
Bayside Planning Panel

14/12/2017

Item No	6.8
Application Type	Development Application
Application Number	DA-2009/316/D
Lodgement Date	22 September 2017
Property	52 Clareville Avenue, Sandringham NSW 2219
Owner	Mrs Anastasia Susan Prapas and Mr Jim Prapas
Applicant	Mr Jim Prapas
Proposal	S96 (1A) Modification Application seeking to reduce lift overrun height, relocation of lift door to east side, addition of a colorbond roof to roof terrace and deletion of Condition 11a
No. of Submissions	Three (3)
Cost of Development	N/A
Report by	Adam Iskander – Development Assessment Planner

Officer Recommendation

- 1 That the Panel resolve pursuant to Section 96(1A) of the Environmental Planning & Assessment Act 1979, to modify Development Consent DA-2009/316/D, as follows:
 - a. Modify condition 2 to refer to the amended plans;
 - b. Modify condition 11A referring to the deletion of the roof top terrace;
 - c. Addition of condition 11B, 11C and 11D to ensure that the proposal does not unreasonably contribute to bulk and scale, and is consistent with the recently approved entry points within the locality; all unauthorised works associated with the application are addressed with a Building Certificate and that the approval is granted only to the works shown clouded on the plans.
 - 2 That the objectors be advised of Council's decision.
-

Attachments

- 1 Planning Assessment Report
- 2 Site plan
- 3 Roof plan
- 4 Elevations east and south
- 5 Elevations west and north
- 6 Sections
- 7 Streetscape

- 8 Shadows 9am and 12pm
 - 9 Shadows 3pm
-

Location Plan



BAYSIDE COUNCIL

Section 96(1A) – Delegated Report

1. APPLICATION DETAILS

Application Number: DA-2009/316/D
Date of Receipt: 22-Sep-2017
Property: 52 Clareville Avenue, SANDRINGHAM NSW 2219
Lot 13 DP 5643
Owner: Mr J Prapas and Mrs A S Prapas
Applicant: Mr J Prapas
Proposal: S96 (1A) Modification Application seeking to reduce lift overrun height, relocation of lift door to east side, addition of a colorbond roof to roof terrace and deletion of Condition 11a

Recommandation: Approved
No. of submissions: Three (3)
Author: Adam Iskander – Development Assessment Planner
Date of Report: 01-Dec-2017

2. SUMMARY OF ISSUES

- Three neighbour submissions

3. RECOMMENDATION

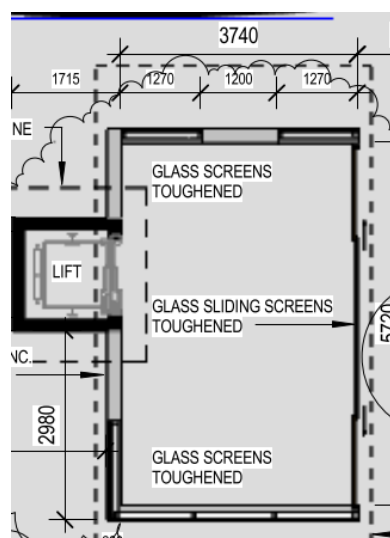
- A. That the Panel resolve pursuant to Section 96(1A) of the Environmental Planning & Assessment Act 1979, to modify Development Consent DA-2009/316/D, as follows:
1. Modify condition 2 to refer to the amended plans;
 2. Modify condition 11A referring to the deletion of the roof top terrace;
 3. Addition of condition 11B, 11C and 11D to ensure that the proposal does not unreasonably contribute to bulk and scale, and is consistent with the recently approved entry points within the locality; all unauthorised works associated with the application are addressed with a Building Certificate and that the approval is granted only to the works shown clouded on the plans.
- B. That the objectors be advised of Council's decision

4. BACKGROUND

- DA-2009/316 was approved for the demolition of an existing dwelling and construction of a new two storey dwelling with a roof top terrace, basement garage, in ground swimming pool, front fence and boundary fencing and alterations to the existing outbuilding at 52 Clareville Avenue, SANDRINGHAM NSW 2219 was approved under delegation on 5 June 2009.
- S96-2009/316/A to delete the basement garage and provide a double garage to both street frontages, changes to windows and enlargement of first floor front deck of the dwelling at 52 Clareville Avenue, SANDRINGHAM NSW 2219 was approved under delegation on 18 June 2013. Construction of the building has since commenced.
- S96-2009/316/B for a new lift awning and lift door to roof top terrace, internal and external alterations to outbuilding with the addition of solar panels to roof, and relocation of swimming pool was refused on 14 March 2016. Reasons for refusal were based on non-compliance with zone Objectives which was a result from the non-compliance in building height due to the roof top awning structure.
- S96-2009/316/C for a modification to the roof of a dwelling and outbuilding, alterations and additions including layout and windows and doors at 52 Clareville Avenue, SANDRINGHAM NSW 2219 was approved under delegation on 27 July 2016. The application was approved subject to the following condition:

11A - The roof top structure/access point does not form part of this approval and shall be deleted from the plans.

The intent of this condition was not to delete the approved roof top terrace and roof top structure/access point from the original approved plans, but rather to delete the proposed amended access point design which was a large enclosed structure with dimensions of 3.74m x 5.72m with a total floor space of 21sqm. The structure would have an overall height of 3.08m and an internal floor to ceiling height of 2.77m. This proposed structure was significantly larger than what was originally approved and created an area for entertainment which was inconsistent with Council's previous approvals within the municipality. The images below show Birdseye view of the refused design and floor layout.

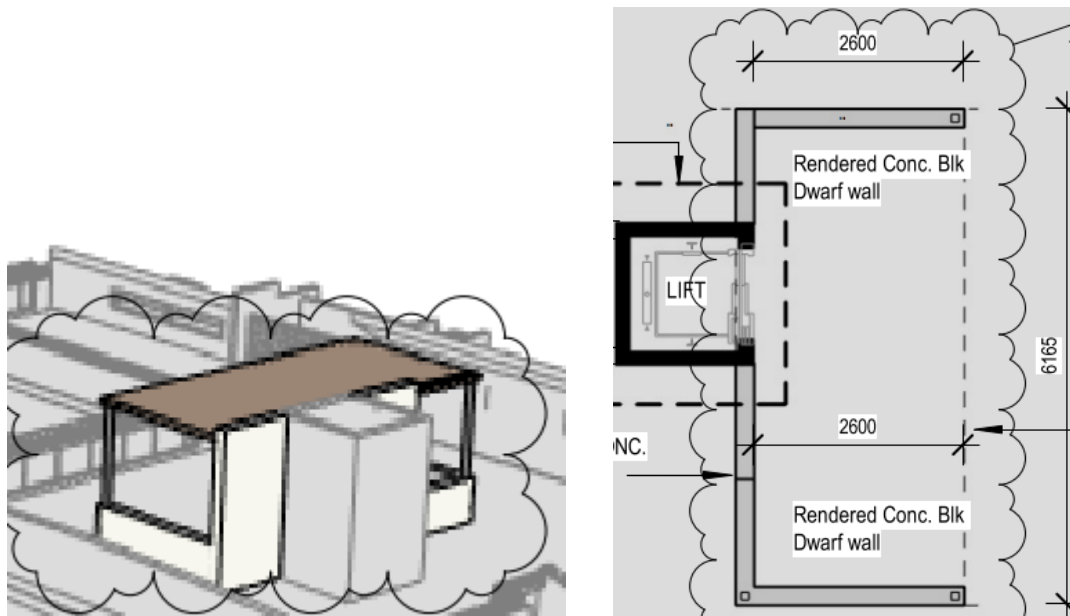


This proposal is for a S96 (1A) for the modification to application seeking to reduce lift overrun height, relocation of lift door to east side, addition of a colorbond roof to roof terrace and deletion of Condition 11a (which deleted the roof top structure) at 52 Clareville Avenue, SANDRINGHAM NSW 2219.

5. PROPOSAL

The proposal modifies the original consent DA-2009/316 as follows:

- Lift entry to face east (original plans proposed the entry to the lift faces west towards Clareville Avenue);
- Reduce height of covered area above lift from RL 14.554 to RL14.095 (a reduction of 0.459m)
- New covered area in front of lift providing shelter with dimensions of 2.6m x 6.165 creating a total floor space of 16.029sqm;
- The covered area will be constructed of rendered concrete walls. The rear walls will have a height of 2.645m with dwarf walls along the side and a colorbond roof over with a light to medium colour. The shelter will be an open structure from the front and partially along the sides;
- The height of the structure will be 2.770m;
- The images below show the proposed structure at a Birdseye view and a floor plan:



- A. The proposed amendments require the modification of condition 2 and 11a of the development consent to read:
2. "The development must be implemented in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions:

Architectural plans numbered 01,16, S96-3_05, S96-3_06,S96-3_07, Project No. 08100 drawn by Mellon Architectural and Building Services, dated 08 April 2017 and received by Council on 22 September 2017;

Architectural plans numbered 03, 04, 05, 06, 07 and 23 Revision D, Project No. 08100 drawn by Mellon Architectural and Building Services, dated 1 September 2015 and received by Council on 12 April 2015;

Drainage plan numbered 08133-C01-C, drawn by P.S. for CPM Engineering Civil & Structural Consulting Engineers, dated 25.5.13 and received by Council on 29 May 2013.”

11a *The roof top structure/access point, as part of DA-2009/316/C on Plan number 16, Revision D dated 1 September 2015 does not form part of the approval of DA-2009/316/C.*

B. *The proposed amendments require the addition of the following condition (11b, 11c and 11d):*

11b *The covered area attached to the lift on the roof top terrace shall be reduced in size. The northern dwarf wall shall be in line with the northern wall of the lift. The depth of the covered area attached to the lift shall be reduced from 2.6m to 2m.”*

11c *All works relating to the covered area and lift which have been constructed without approval will require a Building Certificate. This Building Certificate is to be finalised and approved prior to construction of any covered area attached to the lift.*

11d *Only works shown clouded on the stamped approved plans shall form part of this approval*

6. REFERRALS

No internal or external referrals required.

7. PLANNING CONSIDERATION

7.1 S96(1A) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT

Section 96(1A) of the Environmental Planning & Assessment Act 1979 states:

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

a) It is satisfied that the proposed modification is of minimal environmental impact, and

Comment: The proposed modifications are minor with minimal changes to the external appearance of the approved development which (subject to conditions of consent) will have acceptable impacts in terms of bulk and scale when viewed from the street and neighbouring properties as Council has recently approved similar roof top terrace entry points. The application is assessed as having minor impacts to the surrounding environment

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

Comment: The modification to the roof top terrace is minor and therefore the application is substantially the same development for which consent was originally granted, taking into consideration the original approval and any S96 previous to this application.

c) it has notified the application in accordance with:

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

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

Comment: The application was notified in accordance with Part 8 of RDCP 2011.

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

Comment: Three submissions were received. These submissions are addressed in the body of this report.

7.2 S96(3) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT

S96(3) of the Environmental Planning and Assessment Act 1979 states:

In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

An assessment of the application has been carried out under the provisions of Section 79(C) of the Environmental Planning and Assessment Act, 1979. The matters of relevance to this application have been considered. The following is an assessment of the proposed development under the provisions of Section 79C (1) of the Environmental and Planning Assessment Act.

7.2.1 Provisions of Environmental Planning Instruments (S79C(1)(a)(i))

7.2.1.1.1 Land Use Zone

The subject site is zoned R2 - Low Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as alterations and additions to an existing residential dwelling which constitutes a permissible development only with development consent. The objectives of the zone are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.

The proposed development is consistent with the objectives of the zone.

7.2.1.1.2 Building Height

The height of the proposed building is 10.595 m which exceeds the 8.5m height permitted in Clause 4.3 (Height of buildings) of RLEP 2011 by 24.6%.

The original application DA-2009/316 approved a maximum building height of 11.054m. Several S69 applications have since been determined, however, no changes to the approved building height had been granted. The current application seeks to reduce the overall building height by 0.459m.

Objectives (b) and (c) of Clause 4.3 of RLEP 2011 for Maximum building height require developments to permit building heights that encourage high quality urban form and to provide

building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain. Although the reduction in height is minor, it can be reasoned that the proposal will satisfy the Objectives of the standard.

There are many recent and historic examples within the locality where Council has previously varied the Height of Building development standard to facilitate provision of a roof top terrace with entry over the lift/staircase, provided they do not unreasonably impact on neighbour amenity.

As such, strict compliance with this development standard is considered unreasonable and unnecessary in this instance, with the proposed variation not contributing to the bulk or scale of the building, not unreasonably impacting the overshadowing on adjoining properties and not likely to set an undesirable precedent within the locality. Further, the proposal is consistent with the objectives of Zone R2 Low Density Residential and the Height of Buildings development standard (Clause 4.3) as per RLEP 2011. Accordingly, the proposal is not considered to be contrary to the public interest.

7.2.2 Provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (S.79C(1)(a)(ii))

There are no proposed instruments affecting this proposal.

7.2.3 Provisions of Development Control Plans (S.79C(1)(a)(iii))

Roof top terrace

The application proposes no changes to the roof top terrace, only the access point. The proposed entry point will be of a lesser height to that which was originally approved under DA-2009/316.

Several concerns have been raised by the adjoining neighbours relating to non-compliance with privacy, bulk and scale.

Privacy –

The covered area in front of the lift is setback 10.5m from the southern boundary shared with 54 Clareville Avenue and a skillion roof is located along the southern side of the roof top terrace which will obstruct any direct over-looking to the southern neighbour when standing at the proposed entry point/lift. The neighbours to the rear and to the north (across Sanoni Avenue) are located at a long distance away from the proposed entry point. Issues relating to privacy and over-looking which have been raised by the neighbours are generally related to the roof top terrace which has already been granted approval under the original application DA-2009/316 and cannot be deleted with this S96 application. The proposed works satisfy Objective A of Part 4.4.5 of RDCP 2011 where the proposed works have been designed and sited to ensure visual privacy.

Bulk and scale –

Issues relating to bulk and scale are not assessed as significant to warrant the deletion of the proposed lift and covered area in front of the lift. The structure is consistent with recent approvals in the area for roof top terraces. However, to lessen the perceived bulk of the development and to maintain consistency with recent approvals, the size of the covered area shall be reduced by way of condition. This reduction will also limit the use of the access point for entertaining. The condition will read as follows:

“The covered area attached to the lift on the roof top terrace shall be reduced in size. The northern dwarf wall shall be in line with the northern wall of the lift. The depth of the covered area in front of the lift shall be reduced from 2.6m to 2m.”

Setting the covered area attached to the lift away from the northern side of the roof top terrace will reduce its visibility from the Sanoni Avenue and will reduce the perceived impact of bulk and scale.

A site visit conducted 16 November 2017 revealed that some of the proposed works had been constructed. A Building Certificate will be required for the already constructed works.

Taking the above into consideration, it is not assessed that the proposed work will generate excessive levels of overlooking, bulk and scale. Subject to condition of consent, the proposed works are assessed as reasonable and consistent with recent approvals of rooftop terraces within the surrounding area.

Solar access

According to the submitted shadow diagrams, the shadows created by the roof top entry point will not cast beyond the building edge, therefore, there will be no additional over-shadowing onto the southern neighbour. The application satisfies Objective B of Part 4.4.2 of RDCP where the proposed works do not unreasonably diminish sunlight to neighbouring properties.

7.2.4 Provisions of Regulations (S.79C(1)(a)(iv))

The provisions of the regulations had been considered in the assessment of this development proposal where relevant to this S96 application.

7.2.5 Impact of the Development (S.79C(1)(b))

7.2.5.7 Character / Streetscape

The proposal is located in an R2 - Low Residential Zone with the immediate context as relatively low scale, consisting of residential dwellings and dual occupancy developments. The proposed residential dwelling is consistent with the desired and future character of the area in terms of height, bulk and scale, and is generally appropriate in this context.

The modifications to the proposal are minor and will not significantly impact the streetscape character as the lift is setback 2.6m from the front building edge and has been constructed in accordance with DA-2009/316(notwithstanding the entry doors to the lift). The covered area attached to the lift will be conditioned to be reduced in size and further setback from the northern elevation to reduce its visibility from Sanoni Avenue.

The proposed works as amended are not considered to significantly alter or detract from the existing streetscape character.

7.2.6 Suitability of the Site (S.79C(1)(c))

The suitability of the site for the proposed development was considered as part of the assessment of the initial application. The site is not known to have been used for a contaminated use, and there are no other major physical constraints or exceptional circumstances that would hinder the suitability of the site for the proposed development as modified.

7.2.7 Public Submissions (S.79C(1)(d))

The development application has been notified in accordance with the provisions of Council's DCP and three submissions have been received. The issues raised in the submissions are discussed below:

Issue 1: Non-compliance with Maximum building height;

Comment: There are many recent and historic examples within the locality where Council has previously varied the Height of Buildings development standard to facilitate provision of a roof top terrace with entry over the lift/staircase, provided they do not unreasonably impact on neighbour amenity. The proposal is consistent with the objectives of Zone R2 Low Density Residential and the Height of Buildings development standard (Clause 4.3) as per RLEP 2011.

Issue 2: Un-authorised works and non-compliances relating to the lift (relocation of lift door to the east), front fence, skillion roof and stormwater;

Comment: All Un-authorised works associated with this application will require a Building Certificate. This will form part of the Draft Notice of Consent. The works relating to the front fence, skillion roof and stormwater do not form part of this application and must be dealt with by the applicants Certifier. Only the works shown clouded on the submitted plans shall form part of this approval.

Issue: Privacy impacts from the proposed entry point and roof top terrace;

Comment: The roof top terrace was approved with the original application. All impacts relating to privacy from the use of the terrace have been addressed in the original application DA-2009/316. The modification to the lift and covered area in front of the lift will not create significant levels of over-looking as it is significantly setback from the building edge. The proposed works satisfy Objective A of Part 4.4.5 of RDCP 2011 where the proposed works have been designed and sited to ensure visual privacy. Refer to Part 7.2.3 of this report under heading 'Roof Top Terrace'.

Issue: What is the overall dimensions of the structure? The structure appears wider from the previously refused designs:

Comment: The proposed structure will have dimensions of 2.6m wide, 6.165m long with a height of 2.645m. However, in order to reduce the impacts of bulk and scale and its visibility from Sanoni Avenue the structure will be conditioned to be reduced in size

Issue: Insufficient information on the impacts of solar access in mid-summer;

Comment: Council is satisfied with the shadow diagrams provided. The shadows created by the proposed covered area in front of the lift will not cast beyond the building edge, therefore, there will be no additional over-shadowing onto the southern neighbour. The application satisfies Objective B of Part 4.4.2 of RDCP where the proposed works do not unreasonably diminish sunlight to neighbouring properties.

Issue: How can Council ensure that the proposal gets built in accordance with the approved plans?:

Comment: The plans will form part of the conditions of consent and will be monitored by the certifying authority. Further, Condition 66 in the Notice of Consent requires a registered surveyor's check survey certificate ensuring that the building is constructed at the approved levels.

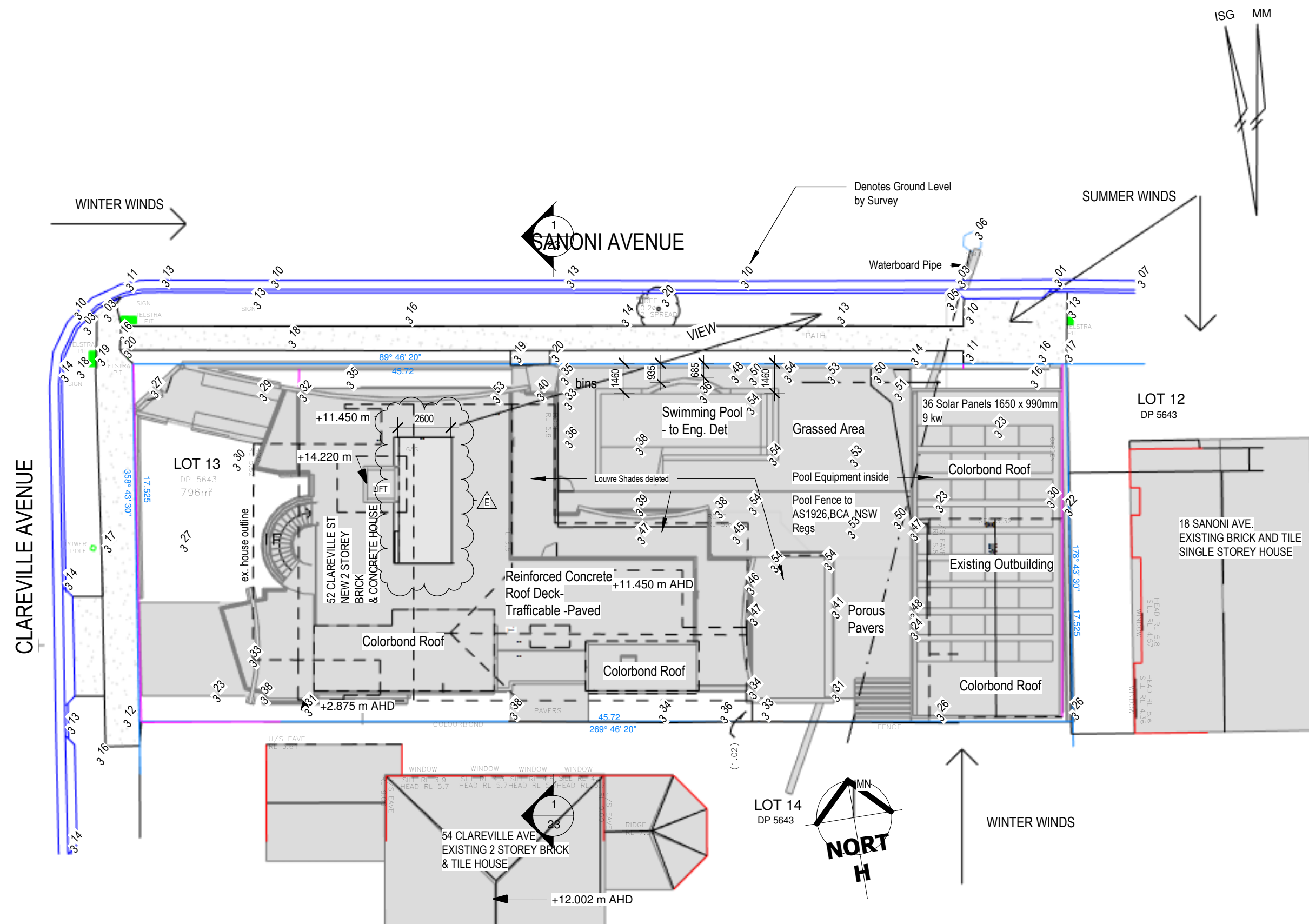
7.2.8 Public Interest (S.79C(1)(e))

The proposed development as modified is considered satisfactory having regard to the objectives and requirements of Rockdale Local Environmental Plan 2011 and Development Control Plan 2011. Impacts on adjoining properties have been considered and addressed. As such it is considered that the proposed development is in the public interest.

8. CONCLUSION

The proposed modification is considered to satisfy the requirements of Section 96(1A) of the *EP&A Act 1979*, and it is recommended that the application be **approved** subject to the modifications to conditions of consent attached.

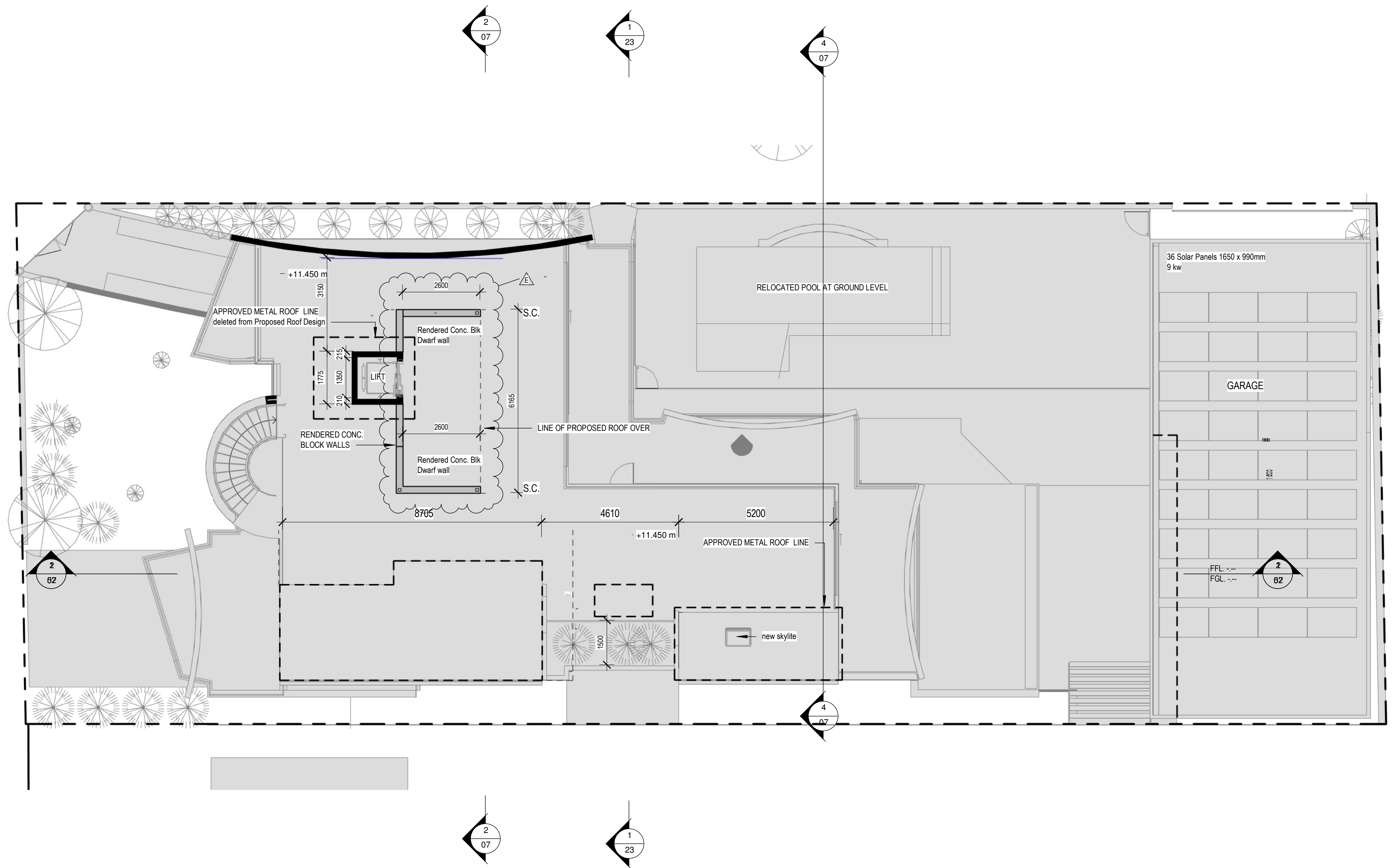
Adam Iskander
Development Assessment Planner



SITE PLAN
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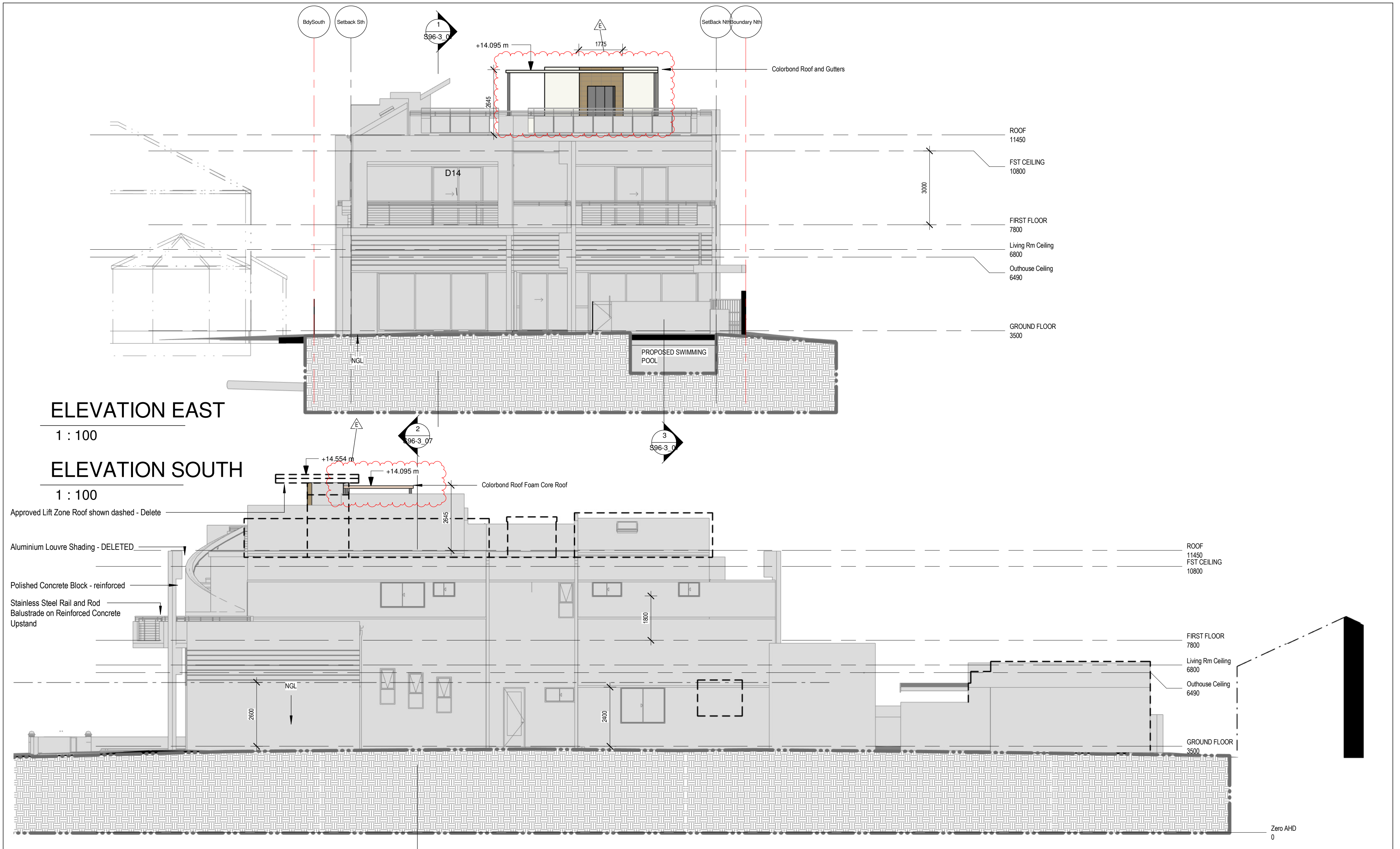
Revision Schedule			
Issued to	Revision Date	Revision Description	Revision Number
	13/05/2013	Delete Basement; Windows/Si Drs deleted/added;Garaging replacing basement.	A
	22/01/2014	REQUESTED	B
	07/03/2014	Updated Balconies, Railings, Windows	C
	01/09/2015	New Section 96 Amendments-see notes on sheet	D
	08/04/2017	Section 96 3-Lift Zone Roof reduced	E

Mellon Architectural and Building Services 9/83-85 Elouera Rd., Cronulla NSW 2230 0418 224 279 02 9544 3088 bus. 02 9383 8572 fax ross.karp@bigpond.com	Prapas House 52 Clareville Ave., Sandringham.	SITE PLAN		
		Project number	08100	<u>01</u>
		Date	10/04/15	
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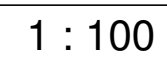
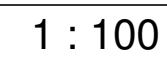
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Mellon Architectural and Building Services 9/83-85 Elouera Rd., Cronulla NSW 2230 0418 224 279 02 9544 3088 bus. 02 9383 8572 fax ross.karp@bigpond.com	Prapas House 52 Clareville Ave., Sandringham.	ROOF PLAN		
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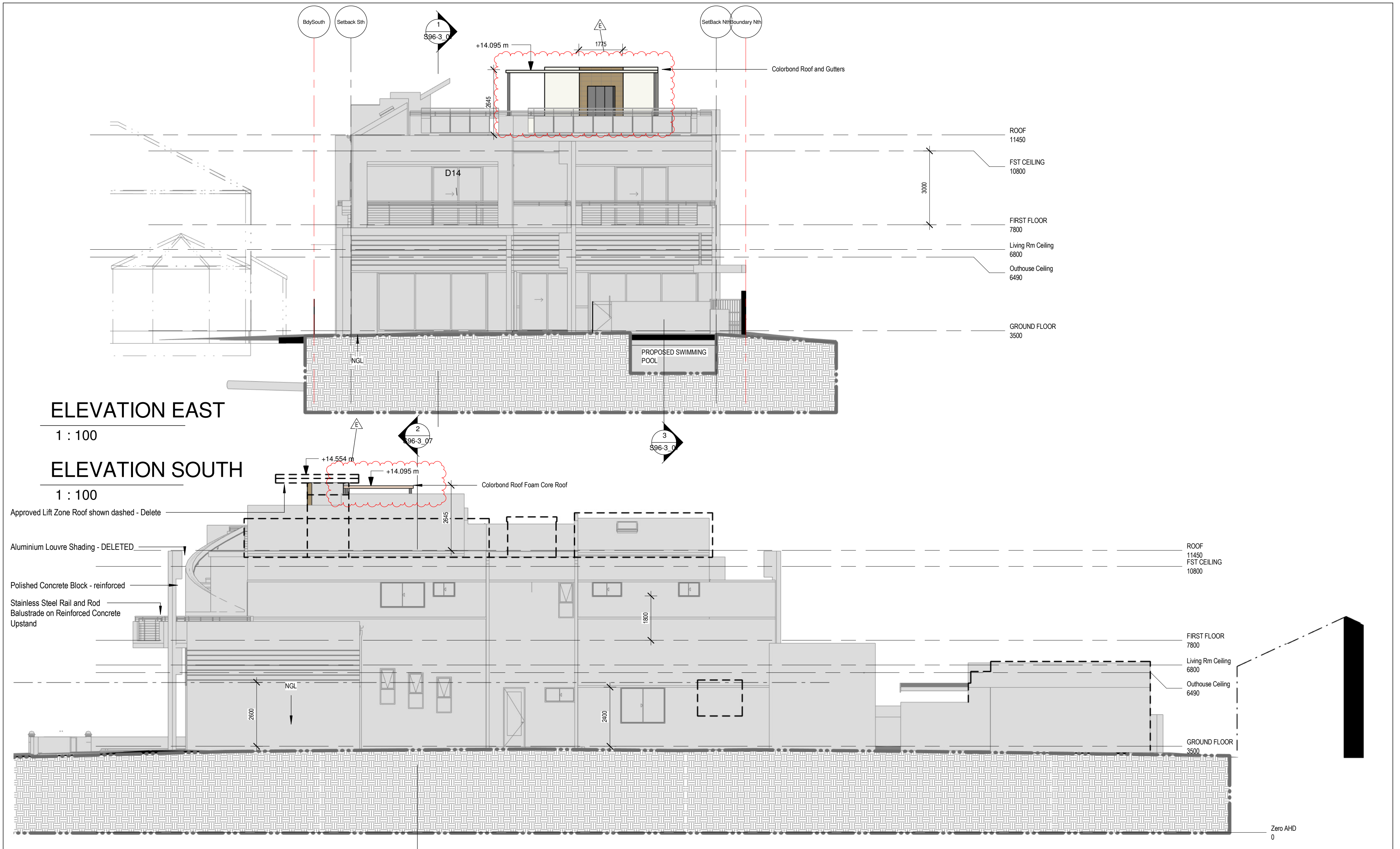


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	22/01/2014	REQUESTED	B
	07/03/2014	Updated Balconies, Railings, Windows	C
	01/09/2015	S96-2 New Section 96 Amendments-see notes on sheet	D
	08/04/2017	S96-3 Lift Zone Roof amended, Lift Door to Roof moved to East side of Lift Core	E

Mellon Architectural and Building Services 10 Conдор Crescent Kyle Bay NSW 2221 0418 224 279 02 9546 5516 bus. 02 9383 8572 fax ross.karp@bigpond.com		Prapas House 52 Clareville Ave., Sandringham.		ELEVATIONS_S96-3 Project number 08100 Date 10/04/15 Drawn by PRELIMINARY Checked by - Scale 1 : 100	
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ELEVATIONS - STREET_S96-3	
Project number	08100
Date	10/04/15
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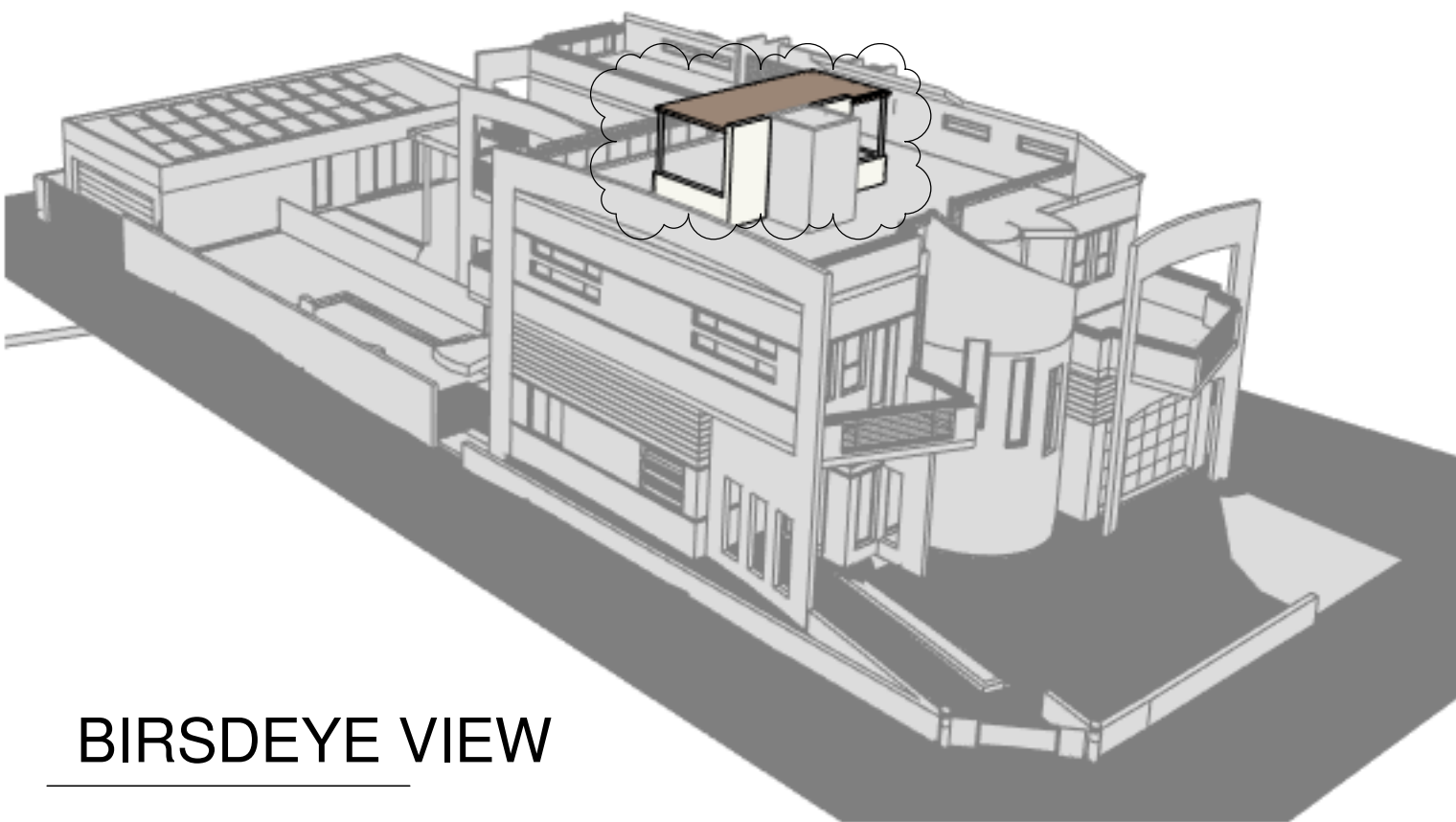


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Mellon Architectural and Building Services 10 Conдор Crescent Kyle Bay NSW 2221 0418 224 279 02 9546 5516 bus. 02 9383 8572 fax ross.karp@bigpond.com		Prapas House 52 Clareville Ave., Sandringham.		ELEVATIONS_S96-3 Project number 08100 Date 10/04/15 Drawn by PRELIMINARY Checked by - Scale 1 : 100	
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CLAREVILLE and SANONI



BIRSD EYE VIEW



CLAREVILLE AVENUE



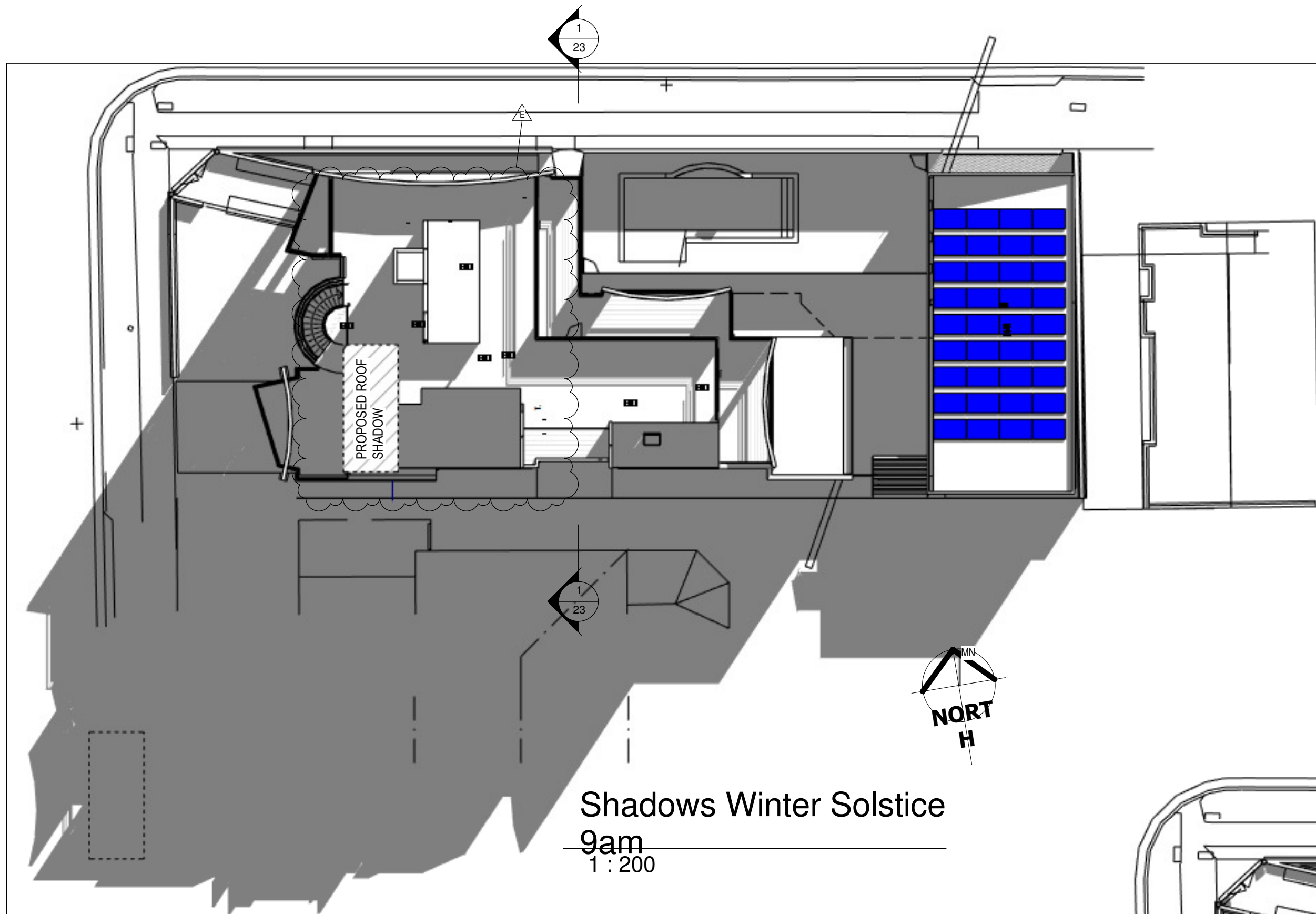
SANONI AVENUE

PRAPAS RESIDENCE
52 CLAREVILLE AVENUE
SANDRINGHAM

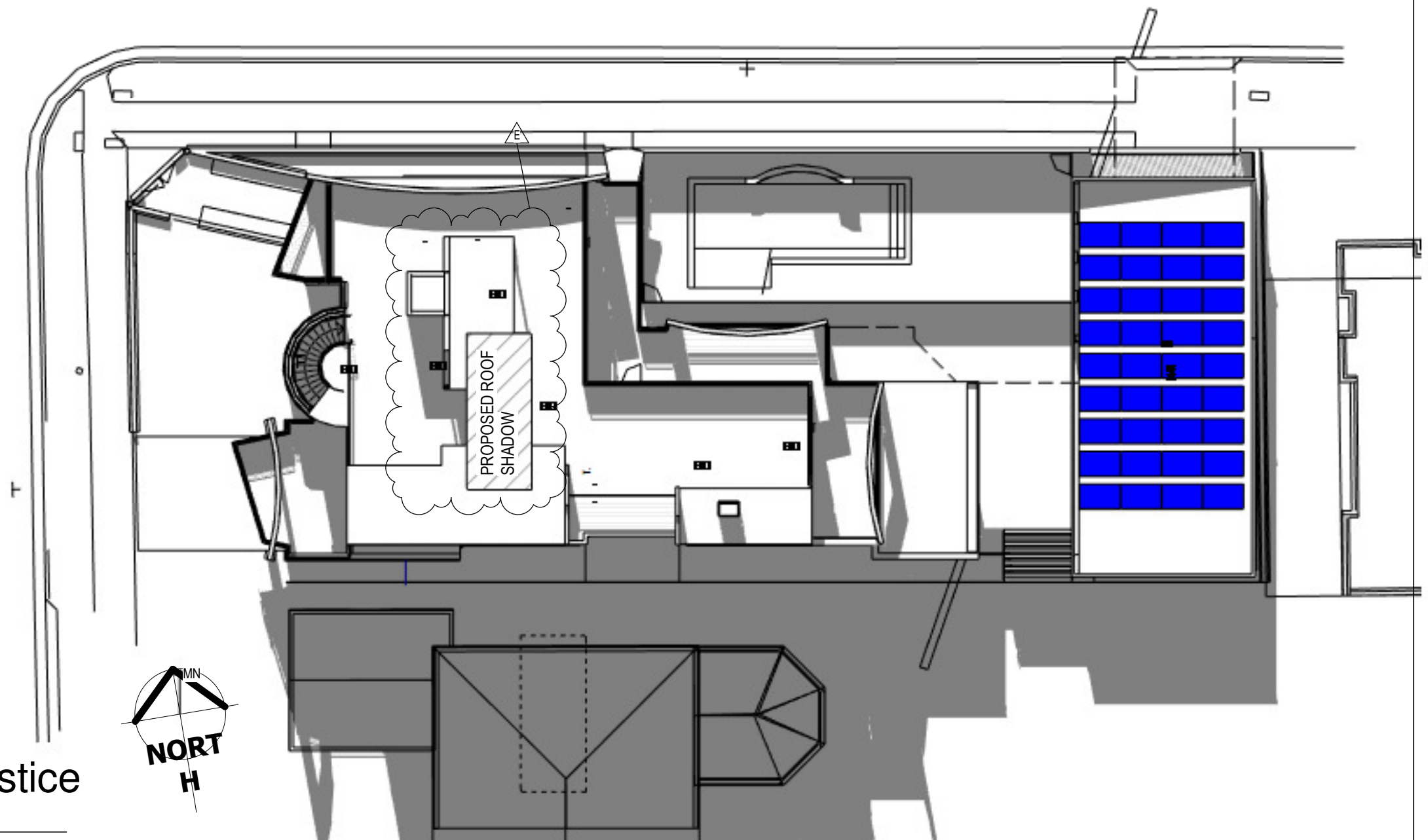
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	01/09/2015	New Section 96 Amendments-see notes on sheet	D
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<div>Mellon Architectural and Building Services 9/83-85 Elouera Rd., Cronulla NSW 2230 0418 224 279 02 9544 3088 bus. 02 9383 8572 fax ross.karp@bigpond.com</div>	<div>Prapas House 52 Clareville Ave., Sandringham.</div>	Cover		
		Project number 08100		<div>oo</div>
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Shadows Winter Solstice
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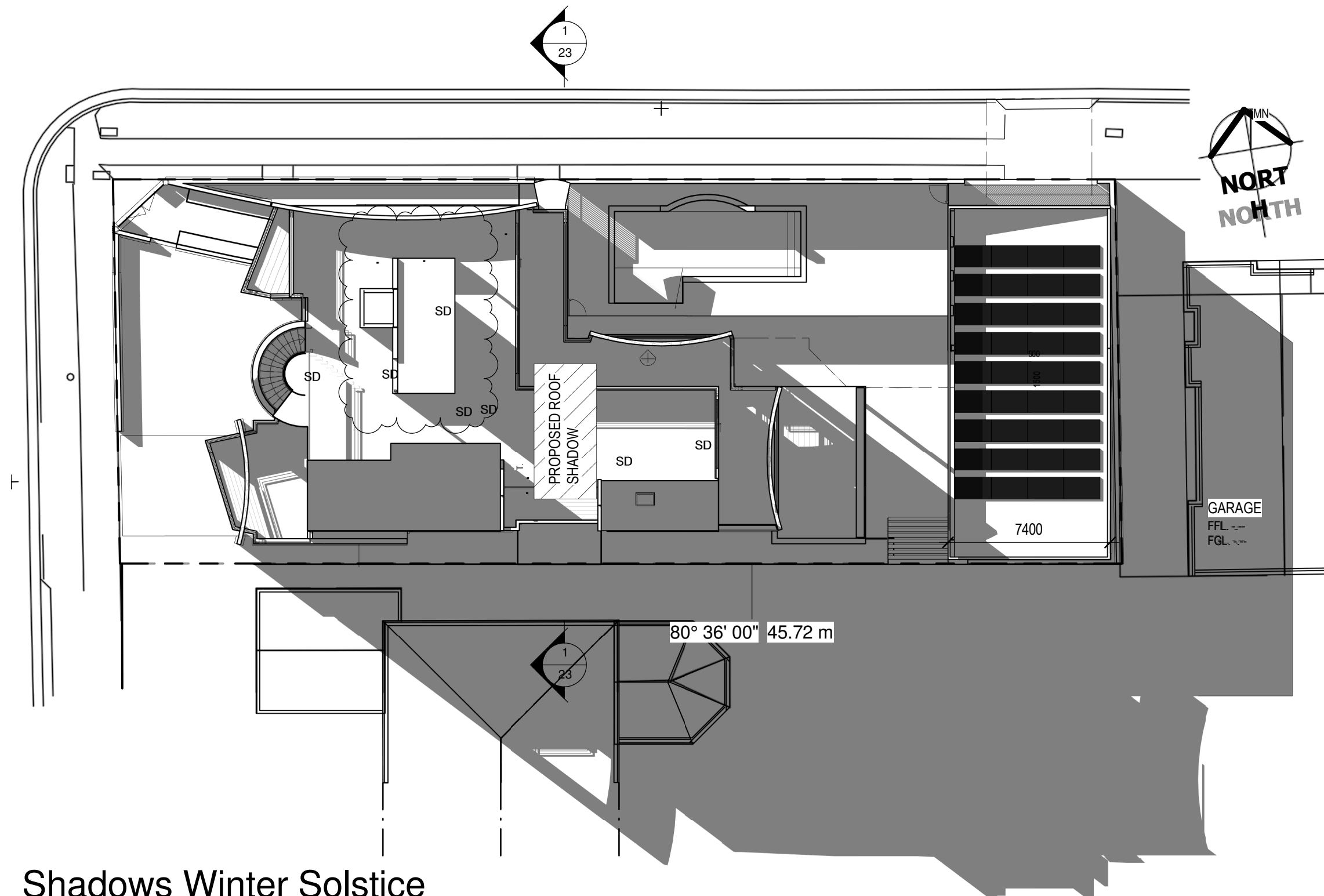
Shadows Winter Solstice
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Mellon Architectural and Building Services
9/83-85 Elouera Rd.,
Cronulla NSW 2230
0418 224 279
02 9544 3088 bus. 02 9383 8572 fax
ross.karp@bigpond.com

Prapas House
52 Clareville Ave., Sandringham.

SHADOWS - Winter Solstice			
Project number	08100	11	Scale 1 : 200
Date	10/04/15		
Drawn by	rak		
Checked by	RAK		



Shadows Winter Solstice
3pm
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Revision Schedule			
Issued to	Revision Date	Revision Description	Revision Number
	08/04/2017	Section 96 3-Lift Zone Roof reduced	E

Mellon Architectural and Building Services
9/83-85 Elouera Rd.,
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Prapas House
52 Clareville Ave., Sandringham.

Shadows Winter Solstice			
Project number	08100	11A	
Date	10/04/15		
Drawn by	Author		
Checked by	Checker	Scale	1 : 200