

ENFORCEABLE UNDERTAKING

1. This is an Enforceable Undertaking given under section 9.5 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* by Mr Mohammad Khair Eddine Morad, date of birth 16 June 1982.

A. Person giving the Undertaking

2. This Undertaking is given to the Department of Planning, Housing and Infrastructure (the **Department**) by Mr Mohammad Khair Eddine Morad (**Mr Morad**), for the purposes of s 9.5 of the EP&A Act.

B. Background

3. Mr Morad is the sole owner of the land at 14 Clifton Street Balmain East (Lot 1 in DP 1100371, Lot 2 in DP 66363 and Lot 1 in DP 68016) (the **Site**).
4. Inner West City Council (**IW Council**), has responsibilities regarding the administration and enforcement of the EP&A Act and its associated Regulations, and responsibilities for the Local Government Area.

Zoning and Heritage Dwelling

5. Between 2013 and 11 August 2022 the Site was zoned R1 General Residential, pursuant to the *Leichhardt Local Environmental Plan 2013 (LLEP)*, which has been repealed.
6. Since 12 August 2022, the Site has been zoned R1 General Residential under the *Inner West Local Environmental Plan 2022 (IWLEP)*.
7. Under the LLEP, the Site as mapped was an item of local environmental heritage listed in Schedule 5 of the LLEP, being Item No I363 'House, including interiors', and since 12 August 2022, the Site has been mapped as an item of local environmental heritage, listed in Schedule 5 of the IWLEP, being Item Heritage Item 1690 'House, including interiors' (**Heritage Dwelling**).
8. The State Heritage Inventory Data Sheet provides the following statement of significance in regards to the Site and the Heritage Dwelling:

'No. 14 Clifton Street is of high local historic, aesthetic and scientific significance as a waterfront development that is now rare as it retains evidence from its initial waterfront development in c. 1844, and subsequent development in the 1880s and early decades of the 20th century. The western building presents as a Victorian Italianate house that makes a positive contribution to the eastern end of Clifton Street and surrounding narrow lane and walkway. The eastern building is a Federation period structure with Arts and Craft

details that despite some alterations is a visible feature on the waterfront. The site retains evidence that reveals information about the early use and development of the local area.'

9. The Site is located on the harbor foreshore, which is subject to the *Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 (Sydney Harbour Plan)*.

Development Consent that applies to the Site

10. The Site has the benefit of development consent DA2019/68 (the **Consent**) that was granted by the NSW Land and Environment Court (**LEC**) in proceedings 2019/294219 on 4 June 2020.
11. The Consent approves alterations and additions to the Heritage Dwelling and boatshed, new swimming pool and associated works, including conservation works and tree removal at the Site.
12. Condition 3 of the Consent, titled 'Documents related to the consent', provides that the 'development on the Site must be carried out in accordance with the listed plans and documents' (**Approved Plans**).
13. On 15 February 2021, Building Certifiers Pty Ltd (Building Certifiers) issued Construction Certificate No. 2020-0296 and 2020-0296.1 in relation to the works approved within the Consent relating to alterations and additions to existing dwelling-house and boatshed, new swimming pool and associated works, including conservation works (**Construction Certificate**). On 29 March 2021, Council was appointed as the Principal Certifier for the works approved by the Consent.

Unlawful development

14. An investigation by IW Council revealed that Mr Morad contravened s 4.2(1)(b) of the EP&A Act through the carrying out of the development otherwise than in accordance with the Consent.
15. IW Council commenced a prosecution in the NSW Local Court with the court attendance notices particularising the offences set out below:
 - 15.1 excavated underneath the Heritage Dwelling at the Site comprising three (3) floor levels and a 'sump' level ('**Excavation Area 1**'), which was otherwise than in accordance with the Consent that had been obtained and was in force in relation to the Site (**Excavation Works – Void**) (case number 2023/301996);
 - 15.2 excavated underneath the approved staircase and below the ground level of the Heritage Dwelling at the Site ('**Excavation Area 2**'), which was otherwise than in accordance with the Consent (**Excavation Under Stairs**) (case number 2023/301997);

- 15.3 demolished an internal wall on level 3 (ground floor) of the Heritage Dwelling, which was otherwise than in accordance with the Consent (**Demolition of Internal Wall**) (case number 2023/301980);
- 15.4 removed a section of a wall located on the eastern façade of the Heritage Dwelling between level 3 (ground floor) and level 4 (street level), which was otherwise than in accordance with the Consent (**External Stone Wall Removal**) (case number 2023/301998);
- 15.5 constructed the south wing addition to the Heritage Dwelling, which was otherwise than in accordance with the Consent, because the overall height of the south wing addition is greater than what is approved by the Consent (**South Wing Works – Increased Height**) (case number 2023/301978);
- 15.6 constructed the roof slab of the south wing addition to the Heritage Dwelling, which was otherwise than in accordance with the Consent, because the overall footprint of the roof slab is larger than what is approved by the Consent (**South Wing Works – Roof Slab Area**) (case number 2023/301987);
- 15.7 made alterations and additions to the Heritage Dwelling, otherwise than in accordance with the Consent because the verandah at level 4 (street level) of the Heritage Dwelling cannot be reconstructed along the southern side of the Heritage Dwelling as required by the Consent (**Verandah Reconstruction – Level 4**) (case number 2023/301985); and
- 15.8 made alterations and additions to the Heritage Dwelling, otherwise than in accordance with the Consent, because the verandah at level 3 (ground level) of the Heritage Dwelling cannot be reconstructed along the southern side of the Heritage Dwelling as required by the Consent (**Verandah Reconstruction – Level 3**) (case number 2023/301986),

(collectively, the **Prosecution Proceedings**).

16. Mr Morad admits that his conduct contravened s 4.2(1)(b) of the EP&A Act as set out in clauses 15(a) – (h) above.
17. Mr Morad accepts that that development has impacted on the heritage value of the Heritage Dwelling and the surrounding area.
18. Mr Morad has offered to enter an Enforceable Undertaking.

C. Commencement of this Undertaking

19. This Undertaking comes into effect when:
 - 19.1 this Undertaking is executed by Mr Morad, and
 - 19.2 this Undertaking so executed is accepted by the Planning Secretary of the

Department or delegate.

(the **Commencement Date**).

D. Terms of the Undertaking

20. For the purposes of section 9.5 of the EP&A Act, Mr Morad undertakes to do the following:

Use of the unauthorised works

- 20.1 unless otherwise approved or authorised through a development consent, modification application consent or complying development certificate, or permitted under a building information certificate, to not reside in or use, or permit others to reside in or use, the following areas of the Site after fourteen (14) days from the Commencement Date:
- i. Excavation Area 1 (as generally shown in the area labelled A in the plans at Annexure 1),
 - ii. Excavation Area 2 (as generally shown in the area labelled B in the plans at Annexure 1),
 - iii. the South Wing (as generally shown in the area labelled D in the plans at Annexure 1),

(together the **Restricted Areas**).

- 20.2 to within fourteen (14) days of the Commencement Date cause the access point into each part of the Restricted Areas to be boarded up with fixed plywood panels or similar means (from the floor to the ceiling of each access point) such that each part of the Restricted Areas cannot be entered or functionally used.
- 20.3 to maintain the measures installed pursuant to clause 20.2 above, until such time as the requirement for the boarding up of the Restricted Areas are removed, , or a development consent, or modification application is granted for new development which requires the removal of the boarding up of the Restricted Areas.

Remedial actions

- 20.4 to carry out any necessary works, and obtain all necessary consents or approvals to:
- i. ensure that the verandah at Level 4 (street level) of the Heritage Dwelling can be reconstructed along the southern side of the Heritage Dwelling,
 - ii. reconstruct the section of a wall located on the eastern façade of the Heritage Dwelling between level 3 (ground floor) and level 4 (street level) (as generally shown in the area labelled C in the plans at Annexure 1).
- 20.5 to pay the sum of \$135,000.00 to IW Council, which is to be wholly contributed to IW Council's heritage design guidance program, called 'Review of State Heritage Inventory Forms and Guidelines for Local Heritage items and Heritage Conservation Areas'. The sum is to be paid in the following three (3) payments:
- i. \$45,000.00 within 30 days of the Commencement Date;
 - ii. \$45,000.00 within 60 days of the Commencement Date; and
 - iii. \$45,000.00 within 90 days of the Commencement Date.

This payment is to be made to the following account:

Institution: Commonwealth Bank
Account Name: Inner West Council
BSB: 062227
Account Number: 10231800

- 20.6 to, within 28 days of the Commencement Date, pay to IW Council the amount of \$50,000.00, to cover IW Council's investigation and legal costs associated with this matter. This payment is to be made to the following account:

Institution: Commonwealth Bank
Account Name: Inner West Council
BSB: 062227
Account Number: 10231800

- 20.7 to, within 28 days of the Commencement Date, pay to the Department the amount of \$1,000, to cover the Department's costs associated with reviewing and considering this Undertaking. This payment is to be made to the following account:

Institution: Westpac Bank
Account Name: DPIE Operational ACC No. 2
BSB: 032-001
Account Number: 114428

- 20.8 to implement the following to satisfy Council that the undertakings in clauses 20.1 – 20.7 have been complied with:
- i. Email to Council's General Counsel at matthew.pearce@innerwest.nsw.gov.au.
 - ii. enclosing a copy of the bank statement/s or transaction receipt/s that confirms that the payments in clauses 20.5 and 20.6 have been made, within seven (7) days of making each of those payments.
 - iii. Email to the Director – Compliance and Investigations of the Department of Planning, Industry and Environment at compliance@planning.nsw.gov.au enclosing a copy of the bank statement or transaction receipt that confirms that the payment in paragraphs 20.7 has been made, within seven (7) days of making that payment.
 - iv. Permit Council's enforcement officer to inspect the Site 21 days after the Commencement Date, and once every three (3) months thereafter, following at least 7 days' written notice being provided and subject to the inspection taking place during business hours.

Demolition and removal of unauthorised works

- 20.9 to demolish and remove from the Site the South Wing Works – Increased Height and the South Wing Works – Roof Slab Area, or parts thereof which:
- i. do not have a development consent, modification application consent or a complying development certificate approving those works, or
 - ii. are not the subject of a building information certificate,

at the two (2) year anniversary of the Commencement Date.


- 20.10 to carry out the works in clause 20.9 by the two (2) year anniversary of the Commencement Date, unless IW Council determines, at its absolute discretion, that an appropriate and reasonable circumstance that has been brought to its attention warrants an extension of no more than twelve (12) months for compliance with this clause by Mr Morad subject to clause 20.12 below.
 - 20.11 to permit Council's enforcement officer to inspect the Site within 7 days of the completion of the works in clause 20.9, following 3 days' written notice being provided and subject to the inspection taking place during business hours to confirm the above has been complied with.
 - 20.12 Mr Morad acknowledges that if IW Council grants the extension specified in clause 20.10, then he must write to the Secretary of the Department at least 30 days before the end of the timeframe in clause 20.9 seeking confirmation of the twelve (12) months extension to the timeframe in clause 20.10, with a copy of that correspondence also provided to the Council.
 - 20.13 that he has the capacity to comply with the terms of this Undertaking;
 - 20.14 that he commits to ensuring that the alleged contraventions will not reoccur. This will involve seeking advice from relevant experts and IW Council.
21. Mr Morad agrees that that the terms in clause 20 are enforceable.


E. Acknowledgments

22. Mr Morad acknowledges that:
- a. the Department will make this Undertaking publicly available including by publishing it on the Department's public register of section 9.5 undertakings on its, or IW Council's website,
 - b. the Department will, from time to time, make public reference to this Undertaking including in news media statements and in Department's publications, and
 - c. this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
23. The Planning Secretary and Mr Morad acknowledge that IW Council has agreed to discontinue the Prosecution Proceedings following the acceptance of this Undertaking by the Planning Secretary, and the execution of this Undertaking by the parties.

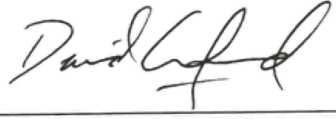
F. Executed as an Undertaking

24. Executed by Mr Mohammad Khair Eddine Morad:

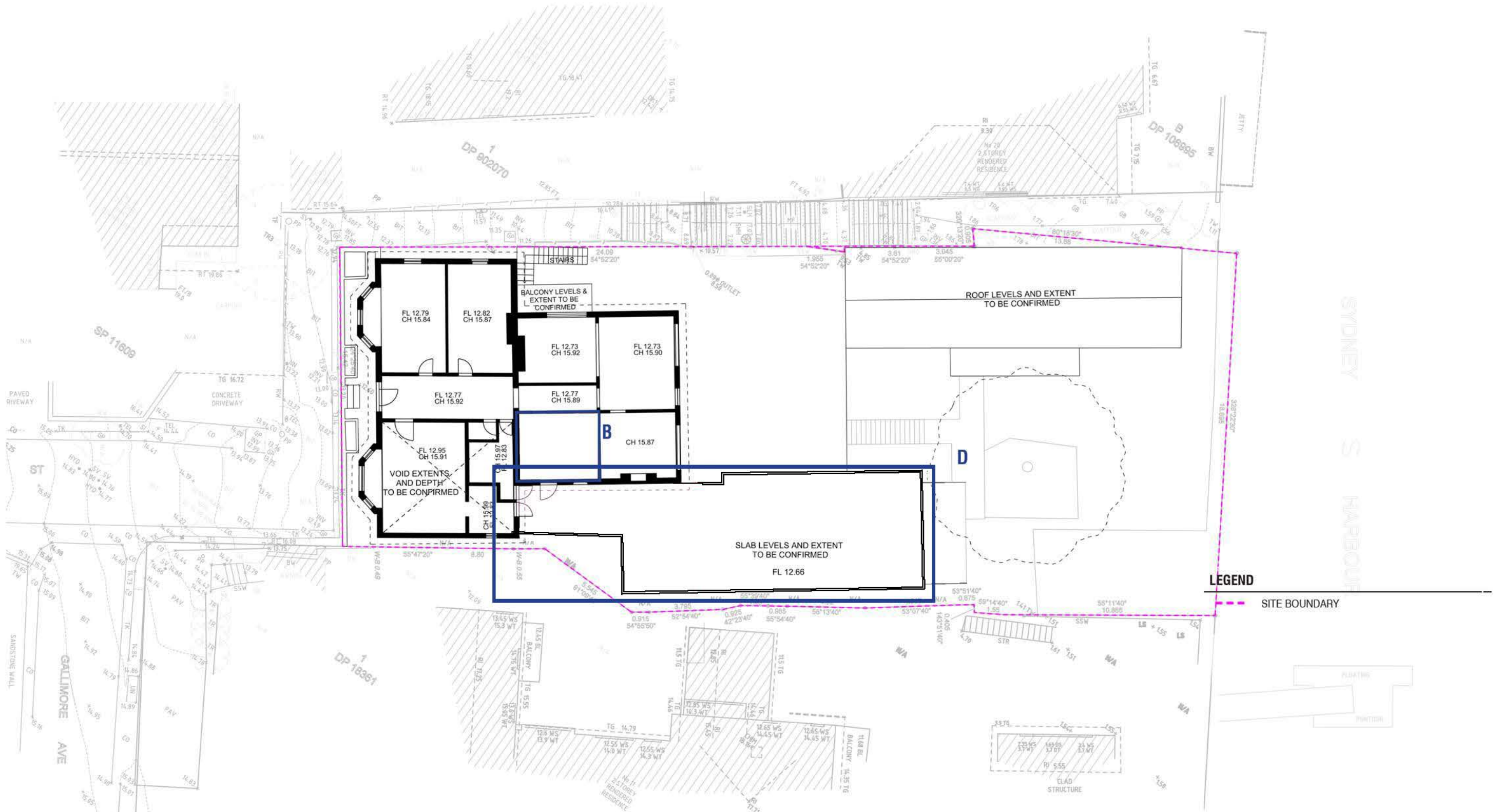
Signature 
Name Mohammad Khair Eddine Morad
Date 24/5/24

Signature of Witness 
Name Anthony Boskovic
Date 24/5/24

25. Accepted by the Planning Secretary pursuant to s 9.5 of the EP&A Act

Signature 
Name David Gainsford
Position Deputy Secretary
Date Development Assessment
and Sustainability
20/06/2024

Signature of Witness AL
Name Adrien Lalchere
Date 20/06/2024



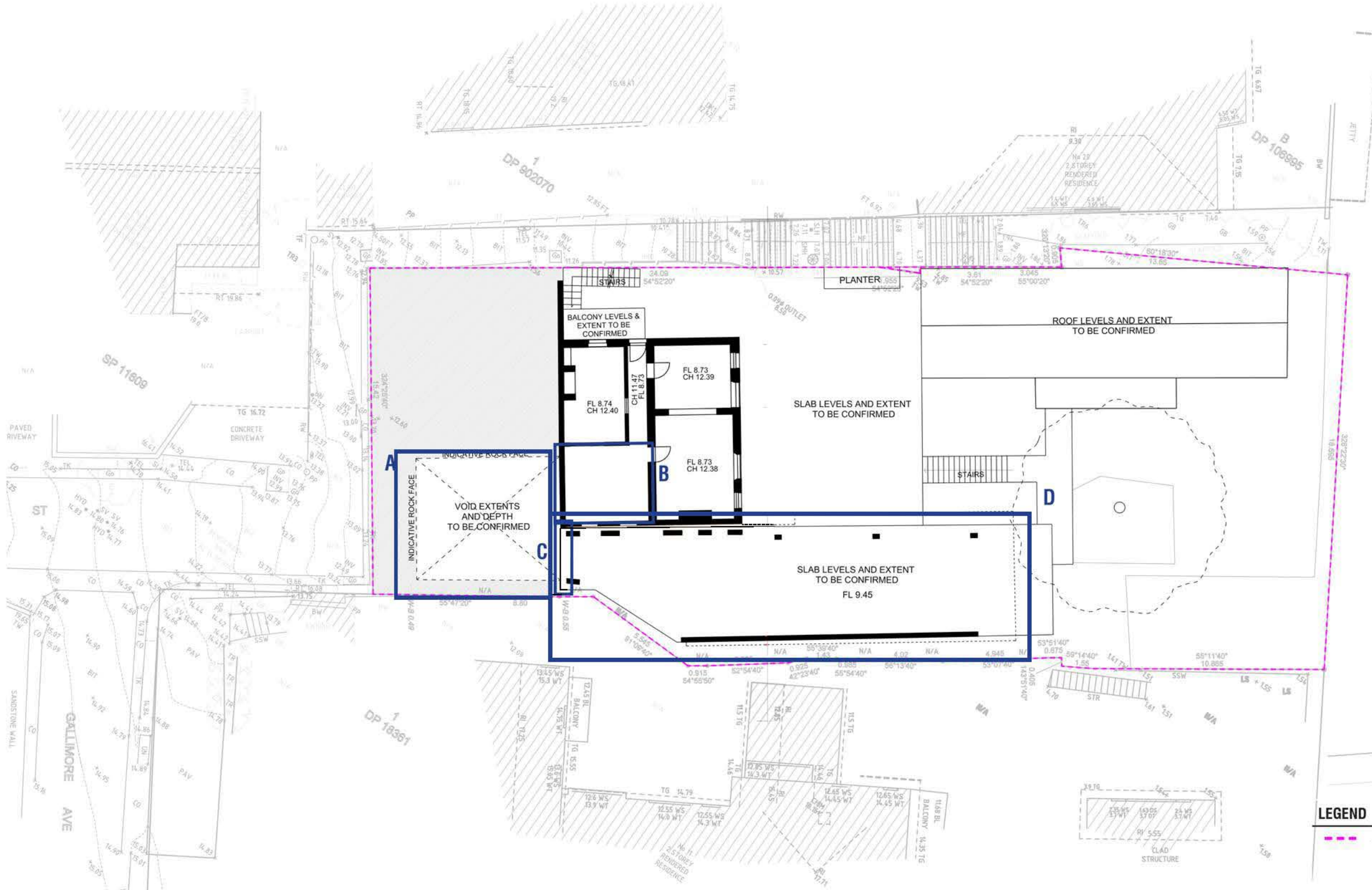
LEGEND
 - - - - - SITE BOUNDARY

The architect has used reasonable endeavours to prepare these drawings to depict the architectural elements as they were completed at the time of the survey by Wumara Group dated 14/02/2023. The architect does not guarantee that the drawings accurately represent the building's condition at any time in the future. The drawings do not account for any items that were not viewed as part of the preparation of these drawings, subsequent alterations, renovations or natural wear and tear.

The architect makes no warranties, express or implied, regarding the accuracy, completeness, or fitness for a particular purpose of these drawings.

Users of this document are advised to exercise their judgment and, if necessary, obtain updated documentation to account for any changes made to the building after the completion of this document.

The architect shall not be held responsible for any liabilities or damages arising from or reliance on this document.



SYDNEY HARBOUR

LEGEND

--- SITE BOUNDARY

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14 CLIFTON STREET,
BALMAIN EAST

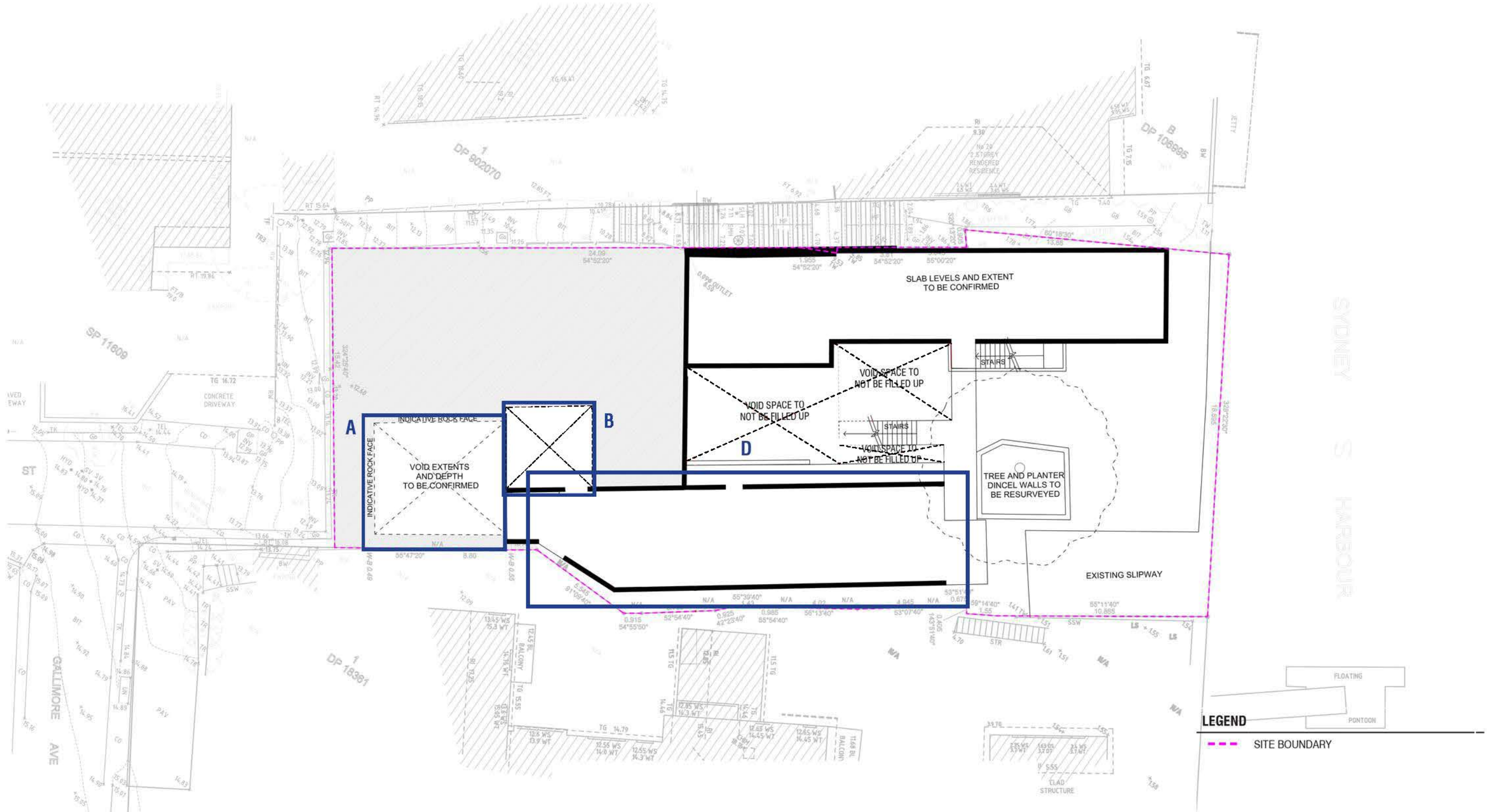
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L3 GROUND FLOOR - MODIFICATIONS

SCALE - 1:200 @ A3 SHEET

DATE
23/05/2024
ISSUE
E
DRAWING
SK-03





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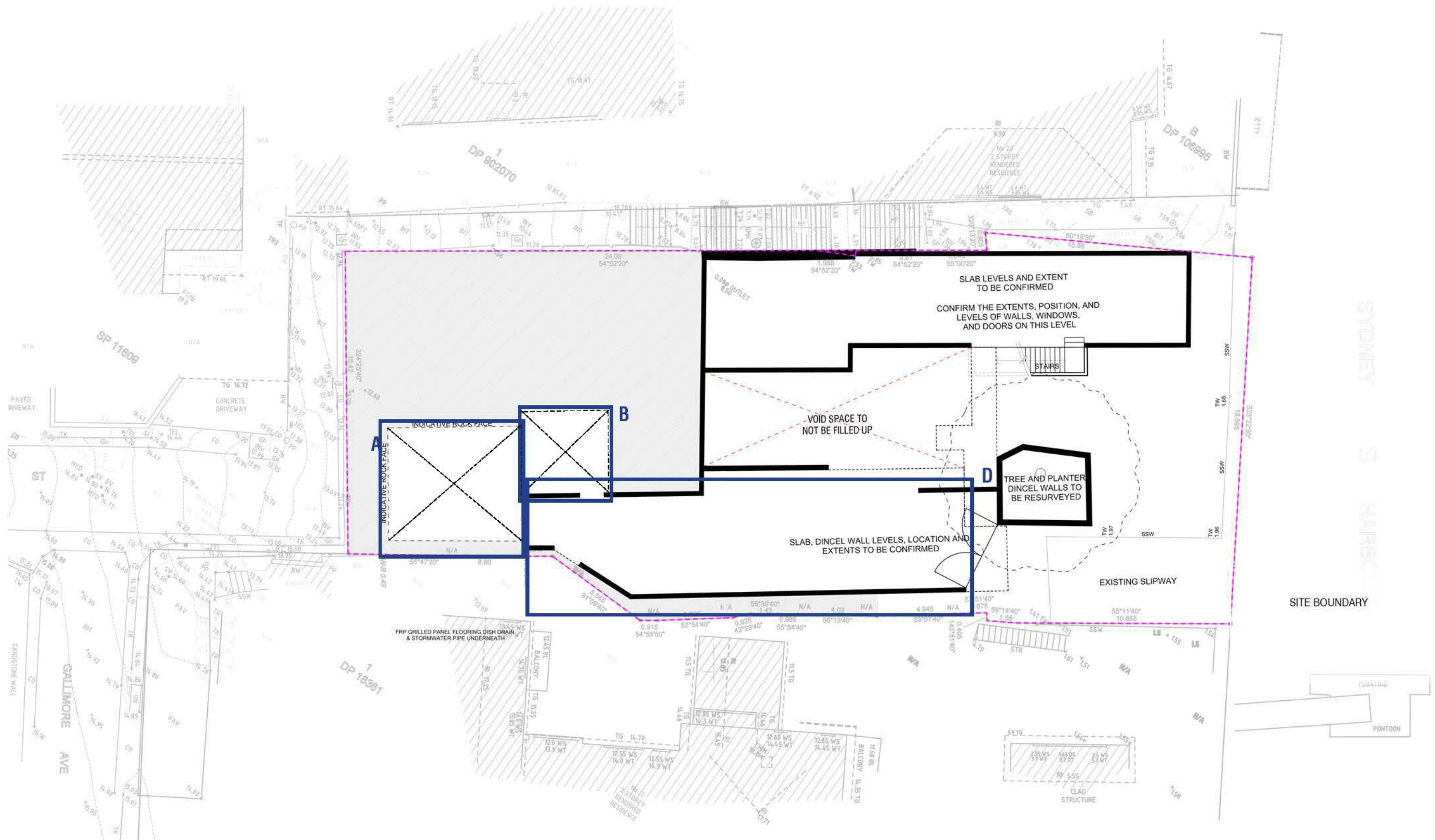


14 CLIFTON STREET,
BALMAIN EAST

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**L2 UPPER BOATHOUSE
- MODIFICATIONS**
SCALE - 1:200 @ A3 SHEET

DATE
23/05/2024
ISSUE
E
DRAWING
SK-04



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14 CLIFTON STREET,
BALMAIN EAST

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**L1 LOWER BOATHOUSE
- MODIFICATIONS**
SCALE - 1:200 @ A3 SHEET

DATE
23/05/2024
ISSUE
E
DRAWING
SK-05

