



## Development Tribunal – Decision Notice

---

### **Planning Act 2016**

<b>Appeal Number:</b>	<b>53-17</b>
<b>Appellant:</b>	John and Lisa Hanley
<b>Assessment Manager:</b>	Grant Johnsen (A1059646) Fluid Building Approvals
<b>Concurrence Agency:</b> (if applicable)	Moreton Bay Regional Council (Council)
<b>Site Address:</b>	58 Gilford Crescent Albany Creek and described as Lot 72 on RP 191022 – the subject site

---

### **Appeal**

Appeal under section 229 of the *Planning Act 2016* (PA) against the Decision Notice of the Assessment Manager to refuse a carport within the street setback area. Moreton Bay Regional (Council) as the Concurrence Agency directed the Assessment Manager to refuse the building as it did not meet and could not be conditioned to meet the performance outcomes of the Planning Scheme Dwelling House Code

---

<b>Date and time of hearing:</b>	2.00pm 7 December 2017
<b>Place of hearing:</b>	The subject site
<b>Tribunal:</b>	Debbie Johnson – Chair Andrew Parker - Member
<b>Present:</b>	John and Lisa Hanley – Appellant Chris Trewin and Melanie Marsellos – Moreton Bay Regional Council representatives Branden Ross and Tahlia Smith – Fluid Building Approvals representatives Jamie Skews – Apollo representative

---

### **Decision:**

The Development Tribunal (Tribunal), in accordance with section 254 of the *Planning Act 2016* (PA) replaces the Assessment Manager's decision to refuse the development application at the direction of Council, and approves the amended siting of the carport with the following conditions:

1. The proposed carport must be sited and built in general accordance with the following drawings:
  - i. Amended Site Plan by Apollo Patios, Drawing Number # N 77, Sheet 1 of 4, undated, showing carport of size 7.7 metres length (facing property frontage) and 7.4 metres width located with minimum street setback of 2.4 metres measured from the outer most projection to the street property boundary at Gilford Crescent, and 0.5 metres from the right side property boundary (reduced size copy attached for identification); and

- ii. Amended Plan by Apollo Patios, Drawing Number # N 77, Sheet 2 of 4, undated, showing proposed modifications to existing driveway (reduced size copy attached for identification); and
  - iii. Amended Elevation Plan by Apollo Patios, Drawing Number # N 77, Sheet 3 of 4, undated, showing height of carport facing the property frontage approximately 3.951 metres above street level (reduced size copy attached for identification); and
  - iv. Amended Site Plan by Apollo Patios, Drawing Number # N 77, Sheet 4 of 4, undated, showing carport posts located minimum 1.5 metres measured horizontally from the sewer infrastructure (Footing design to be confirmed by RPEQ Engineer as appropriate for QDC MP1.4 purposes) (reduced size copy attached for identification).
2. A new landscaping buffer, extending continuously for the entire length of the carport, consisting of screen planting of vegetation is required to be established and maintained between the carport and the Gilford Crescent frontage as depicted on the approved elevation plan. The landscaping buffer is to be established within 3 months of the carport being placed on the site, and maintained (watering, fertilising, mulching, weeding, and the like) for the life of the building;
  3. Any formal modifications to the crossover or driveway are not to be constructed without any necessary (if required) approval (Operational Works Permit or the like) first being obtained from Moreton Bay Regional Council; and
  4. The Appellant shall, prior to any building work commencing onsite, apply for and gain, a Development Approval for the Building Works. The conditions 1 to 4 above are to be referred to in any final inspection certificate.

## **Background**

The subject site is rectangular and approximately 600sq/m in area. The frontage is 18M wide and the depth of the site is approximately 34M. The site has a significant slope (approximately 1 in 7M) from the rear eastern corner of the site falling diagonally to the front western corner. The existing two storey dwelling was built in 1991 or thereabouts. The dwelling is setback approximately 10M from the street frontage and there is a steep concrete driveway that once provided access to a two car garage at the ground level. In recent times the home owners converted the garage to a self-contained living area. This decision was made because access to the upper floor living areas was no longer possible due to health constraints. However, as there is no longer any car accommodation, all vehicles have to be parked in the street or on the sloping driveway. For access and safety reasons the Appellants decided to construct a rock retainment wall (less than 1M high) to create a level pad in the area to the southern side of the driveway. This pad has already been constructed and is situated between the dwelling and the street frontage. This is where the carport measuring 7.7M in depth and 7.4M in width is to be sited with a building line setback of 2.4M. There is an existing 150mm diameter sewer gravity main located approximately 1M inside and parallel to the front alignment. There is therefore a potential conflict between the proposed works and the existing sewer infrastructure.

The Appellants engaged Apollo Patios as building contractors for the project and a development application for the building works was sought through Fluid Building Approvals. The proposed works did not meet all requirements for accepted development (RAD) as outlined in the Dwelling House Code contained in the Moreton Bay Regional Council Planning Scheme. The Assessment

Manager referred the application to Council as a concurrence agency for both design and siting and building over sewer advice on 28 August 2017.

On 21 September 2017 Council responded advising they did not support the proposal stating the works would not satisfy the performance and/ or overall outcomes of Dwelling House Code provisions.

On 10 October 2017 the Assessment Manager refused the development application.

On 30 October 2017, the Appellants lodged a Form 10 – Application for Appeal with the registrar.

### **Material Considered**

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar 30 October 2017
2. Written submission by the Appellants
3. Concurrence agency response dated 21 September 2017
4. The Assessment Manager's decision notice dated 30 October 2017
5. Unity Water water/sewer infrastructure plan dated 24 August 2017 as detailed for the subject site
6. Photographs of other carport structures in the immediate locality
7. Written submission from Occupational Therapist dated 5 December 2017
8. Letter from Consultant Neurologist dated 8 July 2016
9. Verbal submissions by the appellants at the hearing
10. Verbal submissions by the council's representative at the hearing
11. Verbal submissions by the Assessment Manager's representatives at the hearing
12. Verbal submission by the builder at the hearing
13. Revised plans by Apollo Patios received by email through the registrar 22 December 2017
14. Original plans lodged by Apollo Patios received by email through the registrar 22 December 2017
15. Concurrence Agency Referral Form- Moreton Bay Regional Council
16. Checklist for Carports in Front Boundary Setback- Moreton Bay Regional Council
17. Referral Checklist for Building Work
18. DA Form 2 – Building Work Details
19. Confirmation Notice dated 28 August 2017 (PA)
20. The *Planning Act 2016* (PA)
21. The *Building Act 1975* (BA)
22. The *Queensland Development Code* (QDC) Part MP 1.2

## Findings of Fact

The Tribunal makes the following findings of fact:

- The site is located in a fully established suburban environment where neighbouring homes have been built around the same period. There are a mixture of single and two storey homes with most observing a minimum 6M street setback. There are several examples of open carports in the street setback areas but these sites are in the minority.
- The Appellants have recently experienced a dramatic change in their lifestyle due to the onset of a serious health condition. Together they have lived in their home for 26 years and have no desire to move. In recent times they elected to remodel their home and adapt the garage on the ground level to provide them with a suitable living space.
- While the subject site is steeply sloping, the original cut and fill that was undertaken when the dwelling was built in 1991 has exacerbated the slope of the land between the house and the roadway. This has also contributed to the gradient of the driveway. Now that there is no longer a garage, all vehicles associated with the dwelling are being parked either on this driveway or on the street. This is causing significant difficulties for one of the homeowners who is incapable of negotiating the slope any longer and is therefore unable to get into or out of a vehicle. There are also increasing concerns in respect of emergency services being able to access this site to assist when needed.
- The Appellants have levelled a large area in their front yard to the side of this driveway at a level perhaps 1M lower than the ground floor. The area is sufficient in size to accommodate the proposed carport which is 7.7M deep and 7.4M wide however suitable vehicular access to the pad from the road is not clearly established as there are insufficient details and levels provided on the drawings that have been submitted for approval. The carport structure is a *light weight* structure with a skillion roof pitched at 2 degrees. The overall height is not clear but appears to be less than 3M above the finished surface level of the pad as constructed. This pad is supported along the street frontage by a continuous line of large stacked rock that form a retainment wall. It does not appear that this wall has any reinforced concrete footings and the drawings state that the wall is 950mm high. Given this information, the existing rock wall is deemed self-assessable.
- The Queensland Development Code (QDC) Part MP1.2 determines the Design and Siting requirements for Class 1 and 10 structures on sites over 450sq/m in area, but only to the extent that a local planning scheme does not opt to provide alternative requirements. In this instance the Moreton Bay Regional House Code does nominate alternative provisions. Accepted development must meet all of the requirements for accepted development (RAD) or be referred to Council as a Concurrence Agency.
- The QDC Part MP1.4 Building Over or Near Infrastructure determines the requirements for Class 1 and 10 structures. Where the application does not meet the acceptable solutions of the QDC part, it must be referred to the relevant service provider, Unity Water in this instance, as the Concurrence Agency for compliance assessment against the relevant performance outcomes. This part of the QDC does not apply to self-assessable work. This part of the QDC determines reduced requirements for *light weight* structures such as is proposed.
- The Assessment Manager referred this application to the Council on 28 August 2017. The Confirmation Notice states that the application was referred for Design and Siting and Build over Sewer.

- At the hearing, the Council representatives stated that they had requested additional information to be detailed and provided on the building design plans. Specifically existing and proposed surface levels, building heights and dimensions of existing and proposed structures. However, as no additional information was provided, on 21 September 2017, the Council advised the Assessment Manager that they did not support the application. The Council's notice stated the works did not achieve the overall outcomes outlined in the Dwelling House Code, specifically;

PO3 Dwelling Houses and structures are setback to:

- a. be consistent with the intended character of the streetscape, precinct and zone;
- b. ensure parked vehicles do not restrict pedestrian and traffic movement and safety;
- c. provide adequate separation to particular infrastructure and waterbodies or minimise adverse impacts on people, property, water quality and infrastructure;
- d. maintain the privacy of adjoining properties;
- g. maintain private open space areas that are of a size and dimension to be usable and functional spaces.

PO7 Garages and carports facing the street are designed to:

- a. not dominate the street frontage;
- b. maintain active frontages and opportunities for surveillance from within the dwelling;
- c. contribute to the character of the streetscape;
- d. be separated to facilitate on street parking that does not negatively impact the visual amenity of adjoining properties;
- b. located on site to not dominate the streetscape.

- The Tribunal found;
  - a. that the design of the carport structure was in keeping with the style of other carport structures in the immediate vicinity;
  - b. the dwelling needed adequate on site provision for the safe movement and parking of vehicles;
  - c. the *light weight* carport structure can be designed to account for the existing sewer infrastructure in the same location, with the footing design to be confirmed by an RPEQ Engineer as appropriate for QDC MP1.4 purposes. The 950mm high rock retainment wall is deemed self-assessable building work and does not appear to have a concrete strip footing, therefore QDC Part MP1.4 does not apply to the retainment wall;
  - d. while at the hearing, the slope of the land and the positioning of other established homes in the immediate vicinity could be taken into account when considering the height, size and position of the carport structure from a design and siting perspective.

## Reasons for the Decision

The Tribunal found the amended design for the proposed structure would have minimal visual impact on the existing streetscape due to the fall of the land and there is potential for screen planting to be provided along the street frontage. The proposed planting will improve the streetscape and protect the parked cars from the western sun. Additionally, the proposed carport offers a safer and more accessible parking solution for the home owners while allowing more street parking to become available for others in the area.

**Debbie Johnson**

**Development Tribunal Chair**

**Date: 29 January 2018**

## **Appeal Rights**

Schedule 1, Table 2 (1) of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

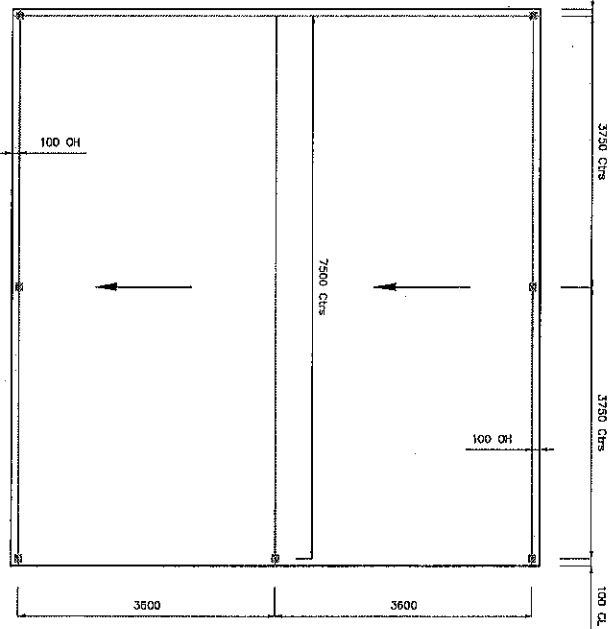
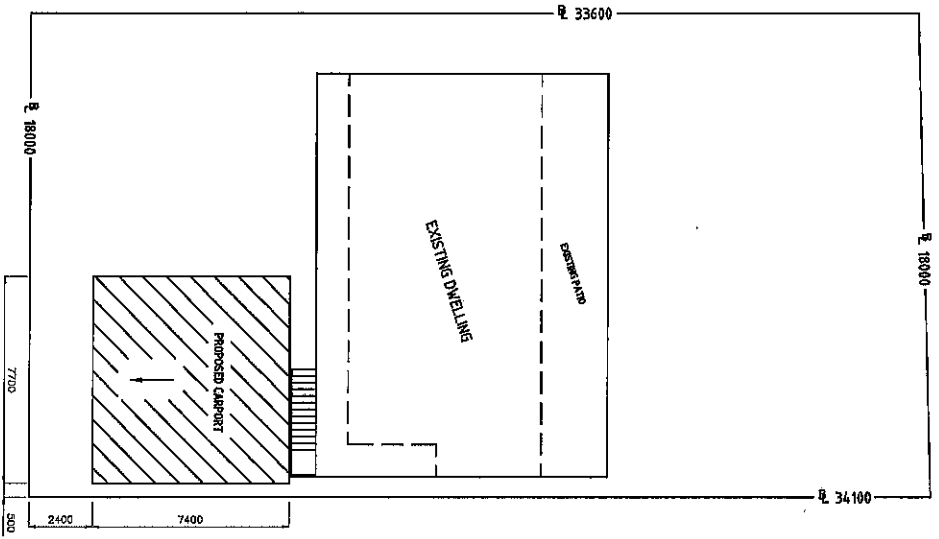
The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

## **Enquiries**

All correspondence should be addressed to:

The Registrar of Development Tribunals  
Department of Housing and Public Works  
GPO Box 2457  
Brisbane QLD 4001

**Telephone (07) 1800 804 833 Facsimile (07) 3237 1248**

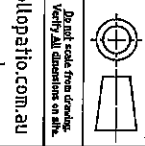


**NOTE:**  
 PROPOSED = 7700 x 7400 = 5698 M<sup>2</sup>  
 T70 BEAM SET BACK APPROX 100 FROM OHP WITH 3 - 90 x 90 COLUMNS AT APPROX 3750 CTRS.  
 T70 MID BEAM WITH 1 - 90 x 90 COLUMN & POINT LOADED AT APPROX 7500 CTRS.  
 T70 REAR BEAM WITH 3 - 90 x 90 COLUMNS AT APPROX 3750 CTRS.  
 APPROX HEIGHT = 2500 UNDER BEAM TO 3951.  
 DP CONNECTED TO BUBBLE PIT.  
 (AS TO ANZES29 & ANZFCO1-P12)

(R & BS)



**Apollo Patios**  
 Apollo Patio Roofing Australia Pty Ltd  
 Head Office: 29 Lorybilla Place Parkinson, QLD  
 Phone: (07) 3277-7666  
 Fax: (07) 3800-9230  
 Web-Site: www.apollopatio.com.au

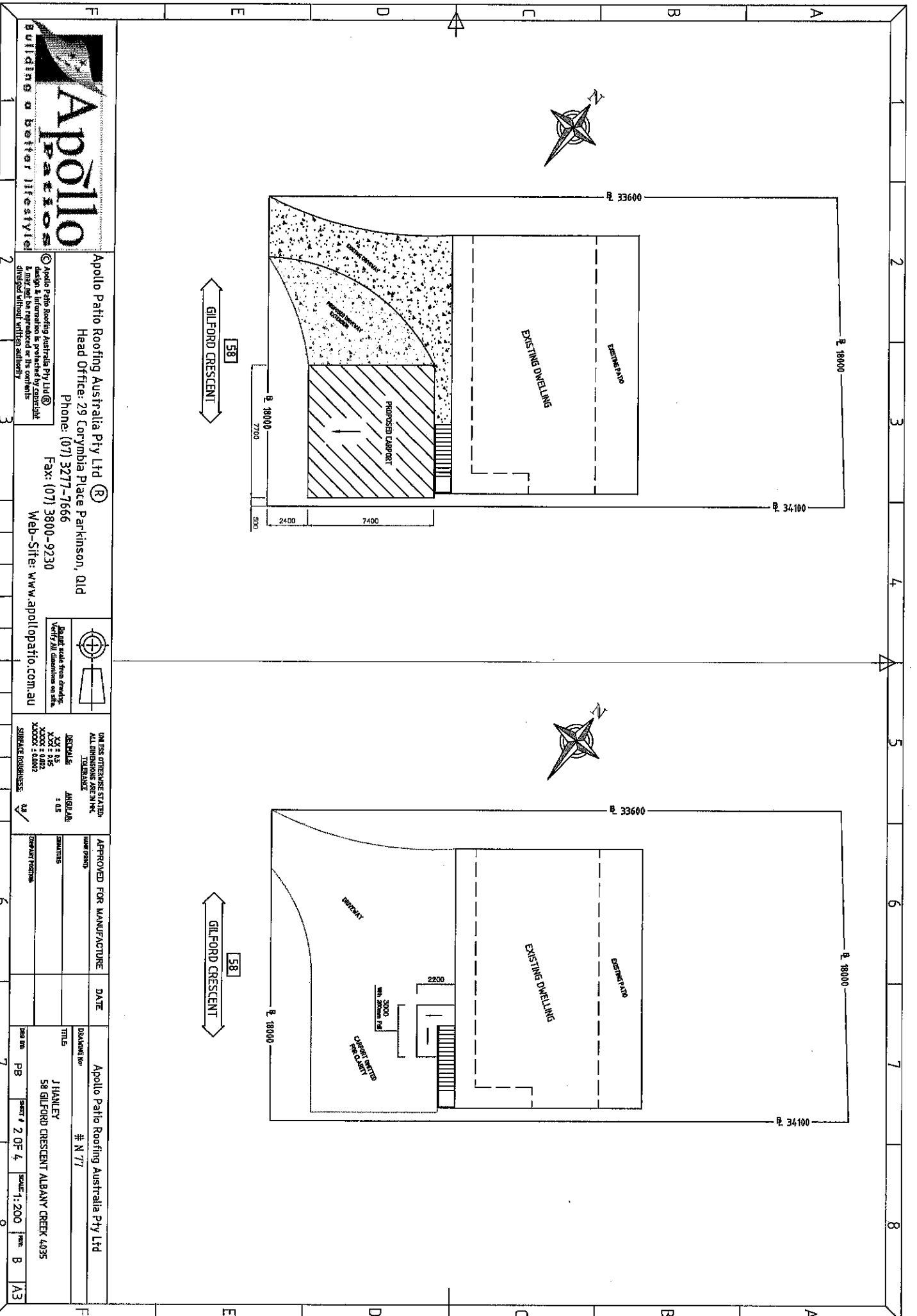


UNLESS OTHERWISE STATED  
 ALL DIMENSIONS ARE IN MM.  
 DETAILS: AS 1610, AS 1611, AS 1612, AS 1613, AS 1614, AS 1615, AS 1616, AS 1617, AS 1618, AS 1619, AS 1620, AS 1621, AS 1622, AS 1623, AS 1624, AS 1625, AS 1626, AS 1627, AS 1628, AS 1629, AS 1630, AS 1631, AS 1632, AS 1633, AS 1634, AS 1635, AS 1636, AS 1637, AS 1638, AS 1639, AS 1640, AS 1641, AS 1642, AS 1643, AS 1644, AS 1645, AS 1646, AS 1647, AS 1648, AS 1649, AS 1650, AS 1651, AS 1652, AS 1653, AS 1654, AS 1655, AS 1656, AS 1657, AS 1658, AS 1659, AS 1660, AS 1661, AS 1662, AS 1663, AS 1664, AS 1665, AS 1666, AS 1667, AS 1668, AS 1669, AS 1670, AS 1671, AS 1672, AS 1673, AS 1674, AS 1675, AS 1676, AS 1677, AS 1678, AS 1679, AS 1680, AS 1681, AS 1682, AS 1683, AS 1684, AS 1685, AS 1686, AS 1687, AS 1688, AS 1689, AS 1690, AS 1691, AS 1692, AS 1693, AS 1694, AS 1695, AS 1696, AS 1697, AS 1698, AS 1699, AS 1700, AS 1701, AS 1702, AS 1703, AS 1704, AS 1705, AS 1706, AS 1707, AS 1708, AS 1709, AS 1710, AS 1711, AS 1712, AS 1713, AS 1714, AS 1715, AS 1716, AS 1717, AS 1718, AS 1719, AS 1720, AS 1721, AS 1722, AS 1723, AS 1724, AS 1725, AS 1726, AS 1727, AS 1728, AS 1729, AS 1730, AS 1731, AS 1732, AS 1733, AS 1734, AS 1735, AS 1736, AS 1737, AS 1738, AS 1739, AS 1740, AS 1741, AS 1742, AS 1743, AS 1744, AS 1745, AS 1746, AS 1747, AS 1748, AS 1749, AS 1750, AS 1751, AS 1752, AS 1753, AS 1754, AS 1755, AS 1756, AS 1757, AS 1758, AS 1759, AS 1760, AS 1761, AS 1762, AS 1763, AS 1764, AS 1765, AS 1766, AS 1767, AS 1768, AS 1769, AS 1770, AS 1771, AS 1772, AS 1773, AS 1774, AS 1775, AS 1776, AS 1777, AS 1778, AS 1779, AS 1780, AS 1781, AS 1782, AS 1783, AS 1784, AS 1785, AS 1786, AS 1787, AS 1788, AS 1789, AS 1790, AS 1791, AS 1792, AS 1793, AS 1794, AS 1795, AS 1796, AS 1797, AS 1798, AS 1799, AS 1800, AS 1801, AS 1802, AS 1803, AS 1804, AS 1805, AS 1806, AS 1807, AS 1808, AS 1809, AS 1810, AS 1811, AS 1812, AS 1813, AS 1814, AS 1815, AS 1816, AS 1817, AS 1818, AS 1819, AS 1820, AS 1821, AS 1822, AS 1823, AS 1824, AS 1825, AS 1826, AS 1827, AS 1828, AS 1829, AS 1830, AS 1831, AS 1832, AS 1833, AS 1834, AS 1835, AS 1836, AS 1837, AS 1838, AS 1839, AS 1840, AS 1841, AS 1842, AS 1843, AS 1844, AS 1845, AS 1846, AS 1847, AS 1848, AS 1849, AS 1850, AS 1851, AS 1852, AS 1853, AS 1854, AS 1855, AS 1856, AS 1857, AS 1858, AS 1859, AS 1860, AS 1861, AS 1862, AS 1863, AS 1864, AS 1865, AS 1866, AS 1867, AS 1868, AS 1869, AS 1870, AS 1871, AS 1872, AS 1873, AS 1874, AS 1875, AS 1876, AS 1877, AS 1878, AS 1879, AS 1880, AS 1881, AS 1882, AS 1883, AS 1884, AS 1885, AS 1886, AS 1887, AS 1888, AS 1889, AS 1890, AS 1891, AS 1892, AS 1893, AS 1894, AS 1895, AS 1896, AS 1897, AS 1898, AS 1899, AS 1900, AS 1901, AS 1902, AS 1903, AS 1904, AS 1905, AS 1906, AS 1907, AS 1908, AS 1909, AS 1910, AS 1911, AS 1912, AS 1913, AS 1914, AS 1915, AS 1916, AS 1917, AS 1918, AS 1919, AS 1920, AS 1921, AS 1922, AS 1923, AS 1924, AS 1925, AS 1926, AS 1927, AS 1928, AS 1929, AS 1930, AS 1931, AS 1932, AS 1933, AS 1934, AS 1935, AS 1936, AS 1937, AS 1938, AS 1939, AS 1940, AS 1941, AS 1942, AS 1943, AS 1944, AS 1945, AS 1946, AS 1947, AS 1948, AS 1949, AS 1950, AS 1951, AS 1952, AS 1953, AS 1954, AS 1955, AS 1956, AS 1957, AS 1958, AS 1959, AS 1960, AS 1961, AS 1962, AS 1963, AS 1964, AS 1965, AS 1966, AS 1967, AS 1968, AS 1969, AS 1970, AS 1971, AS 1972, AS 1973, AS 1974, AS 1975, AS 1976, AS 1977, AS 1978, AS 1979, AS 1980, AS 1981, AS 1982, AS 1983, AS 1984, AS 1985, AS 1986, AS 1987, AS 1988, AS 1989, AS 1990, AS 1991, AS 1992, AS 1993, AS 1994, AS 1995, AS 1996, AS 1997, AS 1998, AS 1999, AS 2000.

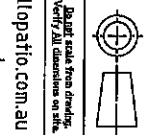
APPROVED FOR MANUFACTURE	DATE	DRAWING NO.	TITLE
[Signature]		Apollo Patio Roofing Australia Pty Ltd # N 77	J HANLEY 58 GILFORD CRESCENT ALBANY CREEK 4035

COMPANY/PERSON	SCALE	DATE	REV
PB	1:100	4	B
	1:200		A3





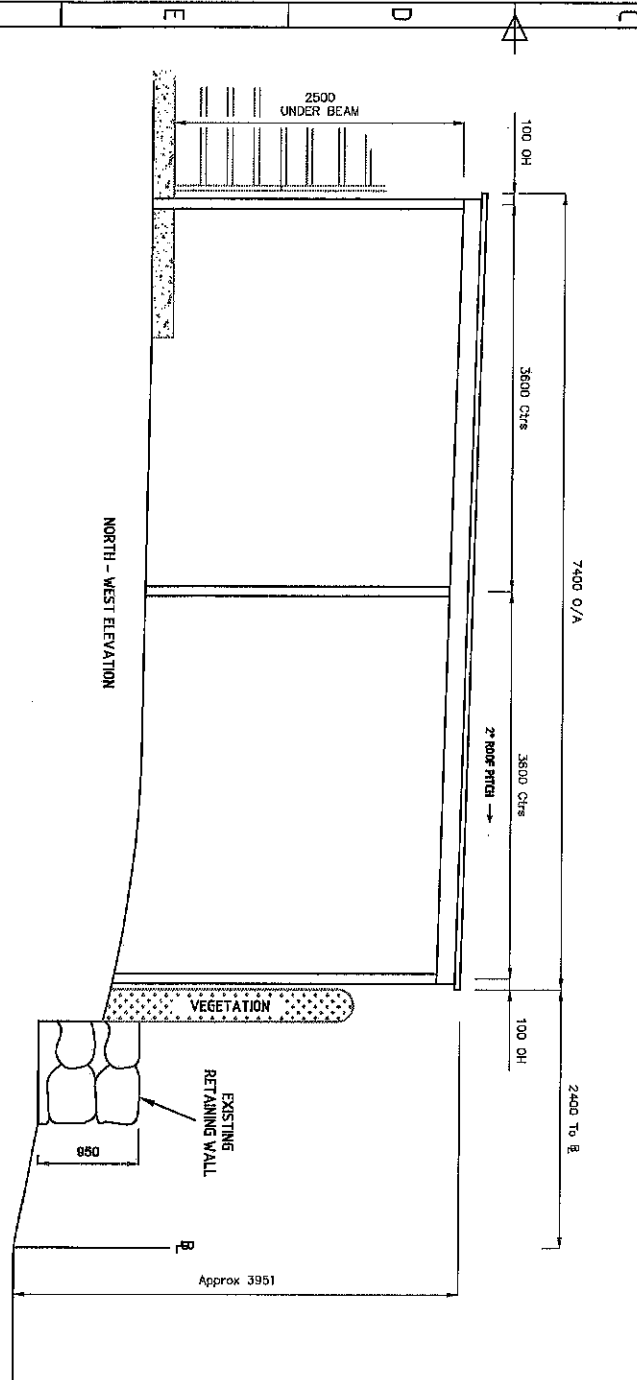
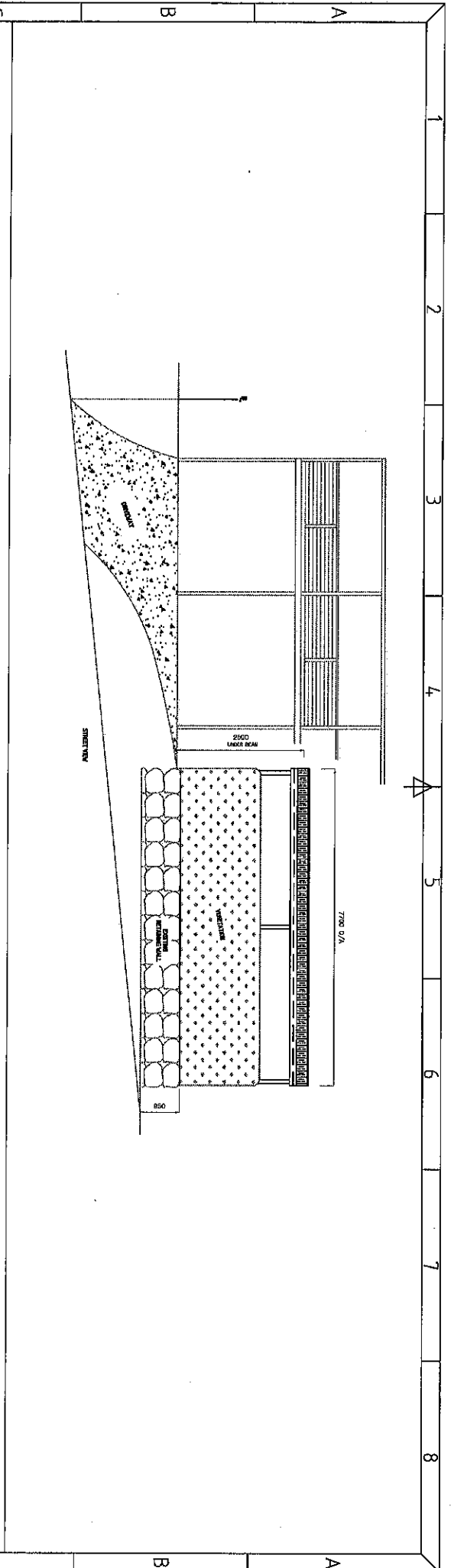
**Apollo Patios**  
 Apollo Patio Roofing Australia Pty Ltd  
 Head Office: 29 Lorymbia Place Parkinson, Qld  
 Phone: (07) 3777-7666  
 Fax: (07) 3800-9230  
 Web-Site: www.apollopatio.com.au



UNLESS OTHERWISE STATED,  
 ALL DIMENSIONS ARE IN MM.  
 DECIMALS : 1/1000000  
 ANGLES : 0.1  
 SURFACE ROUGHNESS : 1.6

APPROVED FOR MANUFACTURE  
 DATE

APPROVED FOR MANUFACTURE  
 DATE  
 DRAWING No: # N 77  
 TITLE: 58 GILFORD CRESCENT ALBANY CREEK 4035  
 DRAWN BY: J HANLEY  
 CHECKED BY: J HANLEY  
 DATE: 2 OF 4  
 SCALE: 1:200  
 SHEET: B  
 TOTAL SHEETS: A3



**NOTE:**  
 PROPOSED = 7700 x 7400 = 56,98 m<sup>2</sup>  
 T70 BEAM SET BACK APPROX 100 FROM OMP WITH 3 - 90 x 90 COLUMNS AT APPROX 3750 CTRS.  
 T70 MID BEAM WITH 1 - 90 x 90 COLUMN & POINT LOADED AT APPROX 7500 CTRS  
 T70 REAR BEAM WITH 3 - 90 x 90 COLUMNS AT APPROX 3750 CTRS.  
 APPROX HEIGHT = 2500 UNDER BEAM TO 3951  
 DP CONNECTED TO RIBBLE PIT.  
 (AS TO ANZFS29 & ANZFC01-P12)

**R & BOS**



**Apollo Patios**  
 Apollo Patios Roofing Australia Pty Ltd  
 Head Office: 29 Corvybia Place Parkinson, QLD  
 Phone: (07) 3277-7666  
 Fax: (07) 3800-9230  
 Web-Site: www.apollopatios.com.au

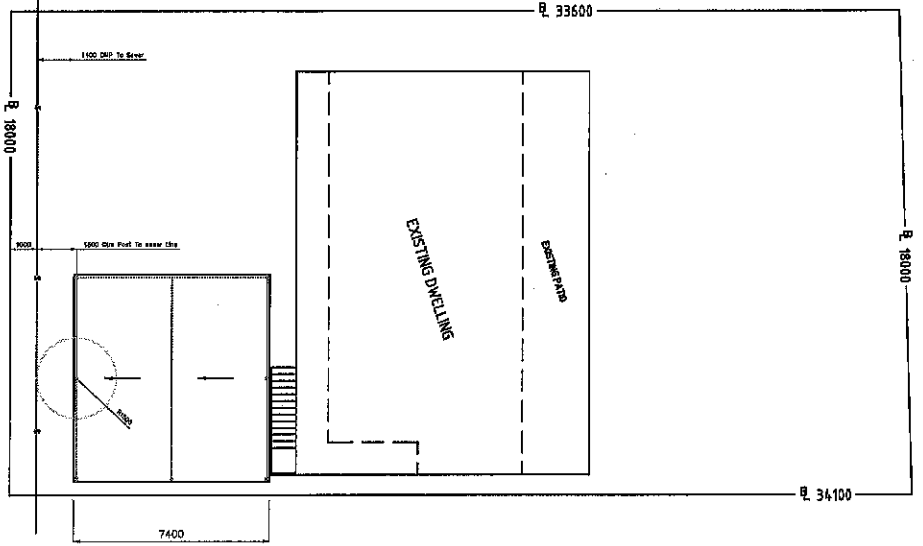
Do not scale from drawings  
 Verify all dimensions on site

UNLESS OTHERWISE STATED:  
 ALL DIMENSIONS ARE IN MM  
 DECIMALS TO 0.000  
 ANGLES TO 0.5  
 SURFACE FINISHES: AS SHOWN

APPROVED FOR MANUFACTURE	DATE

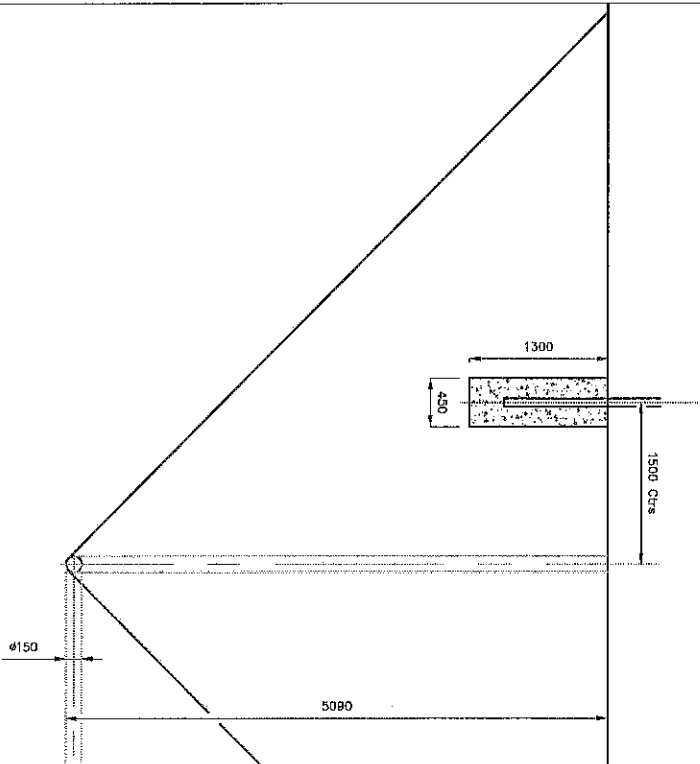
DESIGNER	APPROVED FOR MANUFACTURE
TITLE	DATE
DRAWING NO. # N 77	
J HANLEY	
50 GILFORD CRESCENT ALBANY CREEK 4035	
ONE SET	
PB	
SHEET # 3 OF 4	
SCALE 1:50	
REV. B	
A3	

1:200



GILFORD CRESCENT

1:50



**NOTE:**  
 PROPOSED = 7700 x 7400 = 56,98 m<sup>2</sup>  
 T70 BEAM SET BACK APPROX 700 FROM OMP WITH 3 - 90 x 90 COLUMNS AT APPROX 3750 CTRS.  
 T70 MID BEAM WITH 1 - 90 x 90 COLUMN & POINT LOADED AT APPROX 7500 CTRS  
 T70 REAR BEAM WITH 3 - 90 x 90 COLUMNS AT APPROX 3750 CTRS.  
 APPROX HEIGHT = 2500 UNDER BEAM TO 3951.  
 DP CONNECTED TO SUBBLE PIT.  
 (AS TO ANZFS28 & ANZFC01-P12)

R. & B.S.



Apollo Patio Roofing Australia Pty Ltd

Head Office: 29 Corymbia Place Parkinson, Qld

Phone: (07) 3277-7666

Fax: (07) 3800-9230

Web-Site: www.apollopatio.com.au



Detail made from drawing. VERTICAL DIMENSIONS IN MM.

UNLESS OTHERWISE STATED, ALL DIMENSIONS IN MM.

ROOFING: 22 x 0.5

WALLS: 200 x 0.5

FLOORING: 200 x 0.5

SURFACE FINISHES: AS SHOWN

APPROVED FOR MANUFACTURE

DATE

DRAWING No.

TITLE

DATE

Apollo Patio Roofing Australia Pty Ltd

# N 77

J HANLEY

S8 GILFORD CRESCENT ALBANY CREEK 4935

PB

4 OF 4

SCALE: 1:200

REV

B

A3