



# ATTACHMENTS

## LOCAL PLANNING PANEL MEETING

**Wednesday 28 May 2025  
at 4:00 PM**



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### LOCAL PLANNING PANEL

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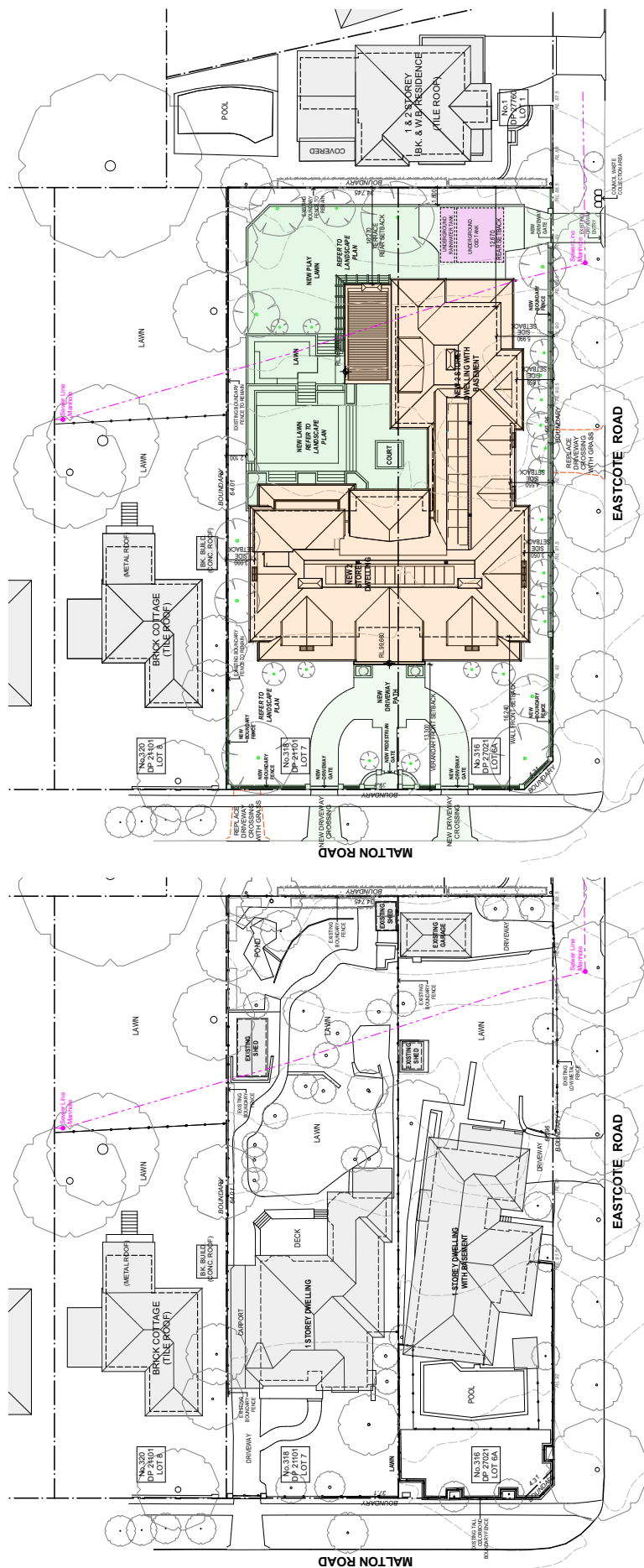


**ATTACHMENT/S**

**REPORT NO. LPP11/25**

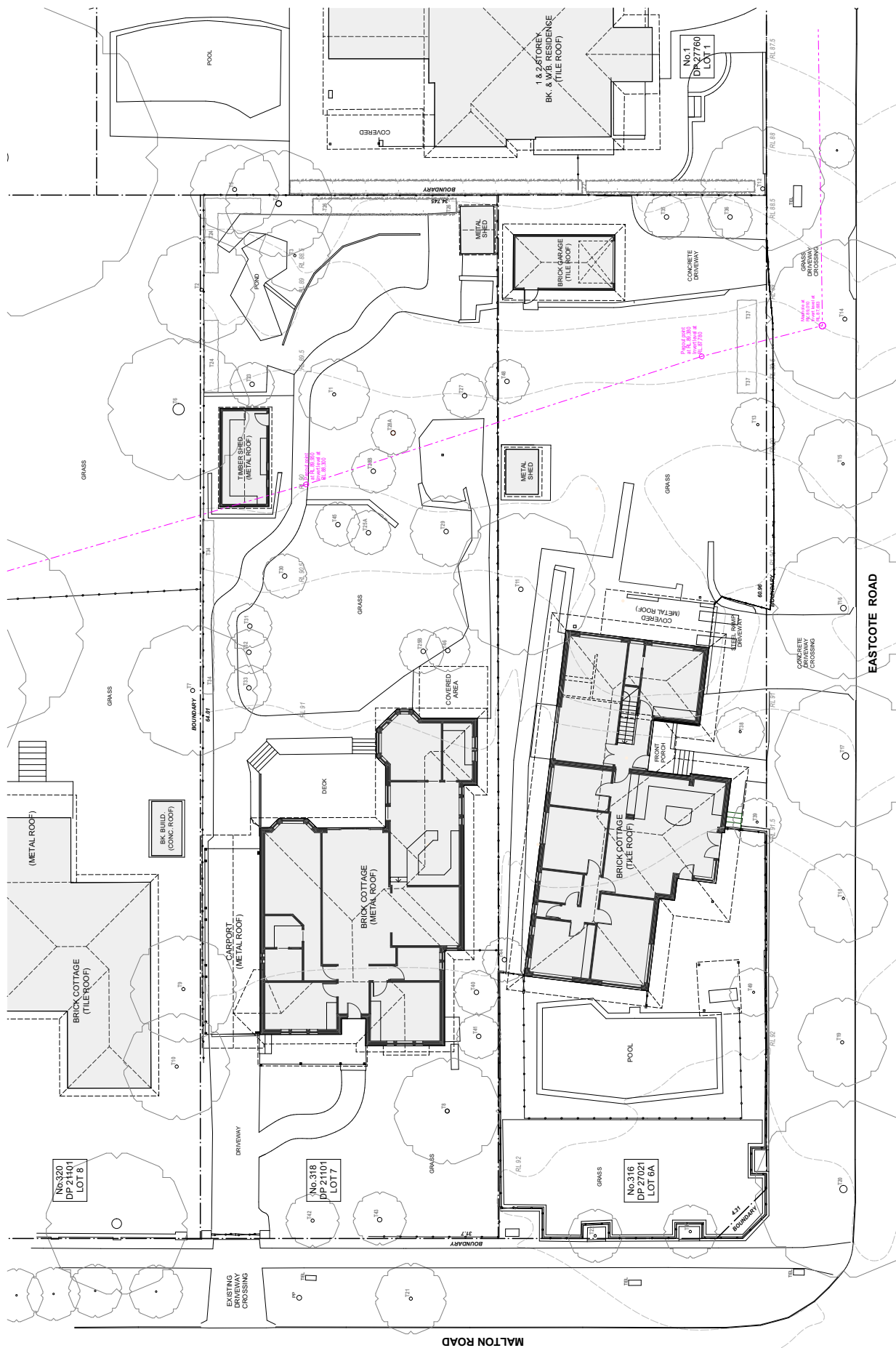
**ITEM 1**

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



|   |  |  |                     |  |   |  |   |  |   |  |                   |
|---|--|--|---------------------|--|---|--|---|--|---|--|-------------------|
| <b>Architect</b><br>DAVID WHITE ARCHITECTS PTY LTD<br>1 WINDALL CRESCENT (SUITE 2) BERRY PT 2114<br>NSW 2114<br>P 02 9466 8000<br>E DAVID@DAVIDWHITEARCHITECTS.COM.AU | <b>NOTES</b><br>1. ALL DIMENSIONS ARE IN METRES UNLESS OTHERWISE SPECIFIED.<br>2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.<br>3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.<br>4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.<br>5. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.<br>6. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.<br>7. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.<br>8. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. |  | <b>MS. B. LIGHT</b> |  | <b>PROPOSED NEW HOUSE</b><br>116-118 MALTON RD NORTH HERRING NSW 2112 AUSTRALIA |  | <b>EXISTING &amp; PROPOSED SITE PLANS</b> |  | <b>DAVID WHITE ARCHITECTS</b><br>DA-WH1<br>DATE: 11/05/2025<br>DRAWN: AM<br>CHECKED: DW |  | <b>DATE:</b><br>D |
|   | <b>DATE:</b><br>D  |  | <b>DATE:</b><br>D   |  | <b>DATE:</b><br>D   |  | <b>DATE:</b><br>D                         |  | <b>DATE:</b><br>D   |  | <b>DATE:</b><br>D |
|   | <b>DATE:</b><br>D  |  | <b>DATE:</b><br>D   |  | <b>DATE:</b><br>D   |  | <b>DATE:</b><br>D                         |  | <b>DATE:</b><br>D   |  | <b>DATE:</b><br>D |

# ATTACHMENT 1 - ITEM 1



|  |   |                         |   |                     |            |             |                     |                        |           |
|--|---|-------------------------|---|---------------------|------------|-------------|---------------------|------------------------|-----------|
| Architect<br>DAVID WHITE ARCHITECTS PTY LTD<br>1 WINDGALL CRESENT (SUITE 2) BEVERLY PT 2111<br>NSW 2111<br>P: 02 9439 4400<br>E: DAVID@DAVIDWHITEARCHITECTS.COM.AU | NOTES<br>ALL MEASUREMENTS, DIMENSIONS AND VOLUMES ARE APPROXIMATE.<br>CONSTRUCTION OF THIS PLAN IS BASED ON THE INFORMATION PROVIDED BY THE CLIENT.<br>THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.<br>THESE PLANS ARE NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF DAVID WHITE ARCHITECTS PTY LTD. | PROJECT<br>MS. B. LIGHT | PROPOSED NEW HOUSE<br>116-118 MALTON RD NORTH RYDE NSW 2112 AUSTRALIA | EXISTING FLOOR PLAN | DATE<br>AM | DRAWN<br>DW | SCALE<br>1:100 @ A1 | PROJECT NO.<br>DA-1900 | DATE<br>D |
|  |   |                         |   |                     |            |             |                     |                        |           |

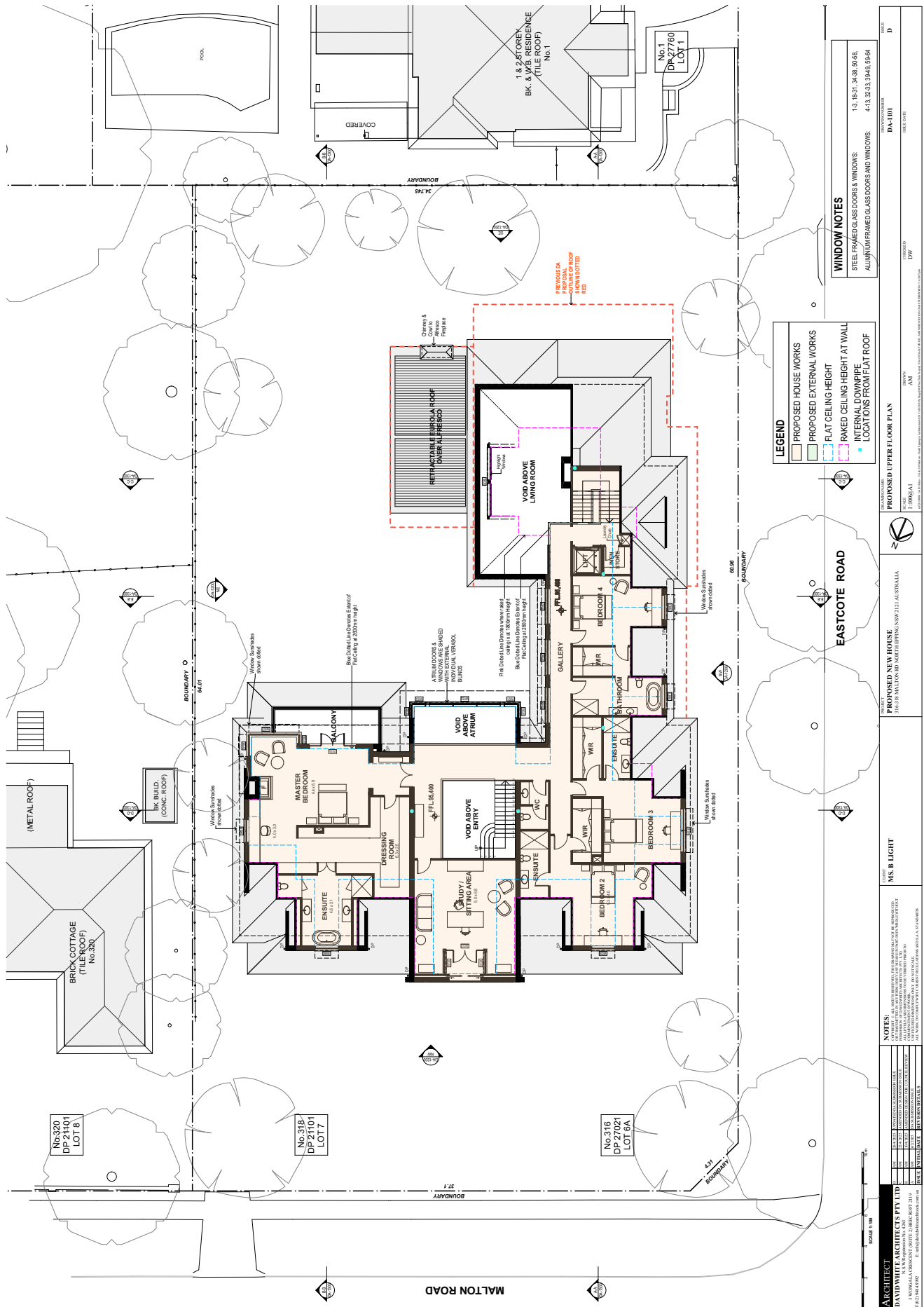
# ATTACHMENT 1 - ITEM 1



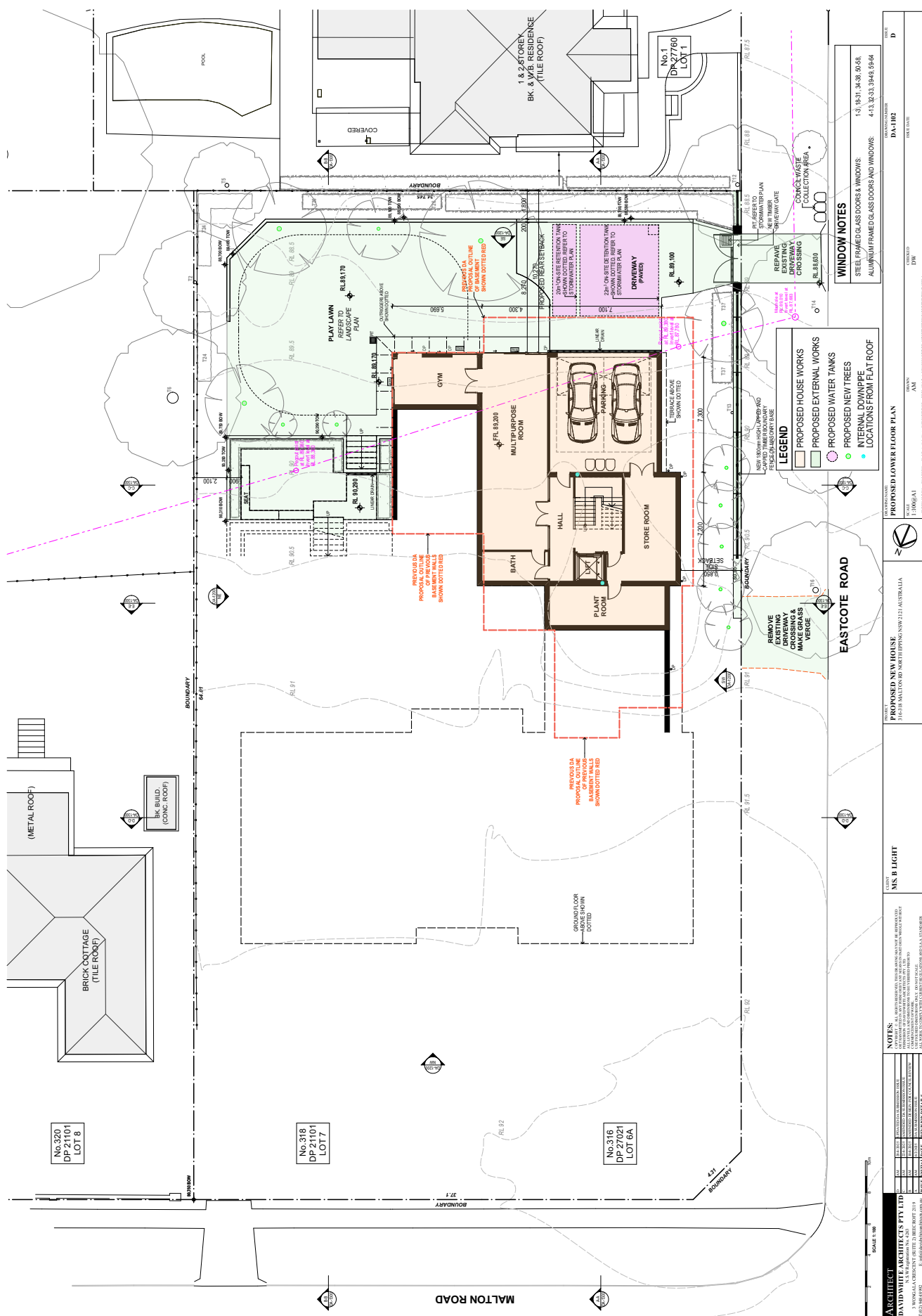
ATTACHMENT 1 - ITEM 1



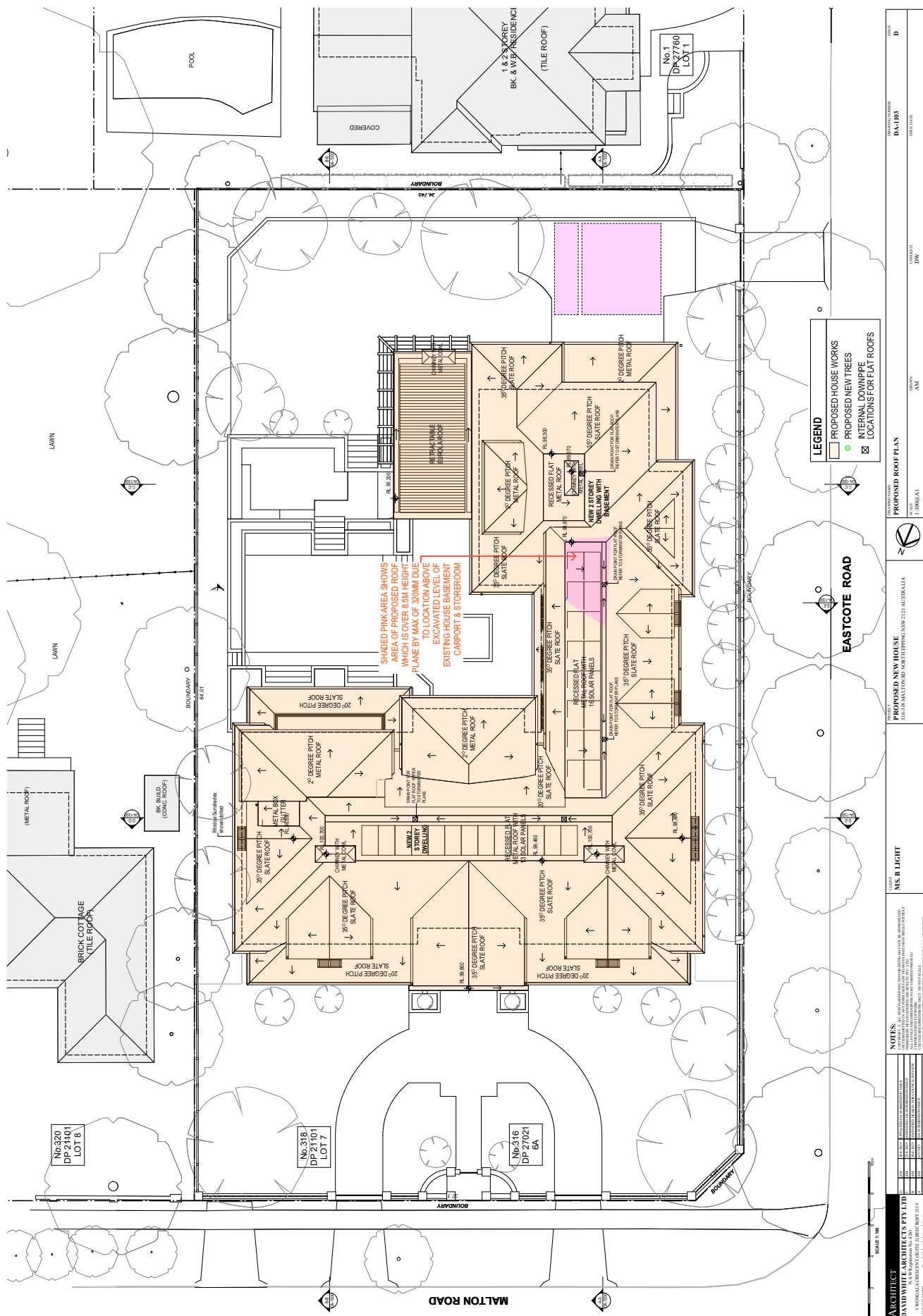




# ATTACHMENT 1 - ITEM 1



## ATTACHMENT 1 - ITEM 1

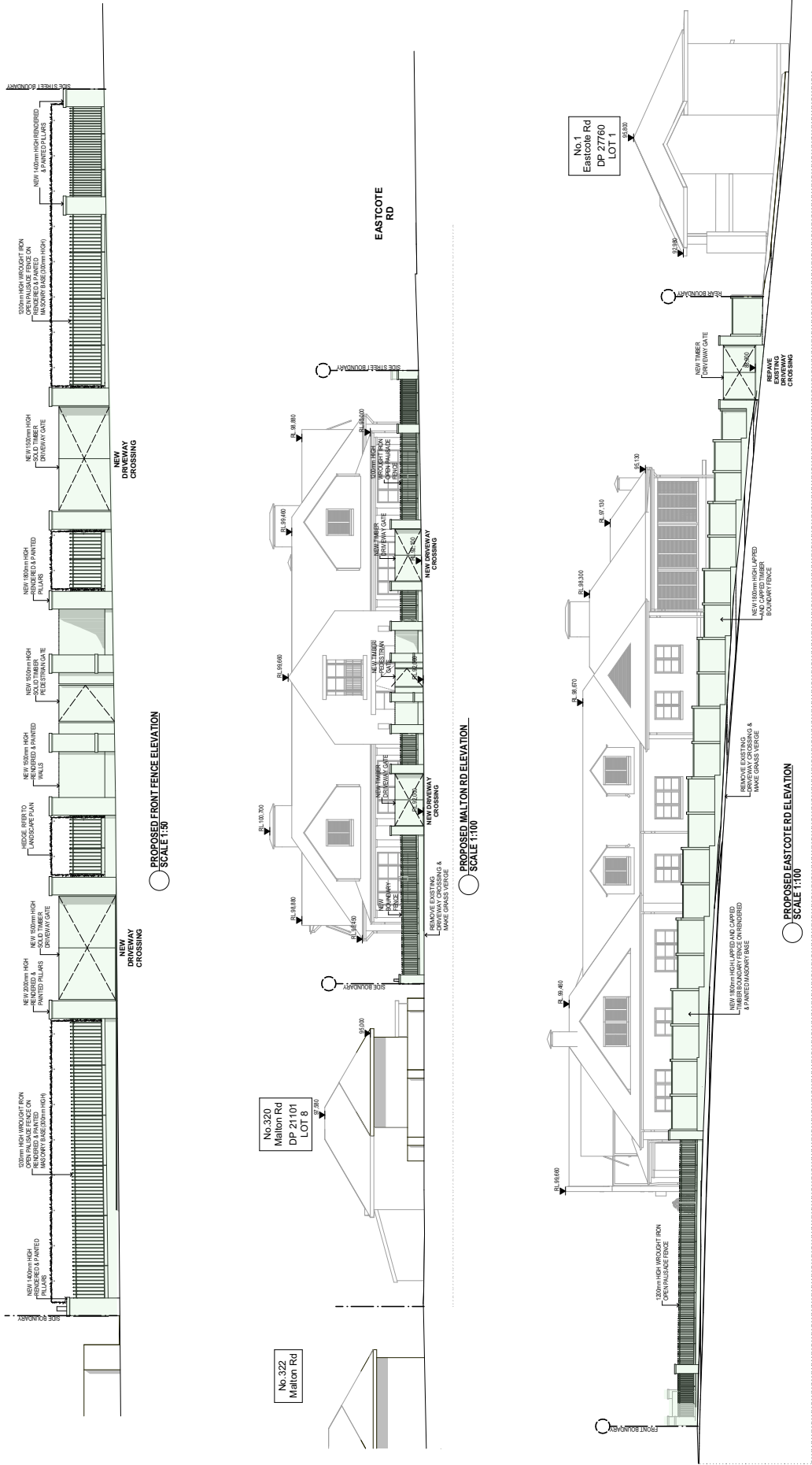


# ATTACHMENT 1 - ITEM 1





# ATTACHMENT 1 - ITEM 1



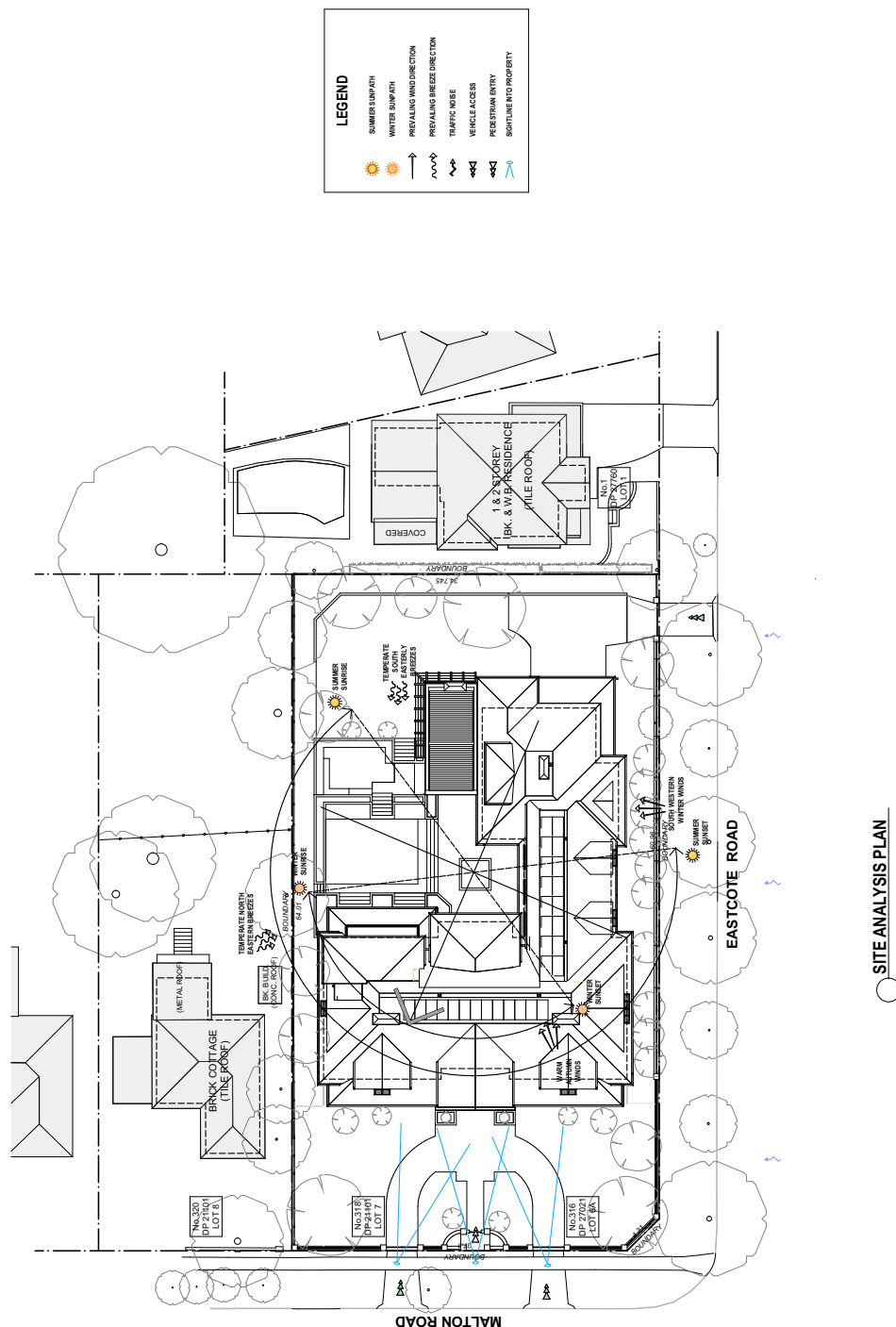
**LEGEND**

- PROPOSED HOUSE WORKS
- PROPOSED EXTERNAL WORKS

|   |   |                           |                          |  |                          |                               |                           |
|---|---|---------------------------|--------------------------|--|--------------------------|-------------------------------|---------------------------|
| <b>ARCHITECT</b><br>DAVID WHITE ARCHITECTS PTY LTD<br>3 WINDGALL CRESCENT (SUITE 2) BEVERLY PT 2111<br>NSW 2104<br>P 02 9466 8000<br>E david@dwwhitearchitects.com.au | <b>NOTES</b><br>1. ALL DIMENSIONS ARE IN METRES UNLESS OTHERWISE SPECIFIED.<br>2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.<br>3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.<br>4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.<br>5. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. | <b>DATE</b><br>15/05/2025 | <b>BY</b><br>DAVID WHITE | <b>PROJECT</b><br>PROPOSED NEW HOUSE<br>116-18 MALTON RD NORTH EPPING NSW 2121 AUSTRALIA | <b>SCALE</b><br>AS SHOWN | <b>PROJECT NO.</b><br>DA-1901 | <b>DATE</b><br>15/05/2025 |
|   |   |                           |                          |  |                          |                               |                           |

# ATTACHMENT 1 - ITEM 1

[illegible]



## SITE ANALYSIS PLAN

| ARCHITECT |      | DAVID WHITE ARCHITECTS PTY LTD |            | N.S.W Registration No. 4203 |            |
|-----------|------|--------------------------------|------------|-----------------------------|------------|
| D         | 1/01 | 20/12/2017                     | 20/12/2017 | 20/12/2017                  | 20/12/2017 |
| C         | 1/01 | 22/12/2017                     | 22/12/2017 | 22/12/2017                  | 22/12/2017 |
| B         | 1/01 | 10/1/2018                      | 10/1/2018  | 10/1/2018                   | 10/1/2018  |
| A         | 1/01 | 10/1/2018                      | 10/1/2018  | 10/1/2018                   | 10/1/2018  |

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ALL LEVELS AND DIMENSIONS TO BE VERIFIED PRIOR TO COMMENCEMENT OF WORK.  
CONCEALED DIMENSIONS ONLY. DO NOT SCALE.

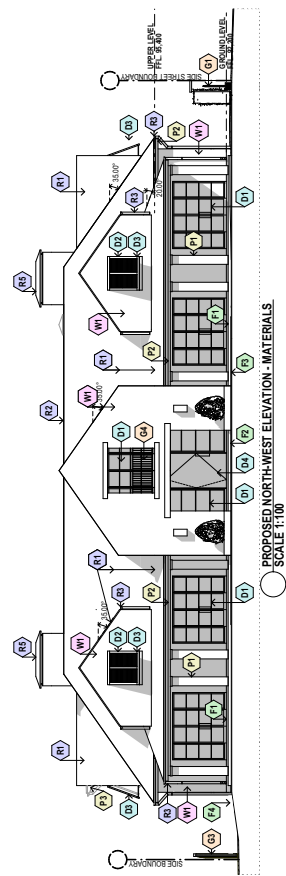
|         |  |
|---------|--|
| CLIENT  | MS. B LIGHT  |
| PROJECT | <b>PROPOSED NEW HOUSE</b><br>316-318 MALTON RD NORTH EPPING NSW 2121 AUSTRALIA |

|   |  |
|---|--|
|  | DRAWING NAME:<br><b>SITE ANALYSIS PLAN</b> |
|   | SCALE:<br>1:200 @ A1                       |

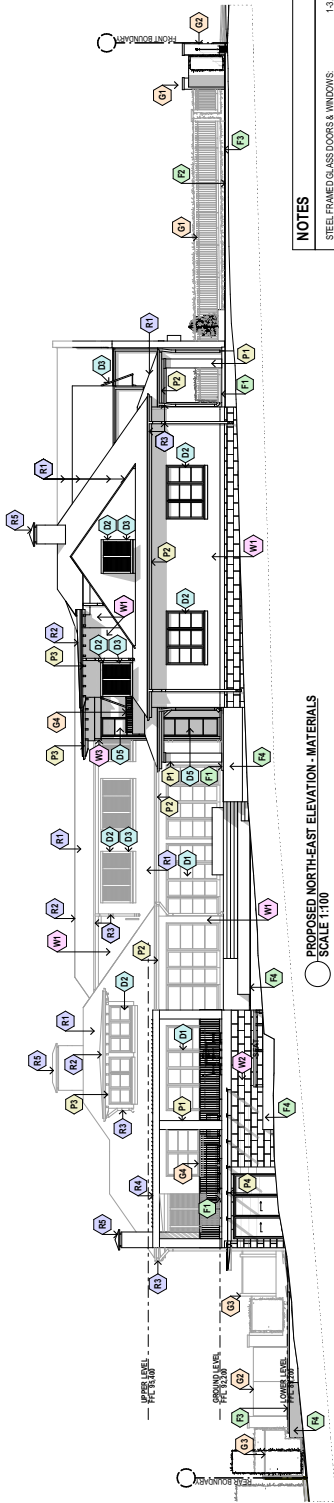
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# ATTACHMENT 1 - ITEM 1





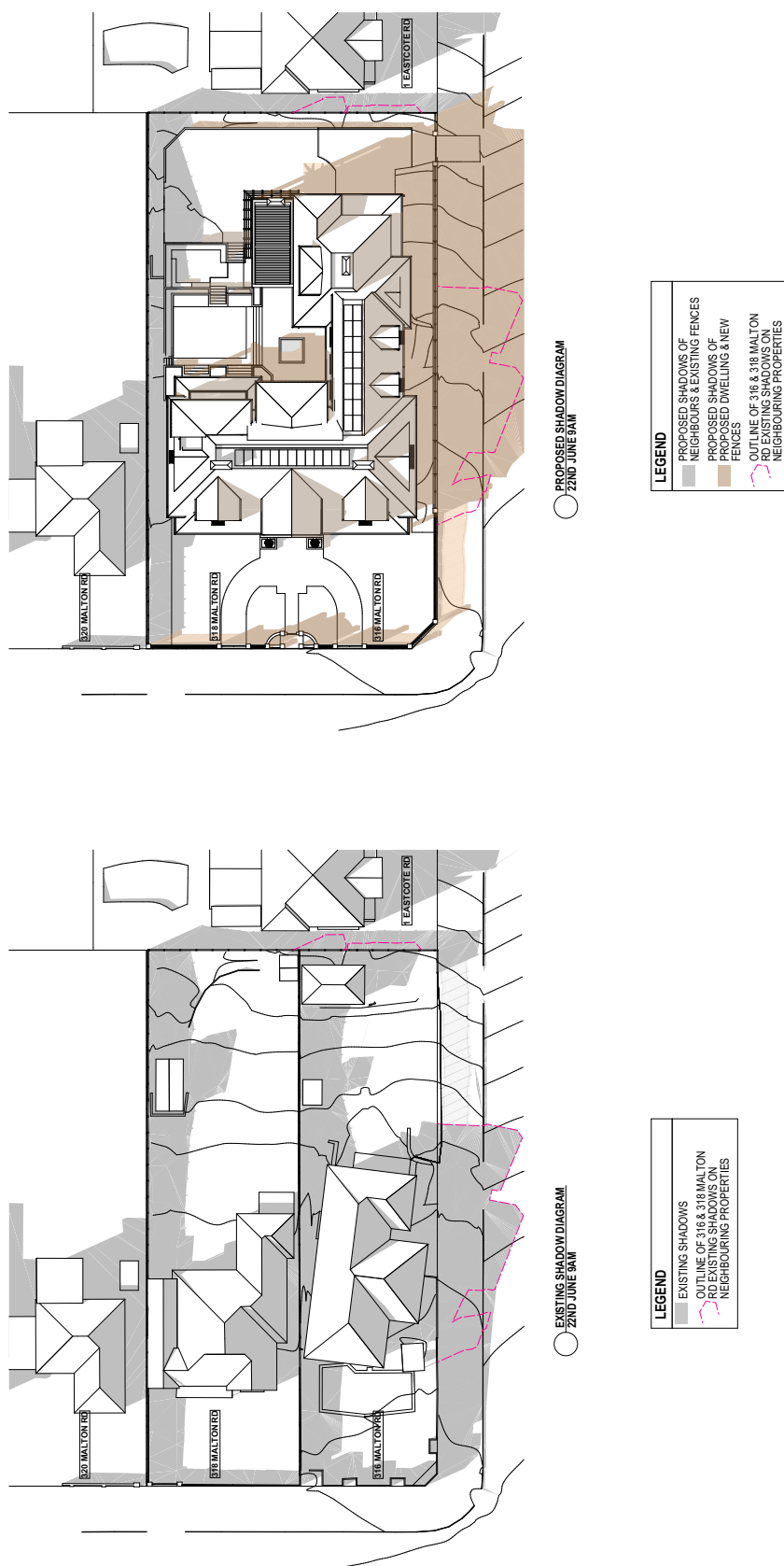
| G - GATE & FENCE FINISHES   | W - WALL FINISHES   | D - DOOR & WINDOW FINISHES   | R - ROOF ELEMENT FINISHES  | P - POST & BEAM FINISHES   | F - FLOOR FINISHES  |
|---|---|--|--|--|---|
| <div>Streetfront Boundary Fence - Wrought Iron Palisade Fence on Masonry Base with Pillars, Rendered &amp; Painted Dulux White Exchange</div> <div>Street Pedestrian &amp; Driveway Gates - Solid Timber Stained Charcoal</div> <div>Side Boundary Fence - Timber Lapped &amp; Capped Stained Charcoal on Rendered &amp; Painted Masonry Base</div> <div>External Balustrades - Wrought Iron Balustrade</div> | <div>House External Walls - Cavity Brick Walls, Rendered and Painted Dulux White Exchange</div> <div>Lower Floor External Walls - Concrete Block Walls with Sandstone Cladding</div> <div>Arrium Wall Frame for Windows - Steel I-Beams</div> | <div>Doors &amp; Windows - Steel Framed in Dulux Monument Colour</div> <div>Doors &amp; Windows - Aluminium Framed in Dulux Monument Colour</div> <div>Window Shutters - Aluminium Shutters Powdercoated in Dulux Monument Colour</div> <div>Front Solid Door - Timber Solid Door Leaf with Steel Frame, Dulux Monument Colour</div> <div>Atrium Shading - External Venetian Blinds in Dulux Monument Colour</div> | <div>Roof Pitched between 20° to 35° - Welsh Slate</div> <div>Flat Roof - Upstand Seam Colorbond in Monument Colour</div> <div>Gutters and Downpipes - 150mm Half-Round Gutter, 90mm Downpipes, Colorbond Monument Colour</div> <div>Retractable Roof - Europa Colorbond Southery Colour</div> <div>Chimneys - Masonry Powdercoated Cowl</div> | <div>Verandah Pillars - Masonry Rendered and Painted Dulux White Exchange</div> <div>Verandah Ceilings and Roof Eaves Soft - V-Jointed Timber Ceilings Painted</div> <div>Flat Roof Eaves - Exposed Timber Rafter with Chamber Painted &amp; Painted Timber V-Joint Lining</div> <div>Outriggers - Steel Beams painted Microbond Bridge Paint Carbon &amp; Stainless Steel Wires</div> | <div>Verandah &amp; Terrace Floor - Porcelain Tile</div> <div>Front Path - Sandstone Flagging</div> <div>Driveway Path - Cobblestone</div> <div>Planters &amp; Garden Retaining Walls - Masonry Rendered &amp; Painted Dulux White Exchange</div> |



| NOTES   |
|---|
| STEEL FRAMED GLASS DOORS & WINDOWS 1-3, 13-31, 34-38, 40-58, ALUMINIUM FRAMED GLASS DOORS & WINDOWS 4-13, 33-33, 39-49, 59-64 |

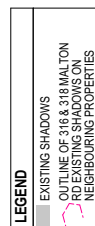
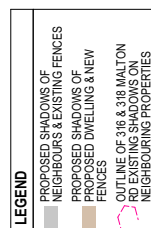
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|--|--|------------------------------|---|---|---------------------------------|
| <b>ARCHITECT</b><br>DAVID WHITE ARCHITECTS PTY LTD<br>3 WINDMILL CRESCENT (SUITE 2) BEVERLY PT 2111<br>TEL 02 9460 8000<br>E DAVID@DAVIDWHITEARCHITECTS.COM.AU | <b>NOTES</b><br>ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED AND NOT BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF DAVID WHITE ARCHITECTS PTY LTD.<br>THIS DOCUMENT IS THE PROPERTY OF DAVID WHITE ARCHITECTS PTY LTD. AND IS NOT TO BE LOANED, REPRODUCED, COPIED, OR IN ANY MANNER DISCLOSED TO ANY OTHER PARTY WITHOUT THE WRITTEN PERMISSION OF DAVID WHITE ARCHITECTS PTY LTD. | <b>PROJECT</b><br>MS B LIGHT | <b>PROPOSED NEW HOUSE</b><br>116-118 SALTON RD NORTH LIPPINS NSW 2121 AUSTRALIA | <b>MATERIAL &amp; FINISHES SCHEDULE</b><br>SCALE 1:100/A1<br>DRAWN AM<br>CHECKED DW | <b>DATE</b><br>DAVID WHITE<br>D |
|  | <b>PROJECT</b><br>PROPOSED NEW HOUSE   |                              |   |   |                                 |
|  | <b>LOCATION</b><br>116-118 SALTON RD NORTH LIPPINS NSW 2121 AUSTRALIA  |                              |   |   |                                 |
|  | <b>SCALE</b><br>1:100/A1   |                              |   |   |                                 |

# ATTACHMENT 1 - ITEM 1

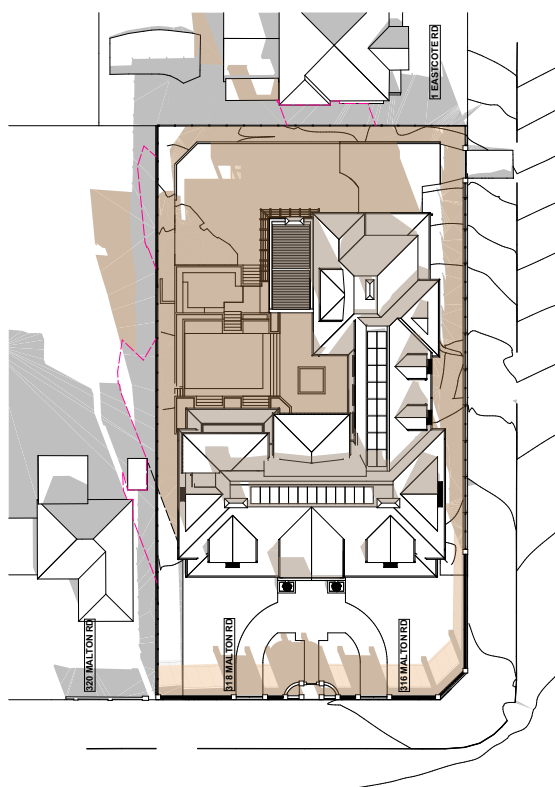


ATTACHMENT 1 - ITEM 1

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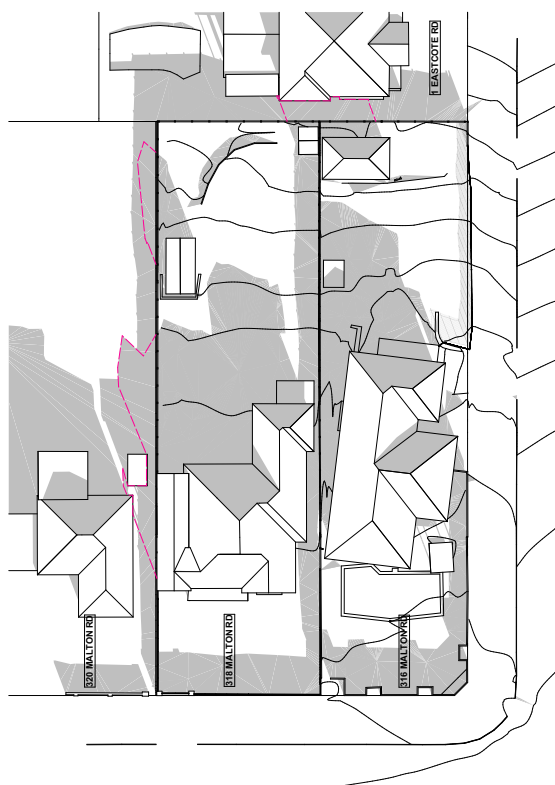
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ATTACHMENT 1 - ITEM 1



○ PROPOSED SHADOW DIAGRAM  
22ND JUNE 3PM

| LEGEND |  |
|--------|--|
|        | PROPOSED SHADOWS OF NEIGHBOURS & EXISTING FENCES                           |
|        | PROPOSED SHADOWS OF PROPOSED DWELLING & NEW FENCES                         |
|        | OUTLINE OF 316 & 318 MALTON RD EXISTING SHADOWS ON NEIGHBOURING PROPERTIES |



○ EXISTING SHADOW DIAGRAM  
22ND JUNE 3PM

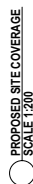
| LEGEND |  |
|--------|--|
|        | EXISTING SHADOWS   |
|        | OUTLINE OF 316 & 318 MALTON RD EXISTING SHADOWS ON NEIGHBOURING PROPERTIES |

|  |   |   |                               |  |                           |                              |                           |                 |                           |                      |
|--|---|---|-------------------------------|--|---------------------------|------------------------------|---------------------------|-----------------|---------------------------|----------------------|
| <b>ARCHITECT</b><br><b>DAVID WHITE ARCHITECTS PTY LTD</b><br>3 WINDALLA CRESCENT (SUITE 2) BERRIGEE PT 2114<br>NSW 2146<br>P 02 9460 8000<br>E david@dwarchitects.com.au | <b>NOTES</b><br>ALL INFORMATION, INCLUDING ANY PHOTOGRAPHS, DRAWINGS, AND/OR ANY OTHER INFORMATION, IS PROVIDED FOR YOUR INFORMATION ONLY AND IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN PERMISSION OF DAVID WHITE ARCHITECTS PTY LTD.<br>THE INFORMATION IS PROVIDED AS IS, WITHOUT WARRANTY, AND IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN PERMISSION OF DAVID WHITE ARCHITECTS PTY LTD. | <b>PROJECT</b><br>PROPOSED NEW HOUSE<br>316 & 318 MALTON RD NORTH RIPPINGS NSW 2121 AUSTRALIA | <b>CLIENT</b><br>MS. B. LIGHT |  | <b>DATE</b><br>21/06/2025 | <b>PROJECT NO.</b><br>DA-902 | <b>DATE</b><br>21/06/2025 | <b>BY</b><br>DW | <b>DATE</b><br>21/06/2025 | <b>REVISION</b><br>D |
|  |   |   |                               |  |                           |                              |                           |                 |                           |                      |

# ATTACHMENT 1 - ITEM 1







| SITE COVERAGE CALCULATIONS |                        |
|----------------------------|------------------------|
| SITE AREA                  | = 2219m <sup>2</sup>   |
| TOTAL SITE COVERAGE        | = 685.43m <sup>2</sup> |

(Site Coverage means the proportion of a site area covered by buildings. Unenclosed balconies, decks, pergolas and the like are not included. Basements, carvies and awnings are not included)

3.1.1 h

| HORNSBY COUNCIL SITE COVERAGE REQUIREMENTS |                        |
|--|------------------------|
| MAXIMUM SITE COVERAGE (30%)                | = 665.70m <sup>2</sup> |
| UNDER MAXIMUM BY                           | = 0.27m <sup>2</sup>   |
| COMPLIANCE:                                | YES                    |

[illegible]

# ATTACHMENT 1 - ITEM 1



EXISTING MALTON RD STREET VIEW



PROPOSED MALTON RD STREET VIEW



PROPOSED MALTON RD STREET VIEW (TREES GHOSTED)

NOTE: PHOTOMONTAGE VIEWS BY PODGROUP

|  |   |  |  |  |                      |  |                   |  |
|--|---|--|--|--|----------------------|--|-------------------|--|
| ARCHITECT<br>DAVID WHITE ARCHITECTS PTY LTD<br>3 WINDGALLA CRESCENT (SUITE 2) BIRCHMOUNT PT 2111<br>TEL 02 9461 8040<br>E DAVID@DWAARCHITECTS.COM.AU | NOTES<br>ALL INFORMATION, INCLUDING ANY PHOTOGRAPHY, IS FOR INFORMATION ONLY AND DOES NOT REPRESENT A COMMITMENT OR OBLIGATION BY DWA ARCHITECTS PTY LTD. ANY INFORMATION PROVIDED BY CLIENT IS TO BE TAKEN AS IS AND WITHOUT WARRANTY. DWA ARCHITECTS PTY LTD. IS NOT RESPONSIBLE FOR ANY INACCURACIES OR OMISSIONS IN THE INFORMATION PROVIDED BY CLIENT. ANY INFORMATION PROVIDED BY CLIENT IS TO BE TAKEN AS IS AND WITHOUT WARRANTY. DWA ARCHITECTS PTY LTD. IS NOT RESPONSIBLE FOR ANY INACCURACIES OR OMISSIONS IN THE INFORMATION PROVIDED BY CLIENT. |  | PROJECT<br>PROPOSED NEW HOUSE<br>31618 MALTON RD NORTH EPPING NSW 2121 AUSTRALIA |  | DATE<br>MS. B. LIGHT |  | DATE<br>DA-990    |  |
|  | DRAWING<br>DA-990   |  | DRAWING<br>DA-990  |  | DRAWING<br>DA-990    |  | DRAWING<br>DA-990 |  |

# ATTACHMENT 1 - ITEM 1





EXISTING EASTCOTE RD STREET VIEW



PROPOSED EASTCOTE RD STREET VIEW



PROPOSED EASTCOTE RD STREET VIEW (TREES GHOSTED)

NOTE: PHOTOMONTAGE VIEWS BY PODGROUP

|  |   |  |  |                        |   |  |           |
|--|---|--|--|------------------------|---|--|-----------|
| ARCHITECT<br>DAVID WHITE ARCHITECTS PTY LTD<br>3 WINDGALLA CRESCENT (SUITE 2) BIRCHMOUNT 2111<br>TEL: 02 9461 5000<br>E: david@dwarchitects.com.au | NOTES:<br>ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED AND NOT FOR RELEASE TO THE PUBLIC<br>UNLESS OTHERWISE SPECIFIED<br>THIS DOCUMENT IS THE PROPERTY OF DAVID WHITE ARCHITECTS PTY LTD<br>IT IS TO BE USED ONLY FOR THE PURPOSES SPECIFIED IN THE COVER SHEET<br>IT IS TO BE DESTROYED WHEN NO LONGER REQUIRED<br>DAVID WHITE ARCHITECTS PTY LTD |  | PROJECT<br>PROPOSED NEW HOUSE<br>31618 SALTON RD NORTH RIPPON NSW 2121 AUSTRALIA | CLIENT<br>MS. B. LIGHT | DATE OF PHOTO<br>PHOTOMONTAGE VIEWS FROM EASTCOTE RD<br>DA-9071<br>DATE OF PHOTO<br>DA-9071 |  | FILE<br>D |
|  | DRAWN<br>DW   |  |  |                        | CHECKED<br>DW   |  |           |

# ATTACHMENT 1 - ITEM 1

316-318 Malton Road, North Epping

**316-318 MALTON ROAD, NORTH EPPING  
CONSTRUCTION OF A NEW DWELLING HOUSE**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM  
HEIGHT OF BUILDING CONTROL AS DETAILED IN CLAUSE 4.3 OF THE  
HORNSBY ENVIRONMENTAL PLAN 2013**

**For:** Construction of a New Dwelling House  
**At:** 316-318 Malton Road, North Epping  
**Applicant:** Ms B. Light

## **1.0 Introduction**

This written request is made pursuant to the provisions of Clause 4.6 of Hornsby Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum height of building development standard as described in Clause 4.3 of the Hornsby Local Environmental Plan 2013 (HLEP 2013).

## **2.0 Background**

Clause 4.3 of HLEP sets out the maximum height of building standard as follows:

- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The Height of Building Map specifies a maximum height of 8.5m.

The proposed dwelling house provides for a maximum height of 8.82m. This is a non-compliance of 320mm or a variation of 3.7%.

The proposal is considered acceptable and as discussed further within this request, there are sufficient environmental planning grounds to justify contravening the development standard.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

### **Is Clause 4.3 of the LEP a development standard?**

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act means standards fixed in respect of an aspect of the development and includes:

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



316-318 Malton Road, North Epping

- (b) Clause 4.3 relates to the maximum height of building. Accordingly, Clause 4.3 is a development standard.

### 3.0 Purpose of Clause 4.6

The Hornsby Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the Standard Instrument should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been relied on in this request for a variation to the development standard.

### 4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

- (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 North Sydney 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:

316-318 Malton Road, North Epping

*"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 the LEP 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.*

Clause 4.3 (the Height of Building Control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of the LEP 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.*

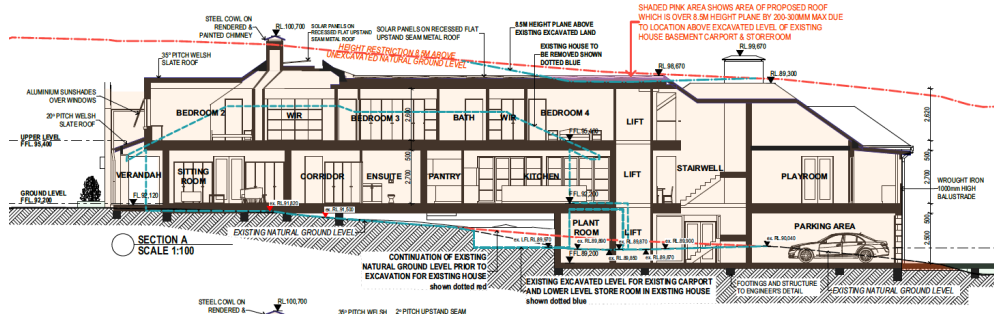
The proposed development does not comply with the maximum height of building development standard pursuant to Clause 4.3 of HLEP which specifies a maximum height of building of 8.5m in this area.

The proposed dwelling house provides for a maximum height of 8.82m. This is a non-compliance of 320mm or a variation of 3.7%. It is noted that when measured from natural ground level, the proposal would comply with the 8.5m control.

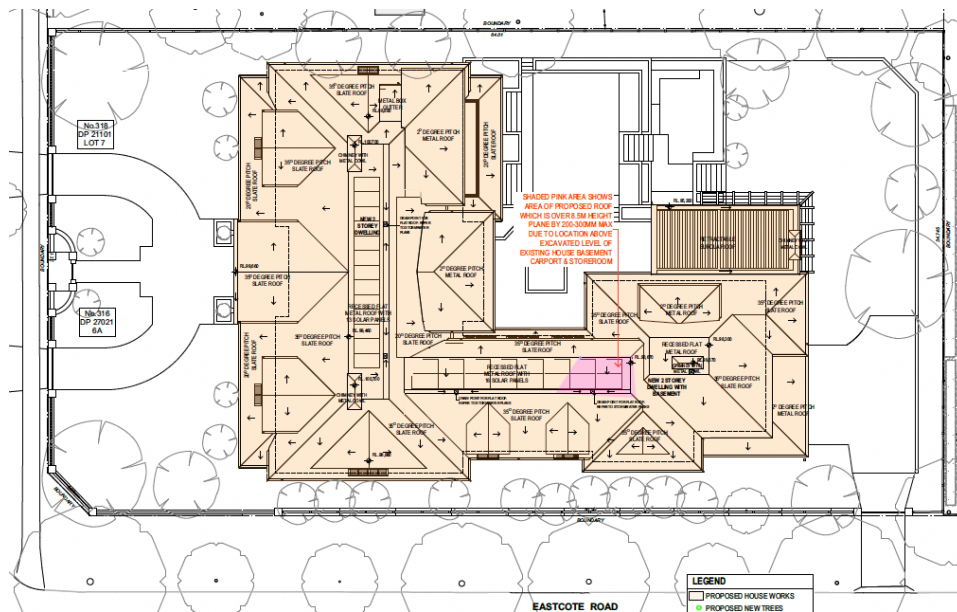
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The non-compliance with the height of building control is a result of the previous excavation of site which was carried out to accommodate the lower level carport structure. The area of non-compliance is restricted to that area that was previously excavated, with the proposal complying with the height control if measured from natural ground level as depicted in the sections below.

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.



Existing section depicting existing and natural ground level



Small area of non-compliance depicted in roof plan above

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View looking east from existing drive from Eastcote Road depicting the excavated area



View of rear of existing dwelling looking north depicting the excavated area

Clause 4.6(4) requires the consent authority to keep a record of its assessment carried out.

Clause 4.6(5) has been repealed. Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) has been repealed. Clause 4.6(8) is only relevant so as to note that it does not exclude Clause 4.3 of the LEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*

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*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The development will provide for a construction of a new dwelling house on site. The non-compliance is a direct result of the previous excavation to provide for a carport. When measured from natural ground level, the proposal would comply with the development standard. It is considered that allowing for flexibility in this instance is reasonable and that if measured from natural ground level (prior to excavation occurring) the proposed dwelling would comply with the maximum height control. The area is limited to that portion of the dwelling over the previously excavated area. The area of non-compliance is the ridge of the upper level attic rooms. This element is provided with ample setback to the Eastcote Road frontage and will not result in unreasonable bulk or scale. The non-compliance results in a development that is compatible with the existing surrounding development in this portion of Eastcote Road and which is consistent with the stated Objectives of the R2 Low Density Residential Zone, which are noted as:

- *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.*

#### **5.0 The Nature and Extent of the Variation**

- 5.1 This request seeks a variation to the maximum height of building standard contained in Clause 4.3 of HLEP.
- 5.2 Clause 4.3 of HLEP specifies a maximum building height of 8.5m in this area of Hornsby.
- 5.3 The proposal provides for the construction of a new dwelling house. The works proposed result in a development that is compatible with the existing surrounding development in this portion of Malton Road and Eastcote Road, particularly having regard to the large site area. The non-compliance is a result only of the previous excavation on site and when measured from natural ground level, the proposal complies with the height control.



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## 6.0 Relevant Caselaw

6.1 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 Pittwater 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 Pittwater 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 Pittwater 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 Pittwater 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 Pittwater 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 Pittwater 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 Pittwater 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.*



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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.*
- 6.2 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 R2 zone?

## 7.0. Request for Variation

### 7.1 Is compliance with Clause 4.3 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the maximum height of building development standard, as outlined under Clause 4.3, and reasoning why compliance is unreasonable or unnecessary, is set out below:
  - (a) *to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*

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The proposed new dwelling house has been designed to present predominantly as a two storey dwelling. The upper level provides for rooms within the roof form, with the dwelling presenting as a single storey building with attic rooms when viewed from Malton Road. The resultant dwelling is appropriate having regard to the size of the site, being 2,219m<sup>2</sup> which is significantly larger than the average allotment size in the locality and well in excess of the minimum allotment size specified in the Local Environmental Plan. It is therefore considered that the height of the building is appropriate for the site.

The non-compliance with the height standard is minimal, being only 320mm. The area of non-compliance is confined to a small portion of the roof form located with ample setback to all boundaries. Amendment to the plan to require strict compliance would not be discernible from the public domain or the adjoining properties nor would it serve any benefit. The non-compliance is a direct result of the previous excavation of the site to accommodate the existing carport. When measured from natural ground level, the proposed dwelling would comply with the maximum building height control.

The area of non-compliance does not result in any overshadowing to adjoining residential zoned land.

The proposal provides for a single dwelling house on a large allotment of land and as such will not have any impact on the infrastructure capacity of the locality.

The proposal achieves this objective.

### **7.3 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.*

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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].*

There are sufficient environmental planning grounds to justify contravening the development standard. The site is constrained by previous excavation on site which results in the non-compliance. The proposed development is consistent with the objectives of the zone and objectives of the building height control. The non-compliance does not result in any adverse impacts on the adjoining properties. The non-compliance does not result in any loss of views. The area of exceedance does not contribute to visual bulk.

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

- The area of non-compliance relates to only a small portion of the roof form of the new dwelling and is a direct result of the previous excavation on site. If measured from natural ground level the proposal would comply with the height controls. The area of non-compliance is provided with sufficient setback to all boundaries of the site and is designed to complement the character of the locality. The proposal incorporates rooms within the roof form and well-articulated facades. Therefore, the proposal will promote good design (cl 1.3(g)).
- The proposal provides for an appropriate bulk and scale when viewed from the public domain and surrounding properties and therefore strict compliance is therefore unreasonable.

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Further, the proposed works do not have any detrimental impact on the adjoining properties for the following reasons:

- The proposed dwelling has been designed with appropriate setbacks to all boundaries of the site. The non-compliance relates to a small portion of the roof form which is a direct result of the previous excavation on site and which does not impact on privacy of the adjoining properties.
- Shadow diagrams have been provided indicating that all adjoining properties receive appropriate solar access. The very minor non-compliance does not contribute to any shadowing to adjoining properties.
- The non-compliance with the building height control does not result in any loss of privacy or amenity to the adjoining properties.
- The resultant dwelling is compatible in terms of bulk and scale with the existing surrounding dwelling, particularly having regard to the large allotment size and well-articulated facades.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the slope of the site and previous excavation. Further, the resultant development and in particular the very minor non-compliance with the building height standard, is compatible with the existing surrounding development.

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.*

The area of non-compliance does not result in any detrimental impact and is a direct result of the previous excavation on site. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

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**7.4 Is the proposed development in the public interest because it is consistent with the objectives of Clause 4.3 and the objectives of the R2 Low Density Residential Zone?**

- (a) Section 4.2 of this written request suggests the 1<sup>st</sup> test in Wehbe is made good by the development.
- (b) Each of the objectives of the R2 Low Density Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ also found that “*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone*”.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the variation of to the height of building control, the resultant building as proposed will be consistent with the individual Objectives of the R2 Low Density Residential Zone for the following reasons:

- ***To provide for the housing needs of the community within a low density residential environment.***

The proposal results in a single detached dwelling house on a large allotment of land which is consistent with this objective. The very non-compliance relates to a small portion of the roof form and does not detract from the low density residential environment.

- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

This objective is not relative to the proposal.

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Accordingly, it is considered that the site may be further developed with a variation to the prescribed height of building control, whilst maintaining consistency with the zone objectives.

**7.5 Has the Council considered the matters in clause 4.6(5) of HLEP?**

(a) Clause 4.6(5) has been repealed.

**8.0 Conclusion**

This development proposed a departure from the maximum height of building development standard, with the proposed works providing for a maximum height of 8.82m.

The non-compliance is a result of the previous excavation on site. The proposal when measured from natural ground level complies with the maximum building height development standard.

The extent of the variation to the height of building control does not result in any significant impact on the amenity, views and outlook for the neighbouring properties.

This written request to vary to the maximum height of building standard specified in Clause 4.3 of the Hornsby LEP 2013 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum height of building control would be unreasonable and unnecessary in the circumstances of this case.

**Natalie Nolan**  
*Town Planner*



