

Clause 4.6 Request for Variation to Height of Building Standard

Yilaami Eco-Tourist Facility 97 Bruxner Park Road Korora

Version 02 17 May 2022

ABN 76 627 110 407
keiley@keileyhunter.com.au
115 Victoria Street, COFFS HARBOUR 2450
t 0458 515 963

CLAUSE 4.6: REQUEST FOR VARIATION TO HEIGHT LIMIT

Background

The subject development proposes a variation to the height standard specified in clause 4.3(2) Height of Buildings of Coffs Harbour Local Environmental Plan 2013.

This request relates to a Development Application for the proposed Yilaami eco-tourist facility at Lot 21 DP 869885, 97 Sealy Lookout Drive, Korora. The proposal involves a communal building, accommodation cabins ('pods'), onsite carparking, maintenance building, access driveways, pedestrian pathways, landscape planting, and associated ancillary features.

The site is in the Coffs Harbour Local Government Area (LGA). The estimated cost of the development is over \$5 million and is therefore declared to be Regional Development. The Northern Regional Planning Panel will be the Consent Authority for the proposed development.

The subject site is vacant land located approximately 5 kms north of the Coffs Harbour urban area between Bruxner Park Road and Sealy Lookout Drive. The land has an area of 3.49 ha, is relatively steep, has a prior history as a banana plantation and is now managed land. The site has exceptionally high visual amenity and very strong links to Gumbayngirr 'country', through its position on the Sealy ridgeline, considered to be an integral part of the Gungahlin Storyline and pathway that is mapped from Macauley Headland to Sealy Lookout Point, through to Mount Coramba and then west to the Orara Valley and Nana Glen.

This is a small scale eco-tourist facility that has been collaboratively planned and designed by Walknorth Architects and the Bularri Muurlay Nyanggan Aboriginal Corporation with the support of Destination North Coast NSW

The development will have cultural and physical connections to the other Bularri Muurlay Nyanggan Aboriginal Corporation's ventures in the Orara East State Forest, namely the Giingan Gumbayngirr Cultural Experience and the Gapi Gapi café that operation from Niigi Niigi (Sealy Lookout). The project will also collaborate with the Gumbayngirr Giingana Freedom School, and indigenous language school. The operation of the proposed Yilaami eco-tourist facility will provide employment for Aboriginal people and will be a unique place-based tourism destination.

The development will result in an overall positive outcome for the site in terms of:

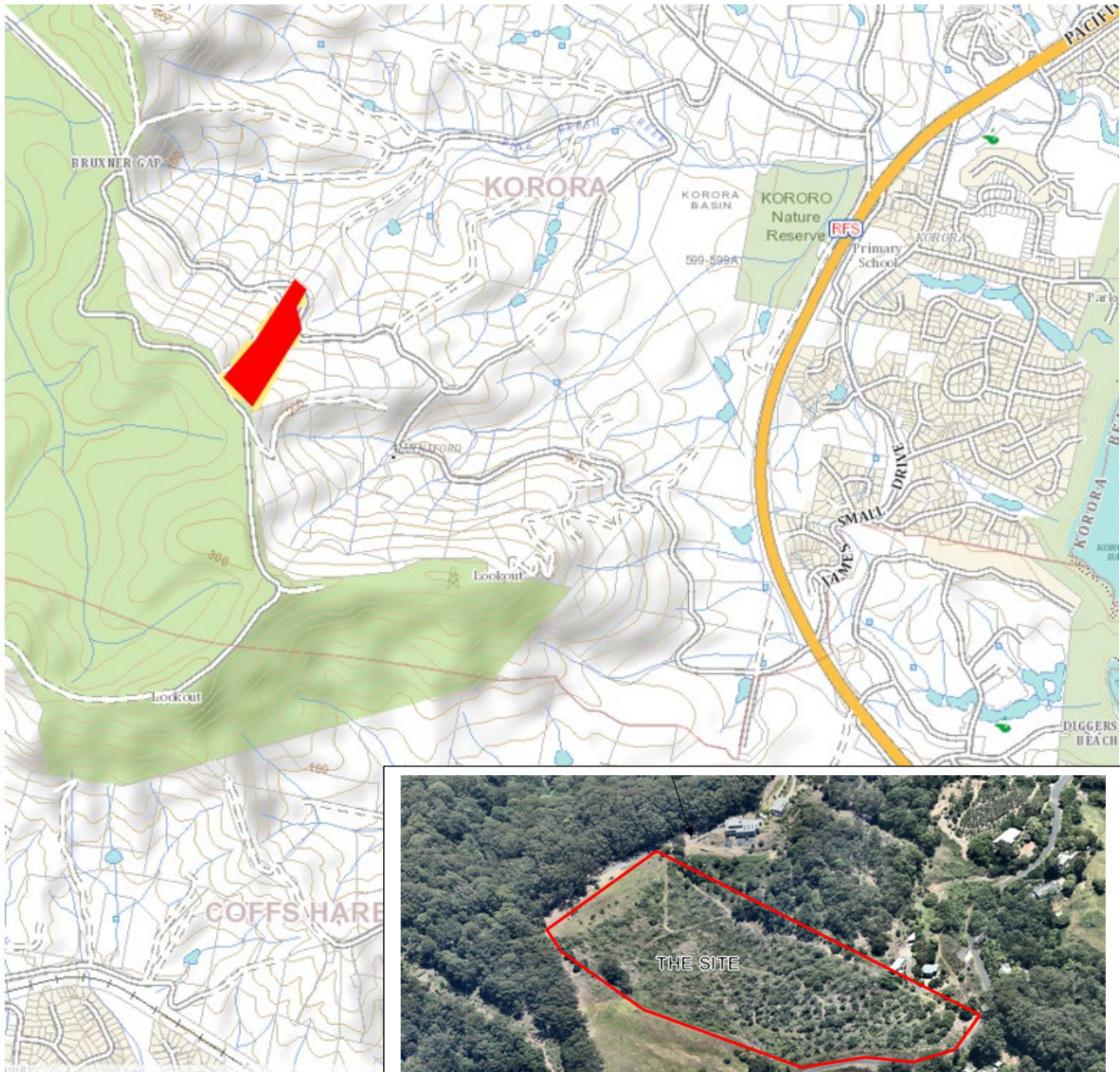
1. Provision of high quality destination based cultural tourism.
2. Ecologically sustainable development – the proposed use of the site will preserve the cultural values of the land for future generations.
3. Land management (removal of weeds and diseased introduced species).
4. Increased bushfire safety for adjoining properties.

The proposal is permissible with consent and meets the aims and development standards of the *Coffs Harbour Local Environmental Plan 2013*. In addition to the above, the proposed development is compliant with the required controls of the *Coffs Harbour Development Control Plan 2015*.

The maximum building height for the subject land is 8.5 m. The maximum height of the proposed communal building is 9.95 m from ground level to a section of the skillion roof located above a steeply sloping part of the site.

Full particulars of the proposed development are provided in the accompanying architectural drawings and Statement of Environmental Effects.

Site Locality:

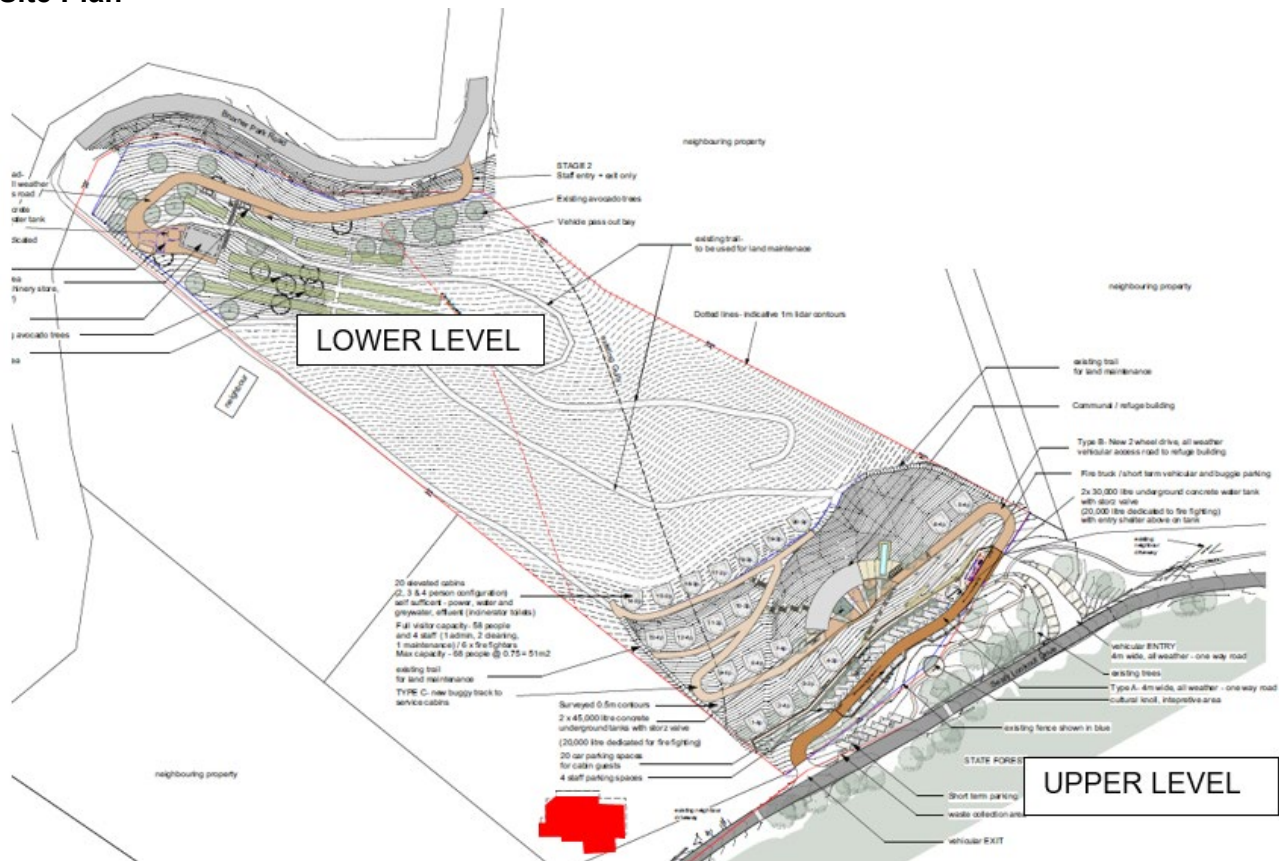


Source: NSW ePlanning 2022



Nearmap: Panoramic View Looking West

Site Plan



Walknorth Architects, DWG 101P

Sealy Lookout Drive - Upper level:

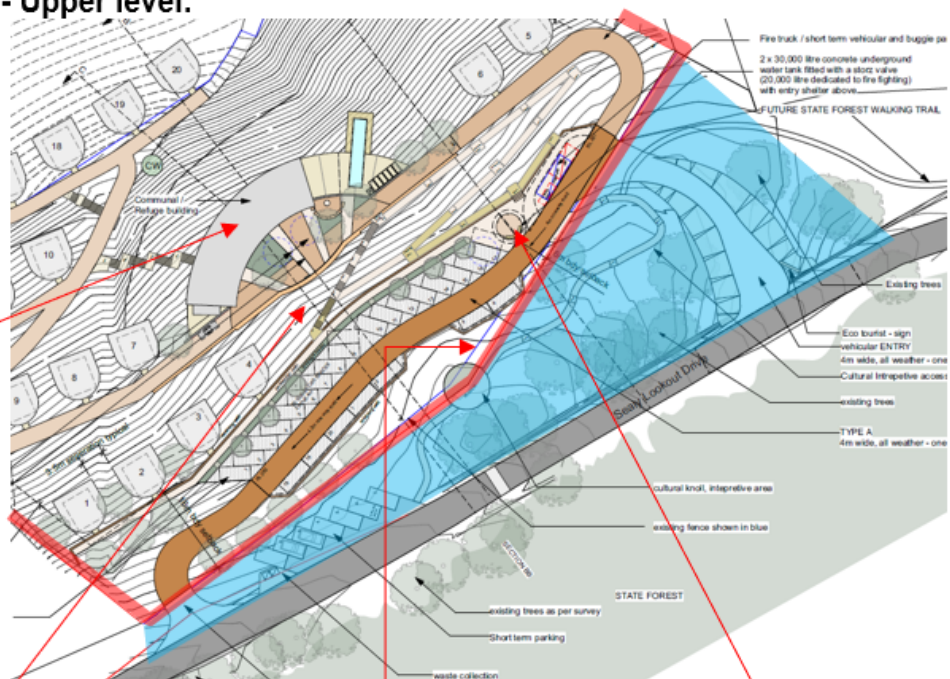
Visitor entrance and exit
Car parking (20 visitor spaces and 4 staff spaces)

Cabins (pods)

Communal refuge building
Pool

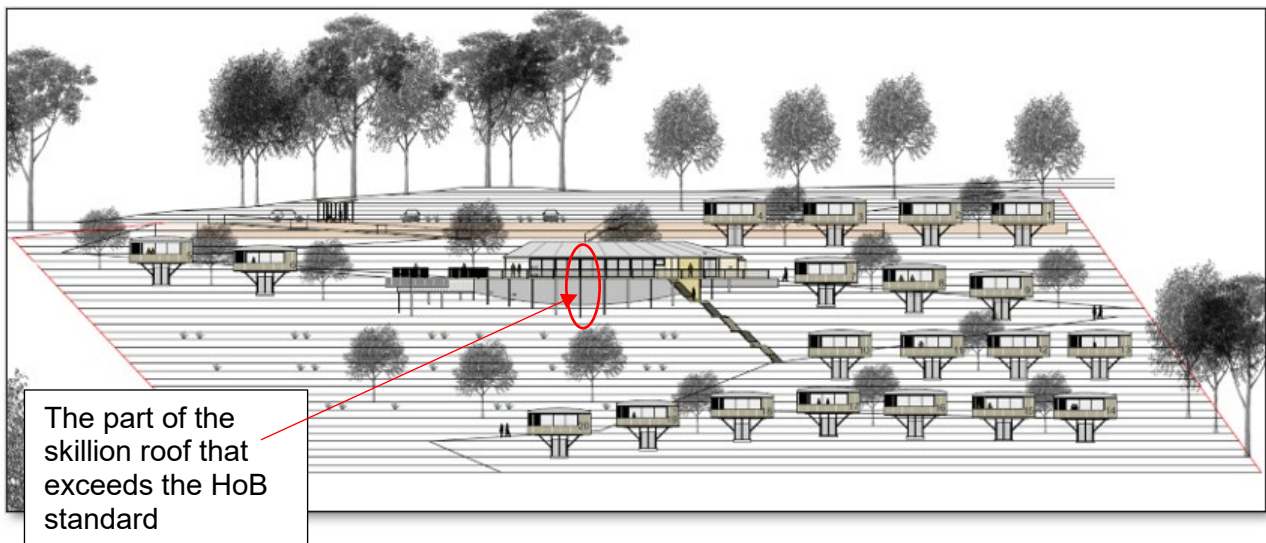
Internal driveway (one direction / forward in and out).
Pedestrian pathways
Short term parking (fire truck/carts)

3 x 45,000 litre water tanks
Cultural knoll (existing)

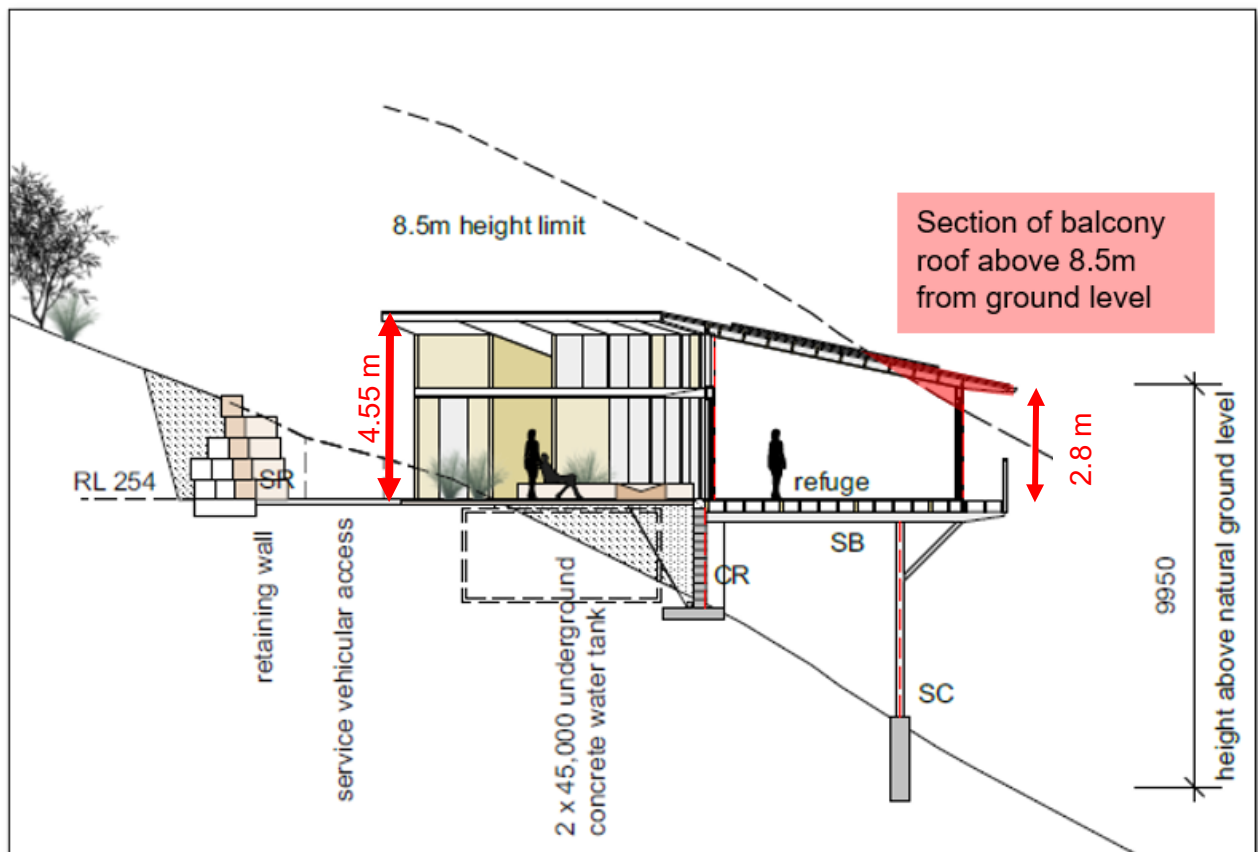


2 x 30,000 litre water tanks

Building Elevations



Walknorth Architects, Overall Elevation, Drawing 201A Rev B, 4/4/22



Walknorth Architects, Drawing 202A, Rev B 4/4/22

The project architects, Walknorth Architects, carefully considered and tested their design through onsite modelling to ensure a positive visual outcome in terms of impact to neighbouring view lines and view opportunities from the public domain. Design, siting and natural material finishes will further mitigate the visual impact of the proposed buildings. The models shown below are to a proportionate scale and were positioned to reflect their ultimate position in the landscape.



Walknorth Architects, Yilaami Design Statement, April 2022

The part of the skillion roof that exceeds the HoB standard.



Looking south west towards the site from Coachmans Close Korora.

Upper level – Stage 1.

Nearmaps 2022

Detailed architectural Drawings 202A and 205A are attached showing site elevations.

Reason for the Variation

The reason for the variation is to accommodate a single storey communal building within a steeply sloping part of the site. The variation is not required to accommodate an additional storey, additional roof height or to increase the floor area of the development.

Clause 4.6 Exceptions to Development Standards

Approval of the development relies on a **Clause 4.6 exception to development standards** of the Coffs Harbour Local Environmental Plan 2013.

The objectives of Clause 4.6 are:

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

The approach to clause 4.6 was set out in a Land and Environment Court decision of Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 on 14 August 2018.

This request follows the approach in the Initial Action case in setting out the preconditions that need to be satisfied. When a development relies on the contravention of a development standard, the applicant must demonstrate that:

- *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- *that there are sufficient environmental planning grounds to justify contravening the development standard.*

This assessment has found that the exception to the height of building standard meets the objectives of Clause 4.6. The following table sets out the relevant matters for consideration when seeking to vary development standards and how these preconditions are satisfied.

Clause 4.6 Matters for Consideration

4.6(3)(a)	Yes.
Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?	<p>The exceedance of the building height is 17% and is considered minor in terms of the percentage of the exceedance and the percentage of the site that is occupied by the building footprint and very small part of the skillion roof that exceeds the height standard.</p> <p>The exception will enable a better design outcome in terms of sustainable building design by providing shelter (roof) over the balcony of the communal building.</p> <p>How the objectives at clause 4.3 are achieved is set out in more detail below.</p>
4.6(3)(b)	Yes.

Are there sufficient environmental planning grounds to justify contravention of the development standard?

Environmental planning grounds to justify the proposed height variation are:

1. The height exceedance is unavoidable due to the steeply sloping part of the land on which the communal building is located.
2. The height exceedance occupies a very small area of the land and will not be visually perceptible in the landscape.
3. The proposed development does not rely on any other exceptions or variations to Council's standards and controls.
4. The site is relatively isolated and well separated from adjoining dwellings.
5. The height exceedance has resulted from good urban design in terms of sheltering the balcony area.
6. The minor height exceedance will not adversely impact view lines of surrounding dwellings.
7. The communal building is single storey and has been carefully sited within the land to meet bushfire APZs and road and accessway grades.

4.6(4)(a)(ii)

Is the proposed development within the public interest?

Yes.

The proposed development is well within the public interest as detailed in the accompanying Statement of Environmental Effects. The public interest is well served by the proposed development for a high quality eco-tourist facility centred around local Aboriginal culture and the environmental, social and economic benefits that this development will provide.

The proposal satisfies the objectives of clause 4.3 (development standard) as set out below.

4.6(4)(a)(ii)

Is the proposal consistent with the objectives of the development standard that it wishes to contravene?

Yes

As set out below.

The objectives of Clause 4.3 Height of Buildings are as follows:

- to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,

Consistent.

The 8.5 m height limit extends over most of the land in the locality, limiting buildings to two or three storeys, depending on the slope of the land. There is no height of building control applicable to the adjoining Orara East State Forest land.

The relevant objectives of the height limit for the area, that includes the subject site, is to limit the impact of building heights on the existing natural and built environment and to maintain an appropriate urban character and level of amenity.

The maximum proposed building height (9.95 m) is well within the land's capability due to the small area of height exceedance and the small building footprint relative to the large 3.59 hectare lot size.

The actual height of the single storey communal building from the floor to the apex of the roof is 4.55 m and at the height breach location the height from the floor to the roof is only 2.8 m.

The proposed height exceedance will not be perceptible from the streetscape or the public domain.

The surrounding area is sparsely settled with three rural dwellings within 200 m of the site. The small area of height exceedance will have no adverse impact on any surrounding property or dwellings.

- to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,

Not applicable. The proposed building is single storey and is not considered a "taller development".

- to ensure that the height of future buildings has regard to heritage sites and their settings and their visual interconnections,

Consistent.

The site is not mapped as comprising an item of Environmental Heritage nor is the site in proximity to any items of local environmental heritage.

An Aboriginal Cultural Heritage Assessment has been prepared for the development and is attached to the Statement of Environmental Effects. The development will have a positive impact on cultural heritage. The 'Yilaami' eco-tourist facility has been sited to connect with the cultural heritage value of the land and surrounding Sealy ridgeline. The minor height exceedance will have no impact on these values or connections.

- to enable a transition in building heights between urban areas having different characteristics,

N/A.

The 8.5 m height limit applies to all of the surrounding land within the Bruxner Park and Korora rural residential area. The characteristics of the surrounding neighbourhood are unlikely to change in the foreseeable future. The subject land shares the same sparsely settled characteristics of adjoining land.

- to limit the impact of the height of a building on the existing natural and built environment,

Consistent.

The sparse settlement pattern and steeply sloping land characteristics mitigate any visual impact arising from the small area of height exceedance of the proposed building.

The building footprint is small in the context of the 3.59 ha site.

Overshadowing impact to adjoining properties will not occur. Shadow from the building will fall within the subject land.

- to encourage walking and decreased dependency on motor vehicles by promoting greater population density in urban areas.

Not applicable. Greater densities are not permitted within the subject land.

4.6(4)(b)

Has the concurrence of the Secretary been obtained?

The consent authority may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under clause 4.6. This was set out in Planning Circular PS 18-003 issued on 21 February 2018.

4.6(5)(a)

Does contravention of the development standard raise any matter of significance for State or regional environmental planning?

No.

The proposed development is for an eco-tourist facility with an estimated *cost of the development* of over \$5 million therefore the proposal is classified as regional development under Schedule 6 of State Environmental Planning Policy (SEPP) (Planning Systems) 2021. The Northern Regional Planning Panel is the consent authority for the proposed development.

4.6(5)(b)

Is there a public benefit in maintaining the development standard?

No.

Public benefit will not be adversely affected by allowing a variation to the height of building standards for this particular development on this particular property.

The applicant submits that development consent can be granted for the proposal despite the minor contravention of the height of building development standard set out in clause 4.3 of the Coffs Harbour LEP 2013.

Overall, the proposal satisfies the height of building objectives. Providing flexibility in the subject case will result in a better urban design outcome.

The Five Part Test

In addition to the above, the five part test (Wehbe v Pittwater Council) has been applied. NSW Planning and Environment prepared the guideline ***'Varying development standards – a guide' in August 2011.***

The guideline provides that:

Written applications to vary development standards will not only address the above matters but may also address matters set out in the 'five part test' established by the NSW Land and Environment Court. Councils may choose to not only use the principles of Clause 4.6 and SEPP1 but also this five part test.

The five-part test is addressed as follows:

The objectives of the standard are achieved notwithstanding noncompliance with the standard;

As justified above, the objectives of the standard are achieved.

The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

The objective is relevant, however, compliance is unnecessary to achieve the objective having regard to the design, scale and location of the development.

The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

Compliance is not required to meet the objective of the clause. Non-compliance with the Height of Buildings standard will result in a better environmental outcome in terms of achieving a better building design outcome.

The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

The height of building standard has been varied on numerous occasions. In the subject case the variation is justified on environmental planning grounds. Strict compliance with the standard is unnecessary and unreasonable in the subject case.

Compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

The subject land and surrounding land are appropriately zoned.

It is to be noted that a development that satisfactorily meets one or more of the above tests for variation can be approved; a development does not have to meet all five parts to have merit.

Conclusion

This variation request has demonstrated that application of the strict numeric standard is unreasonable and unnecessary in this instance as the objectives of the standard are achieved by the proposal.

The proposed development has planning merit in terms of the provision of a sensitively designed eco-tourist facility with significant Aboriginal cultural heritage connections.

As described in this report, the environmental justification for the height exceedance is to enable a single storey communal building to be constructed within a steeply sloping part of the site. The whole of the development has been architecturally designed to meet environmentally sustainable development principles and to respect and enhance the cultural heritage connections of the land.

It is requested that the consent authority approve this request for a minor variation to the height of building standard at Clause 4.3(2) of the Coffs Harbour Local Environmental Plan 2013.

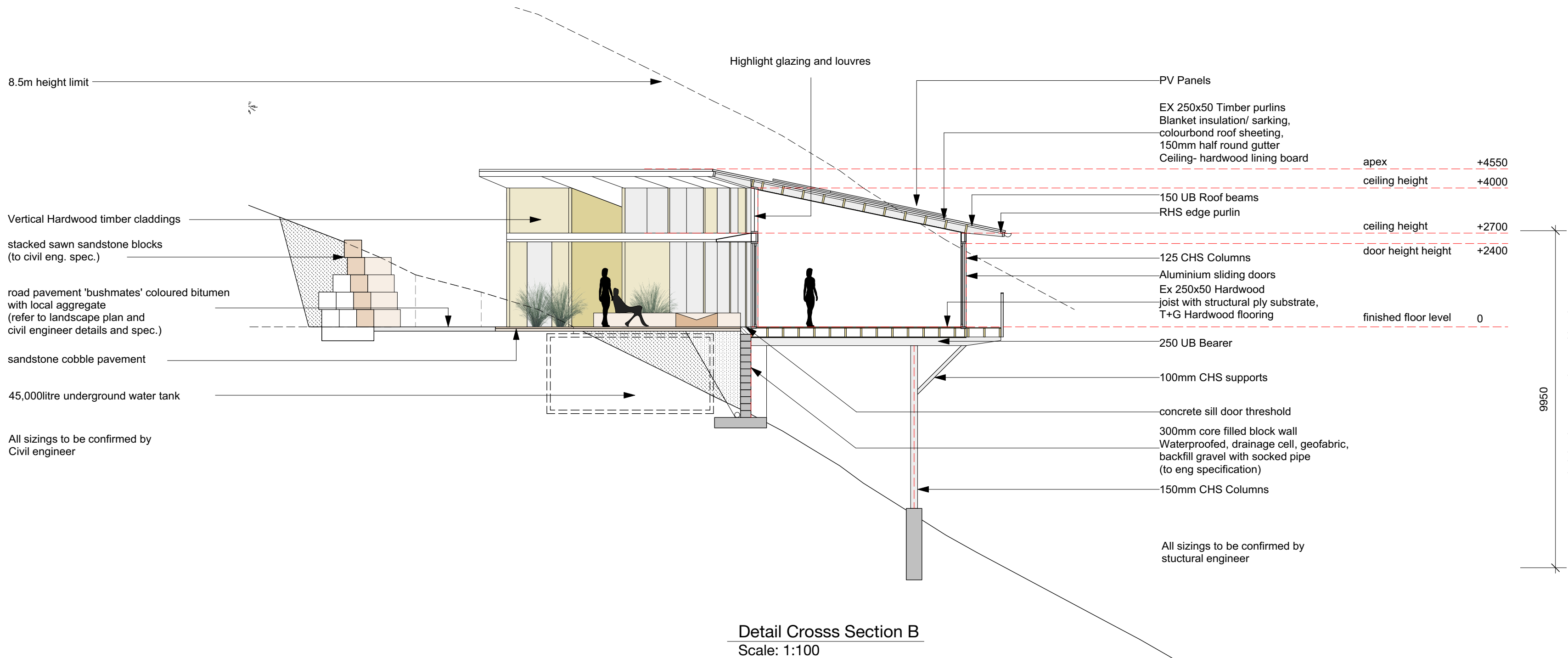
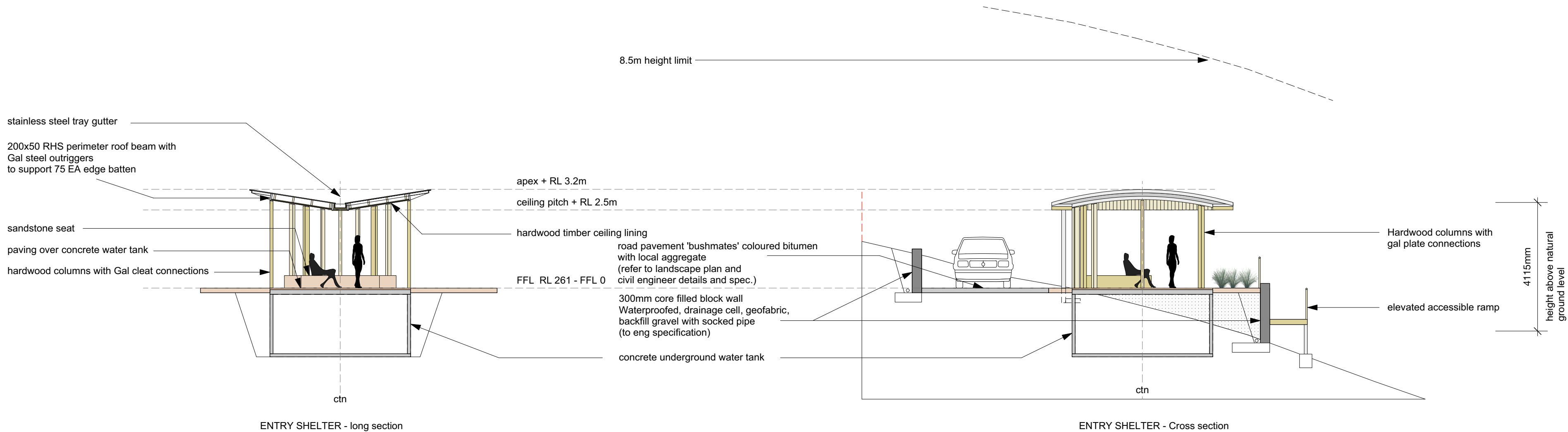


KEILEY HUNTER

17 May 2022

WALKNORTH ARCHITECTS

DRAWINGS 203A AND 205A – DETAIL SECTIONS AND REFUGE SECTION C



Walknorth and Steve Gorrell Architects would like to acknowledge the traditional custodians of the Coffs Coast, the Gumbaynggirr people, and pay our respects to Elders past, present and emerging

NOTES

B 4/4/22 DA Submission
A 29/07/21 PRE DA consultants

ISSUE DATE ISSUE NOTE

A 4/4/22 DA Lodgement

REVISION DATE REVISION NOTE

Do not scale from drawings. Verify all dimensions and levels on site prior to construction and fabrication. Walknorth Architects are the owners of the copyright subsisting in these drawings, plans and specifications. They must not be used, reproduced or copied in whole or part nor may the information, ideas and concepts therein contained be disclosed to any person without the prior written consent of Walknorth Architects.

PROJECT
Yilaami Eco-Tourist Facility

ADDRESS
97 Sealy Lookout Drvie, Korora

CLIENT
BMNAC

WALKNORTH ARCHITECTS
7a Breakers Way, Korora
NSW, 2450
j 0413 504 508
s 0413 929 650
admin@walknorth.com.au
www.walknorth.com.au

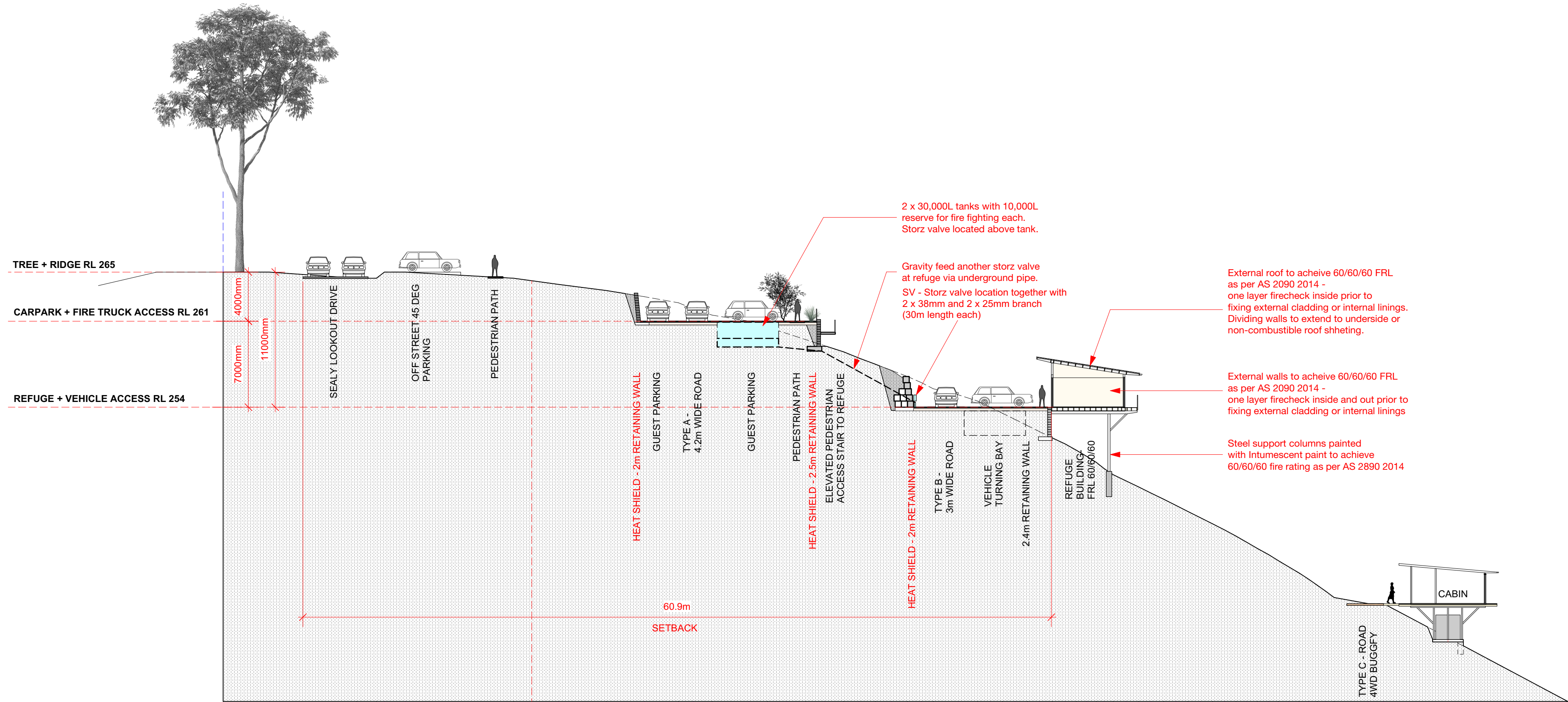
DRAWING
DETAIL SECTIONS

SCALE @ A2 1.200

DWG STATUS

DWG # REVISION

203 A



SECTION C - CENTER REFUGE BUILDING

NOTE: Plan to be read inconjunction with
BLACK ASH Consultinganting -
Emergency Management & Evacuation Plan

Walknorth and Steve Gorrell Architects would like to acknowledge the traditional custodians of the Coffs Coast, the Gumbaynggirr people, and pay our respects to Elders past, present and emerging

NOTES

B	4/4/22	DA Submission
A	29/07/21	PRE DA consultants
ISSUE	DATE	ISSUE NOTE

A 4/4/22 DA Lodgement

REVISION	DATE	REVISION NOTE
----------	------	---------------

Do not scale from drawings. Verify all dimensions and levels on site prior to construction and fabrication. Walknorth Architects are the owners of the copyright subsisting in these drawings, plans and specifications. They must not be used, reproduced or copied in whole or part nor may the information, ideas and concepts therein contained be disclosed to any person without the prior written consent of Walknorth Architects.

PROJECT

Yilaami Eco-Tourist Facility

ADDRESS

97 Sealy Lookout Drvie, Korora

CLIENT

BMNAC

WALKNORTH ARCHITECTS

7a Breakers Way, Korora
NSW, 2450
j 0413 504 508
s 0413 929 650
admin@walknorth.com.au
www.walknorth.com.au

DRAWING

REFUGE SECTION C - RFS

SCALE @ A2	1.250
DWG STATUS	
DWG #	REVISION

205 A