

**NSLPP MEETING HELD ON 07/09/2022****Attachments:**

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Variation Statement

**ADDRESS/WARD:** 4F Whaling Road, North Sydney (C)**APPLICATION No:** DA 169/22**PROPOSAL:** External alterations and additions to existing dwelling and associated works.**PLANS REF:**

No.	Issue	Title	Drawn by	Date	Received
A1.01	E	Site Plan	CVMA Architects	16/03/2022	06/06/2022
A1.02	E	Demolishing Plans	CVMA Architects	16/03/2022	06/06/2022
A1.03	E	Ground Floor Plan	CVMA Architects	16/03/2022	06/06/2022
A1.04	E	Level 1 Floor Plan	CVMA Architects	16/03/2022	06/06/2022
A1.05	C	Roof Plan	CVMA Architects	28/04/2022	06/06/2022
A2.01	C	East Elevation	CVMA Architects	28/04/2022	06/06/2022
A2.02	C	Elevations	CVMA Architects	28/04/2022	06/06/2022
A3.01	B	Sections	CVMA Architects	16/03/2022	06/06/2022
A5.01	C	External Materials and Finishes	CVMA Architects	29/03/2022	06/06/2022

**OWNER:** Ayako Harrison; Strata Plan 9924**APPLICANT:** House to Home Finishes Pty Ltd**AUTHOR:** Andrew Beveridge, Assessment Officer**DATE OF REPORT:** 23 August 2022**DATE LODGED:** 6 June 2022**RECOMMENDATION:** Approval

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## EXECUTIVE SUMMARY

This development application seeks NSLPP approval for alterations and additions to the existing Unit 4F within the multi-dwelling development at 4 Whaling Road, North Sydney, including the addition of new windows with the roof and the extension of internal floor space by reducing the footprint of existing balconies and patios.

**This application is reported to North Sydney Local Planning Panel for determination because the proposed works breach the building height limit by greater than 10% and results in additional floorspace, requiring determination by the panel.**

The existing building has a maximum variance of 1.3m (15.3%) with the 8.5m height limit but the proposal will not result in any increase in the overall height of the existing building, the highest elements of which will have a variance of 1.1m (12.9%). However, the proposed alterations will also result in a floor space increase of approximately 12.6m<sup>2</sup> (19.8%) at ground floor level, and 12.82m<sup>2</sup> (20.9%) at first floor level, resulting in a total floorspace increase of 25.42m<sup>2</sup> (20.3%). Therefore, as a result of the increase in floorspace with an existing height variance over 10%, the proposal is referred to the Panel for determination.

The applicant has submitted a written request seeking a variation to the building height development standard in accordance with Clause 4.6 of NSLEP 2013. The applicant's submission has been considered with reference to the Land and Environment Court's decision in *Wehbe v Pittwater Council [2007] NSWLEC 827* in order to justify the proposed variation. The applicant's Clause 4.6 is considered to be satisfactory given the site circumstances and on the basis that it will not have a significant impact upon the amenity of adjoining properties or the character of the conservation area.

Notification of the proposal has attracted no submissions and the assessment has considered the performance of the application against Council's planning requirements. The impacts of the overall development upon the Whaling Road Conservation Area have also been assessed and, subject to satisfying recommended conditions, was found to be generally acceptable on the basis that the works will maintain a sympathetic scale and will match the built form character of the existing building.

Having regard for the potential impacts upon the amenity of adjoining properties and the conservation area, the development application is considered to be satisfactory and is recommended for **approval**.







**Figure 3 Proposed southern front (Whaling Road) elevation**

### **STATUTORY CONTROLS**

North Sydney Local Environmental Plan 2013 (NSLEP 2013)

- Zoning – R2 Low Density Residential
- Item of Heritage – No
- In Vicinity of Item of Heritage – Yes (Nos. 1-15 Whaling Rd, I1007-I1012)
- Conservation Area – Yes (Whaling Road Conservation Area, CA21)

Environmental Planning & Assessment Act 1979

SEPP (Biodiversity and Conservation) 2021

- Chapter 2 – Vegetation in non-rural areas
- Chapter 10 – Sydney Harbour Catchment

SEPP (Resilience and Hazards) 2021

- Chapter 4 – Remediation of Land

SEPP (Building Sustainability Index: BASIX) 2004

Local Development

### **POLICY CONTROLS**

North Sydney Development Control Plan 2013 (NSDCP 2013)

- Appendix 1 – Heritage: Uncharacteristic Item

North Sydney Local Infrastructure Contributions Plan 2020

### **DESCRIPTION OF LOCALITY**

The subject site is legally described as Strata Plan 9924 and is known as Unit 4F within 4 Whaling Road, North Sydney. The property is a large rectangular lot located on the northern side of Whaling Road between Little Alfred Street to the west and Neutral Street to the east. The site contains a two-storey multi-dwelling town house development with 7 units and basement parking in the Late Twentieth Century Sydney Regional style built in 1974.

The two-storey subject Unit 4F (including the basement parking space – 48m<sup>2</sup>) has a total area of 144m<sup>2</sup> (total site area 1237m<sup>2</sup>) and is located within the south-eastern corner of the building, with ground level terraces and first floor balconies facing the southern and eastern boundaries of the site. The subject site is located in a residential locality comprising a range of building types and heights. Surrounding development is primarily characterised by a combination of single dwellings of mainly two storeys in height together with a range of residential flat buildings ranging from 3-6 storeys alongside some commercial development to the west on Alfred Street. Photos of the site and surrounding properties are provided below.



Figure 4 Aerial photograph of subject site (outlined yellow/subject unit outlined red) and Surrounding development

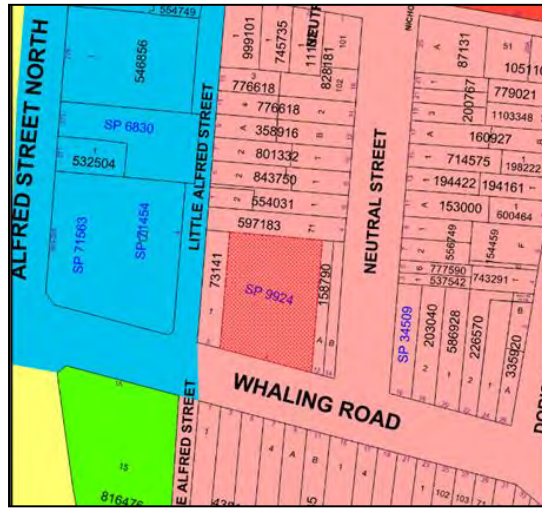


Figure 5. NSLEP Zoning map with the subject site hatched red in the R2 Zone

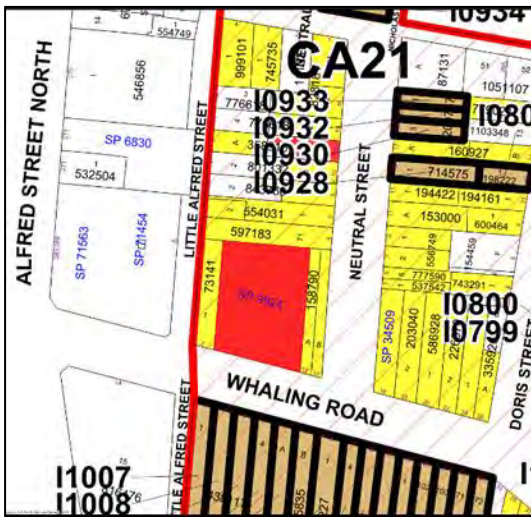


Figure 6 NSLEP and NSDCP Heritage map with the Subject site marked in red



Figure 7 View of the rear of the subject site, showing the existing balcony structure



Figure 8 View looking north-east over the roofs of Nos 12-14 Whaling Road From the existing east-facing first floor balcony

## RELEVANT HISTORY

**Building Application No. 74/103** (lodged 5 March 1974) for the construction of a development comprising seven four-bedroom townhouses, was approved by Council on 28 May 1974. RSP Holdings Pty Ltd/Ron Pritchard of Penshurst Street, Willoughby, owner/builder. Cost of works, \$140,000.

**Development Application No. 1371/95** (lodged 25 July 1995) for the replacement of the existing tiled roof with new corrugated metal roofing to all existing townhouses was approved by Council on 22 August 1995. Building works were subsequently approved under **Building Application No. 95/448** (lodged 25 July 1995) on 11 September 1995.

**Development Application No. 258/98** and **Building Application No. 98/403** (lodged 29 May 1998) for alterations and additions to the existing building including the addition of a security gate to the basement parking area, were approved by Council on 29 September 1998.

**Complying Development Certificate No. 60/12** for internal alterations including bathroom refurbishments and addition storage to Unit 4A was approved on 11 May 2012.

## Current Application History

A brief history of the current application is summarised below: -

Date	Action
6 June 2022	The application was lodged with Council
14 June 2022	Council's Development Review Panel requested additional information, including a Clause 4.6 Statement addressing the building height breach, and a statement addressing existing use rights.
15 June 2022	The subject application was notified to adjoining properties and the Milson Precinct Committee (Anderson Precinct Committee being inactive) between 24 June 2022 and 8 July 2022. No submissions were received.
20 July 2022	A site inspection was undertaken by Council Officers.
26 July 2022	The Clause 4.6 Variation statement was provided to Council.
17 August 2022	The Existing Use Rights statement was provided to Council.

## REFERRALS

### Building

The proposal was reviewed by Council's Building Surveyor, who provided the following comments:

*The development application seeks approval for alterations and additions to an existing 3 storey townhouse within a residential complex. The building is classified by the NCC BCA 2019 as a class 2 and 7a building of Type A construction.*

*A search of Council's records revealed there is no Fire Safety Schedule for the building and no Annual Fire Safety Statement has ever been submitted for the premises. Additionally, no recent upgrade of the building in terms of fire safety has occurred. The premises will be applied to Council's Fire Safety Upgrade Program.*

*The application is supported by a BCA Compliance Report dated 29 March 2022 prepared by Credwell Consulting. The BCA Report concludes that the proposed development complies or can comply with the NCC BCA.*

*Given the above and considering the proposed building works represent less than 50% buildings total volume no upgrade pursuant to Clause 64 of the Environmental Planning & Assessment Regulations 2021 is required. A detailed assessment of compliance with the Building Code of Australia 2019 will be undertaken by an appropriately registered building certifier at the Construction Certificate Stage of the proposed development.*

*Additionally, a Fire Safety Schedule is to be prepared by the certifier and accompany the Construction Certificate. Generally, the proposed works are able to comply with the requirements of the NCC – BCA 2019, Volume 1.*

The comments above are noted and the standard condition for NCC/BCA compliance is recommended (see condition **F1**).

### **Heritage**

Council's Conservation Planner has reviewed the proposal and raised no objection nor recommended any special conditions, providing the following comments:

*The subject property is an Uncharacteristic Item located within the Whaling Road Conservation Area. The late twentieth century townhouse development has little heritage significance, and the proposed changes will have a negligible impact upon the heritage significance and setting of the nearby heritage items located at 1 to 31 Whaling Road (opposite) or to the character and significance of the conservation area. Clause 5.10 of NSLEP 2013 and Part B Section 13 of NSDCP 2013 are therefore considered to be satisfied. No heritage conditions are required.*

### **Landscaping**

The proposal was referred to Council's Landscape Development Officer, who provided the following comments:

*Conditions: 1 x Stenocarpus sinuatus (6x5m) planted in the council verge in front of Unit 4F Whaling Road shall be retained and protected in accordance with AS4970, 1.8m high steel mesh tree protection fencing shall be installed, and a tree bond of \$4,000 shall be applied. 1 x Callistemon sp. planted in the small garden bed to the south of the front wall of Unit 4G Whaling Road shall be retained and protected in accordance with AS4970, branch protection shall be installed to branches overhanging Unit 4F where required -Existing planting in the small garden bed to the south of the front wall of Unit 4F Whaling Road shall be retained and protected in accordance with AS4970.*

Consequently, several conditions have been recommended to ensure the retention and survival of significant trees (see conditions **C9, C10, D2, D1, D3, E9, and G6**).



## **SUBMISSIONS**

On 15 June 2022, the subject application was notified to adjoining properties and the Milson Precinct Committee (Anderson Precinct Committee being inactive) between 24 June 2022 and 8 July 2022. No submissions were received.

## **CONSIDERATION**

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, are assessed under the following headings:

### **SEPP (Biodiversity and Conservation) 2021 – Chapter 2 – Vegetation in non-rural areas**

On 1 March 2022, the *SEPP (Biodiversity and Conservation) 2021* came into effect, consolidating several planning policies to form chapters within the new SEPP without significant amendment. Under Chapter 2 of this SEPP, which comprises the former *SEPP (Vegetation in Non-Rural Areas) 2017*, the proposed development would not require the removal of any significant vegetation defined under this SEPP or have any impact upon bushland areas.

### **SEPP (Biodiversity and Conservation) 2021 – Chapter 10 – Sydney Harbour Catchment**

Under Chapter 10 of this SEPP, which since 1 March 2022 comprises the former *SREP (Sydney Harbour Catchment) 2005*, the subject site is not highly visible from Sydney Harbour or its foreshores. The proposal, which is for internal and external works, therefore would not impact upon the scenic, ecological, or water quality of Sydney Harbour or its waterways and is considered acceptable with regard to the above SEPP.

### **SEPP (Resilience and Hazards) 2021 – Chapter 4 – Remediation of Land**

On 1 March 2022, the *SEPP (Resilience and Hazards) 2021* came into effect, consolidating several planning policies to form chapters within the new SEPP without significant amendment. Chapter 4 of this SEPP comprises the former *SEPP 55 – Remediation of Land*, and requires Council to consider the likelihood of land contamination and any remediation necessary to rehabilitate the site. Council's records indicate that the site has previously been used for residential development since its original subdivision and as such is unlikely to contain any contamination. Therefore, the requirements of the above SEPP have been satisfactorily addressed.

### **SEPP (Building Sustainability Index: BASIX) 2004**

The applicant has submitted a valid BASIX Certificate (A457534, dated 28 April 2022) to satisfy the requirements of the above SEPP.

### **North Sydney Local Environmental Plan 2013**

#### **Permissibility – Existing use rights**

The subject site is zoned R2 Low Density Residential in accordance with the NSLEP 2013. Multi-dwelling housing developments such as the subject site, however, are not a permissible form of development in an R2 Low Density Zone. Nevertheless, the subject site operates under existing use rights pursuant to sections 4.65-4.70 of the *Environmental Planning and Assessment Act 1979* (EPAA 1979).

Council granted consent for the construction of the existing multi-dwelling housing development of eight units under Building Application No. 74/103 on 28 May 1974. Council has also approved previous alterations and additions to the subject multi-dwelling housing development in 1995 and 1998 under previous planning instruments. Having regard to previous approvals where the proposals were permissible forms of development but now prohibited under NSLEP 2013, and the fact that the subject site has been lawfully occupied as multi-dwelling housing since at least 1974, it can be concluded that the site benefits from “Existing Use Rights” under the EPAA 1979 (as amended).

The subject application is therefore assessed under the relevant clauses in the EPAA 1979 below:

**4.66 Continuance of and limitations on existing use**

- 1) Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.**
- 2) Nothing in subsection (1) authorises:**
  - (a) any alteration or extension to or rebuilding of a building or work, or**
  - (b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or**
  - (c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or**
  - (d) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 80A (1) (b), or**
  - (e) the continuance of the use therein mentioned where that use is abandoned.**
- 3) Without limiting the generality of subsection (2) (e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually soused for a continuous period of 12 months.**

A search of Council’s records has revealed that the subject multi-dwelling housing development has been in continuous use for this purpose since 1974 and has not been abandoned for any length of time.

Sections 163-165 of the *Environmental Planning and Assessment Regulations 2021* are relevant to the proposed development because they set out how development is allowed under Part 7 (Existing uses). The relevant matters for consideration for existing uses and the consent requirements for alteration and additions to an existing use are considered below.

**Section 163 – Certain development allowed**

**(1) An existing use may, subject to this Part –**

- (a) be enlarged, expanded, or intensified, or**
- (b) be altered or extended, or**
- (c) be rebuilt, or**
- (d) be changed to another use, but only if the other use is a use that may be carried out with or without development consent under the Act,**

**Comment:** The proposal involves alterations and additions to an existing multi-dwelling housing development that is permitted by Section 163(1) of the EP&A Regulations 2021 for the reasons stated throughout this report.

***Section 164 – Enlargement, expansion, and intensification of existing uses***

***(1) Development consent is required for any enlargement, expansion or intensification of an existing use.***

***(2) The enlargement, expansion or intensification must be—***

***(a) for the existing use and for no other use, and***

***(b) carried out only on the land on which the existing use was carried out immediately before the relevant day.***

**Comment:** With regard to Section 164(2), the proposal for alterations and additions to the existing multi-dwelling housing development satisfies the requirements for this clause because the proposal would be carried out on the land to which the existing use was carried out and no new uses would be introduced within the land affected by the proposal.

***Section 165 – Alterations of buildings and works***

***(1) Development consent is required for an alteration of a building or work used for an existing use.***

***(2) The alteration must be –***

***(a) for the existing use of the building or work and for no other use, and***

***(b) erected or carried out only on the land on which the building or work was erected or carried out immediately before the relevant day.***

**Comment:** The proposed works would be for the existing residential use of the building and there would no other uses incorporated in the building.

***Land and Environment Court Planning Principles – Existing Use Assessments and Prescriptive Requirements***

The decision of Chief Judge Preston in *Saffioti v Kiama Council* [2019] NSWLEC 57 outlined that the development standards would not derogate from the incorporated provisions of existing use rights and therefore would not prevent their operation. The decisions effectively overturned the Planning Principle established in *Fodor Investments v Hornsby Shire Council* [2005] NSWLEC 71. On this basis, the proposed development should comply with any development standard or be subject to a written request to vary the development standard pursuant to clause 4.6 in NSLEP 2013. In addition, it also concluded that the proposed development should be assessed against the relevant DCP provisions as a DCP is not an environmental planning instrument and therefore could not derogate from the incorporated provisions.

Therefore, any future development on the subject site must have regard to the relevant development standards and controls as contained in the LEP and DCP which are assessed below. An assessment in accordance with s4.15 of the Act, including those in s 4.15(1)(a)(i) which require an assessment against the provisions of any environmental planning instrument, such as the LEP, is contained within this report.

### Clause 4.3 – Height

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Section	Height	Control	Complies
Clause 4.3 – Heights of Building	<b>Existing:</b> 9.8m <b>Proposed:</b> 9.8m	8.5m	No

The subject site has a height limit of 8.5m pursuant to clause 4.3(2). The highest proposed external elements, being the new roof skylights would have an approximate height of 9.6m, which results in an existing variance with the height control of 1.3m (15.3%), with the proposed works having a variance of 1.1m or 12.9%. However, while it is noted that there will be no change to the overall height of the existing building, the proposal requires a variation of the Development Standard in clause 4.3 in NSLEP 2013 (see discussion below).

### Clause 4.6 – Exceptions to development standards

The applicant has provided a written request to vary the development standard for height.

#### Extent of the Variation

The proposed works would exceed the maximum permitted height. The existing and proposed heights of the building have a maximum variation of 1.3m (15.3%) from the development standard.

#### Clause 4.6(3)(a) Is compliance with the development standard unreasonable and unnecessary in the circumstances of the case?

For reference the objectives of the development standard are as follows:

Clause 4.3(1) of North Sydney Local Environmental Plan 2013

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

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) to promote the retention and, if appropriate, sharing of existing views,*
- (c) to maintain solar access to existing dwellings, public reserves, and streets, and to promote solar access for future development,*
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) to ensure compatibility between development, particularly at zone boundaries,*
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*
- (g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.”*

The applicant's written request relies upon *Webhe Test 1* to demonstrate that compliance with the development standard is unreasonable and unnecessary in this instance as the objectives of the development standard would be achieved notwithstanding the non-compliance with the development standard. The development is considered below, having regard to the objectives of the development standard.

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

The proposed works to the existing building are contained within the existing building footprint above ground level and would not alter the development's overall relationship to the topography, nor require any excavation works.

***(1)(b) to promote the retention and, if appropriate, sharing of existing views,***

There would be no view loss for adjoining dwellings given that the works would be contained within the existing footprint and there would be no significant additional height to the building.

***(1)(c) to maintain solar access to existing dwellings, public reserves, and streets, and to promote solar access for future development,***

The levels of solar access for nearby properties will not change as a result of the proposal. The additional shadows cast will fall within existing shadows and the subject Unit.

***(1)(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,***

The new windows above the height limit on the southern and eastern roof planes will be clerestory style windows for the purpose of additional light and ventilation to the first floor bedrooms with a sill height of approximately 2.6m above the floor level. Consequently, these windows will have no privacy impact.

The new stacking-style sliding doors to the first floor bedrooms will be continued within the existing openings and, by moving closer to the property boundaries by 1m, will reduce the trafficable space of the first floor balconies, which is likely to have a positive impact upon the privacy of nearby properties.

***(1)(e) to ensure compatibility between development, particularly at zone boundaries,***

The site is located within the R2 Low Density Residential zone and is surrounded by buildings within the R2 zone. The proposed works will retain the existing footprint of the building, with the expanded floorspace achieved by reducing the footprint of existing patios and balconies. It is considered that the proposed alterations to the building are unlikely to result in a development that is incompatible with the R2 zone or any nearby zones.

***(1)(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.***

The proposed scale and density of the development is appropriate for the site and does not result in significant non-compliances with Council's controls. While the proposal involves works to a building with an existing non-compliance in building height, the overall development is compatible with the existing building and surrounding buildings.

***(1)(g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.***

The proposal involves works to an existing two-storey building, which is compatible with surrounding buildings in both the existing multi-dwelling development and within nearby residential areas.

**Clause 4.6(3)(b) Are there sufficient environmental planning grounds to justify the variation**

The applicant has provided the following grounds for the variation to the permissible height limit:

*The assessment above demonstrates that the resultant environmental impacts of the proposal will be satisfactory. The proposed development relates to alterations and additions to an existing townhouse. The existing number of storeys or finished floor levels will not be impacted by the proposed development.*

*It is notable that the proposed works sought are below the existing maximum building height of the dwelling, which exceeds the current numerical standard. As this variation has no impact on view corridors or results in additional overshadowing, it is considered a minor variation with no negative impact to adjoining properties or the streetscape.*

*Consequently, in this case, strict compliance with the development standard for height of buildings development standard of the NSLEP13 is unnecessary and unreasonable.*

The existing non-compliance with the height limit only relates to the works on the first-floor level and above and does not comprise the entirety of the proposed works. Furthermore, the amenity impacts of the development are considered to be minimal and compliant with Council's controls in Part B of NSDCP 2013. The proposed alterations to the existing building will not alter the existing height or scale of the building and have been designed to be sympathetic to the existing building, which is an uncharacteristic item within the conservation area. The proposal is therefore considered to be acceptable within the site circumstances, with no significant additional height, bulk, or scale, nor any significant adverse impacts to the amenity and privacy of neighbouring properties, and is considered a reasonable improvement to the existing building.

**Clause 4.6(4)(a)(ii) Applicant's written request**

The written request provided by the applicant adequately addresses the matters required by subclause (3) as discussed above.

**Clause 4.6(4)(a)(ii) Public Interest**

The proposed development would be in the public interest because it is consistent with the objectives of the development standard for height and the objectives of the zone as discussed above. It is also considered that the proposal does not result in any adverse impacts for the character of the surrounding area or the amenity of adjoining properties.

**Conclusion**

The applicant has submitted a written request pursuant to Clause 4.6 in NSLEP 2013. The written request has adequately addressed subclause (3) and, subject to satisfying conditions, is considered to be in the public interest because it is consistent with the relevant development standard and the objectives of the zone.

**Clause 5.10 – Heritage Conservation**

The subject site does not contain a heritage item and is not in the immediate vicinity of any heritage items. The subject site is however identified as an Uncharacteristic Item within the Whaling Road Conservation Area. The proposed works are considered to satisfy clause 5.10 of NSLEP 2013 in that the proposed works will have a low impact upon the significance and character of the conservation area. The proposed works are also consistent with the mid-Twentieth Century character and style of the existing building. The proposal is therefore acceptable in this regard.

**Clause 6.10 – Earthworks**

The proposal will not entail any excavation or earthworks and consequently will not have any adverse impacts upon the site’s drainage patterns, soil stability, neighbouring amenity or significant trees and vegetation. The works are therefore compliant in this regard.

**North Sydney Development Control Plan 2013**

<b>Part B Section 1- Residential Development</b>		
<i>Section</i>	<i>Complies</i>	<i>Comments</i>
<b>1.2 Social Amenity</b>		
<b>Population mix</b>	Yes	The proposed modifications will not alter the function of the 4-bedroom Unit 4F within the existing multi-dwelling development.
<b>Maintaining residential accommodation</b>		
<b>Affordable housing</b>		
<b>1.3 Environmental criteria</b>		
<b>Topography</b>	Yes	The proposed modifications will not result in the need for any excavation or earthworks that would impact upon the topography of the site.
<b>Properties adjoining bushland</b>	N/A	The site does not adjoin bushland and is not located within a bushland buffer zone.
<b>Properties with a foreshore building line</b>	N/A	The site does not include foreshore land.
<b>Views</b>	Yes	There would be no view loss for adjoining dwellings given that the works would be contained within the existing footprint and there would be no significant additional height to the building.
<b>Solar access</b>	Yes	The levels of solar access for nearby properties will not change as a result of the proposal. The additional shadows cast will fall within existing shadows and with the subject lot.

<b>Acoustic and Visual privacy</b>	Yes	<p>The new windows on the southern and eastern roof planes will be clerestory style windows for the purpose of additional light and ventilation to the first floor bedrooms with a sill height of approximately 2.6m above the floor level. Consequently, these windows will have no privacy impact.</p> <p>The new stacking-style sliding doors to the first floor bedrooms will be contained within the existing openings and, by moving closer to the property boundaries by 1m, will reduce the trafficable space of the first floor balconies, which is likely to have a positive impact upon the privacy of nearby properties.</p> <p>Similarly, the proposed bifold doors for the east-facing and south-facing ground floor terraced areas to accommodate the additional floor space that is 1m closer to the property boundaries, are unlikely to result in significant privacy impacts as the habitable use of these spaces will not change or intensify from the current arrangement.</p>
<b>1.4 Quality Built Form</b>		
<b>Context</b>	Yes	<p>The existing context of the dwelling as visible from Whaling Road and that of surrounding properties will not be significantly altered as a result of the proposed works due to its integration as part of the multi-dwelling development at No. 4 Whaling Road. The most visible change when viewed from the public domain context will be the additional clerestory style windows to the southern and eastern roof planes, and the expended footprint of the dwelling into the existing balconies at the first floor level. These changes are acceptable on the basis that the works are consistent with the style and character of the existing 1970s multi-dwelling development, which is an uncharacteristic item within the conservation area.</p>
<b>Streetscape</b>	Yes	<p>Bonds are recommended to protect Council's footpath and street trees.</p>
<b>Siting</b>	Yes	<p>The proposed works will not affect the siting of the building from the street.</p>
<b>Setbacks</b>	Yes	<p>The existing front, rear and side setbacks of the entire building will not be altered by this proposal. However, the first floor eastern side setback of Unit 4F will be reduced by 1m to match the side setback of Unit 4E to the north (3.01m), which is nevertheless compliant with the side setback control.</p>
<b>Form, massing &amp; scale</b>	Yes	<p>The proposed works are consistent with the built form, massing, and scale within the area by maintaining the two-storey scale of the existing multi-unit development.</p>
<b>Built form character</b>	Yes	<p>The proposal will maintain the existing mid-century building's overall character and style, which is nevertheless specified as uncharacteristic to the conservation area. As the works will not further detract from the existing building, its impact upon the conservation area is considered to be acceptable.</p>
<b>Dwelling entry</b>	N/A	<p>The existing dwelling entries from Whaling Road will remain unchanged.</p>
<b>Roofs</b>	Yes	<p>The additional clerestory style windows added to the existing pitched roof, and the new first floor level extensions added over the existing balconies, will have pitched roofs clad in metal to match the existing roof material. As a result, these additions are considered to be sympathetic to the existing roof typology of the surrounding area.</p>
<b>Dormers</b>	N/A	<p>While the proposed clerestory style windows on the southern and eastern roof planes have the appearance of dormer windows, this control does not strictly apply on the basis that these windows are for the purpose of additional light and ventilation of the First Floor bedrooms only, are not accessible (with a 2.6m sill height), and are not contained within an attic space.</p>



<b>Colours and materials</b>	Yes	The proposed colours and materials, subject to condition (see <b>Condition A4</b> ), are reflective of the surrounding area, and the materials and colours are sympathetic to the late Twentieth Century character of the subject property, and the character of the conservation area and surrounding properties.
<b>1.5 Quality urban environment</b>		
<b>High quality residential accommodation</b>	Yes	The proposed works would provide additional amenity for residents by expanding existing living areas and improving the functionality of the dwelling's floor plan.
<b>Site coverage, Landscaped area, Unbuilt-upon Area</b>	Yes	The proposal maintains all existing levels as the works would be contained within the footprint of the existing multi-dwelling development.
<b>Safety and Security</b>	Yes	Safety and security would not be compromised as a result of the subject development application.
<b>Landscaping and front gardens</b>	Yes	The proposed modifications would not alter the existing landscaping on the site, and would not have any additional impact upon nearby trees, subject to conditions (see Conditions <b>C9</b> and <b>C10</b> ).
<b>Private and Communal Open Space</b>	Yes	The proposal retains a significant area of private open space for Unit 4F above the minimum 40m <sup>2</sup> control (60.7m <sup>2</sup> ).
<b>1.6 Efficient use of resources</b>		
<b>Energy efficiency</b>	Yes	A valid BASIX certificate has been submitted demonstrating compliance with the proposed works.
<b>Stormwater management</b>	Yes	The proposed works will connect to the existing stormwater system.

### Neutral Bay Planning Area (Whaling Road Conservation Area)

Consideration has been given to the Character Statement for the Neutral Bay Planning Area in Part C of NSDCP 2013, particularly Section 7.3 (Whaling Road Conservation Area) where this site is located. The proposal is acceptable as the proposed works are sympathetic in character, bulk, and scale to the existing building, which has a mid-Twentieth Century style that is uncharacteristic to the conservation area. The materials and overall appearance of the works are generally compatible with existing development in the neighbourhood, and the development conforms to the relevant provisions in Part B in NSDCP 2013.

### LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The proposal, which involves development where the cost of the proposed development is more than \$100,000, is classified under the North Sydney Local Infrastructure Contributions Plan 2020 as a 'Type (c) development' that triggers a Section 7.12 contribution of **\$7,000.00**, for the purposes of the local infrastructure provision.

### Contribution amounts payable

<b>Applicable contribution type</b>		
<b>s7.12 contribution details</b>	Development cost:	\$700,000.00
<i>(payment amount subject to indexing at time of payment)</i>	Contribution:	\$7,000.00

A condition is recommended requiring payment prior to issue of any Construction Certificate (refer to **Condition C14**).

## **ALL LIKELY IMPACTS OF THE DEVELOPMENT**

All likely impacts of the proposed development have been considered within the context of this report.

<b>ENVIRONMENTAL APPRAISAL</b>	<b>CONSIDERED</b>
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	Yes
5. Traffic generation and Carparking provision	N/A
6. Loading and Servicing facilities	N/A
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	Yes
9. All relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

## **SUITABILITY OF THE SITE (Section 4.15 of the EPAA 1979)**

The proposal involves residential development in a residential zone, so the proposal is considered to be suitable for the subject site.

## **SUBMISSIONS (Section 4.15 of the EPAA 1979)**

The subject application was notified to adjoining properties and the Milson Precinct Committee. No submissions were received.

## **PUBLIC INTEREST (Section 4.15 of the EPAA 1979)**

The proposal would provide improved amenity for the residents without causing any unreasonable impacts to the area character, the streetscape, and/or adjoining properties so the proposal would not be contrary to the public interest.

## **HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION**

The subject application was notified to adjoining properties and the Milson Precinct Committee seeking comment, and no submissions were received. Nevertheless, it is considered that the proposal would provide improved amenity for the residents without causing any unreasonable impacts to the streetscape and/or adjoining properties.

## **CONCLUSION**

The development application has been assessed against the relevant planning instruments and policies, in particular the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013, and generally found to be satisfactory.

There would be no unreasonable overshadowing, view loss, privacy loss and/or excessive bulk and scale as a result of the proposal given that the works will be contained within the overall footprint of the existing building, and will be sympathetic to the Late Twentieth Century Style of the existing multi-dwelling development that was built in 1974, and the adjoining dwellings.

While the works to the first floor level will be partially above the maximum permitted height limit as required in NSLEP 2013, the works will not add additional height to the overall building and have been designed to be sympathetic to the original dwelling without resulting in significant impacts upon adjoining properties. The works are also considered to maintain the existing dwelling's neutral contribution to the Whaling Road Conservation Area.

As a result, the proposed works as conditioned will provide a high level of resident amenity without significantly impacting upon adjoining dwellings or the character of the neighbourhood. The application is considered to be acceptable in the circumstances and it is recommended for **approval** subject to standard and site-specific conditions.

## **RECOMMENDATION**

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

**THAT** the North Sydney Local Planning Panel, exercising the functions of Council, assume the concurrence of the Secretary of The Department of Planning, Industry, and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 and **grant consent** to Development Application No. 169/22 for alterations and additional Unit 4F within the existing multi-dwelling development on land at 4 Whaling Road, North Sydney, subject to the attached site specific and standard conditions:-

**Andrew Beveridge**  
**ASSESSMENT OFFICER**

**Robyn Pearson**  
**TEAM LEADER ASSESSMENTS**

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**Stephen Beattie**  
**MANAGER DEVELOPMENT SERVICES**

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**NORTH SYDNEY COUNCIL**  
**CONDITIONS OF DEVELOPMENT APPROVAL**  
**4F WHALING ROAD, NORTH SYDNEY**  
**DEVELOPMENT APPLICATION NO. 169/22**

**A. Conditions that Identify Approved Plans**

**Development in Accordance with Plans/Documentation**

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

No.	Issue	Title	Drawn by	Date	Received
A1.01	E	Site Plan	CVMA Architects	16/03/2022	06/06/2022
A1.02	E	Demolishing Plans	CVMA Architects	16/03/2022	06/06/2022
A1.03	E	Ground Floor Plan	CVMA Architects	16/03/2022	06/06/2022
A1.04	E	Level 1 Floor Plan	CVMA Architects	16/03/2022	06/06/2022
A1.05	C	Roof Plan	CVMA Architects	28/04/2022	06/06/2022
A2.01	C	East Elevation	CVMA Architects	28/04/2022	06/06/2022
A2.02	C	Elevations	CVMA Architects	28/04/2022	06/06/2022
A3.01	B	Sections	CVMA Architects	16/03/2022	06/06/2022
A5.01	C	External Materials and Finishes	CVMA Architects	29/03/2022	06/06/2022

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

**Plans on Site**

- A2. A copy of all stamped approved plans, specifications and documents (including the plans, specifications and documents submitted and approved with the Construction Certificate) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the certifying authority upon their request.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information and to ensure ongoing compliance)

**No Demolition of Extra Fabric**

- A3. Alterations to, and demolition of the existing building shall be limited to that documented on the approved plans.

(Reason: To ensure compliance with the approved development)

**External Finishes and Materials**

- A4. External finishes and materials must be in accordance with the submitted schedule numbered A5.01, dated 29 March 2022, prepared by CVMA Architects, and received by Council on 6 June 2022, unless otherwise modified by Council in writing.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

**C. *Prior to the Issue of a Construction Certificate (and ongoing, where indicated)***

**Dilapidation Report Damage to Public Infrastructure**

- C1. A dilapidation survey and report (including photographic record) must be prepared by a suitably qualified consultant which details the pre-developed condition of the existing public infrastructure in the vicinity of the development site. Particular attention must be paid to accurately recording any pre-developed damaged areas so that Council is fully informed when assessing any damage to public infrastructure caused as a result of the development. A copy of the dilapidation survey and report is to be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The developer may be held liable for all damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded and demonstrated as pre-existing under the requirements of this condition.

The developer shall bear the cost of carrying out works to restore all public infrastructure damaged as a result of the carrying out of the development, and no occupation of the development shall occur until damage caused as a result of the carrying out of the development is rectified.

A copy of the dilapidation survey and report must be lodged with North Sydney Council by the Certifying Authority with submission of the Construction Certificate documentation.

(Reason: To record the condition of public infrastructure prior to the commencement of construction)

**Dilapidation Survey Private Property (Neighbouring Buildings)**

- C2. A photographic survey and dilapidation report of adjoining properties Nos. 4E and 4G Whaling Road, North Sydney detailing the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Certifying Authority, prior to the issue of any Construction Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the photographic survey and dilapidation report is denied by an adjoining owner, the applicant MUST DEMONSTRATE, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: Proper management of records)

**Structural Adequacy (Semi-detached and Terrace Buildings)**

- C3. A report from an appropriately qualified and practising structural engineer, certifying the structural adequacy of the adjoining properties Nos. 4E and 4G Whaling Road, North Sydney which certifies their ability to withstand the proposed works and outlines any measures required to be implemented to ensure that no damage will occur to adjoining premises during the course of the works, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The measures outlined in the certified report must be complied with at all times.

Under no circumstances shall the party or common wall be extended or altered without the prior written consent of the adjoining owner. Any such extension of the party wall shall be noted on title by way of appropriate easement or Section 88B instrument.

(Reason: To ensure the protection and structural integrity of adjoining properties, and that common law property rights are recognised)

### Structural Adequacy of Existing Building

- C4. A report prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction shall be submitted to the Certifying Authority for approval prior to issue of any Construction Certificate. The certified report must also include all details of the methodology to be employed in construction phases to achieve the above requirements. The methodology in the certified report must be complied with at all times.

(Reason: To ensure the structural integrity of the building is maintained)

### Sediment Control

- C5. Where construction or excavation activity requires the disturbance of the soil surface or existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication *Managing Urban Stormwater: Soils and Construction* (4th edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

A Sediment Control Plan must be prepared and submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate and prior to any works commencing. The Sediment Control Plan must be consistent with the Blue Book and disclose:

- a) All details of drainage to protect and drain the site during the construction processes;
- b) All sediment control devices, barriers and the like;
- c) Sedimentation tanks, ponds or the like;
- d) Covering materials and methods; and
- e) A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.
- f) Methods for the temporary and controlled disposal of stormwater during construction.

All works must be undertaken in accordance with the approved Sediment Control plan.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

### **Waste Management Plan**

- C6. A Waste Management Plan is to be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate. The plan must include, but not be limited to:
- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
  - b) The design of the on-site waste storage and recycling area; and
  - c) Administrative arrangements for waste and recycling management during the construction process.

The approved Waste Management Plan must be complied with at all times in the carrying out of the development.

(Reason: To encourage the minimisation of waste and recycling of building waste)

### **Work Zone**

- C7. If a Work Zone is proposed, an application must be made to the North Sydney Local Traffic Committee to install the 'Work Zone'. A Work Zone permit is required to be issued by the Council prior to the issue of any Construction Certificate.

Work Zones are provided specifically for the set down and pick up of materials and not for the parking of private vehicles associated with the site. Work Zones will generally not be approved where there is sufficient space on-site for the setting down and picking up of goods being taken to or from a construction site. If the Work Zone is approved by the Committee, the Applicant must obtain a written copy of the related resolution from the North Sydney Local Traffic Committee and submit a copy of this to the Certifying Authority to enable issue of the Construction Certificate.

Where approval of the 'Work Zone' is given by the Committee, the requirements of the Committee, including installation of the necessary 'Work Zone' signage and payment of any fees, must occur prior to commencement of any works on the site. Further, at the expiration of the Work Zone approval, the developer is required to remove the Work Zone signs and reinstate any previous signs, all at the developer's cost. The requirements imposed by the Committee on the Work Zone permit (or permits) must be complied with at all times.

(Reason: Amenity and convenience during construction)

### **Bond for Damage and Completion of Infrastructure Works - Stormwater, Kerb and Gutter, Footpaths, Vehicular Crossing and Road Pavement**

- C8. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$2,500.00 to be held by Council for the payment of cost for any/all of the following:



- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent.
- c) remedying any defects in any such public work that arise within six months after the work is completed.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

The security will be refundable following the expiration of six months from the issue of any final Occupation Certificate or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's Engineers.

Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in circumstances including the following:

- where the damage constitutes a hazard in which case Council may make use of the security immediately;
- the applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works;
- works in the public road associated with the development are to an unacceptable quality; and
- the Certifying Authority must ensure that security is provided to North Sydney Council prior to issue of any Construction Certificate.

(Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure)

#### **Tree Bond for Public Trees**

- C9. Prior to the issue of any construction certificate, security in the sum of \$4,000.00 must be provided to Council for the protection of trees in public places, including the making good of any damage caused to such trees. The security is to be provided in accordance with the Schedule below.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

If any tree is removed or damaged Council may deduct from this security the reasonable cost of replacement with a tree of the same species and to a similar stage of growth it would have attained at the completion of the work.

In the case of any tree, which cannot be replaced with a similar specimen, the security for that tree will be forfeited to Council and used to provide replacement street plantings.

#### SCHEDULE

Tree Species (Height)	Location	Bond
1 x <i>Stenocarpus sinuatus</i> (6x5m)	Council verge in front of 4F Whaling Road.	\$4,000.00

(Reason: Protection of existing environment public infrastructure, community assets and significant trees)

#### Protection of Trees

C10. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites:

Tree	Location	Height
1 x <i>Stenocarpus sinuatus</i>	Council verge in front of 4F Whaling Road.	6x5m
1 x <i>Callistemon viminalis</i>	Planted in the small garden bed to the south of the front wall of 4G Whaling Road.	8x8m
Existing planting	The small garden bed to the south of the front wall of 4F Whaling Road.	-

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on, and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

### **Garbage and Recycling Facilities**

C11. Adequate provision must be made for the storage of waste and recyclable material generated by the premises. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the provision of appropriate waste facilities and to ensure efficient collection of waste by collection contractors)

### **Asbestos Material Survey**

C12. A report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- a) the removal of asbestos must be undertaken by a WorkCover licensed contractor;
- b) all removal must be in strict accordance with the requirements of the WorkCover Authority in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.
- c) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Certifying Authority as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the report, and other plans, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the long-term health of workers on site and occupants of the building is not put at risk unnecessarily)

### **Air Conditioners in Residential Premises**

C13. The use of any air conditioner installed on the premises must comply with the requirements of the Protection of the Environment Operations (Noise Control) Regulations 2008 and State Environmental Planning Policy (Infrastructure) 2007 and must not:

- (a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
  - (i) before 8.00 am and after 10.00 pm on any Saturday, Sunday or Public Holiday; or
  - (ii) before 7.00 am or after 10.00 pm on any other day
- (b) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy will be applied.

“affected residence” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

“boundary” includes any window or elevated window of an affected residence.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To maintain residential amenity)

### **Section 7.12 Contributions**

- C14. A monetary contribution pursuant to the provisions of Section 7.12 of the Environmental Planning and Assessment Act 1979 is to be paid to Council, in accordance with the North Sydney Council’s Contribution Plan. Based on the cost of development a total contribution of **\$7,000.00** is to be paid to Council to provide for additional local infrastructure improvements.

The contribution must be paid to Council prior to issue of any Construction Certificate for any work approved by this consent.

A copy of the North Sydney Contribution Plan can be viewed at North Sydney Council’s Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council’s website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au).

(Reason: To retain a level of service for the existing population and to provide the same level of service to the population resulting from new development)

### **Security Deposit/Guarantee Schedule**

- C15. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security Deposit/Guarantee	Amount (\$)
Street Tree Bond (on Council Property)	\$4,000.00
Footpath Damage Bond	\$2,500.00
<b>TOTAL BONDS</b>	<b>\$6,500.00</b>

Note: The following fees are applicable per Condition C14

Fees	
Section 7.12 Development Contributions	\$7,000.00
<b>TOTAL FEES</b>	<b>\$7,000.00</b>

(Reason: Compliance with the development consent)

### BASIX Certificate

C16. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A457534, dated 28 April 2022 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

### ***D. Prior to the Commencement of any Works (and continuing where indicated)***

#### Protection of Trees

D1. All trees that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be maintained and protected during demolition, excavation, and construction on the site in accordance with AS4970-2009 (Protection of trees on development sites).

A report containing recommendations, and methods of tree protection prepared by an appropriately qualified person must be provided to the Certifying Authority for approval by an appropriately qualified person prior to commencement of any works on the site. Any recommendations must be undertaken for the duration of works on the site.

(Reason: To ensure compliance with the requirement to retain significant planting on the site)

### Protection of Public Trees

- D2. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites:

Tree	Location	Protection
1 x <i>Stenocarpus sinuatus</i> (6x5m)	Council verge in front of 4F Whaling Road.	Minimum 1.8m-high steel mesh tree protection fencing.

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on, and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Protection of existing environmental and community assets)

### Temporary Fences and Tree Protection

- D3. All protected trees on-site that are specifically nominated as per **Condition C10** to be retained by notation on plans or by condition as a requirement of this consent must be tagged with luminous tape or the like for purposes of identification prior to demolition, excavation or construction works and must remain so for the duration of works on the site. No materials or builder's waste are to be stored in the vicinity of the nominated tree/trees at any time. No pruning shall be permitted to any protected tree and no roots greater than 30mm shall be cut.

The *Callistemon viminalis* planted in the small garden bed to the south of the front wall of Unit 4G Whaling Road shall be retained and protected in accordance with AS4970, with branch protection installed to branches overhanging Unit 4F, where required

Sensitive construction techniques, such as hand excavation, pier and beam construction, and flexible location of piers and footings shall be used for all works within the TPZ of any protected tree. Appropriate fencing or barricades in accordance with AS4970-2009 (Protection of trees on development sites), must be installed to the satisfaction of the Certifying Authority prior to demolition or commencement of any works and must be maintained for the duration of the works.

(Reason: To protect the trees to be retained on the site during construction works)

**Public Liability Insurance - Works on Public Land**

- D4. Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent. The Policy is to note and provide protection/full indemnification for North Sydney Council, as an interested party. A copy of the Policy must be submitted to Council prior to commencement of any works. The Policy must be valid for the entire period that the works are being undertaken.

Note: Applications for hoarding permits, vehicular crossings etc will require evidence of insurance upon lodgement of the application.

(Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land)

**Commencement of Works' Notice**

- D5. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

(Reason: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

**E. *During Demolition and Building Work***

**Parking Restrictions**

- E1. Existing public parking provisions in the vicinity of the site must be maintained at all times during works. The placement of any barriers, traffic cones, obstructions or other device in the road shoulder or kerbside lane is prohibited without the prior written consent of Council. Changes to existing public parking facilities/restrictions must be approved by the North Sydney Local Traffic Committee. The Developer will be held responsible for any breaches of this condition and will incur any fines associated with enforcement by Council regulatory officers.

(Reason: To ensure that existing kerbside parking provisions are not compromised during works)

### Road Reserve Safety

- E2. All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works, with no obstructions caused to the said footways and roadways. Construction materials and plant must not be stored in the road reserve without approval of Council. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site.

Where public infrastructure is damaged, repair works must be carried out in when and as directed by Council officers (at full Developer cost). Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742-3 (1996) "Traffic Control Devices for Work on Roads". **If pedestrian circulation is not satisfactorily maintained across the site frontage, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.**

(Reason: Public Safety)

### Temporary Disposal of Stormwater Runoff

- E3. During construction, stormwater runoff must be disposed in a controlled manner that is compatible with the erosion and sediment controls on the site. Immediately upon completion of any impervious areas on the site (including roofs, driveways, paving) and where the final drainage system is incomplete, the necessary temporary drainage systems must be installed to reasonably manage and control runoff as far as the approved point of stormwater discharge. Such ongoing measures must be to the satisfaction of the Certifying Authority.

(Reason: Stormwater control during construction)

### Removal of Extra Fabric

- E4. Should any portion of the existing building, trees, or curtilage of the site which is indicated on the approved plans to be retained be damaged for whatever reason, all the works in the area of the damaged portion are to cease and written notification of the damage is to be given to Council forthwith. No work is to resume until the written approval of Council to do so is obtained. Failure to comply with the provisions of this condition may result in the Council taking further action including legal proceedings if necessary.

(Reason: To ensure compliance with the terms of this development consent)

### Dust Emission and Air Quality

- E5. The following must be complied with at all times:

(a) Materials must not be burnt on the site.



- (b) Vehicles entering and leaving the site with soil or fill material must be covered.
- (c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction.
- (d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

#### **Noise and Vibration**

- E6. The works must be undertaken in accordance with the "Interim Construction Noise Guideline" published by the NSW Environment Protection Authority, to ensure excessive levels of noise and vibration do not occur so as to minimise adverse effects experienced on any adjoining land.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

#### **Developer's Cost of Work on Council Property**

- E7. The developer must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

(Reason: To ensure the proper management of public land and funds)

#### **No Removal of Trees on Public Property**

- E8. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

(Reason: Protection of existing environmental infrastructure and community assets)

#### **Protection of Trees**

- E9. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009.

In the event that any tree required to be retained is damaged during works on the site, notice of the damage must be given to Council forthwith.

Notes:

- a. If the nominated tree is damaged to a significant degree or removed from the site without prior written approval being obtained from Council, the issuing of fines or legal proceedings may be commenced for failure to comply with the conditions of this consent.
- b. An application to modify this consent pursuant to Section 4.55 of the Environmental Planning and Assessment Act 1979 will be required to address the non-compliance with any of the conditions of consent relating to the retention of nominated trees, and Council may require tree replenishment.

(Reason: Protection of existing environmental infrastructure and community assets)

### **Special Permits**

- E10. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

The developer, owner or builder may apply for specific permits available from Council's Customer Service Centre for the undermentioned activities on Council's property. In the event that a permit is granted by Council for the carrying out of works, processes, storage of materials, loading and unloading associated with the development on Council's property, the development must be carried out in accordance with the requirements of the permit. A minimum of forty-eight (48) hours' notice is required for any permit:

1) **On-street mobile plant**

E.g., cranes, concrete pumps, cherry-pickers, etc. - restrictions apply to the hours of operation, the area of operation, etc. Separate permits are required for each occasion and each piece of equipment. It is the developer's, owner's and builder's responsibilities to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

(Reason: Proper management of public land)

2) **Hoardings**

Permits are required to erect Class A and Class B hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

(Reason: Proper management of public land)

3) **Storage of building materials and building waste containers (skips) on Council's property**

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given. Storage of building materials and waste containers on open space reserves and parks is prohibited.

(Reason: Proper management of public land)

4) **Kerbside restrictions, construction zones**

Attention is drawn to the existing kerbside restrictions adjacent to the development. Should alteration of existing kerbside restrictions be required, or the provision of a construction zone, the appropriate application must be made and the fee paid to Council. Alternatives to such restrictions may require referral to Council's Traffic Committee and may take considerable time to be resolved. An earlier application is suggested to avoid delays in construction programs.

(Reason: Proper management of public land)

**Construction Hours**

E11. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

<b>Standard Construction Hours</b>		
<b>Location</b>	<b>Day</b>	<b>Hours</b>
<b>All Other Zones</b>	Monday - Friday	7.00 am - 5.00 pm
	Saturday	8.00 am - 1.00 pm
	Sunday, Public holiday	No work permitted

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above and any Construction Noise Management Plan required under this consent.

In the event of breach to the approved hours of construction Council take may take enforcement action under Part 9 of the EP&A Act 1979 and in accordance with Council's adopted Compliance and Enforcement Policy.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

### **Installation and Maintenance of Sediment Control**

- E12. Erosion and sediment controls must be installed and maintained at all times in accordance with the Sediment and erosion control plan submitted and approved with the Construction Certificate.

Erosion and sediment measures must be maintained in accordance with the publication Managing Urban Stormwater: Soils and Construction (4th edition, Landcom, 2004), commonly referred to as the “Blue Book” and can only be removed when development activities have been completed and the site fully stabilised.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

### **Sediment and Erosion Control Signage**

- E13. A durable sign must be erected during building works in a prominent location on site, warning of penalties should appropriate erosion and sedimentation control devices not be maintained. A sign of the type referred to in this condition is available from Council.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

### **Site Amenities and Facilities**

- E14. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of workplace determines the type of amenities required.

Further information and details can be obtained from the Internet at [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au).

(Reason: To ensure the health and safety of the community and workers on the site)

### **Health and Safety**

- E15. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number for enquiries.

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au).

(Reason: To ensure the health and safety of the community and workers on the site)

### **Prohibition on Use of Pavements**

- E16. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

(Reason: To ensure public safety and amenity on public land)

### **Plant and Equipment Kept Within Site**

- E17. All plant and equipment used in the undertaking of the development/ works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.

Details of Council requirements for permits on public land for standing plant, hoardings, storage of materials and construction zones and the like are available on Council's website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au).

(Reason: To ensure public safety and amenity on public land)

### **Waste Disposal**

- E18. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environmental Protection Authority.

(Reason: To ensure the lawful disposal of construction and demolition waste)

### **Asbestos Removal**

- E19. All demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence and removal must be carried out in accordance with National Occupational Health and Safety Commission.

(Reason: To ensure works are carried out in accordance with relevant WorkCover requirements)

**F. Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation**

**National Construction Code**

F1. All building work must be carried out in accordance with the provisions of the National Construction Code.

(Reason: Prescribed - Statutory)

**Home Building Act**

F2. 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) for which the *Home Building Act 1989* requires there to be a contract of insurance under Part 6 of that Act must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given North Sydney Council written notice of the contract of insurance being issued and of the following:

a) in the case of work for which a principal contractor is required to be appointed:

- i) the name and licence number of the principal contractor, and
- ii) the name of the insurer by which the work is insured under Part 6 of that Act, or

(b) in the case of work to be done by an owner-builder:

- (i) the name of the owner-builder, and
- (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

2) If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this conditions is out of date, work must cease and no further work may be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

(Reason: Prescribed - Statutory)

### **Appointment of a Principal Certifying Authority (PCA)**

F3. Building work, demolition or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifying Authority for the building work in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

### **Construction Certificate**

F4. Building work, demolition or excavation in accordance with the development consent must not be commenced until a Construction Certificate for the relevant part of the building work has been issued in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

### **Occupation Certificate**

F5. A person must not commence occupation or use of the whole or any part of a new building (new building includes an altered portion of, or an extension to, an existing building) unless an Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifying Authority appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

### **Demolition**

F6. Demolition work must be undertaken in accordance with the provisions of AS2601-Demolition of Structures.

(Reason: To ensure that work is undertaken in a professional and responsible manner and protect adjoining property and persons from potential damage)

### **Protection of Public Places**

- F7.
- 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
  - 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

- 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- 4) Any such hoarding, fence or awning is to be removed when the work has been completed.
- 5) No access across public reserves or parks is permitted.

Note: Prior to the erection of any temporary fence or hoarding over property owned or managed by Council, written approval must be obtained. Any application needs to be accompanied by plans indicating the type of hoarding and its layout. Fees are assessed and will form part of any approval given. These fees must be paid prior to the approval being given. Approval for hoardings will generally only be given in association with approved building works, maintenance or to ensure protection of the public. An application form for a Hoarding Permit can be downloaded from Council's website.

(Reason: To ensure public safety and the proper management of public land)

#### **Site Sign**

- F8.
- 1) A sign must be erected in a prominent position on the site
    - a) stating that unauthorised entry to the work site is prohibited;
    - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
    - c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
  - 2) Any such sign must be maintained while to building work or demolition work is being carried out but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

#### **G. Prior to the Issue of an Occupation Certificate**

##### **Infrastructure Repair and Completion of Works**

- G1. Prior to the issue of any Occupation Certificate any and all works relating to the development:
- a. in the road reserve must be fully completed; and



- b. to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

to the satisfaction of Council Engineers at no cost to Council.

(Reason: Maintain quality of public assets)

### **Damage to Adjoining Properties**

- G2. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

(Reason: To ensure adjoining owner's property rights are protected)

### **Utility Services**

- G3. All utility services shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of an occupation certificate. This shall be at no cost to Council.

(Reason: To ensure compliance with the terms of this consent)

### **Asbestos Clearance Certificate**

- G4. For building works where asbestos based products have been removed or altered, an asbestos clearance certificate signed by an appropriately qualified person (being an Occupational Hygienist or Environmental Consultant) must be submitted to and approved by the Certifying Authority (and a copy forwarded to Council if it is not the Certifying Authority) for the building work prior to the issue of any Occupation Certificate, the asbestos clearance certificate must certify the following:

- a) the building/land is free of asbestos; or  
b) the building/land has asbestos that is presently deemed safe.

The certificate must also be accompanied by tipping receipts, which detail that all asbestos waste has been disposed of at an approved asbestos waste disposal depot. If asbestos is retained on site the certificate must identify the type, location, use, condition and amount of such material.

Note: Further details of licensed asbestos waste disposal facilities can be obtained from [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au).

(Reason: To ensure that building works involving asbestos based products are safe for occupation and will pose no health risks to occupants)

### BASIX Completion Certificate

- G5. In accordance with Clause 154C of the Environmental Planning and Assessment Regulation 2000, prior to issuing a final occupation certificate the Certifying Authority must apply to the Director-General for a BASIX completion receipt.

(Reason: To ensure compliance with the specified BASIX Certificate)

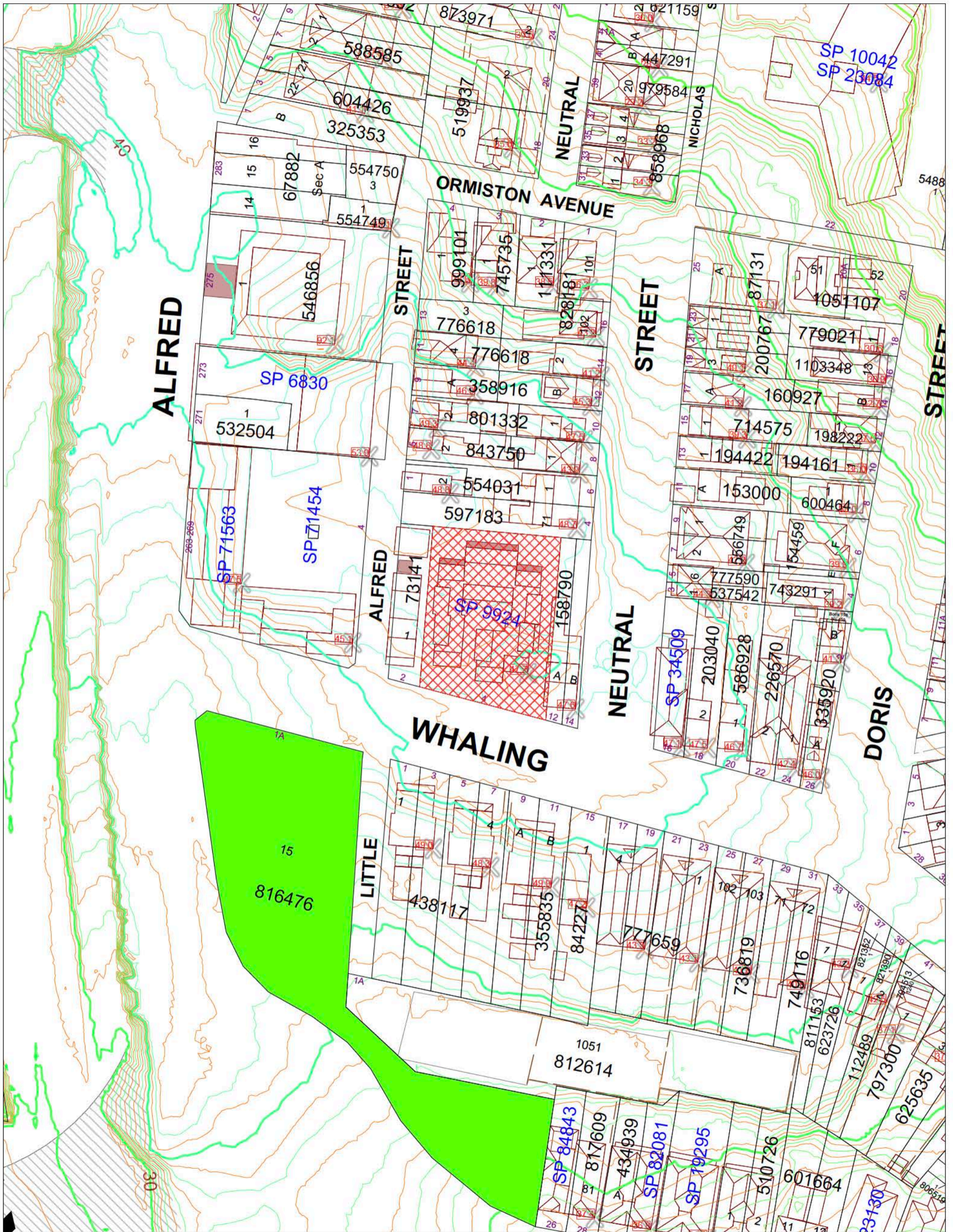
### Certification of Tree Condition

- G6. Prior to the issue of an Occupation Certificate, a report prepared by an appropriately qualified person (being an arborist or the like) must be submitted to the Certifying Authority, describing the health of the tree(s) specifically nominated below:

Tree	Location	Height
1 x <i>Stenocarpus sinuatus</i>	Council verge in front of 4F Whaling Road.	6x5m
1 x <i>Callistemon viminalis</i>	Planted in the small garden bed to the south of the front wall of 4G Whaling Road.	8x8m

The report must detail the condition and health of the nominated trees upon completion of the works and shall certify that the trees has/have not been significantly damaged during the works on the site and have reasonable prospects for survival.

(Reason: To ensure compliance with the terms of this consent)



### North Sydney Council

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Further details can be obtained by calling (02) 9936 8100 or e-mail [mapping@northsydney.nsw.gov.au](mailto:mapping@northsydney.nsw.gov.au).

# ALTERATIONS AND ADDITIONS

## 4F WHALING ROAD, NORTH SYDNEY NSW

PROJECT NUMBER: HTH2114

DATE: 28/04/2022

CLIENT: HOUSE TO HOME FINISHES

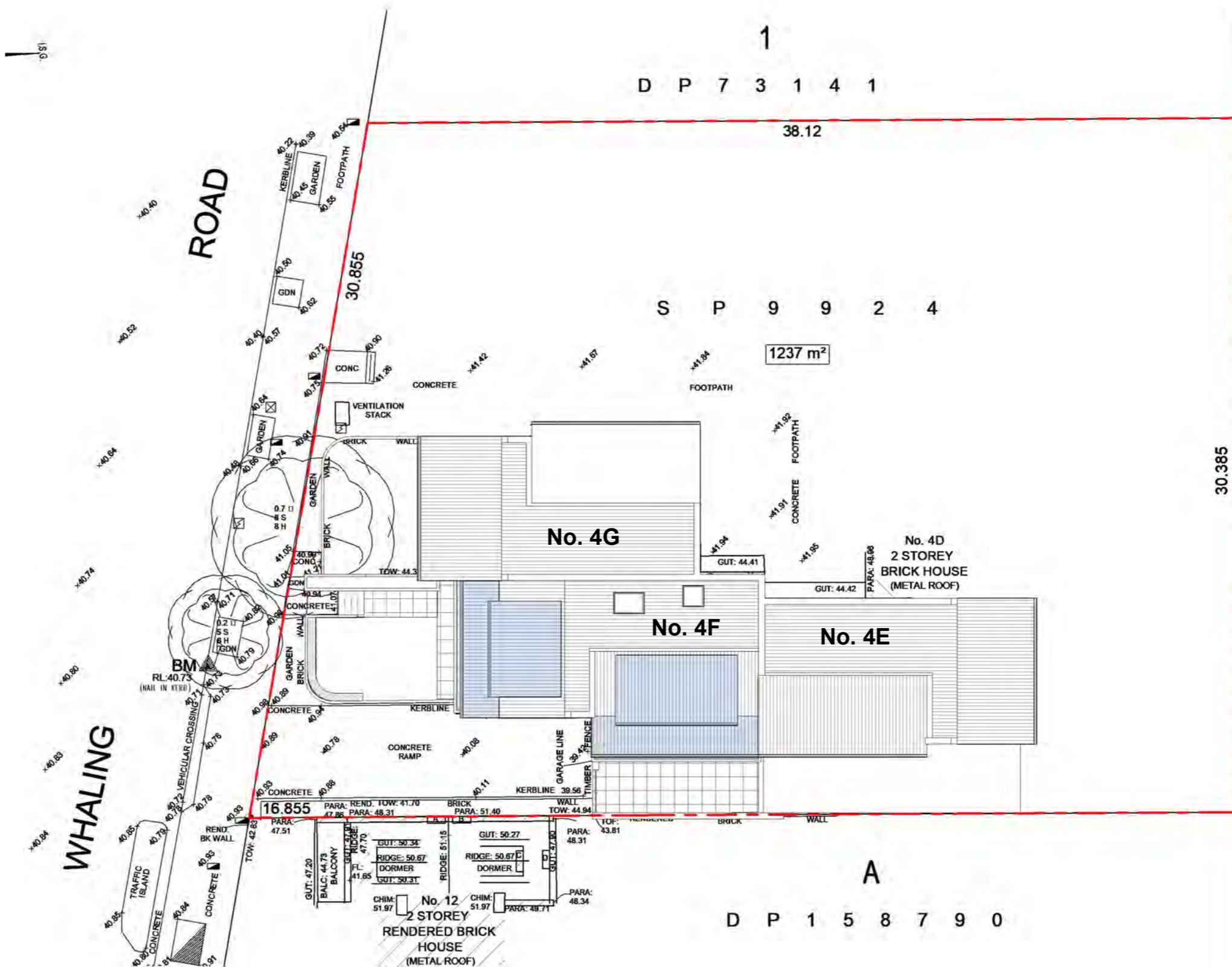
SHEET N°	SHEET NAME
A0.01	COVER SHEET
A1.01	SITE PLAN
A1.02	DEMOLISHING PLANS
A1.03	GROUND FLOOR PLAN
A1.04	LEVEL 1 FLOOR PLAN
A1.05	ROOF PLAN
A1.06	BASIX NOTES
A2.01	EAST ELEVATION
A2.02	ELEVATIONS
A2.03	SHADOW DIAGRAM 21.06 9AM
A2.04	SHADOW DIAGRAM 21.06 12PM
A2.05	SHADOW DIAGRAM 21.06 3PM
A3.01	SECTIONS
A5.01	EXTERNAL MATERIALS AND FINISHES
A10.01	3D IMAGE
A10.02	3D SECTION
A10.03	3D IMAGE
N1.01	SITE PLAN NOTIFICATION
N1.02	ELEVATION NOTIFICATION

DA ISSUE 28/04/2022  
E

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NOMINATED ARCHITECT: Alexander Chougam | ARN: 7196

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0403313035



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1 SITE PLAN  
A2.01 1 : 200

NOT FOR CONSTRUCTION / CONSTRUCTION CERTIFICATE

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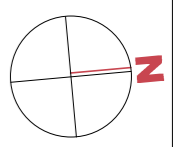
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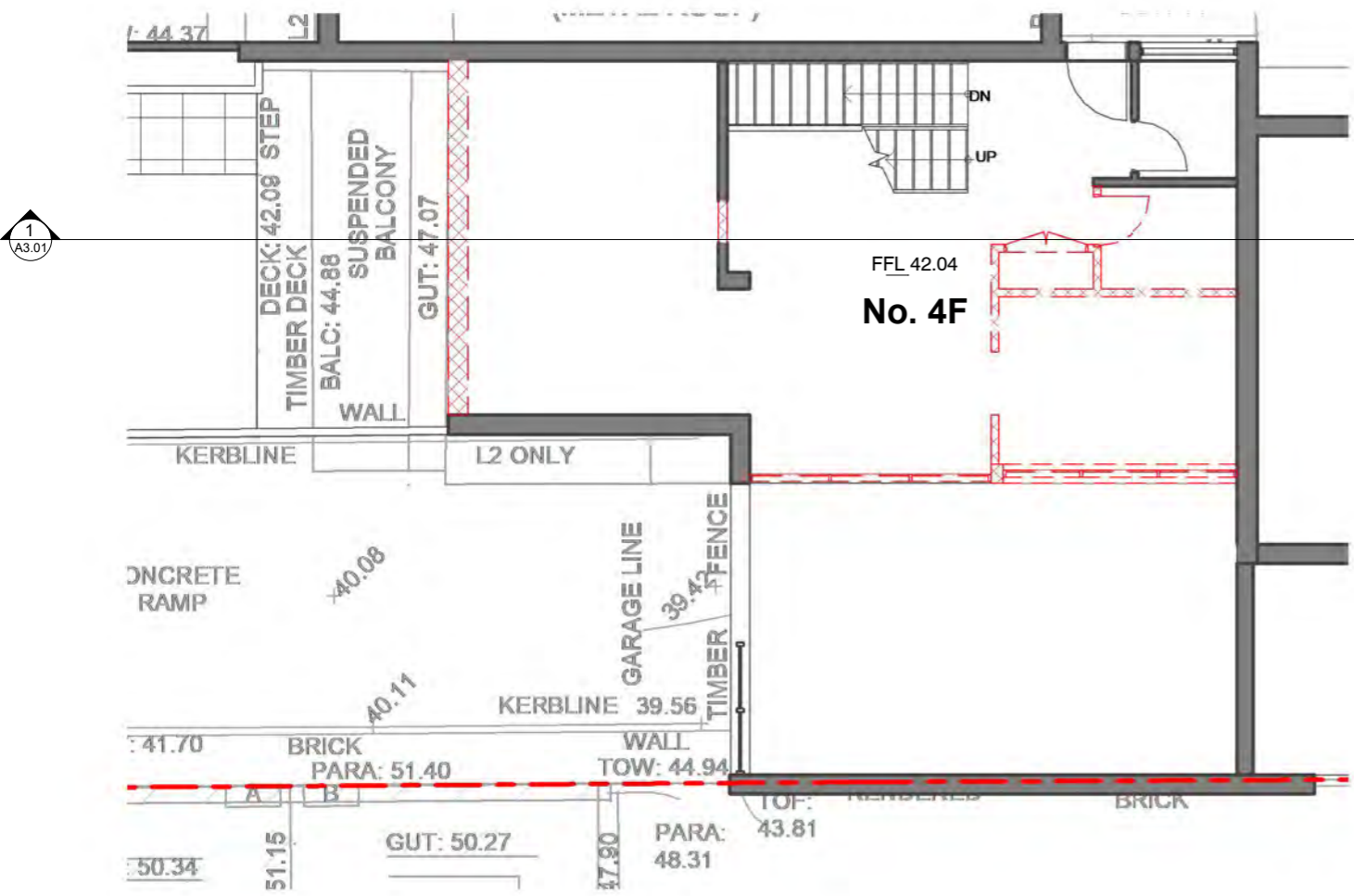
ISSUE	REVISIONS	DATE
A	CONCEPT FOR REVIEW	20/10/2021
B	CONCEPT	25/10/2021
C	REVISED CONCEPT	30/11/2021
D	DA ISSUE	03/03/2022
E	DA ISSUE	16/03/2022



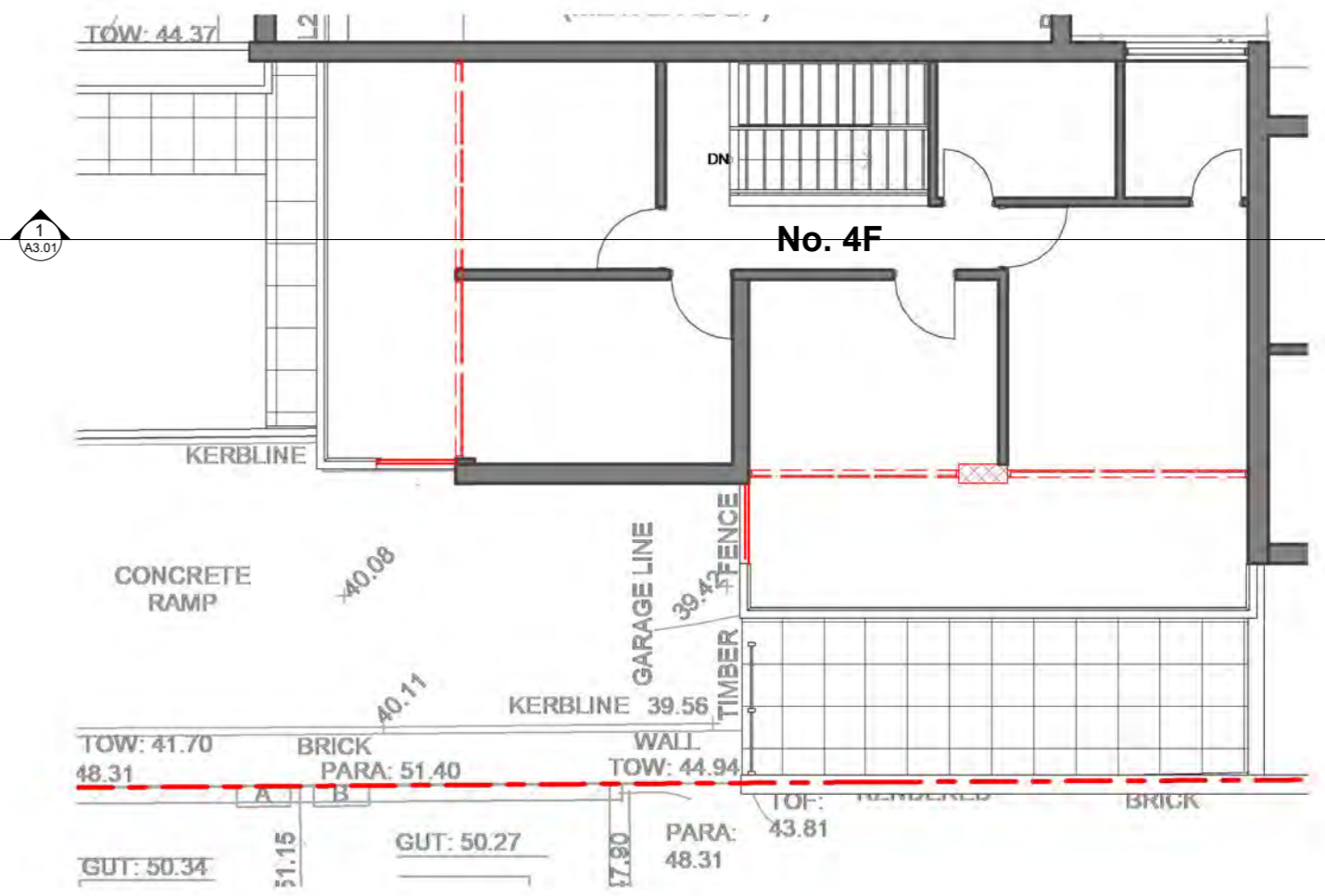
DRAWING	SITE PLAN
PROJECT	ALTERATIONS AND ADDITIONS
ADDRESS	4F WHALING ROAD, NORTH SYDNEY NSW
CLIENT	HOUSE TO HOME FINISHES

DRAWN BY	NV
CHECKED BY	AC
SCALE	1 : 200@A3
JOB NO	HTH2114
DRAWING NO	A1.01 E





**1** GROUND FLOOR DEMOLISHING PLAN  
A2.01 1 : 100



**2** LEVEL 1 DEMOLISHING PLAN  
A2.01 1 : 100

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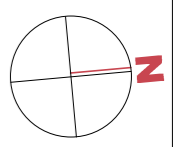
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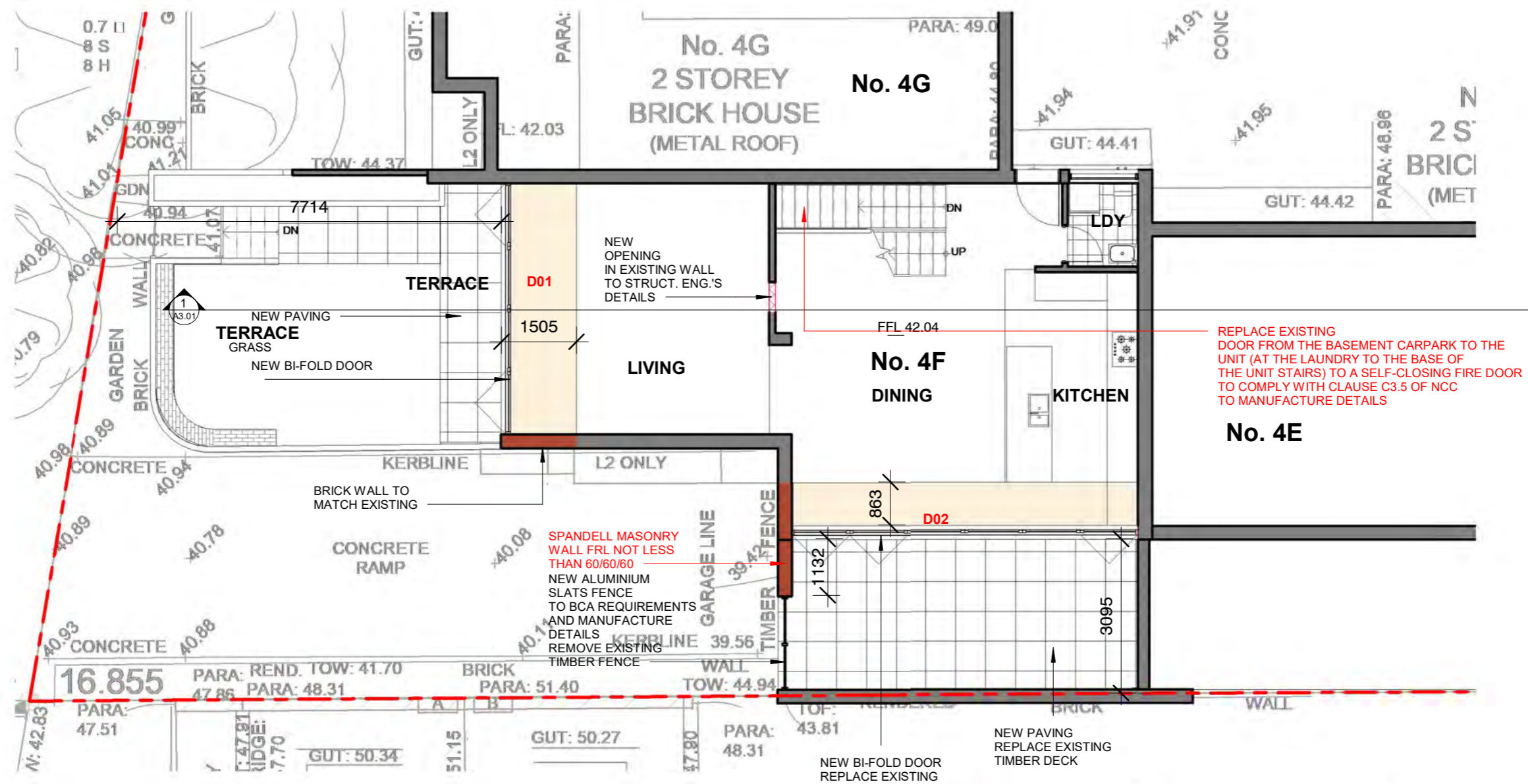
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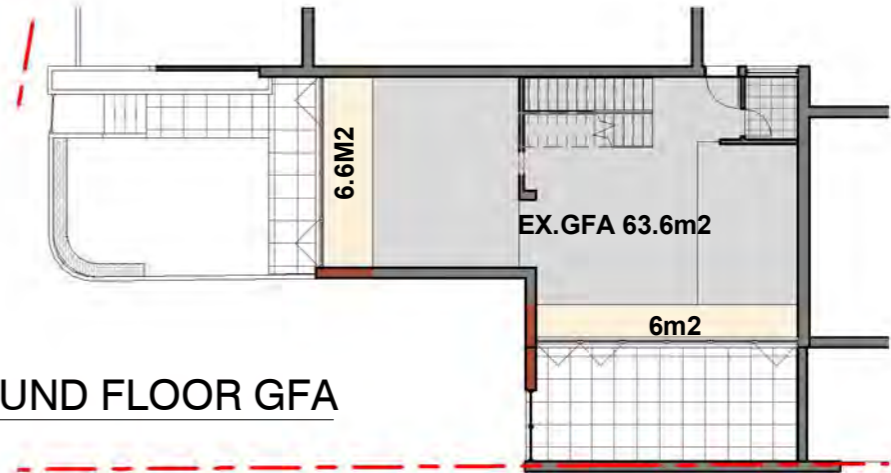
DRAWING DEMOLISHING PLANS  
 PROJECT ALTERATIONS AND ADDITIONS  
 ADDRESS 4F WHALING ROAD, NORTH SYDNEY NSW  
 CLIENT HOUSE TO HOME FINISHES

DRAWN BY NV  
 CHECKED BY AC  
 SCALE 1 : 100@A3  
 JOB NO HTH2114  
 DRAWING NO A1.02 E





**1** GROUND FLOOR PLAN  
A2.01 1 : 100



**2** GROUND FLOOR GFA  
A2.01 1 : 200

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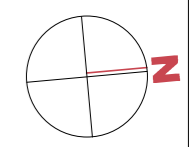
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E	DA ISSUE	16/03/2022



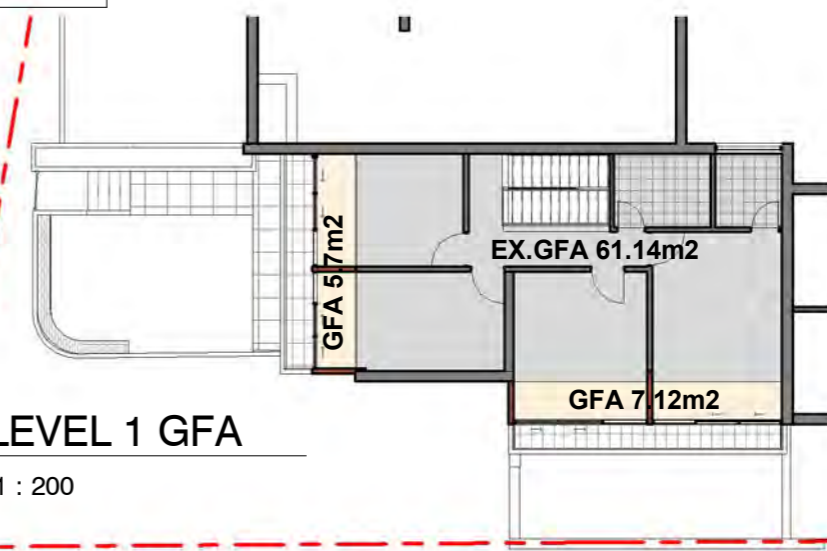
DRAWING	GROUND FLOOR PLAN
PROJECT	ALTERATIONS AND ADDITIONS
ADDRESS	4F WHALING ROAD, NORTH SYDNEY NSW
CLIENT	HOUSE TO HOME FINISHES

DRAWN BY	NVAC
CHECKED BY	AC
SCALE	As indicated@A3
JOB NO	HTH2114
DRAWING NO	A1.03 E





**1 LEVEL 1 FLOOR PLAN**  
A2.01 1 : 100



**2 LEVEL 1 GFA**  
A2.01 1 : 200

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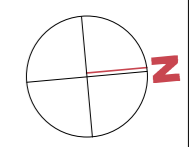
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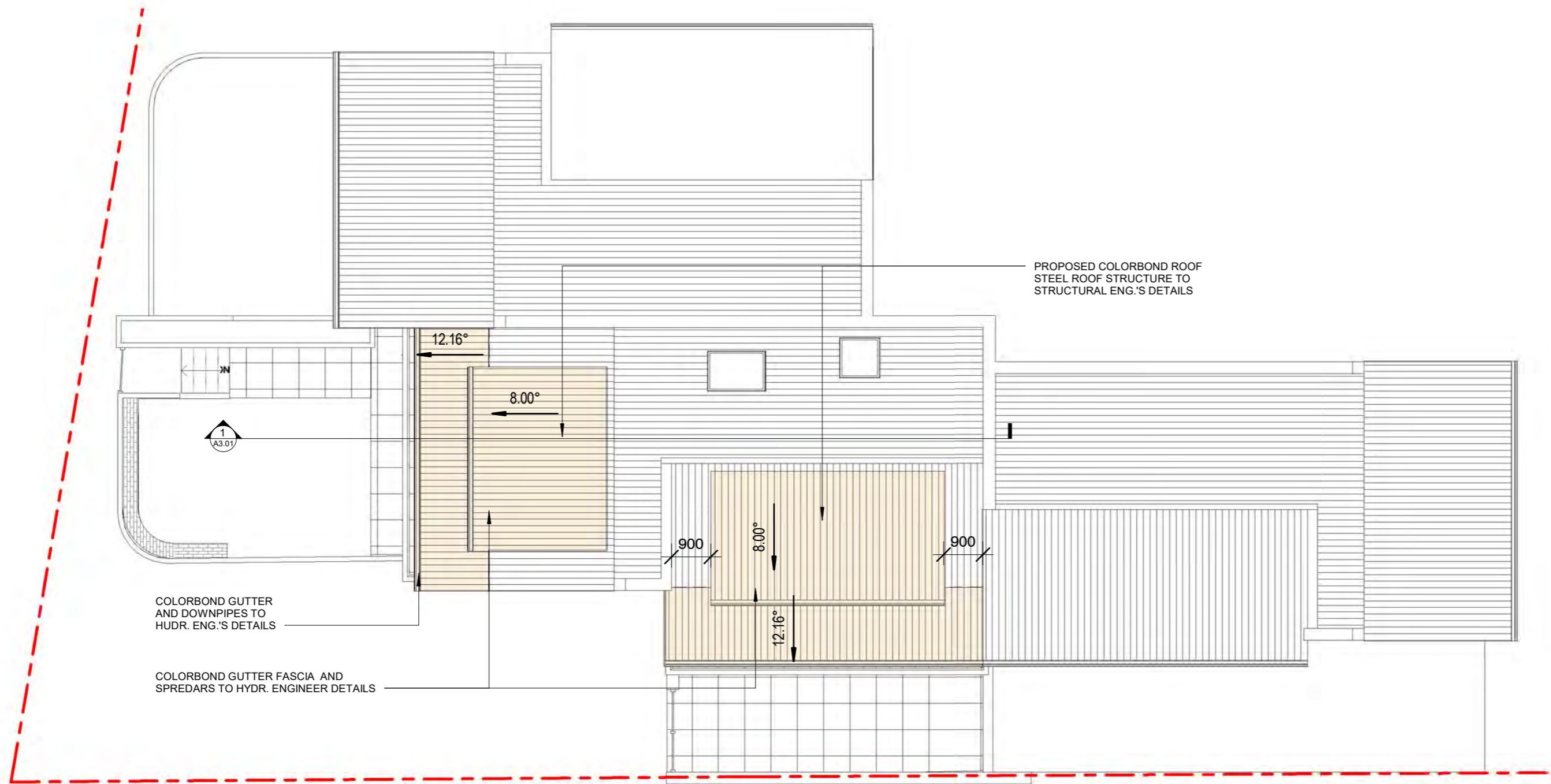


DRAWING	LEVEL 1 FLOOR PLAN
PROJECT	ALTERATIONS AND ADDITIONS
ADDRESS	4F WHALING ROAD, NORTH SYDNEY NSW
CLIENT	HOUSE TO HOME FINISHES

DRAWN BY	NVAC
CHECKED BY	AC
SCALE	As indicated@A3
JOB NO	HTH2114
DRAWING NO	A1.04 E







**1** ROOF  
A2.01  
1 : 100

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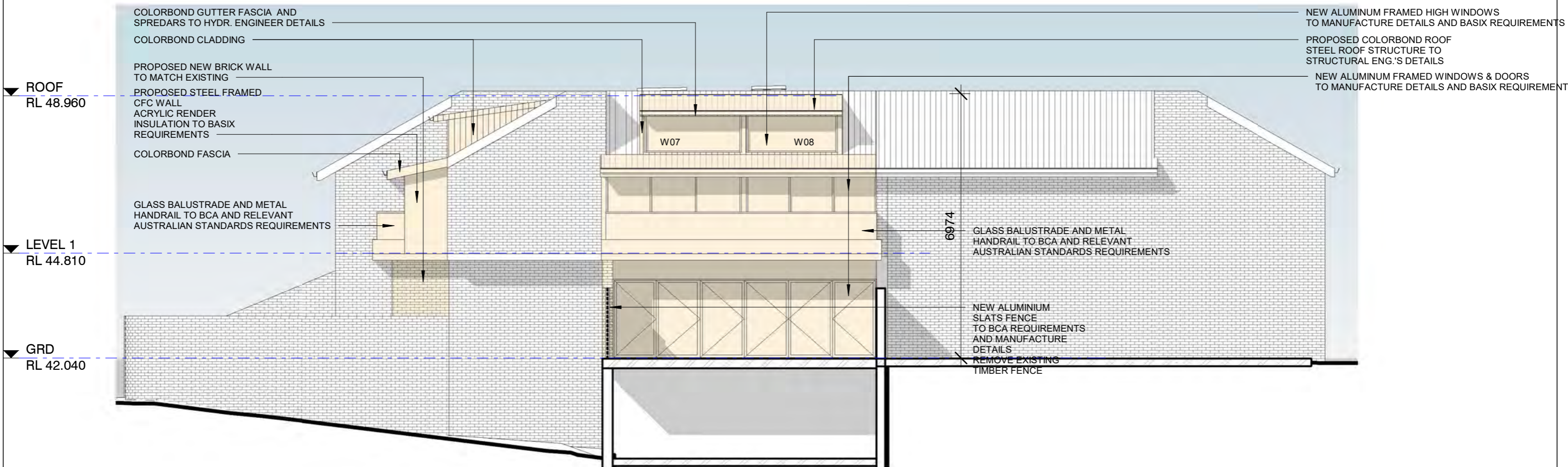
ISSUE	REVISIONS	DATE
A	DA ISSUE	03/03/2022
B	DA ISSUE	16/03/2022
C	DA ISSUE	28/04/2022

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DRAWING ROOF PLAN  
PROJECT ALTERATIONS AND ADDITIONS  
ADDRESS 4F WHALING ROAD, NORTH SYDNEY NSW  
CLIENT HOUSE TO HOME FINISHES

DRAWN BY AC  
CHECKED BY AC  
SCALE 1 : 100@A3  
JOB NO HTH2114  
DRAWING NO A1.05 C





**1 EAST ELEVATION**  
1 : 100

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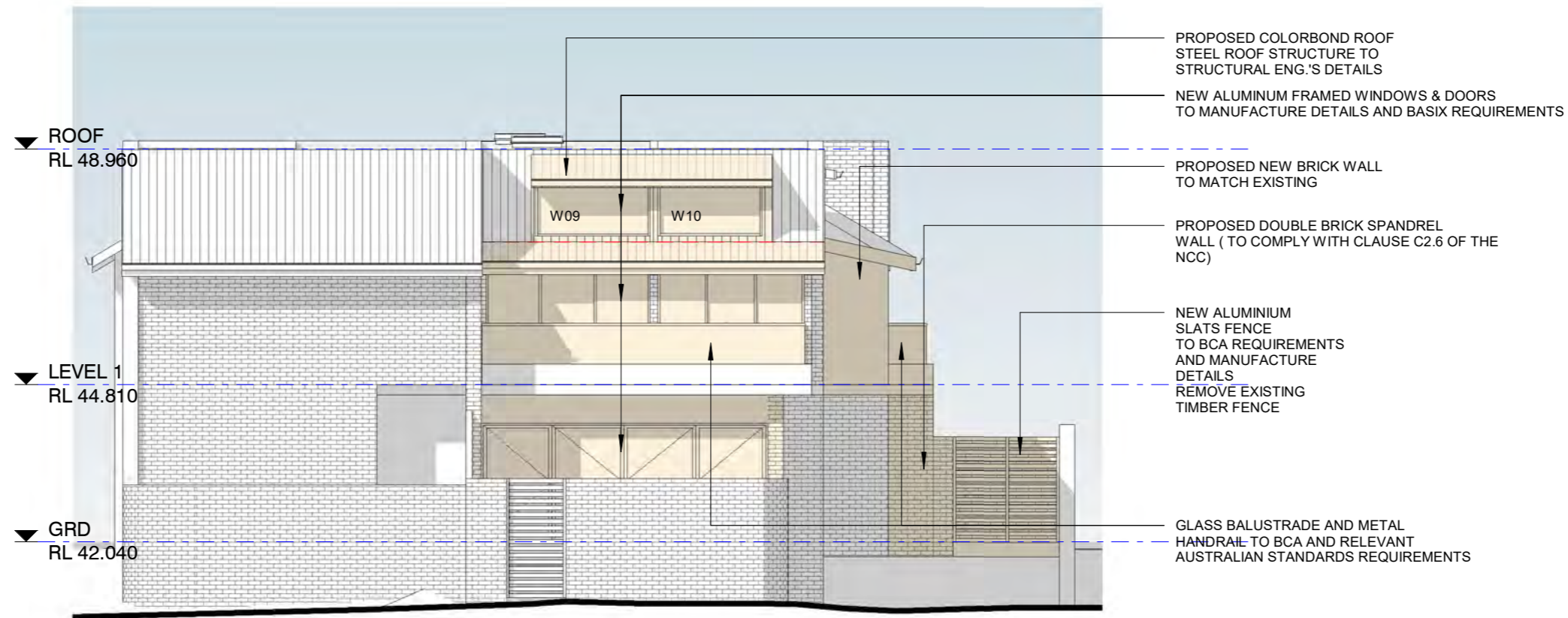
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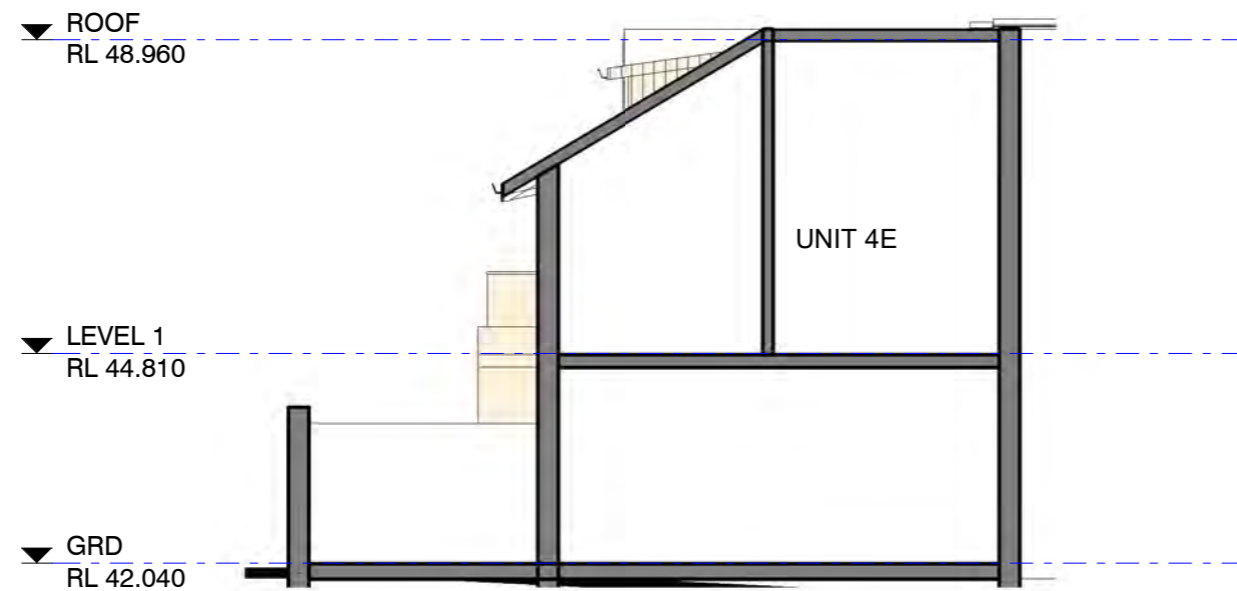


DRAWING EAST ELEVATION  
 PROJECT ALTERATIONS AND ADDITIONS  
 ADDRESS 4F WHALING ROAD, NORTH SYDNEY NSW  
 CLIENT HOUSE TO HOME FINISHES

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 SCALE 1 : 100@A3  
 JOB NO HTH2114  
 DRAWING NO A2.01 C



**1 SOUTH ELEVATION**  
1 : 100



**2 NORTH ELEVATION**  
1 : 100

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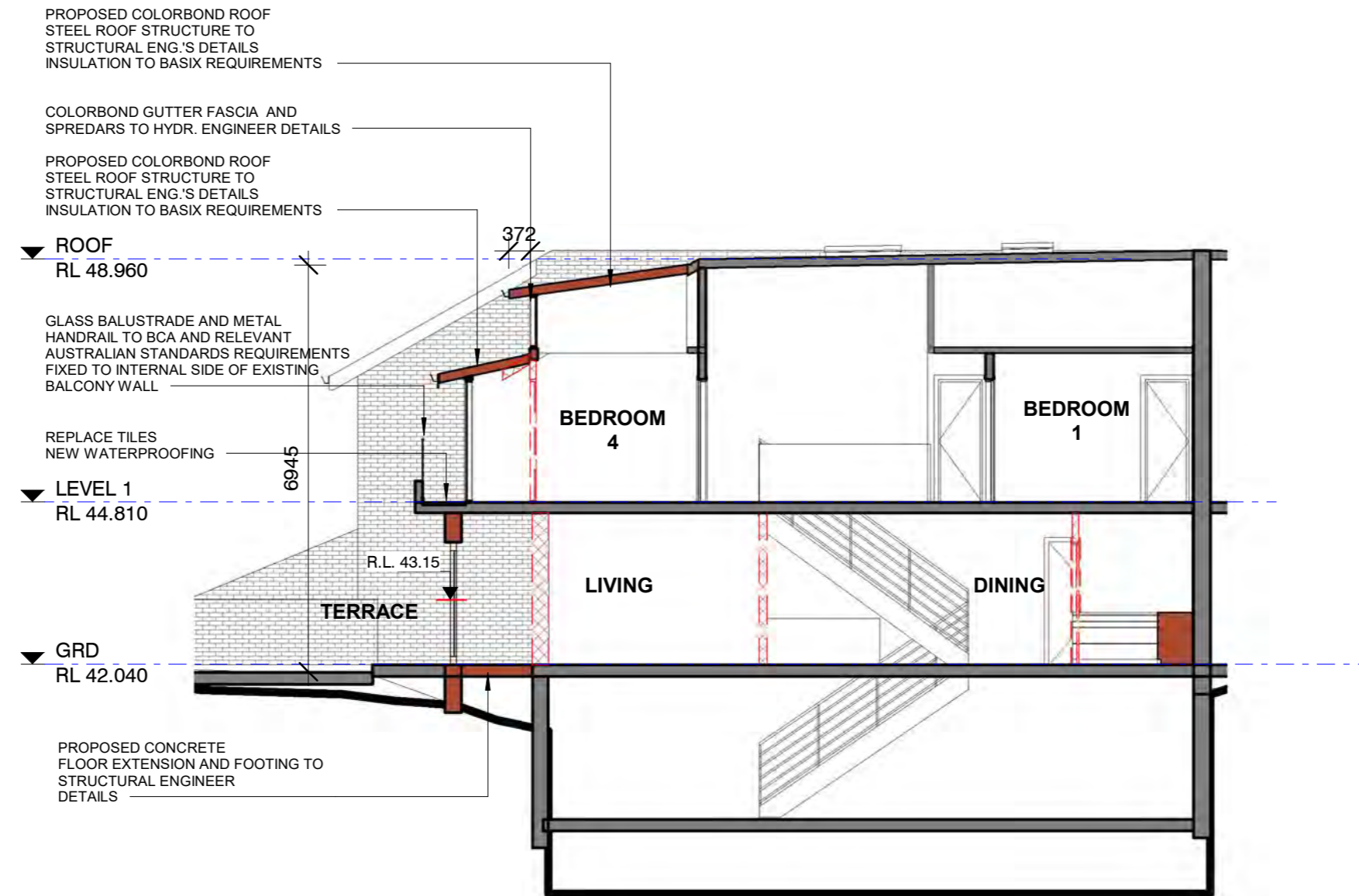
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ISSUE	REVISIONS	DATE
A	DA ISSUE	03/03/2022
B	DA ISSUE	16/03/2022
C	DA ISSUE	28/04/2022

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DRAWING ELEVATIONS  
PROJECT ALTERATIONS AND ADDITIONS  
ADDRESS 4F WHALING ROAD, NORTH SYDNEY NSW  
CLIENT HOUSE TO HOME FINISHES

DRAWN BY AC  
CHECKED BY AC  
SCALE 1 : 100@A3  
JOB NO HTH2114  
DRAWING NO A2.02 C



**1** SECTION 1  
A1.02 1 : 100

CVMA ARCHITECTS NOMINATED ARCHITECT No7196  
t: 0293450984 m: 0403313035 a: 5 PROTHERO PLACE PAGEWOOD NSW 2035 w: CVMAARCHITECTS.COM.AU

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ISSUE	REVISIONS	DATE
A	DA ISSUE	03/03/2022
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ARCHITECTURE • INTERIORS

DRAWING SECTIONS  
PROJECT ALTERATIONS AND ADDITIONS  
ADDRESS 4F WHALING ROAD, NORTH SYDNEY NSW  
CLIENT HOUSE TO HOME FINISHES

DRAWN BY Author  
CHECKED BY Checker  
SCALE 1 : 100@A3  
JOB NO HTH2114  
DRAWING NO A3.01 B



**CLAUSE 4.6 VARIATION TO CLAUSE 4.3 (HEIGHT OF BUILDINGS)  
OF THE NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2013**

**1. INTRODUCTION**

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This submission seeks a variation to Clause 4.3 of the North Sydney Local Environmental Plan 2013 (NSLEP13), which relates to building height.

This submission has been prepared with regards to a development application for the proposed alterations and additions to existing residential unit (townhouse) at No.4F Whaling Road, North Sydney.

As detailed in this written request for a variation to building height being a development standard under NSLEP13, the proposed development meets the requirements prescribed under Clause 4.6 of NSLEP13.

This submission is made under clause 4.6 of the NSLEP13 – Exceptions to development standards. Clause 4.6 states the following:

***“4.6 Exceptions to development standards***

- (1) The objectives of this clause are as follows:
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.**
- (2) Development consent may, subject to this clause, be granted for a 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.*
- (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.**
- (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 Secretary has been obtained.*

- (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.*
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*  
*(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*  
*(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*  
**Note.** *When this Plan was made it did not include all of these zones*
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*  
*(a) a development standard for complying development,*  
*(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*  
*(c) clause 5.4,*  
*(caa) clause 5.5,*  
*(ca) clause 4.3 in relation to land identified as "Area 1" on the Special Provisions Area Map, other than subject land within the meaning of clause 6.19C,*  
*(cab) clause 4.4, 5.6 or 6.19C in relation to land identified as "Area 1" on the Special Provisions Area Map,*  
*(cb) clause 6.3 (2) (a) and (b),*  
*(cba) clause 6.19A,*  
*(cc) clause 6.20*
- (8A) (Repealed)"*

The use of Clause 4.6 to enable an exception to this development control is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been satisfied in terms of the merits of the proposed development and the content in this Clause 4.6 variation request report.

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

*4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.*

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

*(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*

The Environmental Planning Instrument to which these variations relate to is the NSLEP13.

The development standard to which this variation relates to is Clause 4.3 – Height of Buildings, which reads as follows:

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

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

*(b) to promote the retention and, if appropriate, sharing of existing views,*

*(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*

*(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*

*(e) to ensure compatibility between development, particularly at zone boundaries,*

*(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*

*(g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.*

*(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.*

*(2A)–(2C) (Repealed).”*

As demonstrated in Figure 1 on the following page, the subject site has been prescribed with a maximum height of buildings of 8.5 metres.

The proposed maximum height is 9.6 metres, being a variation of 1100mm. It should be noted that the proposed alterations and additions do not exceed the existing height of the building and that the proposed height of the works sought are only 6.97m above the existing ground floor finished floor level.

- Maximum building height control: 8.5m
- Existing building height: 9.8m
- Existing variation: 1.3m (15.3%)
- Proposed height: 9.6m
- Proposed variation: 1.1m (12.9%)

A written justification is therefore required for the proposed variation to the maximum building height development standard, in accordance with Clause 4.6 of the NSLEP13.

Figure 1 – Height of Buildings Map



Source: NSW Legislation, NSLEP13.

## 2. SITE BACKGROUND

The subject site is known as 4F Whaling Road, North Sydney, and is legally defined as Lot 6 in Strata Plan 9924. The site forms part of a townhouse development (multi-dwelling housing) which is located on a lot with a 30.855 metre frontage to Whaling Road and a total area of 1237m<sup>2</sup>.

The existing townhouse on the site is two storeys and situated above the lower ground carparking for the townhouse complex. The existing scale of the development is consistent with the character of development located in proximity to the site. Refer to Figure 2 Site Location Map.

The land is zoned and bounded by R2 Low Density Residential. A B3 commercial core zone is located in proximity to the west of the site. Refer to Figure 3 below.





Figure 2: Aerial view of subject site. (Source: Six Maps).

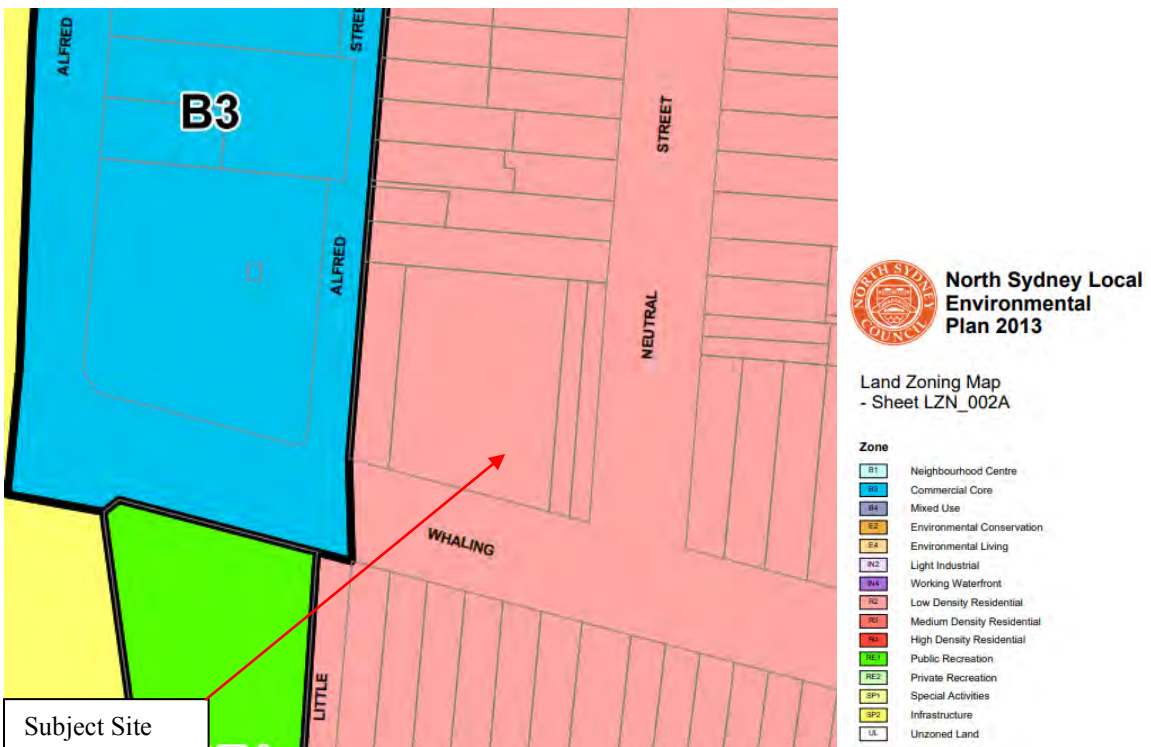


Figure 3: Land zoning Map (Source: NSW Legislation)

### 3. EXTENT OF NON-COMPLIANCE

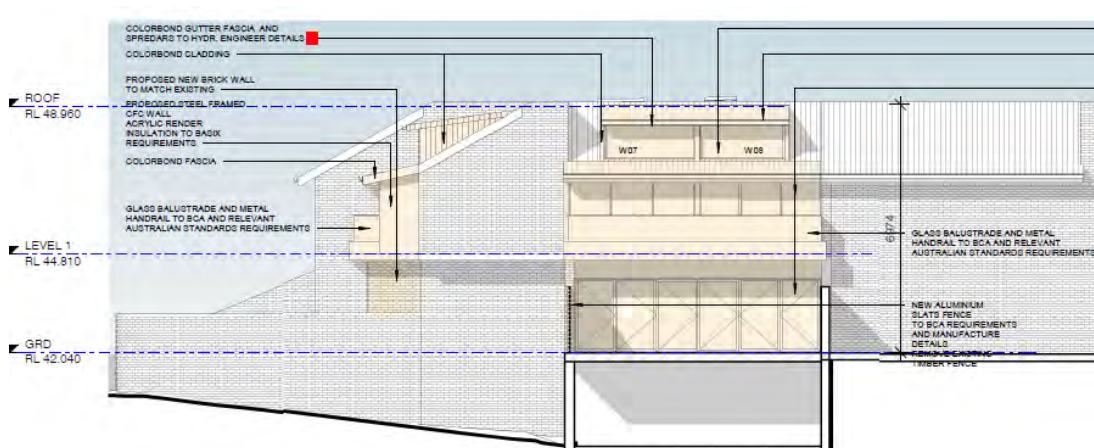
As noted above Clause 4.3 of the NSLEP13 states that the maximum building height for the site is 8.5 metres.

The proposed alterations and additions have a maximum height of 9.6m above existing ground level. This represents a non-compliance of 1100mm or (12.9%).

- Maximum building height control: 8.5m
- Existing building height: 9.8m
- Existing variation: 1.3m (15.3%)
- Proposed height: 9.6m
- Proposed variation: 1.1m (12.9%)

Figure 4 below illustrates the scale of the proposed alterations and additions in relation to the existing building.

Figure 4: East Elevation prepared by CVMA Architects.



It is important to reiterate that the proposed alterations and additions do not exceed the existing height of the building and that the proposed height of the works sought are only 6.97m above the existing ground floor finished floor level.

### 4. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827* are considered.

In the matter of *Four2Five*, the Commissioner stated within the judgement the following, in reference to a variation:

*“...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1.”*

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below:

<b>First</b>	<p><i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i></p> <p><i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable. <b>(applicable)</b></i></p>
<b>Second</b>	<i>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. (not applicable)</i>
<b>Third</b>	<i>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. (not applicable)</i>
<b>Fourth</b>	<i>A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable. (not applicable)</i>
<b>Fifth</b>	<i>A fifth way is to establish that “the zoning of particular land” was “unreasonable or inappropriate” so that “a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land” and that “compliance with the standard in that case would also be unreasonable or unnecessary. (not applicable)</i>

In respect of the building height standard, the first method is invoked.

The objectives supporting the maximum building height control identified in Clause 4.3 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.3.

### **Clause 4.3 Height of Buildings**

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

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) to promote the retention and, if appropriate, sharing of existing views,*
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) to ensure compatibility between development, particularly at zone boundaries,*
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,*
- (g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living”*

With respect to objective (a), the subject site has had regard to its site context and topography. The proposed alterations and additions sought do not alter the existing ground level or finished floor levels. The built form, with due regard to the existing building height, is already established with no topographical change.

Regarding objective (b), no view corridors will be impacted with the proposed alterations and additions located below the existing building height. The extension of the building wall of Unit 4F towards the eastern side boundary will align with the existing wall alignment of Unit 4E, hence will not impact upon any existing views.

For objective (c), the only additional overshadowing generated by the proposed alterations and additions will fall along the driveway of the subject site. Thus, the existing solar access to adjoining dwellings will not be impacted by the proposed alterations and additions. Reference should be made to the shadow diagrams prepared by CVMA Architects submitted under separate cover.

In response to objective (d), the privacy of the site or adjoining properties will not be impacted by the proposed alterations and additions noting that the existing first floor balcony locations will be retained. The proposal seeks to increase the size of the first floor bedrooms by reducing the size of the existing balconies. The reduction in size will limit the useability of the side facing balcony for multiple people, thereby improving acoustic privacy to neighbouring dwellings.

With regard to objective (e), the site is bounded by other lots zoned R2 Low Density Residential, consistent with the zoning of the site. The proposed development is for minor alterations and additions to an existing townhouse (existing use rights to be established separately).

Regarding objective (f), the proposed scale and density of the alterations and additions is considered compatible with the existing building on the site and character. The proposed

alterations and additions do not exceed the existing maximum building height and will largely be contained within the existing building envelope of Unit 4F.

Finally, regarding objective (g), the proposed alterations and additions do not alter the existing number of storeys or finished floor levels. The breach in building height is primarily caused by the height of the side addition in relation to the existing ground level of the entrance to the below ground garage. The proposed development will continue to present as two storeys to Whaling Road

The application meets the objectives of the standard.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard.

## **5. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS?**

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The assessment above demonstrates that the resultant environmental impacts of the proposal will be satisfactory.

The proposed development relates to alterations and additions to an existing townhouse. The existing number of storeys or finished floor levels will not be impacted by the proposed development.

It is notable that the proposed works sought are below the existing maximum building height of the dwelling, which exceeds the current numerical standard.

As this variation has no impact on view corridors or results in additional overshadowing, it is considered a minor variation with no negative impact to adjoining properties or the streetscape.

Consequently, in this case, strict compliance with the development standard for height of buildings development standard of the NSLEP13 is unnecessary and unreasonable.

## **6. IS THE VARIATION IN THE PUBLIC INTEREST?**

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Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless 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 to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 4.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.3.

The works contextually have regard to its surrounding properties and provides sufficient open space and landscaping for the amenity of future residents.

Furthermore, it is important to also consider the objectives of the R2 Low Density Residential zone in relation to the development, which are as follows:

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

#### ***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.*
- *To encourage the development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

In response to the above the following is provided:

- The existing townhouse will be retained with the proposed development continuing to provide for the housing needs of the community.
- Only a residential use is existing and proposed.
- The proposed alterations and additions do not significantly alter the existing scale and form of the townhouse. The proposed development does not impact the existing amenity of adjoining dwellings nor impact any natural or cultural heritage areas, as outlined in the Statement of Heritage Impact prepared by Archnex Designs.
- The proposed alterations and additions do not impact views, solar access or privacy of adjoining properties, thereby protecting residential amenity.

The application achieves the objectives of the R2 Low Density Residential zone.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standards, noting the development will be in the public interest.

### **7. PUBLIC BENEFIT OF MAINTAINING THE STANDARD**

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It is considered that there is no benefit to the public or the community in maintaining the development standards. The proposed development will allow for the creation of a high quality unit which, as stated above, meets the objectives of the both the zone and height of buildings standard. It also has been designed to meet the desired future character of the area.

The variation sought is as a result of the height of the addition in relation to the existing ground level. The proposed works sought are located entirely below the existing building height of the dwelling.

It is not considered that the variation sought raises any matter of significance for State or regional environmental planning.

The departure from the height of buildings control within the NSLEP13 allows for the orderly and economic use of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

## **8. IS THE VARIATION WELL FOUNDED?**

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It is considered that this has been adequately addressed in Parts 4 and 5 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the NSLEP13 in that:

- ❑ Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- ❑ There are sufficient environmental planning grounds to justify the departure from the standards;
- ❑ The development meets the objectives of the standard to be varied (height of buildings) and objectives of the R2 Low Density Residential zoning of the land;
- ❑ The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- ❑ The breach does not raise any matter of State or Regional Significance; and

Based on the above, the variation is considered to be well founded.

## **9. GENERAL**

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Clause 4.6 also states that:

*“(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

**Note.** *When this Plan was made it did not include all of these zones*

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant’s written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*

- (a) a development standard for complying development,*
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
  - (c) clause 5.4,*
  - (caa) clause 5.5,*
  - (ca) clause 4.3 in relation to land identified as "Area 1" on the Special Provisions Area Map, other than subject land within the meaning of clause 6.19C,*
  - (cab) clause 4.4, 5.6 or 6.19C in relation to land identified as "Area 1" on the Special Provisions Area Map,*
  - (cb) clause 6.3 (2) (a) and (b),*
  - (cba) clause 6.19A,*
  - (cc) clause 6.20.*
- (8A) (Repealed)."*

This variation does not relate to the subdivision of land. The variation sought is thus not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A BASIX certificate was provided for the development.

The additional clauses outlined above, within the NSLEP13 do not apply to the proposal. The site is not identified on the Special Provisions Area Map.



## 10. CONCLUSION

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The proposal does not strictly comply with the maximum building height control as prescribed by Clause 4.3 of the NSLEP13. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the NSLEP13 are satisfied as the breach to the controls does not create any adverse environmental impacts.

As reiterated throughout this report, the proposal seeks to provide for a development that meets Council's standards, excepting the variation sought to height. The development is considered to meet the desired future character of the area.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance, especially considering the proposed works are located entirely below the existing building height. The use of Clause 4.6 of the NSLEP13 to vary this development control is appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the maximum building height control is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

Should you have any questions regarding the proposed development, please do not hesitate to contact me.

Kind regards,

*RBianco*

Roberto Bianco  
GAT & Associates  
Plan 4519