

12 August 2022

Chief Executive Officer
City of Melville
10 Almondbury Road
BOORAGOON, WA 6154

Dear Mayor and Councillors,

**Proposed Amendment to Two Storey Single Dwelling with Roof Terrace
Lot 90 (No. 23) Carron Road, Applecross**

Lateral Planning acts for the owners of No. 26 Strome Road, Applecross (**Client**) in respect of the Application for Development Approval proposing amendments to the approved two storey dwelling (**Application**) at No. 23 Carron Road, Applecross (**Development Site**).

In the previous months, we have submitted to the Council our concern with the Application, in particular the considerable bulk and scale, privacy for adjoining properties, the impact on access to views of significance and inaccurate submission prepared by the Applicant.

An independent analysis of the proposed development has been undertaken by Buchan Group, who has prepared the enclosed 'View Performance Analysis'. We note that the Buchan Group analysis has previously been submitted to the Administration and Council. As this was not discussed at the most recent Agenda Briefing Forum, we enclose the View Analysis for your convenience. As demonstrated by the independent review, the proposed development will have a devastating impact on the access to the view of significance. We refer to the comments of the Administration at the Agenda Briefing Forum on June 7 that:

'...in this particular case the View of Significance is the view of the City'.

And, separately, at the June 14 Agenda Briefing Forum where it was stated that:

'...if the view completely disappeared, you might conclude there is a detriment and you would not necessarily support the variation.'

We have prepared this final submission in a view to summarise the key considerations which are relevant to your consideration of the Application. It remains our view that the Application should not be supported by the Council for the reasons we have previously raised with you.

Accordingly, we enclose to this submission an Alternate Recommendation for Refusal which we request is supported by the Council.

Views of Significance

We have previously identified that the Application requires the Council to consider the appropriateness of the building height against Design Principles P6 of the R-Codes due to the building height variation. A consideration against Design Principle P6 necessarily involves an analysis of the impact to access to views of significance.

We reiterate at this juncture that Design Principles are not discretionary. That is, if the Council is of the view that the building height variation negatively impacts on access to views of significance, the Application must be refused.

It has been established that access to views of significance from non-adjoining properties is a relevant consideration for this Application as set out in *Warden and Town of Mosman Park [2019] WASAT 88*.

Warden established 4 relevant tests to be used when determining the impact to views of significance. We have set out at the headings below the relevant analysis and our comments for your consideration.

Assessment of the View to be Affected

It is common ground that the view to be affected is a view of the Perth City skyline and the Swan River, both as a combined view and as discrete elements. A view of the Perth City skyline was accepted as a view of significance in *Warden*.

Applecross remains one of the few locations where uninterrupted views of the Perth skyline remain available in a low-density suburban location promoting a sense of open space. The view is described as 'one of the most photogenic citiscapes' by TourismWA.

For your own understanding, below is a photo taken by the undersigned from the Study of our Client's dwelling.



Figure 1: Existing View from Study of 26 Strome Road

We have presented to the Council on the 'elements' which the Tribunal (citing *Tenacity and Waringah [2004] NSWLEC 140*) considers distinguish a view from a view of significance. Those elements, together with our commentary, are set out below.

- **Water views are more valued than land views;**
 - Our Client has access to views of the Swan River which are viewed in context with the Perth City skyline above.
- **Iconic views are more valued than views without icons; and**
 - Clearly visible from our Client's dwelling is the Perth City skyline. The view of the skyline extends from Capital Square (adjacent the Mitchell Freeway) in the west through the Crown in the east. The view also captures development within the South Perth peninsular.
- **Whole views are more valued than partial views** (i.e., a water view including the interface between land and water is more valuable than one in which it is obscured).
 - As can be seen from the image above, the water and land interface of the Swan River is seen from the South Perth Peninsular through to Canning Highway.

As above, the Swan River can be seen below a view of the Perth City skyline. The view of significance is the Perth City skyline and Swan River, both of which are indisputably iconic. A panoramic view of the skyline with an interface with the Swan River is clearly shown. It is this panoramic, iconic and uninterrupted view which will be impacted by the Application.

Consider from What Part of the Property the Views are Obtained

In our opinion, three properties are potentially significantly impacted by the proposed development. These properties are 26 Strome Road, 13 Killilan Road and 15 Killilan Road. All have provided written objections to the proposed development.

The Administration has determined that 26 Strome Rd is the most impacted property. The dwelling was designed to capture a panoramic view of the Perth City skyline, which is primarily obtained from the home office. As below, the home office is the most used room within the dwelling. Panoramic views are also obtained from the upper-level sitting room and balcony.

Assess the Extent of the Impact

A quantitative analysis of an impact to a view of significance is not the correct methodology. Per Warden, '*...it is unhelpful to state that a view loss is 20% if it includes one of the sails of the Opera House*'. Rather, it is more useful to undertake a qualitative analysis, concluding that an impact to a view of significance is negligible, minor, moderate, severe or devastating.

As you would appreciate, and as has been accepted by the Tribunal, an impact is more significant in rooms which are most habited. That is to say, it depends on the proportion of the view that is affected, but, also how often it is viewed.

The most habited room at 26 Strome Road is the home office. The home office was designed to capture the view of the Perth skyline. It is a room which is used by all family members; it serves as an office for a home business, office for out-of-hours working, study for completing a PhD, and

study for school-aged children. The view is appreciated for 6 to 8 hours a day, by all members of the household. It is, as you would expect, highly valued.

You may reasonably expect that the use of home offices generally will increase, as more and more people work from home. In this regard, it is increasingly recognised that the home office can be one of, if not the, most used and important rooms in a dwelling.

Our Client's investigations, using geolocated drones and computer simulations, demonstrate that the view of significance from the home office **will be affected to a devastating level**. At best, our Client may retain a view of the antennas Central Park Tower (the tallest building in the CBD). Similarly, any view of the Swan River and the South Perth peninsular will be entirely removed.

It would reasonably be expected that the effect of the proposal on access to views of significance from 15 Killilan Road would be similarly devastating.

The Applicant continues to submit that access to the view of significance from our Client's dwelling will not be affected. To support this claim, the Applicant has presented 3-dimensional diagrams purporting to simulate the development outcome. For several months we have advised that the diagrams are misleading and inaccurate, requested to meet with the Applicant and their representatives and engaged with the Administration. Unfortunately, notwithstanding our engagement with the Applicant and expense incurred by our Client, there has been no discussion on the accuracy of the submission.

For the reasons set out above, and consistent with the independent review Buchan Group has prepared, it is demonstrated that the proposed development will have a devastating impact on the access to the view of significance from our Client's dwelling.

Assess the Reasonableness of the Proposal that is Causing the Impact

Consistent with *Warden*, a development that complies with all planning controls would be considered more reasonable than one that breaches them.

"Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable."

There is no dispute that there are a 'number of areas where the proposed property is not deemed to comply'. We have previously submitted that the development site is of a size which would allow a significant development to be provided at a more reasonable and consistent scale. We have submitted that the development site has no significant constraints which would necessitate such considerable variation.

This is especially the case as all existing, mature vegetation has been removed from the development site.

We are of the view that the proposed variations are unreasonable and are at the expense of surrounding landowners, demonstrating no reasonable care in mitigating impact to surrounding

landowners. The dwelling is plainly designed to take advantage of the views of significance it is similarly devastating (for our Client and surrounding landowners).

We have previously raised the concern with the extent of fill which is proposed on the development site. Shown below is a simple depiction of the extent of fill across the development site.

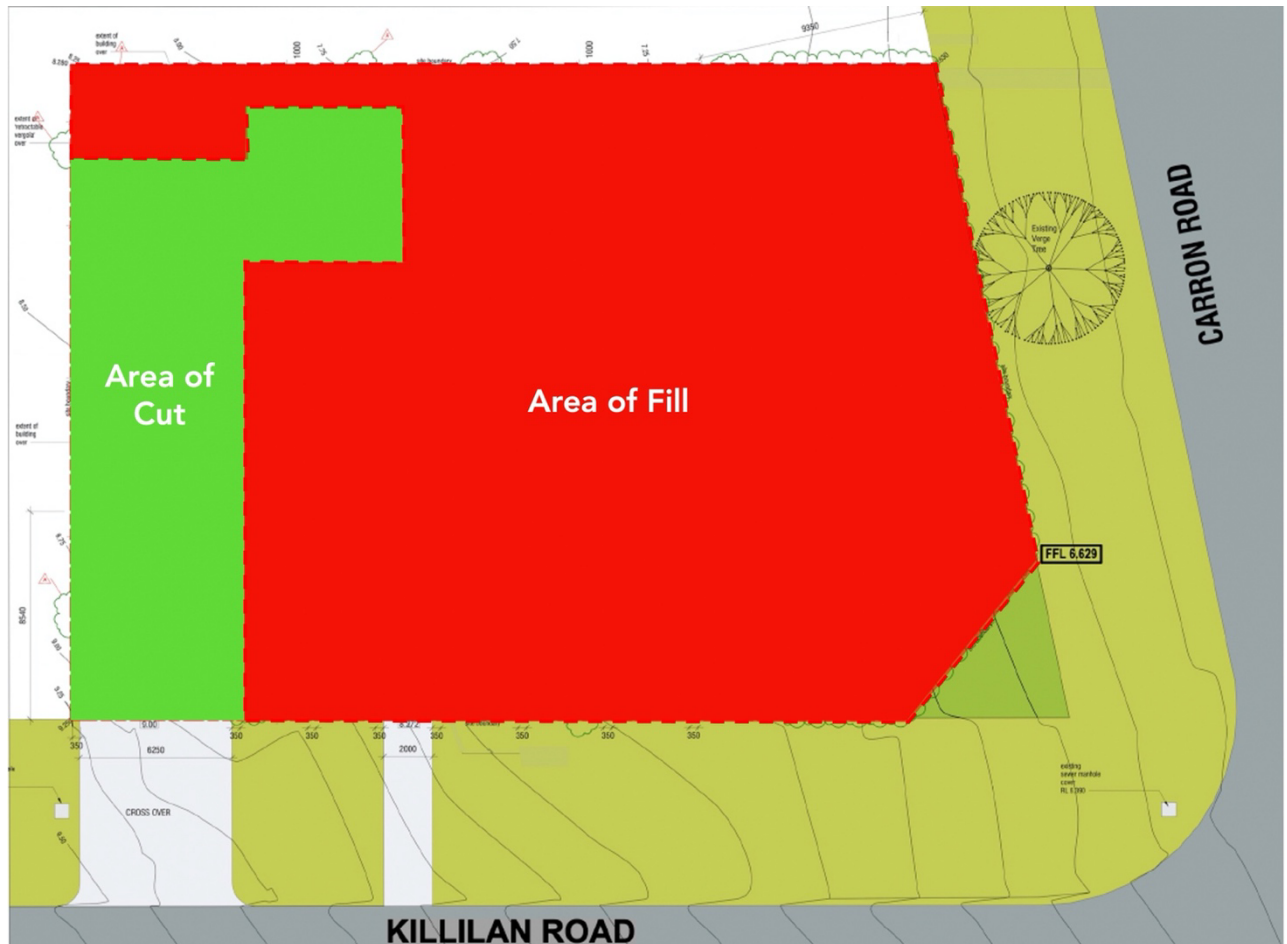


Figure 2: Proposed Cut and Fill

The portions of the development site where the natural ground level is proposed to be increased are shown in red. Areas where natural ground level is proposed to be reduced are shown in green.

The development incorporates significant setback and height variations which increase overall bulk and scale. This is exacerbated through the reliance on a rooftop terrace for open space. We are also concerned with the privacy of adjoining properties, which are overlooked at the spa area.

Overall bulk and scale is inconsistent with the streetscape and has been consistently objected to by the residents of the locality. We are of the view that the Application is manifestly unacceptable in terms of its impact to the streetscape, privacy concerns, and impact to access to views of significance.

Summary and Conclusion

Over the past several months, we have demonstrated to you that, in considering whether to grant approval to a building height variation, it is required to assess the impact to access to views of significance.

Over the same period, we have undertaken an analysis of the impact, prepared an accurate three-dimensional model of the dwelling and commissioned an independent review. Each of these exercises has concluded that the proposed building height variation will devastate (that is, entirely remove) access to the view of significance from our Client's dwelling.

In this submission we have stepped through the relevant test established by the Tribunal to determine, objectively, whether the proposed impact to access to the view of significance merits approval.

We have demonstrated that the devastating impact the building height variation has on access to views of significance does not merit approval. The dwelling is seeking approval for several variations to the R-Codes which result in a built form scale which is entirely inconsistent with the locality, compromises privacy and amenity for adjacent landowners and devastates access to views of significance. We say that the extent of variations proposed, the adverse impacts which are generated to the locality and adjoining residents, and extent of mitigation measures needed (i.e., boundary to boundary screening) are clear indicators of an over developed site.

We reiterate that Design Principles of the R-Codes are not discretionary elements. If the Council is of the view that the Application unreasonably impacts access to views of significance, the Application must be refused.

We submit to you that the Application cannot be approved in its current form.

Should you require any further information or clarification in relation to this matter, please contact Daniel Hollingworth on 0434 433 000.

Yours faithfully,



Daniel Hollingworth
Lateral Planning

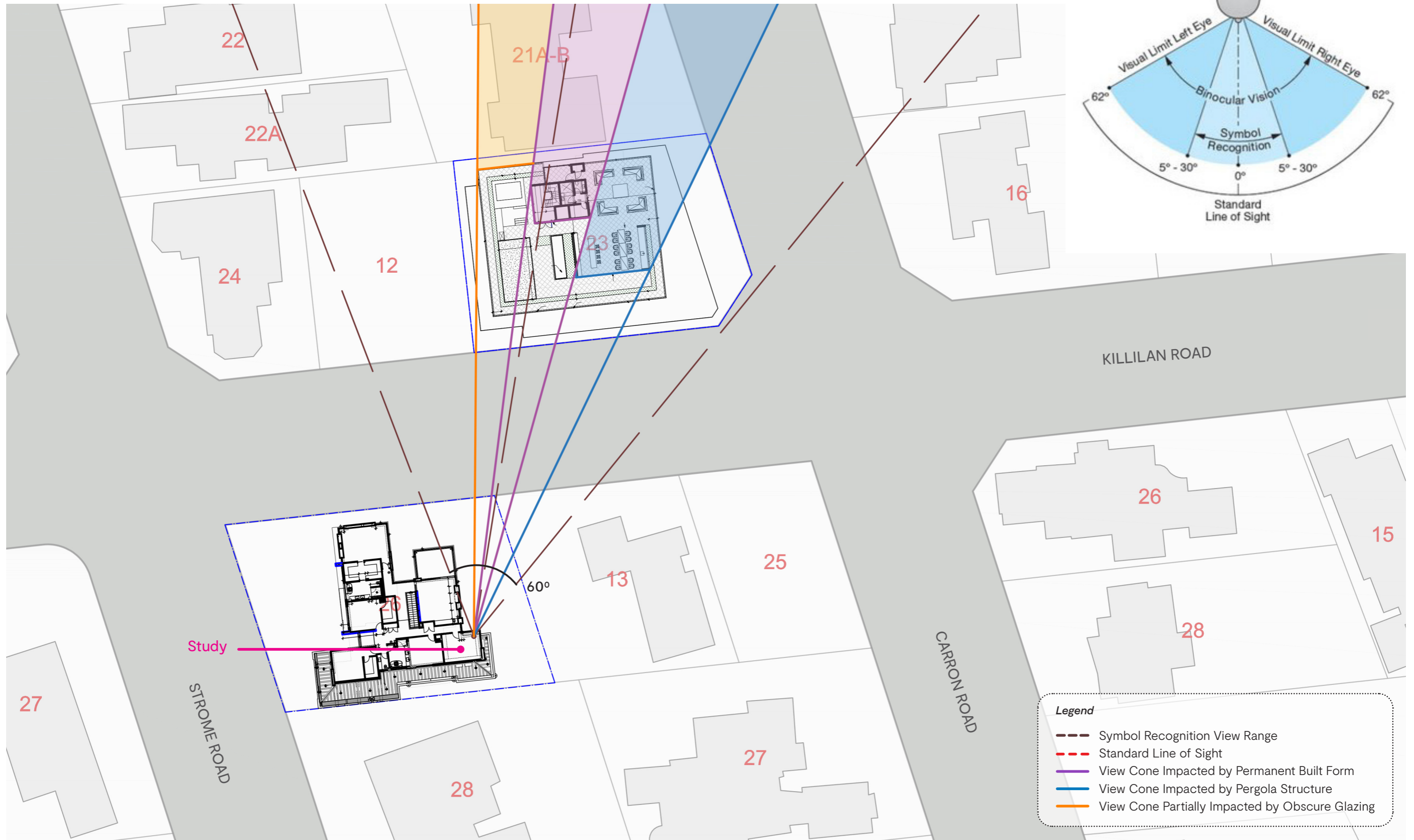
Encl.

Alternative Recommendation

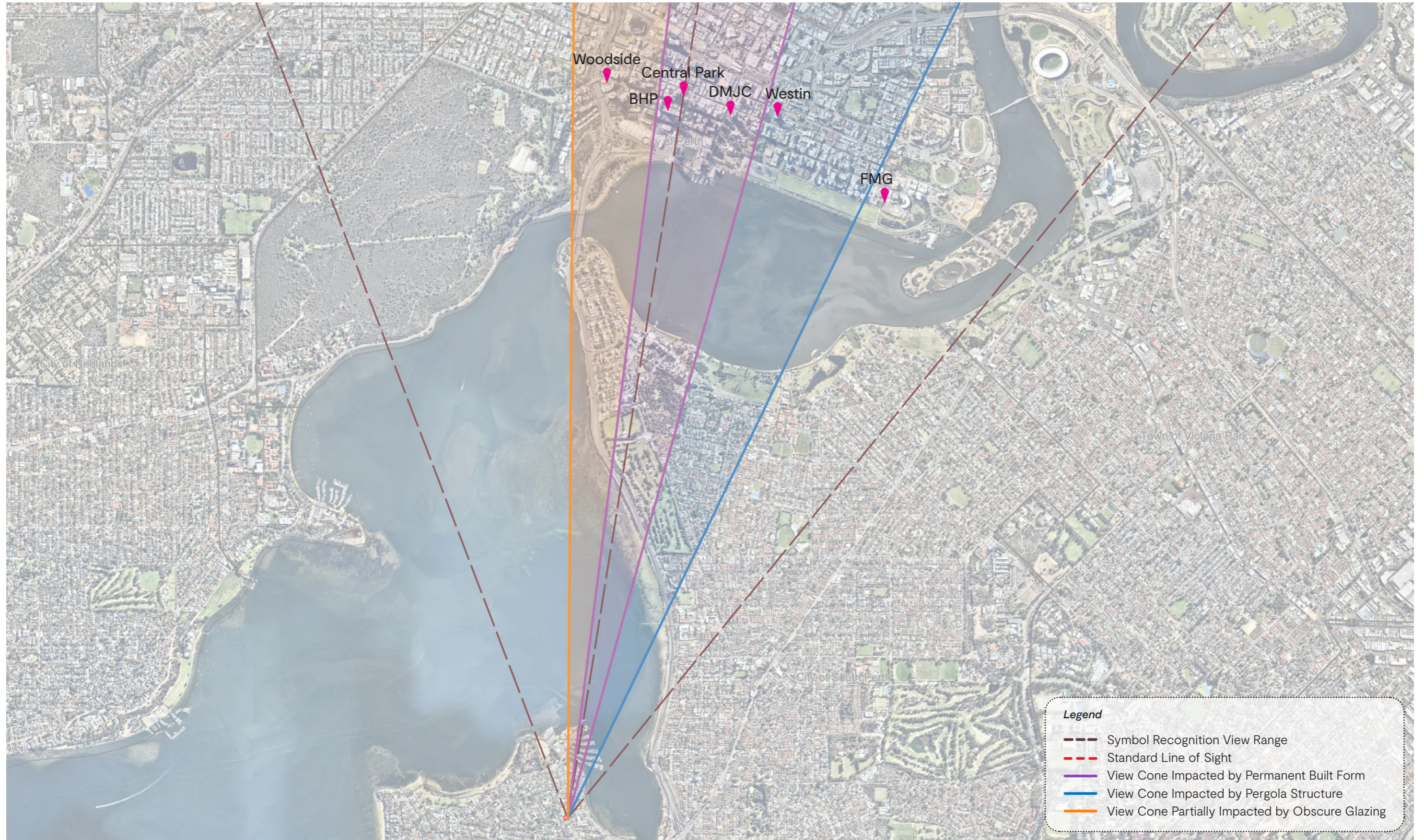
This Amended Planning Approval to Commence Development is refused for the following reasons:

- 1. The Application is not consistent with Design Principle 5.1.6 P6 of the Residential Design Codes as the building height proposed negatively impacts access to views of significance;*
- 2. The Application is not consistent with Design Principle 5.3.7 of the Residential Design Codes as:
 - a. the fill proposed does not consider or respond to the natural features of the site;*
 - b. the fill proposed does not respect natural ground level at the lot boundary, proposing retaining for the full length of the Killian Road frontage;**
- 3. The Application is not consistent with Design Principle 5.1.3 of the Residential Design Codes as the western lot boundary setback proposed increases the impact of building bulk on the western adjoining property;*
- 4. The Application is not consistent with cl 67 of the Planning and Development (Local Planning Schemes) Regulations 2015 as:
 - a. The Application is inconsistent with orderly and proper planning;*
 - b. The building height is incompatible with the desired character of its setting;*
 - c. The building bulk, height and setbacks does not demonstrate the necessary relationship to development within the locality; and*
 - d. The Application is inconsistent with the amenity of the locality.**

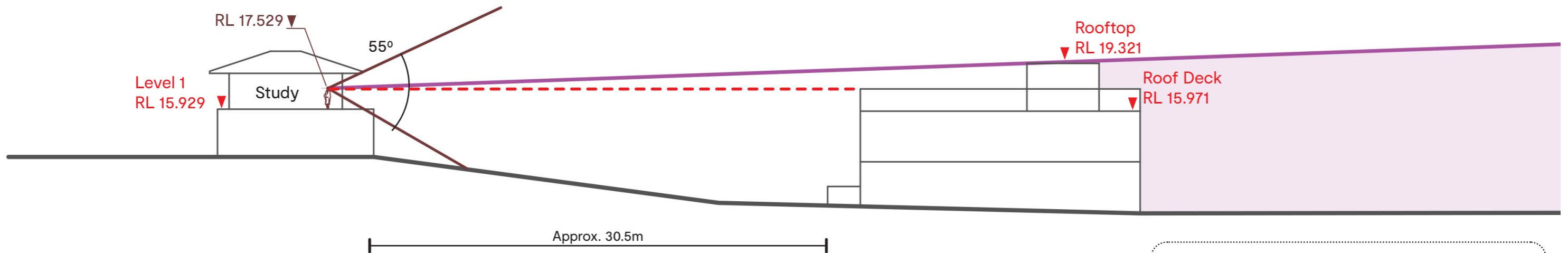
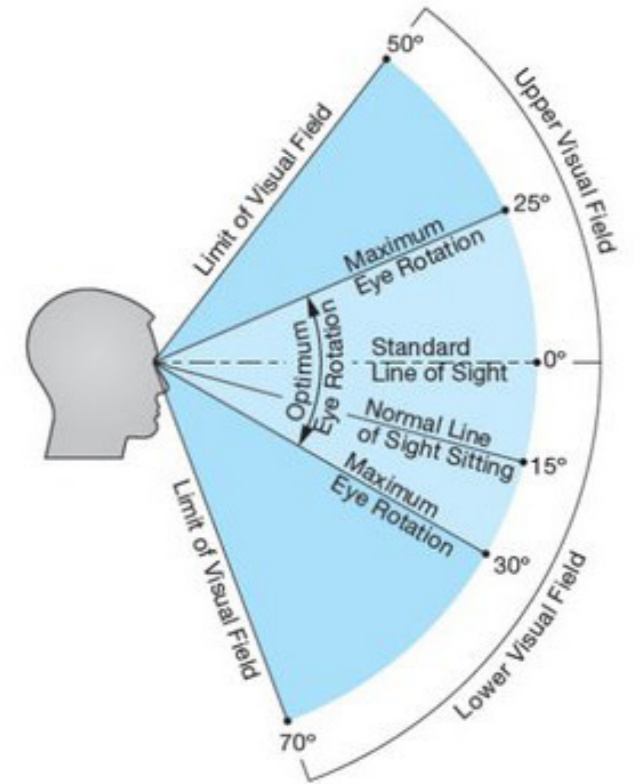
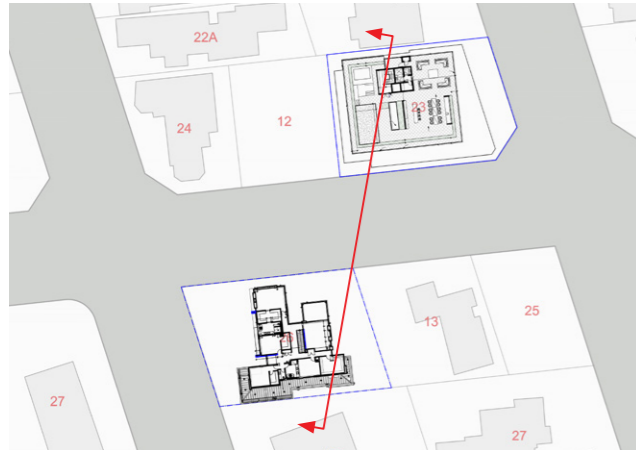
Site Plan/ Micro Scale



Site Plan/ Macro Scale



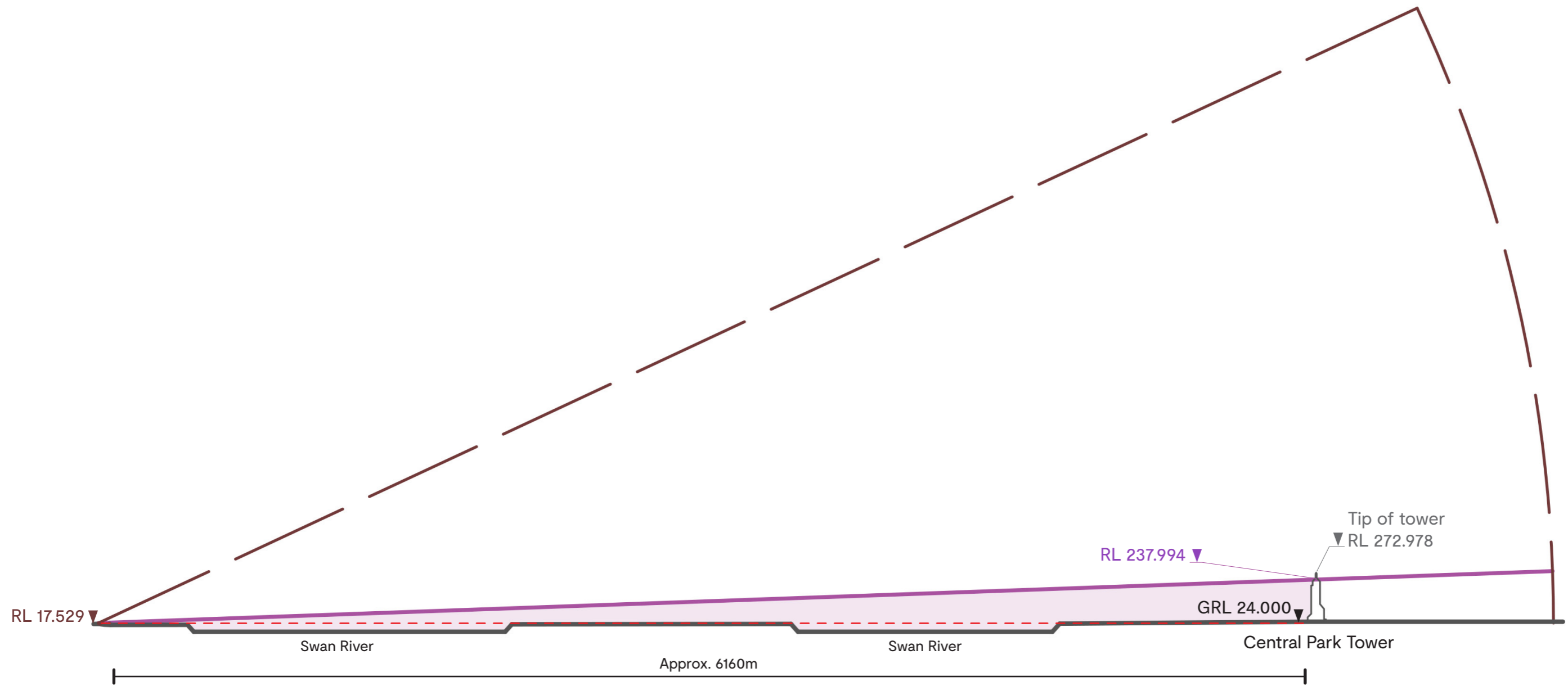
Section/ Micro Scale



Legend

- Optimum Eye Rotation
- Standard Line of Sight
- View Cone Impacted by Permanent Built Form
- View Cone Impacted by Pergola Structure
- View Cone Partially Impacted by Obscure Glazing

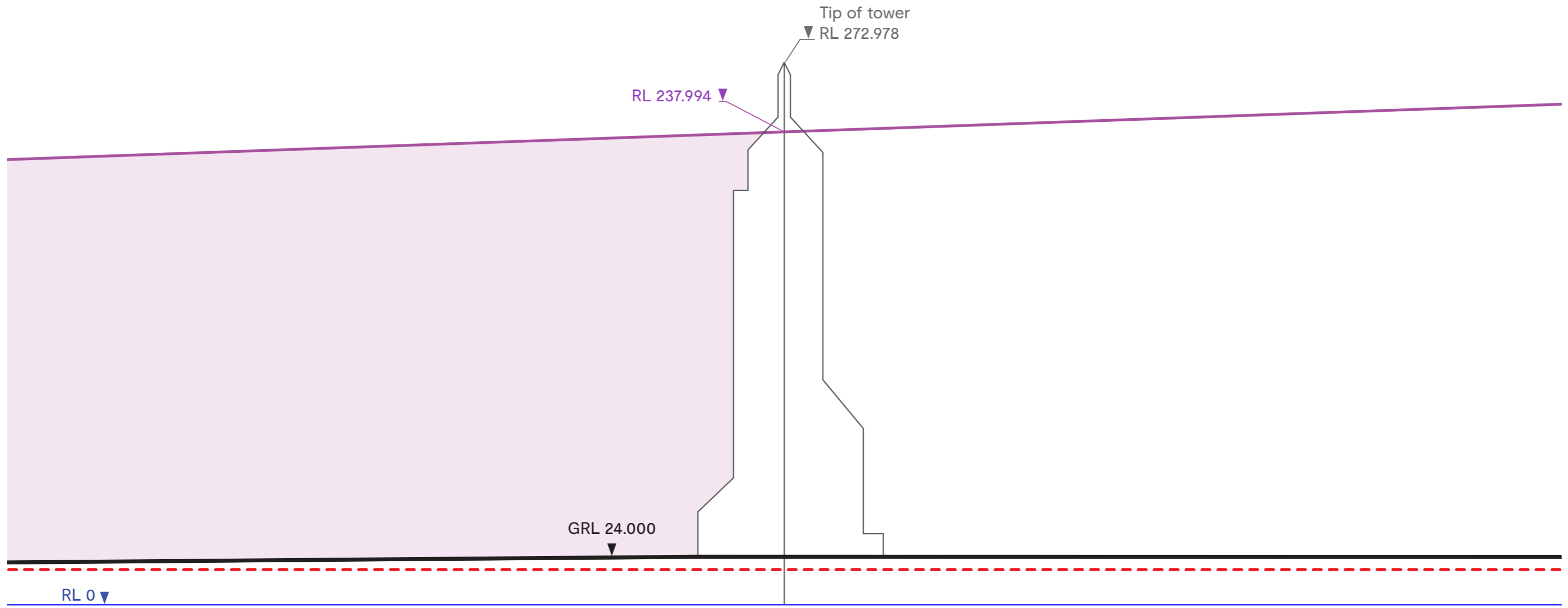
Section/ Macro Scale



Legend

- Optimum Eye Rotation
- Standard Line of Sight
- View Cone Impacted by Permanent Built Form
- View Cone Impacted by Pergola Structure
- View Cone Partially Impacted by Obscure Glazing

Section/ Central Park Tower



Central Park Tower

Legend

- Optimum Eye Rotation
- Standard Line of Sight
- View Cone Impacted by Permanent Built Form
- View Cone Impacted by Pergola Structure
- View Cone Partially Impacted by Obscure Glazing

