

REPORT TO APPLICATION DETERMINATION PANEL

Meeting held on 24 September 2015

20 B Marinella Street Manly Vale - Modification of Development Consent DA2012/0564 granted for Construction of a dwelling house

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2015/0088
Responsible Officer:	Charise Chumroonridhi
Land to be developed (Address):	Lot 24 DP 1195888 , 20 B Marinella Street MANLY VALE NSW 2093
Proposed Development:	Modification of Development Consent DA2012/0564 granted for Construction of a dwelling house
Zoning:	LEP - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Warringah Council
Land and Environment Court Action:	No
Owner:	Onk Operations Pty Limited Caroline Jane Weightman Revell Weightman
Applicant:	Tomasy Pty Ltd

Application lodged:	07/05/2015
Application Type:	Local
State Reporting Category:	Other
Notified:	25/05/2015 to 09/06/2015
Advertised:	Not Advertised in accordance with A.7 of WDCP
Submissions:	9
Recommendation:	Approval

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and

Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B5 Side Boundary Setbacks

Warringah Development Control Plan - B9 Rear Boundary Setbacks

Warringah Development Control Plan - D7 Views

Warringah Development Control Plan - D8 Privacy

Warringah Development Control Plan - D15 Side and Rear Fences

SITE DESCRIPTION

Property Description:	Lot 24 DP 1195888 , 20 B Marinella Street MANLY VALE NSW 2093
Detailed Site Description:	No. 20 Marinella Street, Manly Vale comprises three separate parcels of land, all which have individual torrens title. Originally one dwelling house was erected across two of the existing parcels of land with the third parcel, lot 24, vacant and used as a garden landscaped area. At present, the dwelling house has been demolished and all three lots are unoccupied. The subject site in this modification application is for Lot 24 DP 1195888, No. 20B Marinella Street, Manly Vale which is the most southern parcel of land. The subject site has a 6.1m wide frontage with a depth of 40.31m. The site has a surveyed area of an area of 245.6sqm and is located within the R2 Low Density Residential zone. The property is situated on the western side of Marinella Street and is positioned near the end of the cul-de-sac. Adjoining the site to the south is No 22 Marinella Street with a single storey dwelling house. The rear of the subject site backs on to urban bush land. The immediate surrounding area is dominated by one and two storey residential dwellings.

Map:



SITE HISTORY

A search of Council's records revealed the following approval:

DA2012/0564

This application was for the construction of a dwelling-house and was one of 3 Development Applications, lodged at the same time and concurrently assessed, each being for a dwelling house, the 3 applications being related to adjoining lots. The 3 applications were approved by the Application Determination Panel (ADP) on 7 August 2012.

The notification and assessment of DA2012/0564 (along with DA2012/0563 and DA2012/0562 relating to the other two lots) generated a significant number of objections from surrounding and nearby residents primarily in relation to the small size and narrow width of the lots upon which each dwelling house was proposed.

However, as the existing lots each had a legal entitlement for a dwelling house and the merits of the developments were considered satisfactory, the applications were approved.

PROPOSED DEVELOPMENT IN DETAIL

The current application is for the modification of Development Consent No. DA2012/0564, granted for a dwelling-house, consisting of the following works within the rear of the site:

- Construct a retaining wall along the southern and western boundaries to a maximum height of 1.5 metres. This will raise the ground level of the rear yard area by 0.52 metres from the levels approved under the original DA.
- Construct a 1.8 metre timber fence along the southern boundary.
- Construct a pool style fence to a maximum height of 1.2 metres along the southern and

western boundaries which will sit atop of the retaining wall.

- Associated landscaping works along the southern and western boundaries.

Note: After an assessment of the proposal and the issues raised in the submissions, the applicant was requested to submit amended plans. These were received on 3 July 2015 and 31 July 2015. The full list of modifications described above are those contained in the amended plans and the report below is an assessment of these modifications.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment A.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2012/0564, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 96(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(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	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2012/0564.
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning

Section 96(1A) - Other Modifications	Comments
(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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and	and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan.
(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.	See discussion on “Public Exhibition” in this report.

Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 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.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the

Section 79C 'Matters for Consideration'	Comments
	Regulations. No Additional information was requested. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

As a result of the public exhibition process council is in receipt of 9 submission/s from:

Name:	Address:
Bruce Chamberlain Eaton	24 Marinella Street MANLY VALE NSW 2093
Gregory John Pryor	28 Marinella Street MANLY VALE NSW 2093
Peter Francis McCarthy	31 Marinella Street MANLY VALE NSW 2093

Name:	Address:
Mr Sung Bae Oh Hai Soon Oh	18 Marinella Street MANLY VALE NSW 2093
Mary Yeomans	23 Marinella Street MANLY VALE NSW 2093
Matthew Lye Mrs Louise Lye	31 Marinella Street MANLY VALE NSW 2093
Anonymous	N/A
Mr Josef Demian Erica Demian	22 Marinella Street MANLY VALE NSW 2093
Mr Graham Croft Ellison Cheryl Christine Ellison	25 Marinella Street MANLY VALE NSW 2093

Nine (9) submissions were received in total, one of which was an anonymous submission.

Note: The submissions were based on the originally notified plans. After an assessment of the application and a review of the issues raised in the submissions, the applicant was requested to provide amended plans. These amendments went to improving/lessening the impact of the modifications. Given the amendments differed only in minor respects from the original application and did not result in a greater environmental impact, no further notification was deemed necessary.

The following issues were raised in the submissions and each have been addressed below:

- Insufficient information to properly assess this application.
- Proposed modifications do not meet the statutory provisions for Section 96 1(A) Modifications.
- Development Consent No. DA2012/0564 was approved on 7 August 2012 however does not comply with the zoning objectives and requirements of the Warringah Local Environment Plan 2011. Also does not comply with Part B3 Side boundary envelope, Part C2 Traffic, access and safety, Part D1 Landscape open space and Bushland setting, Part D2 Private open space, Part D8 Privacy and Part D9 Building bulk of the Warringah Development Control Plan 2011. In addition, the design of the dwelling and lot sizes is inconsistent with the character, style and density of the locality.
- No engineering reports referring to the proposed modifications and sewer line details were submitted with the application. Also, Sydney Water's approval and requirements has not been addressed.
- The proposed retaining wall will raise the ground level and the height of the building which will have a visual bulk and solar access issues.
- The proposed works may be within the drip line of a tree which would be adversely affected if their roots were damaged.
- The height and length of the proposed retaining wall and side fence will have an adverse visual impact and view loss to No. 22 Marinella Street Manly Vale.
- The proposed raised level and open pool style fence may cause privacy issues for No. 22 Marinella Street Manly Vale.

The matters raised within the submissions are addressed as follows:

- **Insufficient information to properly assess the application**

Concerns were raised regarding the application providing insufficient information to properly assess this application in that the application lacks information regarding the height and length of the side and rear fences and retaining walls.

Comment: Amended plans were provided on 3 July 2015 showing details of the height and length of the side and rear fences and retaining walls. These plans include sections, elevations and a landscape plan. Part A.7 Notification of the WDCP 2011 permits Council to not re-notify amended plans, if it differs only in minor respects and does not result in a 'greater environmental impact'. In this particular case, the amendments differed only in minor respects and will not result in a greater environmental impact to adjoining properties. Therefore, further notification was not deemed necessary.

- **Proposed modifications do not meet the statutory provisions for Section 96 1(A) of the EPA Act, 1979**

Concerns were raised that the proposed modifications are a significant variation to Development Consent No. DA2012/0564 which does not meet the statutory provisions for Section 96 1(A) Modifications.

Comment: The proposed modifications involve changes that are considered to have a minimal environmental impact and are ancillary to the residential nature of the development. Therefore, the proposed modifications can be assessed and approved under Section 96 1(A) of the EP&A Act 1979.

- **Development Consent No. DA2012/0564 does not comply with Warringah Local Environment Plan 2011 and Warringah Development Control Plan 2011. In addition, the design of the dwelling and lot sizes is inconsistent with the character, style and density of the locality**

Comment: These issues relate to the assessment and determination of the original 3 Development Applications and are not relevant to the modifications proposed under the current application.

- **No engineering reports referring to the proposed modifications and sewer line details were submitted with the application. Also, Sydney Water's approval and requirements have not been addressed**

Comment: Engineering reports are not required during the Development Application and Section 96 modification assessment stage. Engineering reports are required to be addressed by the Principal Certifying Authority prior to the issue of the Construction Certificate. A Sewer/Water Quickcheck condition was imposed under DA2012/0564 which is required to be satisfied prior to the issue of the Construction Certificate and will be addressed by the Principal Certifying Authority. This condition will remain as part of the consent and will satisfy Sydney Water's requirements.

- **The proposed retaining wall will raise the ground level and the height of the building which will have a visual bulk and solar access issues to No. 22 Marinella Street Manly Vale.**

Comment: The proposed retaining wall and raised ground level is confined to the rear yard of the site and not to the area of the dwelling. The height of the dwelling will remain unchanged as will the impacts on No. 22 Marinella Street in relation to visual bulk and solar access.

- **The proposed works may be within the drip line of a tree which would be adversely affected if their roots were damaged.**

Comment: The amended plans dated 3 July 2015 were referred to Council's Landscape Officer who assessed the modifications and raised no concerns in relation to the tree.

- **The height and length of the proposed retaining wall and side fence will have an adverse visual impact and view loss to No. 22 Marinella Street Manly Vale.**

Concerns were raised that if a solid 1.8 metre side fence is to be constructed on top of the retaining wall it will create a visually dominating solid wall higher than 1.8 metres which will have an adverse visual impact to No. 22 Marinella Street Manly Vale. Also, No. 22 Marinella Street would lose views of the reserve looking towards north west from the rear yard.

Comment: Amended plans were provided on 3 July 2015 that proposed a timber fence no higher than 1.8 metres when measured from the ground level of No. 22 Marinella Street. The amendments also included a 1.2 metre open style pool fence when measured from the ground level of the subject site.

The change from solid to open style fencing materials, reduces the visual impact and dominance of the proposed works when viewed from No. 22 Marinella Street. The loss of views is discussed in detail under Part D7 - Views, below in this report. In summary, the loss of views is qualitatively considered to be minor as the views of the public reserve can be seen through out most of the rear yard of No. 22 Marinella Street and are not considered to be of significant value.

- **The proposed raised level and open pool style fence may cause privacy issues for No. 22 Marinella Street Manly Vale.**

Concerns were raised that the proposed open pool style fence will allow for direct views into the private open space of No. 22 Marinella Street which is deemed an unreasonable impact to the privacy of the adjoining property.

Comment: Amended plans were provided on 3 July 2015 with a timber fence no higher than 1.8 metres from the ground level of No. 22 Marinella Street and an open pool style fence 1.2 metres above the ground level of subject site. In addition, landscaping has been provided along the southern and western boundaries to minimise overlooking into the private open space of No. 22 Marinella Street. A condition has also been included in the consent to ensure the raised area along the southern boundary is to be maintained as a planter box to ensure privacy is protected.

MEDIATION

Checkpoint 1: The Objections are not a reasonable basis for mediation	Yes
Checkpoint 2: Can objections be dealt with via appropriate conditions	Yes
Checkpoint 4: Are issues not related to the business of Council	Yes
Checkpoint 3: Is the application grossly inconsistent with Councils policies and would be	No

rejected anyway

Checkpoint 5: An assessment of the application has been made by the Officer and it falls outside guidelines above No

Checkpoint 6: It is considered that the unresolved issues will be best resolved at mediation No

Has mediation been conducted? No

Has the applicant agreed to mediation? No

As a result of the public exhibition period Council received 3 requests for mediation. A review of the application revealed that mediation would not be beneficial to the processing of the application as the issues could be conditioned.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<u>Additional Comment 16/07/2015</u> Submission of additional information including amended landscape plan and sections is noted. No objections raised with regard to landscape issues based on the amended plans. It is noted that the amended design of the rear yard still does not indicate how drainage through the rear of the property is now to be achieved. <u>Original comment 13/05/2015</u> There appears to be insufficient information to assess the application. - No indication of proposed wall heights is provided on the plans - No indication of amended drainage is provided with regard to the requirement in the current DA for drainage to be directed to the reserve and the amended rear yard treatment with additional paving, stairs and terraced levels, along with with the proposed walls. This information is considered significant in assessing the potential impacts and feasibility of the proposed amendment, particularly in relation to adjoining properties and the public reserve. At this stage, the proposal cannot be supported due to insufficient information.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

Nil

Warringah Local Environment Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m	Dwelling - 6.5m	Fencing and retaining walls - Maximum of 2.5m	Yes

Compliance Assessment

Clause	Compliance with Requirements
5.3 Development near zone boundaries	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall Height	7.2m	5.9m	Works are a retaining wall and fences	No change
B3 Side Boundary Envelope	4m	4m (outside envelope)	No encroachment	Yes
B5 Side Boundary Setbacks	0.9m	0.9m	Retaining wall - Nil	No
B7 Front Boundary Setbacks	6.5m	6.5m	Works in the rear yard	Yes
B9 Rear Boundary Setbacks	6m	6m	Retaining wall - Nil	No

D1 Landscaped Open Space and Bushland Setting	40%	31.4%	31.4% (No change)	No change
---	-----	-------	-------------------	-----------

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
Side Setbacks - R2	Yes	Yes
Side Setback Exceptions - R2	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
Rear Boundary Setbacks - R2	Yes	Yes
All other land under R2	Yes	Yes
Rear Boundary Exceptions - R2	Yes	Yes
C4 Stormwater	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Description of non-compliance

The development proposes a retaining wall with a nil side boundary setback on the southern elevation, which is a variation of 100% based on the requirement of 0.9 metres.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To provide opportunities for deep soil landscape areas.*
- *To ensure that development does not become visually dominant.*
- *To ensure that the scale and bulk of buildings is minimised.*
- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

- *To provide reasonable sharing of views to and from public and private properties*

Comment:

The modifications consist of a retaining wall and open style pool fence with a nil setback to the southern boundary. The retaining wall will reach a maximum height of 1.3m when measured from the ground level of the adjoining property to the south. The pool fence will be 1.2m in height and will sit on top of the retaining wall.

The retaining wall and the majority of the pool fence will be hidden behind a 1.8m boundary fence. The elements of the pool fence that will protrude above the boundary fence will be of an open style and will have landscape planting behind it.

The works will not result in a loss of landscaped open space. As the retaining wall is screened by the boundary fence and the pool fence is of an open style, the modifications will not become visually dominant. The design of the retaining wall and fencing is innovative and will reduce the visual impacts when viewed from the adjoining property and the public reserve. The landscaping around the rear yard will reasonably protect the privacy of the adjoining properties.

View loss is discussed in detail under Part D7 Views below in this report. In summary, the works will not result in any unreasonable loss of views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B9 Rear Boundary Setbacks

Description of non-compliance

The development proposes a retaining wall with a nil rear boundary setback on the western elevation, which is a variation of 100% based on the requirement of 0.9 metres.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure opportunities for deep soil landscape areas are maintained.*
- *To create a sense of openness in rear yards.*
- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*
- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*
- *To provide opportunities to maintain privacy between dwellings.*

Comment:

The modifications along the rear boundary consist of a retaining wall and open style pool fence with a nil setback. The retaining wall will reach a maximum height of 1.5m when measured from the ground level of the adjoining public reserve. The pool fence will be 1.2m in height and will sit on top of the retaining wall. The pool fence will be of an open style and

will have landscape planting behind it.

The works will not result in a loss of landscaped open space and will retain the existing sense of openness in the rear yard. The landscaping around the rear yard will reasonably protect the privacy of the adjoining properties and will also prevent overlooking into the subject site from the public reserve.

The rear yard will remain open and will remain reasonably consistent with the established pattern of buildings, rear gardens and landscape elements in the vicinity.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D7 Views

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To allow for the reasonable sharing of views.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

Views from No. 22 Marinella Street of a portion of the public reserve and bushland to the rear of the site will be affected by the modifications.

2. What part of the affected property are the views obtained

"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

Comment to Principle 2:

The views are obtained from the rear yard of No. 22 Marinella Street from sitting and standing positions. The affected views are over the side boundary shared with No. 20B Marinella Street. The views of the public reserve over the rear boundary of No. 22 Marinella Street will be unaffected.

3. Extent of impact

“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.

Comment to Principle 3:

The views that will be affected consist of a portion of the public reserve and bushland. These views are obtained over a side boundary and from a rear yard. All views of the public reserve currently obtained over the rear boundary will be unaffected.

In this regard, the view loss is considered to be minor.

4. Reasonableness of the proposal that is causing the impact

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

Comment to Principle 4:

The views are clearly important to the residents of No. 22 Marinella Street, however, all affected views are obtained over a side boundary and all views obtained over the rear boundary will be retained.

The design of the retaining wall, open style pool fence, timber boundary fence and landscape planting is an innovative solution that, given the circumstances of the site, is considered to be reasonable.

As such, the proposal will result in a reasonable sharing of views.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The design of the retaining wall, open style pool fence, timber boundary fence and landscape planting is an innovative solution.

- *To ensure existing canopy trees have priority over views.*

Comment:

The existing canopy trees will not be affected by the proposed development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D8 Privacy

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*
- *To encourage innovative design solutions to improve the urban environment.*
- *To provide personal and property security for occupants and visitors.*

Comment:

The proposed development raises the ground level in the rear yard along the southern boundary which may cause privacy impacts for the adjoining property at No. 22 Marinella Street. Amended plans were provided on 3 July 2015 and 31 July 2015 involving new screen planting that will mature to a height of 1.5m - 6m along the southern and western boundaries.

A planter box will also be required to be constructed along the southern boundary to ensure that area is non-trafficable and is maintained as a dense, planted garden bed.

Therefore, the privacy issues has been addressed and the proposal meets the objectives and requirements of Part D8 Privacy of the WDCP 2011.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D15 Side and Rear Fences

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The development proposes two side fences and a rear fence. The fencing adjoining No. 22 Marinella Street comprises a timber fence to 1.8 metres in height measured from the ground level of No. 22 Marinella Street and an open style pool fence 1.2 metres in height measured from the ground level of the subject site and 2.6 metres in height measured from the ground level of No. 22 Marinella Street .

The use of the two fences is an innovative design solution to reduce the visual and amenity impact on the adjoining property and the environment. The timber fence is provided to visually separate the two lots and screen the proposed retaining wall with a fence that is consistent with the residential area.

The pool fence functions as a safety fence for the occupants of the subject site. The open style and lightweight design of the fence avoids the neighbours feeling blocked in as opposed to a continuous solid wall and is more visually appealing.

Therefore, the proposal meets the requirements and objectives of Part D15 Side and Rear Fences of the WDCP 2011.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

Section 94 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval Modification Application No. Mod2015/0088 for Modification of Development Consent DA2012/0564 granted for Construction of a dwelling house on land at Lot 24 DP 1195888, 20 B Marinella Street, MANLY VALE, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
LPDA 12 - 328 / D3 Issue F	July 2015	Conzept Landscape Architects
LPDA 12 - 328 / D4 Issue B	July 2015	Conzept Landscape Architects
LPDA 12 - 328 / D5 Issue B	July 2015	Conzept Landscape Architects
LPDA 12 - 328 / D6 Issue B	July 2015	Conzept Landscape Architects

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

B. Add Condition No. 1B - Retention and Maintenance of Screen Landscaping to read as follows:

The landscaping within the planter boxes adjoining the southern boundary is to be retained and maintained in perpetuity.

Reason: To ensure the privacy of the adjoining property is protected.

CONSULTANTS INFORMATION

Refer to the Bushfire Risk Assessment Report prepared by Bushfire Planning Services for all information on the proposed APZ & IPA recommendations.

Refer to Hydraulic plans and details prepared by ALW Design Civil Engineering Consultants for all information on drainage works including retaining walls and grading that form part of the drainage design.

Refer to Architectural plans and details prepared by Sekisui House for all information on the Townhouse design & construction.

PLAN PREPARED FOR DA ONLY
NOT FOR CONSTRUCTION



LEGEND & SCHEDULE

Note: Landscape Contractor to verify plant quantities with Landscape Architect prior to ordering.

Native Trees
Elaeocarpus reticulatus
Blueberry Ash (Native)
Pot size: 25Lt
Mature H x S: 4-6m x 2-3m
Qty Required: 1

Corymbia "Summer Red"
Flowering Gum (Native)
Pot size: 100Lt
Mature H x S: 4-6m x 3-4m
Qty Required: 1

Backhousia myrtifolia
Grey Myrtle (Native)
Pot size: 75Lt
Mature H x S: 4-5m x 2-3m
Qty Required: 1

Deciduous Trees
Gleditsia "Ruby Lace"
Ruby Honey Locust (Exotic)
Pot size: 75Lt
Mature H x S: 5-6m x 3-4m
Qty Required: 2

Shrubs
Acmena "Cherry Red"
Cherry Red Lillypilly (Native)
Pot size: 200mm
Mature H x S: 2m x 1.5m
Qty Required: 7

Syzygium "Cascade"
Cascade Lillypilly (Native)
Pot size: 200mm
Mature H x S: 2m x 1.5m
Qty Required: 22

Kunzea ambigua "Rivan"
Tick Bush (Native)
Pot size: 200mm
Mature H x S: 2m x 1.5m
Qty Required: 2

Grasses / Groundcovers
Viola hederacea
Native Violet (Native)
Pot size: 150mm
Mature H x S: 200mm x 900mm
Qty Required: 40

Dianella "Little Jess"
Dwarf Blue Flax Lily (Native)
Pot size: 150mm
Mature H x S: 400mm x 400mm
Qty Required: 35

Trachelospermum jasminoides
Star Jasmine (Exotic)
Pot size: 300mm
Mature H x S: 300mm x 900mm
Qty Required: 35

Hedges
Acmena "Hedgemaster"
Dwarf Hedge Lillypilly (Native)
Pot size: 300mm
Mature H x S: 1m x 1m
Qty Required: 6

Feature Plants
Doryanthes excelsa
Gymea Lily (Native)
Pot size: 200mm
Mature H x S: 1.5m x 1m
Qty Required: 4

Cordylina "Red Sensation"
Red Cordylina (Native)
Pot size: 200mm
Mature H x S: 1.5m x 1m
Qty Required: 4

Phormium "Copper Shot"
Copper NZ Flax (Exotic)
Pot size: 200mm
Mature H x S: 700mm x 700mm
Qty Required: 3

Other Landscape Items

Brick garden edging - refer Detail

Specified turf to graded and drained open areas as indicated - refer Detail

Stepping stones in 75mm Pebble as nominated by the Client - refer Detail

Masonry retaining wall - refer Detail.

Retractable clothes line - style and colour nom. by Client.

Trees proposed to be removed and replaced with new landscaping

Existing trees proposed to be retained and protected - refer Tree Survey.

Existing street tree to be removed and replaced as indicated - refer Tree Survey.

New crossover to Council's spec.

New concrete driveway - colour and style nom. by Client.

New letterbox to comply with Aust. post standards.

LANDSCAPE PLAN NOTES

NB: This plan should be read in conjunction with the architectural and hydraulics plans. Work specific to these plans should be prepared in accordance to these plans, including specification and details prior to the installation of landscaping, and should not be altered or compromised during landscape construction. **Retaining wall details to engineers design.** Elements such as drainage swales may be incorporated in garden bed areas (using non-floatable mulch) without compromising the capacity or form.

This plan has been prepared for DA approval only, not for construction.

This plan has been prepared with reference to **Warringah Councils** Landscaping Guidelines & requirements. Planting proposed using commercially available plant species selected from local planting lists and the BASIX local plant list and from Sydney Waters "Plant Selector" web site one-drip rated native plants (**acceptable for Basix planting**).

The Design & location of new letter boxes shall be in accordance with Australia Post's "Requirements for Delivery of Mail to Residential Premises" published Feb '97. All noxious weeds listed in Councils weed lists & located on the site shall be continually removed & suppressed. Pollution, sediment & erosion control devices as specified shall be in place, and maintained for the duration of the construction period. D.A approved landscape plan's are required to be constructed as approved to obtain occupancy certificate.

IRRIGATION

The client may choose to have an approved automated drip-irrigation system installed to garden bed areas prior to planting. This system shall be designed and installed by a qualified, licensed irrigation specialist to suit the garden layouts and planting species nominated in the design. Note that endemic and native planting will not require significant watering once established, and that a longer maintenance period should be considered in lieu of irrigation.

Irrigation systems shall be installed in accordance to the latest Sydney Water Irrigation regulations and times, and shall consist of the necessary components to ensure safe, efficient operation. Such components shall include a back-flow prevention valve and moisture sensor to prevent watering during wet periods. The irrigation shall be tested and approved upon completion, and monitored / maintained at 6 monthly periods.

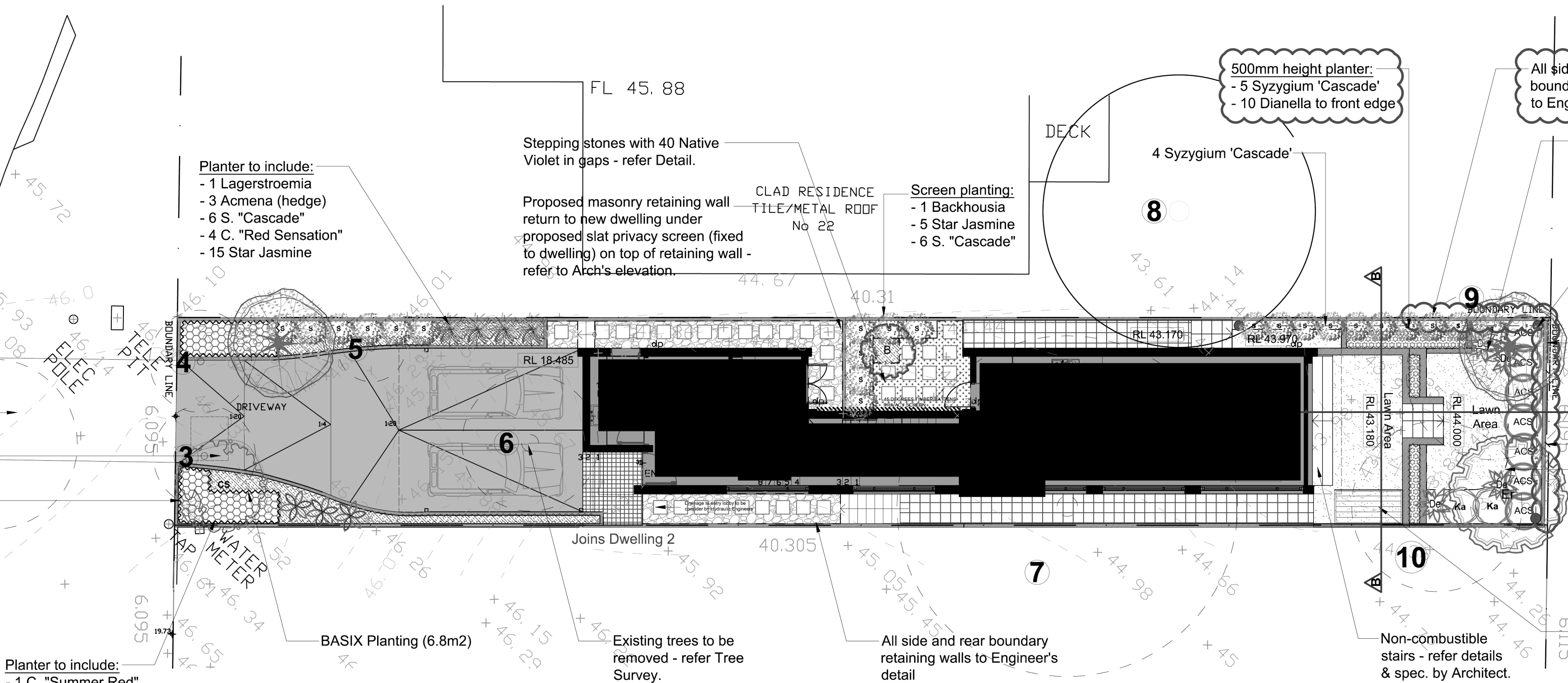
LANDSCAPE MAINTENANCE SCHEDULE

After a landscape compliance certificate has been issued to the Principal Certifying Authority approving the correct installation of landscape construction works and Practical Completion, the maintenance period shall begin.

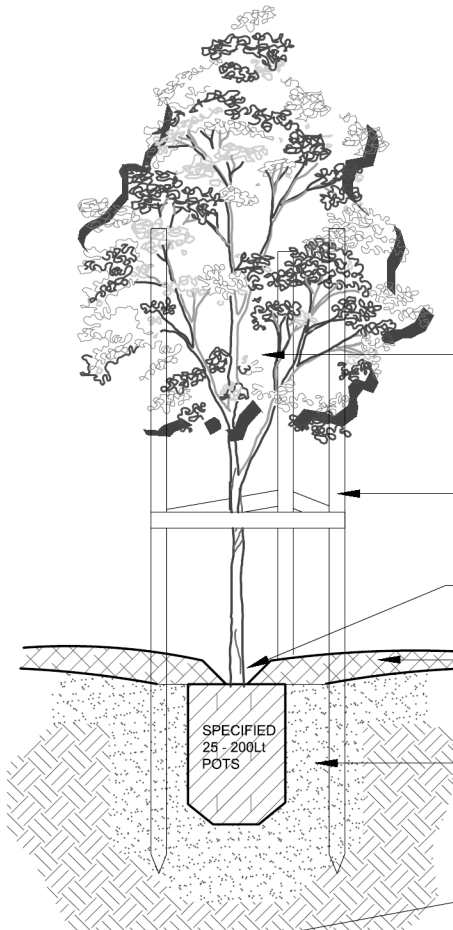
Consolidation & landscape maintenance shall mean the care and maintenance of the contracted landscape works using acceptable horticultural practices, ensuring that all plants and planting areas experience the optimum growing conditions and are in excellent appearance at all times, as well as the rectification of defects which have resulted from regular use.

The landscape maintenance period shall be a minimum of **3 months (12 weeks)** or as required by Council, or requested by client, from the certificate date, and shall include, but not be limited to the following maintenance works;

- Replacement of dead, damaged, stolen, unhealthy or diseased plants (at the reasonable discretion of client / landscape architect)
- Watering all garden areas as required by hand to ensure plant establishment without loss / irrigation maintenance (monitor soil moisture)
- Clearing litter and other debris from landscaped & lawn areas
- Monitoring for pests and disease & as required
- Fertilizing with approved fertilizer at rates applicable to plant species
- Adjusting stakes and ties / removing as tree mature
- Mowing lawn areas, watering, edging and weeding as required (Mowing at period of 18 days during summer & 21 during winter)
- Topping up mulch areas and keeping beds free or weeds
- Making good areas of soil subsistence or erosion & repair problem
- Maintaining all hard and semi permeable areas including paving / raking gravel and decomposed granite areas, cleaning / weeding paving etc)

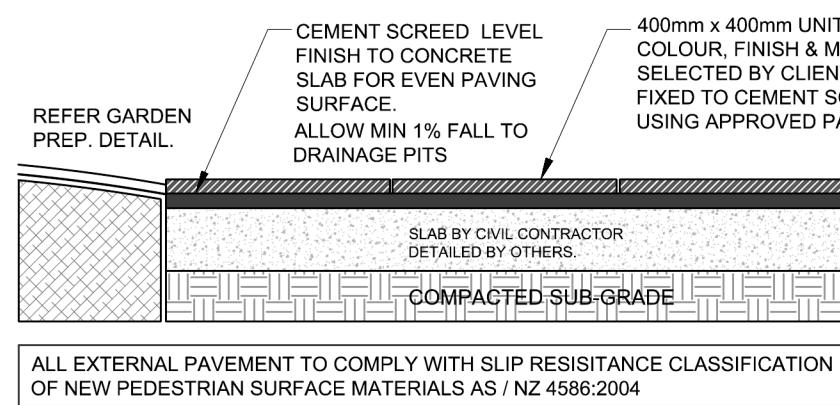


Planter to include:
- 1 C. "Summer Red"
- 3 P. "Copper Shot"
- 15 Star Jasmine
- 3 Acmena (hedge)



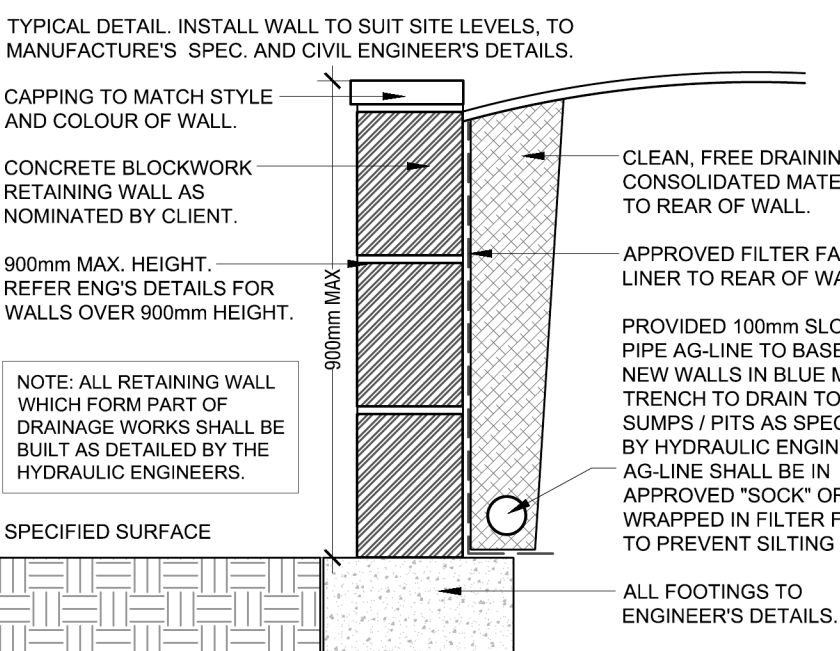
INDIVIDUAL TREE PLANTING DETAIL

approx 1:10



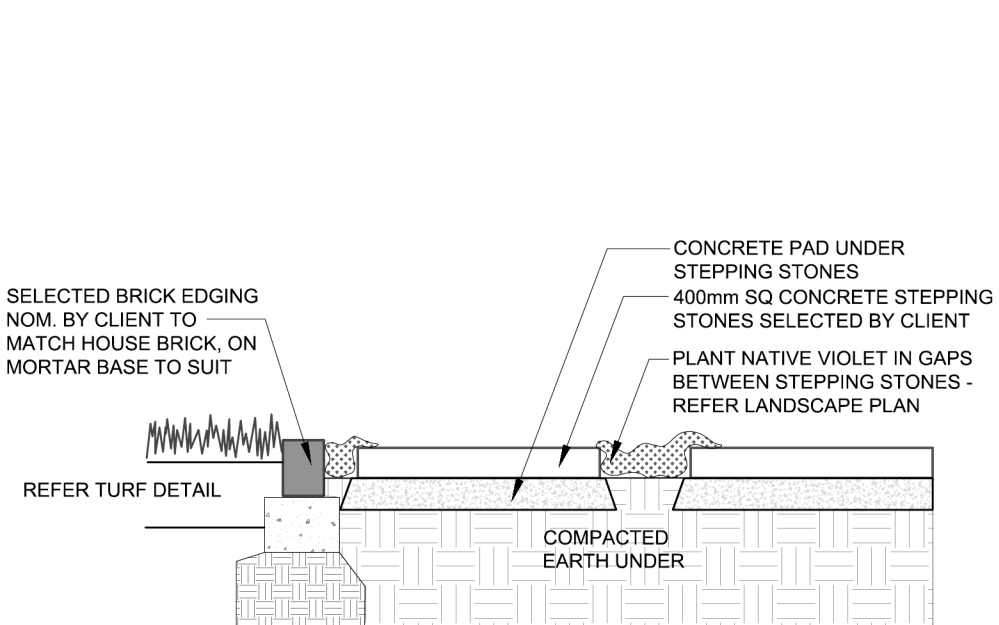
TYPICAL PAVING ON SLAB

approx 1:10



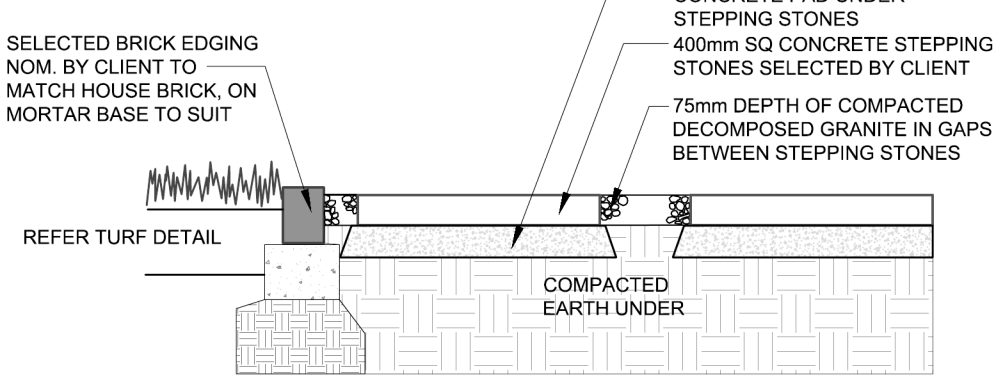
MASONRY RETAINING WALL DETAIL

approx 1:10



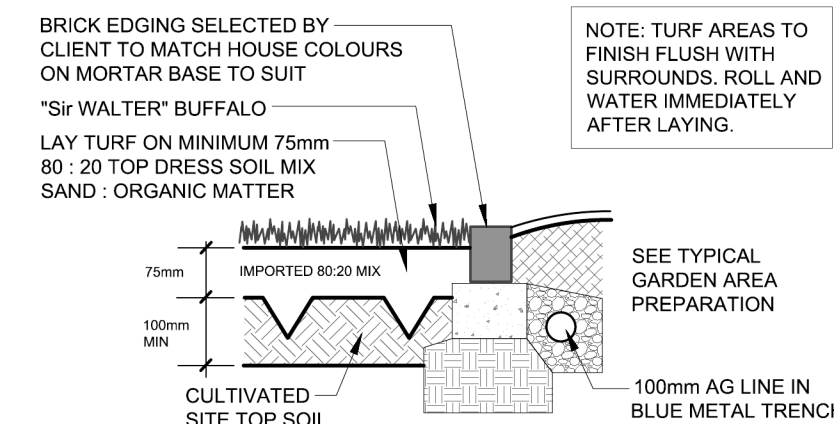
STEPPING STONES & VIOLET DETAIL

approx 1:10



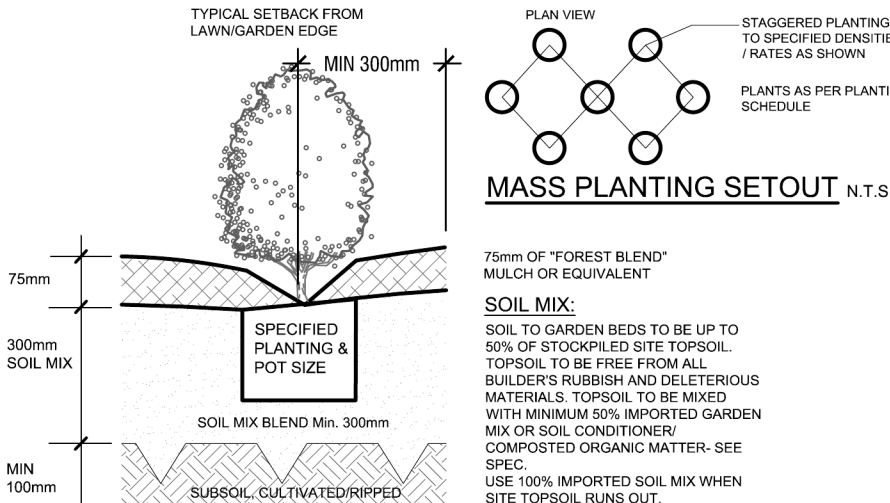
STEPPING STONES & BRICK EDGE DETAIL

approx 1:10



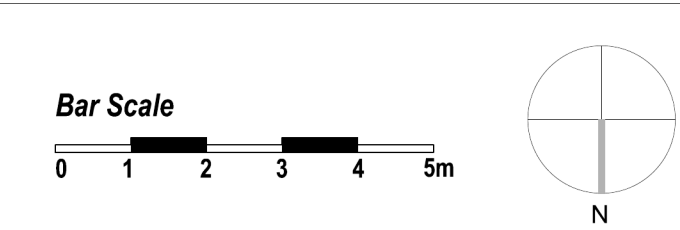
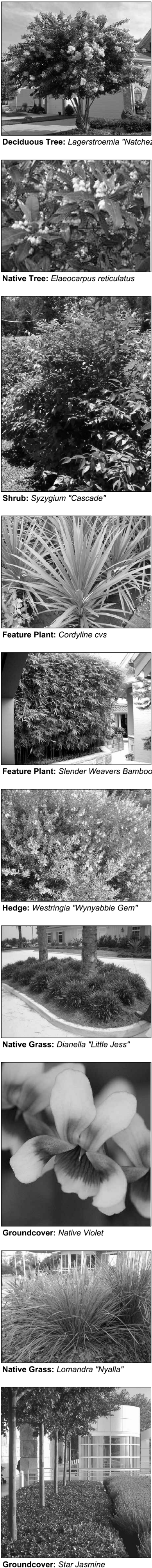
TYPICAL TURFING & BRICK EDGING

approx 1:10



TYPICAL GARDEN AREA PREPARATION

approx 1:10



ARCHITECT:

LANDSCAPE ARCHITECT:



Suite 101, 506 Miller Street,
CAMMERAY NSW 2062
Phone: 9622 5312
Fax: 9209 4862
Mob: 0413 861 351
www.concept.net.au
enquiries@concept.net.au

CLIENT
LEGACY PROPERTY
PH (02) 9252 1111 FAX (02) 9475 5151
LANDSCAPE ARCHITECT
CONCEPT
PH (02) 9438 1744 FAX (02) 9438 1766
ARCHITECT
SEKISUI HOUSE
PH (02) 9848 8438 FAX (02) 9848 6401

REV	DATE	NOTATION/AMENDMENT
A	30/04/12	Preliminary plan prepared for review
B	24/04/15	Rear landscape amended to suit revised survey and new sewer location
C	30/04/15	Labeling revisions and clouding amendments
D	15/06/15	Sections added
E	03/07/15	Boundary fencing and screen planting revisions
F	31/07/15	Additional planting added along rear southern boundary as instructed

PROJECT:

TOWNHOUSE DEVELOPMENT
AT
**20 MARINELLA STREET,
MANLY VALE**

TITLE:

LANDSCAPE PLAN

ISSUE:

DWG No:

LPDA 12 - 328 / D3

PLOTTED:

STATUS:

DEVELOPMENT APPLICATION

SCALE:

1:100 @ A1

DATE:

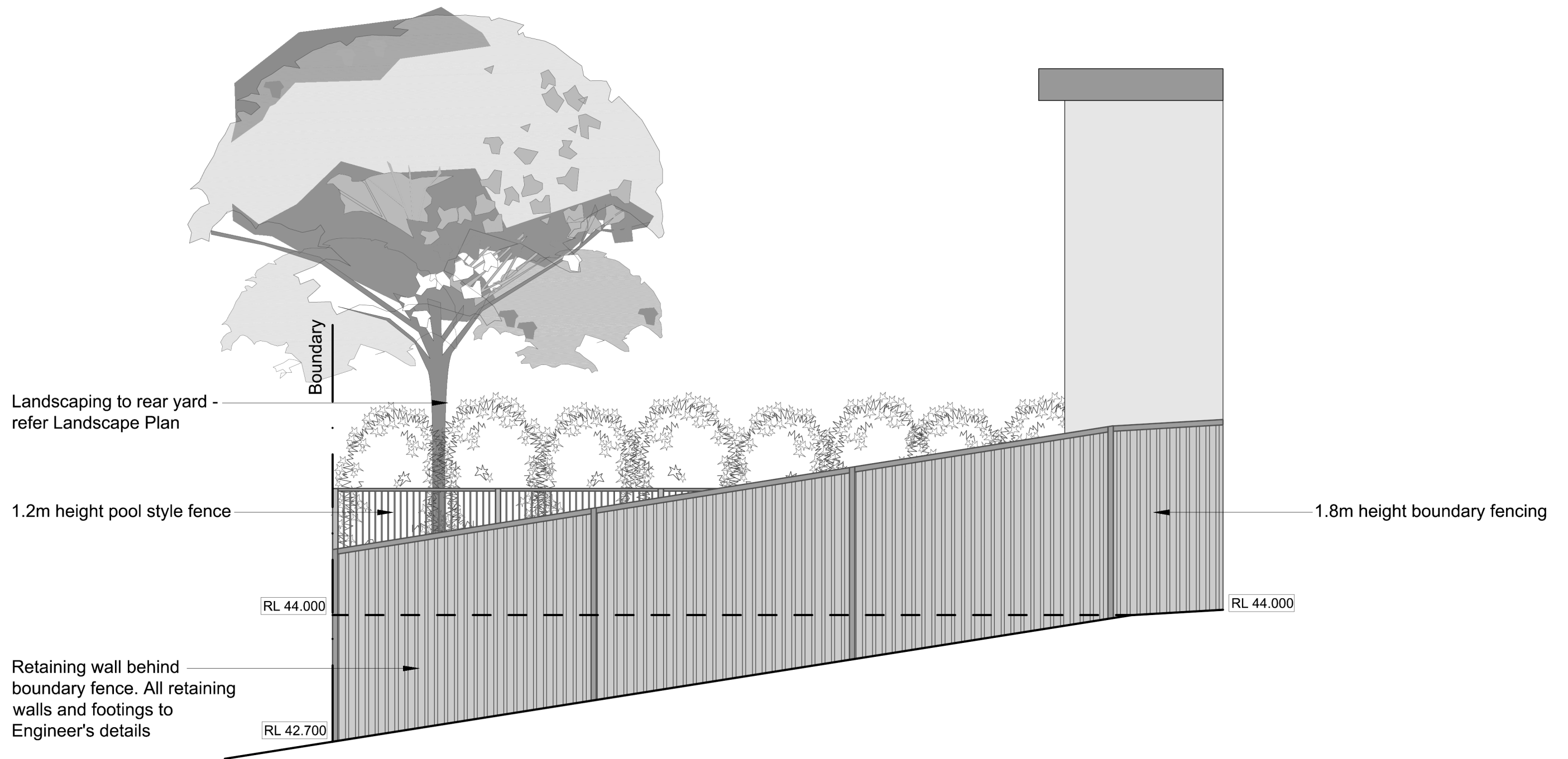
JULY 2015

JOB NO:

DRAWN:

CHECKED:

APPROVED:



SOUTHERN ELEVATION: REAR YARD LANDSCAPE

SCALE 1:40

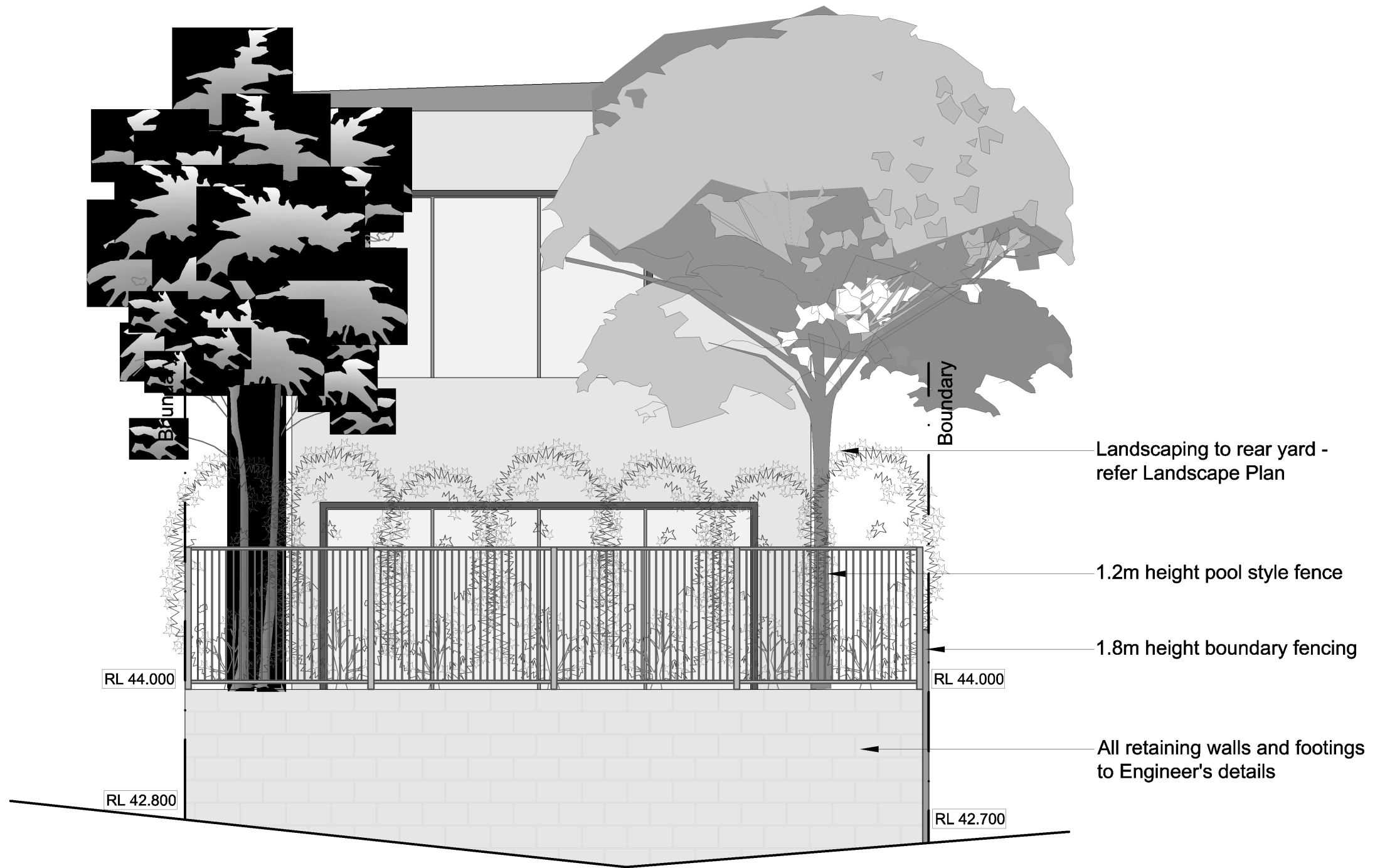
ISSUE:	DATE:	AMENDMENT:
B	03/07/15	Boundary fencing and screen planting revisions
TITLE:		
LANDSCAPE ELEVATION		
DWG.No:	ISSUE:	PLOTTED:
LPDA 12 - 328 / D6	B	JULY 2015

Conzept
Landscape Architects

Suite 101, 506 Miller Street,
CAMMERAY NSW 2062

Phone: 9922 5312
Fax: 8209 4982
Mob: 0413 861 351

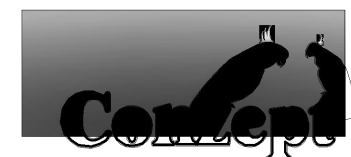
www.conzept.net.au
enquiries@conzept.net.au



WESTERN ELEVATION: REAR YARD LANDSCAPE

SCALE 1:40

ISSUE:	DATE:	AMENDMENT:
B	03/07/15	Boundary fencing and screen planting revisions
TITLE:		
LANDSCAPE ELEVATION		
DWG.No:	ISSUE:	PLOTTED:
LPDA 12 - 328 / D5	B	JULY 2015

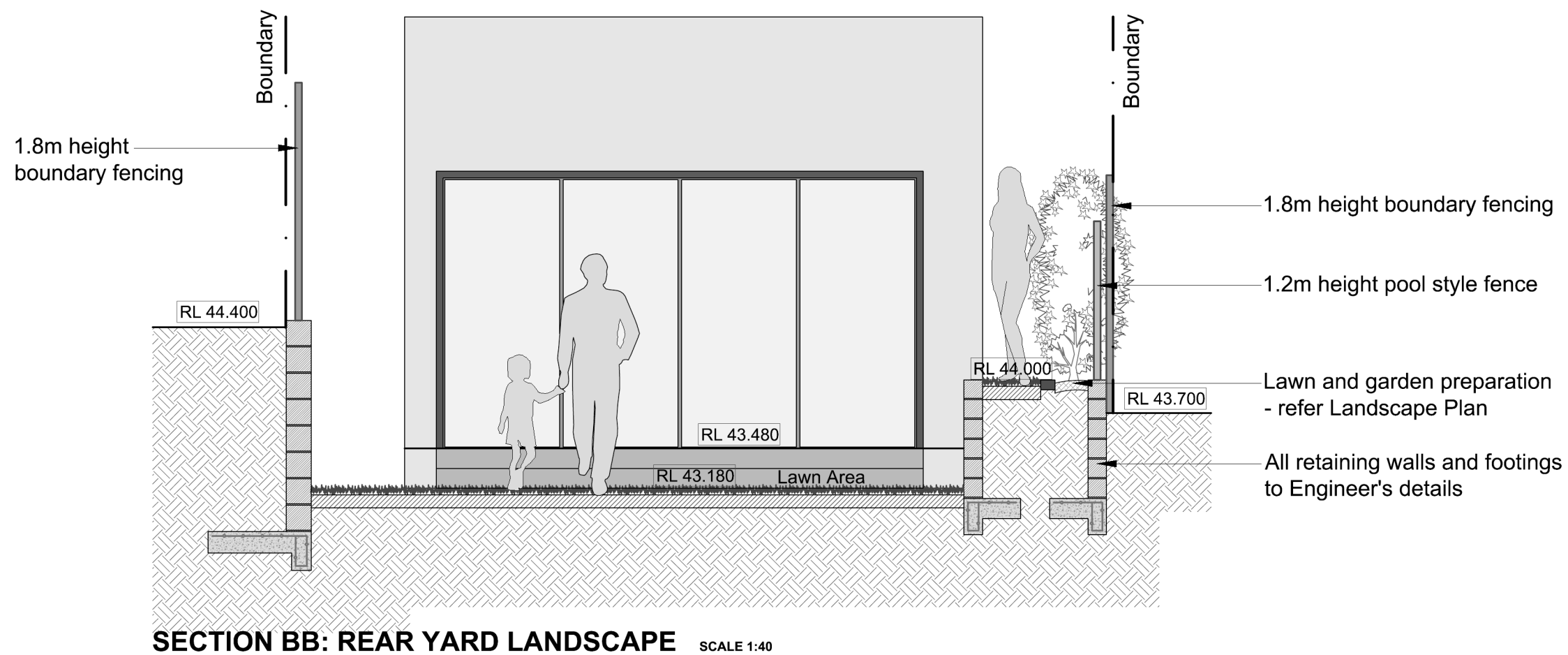
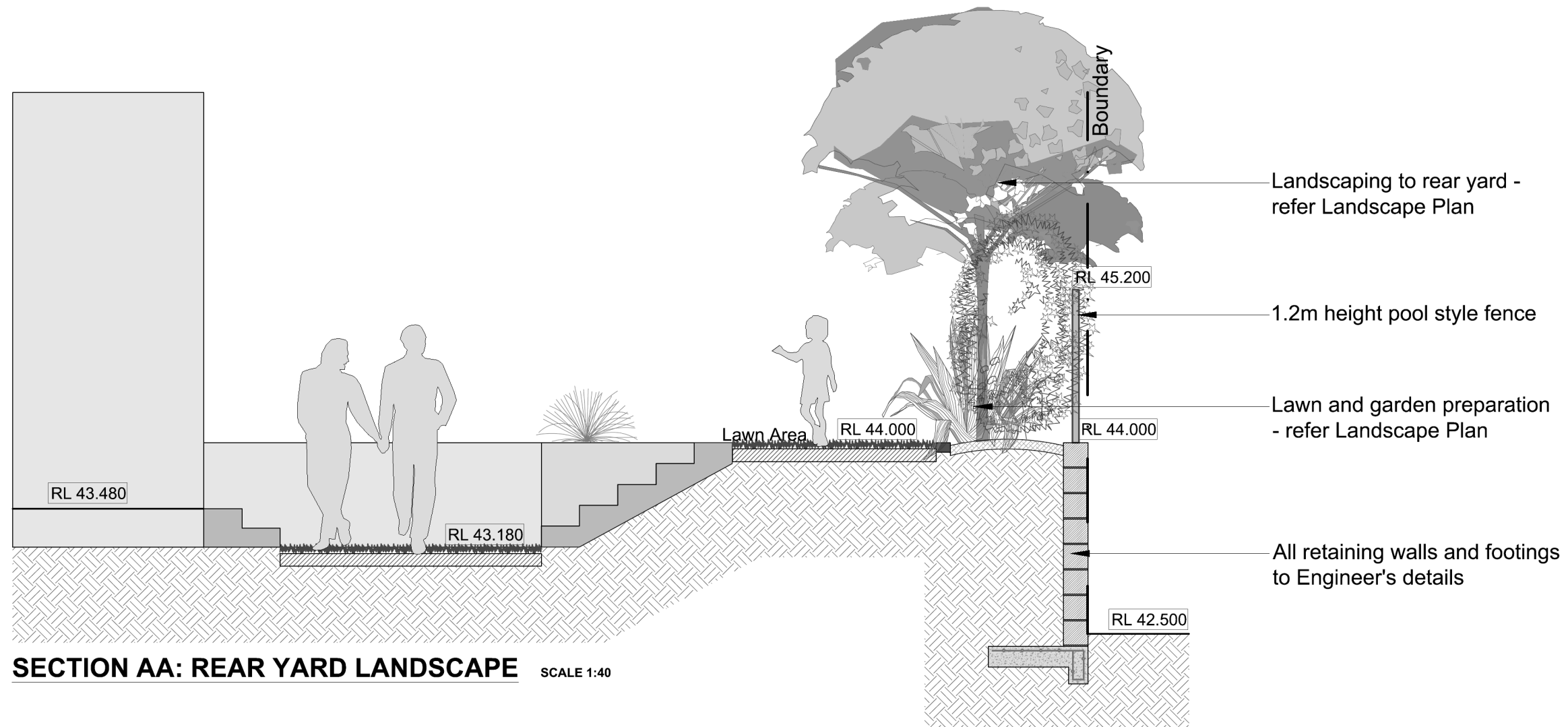


Landscape Architects

Suite 101, 506 Miller Street,
CAMMERAY NSW 2062

Phone: 9922 5312
Fax: 8209 4982
Mob: 0413 861 351

www.conzept.net.au
enquiries@conzept.net.au



ISSUE:	DATE:	AMENDMENT:
B	03/07/15	Boundary fencing and screen planting revisions
TITLE:		
LANDSCAPE SECTIONS		
DWG.No:	ISSUE:	PLOTTED:
LPDA 12 - 328 / D4	B	JULY 2015
		
Suite 101, 506 Miller Street, CAMMERAY NSW 2062 Phone: 9922 5312 Fax: 8209 4982 Mob: 0413 861 351 www.conzept.net.au enquiries@conzept.net.au		