



# ATTACHMENTS

## LOCAL PLANNING PANEL MEETING

Thursday 27 February 2025  
at 2:00 PM



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**ATTACHMENT/S**

**REPORT NO. LPP6/25**

**ITEM 1**

- 1. CONSULTANT'S REPORT**
- 2. DRAFT CONDITIONS OF CONSENT**
- 3. ARCHITECTURAL PLANS**
- 4. APPROVED PLANS**

## Consultant Assessment Report

Prepared by: Donna Clarke – Landmark Planning Pty Ltd

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<b>DA No:</b>	DA/389/2023/A (Lodged on 31 October 2024)
<b>Description:</b>	Section 4.55(2) Modification to approved Alterations & Additions to an existing child care centre including a reduction in size of the approved works due to a drafting error on the plans where the existing building was not located correctly relative to the western and southern boundaries.
<b>Property:</b>	Lot 2 DP 565080, No. 1 Hall Road, Hornsby
<b>Applicant:</b>	Boss Design Pty Ltd
<b>Owner:</b>	Hornsby Shire Council
<b>Estimated Cost:</b>	\$231,600
<b>Ward:</b>	B Ward
<b>Clause 4.6 Request:</b>	N/A
<b>Submissions:</b>	One (1)
<b>LPP Criteria:</b>	Council Owned
<b>Author:</b>	Donna Clarke - Landmark Planning Pty Ltd
<b>COI Declaration:</b>	No Council staff involved in the assessment of this application have declared a Conflict of Interest.

**RECOMMENDATION**

THAT pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, Development Application No. DA/389/2023/A for Modification to approved Alterations & Additions to an existing child care centre at Lot 2 DP 565080, No. 1 Hall Road, Hornsby be amended as detailed in Attachment 2 of LPP Report No. LPP.

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### EXECUTIVE SUMMARY

- The Section 4.55(2) application proposes to amend DA/389/2023/A for Modification to approved Alterations & Additions to an existing child care centre known as Jack & Jill Kindergarten, including a reduction in size of the approved works due to a drafting error on the plans.
- The approved and modified proposal generally complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013, with the exception of setbacks and landscaping. Importantly, the existing child care centre was approved in 1975, before the current controls of State Environmental Planning Policy (Transport and Infrastructure) 2021 and the Child Care Planning Guideline 2017 were in place.
- One submission has been received in response to the notification period and the matter raised is reinforced by way of amendment to an existing condition of consent regarding boundary fencing to provide greater certainty.
- The application is required to be determined by the Hornsby Local Planning Panel as Hornsby Shire Council is the landowner.
- It is recommended that the application be approved.

### BACKGROUND

#### Site History

The site contains an existing child care centre, which was originally approved under DA/140/75 on 2 October 1975.

On 26 September 1986, Council granted consent to DA/140/75 for minor alterations & additions to an existing child care centre and permits a maximum of 45 children and play areas on the northern and eastern side of the building only.

On 27 September 2023, the Hornsby Local Planning Panel granted consent to DA/389/2023 for Alterations & Additions to an existing child care centre. The application included use of an outdoor play area on the southern side of the building and construction of an awning above, extension of the building to the west to accommodate a staff room, meeting room and storage room, replacement of the existing ground covering for the rear southern playground space, relocate existing metal shed to the corner of the outdoor play area; and alterations and additions to the internal space for staff facilities. No tree removal or change to children numbers was proposed.

#### Application History

On 31 October 2024, the subject modification application was lodged.

Between 4 November 2024 and 9 December 2024, the Section 4.55(2) application was placed on public notification. One (1) public submission was received.

### SITE

The 1188m<sup>2</sup> lot is located on the southern side of Hall Road and contains an existing child care centre known as "The Jack & Jill Kindergarten".

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Vehicular access to the site is via a split driveway directly from the curve in the road and over the wide verge. A car parking area is provided at the front of the centre, which extends onto the widened verge. An electricity pole is located at the front of the site within the vehicular entry area.

The existing building on the site is located close to the rear southern boundary, with the approved play areas located on the northern and eastern side of the building. The area along the southern boundary is currently being used as a play area without consent.

The site is generally flat closer to the road and slopes down towards the building.

The site has a side eastern boundary to the railway corridor and lines, which are elevated above the site and contain solid acoustic walls at the top of the embankment and open style chain wire fencing along the boundary at the level of the centre.

The site adjoins residential dwellings to the south and west. Boundary fencing approx. 1.2m high is in place along the southern boundary and continues along the western boundary however the overall height is increased as the fence is elevated due to retaining walls and garden beds. A metal garden shed is located within the western side setback adjacent to the boundary fence.

The site is not bushfire or flood prone and is not burdened by any easements or restrictions.

The site is surrounded by a mix of single and two storey dwellings to the north, south and west.

The site does not contain a heritage item, is not in the vicinity of a heritage listed item and is not located within a heritage conservation area.

The approved application DA/389/2023 indicates that the existing kindergarten is for children ages 3-5 years in two classes of 20 children, operates from Monday to Friday, 8:30am to 4pm during the NSW Public School terms, with 5 working staff including administrative staff and a maximum total of 40 children consistent with the licence for the centre. Staff arrive at 8am and leave by 5pm.

**THE APPROVED DEVELOPMENT**

The approved development consisted of alterations and additions to an existing child care centre known as Jack & Jill Kindergarten, detailed as follows:

- Use of an outdoor play area on the southern side of the building and construction of an awning above, 3.07m high.
- Extension of the building to the west to accommodate a staff room, meeting room and storage room, with a roof height to match the existing pitched roof.
- Replacement of the existing ground covering for the rear southern playground space, removing the rubber soft-fall and replacing with synthetic grass.
- Existing metal shed which is located within the western side setback, is proposed to be relocated to the corner of the outdoor play area.
- Alterations and additions to the internal space for staff facilities.
- The materials and finishes of the new works are proposed to match the existing.

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- No tree removal.
- No change to children numbers.

#### THE MODIFICATION

The Section 4.55(2) application seeks to modify the approved development as follows:

- Minor modification to the approved plans as a result of a drafting error in the plans where the existing building was not located correctly relative to the boundary. This error indicated that there was more space between the existing building and the western and southern boundaries to accommodate the new addition.
- The overall size of the addition has been reduced, including width and floorspace.
- The width of the addition has been reduced from 2.885m to 2.095m.
- Windows to the addition facing to the north internally to the site and western and southern side boundaries have also been reduced in size, moved or removed. The changes to sill height required by Condition 2 of the consent relating to the windows and doors on the western elevation have been incorporated into the new design.
- Internal design changes to the floor plan.
- No change to setbacks is proposed.

The table below lists the proposed conditions to be amended.

Condition No.	Title	Proposed changes	Reason for amended wording
1	Approved Plans and Supporting Documentation	Update approved plan set to reflect changes to the plans.	To facilitate minor amendments to the approved design.
2	Amendment of Plans	Updated wording to reflect the new window and doors as shown on the amended plans.	To facilitate minor amendments to the approved design.
21	Boundary Fencing	Amendment to provide greater clarification of the height of the new boundary fence along the southern boundary for the entire length to be 2.1m and of solid construction.	To provide greater certainty for the adjoining neighbour to the south to ensure amenity impacts are addressed.

#### ASSESSMENT

The development application has been assessed having regard to the Greater Sydney Region Plan - A Metropolis of Three Cities, the North District Plan and the matters for consideration prescribed under

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Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act). The following issues have been identified for further consideration.

## 1. STRATEGIC CONTEXT

### 1.1 Greater Sydney Region Plan - A Metropolis of Three Cities and North District Plan

The Greater Sydney Region Plan - A Metropolis of Three Cities has been prepared by the NSW State Government to guide land use planning decisions over the next 40 years (to 2056). The Plan sets a strategy and actions for accommodating Sydney's future population growth and identifies dwelling targets to ensure supply meets demand. The Plan also identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

Part 3 of the strategy relates to 'Infrastructure and Collaboration' and a key objective is to provide services and infrastructure to meet communities' changing needs. Further, the strategy cites changing demographics will affect the types and distribution of services required in neighbourhoods.

Between 2016-2036, the number of infants aged 0-4 years is projected to increase by 85,000 and there are projected to be 333,000 more children and young people aged 5-19 years. The identified challenge for Hornsby Shire would be to provide additional infrastructure for students and young people.

The proposed works to an existing child care centre would be consistent with the objectives of the strategy by maintaining child care places and allowing existing centres to continue operating.

## 2. STATUTORY CONTROLS

Section 4.15(1)(a) requires Council to consider "*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*".

### 2.1 Environmental Planning and Assessment Act 1979 - Section 4.55(2)

The proposal constitutes a modification under Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*. Council pursuant to Section 4.55(2), Council may consider an application to amend development consent provided that, inter alia:

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if any at all), and*
- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) *it has notified the application in accordance with-*
  - (i) *the regulations, if the regulations so require, or*



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- (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.”*

*Subsections (1) and (1A) do not apply to such a modification.*

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

With respect to (a), it is considered that the proposal as amended is substantially the same as the development originally approved.

Section 4.55(2)(b) is not applicable as the development is not an integrated development or a State significant development.

With respect to (c) and (d), the amended application was notified, and one submission has been received, considered and addressed within this report.

In accordance with Section 4.55(3) there would no environmental, social or economic issues arising from the proposed changes. The reasons for approval of the original development application No. DA/1047/2019 were as follows.

- *The proposed development generally complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.*
- *The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, overshadowing, solar access, amenity or privacy.*

The amended proposal would be generally in accordance with the HLEP and HDCP. The amended proposal results in a reduction in gross floor area to ensure the side setbacks to neighbouring properties are maintained to the approved footprint despite the drafting error. The changes to sill height required by Condition 2 of the consent relating to the windows and doors on the western elevation have been incorporated into the new design. It is also necessary to amend Condition 21 (renumbered to Condition 22) to provide greater certainty for the adjoining neighbour to the south to ensure amenity impacts are addressed by way of a 2.1m solid boundary fence replacing the existing partially open fencing. Therefore, there are no additional adverse environmental impacts as a result of the modification including visual bulk, overshadowing, amenity, privacy, noise, traffic and security.

## **2.2 Hornsby Local Environmental Plan 2013**

The proposed development has been assessed having regard to the provisions of the Hornsby Local Environmental Plan 2013 (HLEP).

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### 2.2.1 Zoning of Land and Permissibility

The subject land is zoned R2 - Low Density Residential under the HLEP. The objectives of the R2 zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development is defined as a centre-based child care facility and is permissible in the zone with Council's consent. The proposal meets the zone objectives and provides a service for the day to day needs of the residents and would contribute to meeting the increasing demand for child care in Hornsby Shire. The proposed amendments to the approved development would not alter the proposal's compliance with the objectives of the R2 zone.

### 2.2.2 Height of Buildings

Clause 4.3 of the HLEP provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m.

The approved development complies with this provision. The approved plans indicate a maximum height from existing natural ground level of the existing building of 3.85m and that the addition to the west and new awning to the south do not exceed the height of the existing building.

The proposed modified development under this section 4.55(2) would not exceed the approved building height of the original additions despite the design changes.

The height of the proposed modified works is well below the maximum height limit.

### 2.3 State Environmental Planning Policy (Planning Systems) 2021

On 27 September 2023, the Hornsby Local Planning Panel granted consent to DA/389/2023 for Alterations & Additions to an existing child care centre as Hornsby Shire Council is the landowner. One submission was received in response to DA/389/2023.

During the LPP meeting for DA/389/2023, the Panel resolved to adopt the officer's recommendation and approve the proposed development subject to the conditions of consent contained in Schedule 1 of the report.

This Section 4.55(2) application has been referred to Hornsby Local Planning Panel (HLPP) for determination, due to Hornsby Shire Council being the landowner.

Local planning panels are to determine applications under section 4.55(2) of the Act for the modification of development consents granted by the panel that:

- Propose amendments to a condition of development consent recommended in the council assessment report but which was amended by the panel, or
- Propose amendments to a condition of development consent that was not included in the council assessment report, but which was added by the panel, or meet the criteria for

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development applications set out in the Schedules to this direction relating to conflict of interest, contentious development or departure from development standards.

There is a conflict of interest associated with the approved Development Application and this modification application due to Hornsby Shire Council being the landowner. Only one public submission was received in response to the original development application. One public submission was received in response to this Section 4.55(2) application which has been considered and addressed within this report.

#### **2.4 State Environmental Planning Policy (Transport and Infrastructure) 2021**

The original application was assessed against the requirements of State Environmental Planning Policy (Transport and Infrastructure) 2021.

##### **2.4.1 Development in or adjacent to rail corridors**

Chapter 2, Division 15, Subdivision 2 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* contains controls with respect to development adjoining rail corridors. The site has a side eastern boundary to the railway corridor and lines, which are elevated above the site and contain solid acoustic walls at the top of the embankment and open style chain wire fencing along the boundary at the level of the centre.

Consideration has been given to Clauses 2.98 Development adjacent to rail corridors; 2.99 Excavation in, above, below or adjacent to rail corridors; and 2.100 Impact of rail noise or vibration on non-rail development and referral was undertaken to Transport for NSW (on behalf of Sydney Trains).

Section 2.98 of State Environmental Planning Policy (Transport and Infrastructure) 2021 requires referral to Sydney Trains for the following:

- (1) *This section applies to development on land that is in or adjacent to a rail corridor, if the development—*
  - (a) *is likely to have an adverse effect on rail safety, or*
  - (b) *involves the placing of a metal finish on a structure and the rail corridor concerned is used by electric trains, or*
  - (c) *involves the use of a crane in air space above any rail corridor, or*
  - (d) *is located within 5 metres of an exposed overhead electricity power line that is used for the purpose of railways or rail infrastructure facilities.*

To ensure the proposed works do not have an adverse effect on rail safety, a referral was undertaken in accordance with Section 2.98 of the Policy. Whilst there are no works on the eastern boundary or shown on the plans not within 5m, conditions of the original approval require new boundary fencing along the southern boundary for its entirety to address the submission from 7 Allendale Close to the south, not just for the portion required within the Acoustic Report. In that regard, the new fencing will be required along the southern boundary all the way up to the eastern boundary with the rail corridor.

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Transport for NSW (on behalf of Sydney Trains) have advised in their response dated 12 February 2025:

*We advise that the proposed development has been assessed in accordance with the relevant TfNSW Asset Management Branch standards and Sydney Trains' requirements. To ensure that the proposed development is undertaken in a safe manner it is requested Council impose the conditions provided in Attachment A.*

Accordingly, Condition 3A has been recommended to be added to the conditions of consent, which refers to the letter and Attachment A which contains conditions to ensure the development is undertaken in a safe manner with respect to the adjoining rail corridor. Ongoing liaison with Transport for NSW (on behalf of Sydney Trains) will be necessary to ensure satisfaction of the condition where applicable and continuing into operation.

#### **2.4.2 Educational Establishments and Childcare Facilities**

Chapter 3 of State Environmental Planning Policy (Transport and Infrastructure) 2021 aims to facilitate the effective delivery of educational establishments and early education and care facilities. Section 3.23 of Chapter 3 requires Council to consider the relevant provisions of the Child Care Planning Guideline 2017 (CCPG).

The CCPG will generally take precedence over the HDCP with the exception of building height, side and rear setbacks and car parking rates. Importantly, the existing child care centre was approved in 1975, before the current controls were in place.

The proposal generally complies with the CCPG requirements, in particular with respect to the new components including the unencumbered outdoor play area.

An assessment of the proposed alterations and additions to an existing childcare centre against Part 1.3 Planning objectives, Part 2 Design quality principles, Part 3 Matters for consideration and Part 4 Applying the National Regulations to development proposals is provided below:

##### **2.2.2.1 Part 1.3 - What are the planning objectives?**

The planning objectives contained within Part 1.3 of the CCPG include requirements that child care facilities are compatible with the existing streetscape, context and neighbouring land uses and that they seek to minimise adverse impacts of development on adjoining properties and the neighbourhood. The discussion provided below in response to Part 3 of the CCPG, demonstrates that the proposed modification is considered consistent with these objectives.

##### **2.2.2.2 Part 2 - Design quality principles**

The discussion provided below in response to Part 3 of the CCPG, demonstrates that the proposed modification is consistent with the design quality principles of Part 2 in relation to built-form, landscaping, safety and amenity, privacy, solar access and noise.

##### **2.2.2.3 Part 3 - Matters for Consideration**

###### Part 3.1 - Site selection and location

The objectives of Part 3.1 of the CCPG include that the siting of child care centres should be clear of potential environmental contaminants. In addition, Part 3.1 encourages that the land characteristics be

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suitable for the scale of the development with regard to adjacent properties. Centre-based child care facilities are a permissible land use within the R2 Low Density Residential zone. The site is not flood prone or bushfire prone. The approved development demonstrated that the childcare centre appropriately accommodates for the site constraints relating to land gradient, pedestrian safety, site contamination and vehicular traffic. Section 2.4.1 of this report addresses site contamination and remediation works. The visual scale of the proposed development is unaltered from the approved development and is consistent with the capability of the site and is considered acceptable. The proposed modification continues to meet the objectives of Part 3.1 of the CCPG and the proposal is supported in this regard.

#### Part 3.2 - Local character, streetscape and the public domain interface

The objectives of Part 3.2 of the CCPG include that child care centre developments should contribute to and recognise existing streetscape qualities and integrate car parking into the building and site landscaping design. Hall Road is a low-density residential street with a streetscape predominantly comprising single and two storey dwelling houses. The alterations and additions to the existing child care centre would not alter the presentation to the streetscape and remains as a single storey structure in a landscaped setting. The approved works are minor in scale and are located to western side and rear elevations of the approved development. The modified plans reduce the size of the approved alterations and additions. The approved and proposed modified works would not be visible from the public domain and would not impact upon the streetscape. The modified proposal meets the objectives of Part 3.2 of the CCPG and is supported in this regard.

#### Part 3.3 - Building orientation, envelope and design

The objectives of Part 3.3 of the CCPG stipulate that childcare centres should be orientated to minimise visual privacy and minimise noise impacts and respond to the adjacent built form. Sections 2.7.5 and 2.7.6 of this report address the noise and privacy considerations of the proposed development. It was considered that subject to conditions of consent that the approved proposal was consistent with the privacy and noise considerations of the approved development. Subject to minor word changes to Condition 21 (renumbered to Condition 22) to provide greater certainty for the adjoining neighbour to the south to ensure amenity impacts are addressed, the modification is deemed acceptable. The proposal meets the objectives of Part 3.3 of the CCPG and the proposal is supported in this regard.

#### Part 3.4 - Landscaping

The objectives of Part 3.4 of the CCPG encourages landscape design that contributes to the streetscape and amenity. Landscaping is in existence on the site and the application does not seek any alterations due to the building addition being over an existing paved area and the rear setback already being utilised as soft fall not landscaping. The reduction in size of the approved alterations and additions ensures no further loss of landscaping opportunities. A condition of consent was imposed via Condition 2 of the consent for new screen planting along the southern and western boundaries where landscaping is not currently provided. The modified proposal meets the objectives of Part 3.4 of the CCPG, and the proposal is supported in this regard.

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Part 3.5 - Visual and Acoustic Privacy and Part 3.6 - Noise and Air Pollution

The objectives of Part 3.5 of the CCPG include that child care centres minimise overlooking of internal living areas and private open spaces at adjoining sites through appropriate building layout including pathway, window and door locations. The objectives of Part 3.6 of the CCPG include that a suitably qualified acoustic professional prepare an acoustic report to identify an appropriate noise level for a childcare centre facility. Council's assessment of the acoustic and privacy requirements of the child care centre are discussed in detail in Sections 2.7.5 and 2.7.6 of this report. The modified proposal reduces windows and increases sill height which meets the objectives of Parts 3.5 and 3.6 of the CCPG and is considered acceptable, subject to conditions of consent. It is recommended that changes be made to Conditions 2 and 21 (renumbered to Condition 22), which were imposed to protect amenity of adjoining residential neighbours, in response to the modification and to provide certainty.

Part 3.7 Hours of operation

Part 3.7 of the CCPG indicates that the hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays.

The hours of use of the childcare facility would remain as per existing arrangements being Monday to Friday, 8:30am to 4pm during the NSW Public School terms and complies with this requirement. The proposed modification application does not alter hours of operation.

Part 3.8 Traffic, parking and pedestrian circulation

Part 3.8 of the CCPG indicates that a Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised. In addition, the CCPG indicates that child care facilities proposed within narrow roads should ensure that safe access can be provided to and from the site and that vehicles can enter and leave the site in a forward direction. Given the approved and modified proposal does not intensify the site with no increase in children numbers, the existing traffic, parking and pedestrian arrangements remain acceptable. Section 2.7.3 of this report addresses parking, traffic and pedestrian circulation.

**2.2.3 Part 4 Applying the National Regulations to development proposals**

The following table sets out the proposal's compliance with the measures of Part 4 of the CCPG:

Child Care Planning Guideline 2017 - Part 4					
Control	Approved 1986	Approved 2023	Proposed	Requirement	Compliance
Unencumbered indoor space	145.78m <sup>2</sup> 3.64m <sup>2</sup> per child	145.78m <sup>2</sup> 3.64m <sup>2</sup> per child	145.78m <sup>2</sup> 3.64m <sup>2</sup> per child	3.25m <sup>2</sup> per child	Yes
Unencumbered outdoor space	474.3m <sup>2</sup> 11.8m <sup>2</sup> per child	529.15m <sup>2</sup> 13.2m <sup>2</sup> per child	529.15m <sup>2</sup> 13.2m <sup>2</sup> per child	7m <sup>2</sup> per child	Yes

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Storage					
- <i>External</i>	>0.3m <sup>3</sup> per child	No change	No change	0.3m <sup>3</sup> per child	Yes
- <i>Internal</i>	>0.2m <sup>3</sup> per child	No change	No change	0.2m <sup>3</sup> per child	Yes
On site laundry	Not provided on site	No change	No change	Provided on site	No
Child toilet facilities	Provided on site	Provided on site	Provided on site	Provided on site	Yes
Administration space	Provided on site	Provided on site	Provided on site	Provided on site	Yes
Nappy change facilities	Not provided on site	No change	No change	Provided on site	No
Solar Access for outdoor play	Existing northern & eastern play only	No change to existing. Proposed southern area greater than one-third covered, approx. 71%.	No change to existing. Proposed southern area greater than one-third covered, approx. 71%.	30-60%	Yes

As detailed in the above table, the approved and proposed modified development generally complies with Part 4 of the CCPG, with the exception of an on-site laundry and nappy change facilities. Importantly, the existing child care centre was approved in 1975, before the current controls were in place. The nappy change facilities are only required for children who wear nappies and this centre is for children 3-5 years old and unlikely to wear nappies. There is no change proposed to the existing internal play rooms and toilet area under the previous consent or this modification application and as such it is unreasonable to require a laundry or nappy change facility be added in this instance.

Section 3.25 of the Transport and Infrastructure SEPP states that:

*“development consent must not be granted for the purposes of a centre-based child care facility in Zone R2 Low Density Residential if the floor space ratio for the building on the site of the facility exceeds 0.5:1”.*

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The proposed development has a Floor Space Ratio (FSR) of 0.25:1 and complies with Section 3.25 of the SEPP. This modification application proposes a minor reduction in floor area (not indoor play areas) which is supported to ensure the setbacks from the built form to the boundaries remains as approved.

Section 3.26 of the Transport and Infrastructure SEPP contains non-discretionary development standards. This prevents the consent authority from imposing more onerous standards or refusing an application on the basis that they have not been complied with. An assessment of the application against Section 3.26 of the Transport and Infrastructure SEPP has been carried out below:

Centre-based child care - non-discretionary development standards

- (a) *Location - the development may be located at any distance from an existing or proposed early childhood education and care facility.*

Comment: The existing centre's location is acceptable. Whilst there are other child care centres within the vicinity of the site, the child care centre can be located at any distance from an existing or proposed childhood education and care facility in accordance with Section 3.26(2)(a) of the Transport and Infrastructure SEPP. The modification remains acceptable in this regard.

- (b) *Indoor or outdoor space*

- (i) *For development to which clause 107 (indoor unencumbered space requirements) or 108 (outdoor unencumbered space requirements) of the Education and Care Services National Regulations applies - the unencumbered area of indoor space and the unencumbered area of outdoor space for the development complies with the requirements of those clauses, or*
- (ii) *For development to which clause 28 (unencumbered indoor space and useable outdoor play space) of the Children (Education and Care Services) Supplementary Provisions Regulation 2012 applies - the development complies with the indoor space requirements or the useable outdoor play space requirements in that clause;*

Comment: The regulations require a minimum of 3.25m<sup>2</sup> of unencumbered indoor play area and a minimum of 7m<sup>2</sup> of unencumbered outdoor play area per child. The existing, approved and proposed modified centre complies with this requirement. This modification application proposes a minor reduction in floor area which is supported to ensure the setbacks from the built form to the boundaries remains as approved to ensure no change to unencumbered outdoor play area per child. The reduced floor area applies to the approved addition which comprises administrative and storage areas, not indoor play areas. The modification remains acceptable in this regard.

- (c) *Site area, site coverage and site dimensions—the development may be located on a site of any size, cover any part of the site and have any length of street frontage or any allotment depth.*

Comment: The site has an area of 1188m<sup>2</sup> and is considered acceptable.

- (d) *Colour of building materials or shade structures—the development may be of any colour or colour scheme unless it is a heritage item or in a heritage conservation area,*

Comment: The centre is not located within a heritage conservation area and the proposed colours for the addition will match the existing centre. The modification does not alter the materials and finishes from approved.



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In summary, the proposed modified development complies with the provisions of State Environmental Planning Policy (Transport and Infrastructure) 2021 and is assessed as satisfactory in this regard.

#### **2.5 State Environmental Planning Policy (Industry and Employment) 2021**

The application has been assessed against the requirements of Chapter 3 of State Environmental Planning Policy (Industry and Employment) 2021, in particular Part 3.6 and Schedule 5 relating to Advertising and Signage. The approved application and this proposed modification does not propose any changes to this signage and further assessment under this policy is not required. No modifications are proposed which would alter compliance with the policy.

#### **2.6 State Environmental Planning Policy (Resilience and Hazards) 2021**

The application has been assessed against the requirements of Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021. Section 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021 states that consent must not be granted to the carrying out of any development on land unless the consent authority has considered whether the land is contaminated or requires remediation for the proposed use. The site was deemed satisfactory for child care centre purposes at the time of the original consent and no change of use is proposed and no evidence was found of contaminating land activities having occurred on the land. The current and previous planning controls do not allow for potentially contaminating uses. As such, no further investigation is required. No modifications are proposed which would alter compliance with the policy.

#### **2.7 State Environmental Planning Policy (Biodiversity and Conservation) 2021**

The application has been assessed against the requirements of Chapters 2 and 6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021. The approved and modified proposal does not require any tree removal, and further consideration of this policy is not required. No modifications are proposed which would alter compliance with the policy.

#### **2.8 Section 3.42 Environmental Planning and Assessment Act 1979 - Purpose and Status of Development Control Plans**

Section 3.42 of the *Environmental Planning and Assessment Act 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitate development that is permissible under any such instrument; and achieve the objectives of land zones. The provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Consent authorities have flexibility to consider innovative solutions when assessing development proposals, to assist achieve good planning outcomes.

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## 2.9 Hornsby Development Control Plan 2013

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the Hornsby Development Control Plan 2013 (HDCCP). The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

Control	Approved 1986	Approved 2023	Proposed	Requirement	Complies
Site Area	1188m <sup>2</sup>	1188m <sup>2</sup>	1188m <sup>2</sup>	N/A	N/A
Floor Area	264m <sup>2</sup>	293m <sup>2</sup>	286m <sup>2</sup>	430m <sup>2</sup>	Yes
Site Coverage	22%	24%	24%	40%	Yes
Height	3.85m	3.85m	3.85m	8.5m	Yes
No. of Storeys	1 storey	1 storey	1 storey	max. 2 storey	Yes
Number of Children	45 (licenced 40)	40	40	max. 40	Yes
<b>Recreation Space</b>					
- <i>Indoor</i>	145.78m <sup>2</sup> 3.64m <sup>2</sup> per child	145.78m <sup>2</sup> 3.64m <sup>2</sup> per child	145.78m <sup>2</sup> 3.64m <sup>2</sup> per child	3.25m <sup>2</sup> per child	Yes
- <i>Outdoor</i>	474.3m <sup>2</sup> 11.8m <sup>2</sup> per child	529.15m <sup>2</sup> 13.2m <sup>2</sup> per child	529.15m <sup>2</sup> 13.2m <sup>2</sup> per child	7m <sup>2</sup> per child	Yes
<b>Landscaping</b>	Approx 30%	No change	No change	min. 40%	No
<b>Car Parking</b> (1 space per 4 children)	12 spaces	No change	No change	10 spaces	Yes
<b>Setbacks</b>					
- <i>Front (north)</i>	Approx 23m	No change	No change	6m	Yes
- <i>Side (east)</i>	Approx 3m	No change	No change	2m	Yes
- <i>Side (west)</i>	3.9m	0.9m	0.9m	2m	No
- <i>Rear (south)</i>	0.85m - 4.9m	0.9m - 1.45m	0.9m - 1.45m	8m	No

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As detailed in the above table, the proposed development complies with the prescriptive measures within the HDCP, with the exception of landscaping and setbacks. A brief discussion on compliance with relevant performance requirements and Part 1C General Controls is provided below.

### 2.9.1 Scale & Setbacks

Due to the survey error, the approved alterations & additions to the western and southern corner of the existing child care centre has been reduced in size. The width of the addition has been reduced from 2.885m to 2.095m. The reduction allows for the approved side and rear setbacks to be maintained.

The HDCP limits the capacity of a child care centre in a residential zone to 40 places for a purpose built centre, or 60 places if at least 33% of all places are provided for 0-2 year old children if certain other requirements are met. Additionally, the HDCP requires 15m<sup>2</sup> of outdoor recreation space per child.

Notwithstanding the above, Section 3.27 of the Transport and Infrastructure SEPP states that:

- (1) *A provision of a development control plan that specifies a requirement, standard or control in relation to any of the following matters (including by reference to ages, age ratios, groupings, numbers or the like, of children) does not apply to development for the purposes of a centre-based child care facility — ...;*
- (2) *This clause applies regardless of when the development control plan was made.”*

Accordingly, the Transport and Infrastructure SEPP removes the limit on 40 places and 15m<sup>2</sup> outdoor recreation space per child as they are controls under a development control plan control. These limitations do not apply. In line with the Transport and Infrastructure SEPP, the centre provides sufficient size per child to meet the indoor and outdoor area requirements, and there the existing capacity of the centre can be supported.

### 2.9.2 Landscaping

The originally approved child care centre has a landscape plan which indicates the play areas on the northern and eastern side of the building would be a mix of grass lawns and plantings. Over time this has changed in response to developments in materials used in child care centre outdoor play areas such as soft fall instead of grass. The approved alterations and additions under DA/389/2023 did not propose removal of vegetation or landscaping. The western area is currently hardstand in the location of the new building addition. The southern area was original approved as landscaping and from a review of aerial photographs appears to have been grass up until around 2010 and has been utilised as a play area since that time and the grass removed. Having regard to the approved and proposed modified changes including the revised smaller building addition, landscaping is not being removed. It would be difficult for the existing child care centre to satisfy landscaping provisions due to the outdoor play areas not meeting the definition of landscape areas due to the use of a ground surface soft fall material rather than turf. Whilst some of these soft fall areas could be turfed, in this instance it would be impractical for this to occur due to ongoing maintenance issues.

Clause 7.1.4 of HDCP requires that where a children’s outdoor play space adjoins a residential property, screen planting along the common boundary with the residence should be provided. A condition of consent was imposed on the approved alterations and additions under DA/389/2023 which requires screen planting along the southern and western boundaries adjoining residential properties to prevent

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privacy impacts. The addition of this planting will assist with softening the site as well as screen the residential properties adjoining the site and will not reduce the necessary unencumbered outdoor play areas which is in excess of the requirements.

Whilst it has been acknowledged that there was an error in the width between the building and the boundaries, the approved setbacks have been maintained and the building additions reduced in size, which has allowed the proposed landscaping along the southern and western boundaries to still be achieved.

On balance, it is considered that the existing landscaping on site, which is able to be retained by the proposal, as well as the required screen planting ensures adequate landscaping is maintained and provided on site. In line with the above, the modified proposal remains acceptable with regards to Part 7.1.4 Landscaping of the HDCP and meets the objectives of Part 3.4 of the CCPG

### **2.9.3 Transport, Parking and Traffic**

The HDCP requires a minimum of 1 on-site car parking space per 4 children (which equates to 10 spaces for the 40 children). The approved car park would comprise 12 car parking spaces, which complies with this requirement. The approved and modified proposals seeks to retain the approved car park arrangement and no concerns are raised in this regard.

There is no change proposed to the children numbers proposed under this modification application and as such the existing traffic generation will remain unaltered.

### **2.9.4 Waste Management**

The existing waste management arrangements remain in place and unaltered by the approved and modified proposals.

### **2.9.5 Noise and Vibration**

The HDCP requires that childcare centres be accompanied by an Acoustic Report that demonstrates the development is sited and designed to minimise the effect of noise and vibration on surrounding sensitive land uses. The original application introduced a new play area along the southern boundary, and as such was supported by an Acoustic Report.

The revised proposal has reduced the size of the addition to ensure that the approved side and rear setbacks remain as approved and does not require further acoustic considerations.

### **2.10 Privacy**

The application as originally proposed included a sliding door to the western elevation of a new meeting room. During the assessment, it was requested by Council that the door be moved to the northern elevation to minimise privacy impacts due to the proximity to the side boundary and adjoining residential property. The applicant requested that the sliding door (D04) on the side western elevation remain as proposed in order to maximise sunlight, rather than relocated to the northern elevation as requested by Council. To accommodate this request whilst ensuring that privacy is maintained to the adjacent western residential properties, Condition 2 was imposed to install a window instead of a sliding door as

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D04 and increases the sill height of the proposed window to the meeting room (replacing D04) and the staff room (W02) on the western elevation.

The proposed modification has revised the proposed windows and doors in response to the reduced floor area and in doing so proposes only one highlight window on the western elevation. This is a superior outcome in terms of privacy for residential dwellings to the west, whilst ensuring all rooms in the addition receive solar access from a window or door. It is recommended that Condition 2 be amended to delete points i) and ii) which refer to the changes to the windows and doors on the western elevation.

The proposal complies with the privacy requirements of Part 7.1.6 of the HDCP and is considered acceptable.

### **2.11 Section 7.12 Contributions Plans**

Hornsby Shire Council Section 7.12 Contributions Plan 2019-2029 applies to the development as the estimated costs of works is greater than \$100,000. Noting that the cost of works would be \$231,600, an appropriate condition of consent is recommended requiring the payment of a contribution in accordance with the Plan.

No change to the cost of works has been indicated within the application and as such no amendment to the existing condition of consent is required with respect to contributions.

## **3. ENVIRONMENTAL IMPACTS**

Section 4.15(1)(b) of the Act requires Council to consider *“the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality”*.

### **3.1 Natural Environment**

#### **3.1.1 Tree and Vegetation Preservation**

There were no trees removed or impacted by the approved development application. The Section 4.55(2) application would not necessitate the removal of or result in any impact to any trees to facilitate the modified development.

#### **3.1.2 Stormwater Management**

As part of the original development application, it was proposed to connect the development into the existing stormwater management system for the site which would then connect to the Council street drainage system.

The Section 4.55(2) application would not necessitate any amendments to the approved stormwater system.

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### **3.2 Built Environment**

#### **3.2.1 Built Form**

The modified development would maintain the approved single-storey built form, with a minor reduction in footprint.

No changes are proposed to the external building materials

#### **3.2.2 Traffic**

This Section 4.55(2) application is unlikely to result in additional car traffic movements due to no change to children or staff numbers.

The amended proposal would not modify access to the site and would not have an impact on the local road network.

### **3.3 Social Impacts**

The proposal as modified would continue to have a positive social impact within the locality.

### **3.4 Economic Impacts**

This proposal as modified would achieve a positive economic impact on the locality via employment generation and an increase in demand for local services.

## **4. SITE SUITABILITY**

Section 4.15(1)(c) of the Act requires Council to consider “*the suitability of the site for the development*”.

The proposal is a permissible use on the site. The proposed development is also consistent with the use and function of the existing development located on the site.

The proposed development suitably responds to the additional demand for child care centres in the locality.

The scale of the proposed development is consistent with the capability of the site and is considered acceptable. The modified development responds to its context and setting and represents a development that is appropriate for the constraints of the site and the surrounding built environment.

As outlined in this report, the proposed modification would not have any impact with respect to the suitability of the site for the development

## **5. PUBLIC PARTICIPATION**

Section 4.15(1)(d) of the Act requires Council to consider “*any submissions made in accordance with this Act*”.

### **5.1 Community Consultation**



The Section 4.55(2) development was placed on public exhibition and was notified to adjoining and nearby landowners between 4 November 2024 and 9 December 2024 in accordance with the Hornsby

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Community Engagement Plan. During this period, Council received one submission. The map below illustrates the location of those nearby landowners who were notified of the development.



**NOTIFICATION PLAN**

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
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The original application received a submission from an adjoining neighbour to the south at 7 Alliedale Close which did not object to the development but indicated a desire for a gap in the existing boundary fence between the site and their residential site to be closed up. In this regard, Conditions 14 and 21 of the original consent were imposed which state:

**14. Compliance with Acoustic Report**

*All control measures nominated in the Noise Impact Assessment prepared by Rodney Stevens, dated 7 August 2023, Report 230514R1, Rev 2 must be implemented.*

- a) *Install 2.1 metre high solid barrier along the south boundary to mid position of the west boundary as demonstrated in Figure 2-2.*
- b) *The windows are to be configured as shown in Figure 2-2. Glazing for sliding doors and window on the southern exterior façade must have a minimum Rw32.*

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- c) *Install sound absorptive material to at least 50% of the ceiling/roof area above the outdoor play, with a minimum rating of NRC 0.7.*

*Reason: To ensure the operational measures implemented protect the amenity of the local area.*

and

**21. Boundary Fencing**

- d) *The exact location, design and costing for the upgrading of boundary fencing as detailed below are to be the subject of negotiation and agreement in accordance with the relevant requirements of the Dividing Fences Act 1991.*
- e) *The parts of the boundary fencing along the southern and western boundaries not required to be 2.1m in height in accordance with condition No. 14 must be upgraded as follows:*
- i) *Remove the existing open style fencing and replace with a new fence, ensuring no openings within the boundary fencing.*
  - ii) *Provide a minimum 1.8m high fence, or higher to address privacy impacts to adjoining properties. The fence is to be of solid construction to maintain acoustic amenity in accordance with the requirements of the Noise Impact Assessment Report 230514R1, Rev 2 prepared by Rodney Stevens Acoustics Pty Ltd, dated 7/8/23.*

*Note: Alternative fencing may be erected subject to the written consent of the adjoining property owner(s) except where specifically required by the Noise Impact Assessment.*

*Reason: To provide amenity to the site and adjoining development.*

The submission received to the Modification application indicates that discussions held after issue of the consent have indicated to the neighbour at 7 Allendale Close that the fencing will remain unchanged and open, which is contrary to the conditions of consent and contrary to their wishes for a 2.1m high solid fence consistent with that proposed for the remainder of the southern boundary.

Below is an image of the existing adhoc boundary fence included within the submission:



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New boundary fencing along the southern and western boundaries is required by the conditions of consent. It was considered during the original assessment of DA/389/2023 that new boundary fencing is necessary along those two side boundaries which adjoin residential properties, noting that the approved play areas of the centre are located on the northern and eastern side of the building and the area along the southern boundary was currently being used as a play area without consent. As such, the existing fence on the southern boundary with openings is no longer appropriate with the centre expanding towards the southern and western boundaries under this consent.

Conditions 14 and 21 of the original consent are clear that the boundary fencing along the southern boundary is to be replaced, in agreement with the adjoining landowners, and these conditions were in direct response to the amenity concerns raised during the original application regarding the southern boundary fence. This will resolve the current opening in the boundary fencing along the southern boundary.

Conditions 14 and 21 of the original consent indicate that no Occupation Certificate will be able to be issued for the occupation and use of the alterations and additions until the boundary fencing and these conditions are complied with.

Condition 14 requires a certain part of the southern boundary to be 2.1m for acoustic purposes. This appears to cease at or near the start of 7 Allendale Close. However, Condition 21 currently states that the southern fencing is to be a “*minimum 1.8m high fence, or higher to address privacy impacts to adjoining properties*” and the neighbour at 7 Allendale Close has requested that the fencing be 2.1m in height and solid to ensure their privacy and amenity is improved and maintained at all times.

As such, it is proposed to amend Condition 21 to provide greater certainty for both the applicant and the adjoining neighbour at 7 Allendale Close, as well as provide a consistent height of 2.1m and appearance for the entire new southern boundary fencing.

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## 5.2 Public Agencies

The development application was referred to the following Agencies for comment:

### 5.2.1 Sydney Trains

Transport for NSW (on behalf of Sydney Trains) have considered the proposal against the requirements of Section 2.98 of State Environmental Planning Policy (Transport and Infrastructure) and provided conditions of consent via their response dated 12 February 2025. In this regard, Condition 3A has been recommended to be added to the conditions of consent, which refers to the letter and Attachment A.

## 6. THE PUBLIC INTEREST

Section 4.15(1)(e) of the Act requires Council to consider “*the public interest*”.

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

The application is considered to have satisfactorily addressed Council's criteria and would provide a development outcome that, on balance, would result in a positive impact for the community. Accordingly, it is considered that the approval of the proposed modification would be in the public interest. The modified proposal would result in a positive impact for the community and would be in the public interest.

### 6.1 Part 5 of the Environmental Planning and Assessment Regulation 2021

There are a number of matters required to be addressed in an application for modification of development consent pursuant to Division 1, 2 and 3 of Part 5 of the 2021 EP&A Regulation. These matters are considered below.

Consideration of the Requirements under the Regulation		
Matter	Comment	Comply
<b>Clause 100 Application for modification of development consent</b>		
May be made by— (a) the owner of the land to which it relates, or (b) another person, with the consent of the owner of the land (CI 98(1))	The application has been made by Boss Design Pty Ltd with the consent of the owner.	Y
NSW Aboriginal Land Council consent required for land owned by a Local Aboriginal Land Council (CI 98(6)).	The land is not owned by a LALC.	Y
Form approved by Planning Secretary and on portal (CI 99).	The application has been provided in accordance with the Regulation.	Y
Applicant details (CI 100(1)(a))	Provided on the NSW Planning Portal ('the Portal').	Y

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Description of the development (CI 100(1)(b))	Provided on the Portal and outlined this Report.	Y
Address and title details (CI 100(1)(c))	Provided on the Portal and outlined in Section this Report.	Y
Description of the proposed modification (CI 100(1)(d))	Provided on the Portal and address in this report.	Y
Whether to correct a minor error, mis-description or miscalculation, or some other effect (CI 100(1)(e))	N/A	Y
Description of the expected impacts of the modification (CI 100(1)(f))	There are unlikely to be any significant impacts resulting from the proposed modification.	Y
Undertaking that modified development will remain substantially same as development originally approved (CI 100(1)(g))	The modified development will remain substantially the same development as that originally approved. Refer to Section 2.1 of this Report.	Y
If accompanied by a Biodiversity development assessment report, the biodiversity credits information (CI 100(1)(h))	N/A	N/A
Owner's consent (CI 100(1)(i))	Written owners consent has been provided.	Y
Whether the application is being made to the Court (under section 4.55) or to the consent authority (under section 4.56) (CI 100(1)(j)).	Application is made to the consent authority pursuant to S4.55(2) of the EP&A Act.	Y
BASIX Certificate (CI 100(3))	N/A	N/A
Penrith Lakes Development Corporation (CI 101)	N/A	N/A
Qualified designer statement for residential apartment development (CI 102)	N/A	N/A
Mining and petroleum development consents (CI 102)	N/A	N/A
Notification and exhibition requirements (CI 105-112)	Refer to Section 5.1 of the report.	Y
Notification of concurrence authorities and approval bodies (CI 109) (to be undertaken by Council)	Not required as outlined in Section 5.2 of the report.	Y

#### CONCLUSION

The Section 4.55(2) application proposes to amend DA/389/2023/A for Modification to approved Alterations & Additions to an existing child care centre known as Jack & Jill Kindergarten, including a reduction in size of the approved works due to a drafting error on the plans.

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The development generally meets the desired outcomes of Council's planning controls and is satisfactory having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Council received one submission during the public notification period. The matters raised have been addressed in the body of the report.

Having regard to the circumstances of the case, approval of the application is recommended.

The reasons for this decision are:

- The modified development complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.
- The modified development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, solar access, amenity or privacy.

The development is substantially the same development as the development for which consent was originally granted. The proposed modification is assessed as satisfactory with respect to the reasons for approval for DA/389/2023.

*Note: At the time of the completion of this planning report, no persons have made a Political Donations Disclosure Statement pursuant to Section 10.4 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.*

# DRAFT CONDITIONS OF CONSENT

## Schedule 1

**Date of this modification:**

**Details of this modification:** Section 4.55(2) Modification to approved Alterations & Additions to an existing child care centre including a reduction in size of the approved works due to a drafting error on the plans where the existing building was not located correctly relative to the western and southern boundaries.

**Conditions Added:** Condition 3A

**Conditions Deleted:** Nil

**Conditions Modified:** 1, 2 and 21

## GENERAL CONDITIONS

Condition

### 1. Approved Plans and Supporting Documentation (modified - Mod A)

The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by Council and/or other conditions of this consent:

#### Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council Reference
A-01 Rev B	Site Plan	BDDS Design	Oct 2024	
B-01 Rev B	Proposed Ground Floor Plan	BDDS Design	Oct 2024	
B-02 Rev B	Proposed Roof Plan	BDDS Design	Oct 2024	
C-01 Rev B	Proposed Elevations A & B	BDDS Design	Oct 2024	
C-02 Rev B	Proposed Elevations C & D	BDDS Design	Oct 2024	
D-01 Rev B	Proposed Sections A & B	BDDS Design	Oct 2024	
G-01 Rev B	Window Schedule	BDDS Design	Oct 2024	
G-02 Rev B	Door Schedule	BDDS Design	Oct 2024	

#### Supporting Documents

Document Title	Prepared by	Dated	Council Reference
Noise Impact Assessment Report 230514R1, Rev 2	Rodney Stevens Acoustics Pty Ltd	7/8/23	D08708484
Plan of Management	Jack & Jill Kindergarten	Aug 2023	D08708487
Waste Management Plan	Woojin Kang (Director)	2/3/23	D08650545
Materials and Finishes	Boss Design	undated	D08650546

<b>Document Title</b>	<b>Prepared by</b>	<b>Dated</b>	<b>Council Reference</b>
BCA 2019 Section J DTS Report	AENEC	15/3/23	D08650549
Boundary Marks	Richards & Loftus	26/7/24	

*Reason: To ensure all parties are aware of the approved plans and supporting documentation that apply to the development.*

## 2. Amendment of Plans (modified - Mod A)

- a) To comply with Councils requirement in terms of privacy, the approved plans are to be amended as follows:
  - i) Screen planting is required along the southern and western boundaries where there is not currently landscaping to prevent privacy impacts to the adjoining residential properties.
- b) These amended plans must be submitted with the application for the Construction Certificate.

*Reason: To require minor amendments to the approved plans and supporting documentation following assessment of the development.*

## 3. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Principal Certifier prior to the commencement of any construction works under this consent.
- b) The Construction Certificate plans must be consistent with the Development Consent plans.

*Reason: To ensure that detailed construction certificate plans are consistent with the approved plans and supporting documentation.*

## 3A. Compliance with Other Department, Authority or Service Requirements (new - Mod A)

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

<b>Other Department, Authority or Service</b>	<b>Document Title/ Ref</b>	<b>Dated</b>	<b>Council Reference</b>
Transport for NSW	Letter & Attachment A (8 pages)	12/2/25	D09067070

*(NOTE: For a copy of the above referenced document/s, please see Application Enquiry System on Council's website [www.hornsby.nsw.gov.au](http://www.hornsby.nsw.gov.au))*

*Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.*

## 4. Section 7.12 Development Contributions

- (a) In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979* and the *Hornsby Shire Council Section 7.12 Development Contributions Plan 2019 - 2029*, **\$2,316** must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of **\$231,600**.
- (b) The value of this contribution is current as of **30 August 2023**. If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.12

Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

$$\$C_{PY} = \frac{\$C_{DC} \times CPI_{PY}}{CPI_{DC}}$$

Where:

- \$C<sub>PY</sub>** is the amount of the contribution at the date of Payment
- \$C<sub>DC</sub>** is the amount of the contribution as set out in this Development Consent
- CPI<sub>PY</sub>** is the latest release of the Consumer Price Index (Sydney - All Groups) at the date of Payment as published by the ABS.
- CPI<sub>DC</sub>** is the Consumer Price Index (Sydney - All Groups) for the financial quarter at the date of this Development Consent.

- (c) The monetary contributions shall be paid to Council:
  - (i) prior to the issue of the Subdivision Certificate where the development is for subdivision; or
  - (ii) prior to the issue of the first Construction Certificate where the development is for building work; or
  - (iii) prior to issue of the Subdivision Certificate or first Construction Certificate, whichever occurs first, where the development involves both subdivision and building work; or
  - (iv) prior to the works commencing where the development does not require a Construction Certificate or Subdivision Certificate.

*Note: It is the professional responsibility of the Principal Certifier to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.*

*Note: The Hornsby Shire Council Section 7.12 Development Contributions Plan may be viewed at [www.hornsby.nsw.gov.au](http://www.hornsby.nsw.gov.au) or a copy may be inspected at Council's Administration Centre during normal business hours.*

*Reason: To address the increased demand for community infrastructure resulting from the approved development.*

**BUILDING WORK  
BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

Condition
-----------

**5. Building Code of Australia**

Detailed plans, specifications and supporting information is required to be submitted to the certifying authority detailing how the proposed building work achieves compliance with the National Construction Code - Building Code of Australia. All building work must be carried out in accordance with the requirements of the National Construction Code - Building Code of Australia.

*Reason: Prescribed condition - EP&A Regulation section 69(1)*

**6. Sydney Water**

This application must be submitted to *Sydney Water* for approval to determine whether the development would affect any *Sydney Water* infrastructure, and whether further requirements are to be met.

*Note: Building plan approvals can be obtained online via Sydney Water Tap in™ through [www.sydneywater.com.au](http://www.sydneywater.com.au) under the Building and Development tab.*

*Reason: To ensure the development is provided with the relevant utility services.*

**7. Stormwater Drainage**

The stormwater drainage system for the development must be designed for an average recurrence interval (ARI) of 20 years and be gravity drained in accordance with the following requirements:

- a) Connected to the existing internal drainage system.

*Reason: To ensure appropriate provision for management and disposal of stormwater.*

**BEFORE BUILDING WORK COMMENCES**

Condition
-----------

**8. Erection of Construction Sign**

- a) A sign must be erected in a prominent position on any site on which any approved work is being carried out:
  - i) Showing the name, address and telephone number of the principal certifying authority for the work;
  - ii) Showing the name of the principal contractor (if any) for any demolition or building work and a telephone number on which that person may be contacted outside working hours; and
  - iii) Stating that unauthorised entry to the work site is prohibited.
- b) The sign is to be maintained while the approved work is being carried out and must be removed when the work has been completed.

*Reason: Prescribed condition EP&A Regulation, section 70(2) and (3).*

**9. Protection of Adjoining Areas**

A temporary hoarding, fence or awning must be erected between the work site and adjoining lands before the works begin and must be kept in place until after the completion of the works if the works:

- a) Could cause a danger, obstruction, or inconvenience to pedestrian or vehicular traffic.
- b) Could cause damage to adjoining lands by falling objects; and/or
- c) Involve the enclosure of a public place or part of a public place; and/or
- d) Have been identified as requiring a temporary hoarding, fence, or awning within the Council approved Construction Management Plan (CMP).

*Note: Notwithstanding the above, Council's separate written approval is required prior to the erection of any structure or other obstruction on public land.*



*Reason: To ensure public safety and protection of adjoining land.*

**10. Toilet Facilities**

- a) To provide a safe and hygienic workplace, toilet facilities must be available or be installed at the works site before works begin and must be maintained until the works are completed at a ratio of one toilet for every 20 persons employed at the site.
- b) Each toilet must:
  - i) be a standard flushing toilet connected to a public sewer; or
  - ii) be a temporary chemical closet approved under the *Local Government Act 1993*.

*Reason: To ensure adequate toilet facilities are provided.*

**11. Erosion and Sediment Control**

To protect the water quality of the downstream environment, erosion and sediment control measures must be provided and maintained throughout the construction period in accordance with the manual *‘Urban Stormwater: Soils and Construction “The Blue Book” 2004 (4th edition)*, the approved plans, Council specifications and to the satisfaction of the principal certifying authority. The erosion and sediment control devices must remain in place until the site has been stabilised and revegetated.

*Note: On the spot penalties may be issued for any non-compliance with this requirement without any further notification or warning.*

*Reason: To minimise impacts on the water quality of the downstream environment.*

**DURING BUILDING WORK**

Condition
-----------

**12. Construction Work Hours**

- a) All works on site, including demolition and earth works, must only occur between 7am and 5pm Monday to Saturday.
- b) No work is to be undertaken on Sundays or public holidays.

*Reason: To protect the amenity of neighbouring properties.*

**13. Council Property**

To ensure that the public reserve is kept in a clean, tidy, and safe condition during construction works, no building materials, waste, machinery, or related matter is to be stored on the road or footpath.

*Reason: To protect public land.*

**14. Compliance with Acoustic Report**

All control measures nominated in the Noise Impact Assessment prepared by Rodney Stevens, dated 7 August 2023, report 230514R1, Rev 2 must be implemented.

- a) Install 2.1 metre high solid barrier along the south boundary to mid position of the west boundary as demonstrated in Figure 2-2.

- b) The windows are to be configured as shown in Figure 2-2. Glazing for sliding doors and window on the southern exterior façade must have a minimum Rw32.
- c) Install sound absorptive material to at least 50% of the ceiling/roof area above the outdoor play, with a minimum rating of NRC 0.7.

*Reason: To ensure the operational measures implemented protect the amenity of the local area.*

**15. Environmental Management**

To prevent sediment run-off, excessive dust, noise or odour emanating from the site during the construction, the site must be managed in accordance with the publication 'Managing Urban Stormwater - Landcom (March 2004) and the Protection of the Environment Operations Act 1997.

*Reason: To minimise impacts to the natural environment and public health.*

**16. Disturbance of Existing Site**

During construction works, the existing ground levels of open space areas and natural landscape features, including natural rock-outcrops, vegetation, soil and watercourses must not be altered unless otherwise nominated on the approved plans.

*Reason: To protect the natural features of the site.*

**17. Waste Management**

All work must be carried out in accordance with the approved waste management plan.

*Reason: To ensure the management of waste to protect the environment and local amenity during construction.*

**BEFORE ISSUE OF AN OCCUPATION CERTIFICATE**

Condition
-----------

**18. Damage to Council Assets**

To protect public property and infrastructure, any damage caused to Council's assets as a result of the construction or demolition of the development must be rectified by the applicant in accordance with AUS-SPEC Specifications ([www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions](http://www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions)). Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

*Reason: To ensure public infrastructure and property is maintained.*

**19. Completion of Works**

All engineering works identified in this consent are to be completed and a Compliance Certificate issued by a suitable qualified engineer prior to the issue of an Occupation Certificate.

*Reason: To ensure engineering works are completed.*

**20. Certification of Acoustic Measures**

Before the issue of an Occupation Certificate, a suitably qualified person must provide details demonstrating compliance to the Principal Certifier and Council that the acoustic measures have been installed in accordance with the acoustic report approved under this consent.

*Reason: To protect the amenity of the local area.*

**21. Boundary Fencing (modified - Mod A)**

- a) The exact location, design and costing for the upgrading of boundary fencing as detailed below are to be the subject of negotiation and agreement in accordance with the relevant requirements of the *Dividing Fences Act 1991*.
- b) The parts of the boundary fencing along the southern and western boundaries not required to be 2.1m in height in accordance with condition No. 14 must be upgraded as follows:
  - i) Remove the existing open style fencing and replace with a new fence, ensuring no openings within the boundary fencing.
  - ii) Provide a minimum 1.8m high fence, or higher to address privacy impacts to adjoining properties for the western boundary and a minimum 2.1m high fence to address privacy impacts to adjoining properties for the southern boundary. The fence is to be of solid construction and match the remainder of fencing proposed on the western and southern boundary for consistency and to maintain acoustic amenity in accordance with the requirements of the Noise Impact Assessment Report 230514R1, Rev 2 prepared by Rodney Stevens Acoustics Pty Ltd, dated 7/8/23.

*Note: Alternative fencing may be erected subject to the written consent of the adjoining property owner(s) except where specifically required by the Noise Impact Assessment.*

*Reason: To provide amenity to the site and adjoining development.*

**OCCUPATION AND ONGOING USE**

Condition
-----------

**22. Children Numbers**

The maximum number of children permitted by this consent is 40 children consistent with the licence for the centre.

*Reason: To ensure the development can safely accommodate the licensed use*

**23. Hours of Operation**

The hours of operation of the premise are restricted to those times listed below:

Monday to Friday                      8.30 am to 4 pm

*Reason: To protect the amenity of the local area.*

**24. Operational Noise**

- a. The LAeq, 15-minute noise level from outdoor play must not exceed 45dBA when assessed at the boundary of any neighbouring residential premises.
- b. The LAeq, 15-minute noise level from cumulative noise (excluding outdoor play) must not exceed 41dBA when assessed at the boundary of neighbouring any residential premises.

*Reason: To protect the acoustic amenity of the local area.*

**25. Compliance with Plan of Management**

All control measures and procedures nominated in the Plan of Management, prepared by The Jack & Jill Kindergarten Hornsby, dated August 2023 must be implemented.

*Reason: To ensure the operational measures implemented protect the amenity of the local area.*

DRAFT

**ATTACHMENT 2 - ITEM 1**

S4.55 MODIFICATION TO COUNCIL - OCTOBER 2024

# ADDITION AND ALTERATION

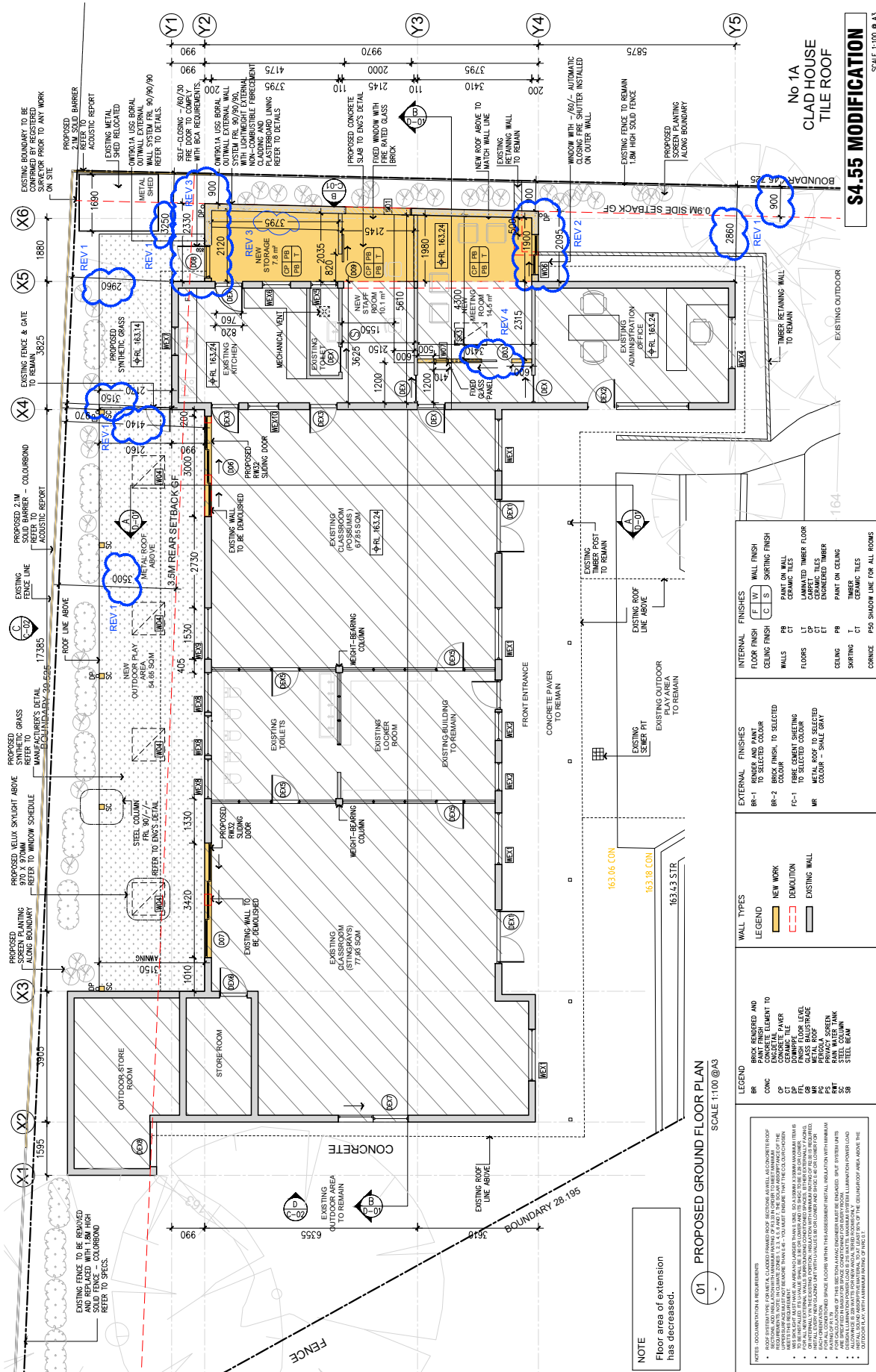
1 HALL RD, HORNSBY, NSW, 2077  
CLIENT: THE JACK AND JILL KINDERGARTEN

INDEX	SITE PLAN	A-01
	PROPOSED GROUND FLOOR PLAN	B-01
	PROPOSED ROOF PLAN	B-02
	PROPOSED ELEVATIONS A&B	C-01
	PROPOSED ELEVATIONS C&D	C-02
	PROPOSED SECTIONS A&B	D-01
	WINDOW SCHEDULE	G-01
	DOOR SCHEDULE	G-02



# ATTACHMENT 3 - ITEM 1





**S4.55 MODIFICATION**  
SCALE 1:100 @ A3

**PROPOSED FLOOR PLAN**

**No 1A CLAD HOUSE TILE ROOF**

PROJECT NO: 2323-010 BUBS  
CLIENT: THE JACK AND JILL MIDDLEGARTEN  
DATE: 2022-01-01

DATE: MAY 2023  
REVISION: 1  
DESCRIPTION: DEVELOPMENT APPLICATION  
DRAWN BY: [Name]  
CHECKED BY: [Name]

**LEGEND**

WALL TYPES	EXTERNAL FINISHES	INTERNAL FINISHES	LEGEND	REVISIONS
BR-1 RENDER AND PAINT TO SELECTED COLOUR BR-2 BRICK FINISH TO SELECTED COLOUR FC-1 FLOOR COVERING SHEETING TO SELECTED COLOUR MR METAL ROOF TO SELECTED COLOUR - SHALE GRAY	FLOOR FINISH CEILING FINISH WALLS FLOORS CEILING SKIRTING CORNICE	FLOOR FINISH CEILING FINISH WALLS FLOORS CEILING SKIRTING CORNICE	NEW WORK DEMOLITION EXISTING WALL	REV 1 REV 2 REV 3 REV 4

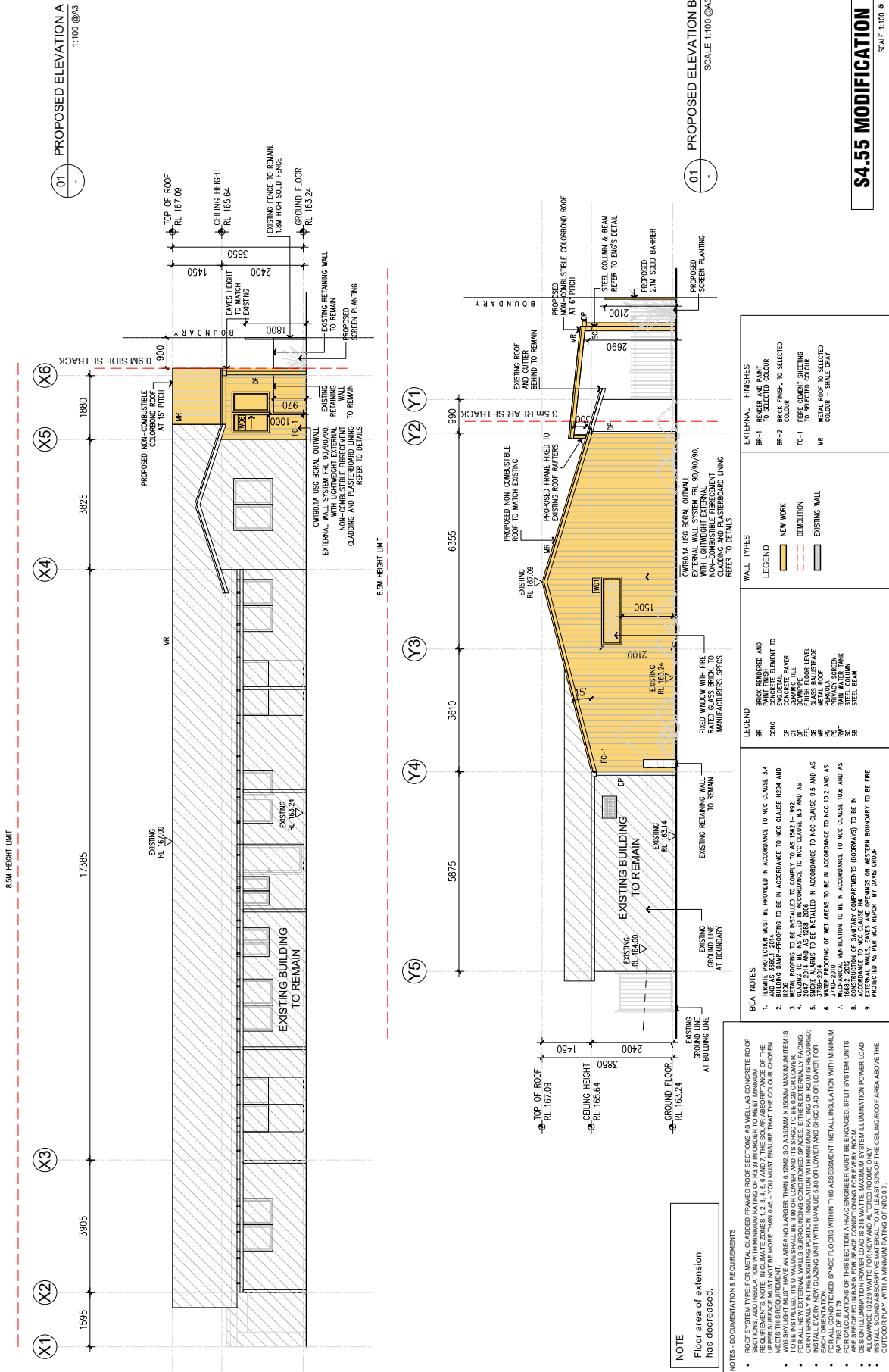
**NOTE (REV 9)**

- REVISED BOUNDARY LINE AND EXISTING BUILDING SETBACKS.
- EXISTING CONCRETE PLAY AREA TO BE REPLACED WITH SANDY SLUICK AND ALLOYED WITH 4% TO.
- EXISTING AT REAR END (NEW STORAGE) INCREASED TO 2.325M WITH.
- DOOR TO BE REPLACED WITH SANDY SLUICK.
- FLOOR AREA OF EXTENSION HAS DECREASED.

# ATTACHMENT 3 - ITEM 1







**ATTACHMENT 3 - ITEM 1**

**bosco design**  
Architecture  
Interior Design  
Project Management

**BDDBS**  
BUILDING DESIGN DEVELOPMENT BOARD  
100 WILSON ROAD, SYDNEY NSW 1570  
1300 737 737  
www.bdbs.gov.au

**bdg**  
BUILDING DESIGN GROUP  
100 WILSON ROAD, SYDNEY NSW 1570  
1300 737 737  
www.bdbs.gov.au

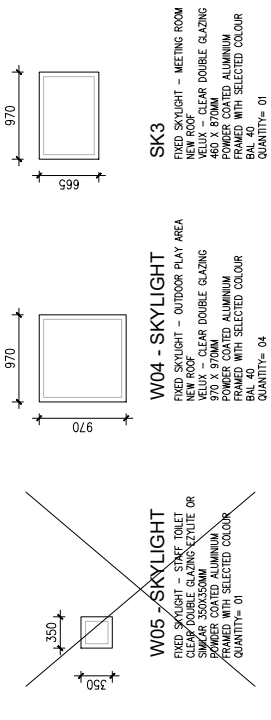
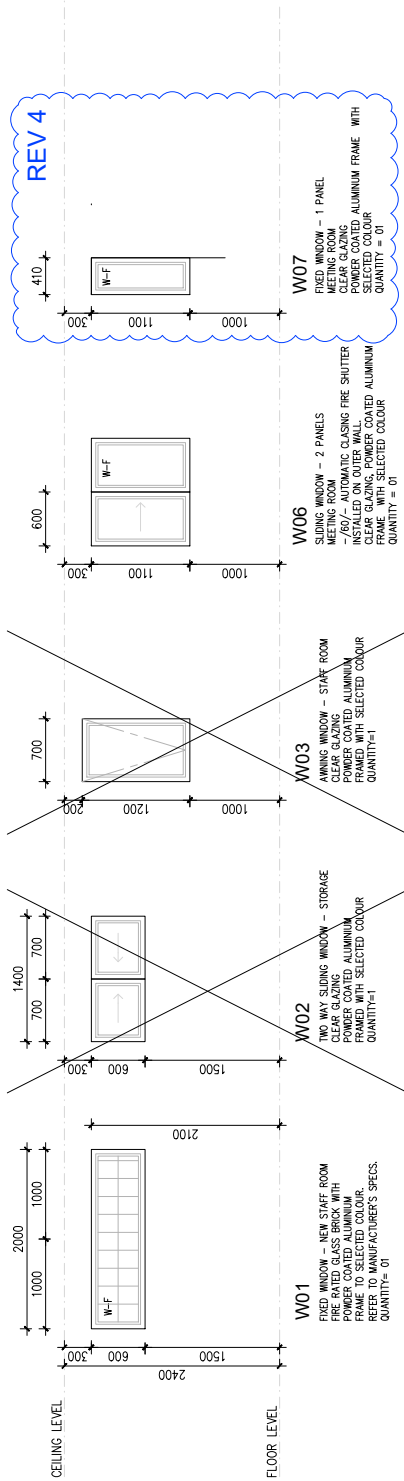
**MADE (REV 9)**

- REVISED BOUNDARY LINE AND EXISTING BUILDING SETBACKS.
- EXISTION AT REAR END NOW STRIPPED INCREASED TO 2.325M WIDTH AND ADDED WITH 0.72.
- EXISTION AT REAR END NOW STRIPPED INCREASED TO 2.325M WIDTH.
- DOOR CASE AND NEW MEETING ROOM TO BE REPLACED WITH GAITY SLIDING DOOR.
- FLOOR AREA OF EXTENSION HAS DECREASED.





NOTE  
Floor area of extension  
has decreased.



01 WINDOW SCHEDULE  
SCALE 1:50 @A3

NOTES: DOCUMENTATION REQUIREMENTS  
 • ROOF SYSTEMS TO BE FOR METAL GLASS FRAMES ROOF SHEETING AS WELL AS CONCRETE ROOF REQUIREMENTS. NOTE: IN CLIMATE ZONES 1, 2, 3, 4, 5, 6 AND 7, THE SOLAR ABSORPTANCE OF THE SECTIONS AND INSULATION WITH MINIMUM RATING OF R0.30 IN ORDER TO MEET MINIMUM REQUIREMENTS. NOTE: IN CLIMATE ZONES 1, 2, 3, 4, 5, 6 AND 7, THE SOLAR ABSORPTANCE OF THE MEETS THIS REQUIREMENT.  
 • W05 SKYLIGHT MUST HAVE AN AREA NOT LARGER THAN 0.12M<sup>2</sup> SOA 500MM AS 300MM MINIMUM ITEMS FOR ALL NEW EXTERNAL WALLS SURROUNDING CONDITIONED SPACES, EITHER EXTERNALLY FACING, OR INTERNALLY FACING.  
 • INSTALL EVERY NEW GLAZING UNIT WITH U VALUE 0.80 OR LOWER AND SH02.00 OR LOWER FOR EACH ORIENTATION.  
 • RATING OF R1.70  
 • MINIMUM SPACED SPACE FLOORS WITHIN THIS ASSESSMENT INSTALL INSULATION WITH MINIMUM RATING OF R1.70  
 • FOR CALCULATIONS OF THIS SECTION A HVAC ENGINEER MUST BE ENGAGED. SPLIT SYSTEM UNITS DESIGN ILLUMINATION POWER LOAD 82.65 WATTS. MAXIMUM SYSTEM ILLUMINATION POWER LOAD 100.00 WATTS.  
 • THE WINDOW SCHEDULE IS TO BE COMPLETED AND ALL WINDOW TYPES AND IMPACT ASSESSMENT REPORT FIGURE 2.2. GLAZING FOR SLIDING DOORS AND WINDOW ON THE SOUTHERN EXTERIOR FACADE MUST HAVE A MINIMUM U-VALUE

LEGEND

BR	BRICK RENDERED AND CONCRETE ELEMENT TO FINISH
CONC	CONCRETE
EN	ENAMEL FINISH
CT	CERAMIC TILE
FL	FLOOR FINISH
FR	FRAMES WITH SELECTED COLOUR
MS	METAL SCREEN
PER	PEROLA SCREEN
PC	RAIN WATER TRAP
RWT	RAIN WATER TRAP
SB	STEEL BEAM

BCA NOTES

1. BUILDING DAMP-PROOFING TO BE IN ACCORDANCE TO NCC CLAUSE 3.4 AND AS 3601.1-2014
2. BUILDING DAMP-PROOFING TO BE IN ACCORDANCE TO NCC CLAUSE 10.4 AND AS 1582.1-1992
3. METAL ROOFING TO BE INSTALLED TO COMPLY TO AS 1582.1-1992
4. 2014-2014 AND AS 1582.1-1992
5. 3788-2014 TO BE INSTALLED IN ACCORDANCE TO NCC CLAUSE 4.5 AND AS 3788-2014
6. MECHANICAL VENTILATION TO BE IN ACCORDANCE TO NCC CLAUSE 10.6 AND AS 3788-2014
7. MECHANICAL VENTILATION TO BE IN ACCORDANCE TO NCC CLAUSE 10.6 AND AS 3788-2014
8. CONSTRUCTION OF SANITARY COMPARTMENTS (DOORWAYS) TO BE IN ACCORDANCE TO NCC CLAUSE 10.6 AND AS 3788-2014
9. EXTERNAL WALLS, FLOORS AND OPENINGS ON WESTERN BOUNDARY TO BE PROTECTED AS PER BCA REPORT BY DAVID GRIP

SCALE 1:50 @ A3

**S4-55 MODIFICATION**

PROJECT NO: 2022-001  
 PROJECT NAME: THE JACK AND JILL MIDDLEGARTEN  
 PROJECT NO: 2233-013 BUBS

DATE: MAY 2022  
 DRAWN BY: [ ]  
 CHECKED BY: [ ]

DESCRIPTION

REV	LEVEL/REVISION	DATE	BY	CHK
01	ISSUED FOR PERMIT	MAY 2022	[ ]	[ ]
02	ISSUED FOR PERMIT	MAY 2022	[ ]	[ ]
03	ISSUED FOR PERMIT	MAY 2022	[ ]	[ ]
04	ISSUED FOR PERMIT	MAY 2022	[ ]	[ ]
05	ISSUED FOR PERMIT	MAY 2022	[ ]	[ ]
06	ISSUED FOR PERMIT	MAY 2022	[ ]	[ ]
07	ISSUED FOR PERMIT	MAY 2022	[ ]	[ ]
08	ISSUED FOR PERMIT	MAY 2022	[ ]	[ ]
09	ISSUED FOR PERMIT	MAY 2022	[ ]	[ ]
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29	ISSUED FOR PERMIT	MAY 2022	[ ]	[ ]
30	ISSUED FOR PERMIT	MAY 2022	[ ]	[ ]

1) REVISIONARY LINE AND EXISTING BUILDING NETWORKS.  
 2) EXTERIOR WALLS TO BE REPLACED WITH CHIPPY SLIDING AND BLIND WITH 1/2".  
 3) EXTERIOR AT REAR DOOR (NEW STRAKE) INCREASED TO 330MM WIDTH.  
 4) DOOR TO BE REPLACED WITH CHIPPY SLIDING.  
 5) FLOOR AREA OF EXTENSION WAS DECREASED.

**BDOS** BUILDING DESIGN & CONSTRUCTION  
 10/100 BROADWAY  
 SYDNEY NSW 2009  
 PH: 02 9550 1000  
 WWW.BDOS.COM.AU

**BDOS** BUILDING DESIGN & CONSTRUCTION  
 10/100 BROADWAY  
 SYDNEY NSW 2009  
 PH: 02 9550 1000  
 WWW.BDOS.COM.AU

**bossdesign**  
 Architecture  
 Interior Design  
 Project Management

PROJECT NO: 2022-001  
 PROJECT NAME: THE JACK AND JILL MIDDLEGARTEN  
 PROJECT NO: 2233-013 BUBS

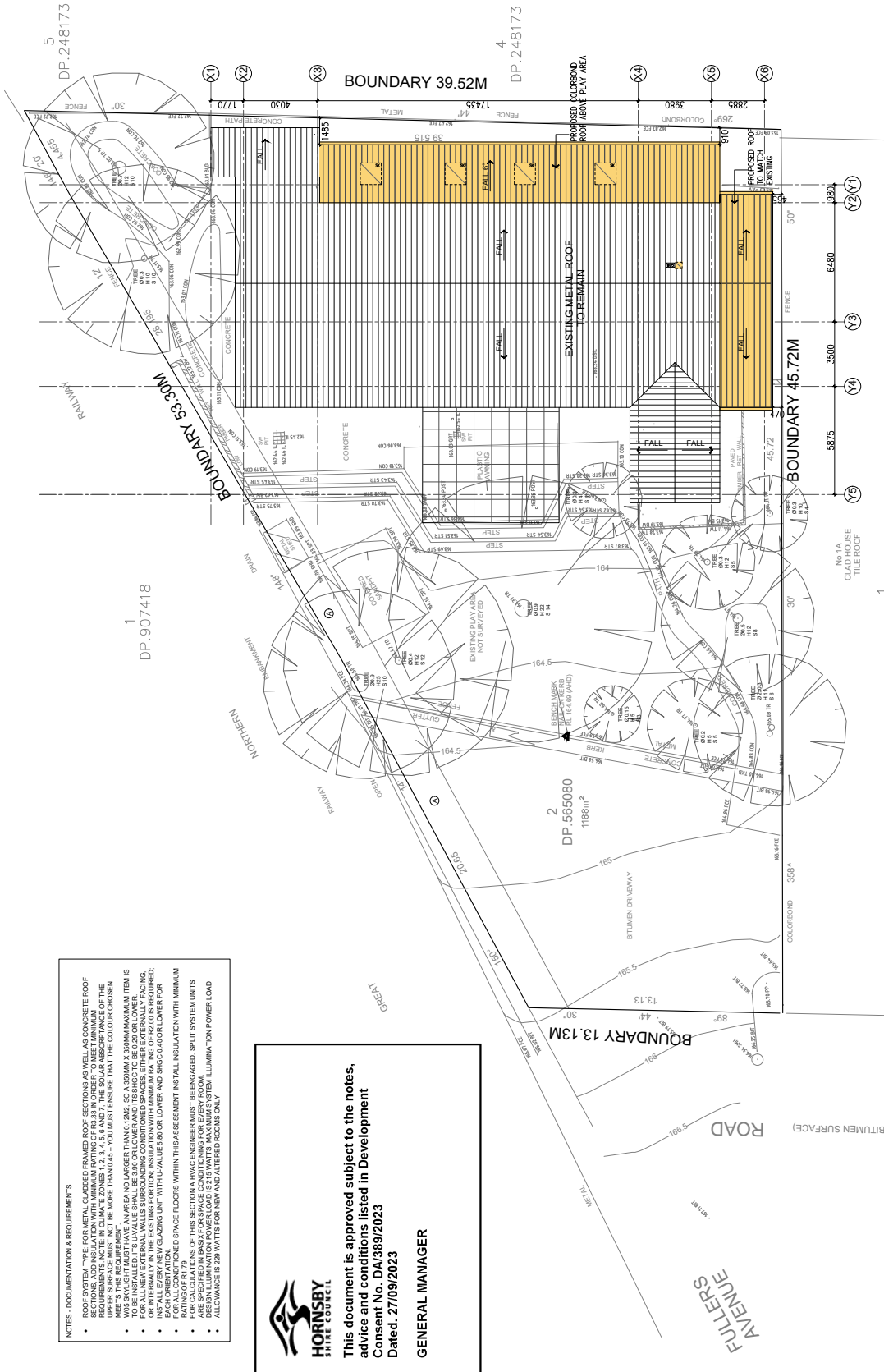
DATE: MAY 2022  
 DRAWN BY: [ ]  
 CHECKED BY: [ ]

DESCRIPTION

REV	LEVEL/REVISION	DATE	BY	CHK
01	ISSUED FOR PERMIT	MAY 2022	[ ]	[ ]
02	ISSUED FOR PERMIT	MAY 2022	[ ]	[ ]
03	ISSUED FOR PERMIT	MAY 2022	[ ]	[ ]
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28	ISSUED FOR PERMIT	MAY 2022	[ ]	[ ]
29	ISSUED FOR PERMIT	MAY 2022	[ ]	[ ]
30	ISSUED FOR PERMIT	MAY 2022	[ ]	[ ]

# ATTACHMENT 3 - ITEM 1





**NOTES - DOCUMENTATION & REQUIREMENTS**

- ROOF SYSTEM TYPE FOR METAL CLADDED FRAMED ROOF SECTIONS AS WELL AS CONCRETE ROOF SECTIONS ADD INSULATION WITH MINIMUM RATING OF R3.0 IN ORDER TO MEET MINIMUM OF THE UPPER SURFACE MUST NOT BE MORE THAN 0.4% - YOU MUST ENSURE THAT THE COLOUR CHOSEN FOR THE ROOF IS A LIGHT COLOUR.
- THIS EXISTING ROOF MUST HAVE AN AREA NO LARGER THAN 0.242. SO A 3000MM X 3000MM MAXIMUM ITEM IS TO BE INSTALLED. ITS U-VALUE SHALL BE 3.00 OR LOWER AND ITS SHGC TO BE 0.20 OR LOWER.
- INSULATION SHALL BE INSTALLED TO THE EXISTING PORTION. INSULATION WITH AN MINIMUM RATING OF R2.00 IS REQUIRED, OR INTERNALLY IN THE EXISTING PORTION.
- FOR ALL CONDITIONED SPACE FLOORS WITHIN THIS ASSESSMENT INSTALL INSULATION WITH MINIMUM RATING OF R1.5.
- FOR ALL UNCONDITIONED SPACE FLOORS WITHIN THIS ASSESSMENT INSTALL INSULATION WITH MINIMUM RATING OF R0.75.
- ALL ROOF SYSTEMS OF THIS SECTION A HVAC ENGINEER MUST BE ENGAGED. ROOF SYSTEM UNITS ARE SPECIFIED IN BASKET OR SPACE CONDITIONING FOR EVERY ROOM.
- ALL ROOF SYSTEMS OF THIS SECTION A HVAC ENGINEER MUST BE ENGAGED. ROOF SYSTEM UNITS ARE SPECIFIED IN BASKET OR SPACE CONDITIONING FOR EVERY ROOM.
- ALLOWANCE IS 220 WATTS FOR NEW AND ALTERED ROOMS ONLY.

**HORNSBY SHIRE COUNCIL**

This document is approved subject to the notes, advice and conditions listed in Development Consent No. DA1389/2023 Dated. 27/09/2023

**GENERAL MANAGER**

01 SITE PLAN 1:200 @A3

**DEVELOPMENT APPLICATION**

1:200 @ A3

**SITE PLAN**

PROJECT: HORNBY RD HORNBY NSW, 2077  
 CLIENT: JILL AND JILL MIDGARDEN  
 PROJECT NO: 2022-001



DATE	REV	DESCRIPTION	DRAWN BY	CHECKED BY
MAY 2023	-	DEVELOPMENT APPLICATION	MM-TL	MM
JULY 2023	-	DEVELOPMENT APPLICATION	MM-TL	MM

**bossgn**  
 Architecture  
 Interior Design  
 Project Management

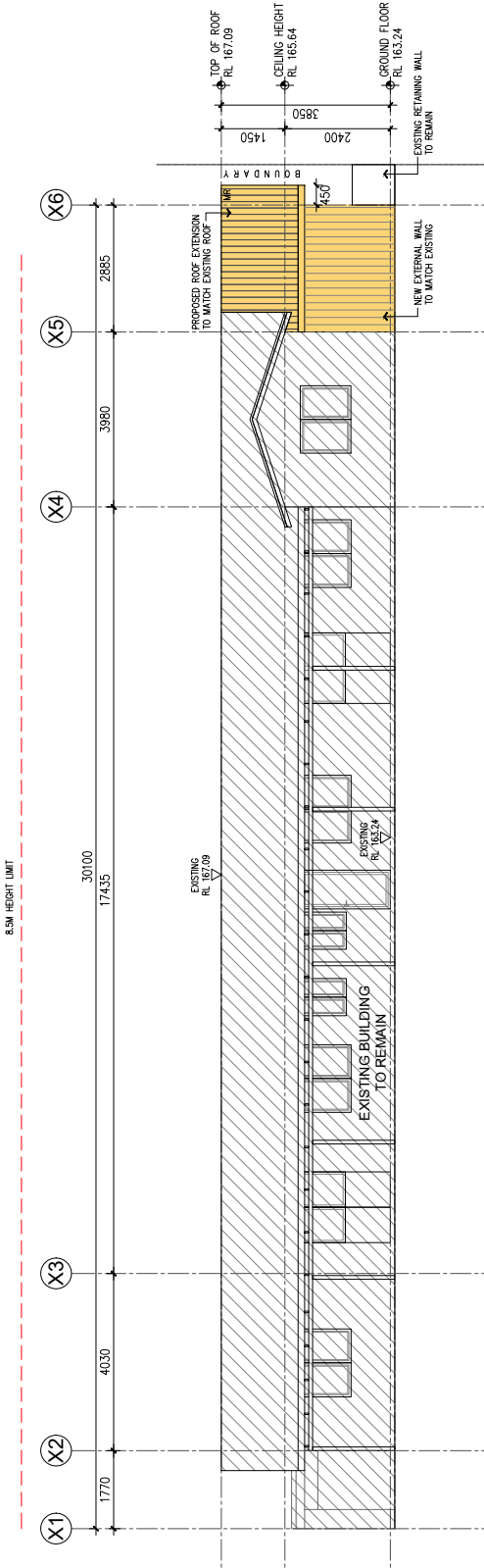
A-02

**ATTACHMENT 4 - ITEM 1**





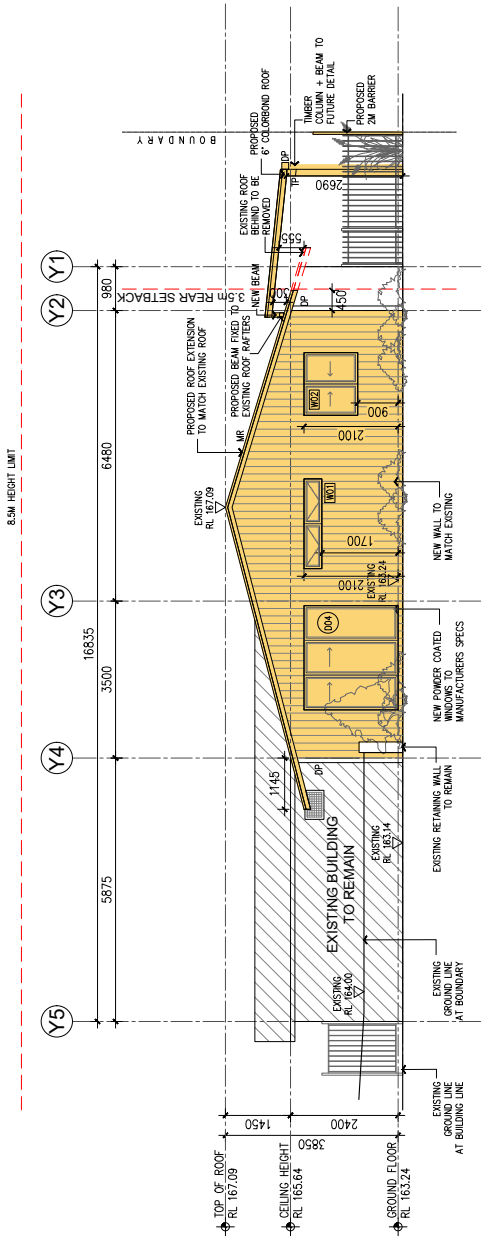




01 PROPOSED ELEVATION A  
1:100 @A3

**HORNSBY SHIRE COUNCIL**

This document is approved subject to the notes, advice and conditions listed in Development Consent No. DA/389/2023  
Dated. 27/09/2023  
GENERAL MANAGER



01 PROPOSED ELEVATION B  
1:100 @A3

- NOTES - DOCUMENTATION & REQUIREMENTS**
- ROOF SYSTEM TYPE FOR NEW CLASSED FRAME ROOF SECTIONS AS WELL AS CONCRETE ROOF SECTIONS ADD INSULATION WITH MINIMUM RATING OF R1.33 IN ORDER TO MEET MINIMUM REQUIREMENTS. NOTE IN CLIMATE ZONES 1, 2, 3, 4, 5, 6 AND 7, THE SOLAR ABSORPTANCE OF THE ROOF MUST BE MORE THAN 0.45 - YOU MUST ENSURE THAT THE COLOUR CHOSEN MEETS THIS REQUIREMENT.
  - WINDSHIELD MUST HAVE AN AREA NOT LARGER THAN 0.12M<sup>2</sup> 50 A 300MM X 300MM MAXIMUM ITEM IS PERMITTED TO BE INSTALLED TO PROTECT GLAZING FROM DEBRIS. THIS REQUIREMENT DOES NOT APPLY TO ALL NEW EXTERNAL WALLS SURROUNDING CONDITIONED SPACES, EITHER EXTERNALLY FACING, OR INTERNALLY FACING.
  - INSTALL EVERY NEW GLAZING UNIT WITH A U-VALUE 3.0 OR LOWER AND SGG OR LOWER FOR EACH ORIENTATION.
  - CONDENSED SPACE FLOORS WITH THIS ASSESSMENT INSTALL INSULATION WITH MINIMUM RATING OF R1.70.
  - FOR CALCULATIONS OF THIS SECTION A HVAC ENGINEER MUST BE ENGAGED. SPLIT SYSTEM UNITS DESIGN ILLUMINATION POWER LOAD IS 21.5 WATTS MAXIMUM SYSTEM ILLUMINATION POWER LOAD ALLOWANCE IS 220 WATTS FOR NEW AND ALTERED ROOMS ONLY.

**DEVELOPMENT APPLICATION**  
1:100 @ A3

**PROPOSED ELEVATION A&B  
NORTH AND WEST ELEVATION**

PROJECT: 1141/10  
HORNBY  
REV: 2077  
THE JACK AND JILL  
KINDERGARTEN  
PROJECT NO: 2022401



DATE	REV	DESCRIPTION	DRAWN BY	DECIDED BY
MAY 2023	-	DEVELOPMENT APPLICATION	MM-JL	MM
SEP 2023	-	DEVELOPMENT APPROVAL	MM-JL	MM

**bossd's sign**  
Architecture  
Interior Design  
Project Management

PROJ: 1141/10  
PROJECT: 1141/10  
PROJECT NO: 2022401  
PROJECT NAME: THE JACK AND JILL KINDERGARTEN  
PROJECT ADDRESS: 1141/10 HORNBY NSW 2077  
PROJECT DATE: 27/09/2023  
PROJECT STATUS: APPROVED  
PROJECT DRAWING NO: DA/389/2023  
PROJECT DRAWING TITLE: PROPOSED ELEVATION A&B  
PROJECT DRAWING SCALE: 1:100 @ A3  
PROJECT DRAWING SHEET NO: 1 OF 1

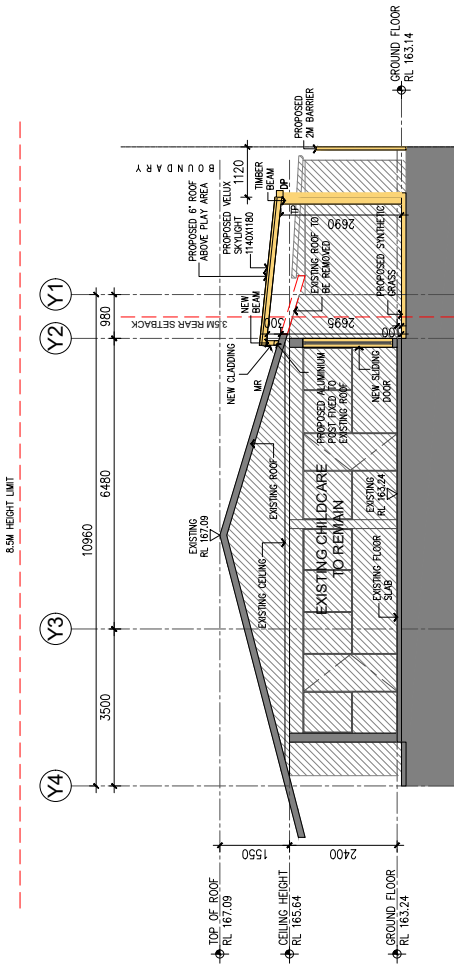
**ATTACHMENT 4 - ITEM 1**



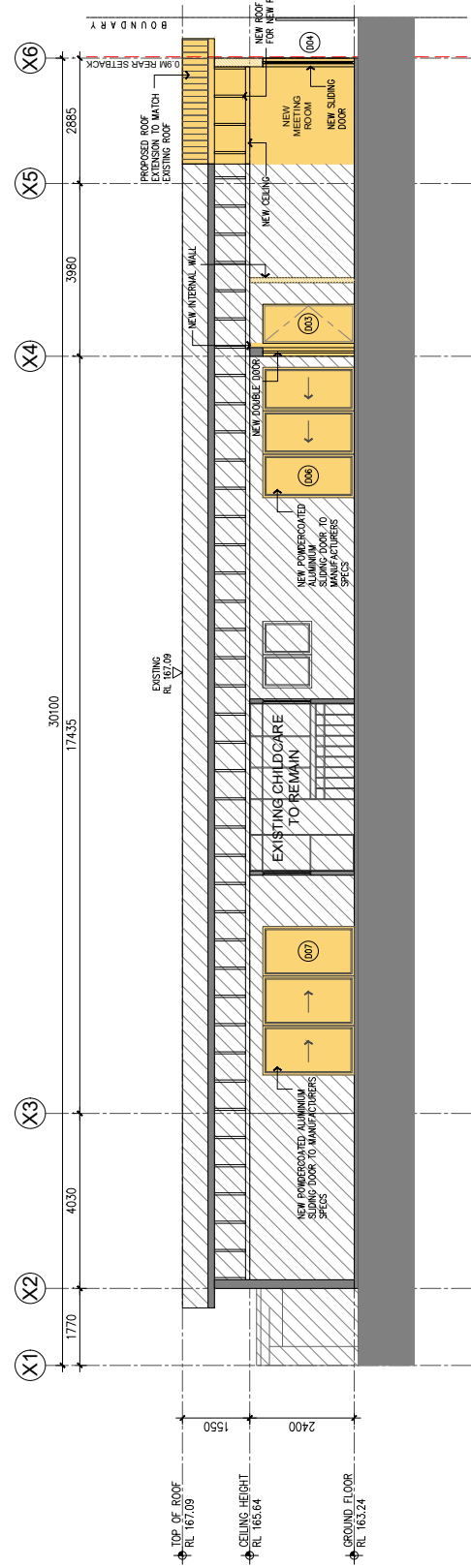
- NOTES - DOCUMENTATION & REQUIREMENTS**
- ROOF SYSTEM TYPE FOR METAL CLADDED FRAMED ROOF SECTIONS AS WELL AS CONCRETE ROOF SECTIONS, AND INSULATION WITH MINIMUM RATING OF R3.3 IN ORDER TO MEET MINIMUM REQUIREMENTS FOR SOUND ATTENUATION. YOU MUST ENSURE THAT THE COLOUR CHOSEN FOR THE UPPER SURFACE MUST NOT BE MORE THAN 0.4 - YOU MUST ENSURE THAT THE COLOUR CHOSEN MEETS THIS REQUIREMENT IN AN AREA NO LARGER THAN 10M<sup>2</sup> SO A 10MM X 10MM MAXIMUM ITEM IS TO BE INSTALLED. ITS U-VALUE SHALL BE 3.00 OR LOWER AND ITS SHGC TO BE 0.20 OR LOWER.
  - FOR ALL NEW EXTERNAL WALLS SURROUNDING UNCONDITIONED SPACES, EITHER EXTERNAL WALLING OR GLAZING SHALL BE INSTALLED WITH U-VALUE 2.00 OR LOWER AND SHGC 0.40 OR LOWER FOR ALL UNCONDITIONED SPACES WITHIN THIS ASSESSMENT. INSTALL INSULATION WITH MINIMUM RATING OF R1.75.
  - FOR ALL UNCONDITIONED SPACES WITHIN THIS ASSESSMENT, HVAC ENGINEERS MUST BE ENGAGED. SPLIT SYSTEM UNITS ARE SPECIFIED IN BASIN FOR SPACE CONDITIONING FOR EVERY ROOM.
  - DESIGN ILLUMINATION POWER LOAD IS 215 WATTS MAXIMUM SYSTEM ILLUMINATION POWER LOAD ALLOWANCE IS 225 WATTS FOR NEW AND ALL EXISTING ROOMS ONLY.

**HORNSBY SHIRE COUNCIL**

This document is approved subject to the notes, advice and conditions listed in Development Consent No. DA/389/2023  
 Dated. 27/09/2023  
**GENERAL MANAGER**



01 PROPOSED SECTION A  
 1:100 @A3



02 PROPOSED SECTION B  
 1:100 @A3

**DEVELOPMENT APPLICATION**

1:100 @ A3

**PROPOSED SECTIONS A & B**

PROJECT: 114/110  
 HUNSBY  
 REV. 2017  
 THE JACK AND JILL  
 KINDERGARTEN  
 PROJECT NO. 2022-001



DATE	REV	DESCRIPTION	DRAWN BY	DECKED BY
MAY 2023	-	DEVELOPMENT APPLICATION	MM	MM
JULY 2023	-	DEVELOPMENT PROFESSIONAL	MM/CL	MM

PROJ: 114/110  
 HUNSBY  
 THE JACK AND JILL  
 KINDERGARTEN  
 PROJECT NO. 2022-001

**bossd's sign**  
 Architecture  
 Interior Design  
 Project Management

D-01

**ATTACHMENT 4 - ITEM 1**

**ATTACHMENT/S**

**REPORT NO. LPP7/25**

**ITEM 2**

- 1. CLAUSE 4.6 REQUEST**
- 2. ARCHITECTURAL PLANS**
- 3. SURVEY PLAN**

**CLAUSE 4.6 VARIATION**  
**TO THE CLAUSE 4.3 - HEIGHT OF BUILDINGS DEVELOPMENT STANDARD**

**A. Introduction**

This objection to the Development Standard accompanies the Development Application proposing construction of a two (2) storey dwelling house at 62 Chapman Avenue Beecroft (the subject site).

Calculations in this objection are based on plans and information provided by ALLCASTLE HOMES. This objection should be read in conjunction with all documentation submitted with the application.

The proposal departs from the maximum Height of buildings standard (height standard) at Clause 4.3(2) of *Hornsby Local Environmental Plan 2013*. As required pursuant to Clause 4.6(3) of *Hornsby Local Environmental Plan 2013*, this submission demonstrates that compliance with the standard is both unreasonable and unnecessary given the circumstances of the case and there are sufficient environmental planning grounds to justify the contravention of the development standard. This submission also takes into consideration relevant NSW Land and Environment Court (NSW LEC) judgements.

**B. Description**

Zoning of the subject site

*Hornsby Local Environmental Plan 2013* applies to the subject site - and the site is zoned R2 Low Density Residential.

Development Standard to be varied - Height of Buildings

Development Standards are defined under Section 1.4 of the Environmental Planning and Assessment Act, 1979 (the Act) as follows:

*development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*

...

*(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

...

The height control at Clause 4.3(2) of *Hornsby Local Environmental Plan 2013* is clearly a performance-based development standard, as it contains objectives to which compliance with the standard is targeted to achieve.

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1

Pursuant to Clause 4.3(2), the maximum building height on Height of Buildings Map that applies to the site is 8.5m.

Proposed numeric value of the development standard in the development application (extent of variation)

A maximum height control of 8.5m applies to the site.

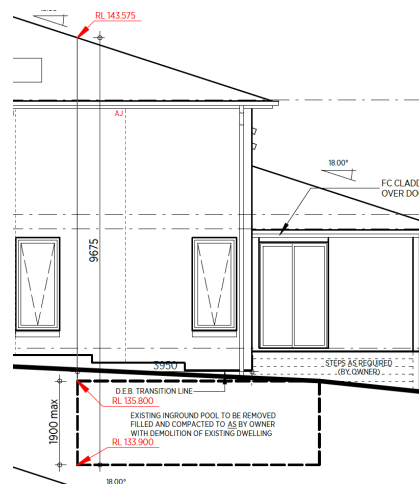
The proposed two storey building has a maximum height above natural ground level to the roof ridge of approximately 8.49m.

However, the height of a building is measured from existing ground level not natural ground level, as defined in the *Hornsby LEP 2013*:

*building height (or height of building) means—*

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

A swimming pool on the site (which is to be removed) is located within the footprint of the proposed building and this increases the height of the building from the ground level under the pool to a maximum height of 9.675m. This is shown in the elevation plan below.



The height of 9.675m exceeds the 8.5m height standard by 1.175m or 13.8%.

### C. Assessment of the proposed variation

#### 1. Justification for Height Non-Compliance

The justification for the non-compliance is that the ground level below the swimming pool is approximately 2m below natural ground level. It is not a reflection of the natural contours of the site and the actual building height complies with the development standard of 8.5m above the natural topography and natural ground levels of the site.

Therefore the proposed building height is consistent with the building height of surrounding development and is not excessive with regard to the natural topography of the subject site.

#### 2. Objectives of the zone

The objectives of the R2 Low Density Residential zone are:

##### *Zone R2 Low Density Residential*

##### *1 Objectives of zone*

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

- The proposal does not seek to modify the current land use of the site,
- The proposal includes a principal and secondary dwelling to meet the housing needs of the community, including the need for affordable housing, within a low density residential environment.
- The proposed new building does not hinder the proper and orderly development of the future urban area,
- The proposal does not unreasonably increase the demand for public services or public facilities,
- The proposal does not create conflicts between land uses within the zone.

#### 3 Objectives of the height standard

The objectives of the height standard are expressly stated at Clause 4.3(1) of *Hornsby Local Environmental Plan 2013*:

##### *4.3 Height of buildings*

*(1) The objectives of this clause are as follows—*

- (a) to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*

3

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The proposal, despite its departure from the height standard, is nonetheless consistent with the relevant objectives and therefore provides an appropriate planning outcome for the following reasons:

- The actual height of the building is appropriate for the site constraints, as the proposed building does not exceed a height of 8.5m above the natural topography and natural ground levels of the subject site. The height non-compliance is due to an anomaly caused by the existing swimming pool being located within the footprint of the proposed building.
- The development potential of the site is for low density residential dwellings with a maximum height of two storeys. The proposed development includes a two storey principal dwelling and a single storey secondary dwelling that both have a height of less than 8.5m above natural ground level.
- The infrastructure capacity of the site is to service low density residential development. It is not expected that the existing utility services provided to the site will have to be augmented as a result of the proposed development.

#### 4. Clause 4.6(3)

Exceptions to development standards of *Hornsby Local Environmental Plan 2013* Subclause (3) reads:

*(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

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

A development that strictly complies with the 8.5m overall height standard is unreasonable or unnecessary given the following presented circumstances:

- The proposal meets the objectives of the R2 zone.
- The proposal meets the objectives of the height standard.
- The departure from the 8.5m height standard is caused by the location of an existing swimming pool within the footprint of the proposed building and is not reflective of the natural topography of the site.

There are two Land and Environment Court judgments which provide guidance on the interpretation and application of Clause 4.6 that are considered relevant to the maximum building height standard variation currently being sought.

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In *Wehbe v Pittwater Council [2007] NSWLEC 827*, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. Those tests have been considered below.

*Are the objectives of the standard achieved notwithstanding non-compliance with the standard?*

See above detailed assessment of the proposal by reference to the objectives of the height standard. That assessment demonstrates that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.

*The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is not necessary?*

On this occasion, the underlying objective or purpose is relevant to the development and therefore the matters do not rely on this reasoning.

*Would the underlying objective or purpose of the standard be defeated or thwarted if compliance was required?*

Compliance with the stated objectives of the height standard would be thwarted if strict compliance was required in the circumstances as the quality of the residential outcome would be compromised for no sound planning reason and which would be inconsistent with the objects of the Act. The proposed built form provides unquestionable improved residential amenity for the occupants without unreasonably impacting neighbouring properties. The proposed built form exhibits substantial merit relative to architectural design, where the roof forms integral part of the solution.

*Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?*

The development standard hasn't been abandoned.

*Is the zoning of the land unreasonable or inappropriate?*

The zoning of the land is reasonable given the site's location. Large traditionally designed and modern/contemporary single dwelling houses are the prevailing built form in the locality.

*Four2Five v Ashfield Council [2015] NSWLEC 1009* established that Clause 4.6(3)(b) requires an applicant for development consent to show that environmental planning grounds exist particular to the circumstances of the proposed development on the subject site, to justify contravening the development standard. This finding was upheld by Pain, J in the subsequent appeal *Four2Five v Ashfield Council [2015] NSWLEC 90*. The decision of Pain J was

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subsequently appealed to the NSW Court of Appeal; however, leave was not granted to hear the appeal.

In addressing Clause 4.6(3)(b), this assessment also identifies the specific environmental planning grounds particular to the circumstances of the site as established in the Four2Five judgement.

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

There are sufficient environmental planning grounds to justify contravening the height standard being:

- The proposal meets the objectives of the R2 zone.
- The proposal meets the objectives of the height standard.
- The non-compliance with the height of building standard is due to an anomaly and the proposal complies with the maximum height limit of 8.5m when measured from natural ground levels.
- The dwelling's scale is similar to the scale of other dwellings in the locality, and the built form attracts visual interest and meets the desired character for the locality.
- Because the proposed height of the two storey building does not exceed 8.5m from natural ground level, the proposal will not have any unreasonable amenity impacts to neighbouring properties.
- The proposal is 2 storeys, complies with the maximum floor area and site coverage controls, and exceeds landscaping and setbacks controls.
- The proposal represents an appropriate planning outcome without adverse impacts. Due to lack of amenity impacts on neighbours, removing the non-compliance would not result in a better planning outcome.

**D. Conclusion**

A development strictly complying with the numerical height standard would not diminish further the development's environmental impacts, including impacts to neighbouring properties and the surrounding public domain because:

- The proposal meets the objectives of the R2 Low Density Residential zone.
- The proposal meets the objectives of the height control.
- The proposal is 2 storeys, complies with the floor area and site coverage controls, and exceeds landscaping and setbacks controls.
- The two storey dwelling complies with the 8.5m height standard when measured from natural ground level and the non-compliance is due to an anomaly with the existing swimming pool being located within the footprint of the proposed building.
- Due to lack of amenity impacts on neighbours and streetscapes removing the non-compliance would not result in a better planning outcome.

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On that basis, the consent authority can be satisfied that:

- A degree of flexibility is justified in the particular circumstances of this case.
- That compliance with the development standard is unreasonable or unnecessary in the circumstances.
- That there are sufficient environmental planning grounds to justify the contravention of the development standard.

It is therefore appropriate to exercise the flexibility provided by Clause 4.6 of *Hornsby Local Environmental Plan 2013*. As such, the proposed variation should be supported as part of the assessment of development application.

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7

**TYPICAL DETAIL OF TERM-GUARD TERMITE PROTECTION**

FLOOR COVERING		
GROUND FLOOR	TILE BEDS	VINYL LAMINATE
ENTRY	TILE	VINYL LAMINATE
STUDY	VINYL LAMINATE	HALL VINYL LAMINATE
MEDIA	VINYL LAMINATE	LIVING VINYL LAMINATE
FAMILY	TILE	GRANNY FLAT
KITCHEN/PANTRY	TILE	
MEALS	TILE	LIVING/DINING LAMINATE
	BEDS	CARPET

**NOTE:**  
STORMWATER TO BE CONNECTED RAINWATER TANK. OVERFLOW TO HYDRAULICS ENG'S DETAIL.

**RAINWATER DUAL PLUMBING**  
CONNECTED AS PER BASIX CERTIFICATE

**ALL WORKS TO BE CARRIED OUT IN ACCORDANCE WITH REQUIREMENTS SET OUT ON THE BASIX/NATHERS CERTIFICATE**

**L.G.A. : HORNSBY COUNCIL**  
**SITE CALCULATIONS**

A. TOTAL GROUND FLOOR AREA	254.18 m <sup>2</sup>
B. TOTAL GRANNY FLAT AREA (INCL PORCH)	62.51 m <sup>2</sup>
C. TOTAL FIRST FLOOR AREA	184.84 m <sup>2</sup>
D. TOTAL BUILDING AREA	501.53 m <sup>2</sup>
E. GARAGE AREA	36.50 m <sup>2</sup>
F. PORCH AREA	7.62 m <sup>2</sup>
G. ALFRESCO AREA	25.56 m <sup>2</sup>
H. GRANNY FLAT PORCH AREA	3.00 m <sup>2</sup>
I. EXT. WALLS/VOID AREA	52.03 m <sup>2</sup>
J. DRIVEWAY AREA	127.00 m <sup>2</sup>
K. SITE AREA	1172.32 m <sup>2</sup>
<b>FLOOR AREA: D - (F+G+H+I)</b>	<b>413.32 m<sup>2</sup></b>
<b>SITE COVERAGE: (A+B+J) / K</b>	<b>37.85 %</b>
<b>LANDSCAPE:</b>	<b>62.15 %</b>

**LEGEND**

BENCH MARK	▲
POWER POLE	● PP
SEWER INSPECTION POINT	○ SIP
WATER METER	⊠ WM

**REFER TO ARBORIST REPORT PREPARED BY URBAN ARBOR FOR TREE PROTECTION/REMOVAL**

**TIMBER FRAME CONSTRUCTION**

**HI CLASS SLAB - DEB TO NGL**

**BUILDING OVER EXISTING POOL LOCATION**

**GALVANIZED POLE**

**BUILDING ADJACENT SEWER**

OWNER TO IDENTIFY TREE SPECIES WITHIN 3M OF HOUSE (SHOWN DASHED) TREES TO BE REMOVED (BY OWNER) MUST BE CHECKED AGAINST COUNCIL'S PROTECTED REGISTER PRIOR TO APPROVAL

EXISTING HOUSE, PAVING, DRIVEWAY, SHEDS ETC (SHOWN DOTTED) TO BE REMOVED BY OWNER AFTER APPROVAL PRIOR TO CONSTRUCTION

**BCA 2022 CONSTRUCTION REQ'S**

**BCA OPTION FOR WATERPROOFING + TILING**

**TOTAL FILL AREA (M2): 145**  
**TOTAL EXCAVATED AREA (M2): 225**  
**GARAGE/SLAB STEPDOWN (MM): 75**  
**TOTAL DROP EDGE BEAM (M2): 25**

**FOR DURABILITY REQ'S REFER TO ENG'S DETAILS**

**DIAL BEFORE YOU DIG**  
www.1100.com.au

**NOTE: REFER TO ELECTRICAL PLAN PREPARED BY CIPSAI FOR ALL ELECTRICAL REQUIREMENTS**

**OWNER(S) ACCEPTANCE**

I/WE HEREBY APPROVE OUR BUILDING PLANS TO BE BUILT ON OUR LAND.

I/WE HAVE STUDIED THE PLANS AND HAVE HAD THEM EXPLAINED TO US AND ACCEPT AND APPROVE THE FRONT/REAR/SIDE SETBACKS AND CUT/FILL LEVELS AS SHOWN ON THE PLAN.

I/WE ACCEPT NO CHANGES CAN BE MADE.

I/WE HAVE HAD THE DRIVEWAY GRADIENT EXPLAINED.

I/WE HAVE HAD THE BASIX WATER TANK OR THE DUAL WATER PLUMBING EXPLAINED.

I/WE HAVE HAD OUR CHOSEN ALTERATIONS/VARIATIONS EXPLAINED TO US

I/WE HEREBY APPROVE OUR PLANS AND GIVE CONSENT TO ALLCASTLE HOMES PTY LTD TO LODGE OUR PLANS TO APPROVING AUTHORITY FOR A DEVELOPMENT APPLICATION.

I/WE UNDERSTAND THAT NO FURTHER PHYSICAL CHANGES CAN BE MADE

I/WE UNDERSTAND THAT DUE TO CONSTRUCTION CONSTRAINTS, THE BUILDER MAY VARY PLANS ON SITE TO SUIT.

I/WE UNDERSTAND ANY SURFACE DRAINAGE OR RETAINING WALLS REQUIRED BY APPROVING AUTHORITY ARE TO BE COMPLETED WITH LANDSCAPING BY OWNER

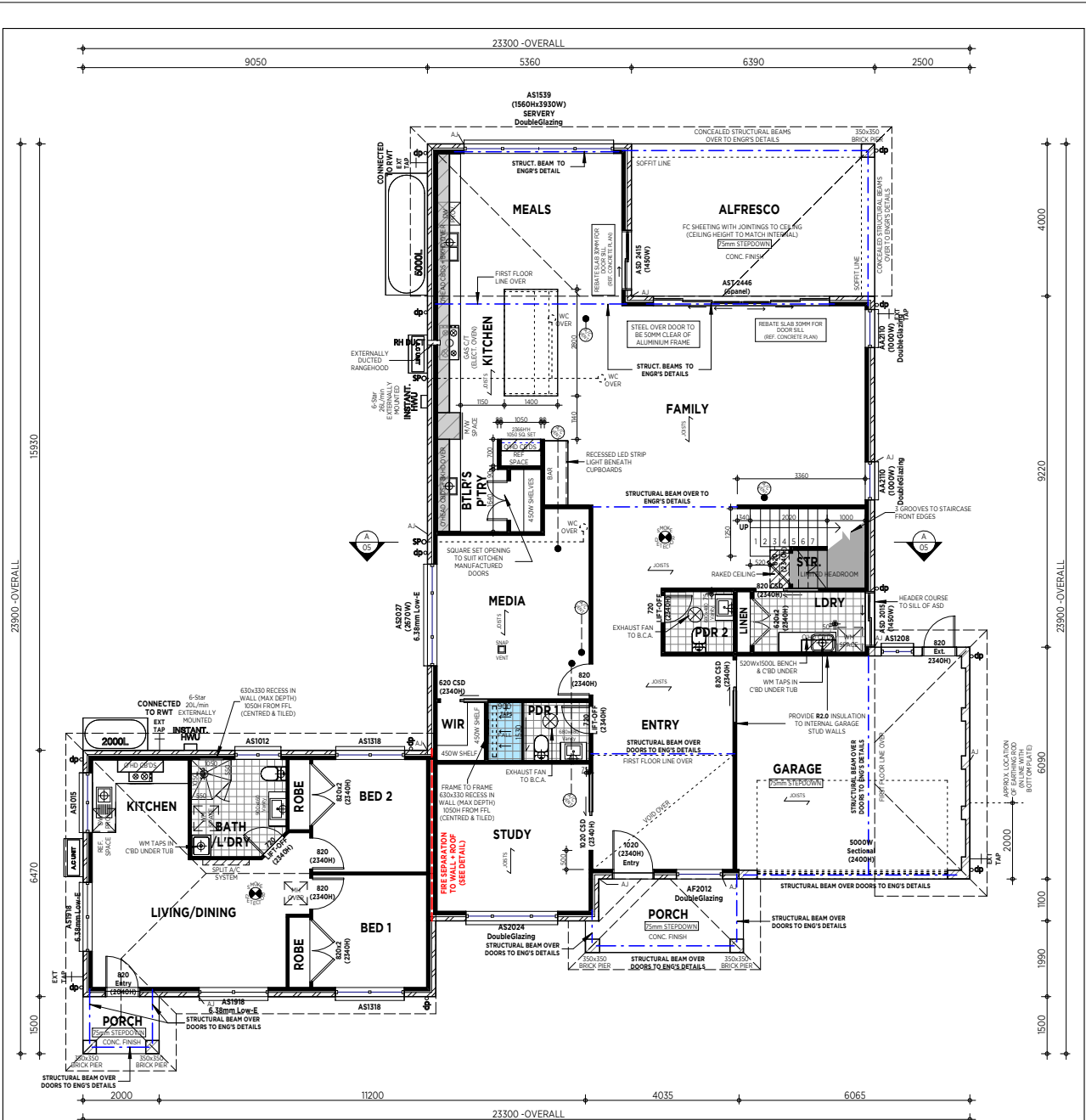
**NOTE: ALL WORKS TO COMPLY WITH BCA 2022 AND RELEVANT AUSTRALIAN STANDARDS**  
 - NOTE: ALL WALLS WITHIN 900mm OF BOUNDARY TO BE 60/60/60 - ALL DIMENSIONS ARE IN MILLIMETRES. - ALL DIMENSIONS ARE FRAME TO FRAME. DO NOT SCALE - USE WRITTEN DIMENSIONS. - THIS DRAWING IS SUBJECT TO COPYRIGHT LAWS AND MAY NOT BE COPIED WITHOUT THE WRITTEN PERMISSION OF ALLCASTLE HOMES PTY LTD.  
 - ABN 12057 761 378

**ALLCASTLE HOMES PTY LTD WILL TAKE NO RESPONSIBILITY FOR ANY VERBAL DISCUSSIONS OR INSTRUCTIONS. ALL CHANGES AND SPECIAL INCLUSIONS MUST BE DOCUMENTED IN WRITING. IT IS THE RESPONSIBILITY OF THE OWNER TO ENSURE THAT THE LAYOUT AND ALL SPECIAL INCLUSIONS ARE CORRECT. NOTE: WET AREA SYMBOLS ARE STRICTLY SYMBOLIC. OWNERS TO CONFIRM WET AREA ITEMS WITH SELECTIONS.**

<b>PROPOSED RESIDENCE</b>		<b>G/W DYNASTY 43 + GF</b>	
FOR: Mr. J WANG & Mrs. J SHI	DATE: 29.04.24	SCALE: 1:200	
DP: 538562	DRAWN: DI	CHECKED:	
AT: LOT 2 (#62) CHAPMAN AVE., BEECROFT	SHEET NO: 01	JOB NO: 7562	

**SALES: PHONE: (02) 9629 4772**  
**FAX: (02) 9629 5813**  
**HEAD OFFICE: 96-100 TOONGABBIE ROAD, GIRRAWEE NSW 2145**  
**PHONE: (02) 9672 7055**  
**FAX: (02) 9672 7033**  
**ABN: 12057761378 BLDG.LIC.39371**

ATTACHMENT 2 - ITEM 2



**NOTE:** REFER TO ELECTRICAL PLAN PREPARED BY CLIPSAI FOR ALL ELECTRICAL REQUIREMENTS

**OWNER(S) ACCEPTANCE**

- I/WE HEREBY APPROVE OUR BUILDING PLANS TO BE BUILT ON OUR LAND.
- I/WE HAVE STUDIED THE PLANS AND HAVE HAD THEM EXPLAINED TO US AND ACCEPT AND APPROVE THE FRONT/REAR/SIDE SETBACKS AND CUT/FILL LEVELS AS SHOWN ON THE PLAN.
- I/WE ACCEPT NO CHANGES CAN BE MADE.
- I/WE HAVE HAD THE DRIVEWAY GRADIENT EXPLAINED.
- I/WE HAVE HAD THE BASIX WATER TANK OR THE DUAL WATER PLUMBING EXPLAINED.
- I/WE HAVE HAD OUR CHOSEN ALTERATIONS/VARIATIONS EXPLAINED TO US.
- I/WE HEREBY APPROVE OUR PLANS AND GIVE CONSENT TO ALLCASTLE HOMES P/L TO LODGE OUR PLANS TO APPROVING AUTHORITY FOR A DEVELOPMENT APPLICATION.
- I/WE UNDERSTAND THAT NO FURTHER PHYSICAL CHANGES CAN BE MADE
- I/WE UNDERSTAND THAT DUE TO CONSTRUCTION CONSTRAINTS, THE BUILDER MAY VARY PLANS ON SITE TO SUIT.
- I/WE UNDERSTAND ANY SURFACE DRAINAGE OR RETAINING WALLS REQUIRED BY APPROVING AUTHORITY ARE TO BE COMPLETED WITH LANDSCAPING BY OWNER

10.01.25 FF	G	DA LETTER
28.10.24FA	F (T03)	DA LETTER
11.07.24FA	E (T03)	DA LETTER
04.04.24TK	D (T03)	EXPANSION JOINTS
13.06.24TK	C (T03)	COUNCIL SET + BASIX
24.05.24FA	B (T03)	VARIATION(S) 56-60
26.04.24	A (T02)	FIRST DRAW

**DATE**      **ISSUE**      **REVISION**

**NOTE:** ALL WORKS TO COMPLY WITH BCA 2022 AND RELEVANT AUSTRALIAN STANDARDS  
 - **NOTE:** ALL WALLS WITHIN 900mm OF BOUNDARY TO BE 60/60/60 - ALL DIMENSIONS ARE IN MILLIMETRES - ALL DIMENSIONS ARE FRAME TO FRAME. DO NOT SCALE - USE WRITTEN DIMENSIONS - THIS DRAWING IS SUBJECT TO COPYRIGHT LAWS AND MAY NOT BE COPIED WITHOUT THE WRITTEN PERMISSION OF ALLCASTLE HOMES PTY LTD.  
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**GROUND FLOOR PLAN - OVERALL**

<b>PROPOSED RESIDENCE</b>		<b>G/W DYNASTY 43 + GF</b>	
FOR: Mr. J WANG & Mrs. J SHI		DATE: 29.04.24	SCALE: 1:100
AT: LOT 2 (#62) CHAPMAN AVE., BEECROFT		DRAWN: DJ	CHECKED:
OWNER	OWNER	SHEET NO: 02	JOB NO: 7562

**SALES:** PHONE: (02) 9629 4772  
 FAX: (02) 9629 5813  
**HEAD OFFICE:** 96-100 TOONGABBIE ROAD, GIRRAWEE NSW 2145  
 PHONE: (02) 9672 7055  
 FAX: (02) 9672 7033  
 ABN: 12057761378 BLDG.LIC.39371

**ATTACHMENT 2 - ITEM 2**

**NOTE:** WHERE FLOOR LEVEL IS >2M ABOVE EXTERNAL SURFACE BENEATH WINDOW, AND WHERE THE OPENABLE SASH IS <17M, ANY OPENABLE WINDOW IN A BEDROOM MUST BE RESTRICTED TO A 125MM OPENING. IN REGARDS TO OTHER ROOMS, THIS APPLIES WHERE THE FLOOR LEVEL IS >4M.

**R** DENOTES RESTRICTION ON THE WINDOW

**ZONED 3-PHASE A/C**  
MIN. 3.0/3.5 E.E.R. FOR COOLING  
MIN. 3.0-3.5 E.E.R. FOR HEATING

A/C VENT & DROPPER POSITION ARE APPROXIMATE ONLY & MAY BE MOVED ON SITE, & SQUARE OR RECTANGULAR VENTS MAY BE REQUIRED TO SUIT DIFFERENT CONSTRUCTION REQUIREMENTS

**NOTE:** WINDOWS MAY NOT BE CENTERED INTERNALLY TO ROOMS DUE TO BRICK SIZING TO EXTERNAL WALL

ALL STEEL TO BE MEASURED (HEIGHT) & FLOORING TO BE CHECKED OVER IF REQUIRED

**NOTE:** ALL STRUCTURAL BEAMS/POSTS ARE AN INDICATION ONLY. REFER TO ENGINEERING DETAILS FOR ALL LOCATIONS & CONNECTIONS.

**ARTICULATION JOINT**  
REFER ENG. DRAWING

**NOTE:** OVERVIEW CONTROL POINT TO ANY UNBROKEN CEILING COLOURS TO BE IDENTIFIED. LOCATION OF ANY OTHER CONTROL JOINT IN PLASTERBOARD AS PER MANUFACTURER'S INSTALLATION GUIDE.

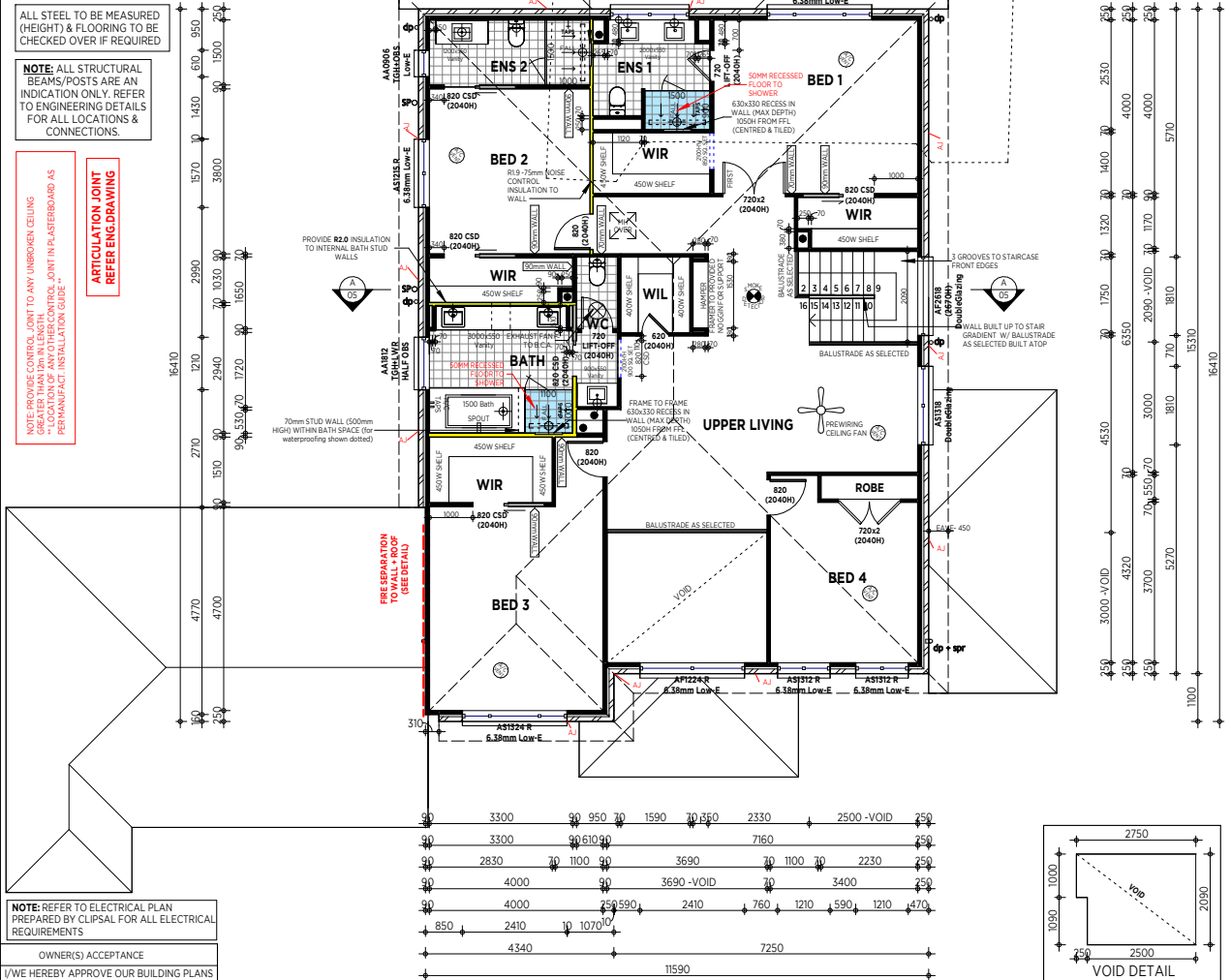
**PROVIDE 300MM FLOOR JOISTS**

EXTERNAL DIMENSIONS OF HOME MAY NOT BE EXACT MULTIPLES OF BRICK AND IN SOME LOCATIONS UNEVEN CUTS TO BRICKS/ STORM MOULDS MAY BE REQUIRED

**NOTE:** PLUMBER TO KEEP VANITY DRAINAGE POINT MAX. 100MM FROM BOTTOM PLATE

ALL DOWNPIPES TO BE PVC, CIRCULAR & SET 240MM FROM OUTSIDE OF EDGE TO CENTRELINE OF D.P. UNLESS OTHERWISE INDICATED

SHOWER ROSES TO BE 1850 OFF FLOOR PRIOR TO TILING FOR STANDARD ADJUSTABLE ROSE (IF FIXED SHOWER ROSE IS SELECTED, MOUNT AT 2050 HIGH)



**TIMBER FRAME CONSTRUCTION**

6-STAR RATED WATER EFFICIENCY TO TAPS FOR BASINS AND BATHS  
4-STAR TO KITCHEN TAPS  
4-STAR TO W.C. CISTERNS  
4-STAR SHOWER HEAD FLOW >6.0 BUT <=7.5L/min

**FIRST FLOOR PLAN**

**NOTE:** REFER TO ELECTRICAL PLAN PREPARED BY CLIPSAI FOR ALL ELECTRICAL REQUIREMENTS

OWNER(S) ACCEPTANCE

I/WE HEREBY APPROVE OUR BUILDING PLANS TO BE BUILT ON OUR LAND.

I/WE HAVE STUDIED THE PLANS AND HAVE HAD THEM EXPLAINED TO US AND ACCEPT AND APPROVE THE FRONT/REAR/SIDE SETBACKS AND CUT/FILL LEVELS AS SHOWN ON THE PLAN.

I/WE ACCEPT NO CHANGES CAN BE MADE.

I/WE HAVE HAD THE DRIVEWAY GRADIENT EXPLAINED.

I/WE HAVE HAD THE BASIX WATER TANK OR THE DUAL WATER PLUMBING EXPLAINED.

I/WE HAVE HAD OUR CHOSEN ALTERATIONS/VARIATIONS EXPLAINED TO US

I/WE HEREBY APPROVE OUR PLANS AND GIVE CONSENT TO ALLCASTLE HOMES P/L TO LODGE OUR PLANS TO APPROVING AUTHORITY FOR A DEVELOPMENT APPLICATION.

I/WE UNDERSTAND THAT NO FURTHER PHYSICAL CHANGES CAN BE MADE

I/WE UNDERSTAND THAT DUE TO CONSTRUCTION CONSTRAINTS, THE BUILDER MAY VARY PLANS ON SITE TO SUIT.

I/WE UNDERSTAND ANY SURFACE DRAINAGE OR RETAINING WALLS REQUIRED BY APPROVING AUTHORITY ARE TO BE COMPLETED WITH LANDSCAPING BY OWNER

OWNER \_\_\_\_\_ OWNER \_\_\_\_\_ DATE \_\_\_\_\_

10.0125 FF	G	DA LETTER
28.10.24FA	F (T03)	DA LETTER
13.07.24FA	E (T03)	DA LETTER
04.04.24TK	D (T03)	EXPANSION JOINTS
13.06.24TK	C (T03)	COUNCIL SET + BASIX
24.05.24FA	B (T03)	VARIATION(S) 56-66
26.04.24	A (T03)	FIRST DRAW

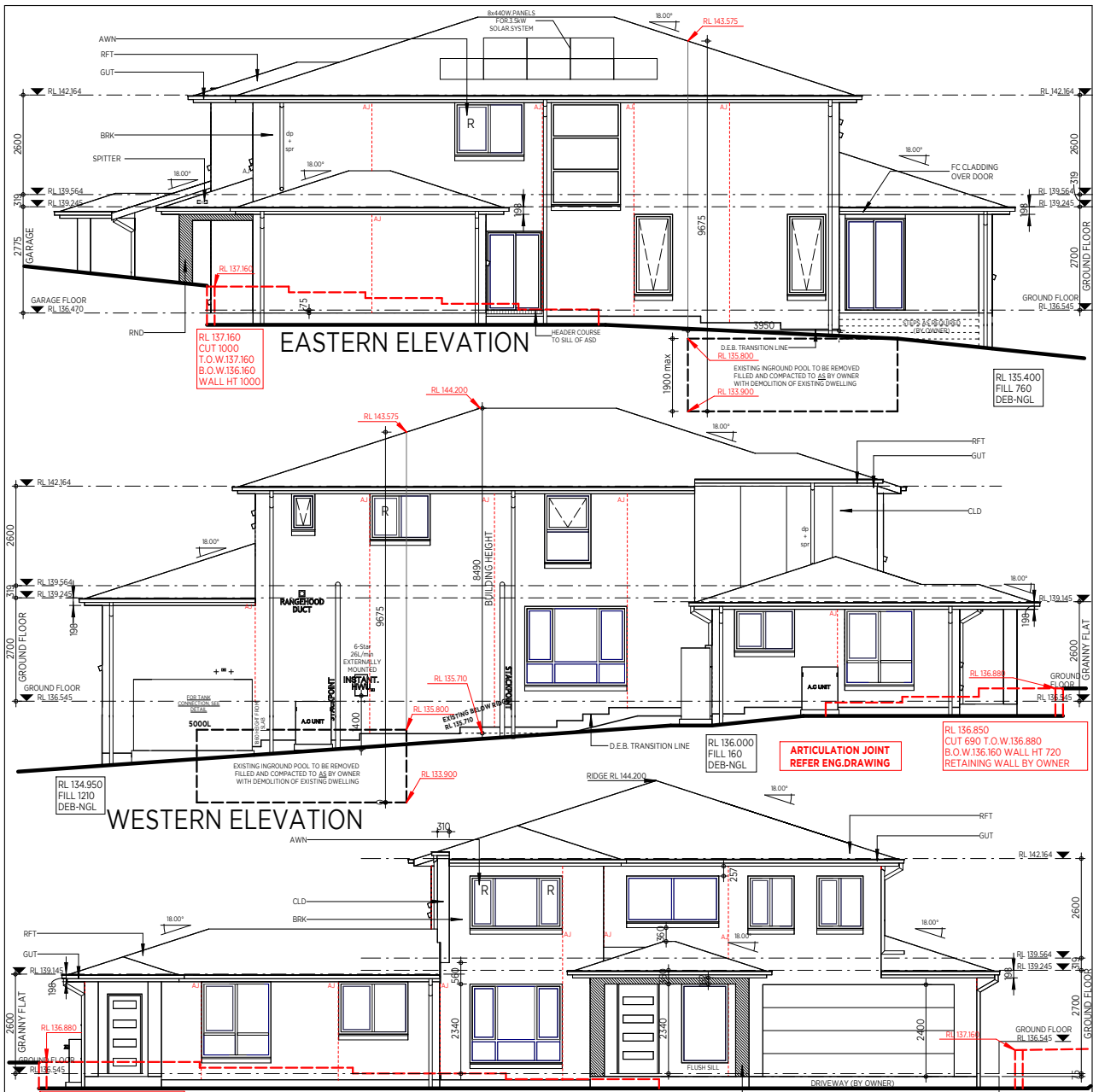
DATE \_\_\_\_\_ ISSUE \_\_\_\_\_ REVISION \_\_\_\_\_

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<b>PROPOSED RESIDENCE</b>		<b>G/W DYNASTY 43 + GF</b>	
FOR: Mr. J WANG & Mrs. J SHI	DATE: 29.04.24	SCALE: 1:100	EDGE FACADE
AT: LOT 2 (#62) CHAPMAN AVE., BEECROFT	DRAWN: DJ	CHECKED:	
	SHEET NO: 03	JOB NO: 7562	

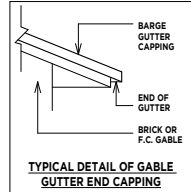
**SALES:** PHONE: (02) 9629 4772  
FAX: (02) 9629 5813  
**HEAD OFFICE:** 96-100 TOONGABBIE ROAD, GIRRAWEE NSW 2145  
PHONE: (02) 9672 7055  
FAX: (02) 9672 7033  
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RL 137.160  
CUT 1000  
T.O.W. 137.160  
B.O.W. 136.160  
WALL HT 1000

**TIMBER FRAME CONSTRUCTION**



Key Value	Keynote Text
AWN	ALUMINIUM WINDOWS AS SELECTED
BRK	BRICKWORK AS SELECTED
CLD	CLADDING W/ JOINTINGS AS SELECTED
GUT	GUTTER + FASCIA AS SELECTED
RFT	ROOF FILES AS SELECTED
RND	ARM WALL RENDER (HATCHED) AS SELECTED

PROVIDE 300MM FLOOR JOISTS

EXTERNAL DIMENSIONS OF HOME MAY NOT BE EXACT MULTIPLES OF BRICK AND IN SOME LOCATIONS UNEVEN CUTS TO BRICKS/ STORM MOULDS MAY BE REQUIRED

NOTE: WINDOWS MAY NOT BE CENTERED INTERNALLY TO ROOMS DUE TO BRICK SIZING TO EXTERNAL WALL

NOTE: WHERE FLOOR LEVEL IS >2M ABOVE EXTERNAL SURFACE BENEATH WINDOW, AND WHERE THE OPENABLE SASH IS <1.7M, ANY OPENABLE WINDOW IN A BEDROOM MUST BE RESTRICTED TO A 125MM OPENING. IN REGARDS TO OTHER ROOMS, THIS APPLIES WHERE THE FLOOR LEVEL IS >4M.

R DENOTES RESTRICTION ON THE WINDOW

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OWNER \_\_\_\_\_ OWNER \_\_\_\_\_ DATE \_\_\_\_\_

DATE	ISSUE	REVISION
10.01.25	FF	G DA LETTER
28.10.24	F (T03)	DA LETTER
11.03.24	E (T03)	DA LETTER
04.04.24	D (T03)	EXPANSION JOINTS
13.06.24	C (T03)	COUNCIL SET + BASIX
24.05.24	B (T03)	VARIATION(S6-S8)
26.04.24	A (T03)	FIRST DRAW

NOTE: ALL WORKS TO COMPLY WITH BCA 2022 AND RELEVANT AUSTRALIAN STANDARDS  
 NOTE: ALL WALLS WITHIN 900mm OF BOUNDARY TO BE 60/60/60 - ALL DIMENSIONS ARE IN MILLIMETRES. - ALL DIMENSIONS ARE FRAME TO FRAME. DO NOT SCALE - USE WRITTEN DIMENSIONS. - THIS DRAWING IS SUBJECT TO COPYRIGHT LAWS AND MAY NOT BE COPIED WITHOUT THE WRITTEN PERMISSION OF ALLCASTLE HOMES PTY LTD.  
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<b>PROPOSED RESIDENCE</b>		<b>G/W DYNASTY 43 + GF</b>	
FOR: Mr. J WANG & Mrs. J SHI	DATE: 29.04.24	SCALE: 1:100	EDGE FACADE
AT: LOT 2 (#62) CHAPMAN AVE., BEECROFT	DRAWN: DJ	CHECKED:	
	SHEET NO: 04	JOB NO: 7562	

SALES: PHONE: (02) 9629 4772  
 FAX: (02) 9629 5813  
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ELEVATIONS

**NORTHERN ELEVATION**

**SECTION A-A**

**RAINWATER TANK CONNECTIONS DETAIL**

**INSTANT HWU CONNECTION DETAIL**

**ELEVATIONS/SECTION**

Key Value	Keynote Text
AWN	ALUMINIUM WINDOWS AS SELECTED
BRK	BRICKWORK AS SELECTED
CLD	CLADDING W/ JOINTINGS AS SELECTED
GUT	GUTTER/FASCIA AS SELECTED
RFT	ROOF TILES AS SELECTED
RND	ARMWALL RENDER (HATCHED) AS SELECTED

**CONCRETE ROOF TILES**  
(UNLESS NOTED OTHERWISE)

**TIMBER FRAME CONSTRUCTION**  
TERMITE-RESISTANT TREATED TIMBER FRAMES & TRUSSES

**HEAVY DUTY SARKING TO UNDERSIDE OF ROOFING**  
90MM CORNICE THROUGHOUT (SQUARE SET TO BATHROOMS & GROUND FLOOR)

**PROVIDE 300MM FLOOR JOISTS**

**TYPICAL 248MM FLOOR JOIST DETAIL**

**NOTE:** WHERE FLOOR LEVEL IS 92M ABOVE EXTERNAL SURFACE BENEATH WINDOW, AND WHERE THE OPENABLE SASH IS <1.7M, ANY OPENABLE WINDOW IN A BEDROOM MUST BE RESTRICTED TO A 125MM OPENING. IN REGARDS TO OTHER ROOMS, THIS APPLIES WHERE THE FLOOR LEVEL IS >4M.

**NOTE:** REQUIRED ARTIFICIAL FLUORESCENT LIGHTING AS PER BASIX CERTIFICATE

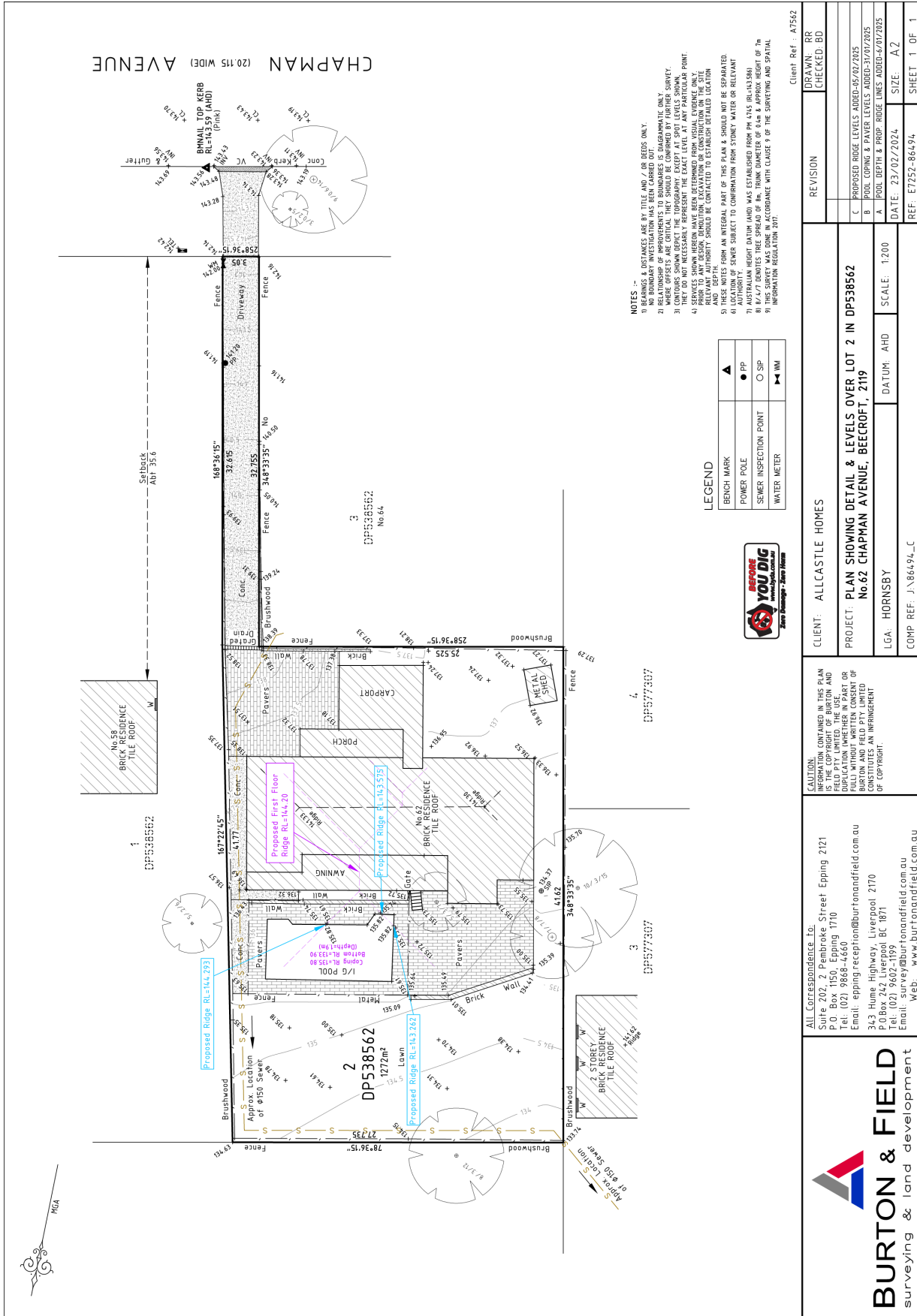
**NOTE:** IF REQUIRED, BEAMS TO BE PACKED WITH **NON-COMPRESSIBLE MATERIAL** TO ENSURE FLOORS AND FRAMES ARE LEVEL

**NOTE:** ALL WORKS TO COMPLY WITH BCA 2022 AND RELEVANT AUSTRALIAN STANDARDS  
- NOTE: ALL WALLS WITHIN 900mm OF BOUNDARY TO BE 60/60/60 - ALL DIMENSIONS ARE IN MILLIMETRES. - ALL DIMENSIONS ARE FRAME TO FRAME. DO NOT SCALE - USE WRITTEN DIMENSIONS - THIS DRAWING IS SUBJECT TO COPYRIGHT LAWS AND MAY NOT BE COPIED WITHOUT THE WRITTEN PERMISSION OF ALLCASTLE HOMES PTY LTD.  
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<b>OWNER(S) ACCEPTANCE</b>		<b>PROPOSED RESIDENCE</b>		<b>G/W DYNASTY 43 + GF</b>		<b>SALES: PHONE: (02) 9629 4772</b>	
I/WE HEREBY APPROVE OUR BUILDING PLANS TO BE BUILT ON OUR LAND.		DATE: 29.04.24		SCALE: 1:100		FAX: (02) 9629 5813	
I/WE HAVE STUDIED THE PLANS AND HAVE HAD THEM EXPLAINED TO US AND ACCEPT AND APPROVE THE FRONT/REAR/SIDE SETBACKS AND CUT/FILL LEVELS AS SHOWN ON THE PLAN.		DRAWN: DI		CHECKED:		HEAD 96-100 TOONGABBIE ROAD,	
I/WE ACCEPT NO CHANGES CAN BE MADE.		SHEET NO: 05		JOB NO: 7562		OFFICE: GIRRAWEEEN NSW 2145	
I/WE HAVE HAD THE DRIVEWAY GRADIENT EXPLAINED.		AT: LOT 2 (#62) CHAPMAN AVE., BEECROFT				PHONE: (02) 9672 7055	
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I/WE UNDERSTAND THAT NO FURTHER PHYSICAL CHANGES CAN BE MADE		DATE					
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# ATTACHMENT 3 - ITEM 2

**ATTACHMENT/S**

**REPORT NO. LPP2/25**

**ITEM 3**

- 1. CLAUSE 4.6 REQUEST**
- 2. ARCHITECTURAL PLANS**
- 3. POOL DETAILS**



# CLAUSE 4.6 REQUEST TO VARY HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

110 Hannah Street,  
Beecroft

Suite 1, 9 Narabang Way Belrose NSW 2085  
Phone: (02) 9986 2535 | Fax: (02) 9986 3050 |

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**ATTACHMENT 1 - ITEM 3**

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## 4.6 Request to Vary Development Standard

### **Alterations and Additions**

**110 Hannah Street, Beecroft**

**William Fleming**

MPLAN

Suite 1/9 Narabang Way  
Belrose NSW 2085

Tel: (02) 99862535

November 2024

## 1.0 Introduction

This clause 4.6 variation request has been prepared in support of a building height breach associated with a development application proposing alterations and additions to the dwelling house on the subject allotment. In the preparation of this variation request consideration has been given to architectural plans prepared by Andy Lehman Design.

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Hornsby Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v Hornsby Council* [2019] NSWCA 130.

## 2.0 Hornsby Local Environmental Plan 2013 (HLEP)

### 2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3 the objectives of the clause are as follows:

- (a) *to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*

The proposed addition will reach a height of 10.05m from the basement garage level to the top of the roof. This equates to a variation of 1550mm or 18.24%. The sections below give a visual representation of the variation.

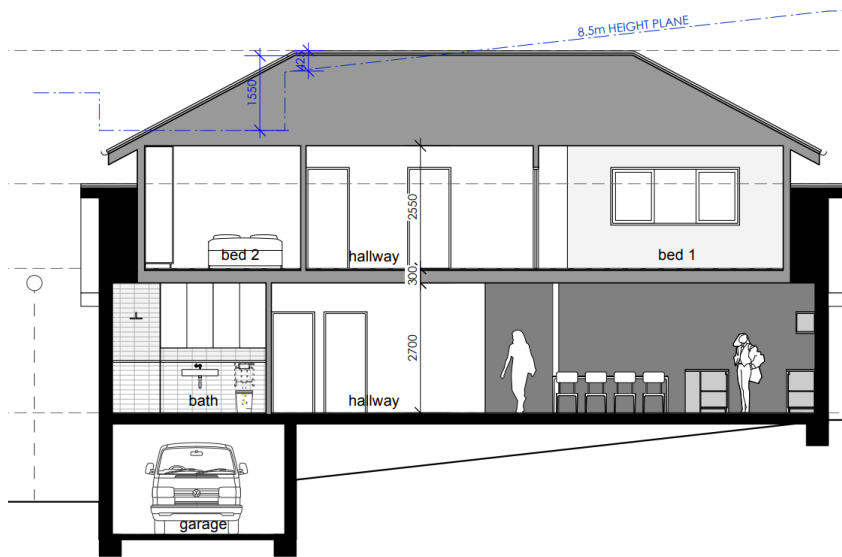


Image 1: Section showing the 8.5m height plane

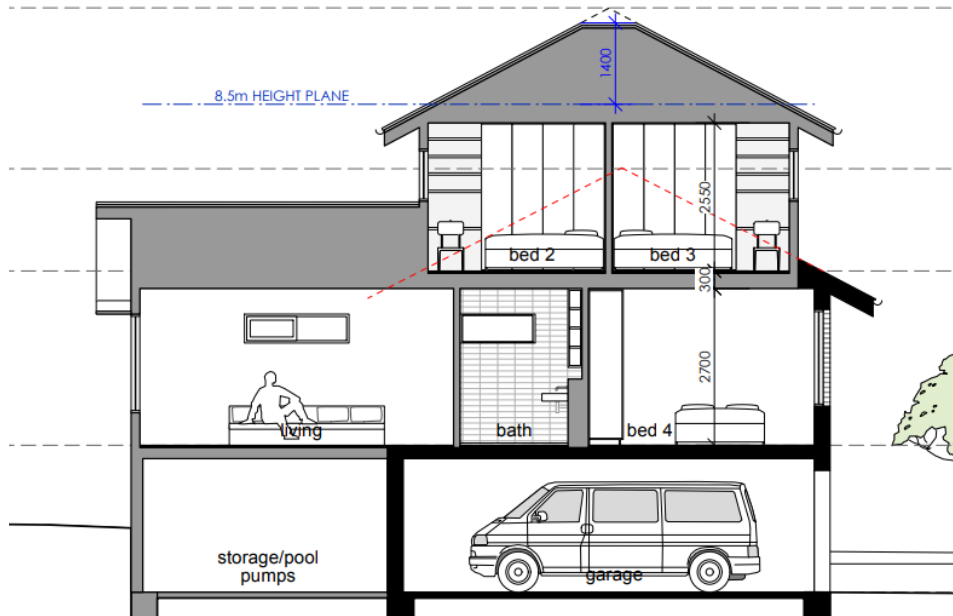


Image 2: Section showing the 8.5m height plane

## 2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of HLEP provides:

- (1) *The objectives of this clause are:*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v Hornsby Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

*Initial Action* involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

*“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”*

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of HLEP provides:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

This clause applies to the clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) of HLEP 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.*

The proposed development does not comply with the height of buildings provision at 4.3 of HLEP which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of HLEP provides:

- (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 Director-General has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which



the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under the *Environmental Planning and Assessment Regulation 2021*, the Secretary has given written notice dated 5<sup>th</sup> May 2020, attached to the Planning Circular PS 18-003 issued on 5<sup>th</sup> May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of HLEP provides:

- (5) *In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.*

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of HLEP from the operation of clause 4.6.

### 3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Hornsby Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Hornsby Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Hornsby Council at [45].*

19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Hornsby Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Hornsby Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Hornsby Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Hornsby Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of HLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
  - (a) compliance is unreasonable or unnecessary; and
  - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of HLEP?

#### 4.0 Request for variation

##### 4.1 Is clause 4.3 of HLEP a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 4.3 HLEP prescribes a fixed building height provision that seeks to control the height of certain development. Accordingly, clause 4.3 HLEP is a development standard.

##### 4.2A Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Hornsby Council* [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

##### Consistency with objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

- (a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*

Response: The proposal provides for a new first floor level and will continue to present as a 2 storey dwelling with a basement level garage. The breach relates to the existing excavated garage level forming existing ground level. The proposed works are not antisympathetic to the natural landform.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

**4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?**

In Initial Action the Court found at [23]-[24] that:

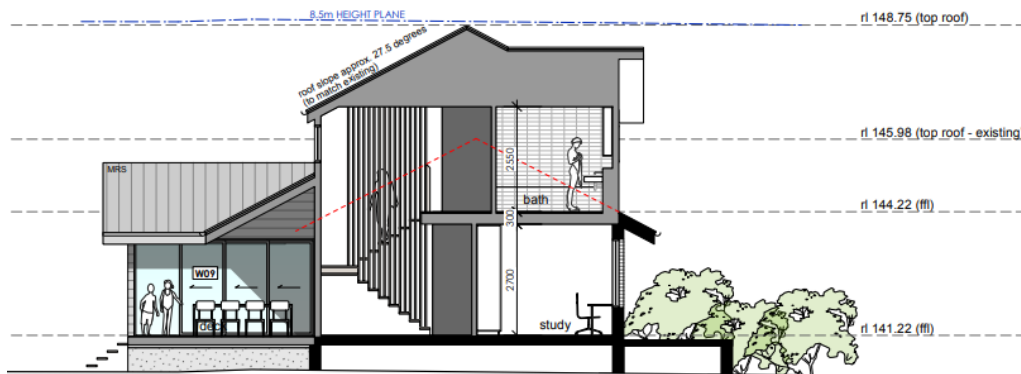
23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

*The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

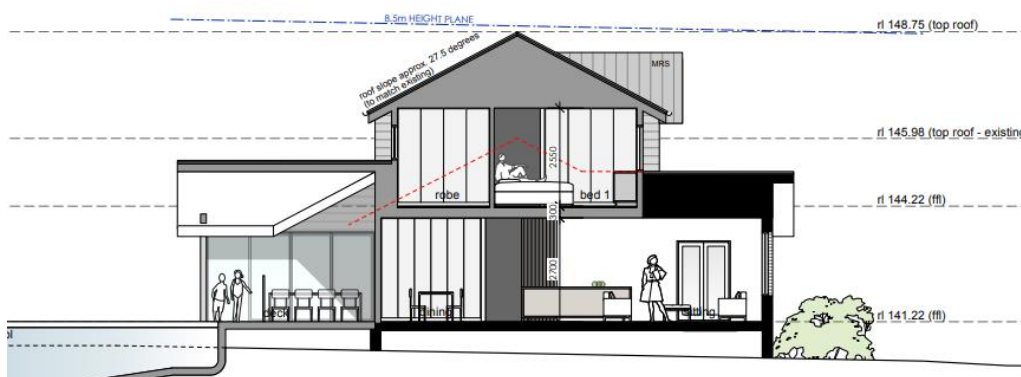
**Sufficient environmental planning grounds**

The breaching elements are associated with existing disturbed levels of the site relating to the existing lower level garage. The first floor addition above the garage therefore extends above the 8.5m height standard.

Section A from the architectural set is taken through the centre of the dwelling and is compliant with the 8.5m. Section B is taken through the western side of the dwelling and also demonstrates consistency with the 8.5m. The sections are provided below.



**Image 3: Section A-A demonstrates compliance with the 8.5m**



**Image 4: Section b-b demonstrates compliance with the 8.5m**

Given the majority of the dwelling achieves compliance it is clear that the breach relates previously excavated ground levels in the basement.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

There are sufficient environmental planning grounds to justify contravening the development standard.

#### **4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3**

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in *Initial Action* (Para 27) described the relevant test for this as follows:

*“The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).”*

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

#### 4.4 Secretary's concurrence

By Planning Circular dated 5<sup>th</sup> May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff. Concurrence of the Secretary can therefore be assumed in this case.

#### 5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- 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*

As such, there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

alterations & additions  
110 HANNAH STREET BEECROFT NSW 2119

**CONTENTS**

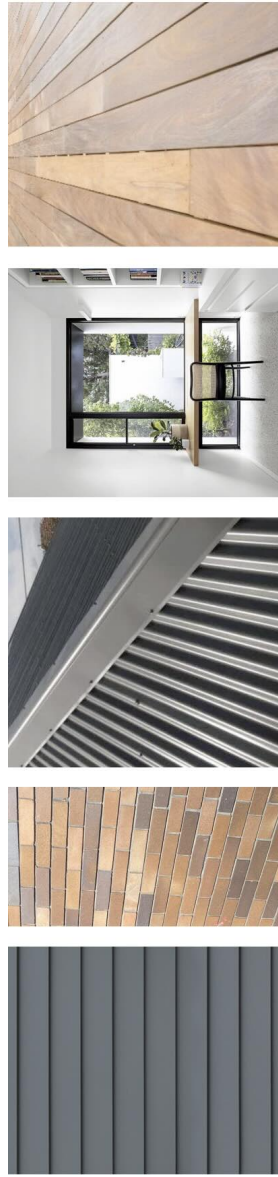
DRG No.	DRAWING	SCALE
DA.00	Drawing Schedule & Palette of Materials	not to scale
DA.01	Existing Site/Roof/Analysis Plan	1:200@A3
DA.02	Existing Site Floor Plan	1:200@A3
DA.03	Existing Garage / Sub-floor Plan	1:100@A3
DA.04	Existing Floor Plan	1:100@A3
DA.05	Existing South Elevation	1:100@A3
DA.06	Existing North Elevation	1:100@A3
DA.07	Existing East Elevation	1:100@A3
DA.08	Existing West Elevation	1:100@A3
DA.09	Proposed Site/Roof/Analysis Plan	1:200@A3
DA.10	Proposed Garage / Sub-floor Plan	1:100@A3
DA.11	Proposed Ground Floor Plan & Landscape Plan	1:100@A3
DA.12	Proposed First Floor Plan	1:100@A3
DA.13	Proposed South Elevation	1:100@A3
DA.14	Proposed North Elevation	1:100@A3
DA.15	Proposed East Elevation	1:100@A3
DA.16	Proposed West Elevation	1:100@A3
DA.17	Proposed Section A-A	1:100@A3
DA.18	Proposed Section B-B	1:100@A3
DA.19	Proposed Site Coverage / Landscape Calculations	1:200@A3
DA.20	Shadow Diagram - 9am Winter Solstice	1:200@A3
DA.21	Shadow Diagram - 12noon Winter Solstice	1:200@A3
DA.22	Shadow Diagram - 3pm Winter Solstice	1:200@A3
DA.23	Erosion, Sediment & Waste Management Control Plan	1:100@A3
DA.24	Proposed Section C-C	1:100@A3
DA.25	Proposed Section D-D	1:100@A3

**BASIX REQUIREMENTS**

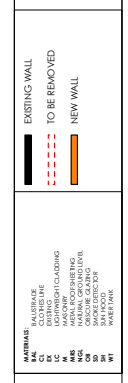
Refer BASIX Certificate number: A1767715

<b>Pool &amp; Spa</b>	Rainwater tank - the applicant must install a rainwater tank of at least 1077.35 litres on site. This rainwater tank must meet, and be installed in accordance with the requirements of the BASIX Code. - the applicant must configure the rainwater tank to collect rainwater runoff from at least 75 sqm of roof area. - the applicant must connect the rainwater tank to a tap located within 10m of the edge of the pool.  Outdoor swimming pool - the swimming pool must be outdoors. - the swimming pool must not have capacity greater than 35 kilolitres. - the swimming pool must not have a pool pump timer for the swimming pool. - the applicant must install a pool pump timer for the swimming pool. - the applicant must install a gas heating system as part of this development.  <b>Fixtures &amp; Systems</b>  Hot Water - the applicant must install an instantaneous gas hot water system.  Lighting - ensure a minimum of 40% of the light fixtures installed throughout the dwelling are fitted with fluorescent or LED lamps.  <b>Fixtures</b> - showerheads with a flow rate no greater than 9 litres per minute or a minimum 3 star water rating. - taps with a flow rate no greater than 9 litres per minute or a minimum 3 star water rating. - taps with a flow rate no greater than 9 litres per minute or a minimum 3 star water rating.  <b>Construction</b>  Insulation Requirements Additional Insulation Req. (R-value) suspended floor with enclosed subfloor: R0.6 (down) (or R1.30 including construction) framed (R0.7). floor above existing dwelling or building: nil external wall: (weatherboard, fibro, metal clad) R1.30 (or R1.70 including construction) flat ceiling, pitched roof: ceiling: R1.45 (up), roof: foil backed blanket (75mm), dark (solar absorbance >0.70)  Glazing - Refer Basix Certificate & correlating window/door No.in architectural drawings.
-----------------------	--

**MATERIAL PALETTE**



**Note:**  
 All load-bearing structural beams, etc. to future structural alterations must be reinforced with steel reinforcement bars (rebar) to connect to stormwater system to all relevant ICC: Building Codes - Council requirements.  
 All wastewater pipe to connect to existing sewer system to all relevant ICC: Building Codes - Council requirements.  
 All stormwater pipe to connect to existing stormwater system to all relevant ICC: Building Codes - Council requirements.  
 All site works to be completed in accordance with Council requirements.



<b>Tom &amp; Jill Drewitt Smith</b>	
110 Hannah Street Beecroft NSW 2119 LOT 19 DP 1212847 SITE AREA = 787.5m <sup>2</sup>	
PROJECT	Alterations & Additions to Dwelling
DRAWING	Cover
DATE	15/11/2024
SCALE	AS SHOWN
DA.	00
NOTES	Refer to notes on drawings for further details.

**ATTACHMENT 2 - ITEM 3**





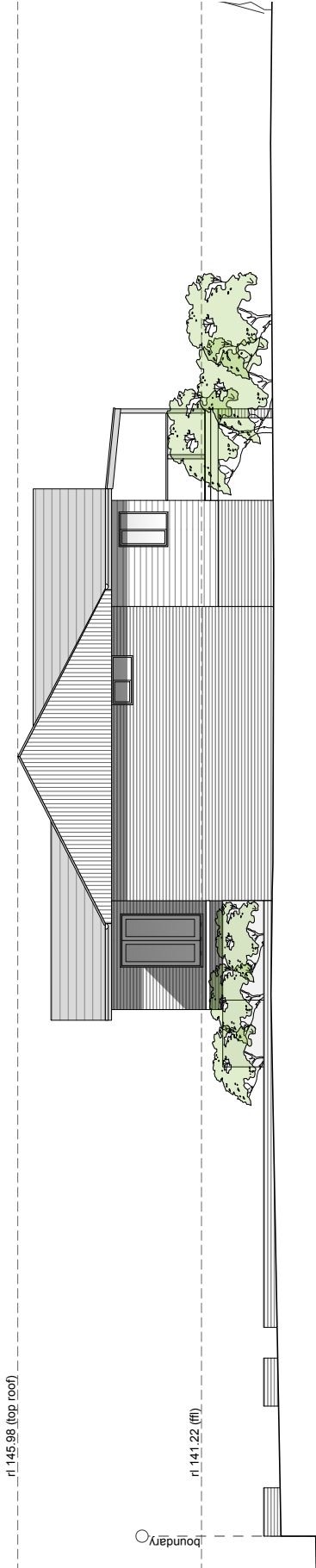












Existing East Elevation



**NOTES:**  
 All borings, slabs, structural beams, etc. to future structural  
 drawings to be checked for connection to stormwater system to  
 ensure compliance with Council requirements.  
 All work to be done in accordance with the relevant  
 Australian Building Codes Council requirements.  
 All work to be done in accordance with the relevant  
 Australian Building Codes Council requirements.  
 All work to be done in accordance with the relevant  
 Australian Building Codes Council requirements.

ABBREVIATION	DESCRIPTION
BA	BASELINE
CL	CLADDING
GL	GLAZING
IC	INTERIOR CLADDING
MC	MATERIAL CLADDING
MS	MATERIAL CLADDING
NS	NON-STRUCTURAL
SP	STRUCTURAL
WT	WATER

EXISTING WALL	TO BE REMOVED	NEW WALL
---------------	---------------	----------

<b>Tom &amp; Jill Drevitt Smith</b> 110 Hannah Street Berracool NSW 2119 LOT 159 DP 1212847 SITE AREA = 787.5m <sup>2</sup> PROJECT Alterations & Additions to Dwelling DRAWING Existing East Elevation NOTES:		DA. 07 LOCAL 11/09/23 11/09/23 11/09/23
ANDY LEHMAN DESIGN 110 HANNAH STREET, BERRACOOOL NSW 2119 PHONE: 02 9392 0000 WWW.ANDYLEHMANDESIGN.COM.AU		11/09/23 11/09/23 11/09/23

# ATTACHMENT 2 - ITEM 3

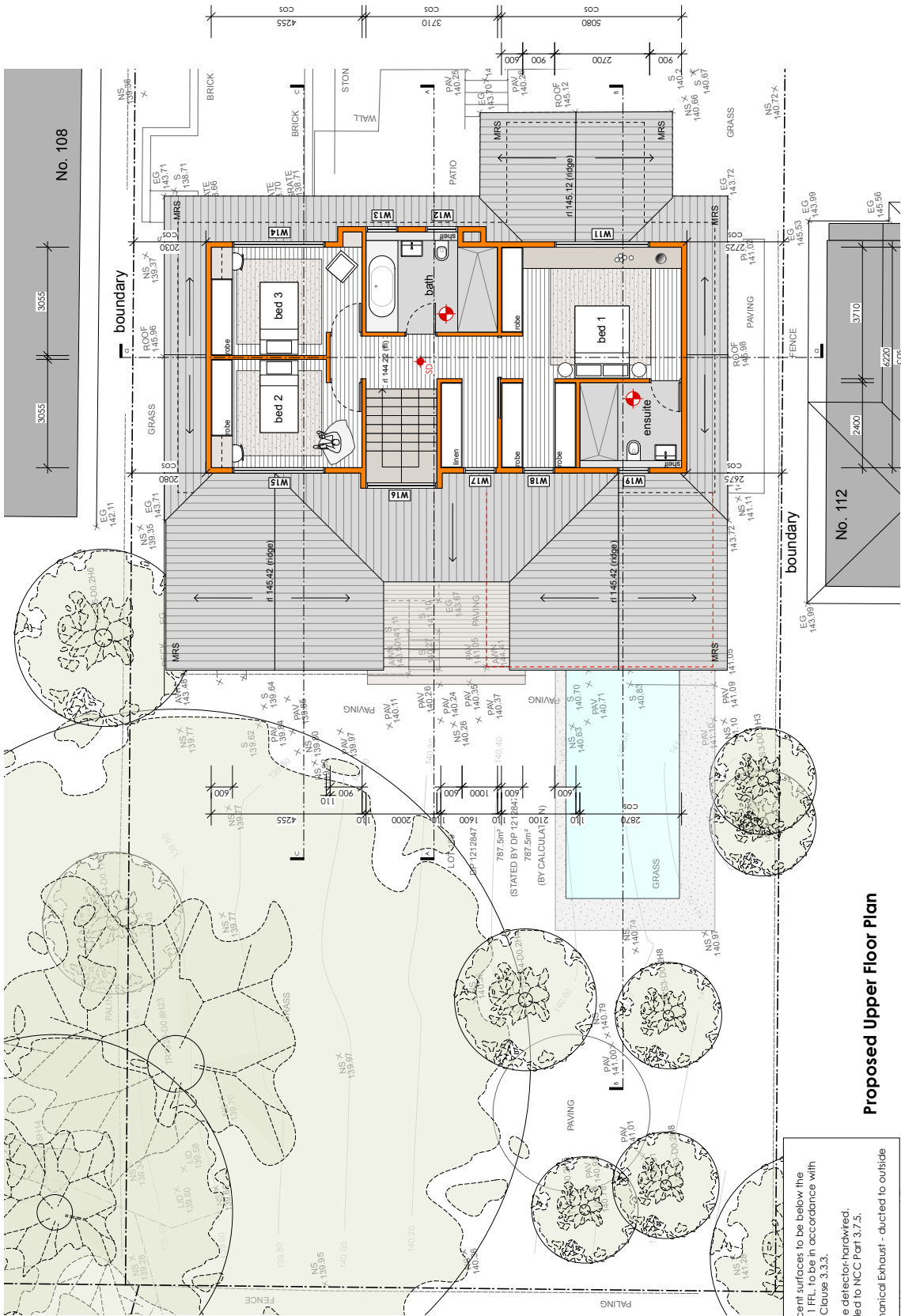






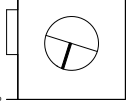






**Proposed Upper Floor Plan**

Adjacent surfaces to be below the Class 1 FFL to be in accordance with NCC Clause 3.3.3.  
 Smoke detector-harawired. Installed to NCC Part 3.7.5.  
 Mechanical Exhaust - ducted to outside



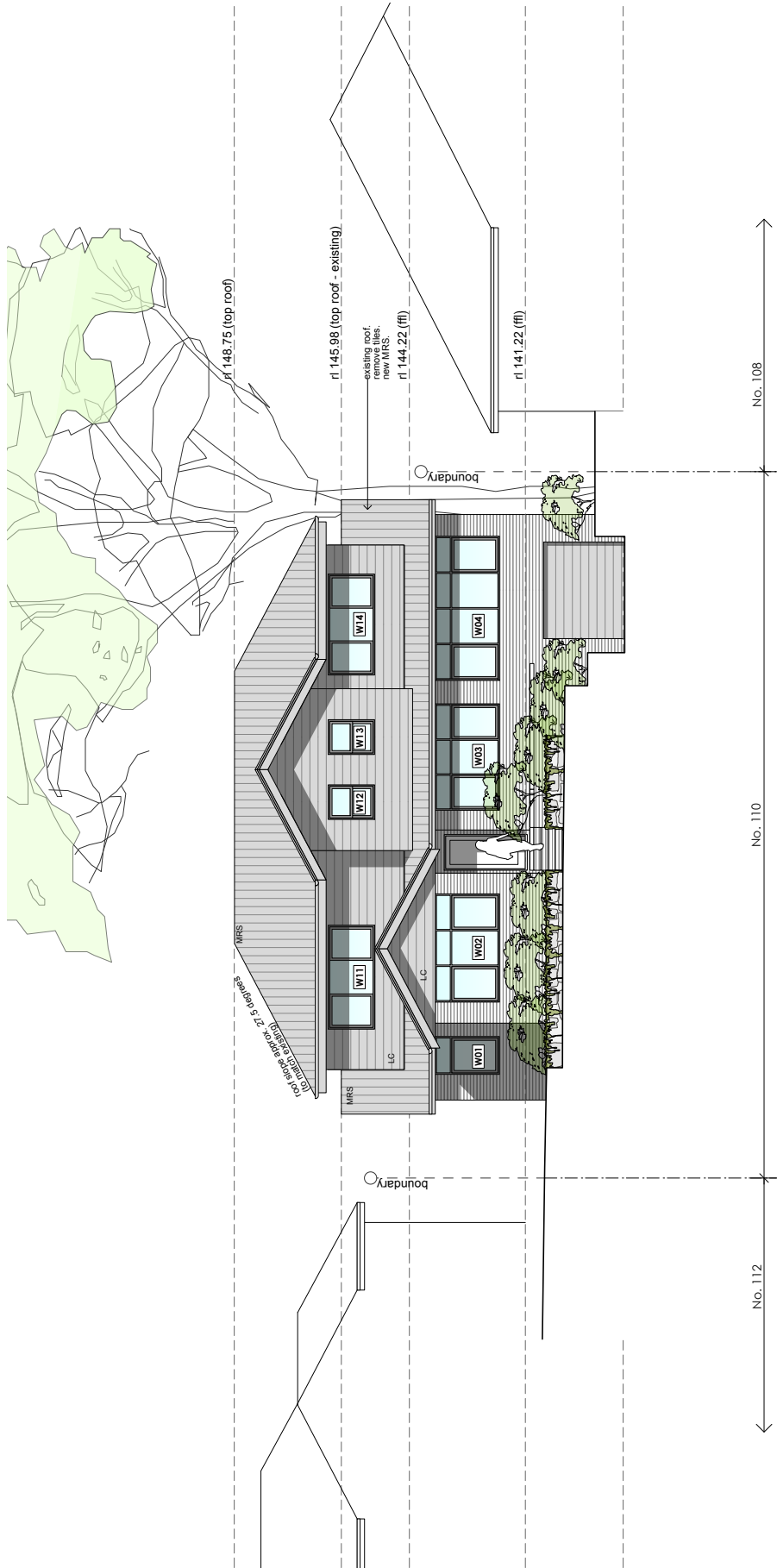
**NOTES:**  
 All footings, slabs, structural beams, etc. to future structural engineer's design.  
 Rainwater from gutters to connect to stormwater system to meet relevant Building Codes, Council requirements, and relevant NCC Building Codes + Council requirements.  
 All work to be in accordance with relevant Building Codes + Council requirements.  
 All work to be in accordance with relevant NCC Building Codes + Council requirements.

SYMBOL	DESCRIPTION
(Solid line)	NEW WALL
(Dashed line)	EXISTING WALL TO BE REMOVED
(Orange outline)	NEW WALL
(Circle with cross)	SMOKE DETECTOR
(Circle with cross)	Mechanical Exhaust

SYMBOL	DESCRIPTION
(Circle with cross)	SMOKE DETECTOR
(Circle with cross)	Mechanical Exhaust

<p><b>Tom &amp; Jill Drewitt Smith</b>                  110 Hannah Street Bescot NSW 2119 Lot 159 DP 1212847 SITE AREA = 787.5m<sup>2</sup></p>	
<p><b>PROJECT:</b> Alterations &amp; Additions to Dwelling</p>	<p><b>ANDY LEHMAN DESIGN</b></p>
<p><b>DRAWING:</b> Proposed Upper Floor Plan</p>	<p>BY: ANDY LEHMAN                  DATE: 11/08/24                  PROJECT NO: 24010</p>
<p><b>NOTES:</b>                  All work to be in accordance with relevant Building Codes + Council requirements.                  All work to be in accordance with relevant NCC Building Codes + Council requirements.</p>	<p><b>DA:</b> 12                  SCALE: 1:100                  DATE: 11/08/24</p>

# ATTACHMENT 2 - ITEM 3

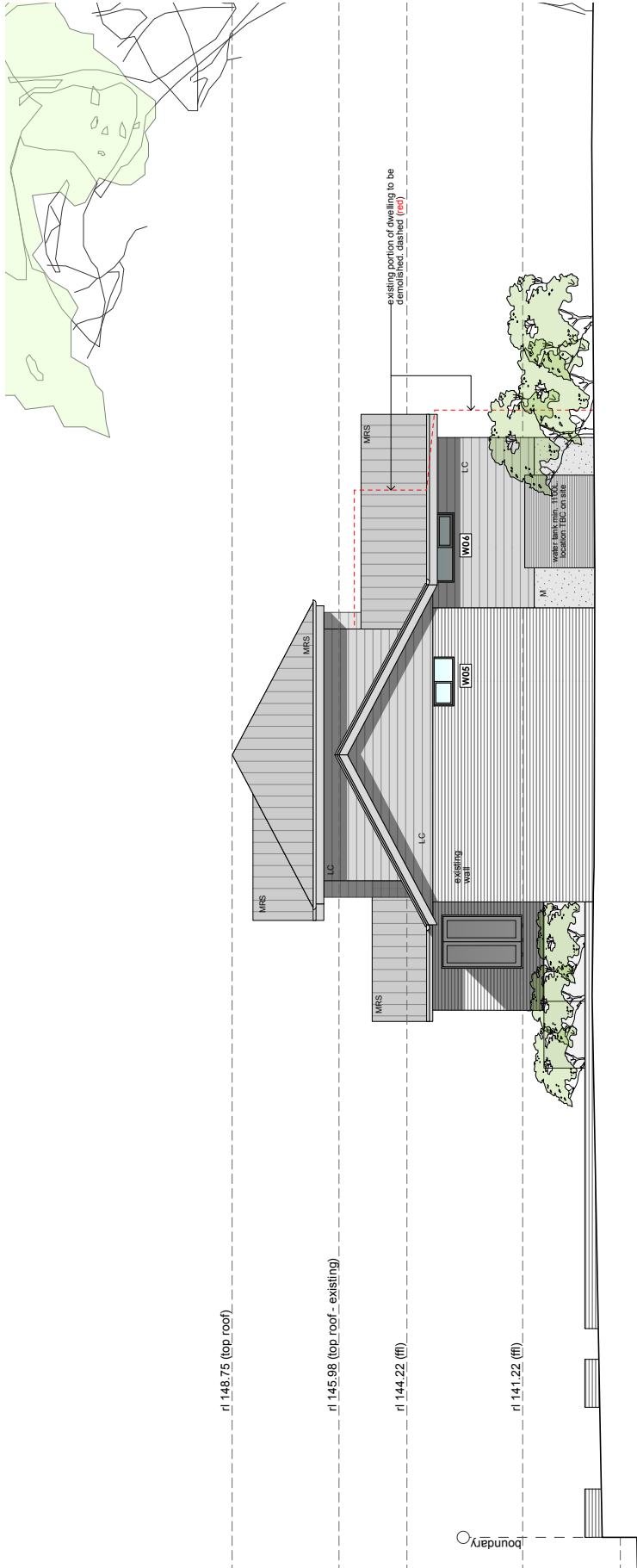


Proposed South Elevation

<p><b>NOTES:</b>                  All loadings, slabs, structural beams, etc. to future structural engineer's design.                  Rainwater from gutters to connect to stormwater system to meet relevant Building Codes, Council requirements and relevant NCC Building Codes + Council requirements.                  All work to comply with all relevant NCC Building Codes + Council requirements.</p>	<p><b>LEGEND:</b>                  MRS: MASONRY                  LG: LIGHT GAUGE GALVANIZED STEEL                  CL: CLADDING                  W: WINDOW                  D: DOOR                  S: SKYLINE                  P: PLASTER                  W: WALL                  S: SKYLINE                  W: WINDOW</p>	<p><b>EXISTING WALL</b>                  TO BE REMOVED                  NEW WALL</p>	<p><b>PROJECT:</b> Alterations &amp; Additions to Dwelling  <b>DRAWING:</b> Proposed South Elevation  <b>NOTES:</b> Proposed in accordance with Council of Hornsby Shire Council Development Plan 2024</p>
<p><b>Tom &amp; Jill Drewitt Smith</b>                  110 Hannah Street Bayscott NSW 2119 Lot 159 DP 1212847 SITE AREA = 792.5m<sup>2</sup></p>		<p><b>ANDY LEHMAN DESIGN</b>                  110/112A Macleay Street                  Sydney NSW 1588                  Phone: 02 9550 1111                  Email: andy@andylehman.com.au                  Website: www.andylehman.com.au</p>	
<p><b>DA 13</b></p>		<p><b>110/112A</b></p>	

# ATTACHMENT 2 - ITEM 3

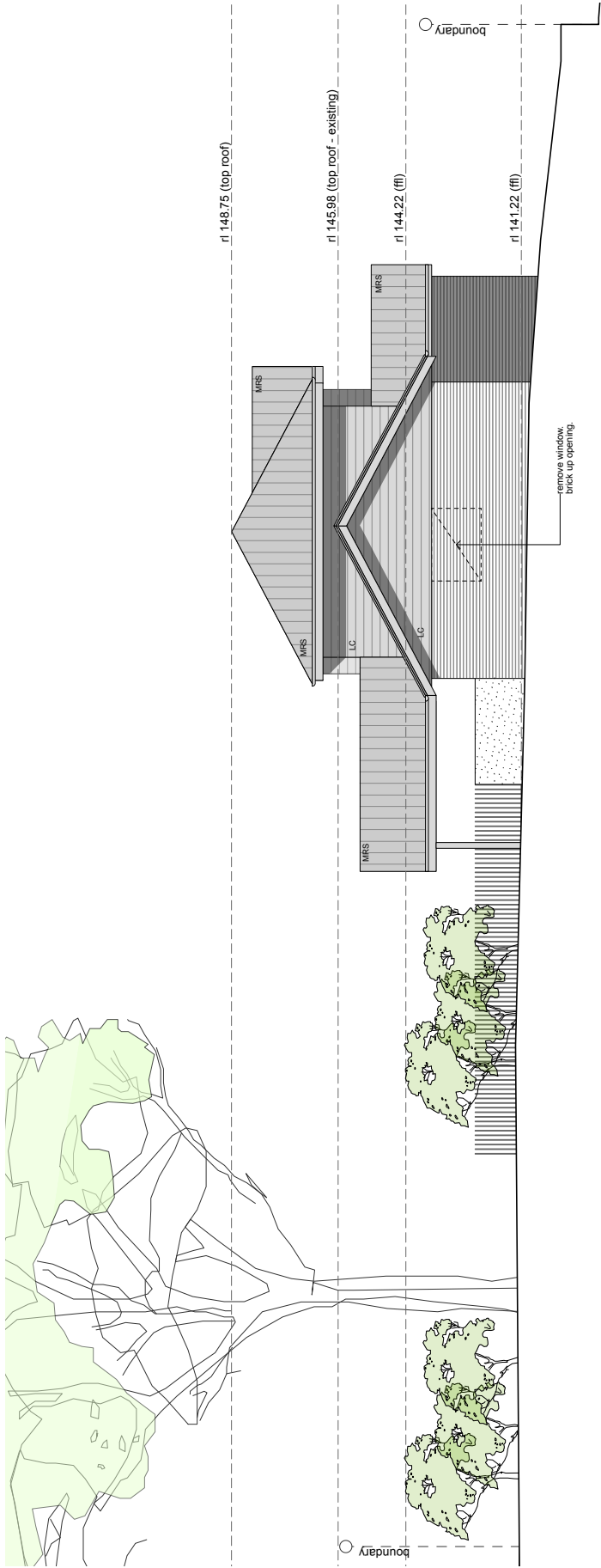




Proposed East Elevation

<p><b>NOTES:</b></p> <p>All loadings, slabs, structural beams, etc. to have structural reinforcement to meet relevant NCC, Council requirements.</p> <p>Reinforcement to be provided to connect to stormwater system to meet relevant NCC, Council requirements.</p> <p>Reinforcement to be provided to meet relevant NCC, Council requirements.</p> <p>Reinforcement to be provided to meet relevant NCC, Council requirements.</p> <p>Reinforcement to be provided to meet relevant NCC, Council requirements.</p>	<p><b>LEGEND:</b></p> <p>EXISTING WALL</p> <p>TO BE REMOVED</p> <p>NEW WALL</p>	<p><b>FINISHES:</b></p> <p>AS SUPPLIED</p> <p>CONCRETE</p> <p>PLASTER</p> <p>PAINT</p> <p>GLASS</p> <p>STONE</p> <p>WOOD</p> <p>STEEL</p> <p>BRICK</p> <p>ROOF</p> <p>WALL</p> <p>WIND</p>	<p><b>SCALE:</b></p> <p>1:100</p>	<p><b>DATE:</b></p> <p>15/08/2024</p>	<p><b>PROJECT:</b></p> <p>Alterations &amp; Additions to Dwelling</p>	<p><b>CLIENT:</b></p> <p>Tom &amp; Jill Drewitt Smith</p>	<p><b>PROJECT ADDRESS:</b></p> <p>110 Hannah Street Bayscott NSW 2119 LOT 159 DP 1212847 SITE AREA = 792.5m<sup>2</sup></p>	<p><b>DESIGNER:</b></p> <p>ANDY LEHMAN DESIGN</p>	<p><b>DATE:</b></p> <p>15/08/2024</p>																				
										<p><b>NOTES:</b></p> <p>Proposed in accordance with the Council's Development Control Plan (DCP) No. 4 of 2019.</p>	<p><b>LEGEND:</b></p> <p>EXISTING WALL</p> <p>TO BE REMOVED</p> <p>NEW WALL</p>	<p><b>FINISHES:</b></p> <p>AS SUPPLIED</p> <p>CONCRETE</p> <p>PLASTER</p> <p>PAINT</p> <p>GLASS</p> <p>STONE</p> <p>WOOD</p> <p>STEEL</p> <p>BRICK</p> <p>ROOF</p> <p>WALL</p> <p>WIND</p>	<p><b>SCALE:</b></p> <p>1:100</p>	<p><b>DATE:</b></p> <p>15/08/2024</p>	<p><b>PROJECT:</b></p> <p>Alterations &amp; Additions to Dwelling</p>	<p><b>CLIENT:</b></p> <p>Tom &amp; Jill Drewitt Smith</p>	<p><b>PROJECT ADDRESS:</b></p> <p>110 Hannah Street Bayscott NSW 2119 LOT 159 DP 1212847 SITE AREA = 792.5m<sup>2</sup></p>	<p><b>DESIGNER:</b></p> <p>ANDY LEHMAN DESIGN</p>	<p><b>DATE:</b></p> <p>15/08/2024</p>										
																				<p><b>NOTES:</b></p> <p>Proposed in accordance with the Council's Development Control Plan (DCP) No. 4 of 2019.</p>	<p><b>LEGEND:</b></p> <p>EXISTING WALL</p> <p>TO BE REMOVED</p> <p>NEW WALL</p>	<p><b>FINISHES:</b></p> <p>AS SUPPLIED</p> <p>CONCRETE</p> <p>PLASTER</p> <p>PAINT</p> <p>GLASS</p> <p>STONE</p> <p>WOOD</p> <p>STEEL</p> <p>BRICK</p> <p>ROOF</p> <p>WALL</p> <p>WIND</p>	<p><b>SCALE:</b></p> <p>1:100</p>	<p><b>DATE:</b></p> <p>15/08/2024</p>	<p><b>PROJECT:</b></p> <p>Alterations &amp; Additions to Dwelling</p>	<p><b>CLIENT:</b></p> <p>Tom &amp; Jill Drewitt Smith</p>	<p><b>PROJECT ADDRESS:</b></p> <p>110 Hannah Street Bayscott NSW 2119 LOT 159 DP 1212847 SITE AREA = 792.5m<sup>2</sup></p>	<p><b>DESIGNER:</b></p> <p>ANDY LEHMAN DESIGN</p>	<p><b>DATE:</b></p> <p>15/08/2024</p>

# ATTACHMENT 2 - ITEM 3

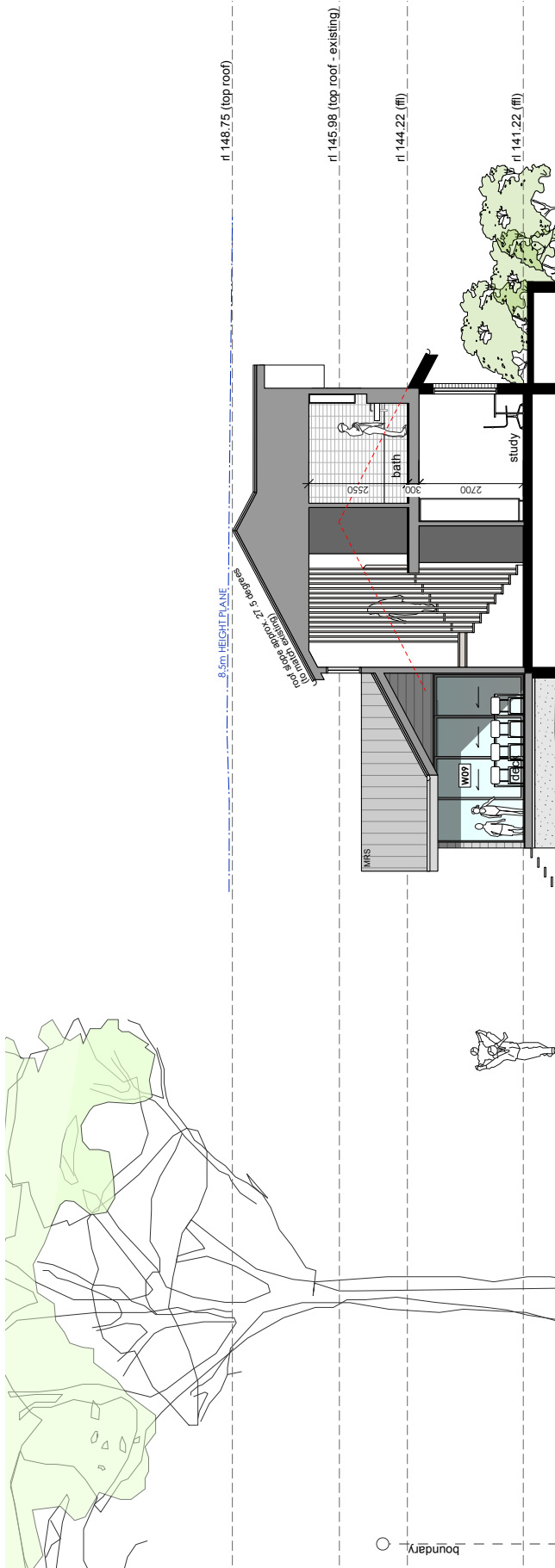


Proposed West Elevation

<p><b>NOTES:</b>                  All footings, slabs, structural beams, etc. to have structural reinforcement in concrete.                  Rainwater from gutters to connect to stormwater system to meet Council requirements.                  All construction to comply with all relevant NCC, Building Codes &amp; Council requirements.</p>	<p><b>LEGEND:</b>                  ■ EXISTING WALL                  - - - TO BE REMOVED                  ■ NEW WALL</p>	<p><b>ABBREVIATIONS:</b>                  MRS: METAL ROOF SHEETING                  LC: LIGHT CLADDING                  M: METAL CLADDING                  W: WALL                  S: SLAB                  F: FOOTING                  ST: STRUCTURAL STEEL                  WT: WATER TANK</p>	<p><b>SCALE:</b> 1:100                  DATE: 16/02/2024</p>
<p><b>PROJECT:</b> 110 Hannah Street Bayscott NSW 2119 LOT 159 DP 1212847 SITE AREA = 792.5m<sup>2</sup>                  Alterations &amp; Additions to Dwelling</p>		<p><b>ARCHITECT:</b> ANDY LEHMAN DESIGN                  11/144 ERM RD                  BAYSWATER NSW 2119                  PH: 02 9338 2100                  WWW.ANDYLEHMANDESIGN.COM.AU</p>	

# ATTACHMENT 2 - ITEM 3

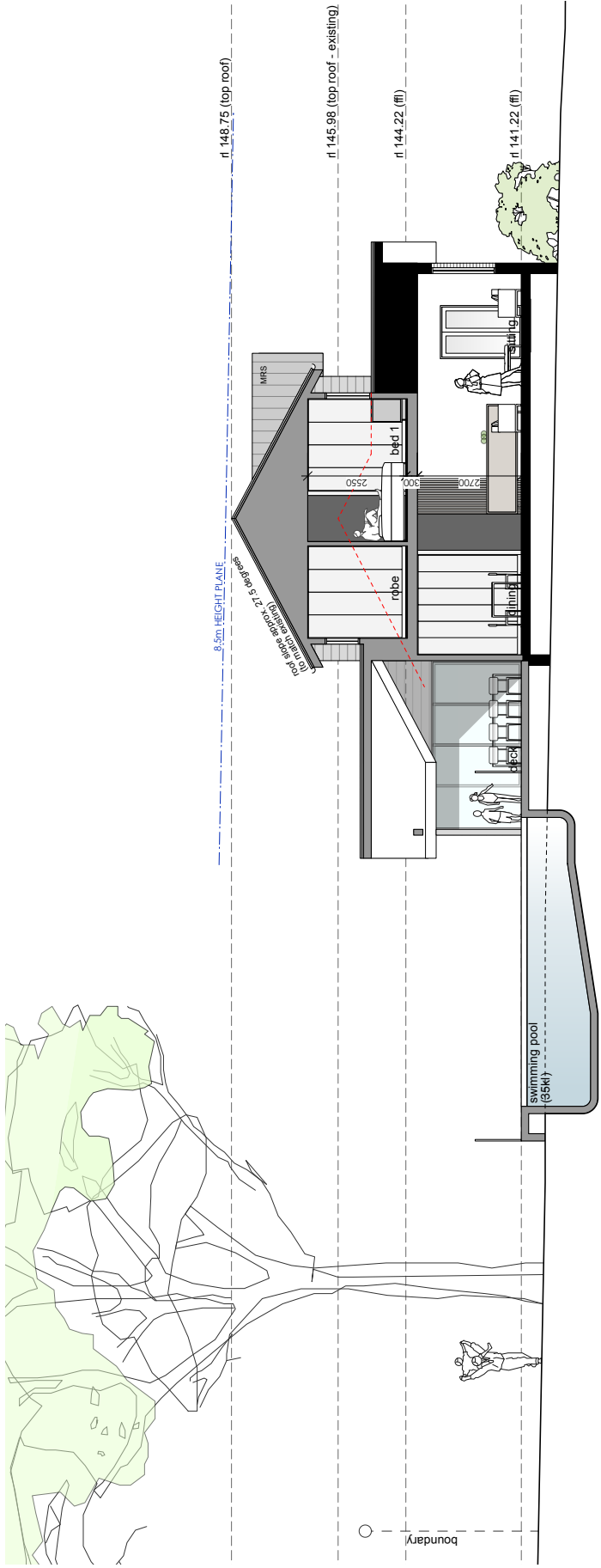




Proposed Section A-A

<p><b>NOTES:</b></p> <p>All footings, slabs, structural beams, etc. to future structural requirements.</p> <p>Reinforcement to be installed to connect to stormwater system to meet Building Codes Council requirements.</p> <p>Reinforcement to be installed to meet Council requirements to all relevant NCC Building Codes + Council requirements.</p> <p>Reinforcement to be installed to meet all relevant NCC Building Codes + Council requirements.</p>	<p>10m</p> <p>5</p> <p>0</p>	<p><b>LEGEND:</b></p> <p>EXISTING WALL</p> <p>TO BE REMOVED</p> <p>NEW WALL</p>	<p><b>SYMBOLS:</b></p> <p>AW: WALL</p> <p>CE: CEILING</p> <p>CL: CLADDING</p> <p>GL: GLASS</p> <p>FR: FLOOR</p> <p>GR: GROUND LEVEL</p> <p>HL: HALLWAY</p> <p>IN: INTERIOR FINISH</p> <p>PL: PLASTER</p> <p>RF: ROOF</p> <p>SP: SKYLINE</p> <p>ST: STRUCTURE</p> <p>WT: WATER TANK</p>	<p><b>Tom &amp; Jill Drewitt Smith</b>                  110 Hannah Street Bayscott NSW 2119 LOT 159 DP 1212847 SITE AREA = 792.5m<sup>2</sup></p>	
				<p><b>PROJECT:</b> Alterations &amp; Additions to Dwelling</p> <p><b>DRAWING:</b> Proposed Section A</p> <p><b>NOTES:</b> Proposed in accordance with the Council of Hornsby Shire Council Development Plan 2014.</p>	
				<p>DATE: 17 DA</p>	<p>SCALE: 1:100</p>

# ATTACHMENT 2 - ITEM 3



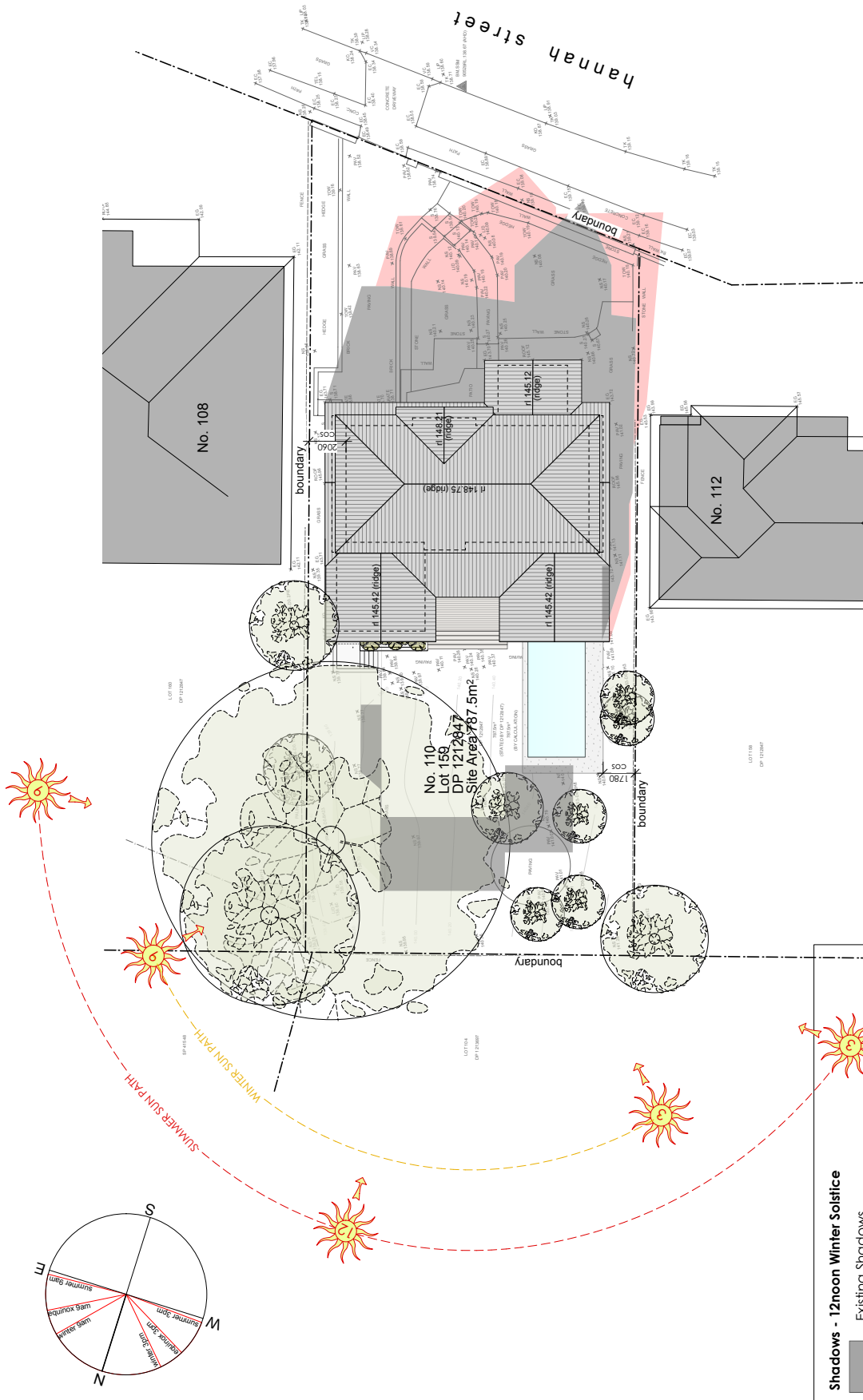
Proposed Section B-B

	<b>Tom &amp; Jill Drewitt Smith</b> 110 Hannah Street Bayscott NSW 2119 LOT 159 DP 1212847 SITE AREA = 792.5m <sup>2</sup>		<b>Proposed Section B</b> Alterations & Additions to Dwelling ANDY LEHMAN DESIGN
PROJECT	110 Hannah Street Bayscott NSW 2119 LOT 159 DP 1212847 SITE AREA = 792.5m <sup>2</sup>	DATE	18 DA
DRAWING	Proposed Section B	SCALE	1:100
NOTES	Drawn by: ANDY LEHMAN Checked by: ANDY LEHMAN Project name: 110 Hannah Street Bayscott NSW 2119 Project no: 110 Hannah Street Bayscott NSW 2119	DATE	18 DA

# ATTACHMENT 2 - ITEM 3







**Shadows - 12noon Winter Solstice**

- Existing Shadows
- Additional Shadows as cast by alterations & additions

**NOTES**

- All footings, slabs, structural beams, etc. to future structural alterations to be shown in grey.
- Water from gutters to connect to stormwater system to meet relevant Building Codes, Council requirements, and relevant NCC, Building Codes & Council requirements.
- Comply with all relevant NCC, Building Codes & Council requirements.

**LEGEND**

- EXISTING WALL
- TO BE REMOVED
- NEW WALL

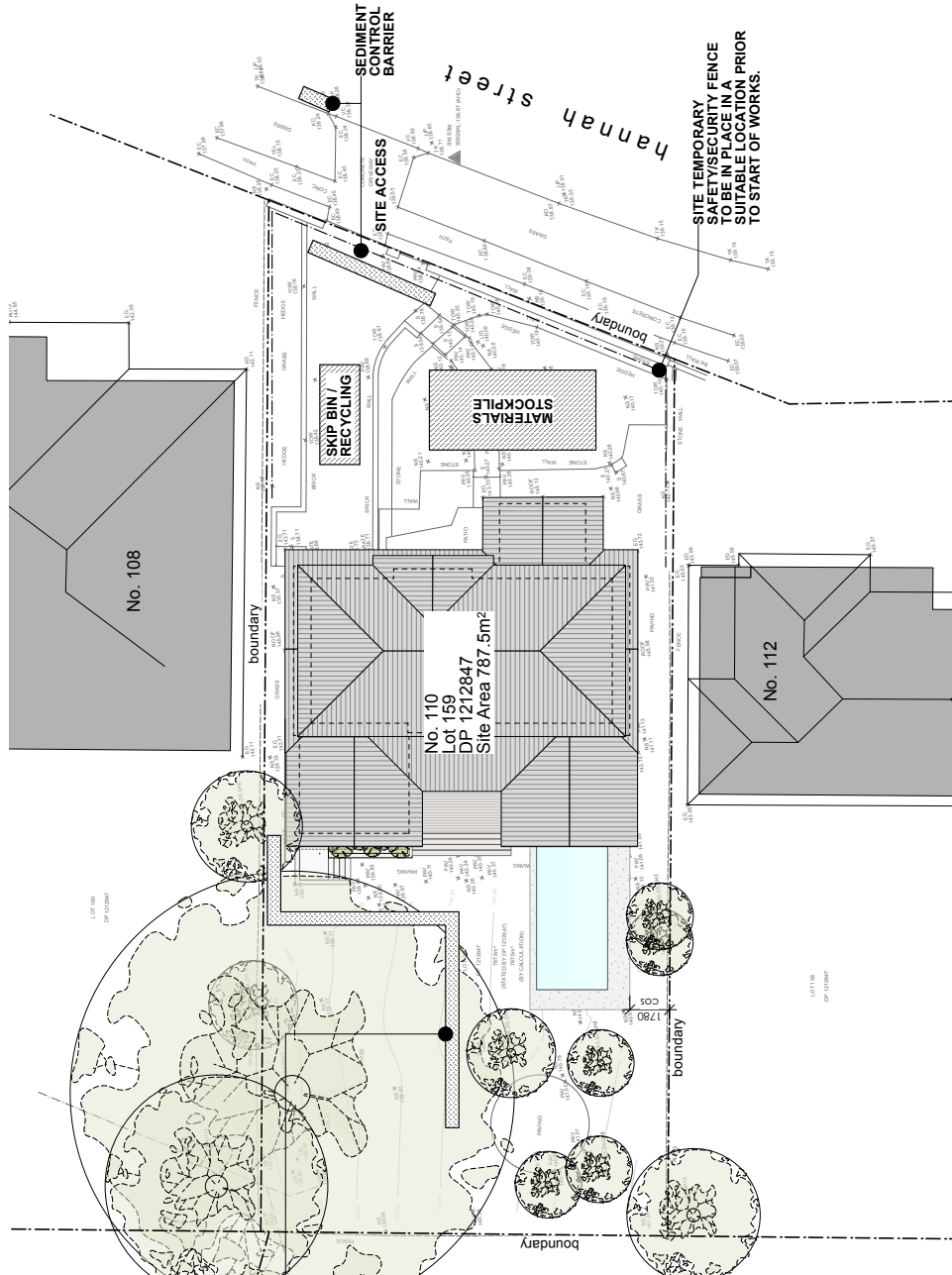
**NUMERALS**

- 1: BALCONY
- 2: TERRACE
- 3: DECK
- 4: STAIRS
- 5: PERGOLA
- 6: GARAGE
- 7: DRIVEWAY
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- 99: DRIVE
- 100: DRIVE

**Tom & Jill Drewitt Smith**  
 110 Hannah Street Bayswater NSW 2119 LOT 159 DP 1212947 SITE AREA = 787.5m²  
**PROJECT** Alterations & Additions to Dwelling  
**ANDY LEHMAN DESIGN**  
**DRAWING** Shadow Diagrams - 12 noon  
**NOTES** Information in this drawing is for Development purposes only. It is not to be used for any other purpose.  
 DA. 21  
 1200BAS  
 DATE: 2024

# ATTACHMENT 2 - ITEM 3

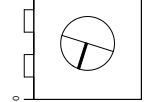




Erosion, Sediment & Waste Management Control Plan

**SEDIMENT CONTROL BARRIER.**  
INSTALLATION WILL AVOID ROOT DAMAGE OF EXISTING TREES. LE ABOVE GROUND HAY BALES/ FENCING/MEASURES ONLY.

**Notes:**  
**Run-off and erosion controls:** Run-off and erosion controls must be implemented to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:  
 (a) directing a runoff area around cleared disturbance areas, and  
 (b) directing a runoff area into drainage systems, other erosion control measures that will prevent debris from escaping into drainage systems, waterways or adjoining properties; and  
 (c) preventing the tracking of sediment by vehicles onto roads, and  
 (d) stockpiling top soil, excavated materials, construction and landscaping supplies and debris within the lot.  
**Maintenance of site:** All equipment must be stored wholly within the work site unless it is essential to store elsewhere, is held in place, or is used for site maintenance.  
 (2) Waste materials (including excavation, demolition and construction waste materials) must be managed on the site and then disposed of at a waste management facility.  
 (3) Any run-off and erosion control measures required must be maintained within their operating capacity until the completion of the works to prevent debris escaping from the site into drainage systems, waterways, adjoining properties and roads.  
**During construction:**  
 (a) all vehicles entering or leaving the site must have their loads covered, and  
 (b) all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads.  
**On Completion:**  
 At the completion of works, the work site must be left clear of waste and debris.



0 5 10m

**Notes:**  
 All existing, sites, structural forms, etc. to future structural works must be retained unless otherwise stated.  
 Retention from gullies to connect to stormwater system to meet relevant Building Codes, Council requirements, and other relevant requirements.  
 All works must comply with all relevant NCC, Building Codes & Council requirements.

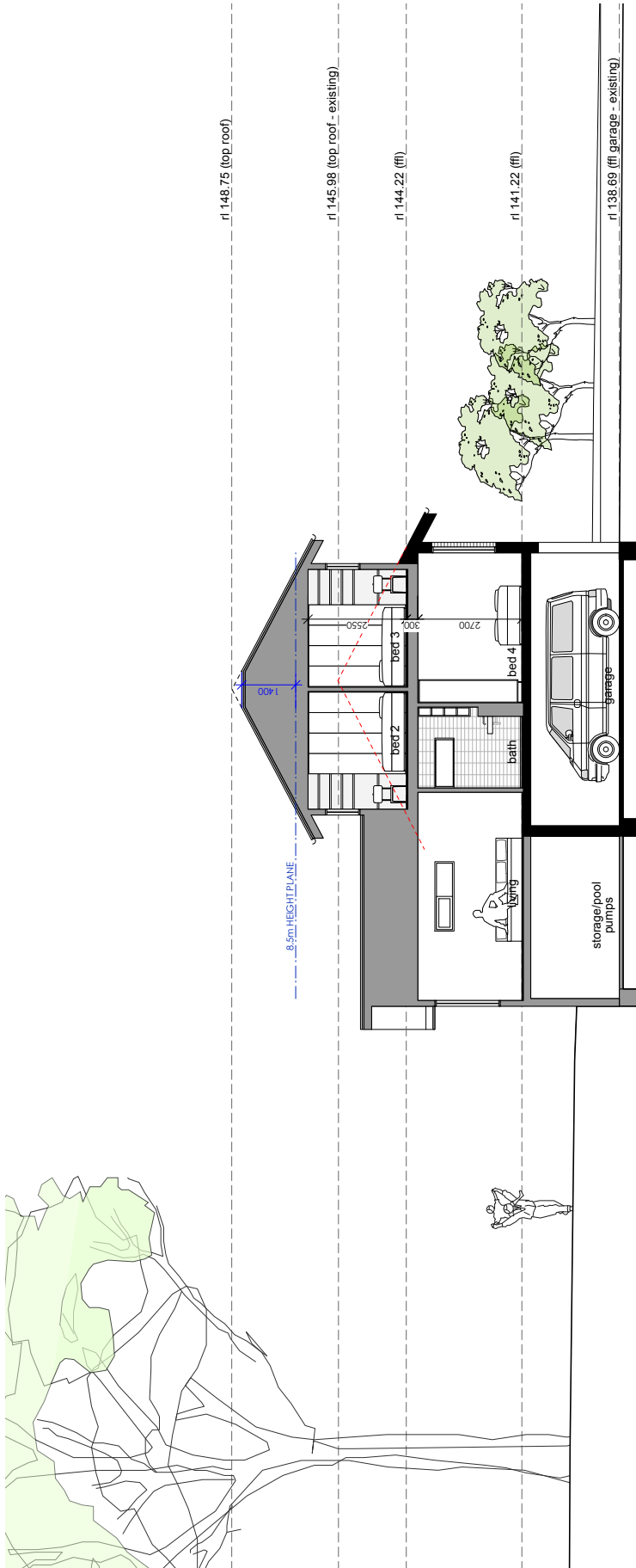
**LEGEND**  
 ■ EXISTING WALL  
 - - - TO BE REMOVED  
 ■ NEW WALL

**ITEMS**  
 ■ WALLS  
 ■ EXISTING WALLS  
 ■ TO BE REMOVED  
 ■ NEW WALLS  
 ■ EXISTING WALLS  
 ■ TO BE REMOVED  
 ■ NEW WALLS  
 ■ EXISTING WALLS  
 ■ TO BE REMOVED  
 ■ NEW WALLS

**PROJECT** Alterations & Additions to Dwelling  
**DRAWING** Erosion, Sediment & Waste Management Control Plan  
**NOTES** Refer to all relevant NCC, Building Codes & Council requirements.

**Tom & Jill Drevitt Smith**  
 110 Hannah Street Bayscott NSW 2119 LOT 159 DP 1212847 SITE AREA = 787.5m<sup>2</sup>  
**ANDY LEHMAN DESIGN**  
 120/28A/3  
 DA 23  
 DATE 2024

# ATTACHMENT 2 - ITEM 3

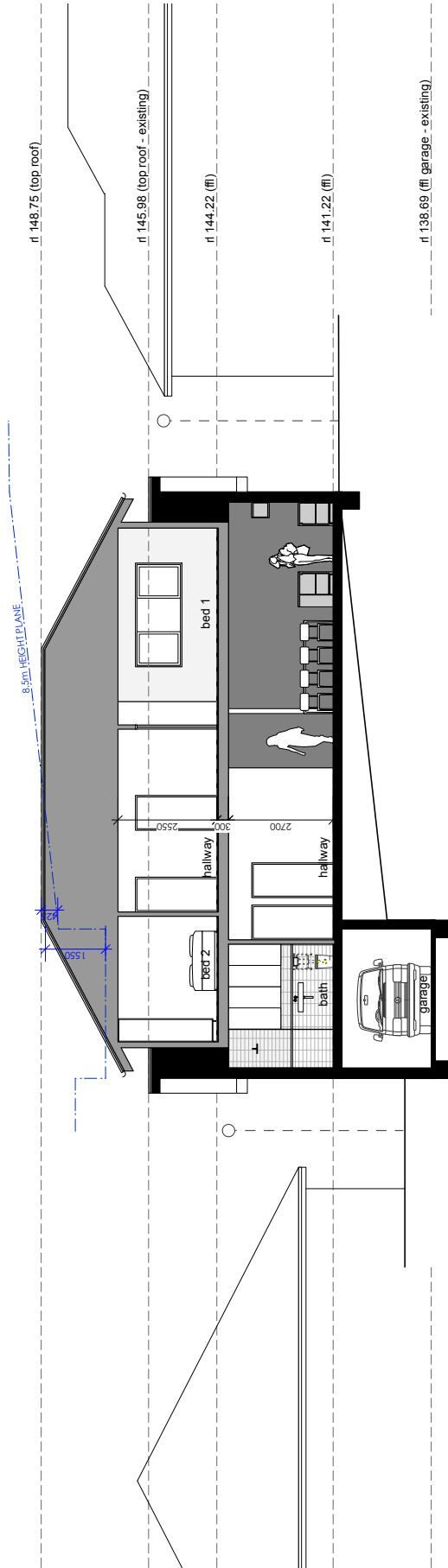


Proposed Section C-C

<p><b>NOTE:</b> All footings, slabs, structural beams, etc. to future structural requirements. Rainwater from gutters to connect to stormwater system to meet Building Codes Council requirements. All plumbing, electrical, and fire alarm systems to meet Building Codes Council requirements. Comply with all relevant NCC, Building Codes &amp; Council requirements.</p>	<p><b>LEGEND</b>                  ■ EXISTING WALL                  - - - TO BE REMOVED                  ■ NEW WALL</p>	<p><b>ABBREVIATIONS</b>                  AL ALUMINIUM                  CL CLADDING                  CR CRACKING                  H HANGING                  I INSULATION                  M MASONRY                  P PAVEMENT                  S SKIN                  ST STRUCTURE                  T TILE                  V VENTILATION                  W WATER</p>	<p><b>PROJECT</b> Alterations &amp; Additions to Dwelling</p>	<p><b>CLIENT</b> Tom &amp; Jill Drewitt Smith                  110 Hannah Street Bayscott NSW 2119 LOT 159 DP 1212847 SITE AREA = 792.5m<sup>2</sup></p>
			<p><b>DRAWING</b> Proposed Section C</p>	<p><b>DESIGNER</b> ANDY LEHMAN DESIGN</p>
<p><b>NOTES</b>                  1. Proposed alterations to comply with Council Development Control Plan 2014.                  2. To be used for reference only.                  3. For more information, please contact the Designer.</p>		<p><b>DATE</b> 24 October 2024</p>	<p><b>SCALE</b> 1:100</p>	<p><b>DA</b> 24</p>

# ATTACHMENT 2 - ITEM 3





Proposed Section D-D

<p><b>NOTES:</b></p> <p>All loadings, slabs, structural beams, etc. to future structural requirements.</p> <p>Water supply to be connected to stormwater system to meet relevant Building Codes, Council requirements and relevant NCC Building Codes + Council requirements.</p> <p>Water supply to be connected to stormwater system to meet relevant NCC Building Codes + Council requirements.</p> <p>Water supply to be connected to stormwater system to meet relevant NCC Building Codes + Council requirements.</p>	<p><b>LEGEND:</b></p> <p>EXISTING WALL</p> <p>TO BE REMOVED</p> <p>NEW WALL</p>	<p><b>ABBREVIATIONS:</b></p> <p>AW - WALL</p> <p>CL - CEILING</p> <p>FL - FLOOR</p> <p>GL - GROUND LEVEL</p> <p>HL - HALLWAY</p> <p>ML - MEASUREMENT</p> <p>SL - SLAB</p> <p>ST - STRUCTURE</p> <p>WT - WATER TANK</p>	<p><b>Tom &amp; Jill Drewitt Smith</b></p> <p>110 Hannah Street Bayswater NSW 2119 LOT 159 DP 1212847 SITE AREA = 792.5m<sup>2</sup></p>	<p><b>DA 25</b></p> <p>DATE</p>
			<p><b>PROJECT:</b> Alterations &amp; Additions to Dwelling</p> <p><b>DRAWING:</b> Proposed Section D</p> <p><b>NOTES:</b> Proposed in accordance with Council of Hornsby Shire Council Development Control Plan 2014, to comply with Council of Hornsby Shire Council Development Control Plan 2014.</p>	<p><b>ANDY LEHMAN DESIGN</b></p> <p>BY: ANDY LEHMAN</p> <p>DATE: 20/02/2025</p>

# ATTACHMENT 2 - ITEM 3



# CRYSTAL POOLS

For: TORA CONSTRUCTIONS  
PTY LTD

#: 0403 167 959

At: 110 HANNAH STREET,  
BEECROFT NSW 2199

**SWIMMING POOL NOTES:**

**SP01. POOL LOCATION:**  
CUSTOMERS MUST SATISFY THEMSELVES TO THE CORRECT LOCATION OF THE POOL, SET OUT PEGS PRIOR TO THE COMMENCEMENT OF THE EXCAVATION.

**SP02. DIMENSIONS:**  
FIGURED DIMENSIONS ARE TO BE TAKEN IN PREFERENCE TO SCALE.

**SP03. FOUNDATIONS:**

- TO BE NATURALLY OCCURRING MATERIAL CAPABLE OF BEING EXCAVATED TO A VERTICAL FACE AND OF MINIMUM SAFE BEARING CAPACITY OF 500kPa.
- UNDERSIDE OF THE CONCRETE FLOOR TO BE SEPARATED FROM THE UNDERLYING MATERIAL BY A LAYER OF APPROVED MEMBRANE – 250µm MIN OR SIMILAR.

**SP04. REINFORCEMENT:**

- ALL RODS TO BE GRADE 250 DEFORMED BARS IN ACCORDANCE WITH AS4671 UNLESS NOTED OTHERWISE – GRADE S.
- RADIUS OF BENDS FOR COPING BARS 50mm.
- RODS TO BE LAPPED A MINIMUM OF 400mm AND TO BE WIRE TIED AT EACH 2ND INTERSECTION.
- REINFORCEMENT SHALL HAVE THE FOLLOWING CLEAR COVER OF CONCRETE:
  - WALLS AND STEPS. 50mm INSIDE FACE.
  - FLOORS AND COPING 50mm TO TOP OF CONC. WIDTH OF COPING FINISH IS APPROX.
  - EARTH FACES 65mm.
  - FORMWORK FACES 40mm.
  - WHERE COPING IS MORE THAN 300mm ABOVE NATURAL GROUND LEVEL, THE HORIZONTAL REINFORCEMENT IS TO BE INCREASED TO S12-200 FOR A DISTANCE OF 400mm BELOW NATURAL GROUND LEVEL.
- HORIZONTALS ABOVE GROUND LEVEL:
  - 25MPa CONCRETE S12-150.
  - 32MPa & ABOVE S12-150.
- REINFORCEMENT IS TO BE CHAIRED TO PREVENT MOVEMENT DURING PLACEMENT OF CONCRETE, AND MAINTAIN CLEAR COVER AS SPECIFIED IN 4.
- CONCRETE CHAIRS ARE NOT TO BE USED AGAINST FORM.
  - FLOOR TO BE CHAIRED AT 600 INTERSECTIONS.

**SP05. CONCRETE:**

- MATERIALS AND WORKMANSHIP GENERALLY TO CONFIRM TO THE REQUIREMENTS OF AS3600 & AS2783.
- CONCRETE DESIGN STRENGTH (f<sub>c</sub>) TO BE 25MPa AT 28 DAYS, UNLESS OTHERWISE STATED.
- CONCRETE TO BE PNEUMATICALLY PLACED PREFERABLY IN A SINGLE UNINTERRUPTED OPERATION. SHOULD A BREAKDOWN OF PLANT OCCUR THE CONSULTING ENGINEERS MUST BE NOTIFIED IMMEDIATELY.

**SP06. CONCOURSE:**

- ANY OPEN TYPE OR GLASS PANEL FENCING TO 1.2m HIGH MAY BE SUPPORTED OFF CONCOURSE AS DESIGNED. ALL FENCING TO BE IN ACCORDANCE WITH AS1926.1 & AS1926.2 AND THE ERECTION OR ALTERATION TO BE THE RESPONSIBILITY OF THE APPLICANT. THE FENCING IS PART OF THE APPLICATION.
- SPIGOTS ARE TO BE CORED NO CLOSER THAN 170mm FROM STRUCTURAL EDGE OF COPING.
- THE POOL SHELL IS DESIGN IN ISOLATION. NO FITMENTS, OR LOADS TO BE PLACED ON CONCOURSE OR POOL SHELL WITHOUT THE EXPRESS PERMISSION OF CRYSTAL POOLS.
- ANY PAVING LAID ADJACENT TO POOL COPING MUST HAVE 15mm WIDE CONSTRUCTION OR EXPANSION JOINTS. IF PAVING LAD IN MORTAR, EXPANSION JOINT MUST BE INSERTED BETWEEN PAVING & POOL COPING. LEAVE 3mm GAPS BETWEEN PAVERS LAID ON SAND.
- POOL HAS BE DESIGNED TO MAINTAIN A CONSTANT 100mm FREEBOARD, OVERFILLING OF THE POOL WILL RESULT IN SATURATION OF THE TILE BED AND RISK DELAMINATING COPING FINISHES.

**SP07. EMPTYING POOL:**  
POOL TO BE EQUIPPED WITH HYDROSTATIC PRESSURE RELIEF VALVE TO SAFEGUARD AGAINST EXTERNAL WATER PRESSURE WHEN POOL IS EMPTY. DESPITE THIS PROVISION THE APPROVAL OF CRYSTAL POOLS MUST BE OBTAINED BEFORE EMPTYING THE POOL.

**SP08. DIVING:**  
THIS POOL IS NOT DESIGNED FOR DIVING.

<b>DATE</b>	12.12.2024
<b>JOB NUMBER</b>	15240
<b>DWG No.</b>	P01
<b>REV.</b>	A

<b>DATUM:</b> FFL OF HOUSE RL 141.22	<b>LEVEL</b>																
<b>TOP OF POOL FINISHED, RELATIVE TO DATUM, ALLOW 30mm FOR PAVER:</b>	FPL 141.22																
<b>TOP OF POOL STRUCTURE RELATIVE TO APPROX. NATURAL GROUND LEVELS</b>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">A</td> <td style="width: 25%;">+150</td> <td style="width: 25%;">RL</td> <td style="width: 25%;">..</td> </tr> <tr> <td>B</td> <td>+200</td> <td>RL</td> <td>..</td> </tr> <tr> <td>C</td> <td>+580</td> <td>RL</td> <td>..</td> </tr> <tr> <td>D</td> <td>+150</td> <td>RL</td> <td>..</td> </tr> </table>	A	+150	RL	..	B	+200	RL	..	C	+580	RL	..	D	+150	RL	..
A	+150	RL	..														
B	+200	RL	..														
C	+580	RL	..														
D	+150	RL	..														



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JANUARY 2021



CRYSTAL POOLS

Australia's most experienced swimming pool builder

1 CENTRAL AVENUE THORNLEIGH NSW 2120

(02) 9875 4555 | SALES@CRYSTALPOOLS.COM.AU

PO BOX 271 PENNANT HILLS NSW 1715

<b>REV.</b>	<b>DATE</b>	<b>ISSUED FOR CONSTRUCTION</b>	<b>AMENDMENT</b>
A	12.12	ISSUED FOR CONSTRUCTION	AMENDMENT
			CMF
			DRAWN

**Consulting Engineer:** Innovative Building Systems Australia Pty Ltd

14 Monterey Parade, Ermington Heights NSW 2115  
ACN: 44 124 486 497 Ph: (02) 9864 8725 www.ibsaust.com.au

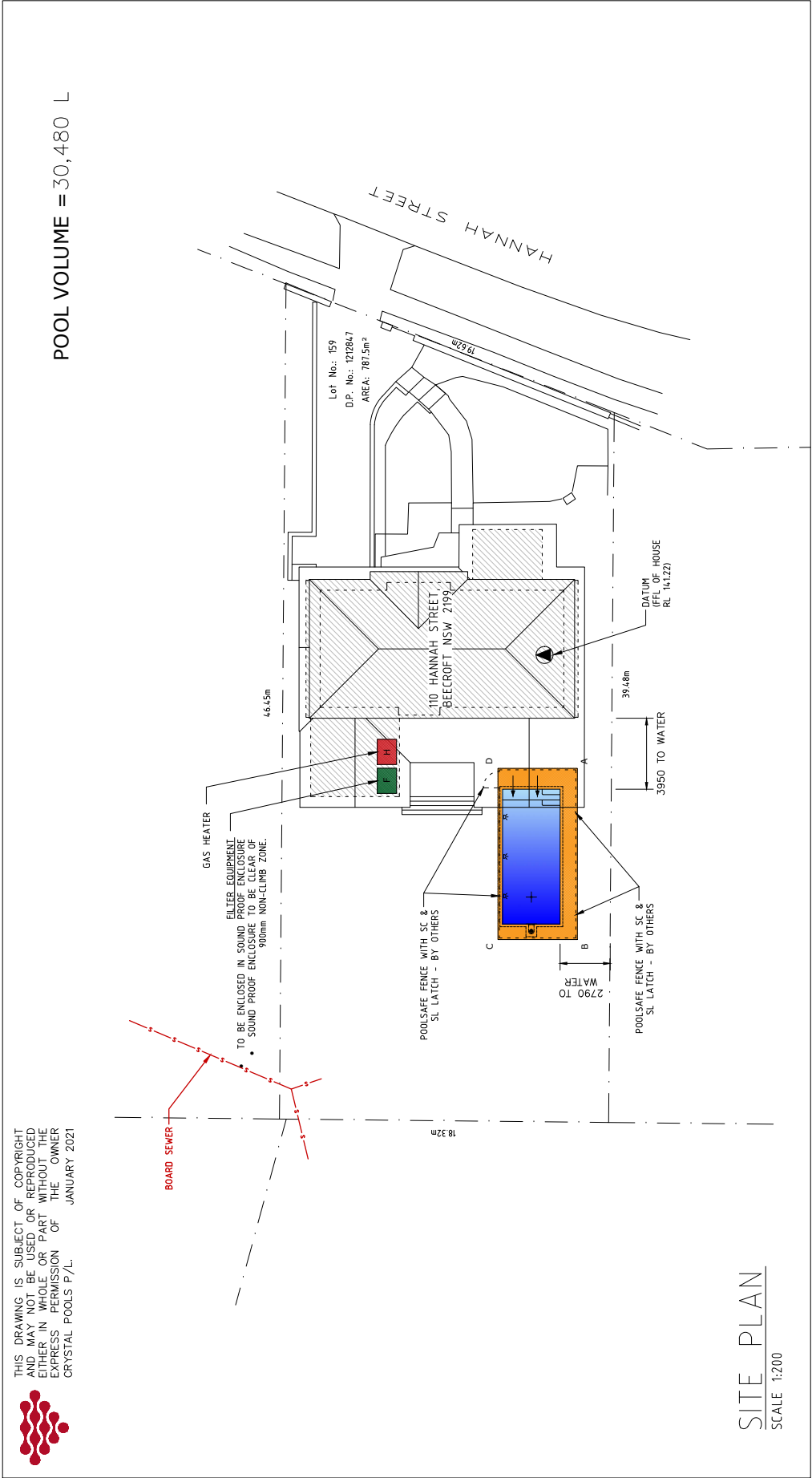
IBS AUSTRALIA

Innovative Building Systems

APPROVED DATE 12.12.2024

CHRISTIAAN FITZSPORN BSC BEC MECHAT & WESLA

# ATTACHMENT 3 - ITEM 3



POOL VOLUME = 30,480 L

SITE PLAN  
SCALE 1:200

DATE	12.12.2024
JOB NUMBER	15240
DWG No.	P02
REV.	A

**PROPOSED SWIMMING POOL**  
**FOR: TORA CONSTRUCTIONS PTY LTD**  
**#: 0403 167 959**  
**AT: 110 HANNAH STREET, BEECROFT NSW 2199**

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 PO BOX 271 PENNANT HILLS NSW 1715

REV.	DATE	AMENDMENT
A	12.12	ISSUED FOR CONSTRUCTION
		CMF
		DRAWN

Consulting Engineer: Innovative Building Systems Australia Pty Ltd  
 14 Monterey Parade, Emington Heights NSW 2115  
 ACN: 44 124 486 497 Ph: (02) 9604 8725 www.ibsaust.com.au

**IBS AUSTRALIA**  
 Innovative Building Systems

APPROVED  
 DATE 12.12.2024  
 CHRISTIAAN FITZSIMON BSC BE (MEAT) # 90546

# ATTACHMENT 3 - ITEM 3

**EQUIPMENT LIST**

- WC602 FILTER
- SF750 PUMP
- RP13 CHLORINATOR
- MT 400 HEATING LIGHTS
- 3 x MULTI LIGHTS FILTER BOX
- DB2 CLEANER

**FINISHES**

- FINISHED COPING - 300, 900, 1000, 1200
- COPING THICKNESS - 30mm
- INTERIOR FINISH - GLASS BEAD W/WATERLINE TILES

**QUANTITIES**

Quantities and selections to be discussed with site supervisor during construction

**COPING WATERLINE**

**SECTIONAL PLAN**

**SECTION**

SKIMMER TO BE S12

**DETAIL A**

NOTES:  
1. SKIMMER BOX  
2. SKIMMER TO COMPLY WITH AS1926.3

**PLAN OF POOL**

SCALE 1:50

NOTES:

- EVEN BEARING ASSUMED THROUGHOUT UNLESS NOTED OTHERWISE.
- ANY VARIATION CHECK WITH ENGINEER, STRUCTURAL CONCRETE BEAM TO SUIT FINISHED COPING WIDTHS. COPING SELECTIONS MUST BE CONFIRMED WITH SITE SUPERVISOR.

No. S Bar =	100 S
No. N Bar =	9 N
Volume of Pool =	30,480 L
Concrete Volume =	16.06 m <sup>3</sup>
Concrete Strength =	32 MPa

REV.	DATE	ISSUED FOR CONSTRUCTION	AMENDMENT	DRAWN
A	12.12			CMF

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Consulting Engineer: Innovative Building Systems Australia Pty Ltd  
14 Monterey Parade, Ermington Heights NSW 2115  
ACN: 44 124 486 497 Ph: (02) 9864 8725 www.ibsaust.com.au

APPROVED:

DATE 12.12.2024  
CHRISTIAAN FITZSIMON BSC BE (MECH) & (WSA)

**PROPOSED SWIMMING POOL**

FOR: TORA CONSTRUCTIONS PTY LTD

#: 0403 167 959

AT: 110 HANNAH STREET, BEECROFT NSW 2199

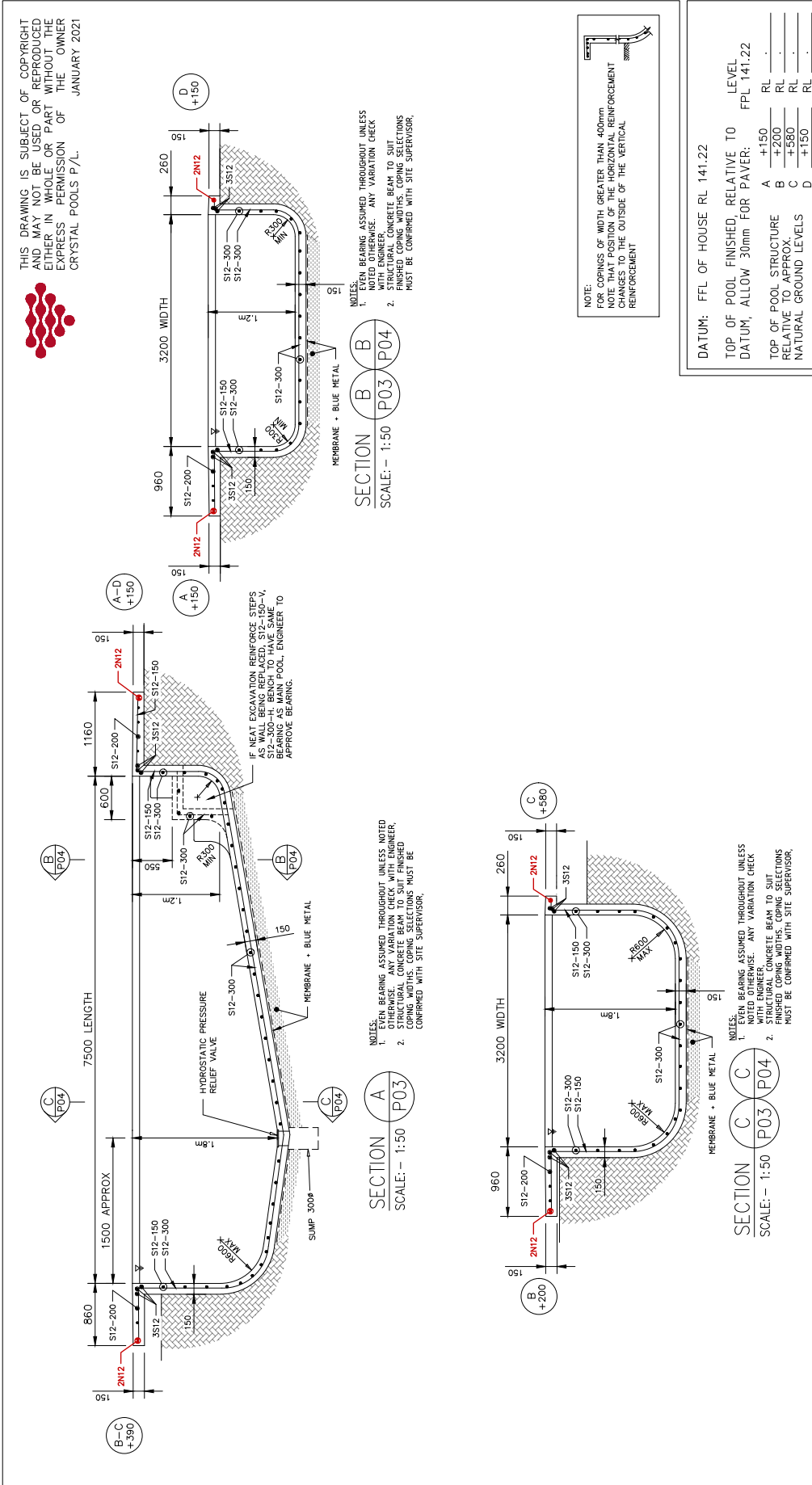
DATE: 12.12.2024

JOB NUMBER: 15240

DWG No.: P03

REV.: A

# ATTACHMENT 3 - ITEM 3



**PROPOSED SWIMMING POOL**  
**FOR: TORA CONSTRUCTIONS**  
 PTY LTD  
**#: 0403 167 959**  
**AT: 110 HANNAH STREET,**  
 BEECROFT NSW 2199

DATE: 12.12.2024  
 JOB NUMBER: 15240  
 DWG No.: P04  
 REV.: A

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**IBS AUSTRALIA**  
 Innovative Building Systems

APPROVED: [Signature] CHRISTIAAN FITZSPON BSC BE (MECH) # 92544  
 DATE 12.12.2024

REV.	DATE	ISSUED FOR CONSTRUCTION	AMENDMENT	DRAWN
A	12.12			CMF

# ATTACHMENT 3 - ITEM 3

**ATTACHMENT/S**

**REPORT NO. LPP8/25**

**ITEM 4**

**1. DAS OVER 180 DAYS - FEBRUARY 2025**

## List of development applications required to be determined by the LPP that are over 180 calendar days from lodgement.

DA No.	Proposal	Address	Reason	Est. Date to LPP	Advice to Chair	No. Days at 26/2
DA/812/2024	Subdivision 1 lot into 2	53 Malton Road, Beecroft	>10 Submissions	Mar	Application has been re-referred to RFS to clarify APZ requirements. Revised plans and additional information to be submitted in response to RFS requirements for an access road.	247
DA/907/2024	Demolition and construction of 5 storey residential flat building with 39 units	454-458 Peats Ferry Road, Asquith	SEPP Housing	Apr	Amended plans and information received on 31 January 2025 in response to matters raised by Council. The amended design has been referred to internal branches for comment and further assessment.  Report to be prepared for the April LPP meeting.	188

**ATTACHMENT 1 - ITEM 4**