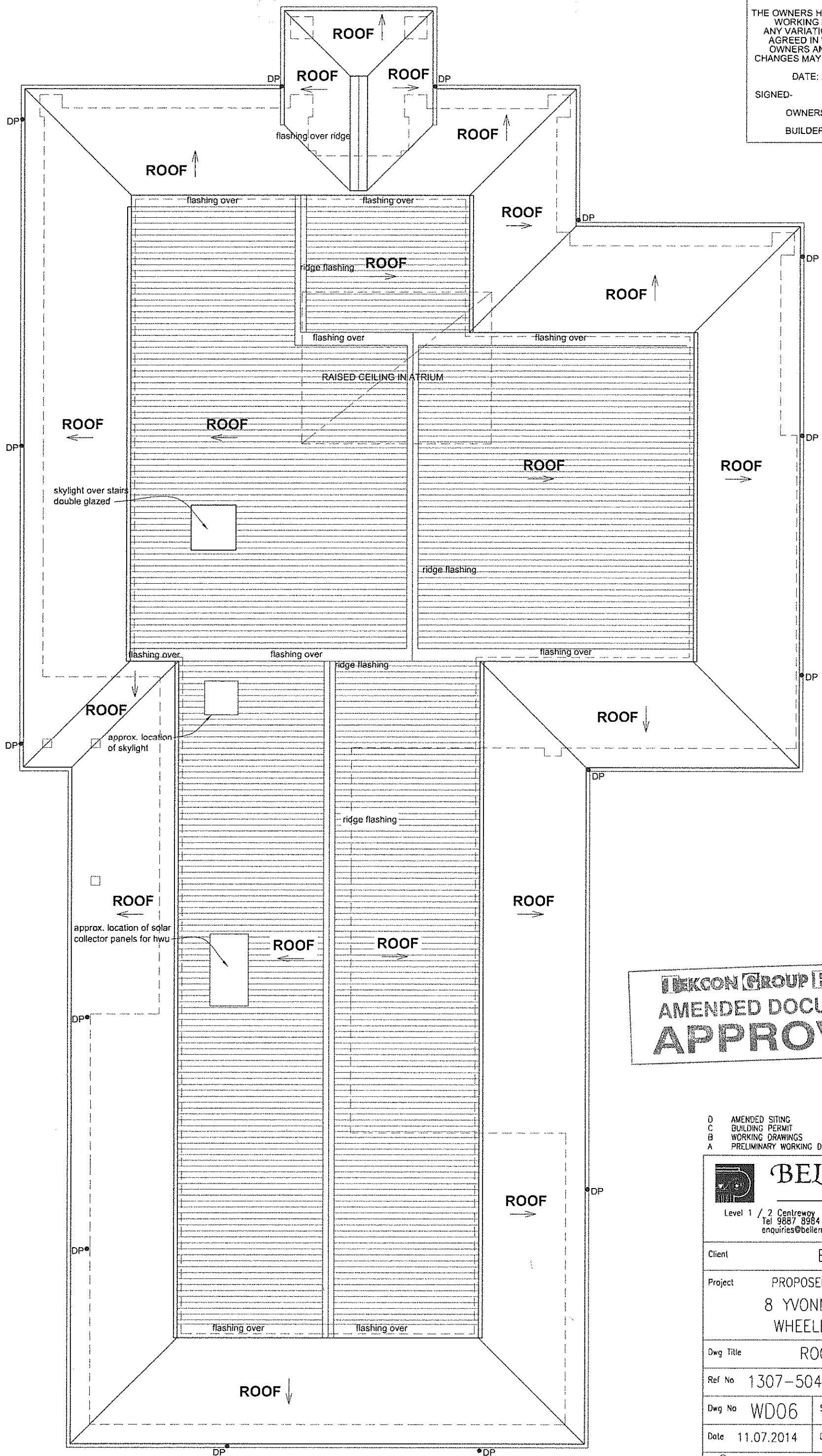
Project: **PROPOSED DWELLING**
8 YVONNE COURT
WHEELERS HILL

Dwg Title: **GROUND FLOOR PLAN**

Ref No: **1307-504** Page: **05**

Dwg No: **WD05** Scale: **1:100** Rev: **D1**

Date: **11.07.2014** Drawn: **RF** Checked:



PLAN CERTIFICATION

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DATE:

SIGNED-

OWNERS.....

BUILDERS.....

BEKCON GROUP PTY LTD
AMENDED DOCUMENTS
APPROVED

D	AMENDED SITING	RF 11/07/14
C	BUILDING PERMIT	RF 16/04/14
B	WORKING DRAWINGS	RF 17/02/14
A	PRELIMINARY WORKING DRAWINGS	RF 17/12/13

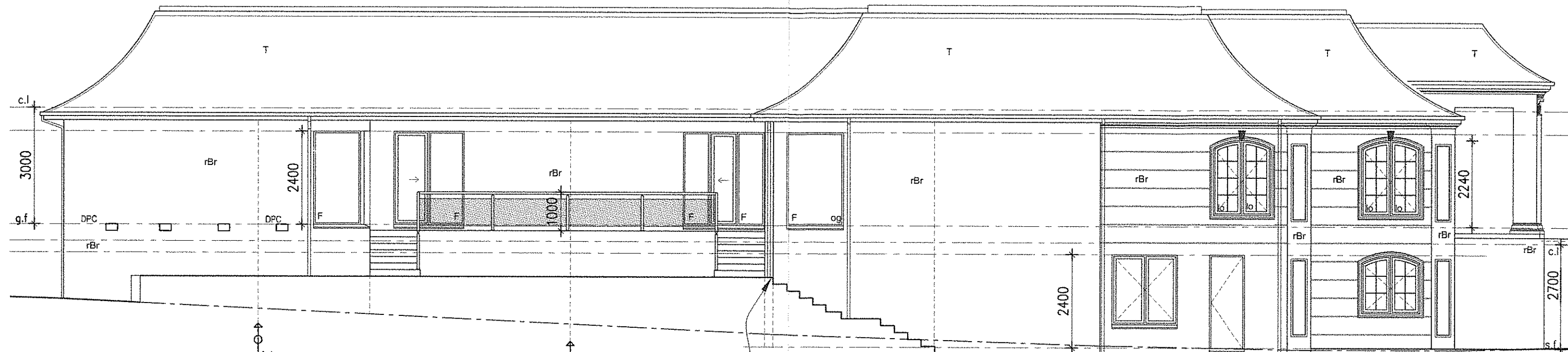


BELLEMORE
HOMES

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Tel 9887 8984 Fax 9887 6079
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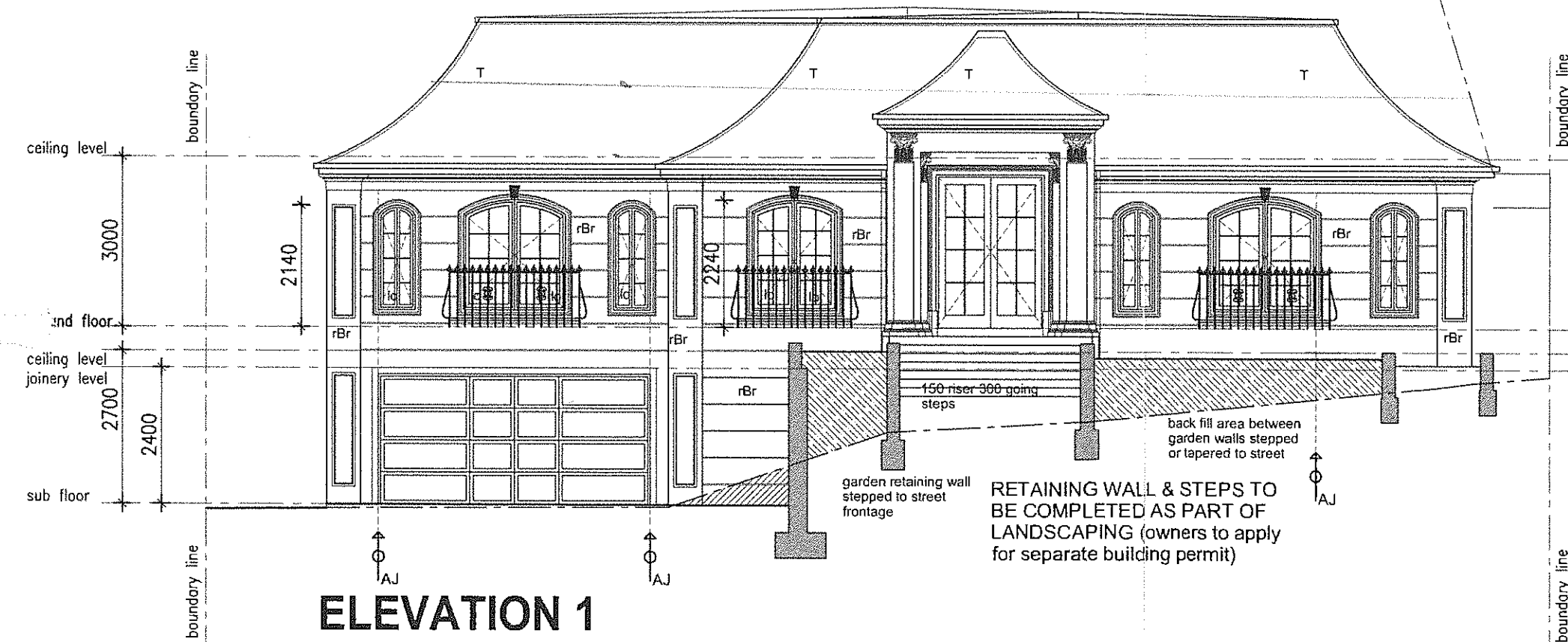
Client	BEDELIS		
Project	PROPOSED DWELLING 8 YVONNE COURT WHEELERS HILL		
Dwg Title	ROOF PLAN		
Ref No	1307-504	Page	06
Dwg No	WD06	Scale	1:100
Date	11.07.2014	Rev	D
Drawn	RF	Checked	

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ELEVATION 2

RETAINING WALL & STEPS TO BE COMPLETED AS PART OF LANDSCAPING (owners to apply for separate building permit)



ELEVATION 1

RETAINING WALL & STEPS TO BE COMPLETED AS PART OF LANDSCAPING (owners to apply for separate building permit)

6 STAR ENERGY RATING SUMMARY

This residence is rated 6 Star for energy efficiency if the following construction features and fittings are incorporated as part of its building fabric.

Ground floor is constructed on elevated timber structure/concrete slab.

Exhaust fans are to be fitted with adjustable louvers that seal shut when the fan is not in use.

External doors are fitted with a draught excluder (attached to bottom of door) and weather strips between the frame and the door.

Gaps around windows, external door frames and pipe penetrations are airtight by caulking.

Windows to be double glazed with aluminium frames

R2.0 insulation to all timber sub-structure.

R2.5 + foil wall insulation.

R5.0 insulation + R1.55 roofing blanket to ceiling areas.

D	AMENDED SITING	RF	11/07/14
C	BUILDING PERMIT	RF	16/04/14
B	WORKING DRAWINGS	RF	17/02/14
A	PRELIMINARY WORKING DRAWINGS	RF	17/12/13

BELLEMORE HOMES
Level 1 / 2 Centroway Mount Waverley Vic 3149
Tel 9887 8984 Fax 9887 6079
enquiries@bellemorehomes.com.au

Client	BEDELIS		
Project	PROPOSED DWELLING 8 YVONNE COURT WHEELERS HILL		
Dwg Title	ELEVATIONS		
Ref No	1307-504	Page	07
Dwg No	WD07	Scale	1:100
Date	11.07.2014	Drawn	RF
		Rev	D
		Checked	

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- NOTE:**
- Masonry articulation joints to be installed at max 6 metre spacing in accordance with the soil report and compliance with Building Code of Australia provisions or as confirmed by the structural engineer.
 - Steps to be provided where door threshold is greater than 190mm above external ground level or between dwelling and garage sections
 - No part of structure including footings, fascia, and gutters are to project over the allotment tilted boundaries. walls abutting allotment boundaries to be constructed to achieve 60/60/60 FRL including non combustible fascia and gutters.
 - Windows to be installed in compliance with AS1288 & AS2047 provisions. safety glazing to be provided to upper level bathroom windows.
 - A full floor waterproof membrane installed in accordance with AS3740 is to be provided to all new bathrooms and/or ensuites
 - Lift off door hinges to be provided to bathrooms and ensuites that do not comply with Building Code of Australia 3.8.3.3 requirements

MATERIALS & FINISHES	
rBr	Rendered brickwork
T	Selected tiled roof
og	obscure glazing
F	fixed panel
□	sub floor vent

DEKCON GROUP PTY LTD
AMENDED DOCUMENTS
APPROVED

PLAN CERTIFICATION

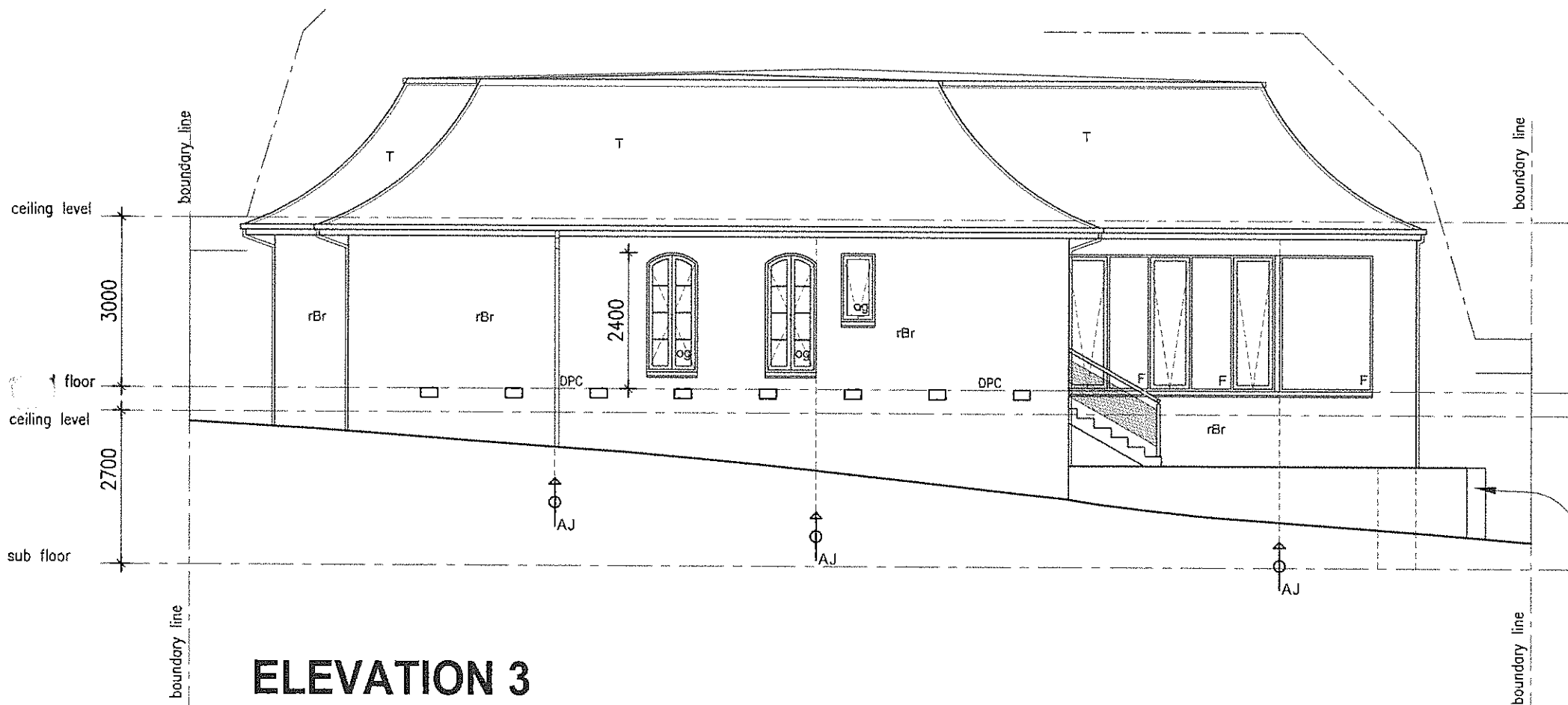
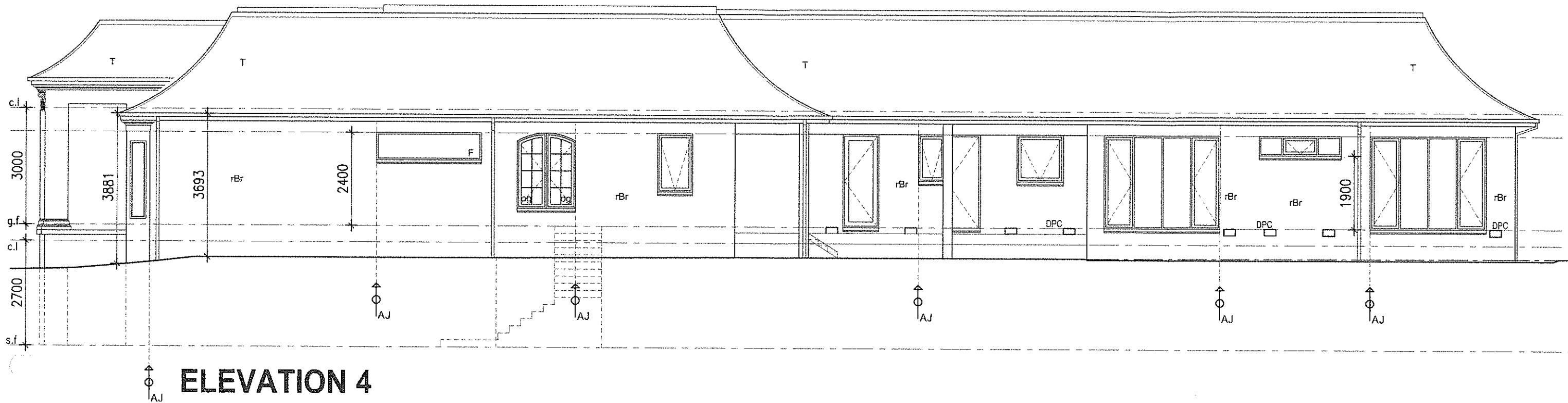
THE OWNERS HEREBY AGREE THAT THESE WORKING DRAWINGS ARE FINAL. ANY VARIATIONS MUST BE MUTUALLY AGREED IN WRITING BETWEEN THE OWNERS AND BELLEMORE HOMES. CHANGES MAY INCUR A COST VARIATION.

DATE:

SIGNED-

OWNERS.....

BUILDERS.....



BEKCON GROUP PTY LTD
AMENDED DOCUMENTS
APPROVED

D AMENDED SITING RF 11/07/14
 C BUILDING PERMIT RF 16/04/14
 B WORKING DRAWINGS RF 17/02/14
 A PRELIMINARY WORKING DRAWINGS RF 17/12/13

BELLEMORE
 HOMES
 Level 1 / 2 Centreway Mount Waverley Vic 3149
 Tel 9887 8984 Fax 9887 6079
 enquiries@bellemorehomes.com.au

Client	BEDELIS		
Project	PROPOSED DWELLING 8 YVONNE COURT WHEELERS HILL		
Dwg Title	ELEVATIONS		
Ref No	1307-504	Page	08
Dwg No	WD08	Scale	1:100
Date	11.07.2014	Rev	D
Drawn	RF	Checked	
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RETAINING WALL TO BE COMPLETED AS PART OF LANDSCAPING (owners to apply for separate building permit)

NOTE:

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- Lift off door hinges to be provided to bathrooms and ensuites that do not comply with Building Code of Australia 3.8.3.3 requirements

MATERIALS & FINISHES

rBr Rendered brickwork
 T Selected tiled roof
 og obscure glazing
 F fixed panel
 □ sub floor vent

PLAN CERTIFICATION

THE OWNERS HEREBY AGREE THAT THESE WORKING DRAWINGS ARE FINAL. ANY VARIATIONS MUST BE MUTUALLY AGREED IN WRITING BETWEEN THE OWNERS AND BELLEMORE HOMES. CHANGES MAY INCUR A COST VARIATION.

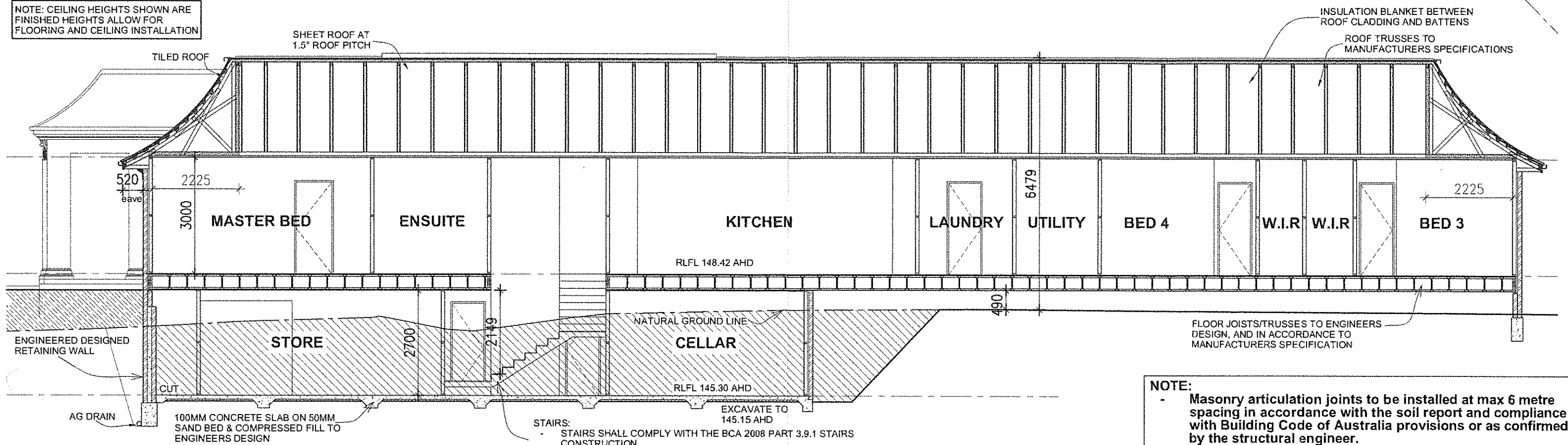
DATE:

SIGNED-

OWNERS.....

BUILDERS.....

NOTE: CEILING HEIGHTS SHOWN ARE
FINISHED HEIGHTS ALLOW FOR
FLOORING AND CEILING INSTALLATION

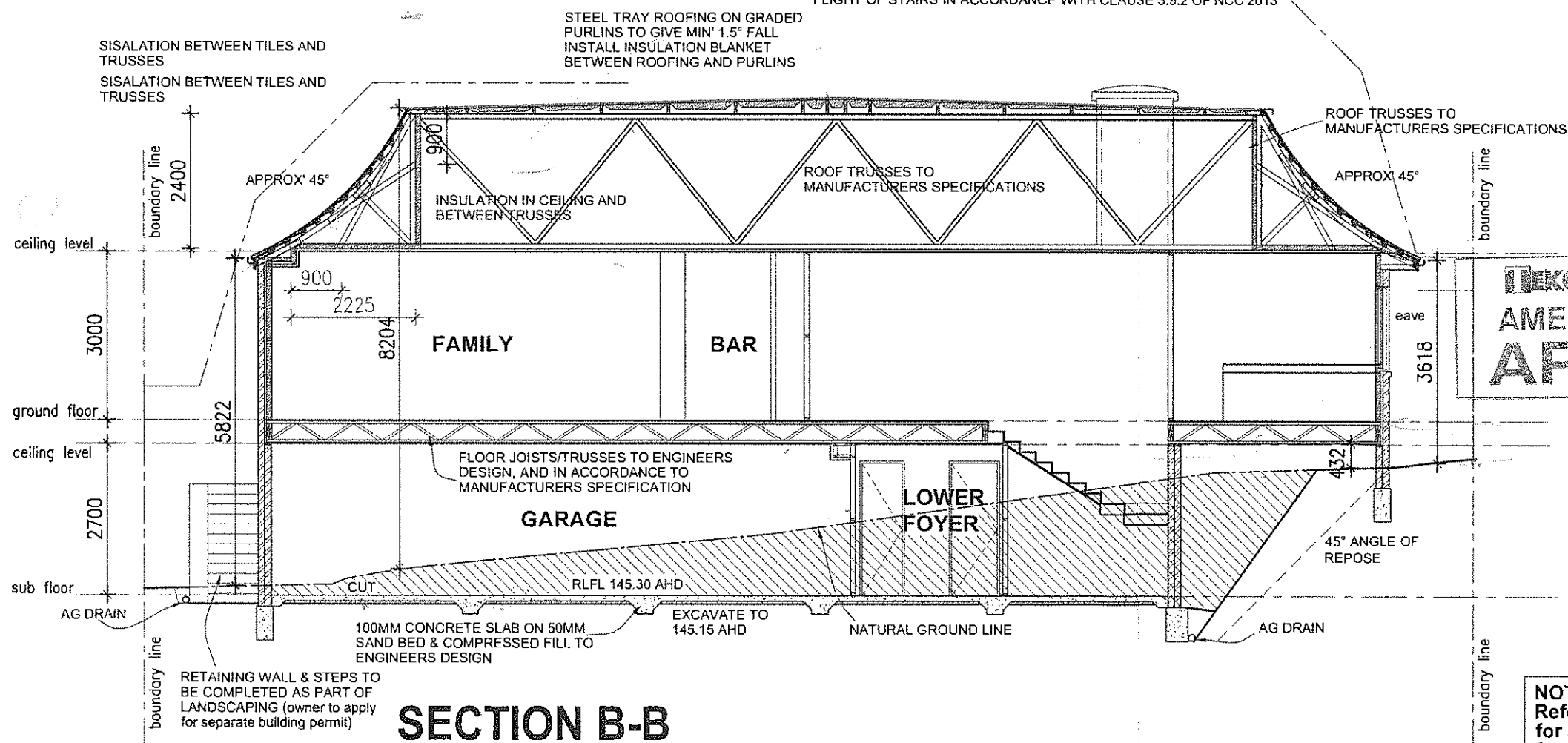


SECTION A-A

- STAIRS: 145.15 AHD
- STAIRS SHALL COMPLY WITH THE BCA 2008 PART 3.9.1 STAIRS CONSTRUCTION
 - RISERS SHALL BE A MAXIMUM OF 190MM / MINIMUM OF 115MM WITH OPEN SPACE (IF REQUIRED) BETWEEN NOT EXCEEDING 124MM. SPIRAL RISERS 220MM MAX 140MM MIN IF INSTALLED.
 - GOING SHALL BE 355MM MAX 250MM MIN, SPIRAL GOING 370MM MAX 210MM MIN (7/10th FROM CENTRE POLE IF INSTALLED)
 - BALUSTRADE 1000MM HIGH FROM LANDING. BALUSTERS-SHALL NOT EXCEED 124MM BETWEEN EACH BALUSTER.
 - HANDRAIL 865MM HIGH FROM TREAD NOSING.
 - PROVIDE A CONTINUOUS HANDRAIL ON AT LEAST 1 SIDE OF THE FLIGHT OF STAIRS IN ACCORDANCE WITH CLAUSE 3.9.2 OF NCC 2013

NOTE:

- Masonry articulation joints to be installed at max 6 metre spacing in accordance with the soil report and compliance with Building Code of Australia provisions or as confirmed by the structural engineer.
- Steps to be provided where door threshold is greater than 190mm above external ground level or between dwelling and garage sections
- No part of structure including footings, fascia, and gutters are to project over the allotment tilted boundaries. walls abutting allotment boundaries to be constructed to achieve 60/60/60 FRL including non combustible fascia and gutters.
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SECTION B-B

TEKCON GROUP PTY LTD
AMENDED DOCUMENTS
APPROVED

D	AMENDED SITING	RF	11/07/14
C	BUILDING PERMIT	RF	16/04/14
B	WORKING DRAWINGS	RF	17/02/14
A	PRELIMINARY WORKING DRAWINGS	RF	17/12/13



BELEMORE

Level 1 / 2 Centreway Mount Waverley Vic 3149
Tel 9887 8984 Fox 9887 6079
enquiries@bellemorehomes.com.au

Client	BEDELIS
--------	---------

Project PROPOSED DWELLING
8 YVONNE COURT
WHEELERS HILL

Dwg Title	CROSS SECTION
-----------	---------------

Ref No	1307-504	Page	09
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Dwg No	WD09	Scale	1:100	Rev	D
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Date	11.07.2014	Drawn	RF	Checked
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PLAN CERTIFICATION

THE OWNERS HEREBY AGREE THAT THESE
WORKING DRAWINGS ARE FINAL.
ANY VARIATIONS MUST BE MUTUALLY
AGREED IN WRITING BETWEEN THE
OWNERS AND BELLEMORE HOMES.
CHANGES MAY INCUR A COST VARIATION.

DATE:/...../.....

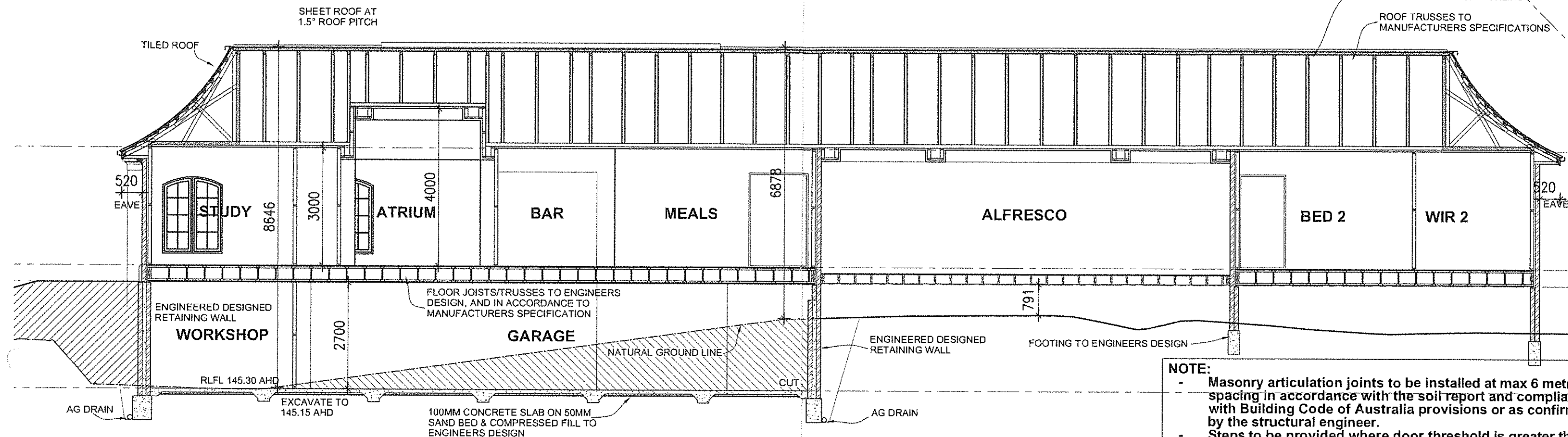
SIGNED-

OWNERS.....

BUILDERS.....

NOTE:
Refer to energy rating report and note
for specific insulation requirements
for ceilings, walls & floors

NOTE: CEILING HEIGHTS SHOWN ARE FINISHED HEIGHTS ALLOW FOR FLOORING AND CEILING INSTALLATION

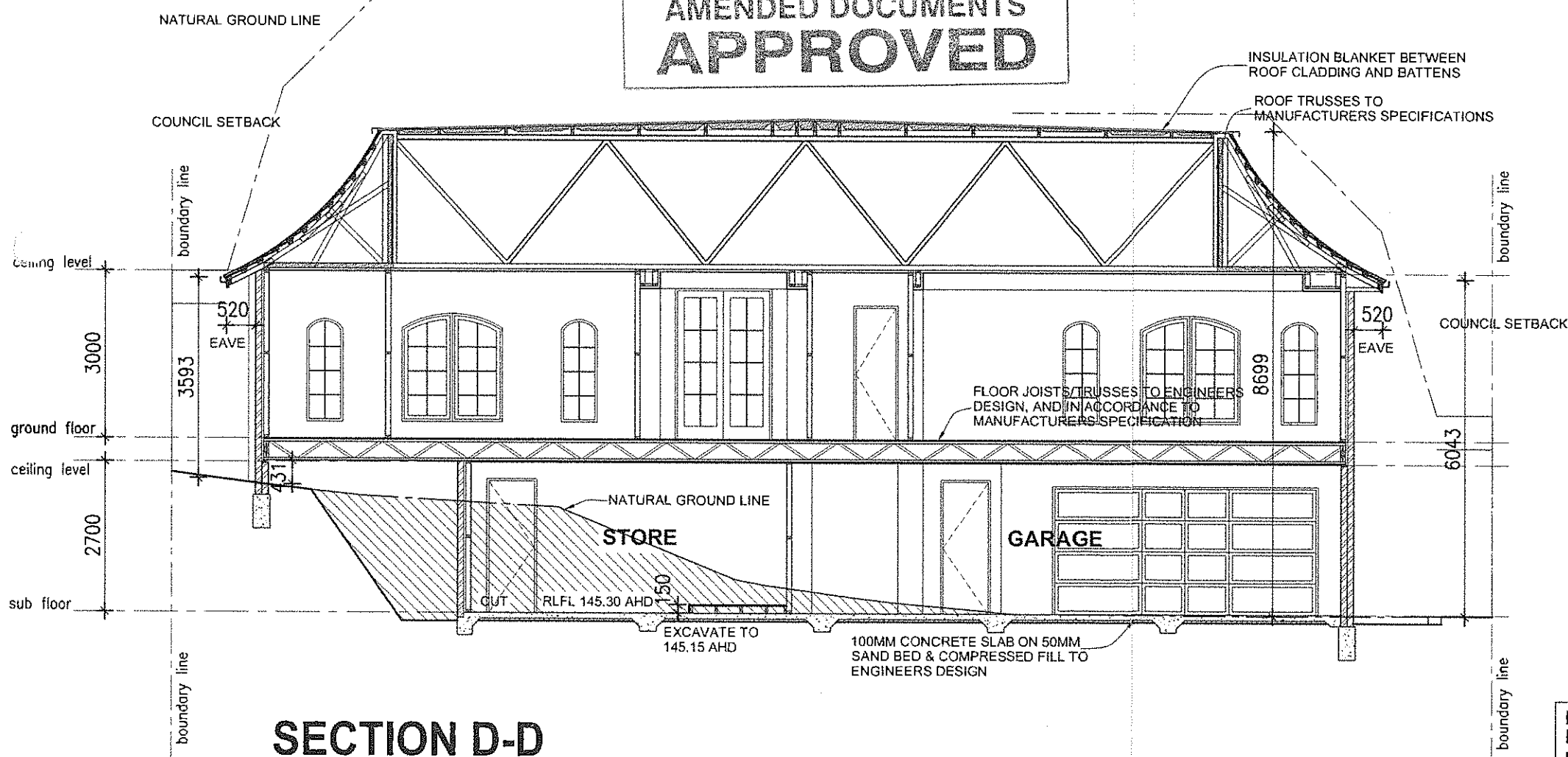


SECTION C-C

BEKCON GROUP PTY LTD
AMENDED DOCUMENTS
APPROVED

NOTE:

- Masonry articulation joints to be installed at max 6 metre spacing in accordance with the soil report and compliance with Building Code of Australia provisions or as confirmed by the structural engineer.
- Steps to be provided where door threshold is greater than 190mm above external ground level or between dwelling and garage sections
- No part of structure including footings, fascia, and gutters are to project over the allotment tilted boundaries. walls abutting allotment boundaries to be constructed to achieve 60/60/60 FRL including non combustible fascia and gutters.
- Windows to be installed in compliance with AS1288 & AS2047 provisions. Safety glazing to be provided to upper level bathroom windows.
- A full floor waterproof membrane installed in accordance with AS3740 is to be provided to all new bathrooms and/or ensuites
- Lift off door hinges to be provided to bathrooms and ensuites that do not comply with Building Code of Australia 3.8.3.3 requirements



SECTION D-D

PLAN CERTIFICATION

THE OWNERS HEREBY AGREE THAT THESE WORKING DRAWINGS ARE FINAL. ANY VARIATIONS MUST BE MUTUALLY AGREED IN WRITING BETWEEN THE OWNERS AND BELLEMORE HOMES. CHANGES MAY INCUR A COST VARIATION.

DATE:

SIGNED:

OWNERS.....

BUILDERS.....

NOTE:
Refer to energy rating report and note for specific insulation requirements for ceilings, walls & floors

D	AMENDED SITING	RF	11/07/14
C	BUILDING PERMIT	RF	16/04/14
B	WORKING DRAWINGS	RF	17/02/14
A	PRELIMINARY WORKING DRAWINGS	RF	17/12/13



BELLEMORE
HOMES

Level 1 / 2 Centroway Mount Waverley Vic 3149
Tel 9887 8984 Fax 9887 6079
enquiries@bellemorehomes.com.au

Client	BEDELIS		
Project	PROPOSED DWELLING 8 YVONNE COURT WHEELERS HILL		
Dwg Title	CROSS SECTION		
Ref No	1307-504	Page	10
Dwg No	WD10	Scale	1:100
Date	11.07.2014	Drawn	RF
		Rev	D
		Checked	

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Attachment

5 Letter instructions

Your Ref: Robert Milner
Our Ref: JB:151085
Contact: Jamie Bedelis
Phone: 8847 8088
Email: jamie@bedelislawyers.com.au

16 July 2015

Mr R Milner
10 Consulting Group
Unit 3 2 Yarra Street
SOUTH MELBOURNE VIC 3205

Dear Robert

MODIFICATION OF RESTRICTIVE COVENANT

1. We act on behalf of Eva Bedelis, the registered proprietor of the property located at 8 Yvonne Court, Wheelers Hill (**Land**). The Land is subject to the restrictive covenant described in Instrument Number A133970 dated 28 March 1956 (**Covenant**).
2. The Covenant provides, relevantly:
The said Keith Leslie Ross with Charles Eric Tobias for the benefit of Charles Eric Tobias for himself and his heirs executors and administrators and transferees and the registered proprietor or registered proprietors for the time being on the land remaining that the said Keith Leslie Ross his heirs executors administrators and transferees will not erect or cause to be erected on the said land hereby transferred any dwelling other than one having walls of brick or stone and such house not to be more than one storey in height and all buildings to be of similar construction.

Background

3. Mrs Bedelis and her late husband purchased the land in 2013 and became the registered proprietors, as joint proprietors on 23 July 2014.
4. After Mr Bedelis' death in February 2014, Mrs Bedelis became the registered proprietor pursuant to a survivorship application on 23 June 2014.
5. At that time, the Land was developed with the building described in the following plans:
 - a) Plan 01_A Site Plan, prepared by Peter M Kelly, Architect, dated 25 November 1986;
 - b) Plan 02_A Existing Ground Plan, prepared by Peter M Kelly, Architect, dated 25 November 1986;
 - c) Plan 03_A Existing Basement Plan, prepared by Peter M Kelly, Architect, dated 25 November 1986;

Liability limited by a scheme approved under Professional Standards Legislation.

- d) Plan 04_A Stage 1 Floor Plan, prepared by Peter M Kelly, Architect, dated 25 November 1986;
 - e) Plan 05_A Stage 1 Proposed Basement, prepared by Peter M Kelly, Architect, dated 25 November 1986;
 - f) Plan 06 Stage 2_A Proposed Floor Plan, prepared by Peter M Kelly, Architect, dated 25 November 1986;
 - g) Plan 07_A Roof Plan, prepared by Peter M Kelly, Architect, dated 25 November 1986;
 - h) Plan 08_A Elevations, prepared by Peter M Kelly, Architect, dated 25 November 1986;
 - i) Plan 09 Stage 2 Electrical Layout, prepared by Peter M Kelly, Architect, dated 25 November 1986;
 - j) Plan 10 Elevations, prepared by Peter M Kelly, Architect, dated 25 November 1986;
 - k) Plan 11 Roof Framing, prepared by Peter M Kelly, Architect, dated 25 November 1986; and
 - l) Plan 12 Sections, prepared by Peter M Kelly, Architect, dated 25 November 1986—
(the **Previous Dwelling**).
6. An application for a building permit for the dwelling presently under construction on the Land (**Present Dwelling**) was made with the building surveyor, Tekcon Group Pty Ltd on or about 16 April 2014.
7. Building permit No. BSU-16991/20140267/0 was issued by the building surveyor, Tekcon Group Pty Ltd on or about 13 June 2014 (**Building Permit**).
8. The plans endorsed pursuant to the Building Permit are:
- a) Dwg No: WD01. Dwg Title: Existing Site Plan. Prepared by Bellemore Homes;
 - b) Dwg No: WD02. Dwg Title: Site Plan. Prepared by Bellemore Homes;
 - c) Dwg No: WD03. Dwg Title: Excavation Plan. Prepared by Bellemore Homes;
 - d) Dwg No: WD04. Dwg Title: Sub- Floor Plan. Prepared by Bellemore Homes;
 - e) Dwg No: WD05. Dwg Title: Ground Floor Plan. Prepared by Bellemore Homes;
 - f) Dwg No: WD06. Dwg Title: Roof Plan. Prepared by Bellemore Homes;
 - g) Dwg No: WD07. Dwg Title: Elevations. Prepared by Bellemore Homes;
 - h) Dwg No: WD08. Dwg Title: Elevations. Prepared by Bellemore Homes;

- i) Dwg No: WD09. Dwg Title: Cross Section. Prepared by Bellemore Homes; and
 - j) Dwg No: WD10. Dwg Title: Cross Section. Prepared by Bellemore Homes.
- 9. The Previous Dwelling was demolished in or about August 2014.
 - 10. Construction of the Present Dwelling was commenced in or about August 2014.
 - 11. The subfloor area was completed in or about mid-November 2014.
 - 12. The wooden frame for the walls was completed in or about mid-March 2015.
 - 13. The roof structure was erected in or about 14 April 2015.

Retainer

- 14. We are instructed to retain your services on behalf of Mrs Bedelis to provide an expert opinion to be used in support of her:
 - a) defence of the Writ from Best Hooper in matter S CI 2015 02973 dated 10 June 2015 (**Writ**); and
 - b) planned application to modify the Covenant pursuant to Section 84(1) of the *Property Law Act* 1958 to expressly permit the construction of the Present Dwelling—
(the **Proceedings**).
- 15. You are retained to:
 - a) provide a written opinion (**Expert Report**); and
 - b) if required, give expert evidence as to your opinion in Court.

Expert Witness Code of Conduct, the Civil Procedure Act and your duties as an expert witness

- 16. The preparation of your Expert Report and the giving of expert evidence in the Supreme Court of Victoria are governed by Order 44 of the *Supreme Court (General Civil Procedure) Rules* 2005 (Vic) and the *Expert Witness Code of Conduct* (Form 44A). Copies of each are enclosed. If you have any queries regarding the requirements set out in Order 44 or Form 44A, please contact us before the preparation of your Expert Report.
- 17. The *Civil Procedure Act* 2010 (Vic) also imposes certain obligations on you as an expert witness. In summary, in your capacity as an expert witness, you are subject to the following "overarching obligations":
 - a) the overarching obligation to act honestly (s 17);
 - b) the overarching obligation to cooperate in the conduct of the Proceedings with the parties and the Court (s 20);
 - c) the overarching obligation not to engage in conduct which is misleading or deceptive or which is likely to mislead or deceive (s 21);

- d) the overarching obligation to resolve by agreement any issues in dispute which can be resolved in that way and to narrow the scope of the remaining issues in dispute (s 23);
 - e) the overarching obligation to use your reasonable endeavours to ensure that legal costs and other costs incurred in connection with the Proceedings are reasonable and proportionate to the complexity or importance of the issues in dispute and the amount in dispute (s 24); and
 - f) the overarching obligation to use your reasonable endeavours to act promptly and minimise delay for the purpose of the prompt conduct of the Proceedings (s 25).
18. In addition, s 16 of the *Civil Procedure Act 2010* (Vic) provides that each person (such as an expert witness) to whom the overarching obligations apply has a paramount duty to the Court to further the administration of justice in relation to the Proceedings.
19. We also draw your attention to s 29(1) of the *Civil Procedure Act 2010* (Vic), which provides that if a court is satisfied that, on the balance of probabilities, a person has contravened any overarching obligation, the court may make any order it considers appropriate in the interests of justice including, but not limited to, those referred to in that provision. A photocopy of section 29(1) of the *Civil Procedure Act 2010* (Vic) is enclosed.
20. Should you have any queries regarding the requirements set out in the *Civil Procedure Act 2010* (Vic) or the consequences of a failure to comply with those requirements, please contact us before preparation of the Expert Report.

Form of the expert report

21. The Expert Report should be in the form of a narrative and divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject. Marker phrases such as "In my opinion" or "In my view" usefully differentiate from other aspects of an expert report. While you are retained by parties to an intended proceeding, in preparing the Expert Report, you are required to be non-partisan and reflect the objectivity and independence you have brought to the task pursuant to your retainer as expert.
22. For your assistance, we suggest that your Expert Report should include the following:
- a) your name and address;
 - b) a copy of your detailed curriculum vitae together with details of any specific experience you possess, which is not referred to in your curriculum vitae, and which is relevant to the formulation of your opinion;
 - c) an acknowledgement that you have received, read and agree to be bound by, the Expert Witness Code of Conduct;
 - d) the facts, matters or assumptions on which your opinion is based (you may attach a copy of this letter of instruction);

- e) the reasons for your opinion including any document, literature or other material used by you in support of your Expert Report;
 - f) a summary of your opinion;
 - g) if applicable, an acknowledgement that a particular question or issue falls outside your area of expertise; and
 - h) a declaration that you have made all enquiries that you believe are desirable and appropriate and that no matter of significance has been withheld from the Court.
23. The Expert Report must be signed by you and dated. It should be accompanied by clear copies of any documents, literature or other material to which your Expert Report refers.
24. Please ensure that the Expert Report is clearly marked "Privileged" and is sent to this office only, marked to the attention of Jamie Bedelis.

Your role as an expert witness

25. You are at all times to remain independent and unbiased in the discharge of your duties as expert witness. Accordingly, please do not discuss any of the enclosed material (or the proceeding when commenced) with any person except the writer or counsel retained on behalf of Mrs Bedelis without the prior consent of this office.
26. Should it become necessary for you to make use of the services of another person in order to assist you in the preparation of any aspect of the expert report, please let us know before doing so. In any event, should you use the services of another person, you are at liberty to discuss with that person the content of this letter, the documents provided with this letter, and any further documents requested by you, provided that you do so on a strictly confidential basis. However in doing so it must be understood that the opinion expressed in the Expert Report is yours, and you as the author of the Expert Report may be required to give evidence concerning that opinion.
27. All communications in the first instance are to be through this office. Should you require further documents or information, you should seek this through this firm. Please note that all written communications with you can be required to be produced to the Court if your Expert Report is relied on in evidence. Similarly, the substance of any oral discussions you have with any person in the course of performing your retainer may be the subject of cross-examination if your Expert Report is relied on in evidence.
28. If we are instructed not to use your report for the purposes of the proceeding, these mechanisms may ensure that all communications with you are protected by legal professional privilege and may not be subject to disclosure.

Documents provided

29. At the outset, you are provided with copies of the following documents:
- a) the title to the Land described in Volume 08131 Folio 781;
 - b) the Instruments of Transfer A133970;

- c) the Parent Title to the land, Volume 07964 Folio 012;
- d) the Writ;
- e) the plans for the Previous Dwelling;
- f) the plans for the Present Dwelling;
- g) the Building Permit;
- h) the Building Code of Australia 2013, part 1.3.2 Classification;
- i) s 84 of the *Property Law Act* 1958 (Vic);
- j) *Prowse v Johnston* [2012] VSC 4;
- k) *Vrakas v Registrar of Titles* [2008] VSC 281;
- l) *Re: Ulman & Anor* (1985) V ConvR 54 – 178; and
- m) *Jacobs v Greig* [1956] VLR 597.

Your opinion

30. Based on the documents we have provided, any further documents we provide to you, the additional instructions contained in this letter and your qualifications and experience, we seek your expert opinion on the following:
- a) what you believe the purpose of the Covenant to be;
 - b) having regard to this purpose, whether the Previous Dwelling and the Present Dwelling are similar in form and materials;
 - c) whether there will be substantial injury to the beneficiaries of the Covenant if the Covenant is expressly modified to allow the dwelling under construction, including:
 - (i) impacts on views;
 - (ii) whether there will be any impact on neighbourhood character:
 - (a) if the Present Dwelling is constructed using brick veneer rather than double-brick; or
 - (b) if the subfloor area is used for parking and other non-habitable rooms such as a lift well, cellar, storage or workshop;
 - (iii) whether the modification of the Covenant to expressly allow the construction of the Present Dwelling would likely create a precedent having regard to the existing and potential built form and materials of other buildings in the neighbourhood; and
 - d) some brief observations on the ostensible degree of compliance with other comparable restrictive covenants throughout the neighbourhood.

Conclusion

31. We would appreciate receiving the expert report as soon as practically convenient and in the manner set out above. If you have any queries in respect of the above, please do not hesitate to contact the writer.

Yours faithfully
Bedelis Lawyers

A handwritten signature in black ink, consisting of a stylized 'J' followed by a long horizontal stroke.

Jamie Bedelis
Principal

Encl.



Expert Evidence | Strategic Advice | Development Approvals