



5 April 2016

DHB:RB\15-190

General Manager
Bathurst Regional Council
158 Russell Street
Bathurst NSW 2795

Attn Richard Denyer and Lucie Clifton

Dear Richard and Lucie,

Re Land at 105 Stanley Street and Peel Street, Bathurst – Residential Care Facility

We write in response to Council's letter dated 4 March 2014 requesting additional information and comments on the matters raised in the submission from the owner of the adjoining site at 81 Stanley Street.

We thank Council for the opportunity to attend the discussion forum on the application on 21 March 2016 and to explain the development application to the owner of the adjoining site. It was a productive and helpful discussion.

The additional information is as follows.

1. Height of Buildings

Clause 48 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 provides that a consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a residential care facility if all proposed buildings are 8 metres or less in height.

Height in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.

Ground level means the level of the site before development is carried out pursuant to this Policy.

The ceiling of the top most floor is shown as RL658 metres. As can be seen from the survey submitted with the application, the existing site levels vary slightly over the site as a consequence of general site undulations. Along the common boundary with the child care centre, the site levels are in the order of RL650.44 metres. Along the north western boundary, site levels are marginally higher at RL650.8. They are also higher along the north eastern boundary and the south eastern boundary.

Thus there is overall compliance with this height control.

2. Distance to Transport Services

In relation to the provisions of clause 26 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, there is a non-compliance in relation to access to the nearest bus stop. Consequently a written request prepared pursuant to clause 4.6 of Bathurst Local Environmental Plan 2014 that seeks to justify the contravention of the development standard contained in clause 26 of SEPP (Housing For Seniors) 2004 (**Attachment 1**).

Development envisaged under the SEPP includes independent living units and residential care facilities (nursing homes). The average age of residents moving into an Opal residential care facility is approximately 85+. The frailty of residents entering such facilities is increasing as people are encouraged to stay in their own home longer with support services provided to the home.

Residents do not have the ability to independently access bus services or nearby centres. All services have to be provided on site to the residents or they need to be transported by ambulance or other means to the medical or community services they require.

In the case of the proposed development such access will be provided to residents as this is the very nature and intention of the facility. All necessary care and support services will be provided for residents on the site with appropriate arrangements made for the provision of all services of the type referred to in clause 26(1).

3. Matters Raised by adjoining land owner

Drainage

Further to discussions at the discussion workshop at Council on 21 March, further details of the proposed drainage system adjoining the child care centre site have been provided and are contained in **Attachment 2**. This includes:

- Revisions to Dwg No DA_C101 and C102 (R02) to show section locations;
- Additional drawing DA_C115 (R01) to show the cross sections;
- Revised landscape plan clarifying the location of the pathway in the vicinity of the child care boundary and the edge condition including landscaping and associated cross-sections (**Attachment 3**).

These show that any water flowing from the child care centre onto the subject site would be collected in a proposed grass swale and transferred off site.

The details provided confirm that the site filling would not extend to the site boundaries.

Overshadowing

Additional shadow diagrams for each half hour have been prepared and were presented at the discussion workshop. These are included in **Attachment 4**. These show that the overshadowing is minimal and passes across the child care site quickly. The worst case shadowing occurs at 9am mid-winter on 21st June. However, the shadows retreat quickly by noon and are gone by 1:30pm. The farm animal area would be free of shadow by about 10.00am.

The orientation of the wing has been carefully orientated to minimise the overshadowing by aligning the length of the building north-south, ensuring morning shadows are minimised.

It is considered that the overshadowing impacts of the development are minimal.

Setback to child care centre

The building is setback some 2.8 metres from the adjoining south west boundary with the child care centre (2.5 metres to the eave line) and is only at this distance for the corner of the building with setbacks increasing. This is in excess of what would be required for any other form of residential building of this height. The development presents a narrow frontage to the adjoining site.

The development would result in an improved appearance of the subject site and would result in the removal of rubbish and weeds currently adjoining the child care centre site.

The proposed development is appropriate adjoining the child care centre and adjoining an independent living unit development to the north west. Further, discussion with the child care centre representative at the discussion forum regarding the privacy and security concerns raised in their submission addressed these concerns. The proposed retaining wall is setback from the boundary so as not to create a security issue. The orientation of the building addressed outlook away from the child care centre. Aged care is an appropriate co-located use. The courtyard adjacent to the child care centre is not designed for resident use and thus does not require a separate security fence. The existing fence along the boundary with the child care centre will be retained.

Yours faithfully

BBC Consulting Planners

A handwritten signature in blue ink, appearing to read 'Dan Brindle', with a stylized flourish at the end.

Dan Brindle

Director

Email dan.brindle@bbcplanners.com.au



Attachment 1 – Clause 4.6 Objection



**WRITTEN REQUEST PREPARED PURSUANT TO
CLAUSE 4.6 OF BATHURST LOCAL
ENVIRONMENTAL PLAN 2014 IN RELATION TO A
VARIATION WHICH IS SOUGHT TO THE
DEVELOPMENT STANDARD CONTAINED IN
CLAUSE 26 OF SEPP (HOUSING FOR SENIORS)
2004**

DA 2016/0030

**Submitted in Support of a Development Application
for a Residential Care Facility at Stanley Street,
Bathurst**

**Prepared for
Opal Aged Care**

**By
BBC Consulting Planners**

Job No: 15-190

April 2016

Table of Contents

1.	INTRODUCTION	1
2.	CLAUSE 4.6	3
3.	IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE AND ARE THERE SUFFICIENT PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE STANDARD?	4
3.1	Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?.....	4
3.2	Are there sufficient environmental planning grounds to justify contravening the development standard?.....	5
3.3	Has this written request adequately addressed the matters required to be demonstrated by sub-clause (3)?	6
4.	IS THE DEVELOPMENT IN THE PUBLIC INTEREST?	7
4.1	Consistency with the objectives of the SEPP (Housing for Seniors).....	7
4.2	Consistency with the objectives of the zone.....	7
5.	CONCLUSION.....	9

1. Introduction

This written request has been prepared as part of a Development Application (“DA”), lodged pursuant to Section 78A of the Environmental Planning and Assessment Act 1979, for the construction of a new 164-bedroom residential aged care facility (“RACF”) and associated works (“the proposal”) on land at Stanley Street, Bathurst (“the site”).

This clause 4.6 request has been prepared in relation to a potential non-compliance with development standards contained in clause 26(2)(c) of SEPP (Housing for Seniors).

Clause 4.6 allows approval to be granted to a development application where a proposal contravenes a development standard in the LEP, in this instance clause 26 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The objectives of clause 4.6 are:-

- (a) *“to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”*

This written request addresses the requirements of clause 4.6.

Clause 26 of SEPP (Housing for Seniors) states:

26 Location and access to facilities

(1) A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have access that complies with subclause (2) to:

- (a) shops, bank service providers and other retail and commercial services that residents may reasonably require, and*
- (b) community services and recreation facilities, and*
- (c) the practice of a general medical practitioner.*

(2) Access complies with this clause if:

(a) the facilities and services referred to in subclause (1) are located at a distance of not more than 400 metres from the site of the proposed development that is a distance accessible by means of a suitable access pathway and the overall average gradient for the pathway is no more than 1:14, although the following gradients along the pathway are also acceptable:

- (i) a gradient of no more than 1:12 for slopes for a maximum of 15 metres at a time,*
- (ii) a gradient of no more than 1:10 for a maximum length of 5 metres at a time,*
- (iii) a gradient of no more than 1:8 for distances of no more than 1.5 metres at a time,*
or

(b) in the case of a proposed development on land in a local government area within the Sydney Statistical Division—there is a public transport service available to the residents who will occupy the proposed development:

- (i) that is located at a distance of not more than 400 metres from the site of the proposed development and the distance is accessible by means of a suitable access pathway, and*

(ii) that will take those residents to a place that is located at a distance of not more than 400 metres from the facilities and services referred to in subclause (1), and

(iii) that is available both to and from the proposed development at least once between 8am and 12pm per day and at least once between 12pm and 6pm each day from Monday to Friday (both days inclusive),

and the gradient along the pathway from the site to the public transport services (and from the public transport services to the facilities and services referred to in subclause (1)) complies with subclause (3), or

(c) in the case of a proposed development on land in a local government area that is not within the Sydney Statistical Division—there is a transport service available to the residents who will occupy the proposed development:

(i) that is located at a distance of not more than 400 metres from the site of the proposed development and the distance is accessible by means of a suitable access pathway, and

(ii) that will take those residents to a place that is located at a distance of not more than 400 metres from the facilities and services referred to in subclause (1), and

(iii) that is available both to and from the proposed development during daylight hours at least once each day from Monday to Friday (both days inclusive),

and the gradient along the pathway from the site to the public transport services (and from the transport services to the facilities and services referred to in subclause (1)) complies with subclause (3).

Note. Part 5 contains special provisions concerning the granting of consent to development applications made pursuant to this Chapter to carry out development for the purpose of certain seniors housing on land adjoining land zoned primarily for urban purposes. These provisions include provisions relating to transport services.

(3) For the purposes of subclause (2) (b) and (c), the overall average gradient along a pathway from the site of the proposed development to the public transport services (and from the transport services to the facilities and services referred to in subclause (1)) is to be no more than 1:14, although the following gradients along the pathway are also acceptable:

(i) a gradient of no more than 1:12 for slopes for a maximum of 15 metres at a time,

(ii) a gradient of no more than 1:10 for a maximum length of 5 metres at a time,

(iii) a gradient of no more than 1:8 for distances of no more than 1.5 metres at a time.

(4) For the purposes of subclause (2):

(a) a suitable access pathway is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like, and

(b) distances that are specified for the purposes of that subclause are to be measured by reference to the length of any such pathway.

(5) In this clause:

bank service provider means any bank, credit union or building society or any post office that provides banking services.

2. Clause 4.6

Clause 4.6 of RLEP 2014 provides:

- “(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*
 - i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Secretary must consider:*
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.”*

The matters raised above are addressed below in Section 4 of this submission.

3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case and are there sufficient planning grounds to justify contravening the standard?

3.1 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The proposed development does not comply with the development standard contained in clause 26(2)(c) of the SEPP (Housing for Seniors) in that the transport is approximately 410 metres from the site of the proposed development and the distance is not accessible by means of a suitable access pathway.

Strict compliance with Clause 26(2)(c) of the SEPP (Housing for Seniors) is considered to be unreasonable and unnecessary in the circumstances of the case for the following reasons. These reasons address the underlying objectives of the standard and shows that these objectives are met.

As mentioned in the SEE accompanying the development application, residential care facility living is not a lifestyle option; rather it is obtained on a needs basis following assessment of an aged care assessment team.

There is an identified need within Bathurst Regional Council area to provide residential aged care facilities which allow aging residents to remain in their locality, close to family, friends and existing social networks and receive an appropriate level of care.

The proposed Opal facility offers high care and dementia care for frail aged residents.

Opal Aged Care homes provide a range of care and services to residents including:

- staff to provide help at all times, including in emergency situations;
- assistance with daily living activities such as bathing, showering, dressing and mobility;
- assistance with medications;
- meals and refreshments, taking into account special dietary needs;
- basic furnishings including carpets, curtains, chairs, beds and bed linen,
- bath towels, face washers, soap and toilet paper;
- a laundry service, cleaning services and maintenance of buildings and grounds;
- services such as hairdressing, library, internet podiatry; and
- social activities.

Opal employs suitably skilled and qualified staff to provide assistance to residents. All residents with high level care needs would have their nursing services carried out by a registered nurse. Additionally, all residents are provided with assistance in obtaining services from health practitioners including the family doctor.

The average age of residents moving into an Opal residential aged care facility is approximately 85+. The frailty of residents entering these facilities is increasing as people are encouraged to stay in their own home longer with support services provided to the home.

Independent seniors who may seek to use services of a bus to access nearby shopping or neighbourhood centres or services would not fit the profile of residents gaining eligibility to reside at the facility. All required services would be provided on site or arrangements would be made for services to be provided on site as required to suit resident needs. Residents would be transported by ambulance or other means to the medical or retail commercial or community services they require.

In the case of the proposed development such access will be provided to residents as this is the very nature and intention of the facility.

Independent seniors who may seek to use the services of a bus to access nearby shopping or neighbourhood centres would not likely be eligible to gain access to the facility.

To the extent that the objective of the standard is to ensure that an appropriate level of care and support will be provided to seniors, it is submitted that the proposed development meets this objective to a high standard.

Compliance with the development standard is therefore unreasonable and unnecessary given the circumstances of this case. The needs of residents of the facility would be met. Further:

- All necessary care and support services will be provided for residents on the site with appropriate arrangements made for the provision of all services of the type referred to in clause 26(1);
- the development does not undermine the underlying objectives of the standard; and
- the non-compliance does not result in any significant adverse environmental impacts on the amenity of the surrounding area.

3.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

The contravention of the access to transport services development standards is justified on environmental planning grounds specific to this development for the following reasons:

- The development is well designed with space and staffing for the provision of all services to residents who often have complex needs and poor mobility;
- The contravention does not result in any significant adverse environmental impacts as there is no change to the built form;
- The impact on neighbouring land uses by reason of visual intrusion, overlooking, or loss of amenity will not alter; and
- The development facilitates an increase in the provision of important nursing home facilities in the area which has a significant social benefit.

The proposal is considered to be entirely consistent with the objectives and requirements of relevant planning instruments and development standards and will result in no significant adverse environmental planning impacts. The inherent characteristics of the site, including its size, existing use and surrounding development, make the proposal eminently suitable and entirely justifiable on environmental planning grounds.

There is a complete absence of environmental harm associated with the non-compliance of the proposal with the minimum lot size development standard.

3.3 Has this written request adequately addressed the matters required to be demonstrated by sub-clause (3)?

It is considered that the development adequately addressed the matters set out in Clause 4.6(3) as required by Clause 4.6(4)(a)(i).

4. Is the development in the public interest?

Clause 4.6(4)(a)(ii) specifies that a development will be in the public interest if it is consistent with the objectives of particular development standards and the objectives for development within the zone in which the development is proposed to be carried out.

It is considered that the development will be in the public interest for the following reasons.

4.1 Consistency with the objectives of the SEPP (Housing for Seniors)

There is no specifically stated purpose or object of the development standards expressed in Clause 26. However it can be inferred that the object of the standard is to ensure that residents have access to all facilities and services they reasonably require. It is considered that the development meets the objectives of the controls.

Clause 2 of SEPP (Housing for Seniors) sets out the aims of the Policy:

- (1) This Policy aims to encourage the provision of housing (including residential care facilities) that will:*
 - (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
 - (b) make efficient use of existing infrastructure and services, and*
 - (c) be of good design.*
- (2) These aims will be achieved by:*
 - (a) setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and*
 - (b) setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and*
 - (c) ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes.*

It is considered that the development is consistent with the objectives of the standards and the Policy.

4.2 Consistency with the objectives of the zone

The site is within Zone R1 General Residential under BLEP 2014. The objectives of this zone are:

- To provide for the housing needs of the community.*
- To provide for a variety of housing types and densities.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

- *To provide housing choice and affordability by enabling opportunities for medium density forms of housing in locations and at densities that complement the surrounding residential environment.*
- *To protect and conserve the historic significance and scenic quality of the urban villages of Eglinton, Raglan and Perthville.*
- *To enable commercial development that is compatible with the amenity of the area and does not prejudice the status and viability of the Bathurst central business district as the retail, commercial and administrative centre of Bathurst.*

The development is consistent with the objectives for development within Zone R1 in that:

- it continues to provide for the housing needs of the community through the provision of a residential aged care facility;
- it broadens the range of housing choice in Bathurst;
- it complements services available in the CBD and elsewhere in Bathurst.

It is considered that the development is consistent with the objectives of the zone.

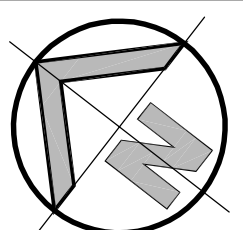
5. Conclusion

Having regard to the above, it can be concluded that the proposed non-compliance does not undermine or frustrate the underlying objective of the standard. The non-compliance also gives rise to no significant adverse environmental impacts. On the grounds stated above, it is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

Further, consistently with the objectives of clause 4.6, it is considered that strict adherence to the development standards to this particular development is not warranted and relaxing the standards results in a better development.



Attachment 2 – Additional Drainage Information

[illegible]

LEGEND

EXISTING BOUNDARY

PROPOSED STORMWATER PIPES

R

V

4.00

4.80

DETAIL PLAN
SCALE 1:250 @ A1



PROPOSED SURFACE INLET PITS

[illegible]

40 125	STORMWATER UPSTREAM INVERT RL.
6X23RCP	STORMWATER PIPE DIAMETER & CLASS
20'450m	STORMWATER PIPE LENGTH
1.5%	STORMWATER PIPE GRADE

ISSUED FOR APPROVAL

4.60

H₂O 2.00m

PROPOSED DESIGN H
 EIL | RETAINING WALL |

LINE LETTER
A-1

FOR APPROVAL

SURVEY

SURVEYED BY

R SURVEYING PTY LTD

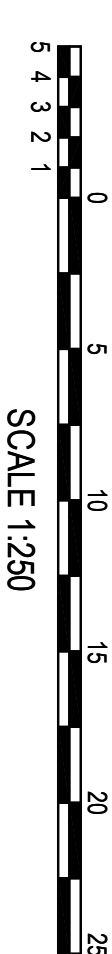
ORIGIN OF LEVELS: PM 11170, RL650.16

[illegible]

10

[illegible]

CD



SURVEY INFORMATION SUPEREVED BY LINKER SURVEYING PTY LTD DANIEL A.H.D ORIGIN OF LEVELS: PM 11170, R550, 180		Client OPAL AGED CARE Addressed GROUP GSA The drawing and design remains the property of Henry & Hyman and may not be copied in whole or in part without the prior written approval of Henry & Hyman.		Location Laurie St, 151-153 Laurie Avenue Cheshwood NSW 2067 Reference Reference R1 2 3417 6537 email@hhyon.com.au www.henryandhyman.com.au	
ISSUED FOR REDEMPTION APPLICATION	LC	IA	23/03/2016		
ISSUED FOR DEVELOPMENT APPLICATION	LC	IA	3/02/2016		
PREVISION	01	PREVISION	DATE	PREVISION	DATE
AGREEMENT	AGREEMENT	AGREEMENT	DATE	AGREEMENT	DATE

henry & hyman

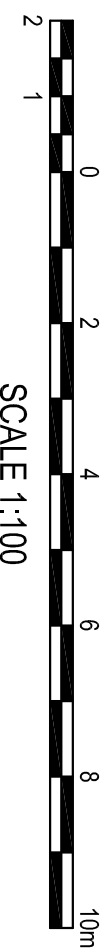
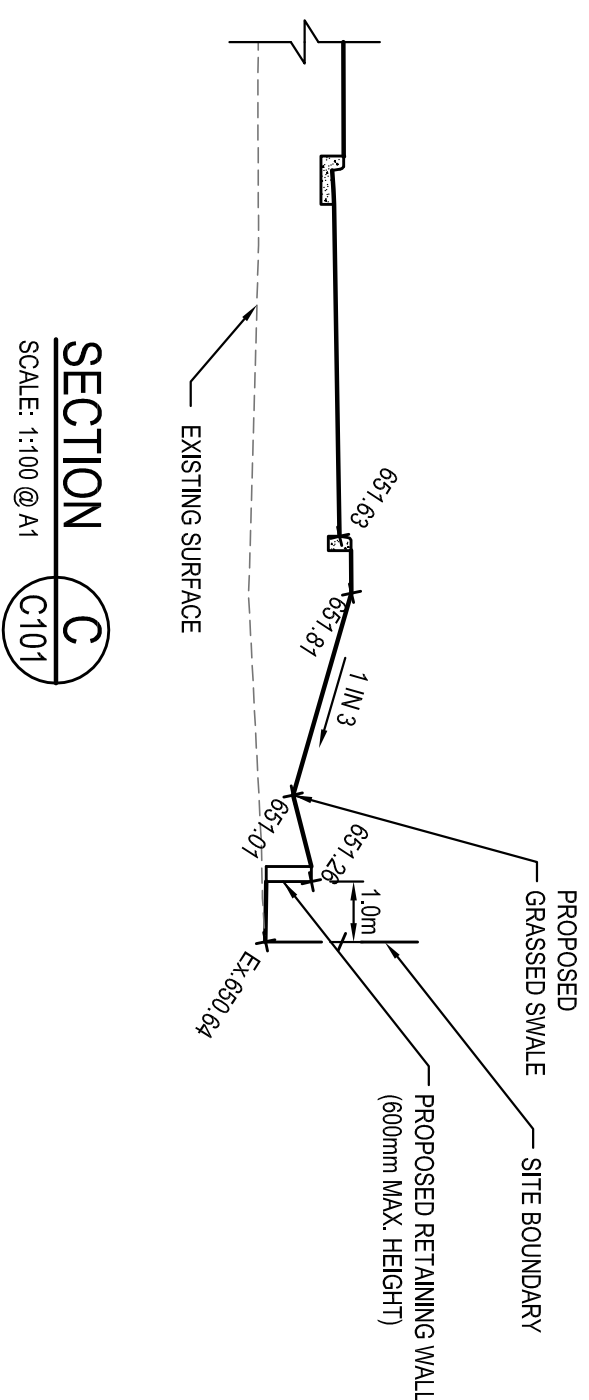
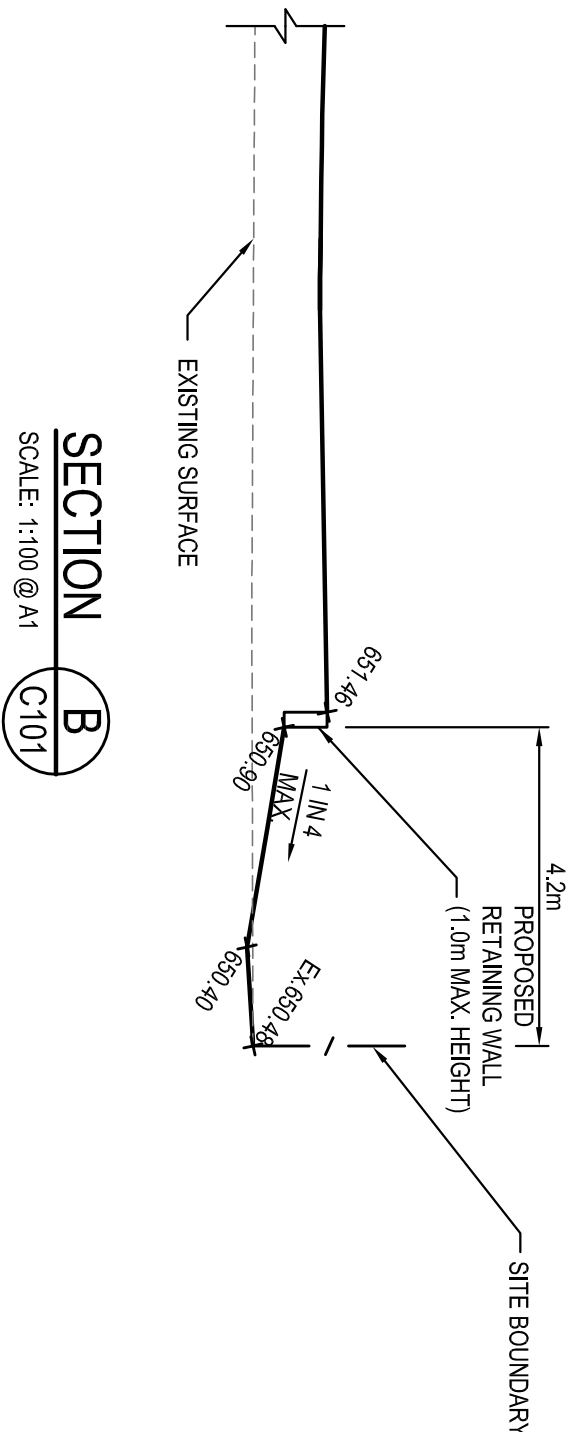
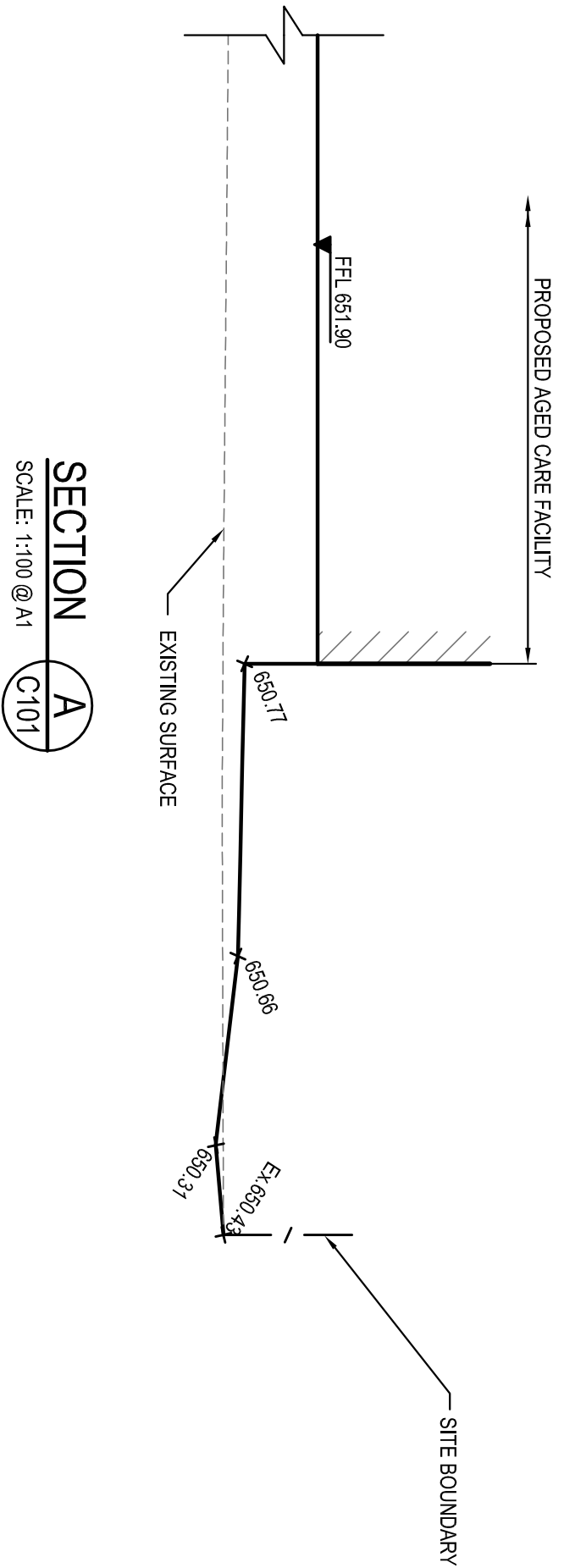
151-153 Laurie Avenue
Cheshwood NSW 2067
R1 2 3417 6537
email@hhyon.com.au
www.henryandhyman.com.au

Project
OPAL AGED CARE DEVELOPMENT

LOTS 2, 3, 4 AND 5 DP1089380 STANLEY STREET BATHURST

Detail PLAN
SHEET 2 OF 2

Drawn GPH Checked I. AHMED Approved A. FRANCIS Scale 1:100 @ A1	Design number 15884_DA_C102	Date OCT 2015

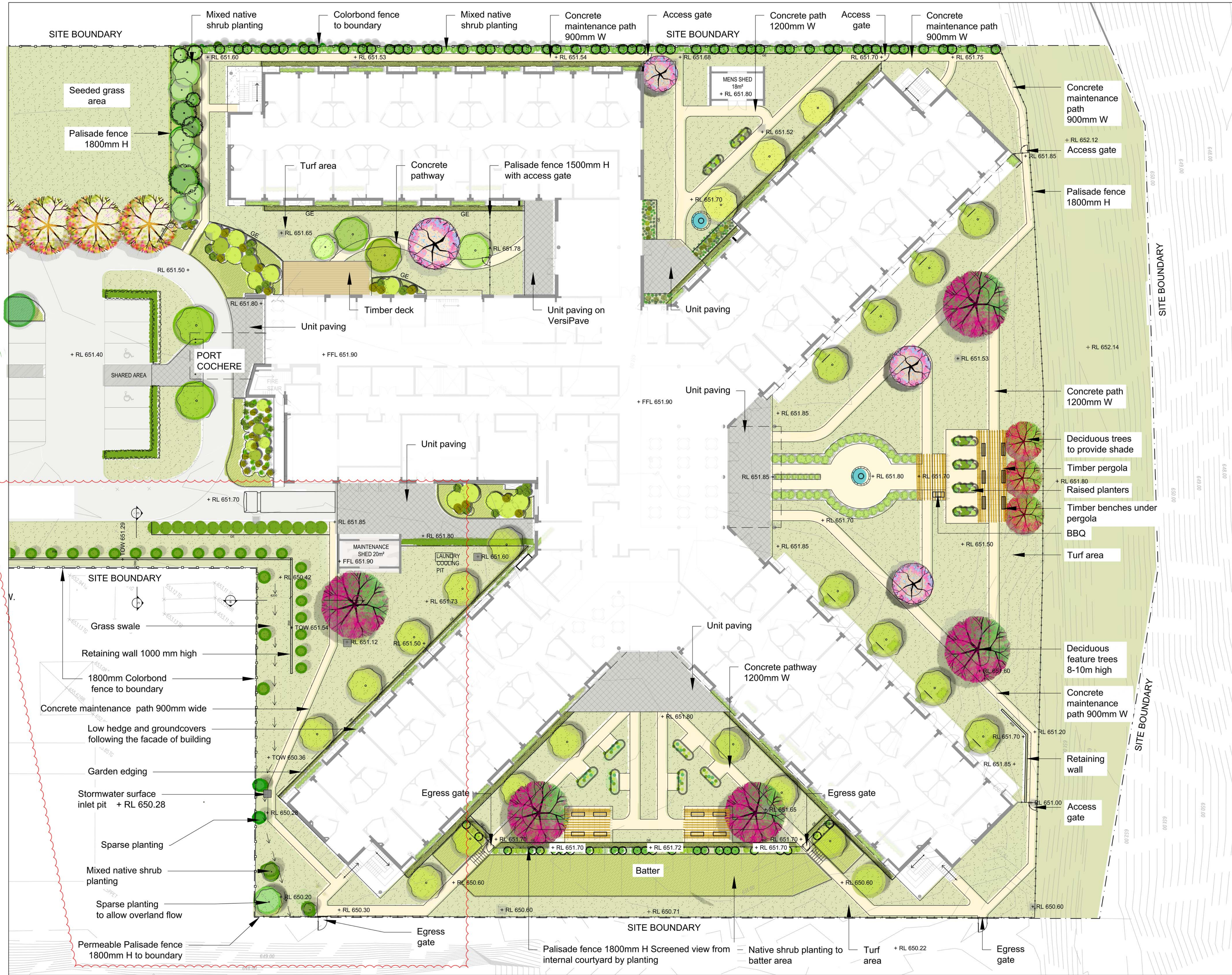


ISSUED FOR APPROVAL

[illegible]



Attachment 3 – Amended Landscape Drawings

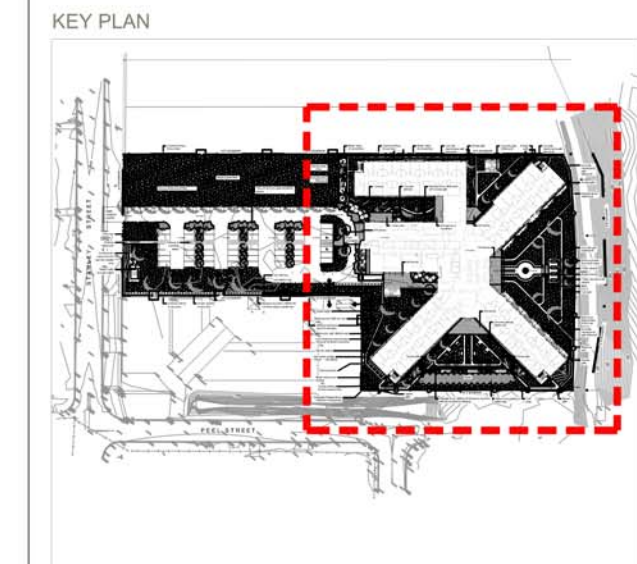


NOTES:
1. Figured dimensions shall be taken in preference to scaling.
2. The contractor shall check all dimensions on site before commencing work.

LEGEND:

[Symbol]	SITE BOUNDARY
[Symbol]	EXISTING SPOT LEVEL
[Symbol]	PROPOSED SPOT LEVEL
[Symbol]	FINISHED FLOOR LEVEL
[Symbol]	TOP OF WALL LEVEL
[Symbol]	RETAINING WALLS
[Symbol]	PALISADE FENCE
[Symbol]	COLORBOND FENCE
[Symbol]	GARDEN EDGING
[Symbol]	UNIT PAVING
[Symbol]	CONCRETE PAVING
[Symbol]	TIMBER DECK
[Symbol]	TURF
[Symbol]	NEW GROUNDCOVERS
[Symbol]	EXISTING TREE RETAINED
[Symbol]	NEW TREES
[Symbol]	NEW SHRUBS
[Symbol]	BENCH SEATS
[Symbol]	SELF CONTAINED WATER FEATURE
[Symbol]	RAISED PLANTER
[Symbol]	TIMBER PERGOLA
[Symbol]	DRAINAGE PIT
[Symbol]	GRASS SWALE

3 LA04
1 LA04
2 LA04
1 LA04
4 LA04
5 LA04



B Revised DA Plan 04.04.2016
A For Development Application 28.01.2016
ISSUE DESCRIPTION DATE

TaylorBrammer

TAYLOR BRAMMER LANDSCAPE ARCHITECTS PTY LTD
SYDNEY STUDIO
218 Oxford Street
Woodlawn, NSW, 2025
T 61 2 9387 8855
F 61 2 9387 8105
E sydney@taylorbrammer.com.au

PROJECT:
BATHURST AGED CARE FACILITY

DRAWING TITLE:
LANDSCAPE PLAN - COURTYARDS

CLIENT:
OPAL AGED CARE

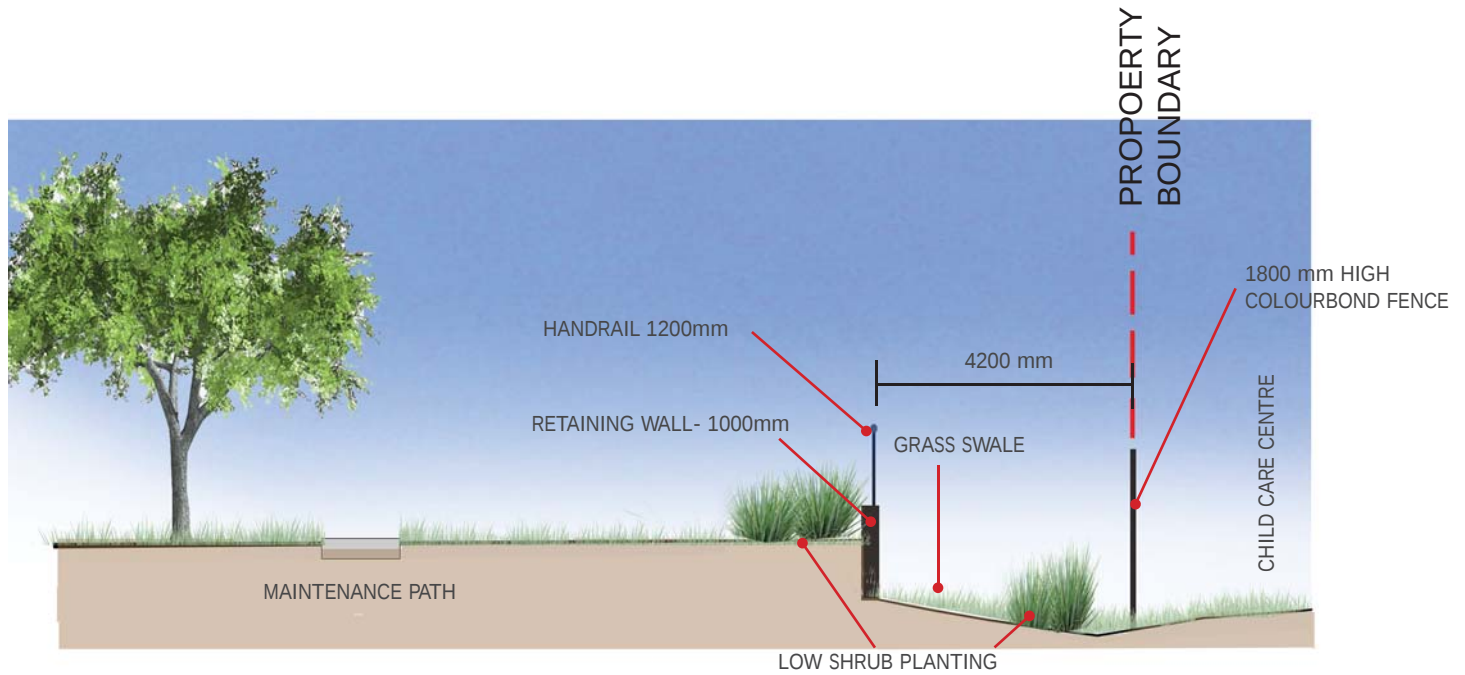
0 2 4 8 12m

SCALE: 1:200 @A1
DATE: 17.12.2015
DRAWN: JP
CHECKED: DMT
JOB NO: 15-160s
DESIGNED: DMT
DRAWING NO: LA02
REVISION: A

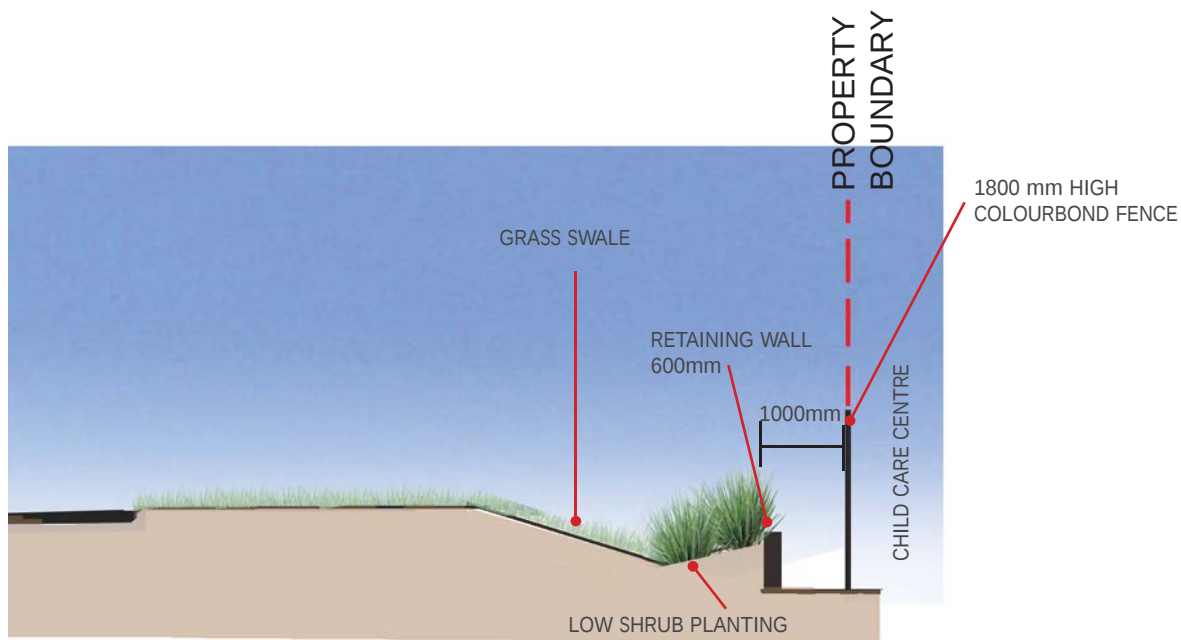
Copyright of Taylor Brammer Landscape Architects Pty Ltd. ABN 61 088 724 988

Opal , Bathurst

South West Boundary Sections



SECTION BB 1:100



SECTION CC 1:100

Attachment 4 – Additional Shadow Diagrams





12:00pm 21st June



12:30pm 21st June



1:00pm 21st June



1:30pm 21st June

