

NOTICE

Bayside Local Planning Panel - Other Applications
will be held in the Rockdale Town Hall
448 Princes Highway, Rockdale
on **Tuesday 24 September 2024 at 6:00 PM**

to consider items outside the public meeting
in accordance with the Operational Procedures

Members of the public do not have the opportunity to speak on this item

ON-SITE INSPECTIONS

On-site inspections are undertaken beforehand.

AGENDA

1 ACKNOWLEDGEMENT OF COUNTRY

Bayside Council acknowledges traditional custodians: the Gadigal and Bidjigal people of the Eora nation, and pays respects to Elders past, present and emerging. The people of the Eora nation, their spirits and ancestors will always remain with our waterways and the land, our Mother Earth.

2 APOLOGIES

3 DISCLOSURES OF INTEREST

4 MINUTES OF PREVIOUS MEETINGS

Nil

5 REPORTS – PLANNING PROPOSALS

Nil

6 REPORTS – DEVELOPMENT APPLICATIONS

6.1 DA-2024/129 - 11 Napoleon Street Rosebery - Development Application
.....2

Meredith Wallace
General Manager

Bayside Local Planning Panel - Other Applications

24/09/2024

Item No	6.1
Application No	DA-2024/129
Property	11 Napoleon Street Rosebery
Application Type	Development Application
Proposal	Alterations and additions to detached dwelling including first floor terrace and study room.
Owner	Mr M S Iacono
Applicant	Mr M S Iacono
Ward	Ward 2
Lodgement Date	6/06/2024
No. of Submissions	Nil (0)
Cost of Development	\$536,000
Reason Criteria	Departure from standards
Report by	Peter Barber, Director City Futures

Officer Recommendation

- 1 That the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.16 and s4.17 of the *Environmental Planning and Assessment Act 1979*, NOT approve applicant's variation request to contravene Section 4.4A – 'Exception to Floor Space Ratio for residential accommodation' of the Bayside Local Environmental Plan 2021 as the application does not adequately address the matters required to be demonstrated by Clause 4.6(8)(bf) of that Plan.
- 2 That the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.16 and s4.17 of the *Environmental Planning and Assessment Act 1979*, REFUSE Development Application DA-2024/129 for Alterations and additions to detached dwelling including first floor terrace and study room at 11 Napoleon Street, ROSEBERY NSW 2018, for the following reasons:
 - The proposed variation of floor space ratio development standard has been assessed in accordance with Clause 4.6 of Bayside Local Environmental Plan 2021 and is not considered acceptable under clause 4.6(8)(bf) as the proposed variation is not for a public benefit.
 - Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy Clause 4.6(8)(bf) of the Bayside Local Environmental Plan 2021 relating to exception to development standards. The application does not provide adequate justification relating to demonstrable public benefit and therefore clause 4.6 cannot be used to vary the development standard.
 - Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives

of the Bayside development control plan, including the objective requiring to ensure development respects desired existing and future local character as identified in this Plan. Specifically, the development does not comply with control C4 and objective O3 of part 5.2.1.2 of Bayside Development Control Plan.

- Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the proposed development is not in the public interest and will set an undesirable precedent.

Location Plan



Attachments

- 1 [↓](#) Planning Report
- 2 [↓](#) Architectural Plans

BAYSIDE COUNCIL

Planning Assessment Report



Application Details

Application Number:	DA-2024/129 - PAN
Date of Receipt:	6 June 2024
Property:	11 Napoleon Street, ROSEBERY NSW 2018 Lot 1 DP 794631
Owner:	Mr Michele Stefano Iacono & Mrs Tina Paradiso
Applicant:	Mr M S Iacono
Architect:	M+M Architects
Town Planner:	OTM Planning & Milestone Town Planning
Proposal:	Alterations and additions to detached dwelling including first floor terrace and study room
Recommendation:	REFUSAL
No. of submissions:	Nil (0)
Author:	Jay Shah- Development Assessment Planner
Date of Report:	23 August 2024

Key Issues

The key issues identified in the assessment of the development application relate to:

- The subject site is mapped within area 2 under clause 4.4A of Bayside Local Environmental Plan 2021 and benefits from a Floor Space Ratio of 0.6:1. The proposed FSR is 0.71:1. Pursuant to clause 4.6 (8)(bf), a variation to clause 4.4A is not to be granted unless the proposed variation is for a demonstrable public benefit.
- The applicant seeks a variation to FSR development standard by arguing public benefit in terms of monetary savings by NDIS. It has been indicated that the proposed sensory room for the neuro-divergent children of the homeowners will result in reduced load on NDIS's budget allocation as the need for the sensory room for homeowners' two children will be fulfilled on site as opposed to relying on the external

facility (the expense of which is covered by NDIS). Council officers do not support the argument provided by the applicant regarding the public benefit.

- Noting the FSR permitted on the land has already been used within the existing buildings; the limitations under clause 4.6(8)(bf) regarding the public benefit; and taking into consideration the needs of this family, a proposition was presented to the applicant to investigate options for the conversion of one of the rooms into a sensory room. However, the applicant has not viewed this as a suitable alternative and opted to justify the proposal on the grounds of providing a public benefit.

The development application ("DA") has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* ("the Act") and is recommended for REFUSAL.

The officers involved in writing and authorising this report declare, to the best of their knowledge, that they have no interest, pecuniary or otherwise, in this application or persons associated with it and have provided an impartial assessment.

Recommendation

1. THAT the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.16 and s4.17 of the *Environmental Planning and Assessment Act 1979*, NOT approve the applicant's variation request to contravene Section 4.4A – 'Exception to Floor Space Ratio for residential accommodation' of the Bayside Local Environmental Plan 2021 as the application does not adequately address the matters required to be demonstrated by Clause 4.6(8)(bf) of that Plan.
2. THAT the Bayside Local Planning Panel, exercising the functions of Council as the consent authority pursuant to s4.16 and s4.17 of the *Environmental Planning and Assessment Act 1979*, REFUSE Development Application DA-2024/129 for Alterations and additions to detached dwelling including first floor terrace and study room at 11 Napoleon Street, ROSEBERY NSW 2018 for the following reasons:
 - The proposed variation of the floor space ratio development standard has been assessed in accordance with Clause 4.6 of Bayside Local Environmental Plan 2021 and is not considered acceptable pursuant to clause 4.6(8)(bf) as the proposed variation is not for a public benefit.
 - Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy Clause 4.6(8)(bf) of the Bayside Local Environmental Plan 2021 relating to exception to development standards. The application does not provide adequate justification relating to a demonstrable public benefit and therefore clause 4.6 cannot be used to vary the development standard.
 - Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not meet the objectives of the Bayside Development Control Plan 2022, including the objective requiring to ensure developments respect the desired existing and future local character as identified in this Plan. Specifically, the development does not comply with control C4 and objective O3 of part 5.2.1.2 of Bayside development control plan.

- Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the proposed development is not in the public interest and will set an undesirable precedent.

Background

History

No previous application has been considered by Council in relation to the subject site:

The history of the subject application is summarised as follows:

- 6 June 2024 – The DA was lodged with Council.
- 13 June 2024 – Site inspection was conducted.
- 17 June 2024 to 1 July 2024 – Notification period
- 20 June 2024 – RFI letter was sent.
- 28 June 2024 – Extension to provide response to the RFI was submitted. New consultant planner appointed by the applicant.
- 15 July 2024 – Response to the RFI was received.
- 24 September 2024 – Application was briefed to Bayside Local Planning Panel (BLPP).

Proposal

The proposed development is summarised as follows:

Demolition/Excavation/Tree Removal

- Demolition of western wall of bedroom 3 located on the first floor.

Construction

- Construction of a 'purpose built sensory room' on the first floor of the existing dwelling replacing the rear terrace area. Construction of new internal wall to create a hallway leading to the 'purpose built sensory room'. Construction of a new pergola on the existing rear terrace adjacent to northern boundary.
- Alteration of building elements contained within front façade including, simplification of the profile of street facing wall of bedroom 1 located on the upper floor, simplification of the profile of the first-floor balcony, addition of a privacy screen on both side of the first-floor balcony, and to extend the roof form to cover the balcony.

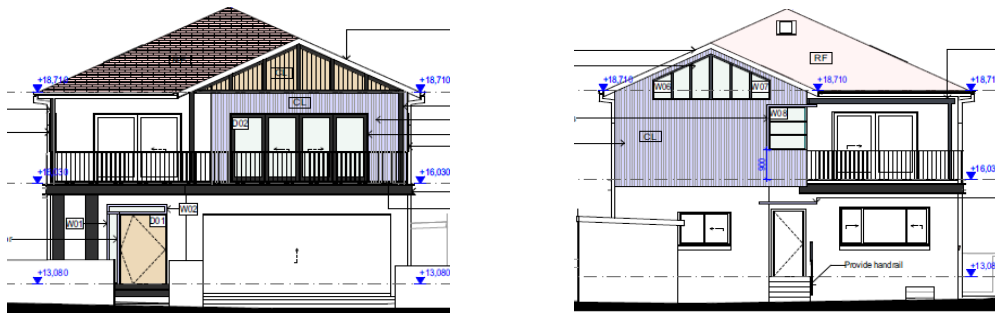


Figure 1 East elevation (left) and West elevation (right).



Figure 2 North elevation.



Figure 3 South elevation.

Site Location and Context

The subject site is legally identified as Lot 1 DP 794631 and is known as 11 Napoleon Street. The site is rectangular shaped with front and rear boundary widths of 12.19 m. The side boundaries are 32.005 m deep. The site has sole frontage to Napoleon. The total site area is 390.1 sqm. The topography of the site is relatively flat.

The subject site contains a two-storey dwelling and a brick shed at the rear of the dwelling. The site is located on the east of Napoleon Street between Henley Street and Coward Street. Adjoining development to the sides includes a two storey dwelling to the north of the subject site and a one storey dwelling to the south of the subject site. A two storey dwelling is situated on the rear adjoining property to the east of the subject site. There is a mix of one storey and two storey residential buildings within close proximity to the subject property.



Figure 4 Site locality.

There are no trees of significance on the site. One tree is located on the public domain in front of the site. The subject site is impacted by Sydney Airport ANEF contour 20-25.

Statutory Considerations

Environmental Planning and Assessment Act, 1979

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979* ("the Act").

S4.15 (1) - Matters for Consideration - General

S4.15 (1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

State Environmental Planning Policies

State Environmental Planning Policy (Sustainable Buildings) 2022

The applicant has submitted a BASIX Certificate for the proposed development, being Certificate number A1739819.

Commitments made within BASIX certificates result in reductions in energy and water consumption on site post construction. The proposal is satisfactory in this regard.

Bayside Local Environmental Plan 2021

The following table outlines the relevant Clauses of Bayside Local Environmental Plan 2021 (“the LEP”) applicable to the proposal, while aspects warranting further discussion follows:

Relevant Clauses	Compliance with Objectives	Compliance with Standard / Provision
2.3 Zone and Zone Objectives R2	Partially - see discussion	Not Applicable
4.3 Height of buildings	Yes see discussion	Yes see discussion
4.4A Exceptions to FSR for residential accommodation	No see discussion	No see discussion
4.6 Exceptions to development standards	No see discussion	No see discussion
6.1 Acid Sulfate Soil Class 5	Yes see discussion	Yes see discussion
6.3 Stormwater and water sensitive urban design	Yes see discussion	Yes see discussion
6.8 Development in areas subject to aircraft noise	Yes see discussion	Yes see discussion
6.11 Essential services	Yes see discussion	Yes see discussion

2.3 - Zone

The subject site is zoned R2 Low Density Residential under the provisions of LEP. The proposal is defined as alterations and additions to an existing residential dwelling which constitutes a permissible development only with development consent. The objectives of the zone are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure land uses are carried out in a context and setting that minimises impact on the character and amenity of the area.
- To enable residential development in accessible locations to maximise public transport patronage and encourage walking and cycling.

The proposed development does not satisfy the first objective of the zone as it intends to exceed the development standard of floor space ratio to an extent that is not compatible to the low-density residential environment.

4.3 - Height of Buildings

A maximum height standard of 9 m applies to the subject site.

The existing development has a maximum height of 8.9 m (RL 21.2 m AHD). The proposal does not change the maximum height of the development and complies with the provisions and objectives of this clause.

4.4A Exceptions to floor space ratio for residential accommodation

The subject site is located on land identified as AREA 2 on the floor space ratio map of Bayside Local Environmental Plan 2021. Clause 4.4A(3) of Bayside LEP 2021 is applicable to the subject site, which permits the development on the subject site to have maximum floor space ratio of 0.60:1 (234.06 sqm) as the site area is between 351 sqm and 450 sqm.

GFA for the proposed development is calculated to be 277.6 sqm (133.7 sqm for ground floor + 131.9 sqm for upper floor + 12 sqm for rear shed) which equates to an FSR of 0.71:1 which proposes a variation of 43.6 sqm (18.6%). The proposal does not comply with the provisions of this clause.

The non-compliance is discussed in Clause 4.6 – Exceptions to Development Standards below.

4.6 - Exceptions to Development Standards

Clause 4.6 of the LEP allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating the matters listed in subclause 4.6(3). Notwithstanding, subclause 4.6(8)(bf) specifies that clause 4.6 does not allow development consent to be granted for development that would contravene clause 4.4A, unless it is for demonstrable public benefit.

As indicated in the preceding section of the report, the proposal contravenes clause 4.4A and the variation of floor space ratio development standard is not supported.

Public Benefit discussion

The applicant has submitted following documents to argue the proposal is for a demonstrable public benefit:

- Letter from the Autism Community Network dated 2 July 2024,
- Letter from BeeU2Day dated 4 July 2024, and
- Letter from Mr John Evernden dated 12 July 2024.

The information provided within the above documents is described and analyzed below:

Letter from the Autism Community Network

Provided information summary:

The letter details the necessity of the sensory room and inconvenience involved in accessing an external sensory room facility away from home.

Officer comments:

Council acknowledges the demanding situation and necessity of an in-house sensory room. Notwithstanding, the letter does not provide any evidence to demonstrate a public benefit.

Letter from BeeU2Day

Provided information summary:

The letter provides detail regarding the monetary saving as following:

“Minimum of two one-hour sensory room sessions per child, per week, @ \$30/hr plus \$193/hr supervision by an allied health professional (NDIS rate) over 48 weeks = \$42,816 ex GST per annum.”

The provision of a sensory room at home releases demand on these public resources, which will save the Australian taxpayer \$470,976 (excl. GST) until 2035, when the children turn 18.

Officer comments:

The public benefit is required to be a tangible benefit to the general public which is generally implemented by means of a voluntary planning agreement. The provided justification for public benefit is not considered satisfactory.

Letter from Mr John Evernden

Provided information summary:

The letter indicates support for the application and states that:

“Refusal of the DA on the basis of Clause 4.6 (8) (bf) of the Bayside LEP 2021 could expose Council to a claim of ‘indirect discrimination’ under Section 3 (a) (i) of the Commonwealth Disability Discrimination Act 1992, Objects, which state,

“The objects of this Act are:

(a) To eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of:

(i) work, accommodation, education, access to premises, clubs and sport”.

Section 4 of the Act, Interpretation, states, “(1) In this Act, unless the contrary intention appears: accommodation includes residential or business accommodation”.

Officer comments:

The council is committed by implementing the Bayside Disability Inclusion Action Plan 2022-26 in terms of the staff understanding universal design principles. Consistent with these principles, the efforts of this family to provide for the needs of their children is acknowledged. Noting the existing buildings on site have maximised the FSR permissible under current planning controls, it was suggested to the applicant to convert one of the existing rooms into a sensory room as an option to satisfy the needs of the family. However, this suggestion was not welcomed by the applicant. In response, the applicant has provided a summary of all rooms within the dwelling and their suitability or otherwise as sensory rooms.

To avoid any doubt, the recommendation of not supporting the application is based on lack of

evidence to demonstrate that the proposed variation is for a public benefit as stipulated by clause 4.4A of Bayside Local Environmental Plan.

As such, the proposal does not benefit from the provisions of clause 4.6 of Bayside LEP permitting the variation to the development standard. Notwithstanding, the application was accompanied by a written request to vary the development standard which is discussed below.

Variation request

Notwithstanding the above, an assessment of the submitted Clause 4.6 argument by the applicant has been considered and assessed as below.

Clause 4.6 of the BLEP 2021 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

Section (3)(a)- that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and

Section (3)(b)- that there are sufficient environmental planning grounds to justify the variation.

The applicant is seeking to contravene the Floor Space Ratio development standard by 43.6 sqm which equates to a 18.6% variation. A contravention request in accordance with Clause 4.6 of the LEP, seeking to justify the proposed contravention, has been prepared by Milestone Planning and is attached to this report.

Note: The provided variation request does not mention the variation accurately as it did not include the floor area of existing rear shed into the calculation of Gross Floor Area. The provided variation request indicates the variation to be 14.11% (33.03 sqm) as opposed to 18.6% (43.6 sqm). Should the panel decide to approve the application, a revised variation request can be requested from the applicant.

The applicant's Clause 4.6 contravention request argues that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to support the non-compliant Floor Space Ratio. These components are summarised below, with the assessing officer's response provided:

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

Applicant Comments/Arguments (summarised):

The findings of Dixon SC in *Brigham v Canterbury – Bankstown Council* [2018] NSWLEC 1406 have been considered as guide to adopt method 1 from the 5 indicated methods in *Wehbe v Pittwater Council* (2007) 156 LGERA 446), to demonstrate that the development standard is unreasonable or unnecessary in the circumstances of this case. Additionally, 'site-specific' circumstances are provided to demonstrate above point according to *Moorgate Mosman Pty Ltd v Mosman Municipal Council* [2023] NSWLEC 1188 at [47]-[48]. Method 1 requires demonstrating that the objectives of the standard are achieved notwithstanding non-compliance with the standard.

Objective (a) aims to ensure, bulk and scale of development is compatible with the character of the locality.

The proposal is located at rear of the dwelling on the existing first floor terrace. The proposal maintains low density character compatible to the locality in terms of retaining 2 storey

development, retaining existing building footprint, maintaining rear building line consistent with surrounding two storey developments, and ensuring that the height of the proposal does not exceed existing roofline. Consequently, objective (a) is achieved notwithstanding non-compliance with the standard.

Objective (b) aims to promote good residential amenity.

The application indicates minimal overshadowing; oversteering; and acoustic impacts to the adjoining properties as a result of the proposal. The positive visual impact has been indicated as a result of the proposed development in terms of contemporary elevational treatment. Additionally, the proposal will result in the non-restricted overlooking impact to the adjoining properties from existing terrace as well as acoustic impact to and from adjoining properties being mitigated due to construction of a room.

Officer Comment:

Objective (a) is considered to be achieved by the proposed development as the overall scale and bulk of the dwelling is not anticipated to have any adverse impact on the low-density residential character of the locality. The proposed sensory room is located at the rear of the property and is not distinctly visible from the public domain.

However, adequate justification for achieving objective (b) is not provided. The provided justification for 'visual impact' focuses mainly on the front façade portion of the development, which does not contribute to the variation of the development standard. Minor increase in the overshadowing impact and lack of acoustic impact is not considered to be adequate justification for achieving the objective. Notwithstanding, reduction in overlooking impact from the existing first floor terrace, as a result of the proposed room is considered to promote good residential amenity.

Section 4.6(3)(b)- Are there sufficient environmental planning grounds to justify contravening the development standard?

Applicant Comments/Arguments (summarised):

The application provides sufficient environmental planning grounds to justify contravening the development standards in terms of maintaining good residential amenity as described in justification for achieving objective (b) in preceding section, compatibility of the bulk and scale with character of the locality as described in justification for achieving objective (a) in preceding section, enhanced accessibility, and public benefit.

Officer Comment:

The existing development on the site has already maximised the permissible FSR under Council's LEP. As previously stated, the proposed variation to the development standard is not for a demonstrable public benefit, but for the benefit of the residents of the subject dwelling. It is the officer's view that there are no sufficient environmental planning grounds to justify contravening the development standard in this case.

6.1 – Acid Sulfate Soils

Acid Sulfate Soils (ASS) – Class 5 affect the property by the LEP mapping. Development Consent is required as the proposal involves works.

The proposal does not involve any excavation below natural ground level. an Acid Sulfate Soils Management Plan is not warranted in this instance and the proposal is acceptable in the

context of the LEP Clause.

6.3 – Stormwater and WSUD

The proposed increase in the non-permeable area is less than 60 sqm. Additionally, the building footprint is not proposed to be increased. Therefore, any further assessment under this part is not required.

6.8 – Development in Areas subject to Aircraft Noise

The subject site is located within the 20 to 25 ANEF Contour, thus subject to potential adverse aircraft noise. Given this, appropriate noise attenuation measures are required for the proposed development.

The proposal was accompanied by an Acoustic Report prepared by ACOUSTIC NOISE & VIBRATION SOLUTIONS P/L dated 19 January 2024 which concluded that the proposed development would satisfy the requirements of the AS 2021-2015 “Acoustics-Aircraft Noise Intrusion –Building Siting and Construction” and Bayside Council requirements, provided that the above recommended materials are used in construction.

The proposal is satisfactory with respect of the requirements and objectives of this clause, subject to conditions of consent would the Panel grant approval to the application.

6.11 – Essential Services

Services are generally available on site to facilitate to the proposed development. The proposal is satisfactory in this regard.

S4.15 (1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

Bayside Development Control Plan 2022

The following table outlines the relevant Clauses of the DCP applicable to the proposal, while aspects warranting further discussion follows:

Relevant Clauses	Compliance with Objectives	Compliance with Standard / Provision
PART 3 – GENERAL DEVELOPMENT PROVISIONS		
3.5 Transport, Parking and Access	Yes see discussion	Yes see discussion
3.7 Landscaping, Private Open Space and Biodiversity	Yes see discussion	Yes see discussion
3.8 Tree Preservation and Vegetation Management	Yes see discussion	Yes see discussion
3.9 Stormwater Management and WSUD	Yes see discussion	Yes see discussion
3.13 Areas subject to Aircraft Noise and Airport airspace	Yes see discussion	Yes see discussion

Relevant Clauses	Compliance with Objectives	Compliance with Standard / Provision
PART 5 – RESIDENTIAL AND MIXED USE DEVELOPMENTS		
5.2.1 Low Density Residential	Yes see discussion	Partially see discussion
PART 7 – SPECIFIC PLACES		
7.9.4 Rosebery Character Precinct	Yes see discussion	Yes see discussion

The following Sections elaborate on Key matters from the above table.

Part 7 is dealt with first, as the DCP states: *“Provisions in the chapter [7] prevail over any similar provisions in other sections of the DCP”*.

Part 7 – Rosebery Character Precinct

This part of the DCP provides controls and guidelines for 17 areas within the Local Government Area. Not all areas are included. The areas chosen are either unique or have been subject to detailed master planning controls, with more specific controls to guide development.

As stated, the provisions of this Section prevail over other sections of the DCP, including where there is any inconsistency.

The site is located within the Rosebery Character Precinct between Henley Street and Coward Street.

Description

The Rosebery Precinct is predominately a consistent low-density scale of development with larger detached dwelling houses. The majority of the Precinct comprises of one and two-storey brick dwellings with multi-unit housing developments including townhouse, semi-detached and villa style developments scattered throughout the Precinct. The one-storey cottages are depicted in two predominant styles – inter-war and post-war. These buildings are constructed of brick, fibro or timber cladding and contribute to the heritage conservation in the LGA. This low to medium density style of development promotes treelined streets with a focus on urban amenity and generous street setbacks. The Precinct is within the 20 to 25 ANEF contour which is conditional for residential development. The Rosebery Neighborhood Centre is located along Gardeners Road and subject to more specific controls outlined in this section.

Desired Future Character/Vision

The Rosebery Precinct will be maintained primarily as a residential precinct that is characterized by a distinct housing style of dwelling houses. Future development will be undertaken to a scale, design, material of construction, and nature that contributes positively to the visual amenity of the area and which complements the architectural style of the surrounds.

Controls

The proposal consists of adding a room to the rear portion of the dwelling on the first floor and some front façade additions. The proposed development is considered to maintain the distinct housing style that the precinct is characterized by, as the defining element of the dwelling character including pitched roof form, two storey height, setbacks, landscape area, and fencing are compatible with other developments in the locality.

PART 3 – GENERAL DEVELOPMENT CONTROLS

Part 3.5 – Transport, Parking and Access

The design and location of the parking facilities and pedestrian access on the site is acceptable having regard to the nature of the site and the proposal.

No changes are proposed to existing parking arrangement. No further consideration under this part is required.

The proposal satisfies the transport, access and parking requirements of the DCP.

Part 3.7 and 3.8 – Landscaping, Private Open Space, Biodiversity and Tree/Vegetation Management

No changes are proposed in terms of landscaping, private open space, biodiversity and tree/vegetation management.

No further consideration under this part is required.

The proposal is satisfactory in regard to the objectives and provisions of Parts 3.7 and 3.8 of the DCP.

Part 3.9 – Stormwater Management and WSUD

An assessment against stormwater management has been discussed in response to Clause 6.3 of the LEP, in the previous Section of this report.

3.13 – Development in areas subject to Aircraft Noise and Sydney Airport Operations

The proposed use is sensitive to aircraft noise and is within the ANEF 20+ noise contour. This has been discussed in response to Clause 6.8 of the BLEP previously.

PART 5 – RESIDENTIAL AND MIXED-USE DEVELOPMENTS

5.2.1 - Low-density residential (dwellings, dual occupancy, semi-detached dwellings)

5.2.1.1 - Streetscape, Local Character and Quality of Design

The considerations for the local area outlined in Part 7 of the DCP have been addressed previously.

The front façade is proposed to be altered to simplify the profile of street facing wall of bedroom 1 located on the upper floor, simplify the profile of the first-floor balcony, add a privacy screen to the northern side of the first-floor balcony, and to extend the roof form to cover the balcony. The proposal is not considered to have adverse impact to the streetscape in terms of compatibility with the local character.



Figure 5 Existing development as seen from Napoleon Street



Figure 6 Proposed development as seen from Napoleon Street

The proposal is consistent with the local streetscape, noting the setbacks, form and materials incorporated into the design are contextually appropriate. The proposed alterations and additions incorporate a range of materials and colours which complement the existing dwelling and integrate with the overall appearance of the building within the streetscape.

Therefore, it is reasonable to conclude the proposal is consistent with the objectives and controls relating to building design, materials and finishes.

5.2.1.2 - Built Form Controls

The building is two storey high and therefore complies with the requirements of this Clause.

The proposal has a maximum height of 8.9 m (RL 21.2 m AHD) which complies with the provisions and objectives of this Clause.

For 2 storey development, the DCP includes a provision stating:

Two or three storey developments are only permitted towards the front of an allotment and may only extend to a maximum of 70% of the depth of the site measured from the front property boundary.

The proposal will result in two storey portion of the development extending to 78.8% (25.3 m) of the site length when measured from the front boundary. The proposal does not comply with abovementioned control C4 of this part and with objective O3 requiring to ensure building length is broken up to reflect the low-density character of adjoining sites.

The application is not supported under this part of bayside DCP due to non-compliance with control C4 and objective O3.

5.2.1.3 – Setbacks

The proposal will not change existing site setbacks except for the rear first floor setback. Notwithstanding, the proposed addition will not extend existing building footprint and will maintain the existing rear setback.

No further consideration under this part is required.

5.2.1.4 - Landscaping and Private Open Space

The landscaping controls in Part 3.7 of the DCP have been addressed previously.

5.2.1.5 - Solar Access and Overshadowing

Dwellings within the development site and adjoining properties are required to receive a minimum of 2 hours direct sunlight to habitable living rooms (family rooms, rumpus, lounge and kitchen areas) and to at least 50% of the primary open space between 9am and 3pm in mid-winter (June 21).

The subject site is orientated west to east with the frontage of the site facing the west and the rear of the site facing the east. The lot pattern of the street is such that each adjoining site also has the same orientation.

The applicant has provided existing and proposed aerial shadow diagrams at 9 am, 12 pm and 3 pm for mid-winter (June 21) and spring-equinox (September/March 21). Additionally, elevation shadow diagrams have been provided for mid-winter and spring-equinox for 13 Napoleon Street.

As demonstrated within the shadow diagrams, at mid-winter, the proposal and adjoining properties will achieve more than 2 hours of direct sunlight to its rear facing living areas and more than 50% of the private open space from midday onwards. Further, the windows on the northern wall of 13 Napoleon Street are already overshadowed by the existing development. The proposed extension is not likely to make any relevant difference in overshadowing to the property at 13 Napoleon Street.

Given the above assessment regarding the solar access and overshadowing objectives and controls, it is reasonable to conclude the proposal is acceptable in this instance.

5.2.1.6 - Parking and Access

This has been addressed previously in accordance with Part 3.5 of the DCP.

5.2.1.7 - Visual and Acoustic Privacy

An assessment of potential privacy impacts upon neighbors has been undertaken having regard to the controls and objectives of this Part of the DCP. The proposed development has been designed and sited to reasonably minimize acoustic impact to and from adjoining properties, incorporating adequate acoustical treatment. Notwithstanding, a potential overlooking impact to the adjoining properties has been identified.

The proposal incorporates a corner window for the purpose-built sensory room on the first floor which overlooks the private open spaces of adjoining properties at 9 Napoleon Street, 28 Sutherland Street, and 30 Sutherland Street. If the application was recommended for approval, the issue could have been mitigated by a condition of consent ensuring that the subject window is provided with obscure glazing.

S4.15(1)(a)(iii) – Provisions any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

There is no planning agreement applicable to the proposal.

S4.15(1)(a)(iv) - Provisions of the Regulation

In terms of provisions of the Regulation:

- The DA submission has included sufficient information to enable environmental assessment of the application (Clause 24);
- No other concurrences or other approvals are proposed or required (Clause 25);
- No approval under the Local Government Act 1993 is sought as part of this DA (Clause 31(3)); and
- Demolition works are able to meet the provisions of Australian Standard (“AS”) 2601 and this is addressed by conditions of consent.

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

S4.15(1)(b) - Likely Impacts of Development

This Section of the Act requires consideration of natural and built environmental impacts, and social and economic impacts. The potential and likely impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls.

S4.15(1)(c) - Suitability of the Site

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal, throughout this report.

As stated in this report, the site area does not permit for the proposed extension as the variation in the floor space ratio is considered to result in overdevelopment. It is concluded that the site is not suitable for the proposed development.

S4.15(1)(d) - Public Submissions

Public Submissions

The development has been notified in accordance with the DCP, between 17 June 2024 and 1 July 2024. Nil (0) submissions have been received.

S4.15(1)(e) - Public interest

The proposal has been assessed against the relevant planning instruments and controls applying to the site, also having regard to the applicable objectives of the controls. As demonstrated in this assessment of the development application, the application fails to provide adequate justification for a demonstrable public benefit and is not considered to benefit with development standard variation under clause 4.6 of Bayside LEP 2021. The proposal is considered to be an overdevelopment of the subject site and is likely to create undesired precedent. As such, granting approval to the proposed development will not be in the public interest.

S7.11/7.12 - Development Contributions

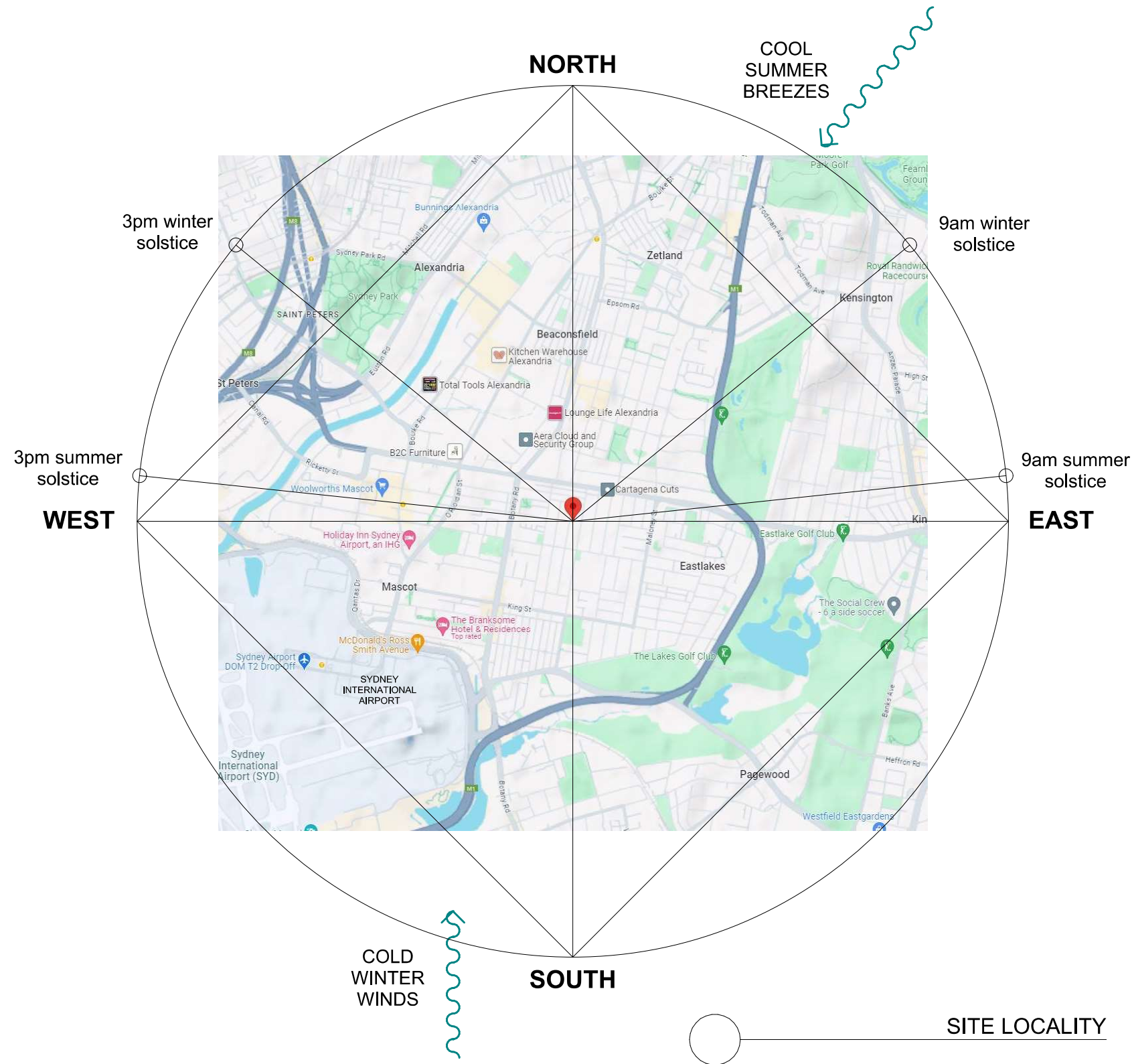
The proposal is not subject to development contributions under Council's Contribution Plans.

Conclusion and Reasons for Decision

The proposed development at 11 Napoleon Street, ROSEBERY NSW 2018 has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979* including relevant environmental planning instruments and Bayside Development Control Plan 2022.

The proposed development, being alterations and additions to a two-storey dwelling, is a permissible land use within the zone with development consent. In response to the public notification, nil (0) submissions were received.

The proposal is not supported for the reasons outline in the Recommendations section of this report.



AERIAL VIEW



STREET VIEW

	<p>NOTES:</p> <p>This drawing is and remains copyright and is the property of m m architects p/l. It may not be used or copied in whole or in part without written consent.</p> <p>All dimensions to be verified on site.</p> <p>This drawing is not to be used for construction purposes.</p> <p>DEVELOPMENT APPLICATION</p>
	<p>REV A</p> <p>DATE 08/04/2024</p> <p>DESCRIPTION DA Client Issue</p>

REV	DATE	DESCRIPTION
A	08/04/2024	DA Client Issue

mm architects

 SUITE 8/21 SYDNEY RD, MANLY NSW 2095

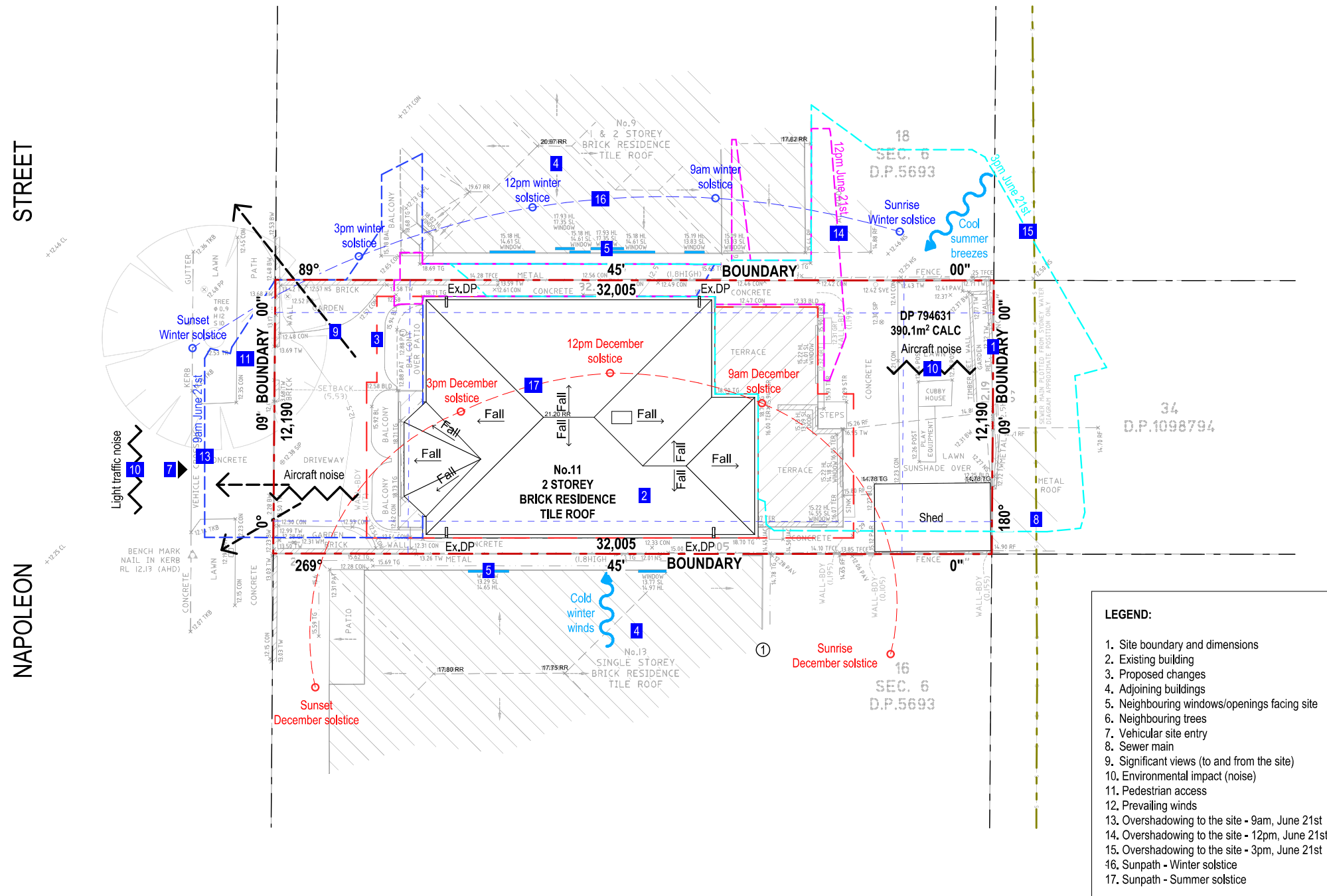
 admin@mmarchitects.com.au

 nom. arch. David McCrae | NSW ARB 8352

 ABN 79 153 579 867

<p>CLIENTS: TINA PARADISO & STEFANO IACONO</p> <p>PROJECT: ALTERATIONS & ADDITIONS TO DETACHED DWELLING</p> <p>TITLE: 11 NAPOLEON STREET ROSEBERY NSW 2018</p> <p>SITE LOCALITY</p>	<p>SCALE: CT</p> <p>DATE: 8/04/2024</p> <p>JOB NO: 1620</p>	<p>DRAWING NO: DA01</p> <p>ISSUE: A</p>
---	--	---

<p>1620_NAPOLEON 11_AC24_DA_240402_MB.dfn</p>	<p>PLOTTED 8/04/2024 9:40 AM</p>
---	----------------------------------



- LEGEND:**
1. Site boundary and dimensions
 2. Existing building
 3. Proposed changes
 4. Adjoining buildings
 5. Neighbouring windows/openings facing site
 6. Neighbouring trees
 7. Vehicular site entry
 8. Sewer main
 9. Significant views (to and from the site)
 10. Environmental impact (noise)
 11. Pedestrian access
 12. Prevailing winds
 13. Overshadowing to the site - 9am, June 21st
 14. Overshadowing to the site - 12pm, June 21st
 15. Overshadowing to the site - 3pm, June 21st
 16. Sunpath - Winter solstice
 17. Sunpath - Summer solstice

SITE ANALYSIS PLAN
1:200

	<p>NOTES:</p> <p>This drawing is and remains copyright and is the property of m m architects p/l. It may not be used or copied in whole or in part without written consent.</p> <p>All dimensions to be verified on site.</p> <p>This drawing is not to be used for construction purposes.</p> <p>DEVELOPMENT APPLICATION</p>																	
	<table border="1"> <thead> <tr> <th>REV</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>08/04/2024</td> <td>DA Client Issue</td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	REV	DATE	DESCRIPTION	A	08/04/2024	DA Client Issue											
REV	DATE	DESCRIPTION																
A	08/04/2024	DA Client Issue																

<p>mm architects</p> <p>SUITE 8/21 SYDNEY RD, MANLY NSW 2095 admin@mmjarchitects.com.au nom. arch. David McCrae NSW ARB 8352 ABN 79 153 579 867</p>
--

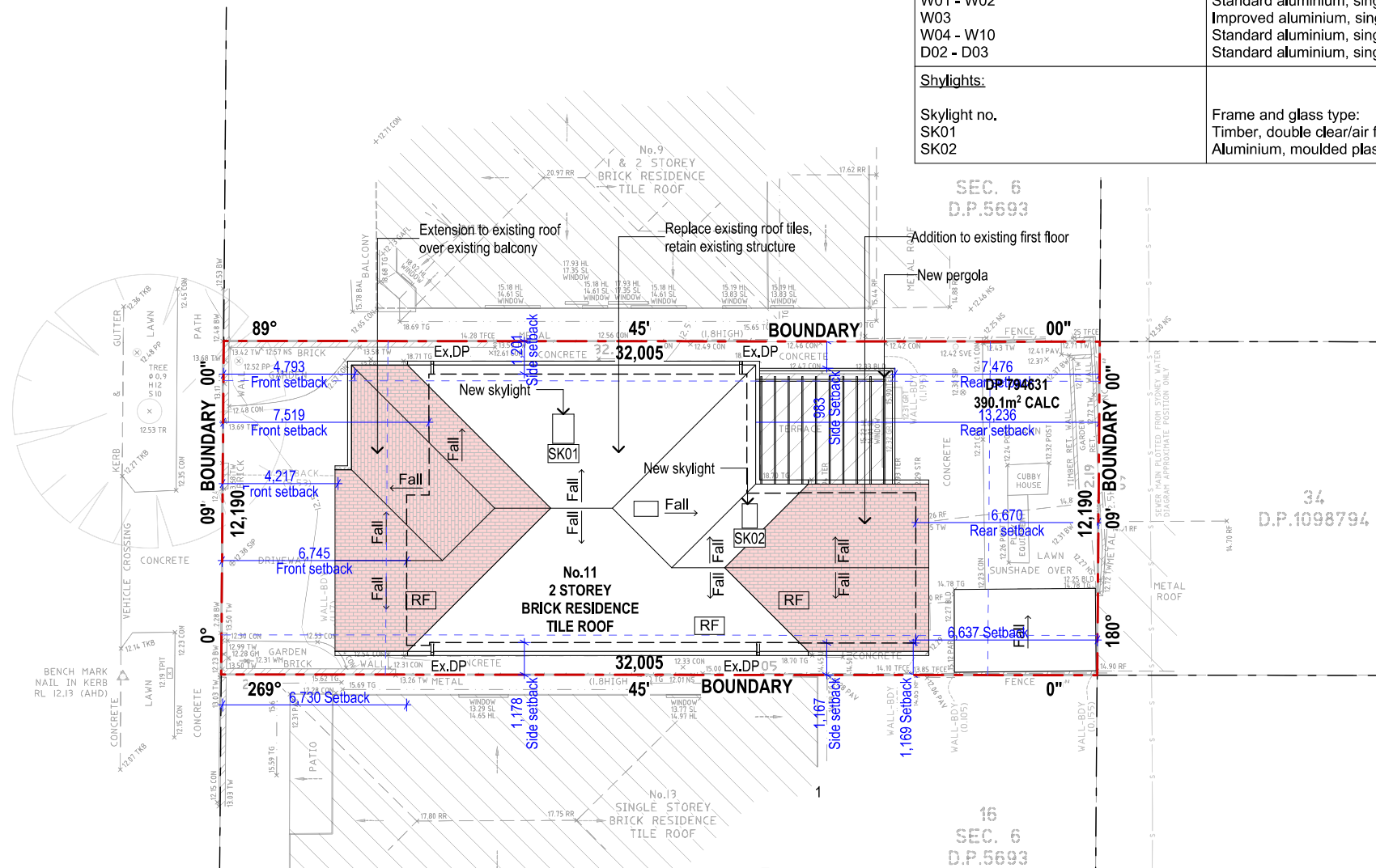
<p>CLIENTS: TINA PARADISO & STEFANO IACONO</p> <p>PROJECT: ALTERATIONS & ADDITIONS TO DETACHED DWELLING</p> <p>11 NAPOLEON STREET ROSEBERY NSW 2018</p> <p>TITLE: SITE ANALYSIS PLAN</p>	<p>SCALE: 1:200</p> <p>DRAWN: CT</p> <p>DATE: 8/04/2024</p> <p>JOB NO: 1620</p>	<p>DRAWING NO: DA02</p> <p>ISSUE: A</p>
---	--	---

<p>1620_NAPOLEON 11_AC24_DA_240402_MB.dgn</p>



STREET

NAPOLEON



BASIX COMMITMENTS

Fixtures and Systems:

Lighting:	A minimum of 40% of new or altered light fixtures are to be fitted with fluorescent, compact fluorescent or LED lamps.
Fixtures:	New or altered showerheads to have a flow rate no greater than 9 Litres per minute or a 3 star water rating. New or altered toilets to have a flow rate no greater than 4 litres per average flush or a minimum 3 star rating. New or altered taps to have a flow rate no greater than 9 litres per minute or minimum 3 star water rating.

Construction:

Construction:	Additional insulation required (r-value):	Other specifications:
Floor above existing dwelling or building External wall: framed (metal clad) Flat ceiling, pitched roof	Nil R1.30 (or R1.70 including construction) Ceiling: R2.50 (up), roof: foil/sarking	N/A Medium (solar absorptance 0.475 - 0.70)

Glazing Requirements:

Windows and glazed doors:	Frame and glass type:
Window/door no. W01 - W02 W03 W04 - W10 D02 - D03	Standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75) Improved aluminium, single toned, (U-value: 6.39, SHGC: 0.56) Standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75) Standard aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
Skylights:	Frame and glass type:
Skylight no. SK01 SK02	Timber, double clear/air fill, (or U-value: 4.3, SHGC: 0.5) Aluminium, moulded plastic single clear, (or U-value: 6.21, SHGC: 0.808)

SITE PLAN
1:200

NOTES:
This drawing is and remains copyright and is the property of m m architects p/l. It may not be used or copied in whole or in part without written consent.
All dimensions to be verified on site.
This drawing is not to be used for construction purposes.
DEVELOPMENT APPLICATION

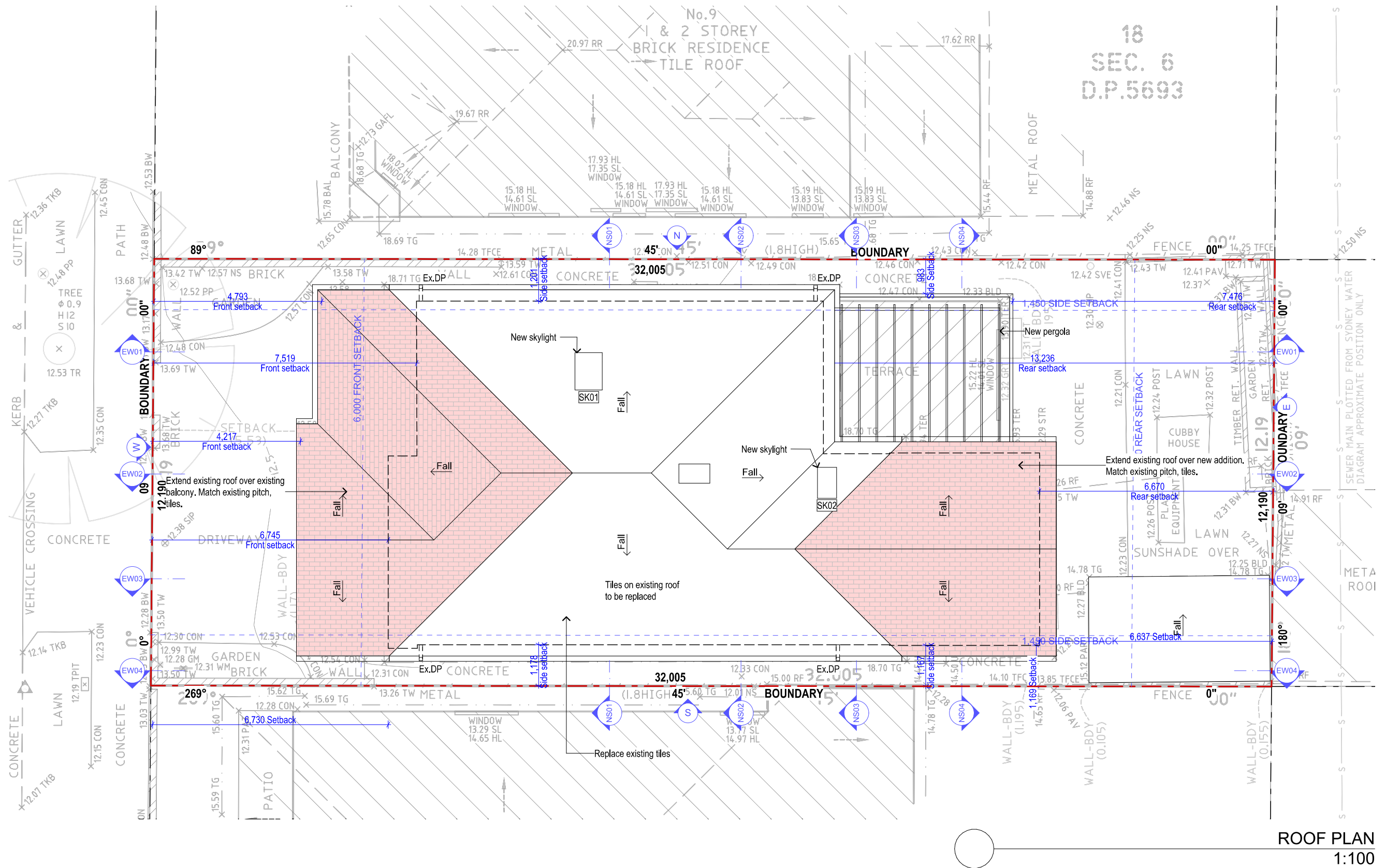
REV	DATE	DESCRIPTION
A	08/04/2024	DA Client Issue

SUITE 8/21 SYDNEY RD, MANLY NSW 2095
admin@mmarchitects.com.au
nom. arch. David McCrae | NSW ARB 8352
ABN 79 153 579 867

CLIENTS: TINA PARADISO & STEFANO IACONO
PROJECT: ALTERATIONS & ADDITIONS TO DETACHED DWELLING
TITLE: **11 NAPOLEON STREET ROSEBERY NSW 2018**
SITE PLAN & BASIX REQUIREMENTS

SCALE: 1:200	DRAWING NO: DA03
DRAWN: CT	ISSUE: A
DATE: 8/04/2024	
JOB NO: 1620	

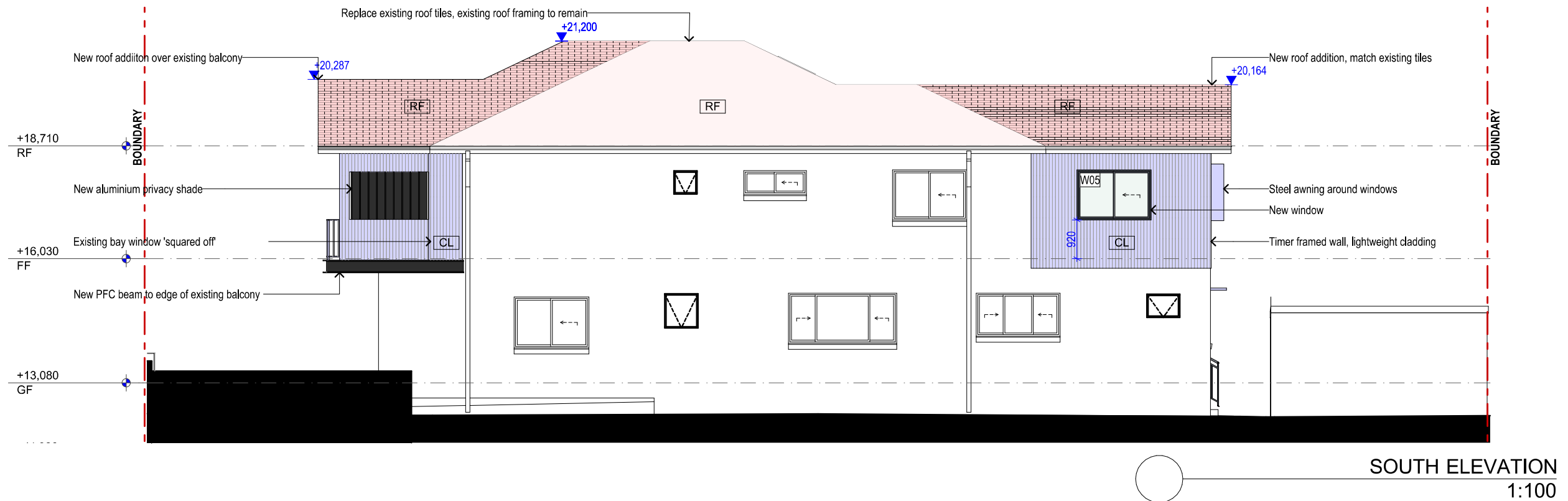
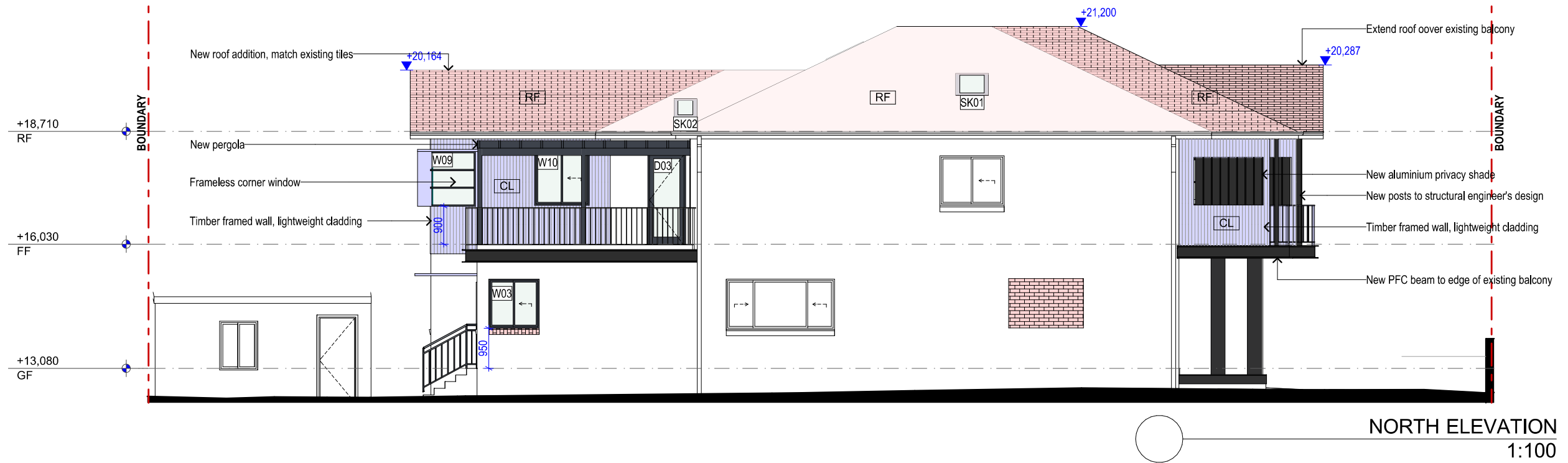
PLOTTED 8/04/2024 9:40 AM



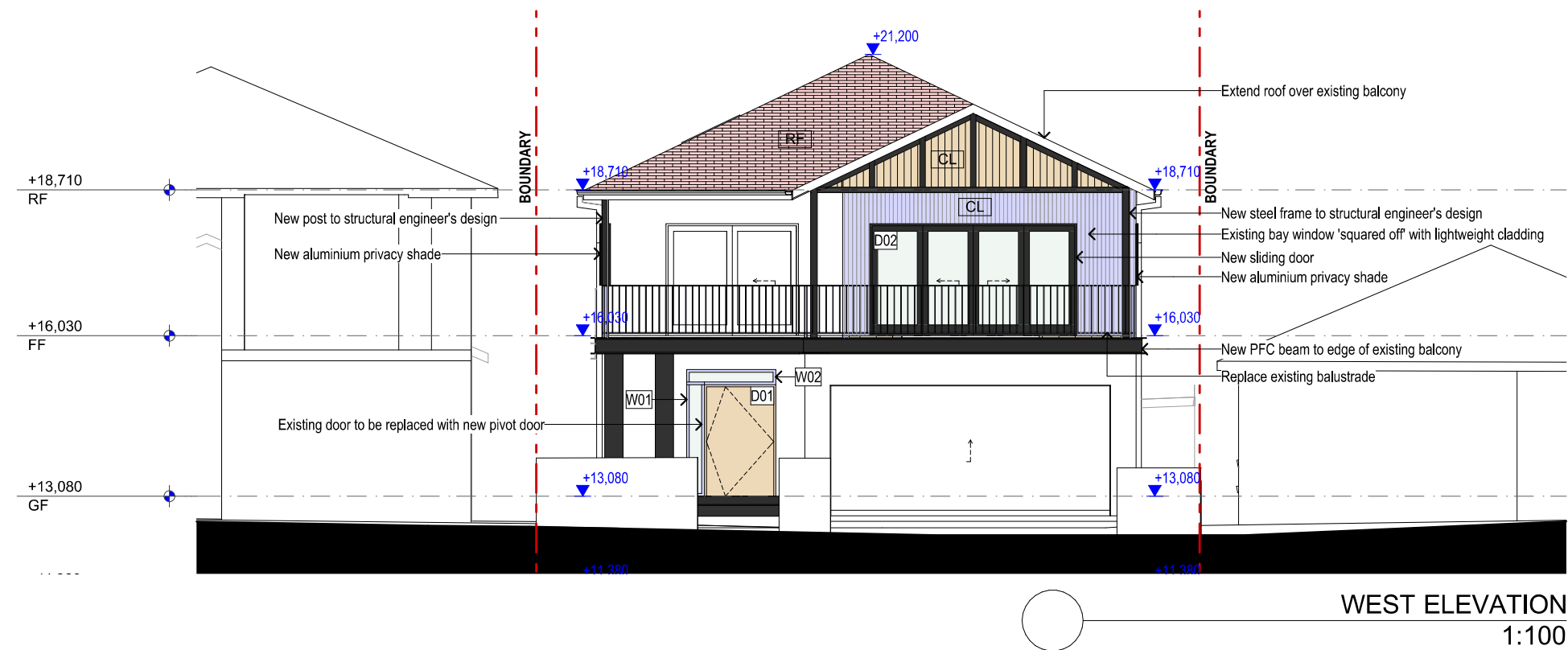
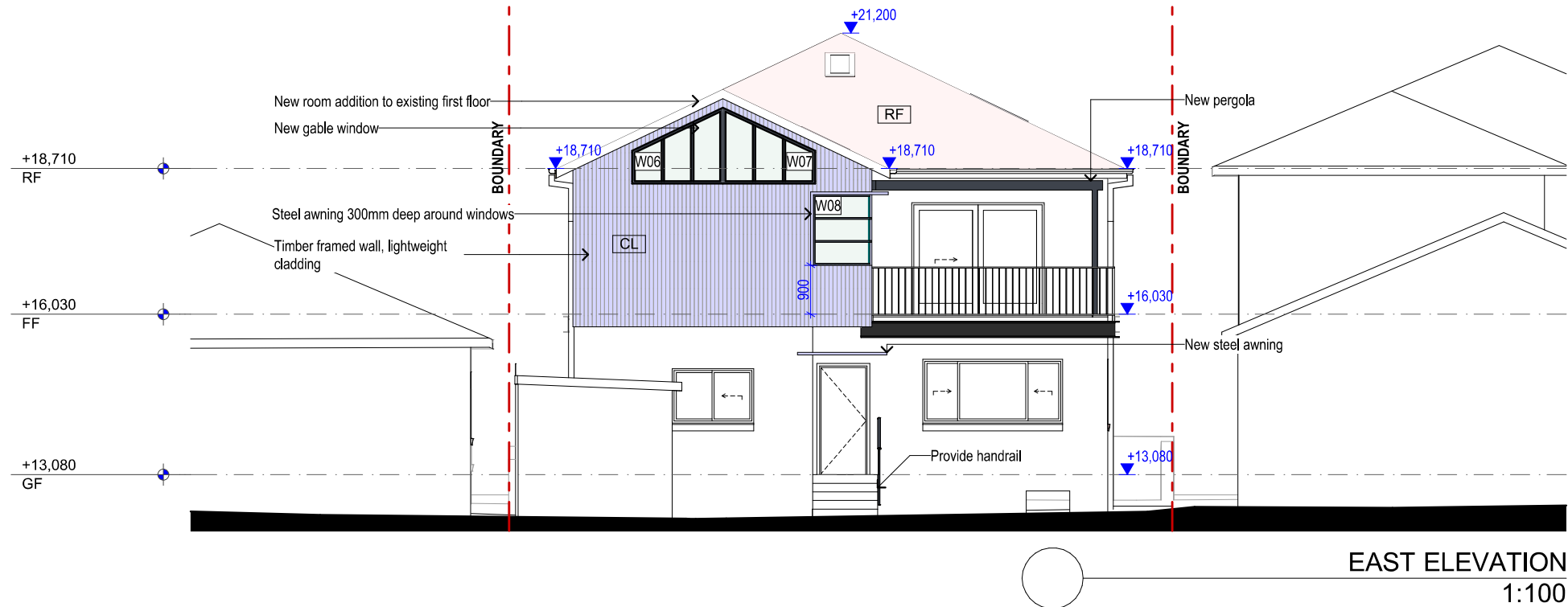
ROOF PLAN
1:100

	<p>NOTES:</p> <p>This drawing is and remains copyright and is the property of m m architects p/l. It may not be used or copied in whole or in part without written consent.</p> <p>All dimensions to be verified on site.</p> <p>This drawing is not to be used for construction purposes.</p> <p>DEVELOPMENT APPLICATION</p>	<table border="1"> <thead> <tr> <th>REV</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>08/04/2024</td> <td>DA Client Issue</td> </tr> </tbody> </table>	REV	DATE	DESCRIPTION	A	08/04/2024	DA Client Issue	<p>SUITE 8/21 SYDNEY RD, MANLY NSW 2095 admin@mmjarchitects.com.au nom. arch. David McCrae NSW ARB 8352 ABN 79 153 579 867</p>	<p>CLIENTS: TINA PARADISO & STEFANO IACONO</p> <p>PROJECT: ALTERATIONS & ADDITIONS TO DETACHED DWELLING</p> <p>11 NAPOLEON STREET ROSEBERY NSW 2018</p> <p>TITLE: ROOF PLAN</p>	<table border="1"> <tr> <td>SCALE: 1:100</td> <td rowspan="3">DRAWING NO: DA08</td> </tr> <tr> <td>DRAWN: CT</td> </tr> <tr> <td>DATE: 8/04/2024</td> </tr> </table>	SCALE: 1:100	DRAWING NO: DA08	DRAWN: CT	DATE: 8/04/2024
		REV	DATE	DESCRIPTION											
A	08/04/2024	DA Client Issue													
SCALE: 1:100	DRAWING NO: DA08														
DRAWN: CT															
DATE: 8/04/2024															
		<table border="1"> <tr> <td>JOB NO: 1620</td> <td>ISSUE: A</td> </tr> </table>	JOB NO: 1620	ISSUE: A											
JOB NO: 1620	ISSUE: A														

PLOTTED 8/04/2024 9:40 AM



NOTES: This drawing is and remains copyright and is the property of m m architects p/l. It may not be used or copied in whole or in part without written consent. All dimensions to be verified on site. This drawing is not to be used for construction purposes. DEVELOPMENT APPLICATION	REV A	DATE 08/04/2024	DESCRIPTION DA Client Issue	 SUITE 8/21 SYDNEY RD, MANLY NSW 2095 admin@mmjarchitects.com.au nom. arch. David McCrae NSW ARB 8352 ABN 79 153 579 867	CLIENTS: TINA PARADISO & STEFANO IACONO PROJECT: ALTERATIONS & ADDITIONS TO DETACHED DWELLING 11 NAPOLEON STREET ROSEBERY NSW 2018 TITLE: NORTH & SOUTH ELEVATIONS	SCALE: 1:100 DRAWN: CT DATE: 8/04/2024 JOB NO: 1620	DRAWING NO: DA12 ISSUE: A
					1620_NAPOLEON 11_AC24_DA_240402_MB.dfn	PLOTTED 8/04/2024 9:40 AM	



NOTES:
This drawing is and remains copyright and is the property of m m architects p/l. It may not be used or copied in whole or in part without written consent.
All dimensions to be verified on site.
This drawing is not to be used for construction purposes.
DEVELOPMENT APPLICATION

REV	DATE	DESCRIPTION
A	08/04/2024	DA Client Issue

mm
archi+ects
SUITE 8/21 SYDNEY RD, MANLY NSW 2095
admin@mmjarchitects.com.au
nom. arch. David McCrae | NSW ARB 8352
ABN 79 153 579 867

CLIENTS: **TINA PARADISO & STEFANO IACONO**
PROJECT: ALTERATIONS & ADDITIONS TO DETACHED DWELLING
11 NAPOLEON STREET ROSEBERY NSW 2018
TITLE: **EAST & WEST ELEVATIONS**

SCALE: 1:100	DRAWING NO: DA13
DRAWN: CT	ISSUE: A
DATE: 8/04/2024	
JOB NO: 1620	


PLOTTED 8/04/2024 9:40 AM



EXISTING 3D VIEW - FRONT



EXISTING 3D VIEW - REAR

NOTES: This drawing is and remains copyright and is the property of m m architects p/l. It may not be used or copied in whole or in part without written consent. All dimensions to be verified on site. This drawing is not to be used for construction purposes. EXISTING	REV	DATE	DESCRIPTION	 SUITE 8/21 SYDNEY RD, MANLY NSW 2095 admin@mmjarchitects.com.au nom. arch. David McCrae NSW ARB 8352 ABN 79 153 579 867	CLIENTS: TINA PARADISO & STEFANO IACONO PROJECT: ALTERATIONS & ADDITIONS TO DETACHED DWELLING 11 NAPOLEON STREET ROSEBERY NSW 2018 TITLE: EXISTING 3D EXTERNAL VIEWS	SCALE:	DRAWING NO:
	A	08/04/2024	DA Client Issue			DRAWN: CT	EX08
						DATE: 8/04/2024	ISSUE: A
						JOB NO: 1620	

1620_NAPOLEON 11_AC24_DA_240402_MB.pln

PLOTTED 8/04/2024 9:40 AM



3D VIEW - REAR 01



3D VIEW - REAR 02



3D VIEW - REAR 03

NOTES:
 This drawing is and remains copyright and is the property of m m architects p/l. It may not be used or copied in whole or in part without written consent.
 All dimensions to be verified on site.
 This drawing is not to be used for construction purposes.
DEVELOPMENT APPLICATION

REV	DATE	DESCRIPTION
A	08/04/2024	DA Client Issue

mm
 architects
 SUITE 8/21 SYDNEY RD, MANLY NSW 2095
 admin@mmjarchitects.com.au
 nom. arch. David McCrae | NSW ARB 8352
 ABN 79 153 579 867

CLIENTS: **TINA PARADISO & STEFANO IACONO**
 PROJECT: ALTERATIONS & ADDITIONS TO DETACHED DWELLING
11 NAPOLEON STREET ROSEBERY NSW 2018
 TITLE: **3D EXTERNAL VIEWS 01**

SCALE:	DRAWING NO:
DRAWN: CT	DA20
DATE: 8/04/2024	ISSUE: A
JOB NO: 1620	

1620_NAPOLEON 11_AC24_DA_240402_MB.dgn

PLOTTED 8/04/2024 9:41 AM



3D VIEW - FRONT 01



3D VIEW - FRONT 02



3D VIEW - FRONT 03

REV	DATE	DESCRIPTION
A	08/04/2024	DA Client Issue

NOTES:
 This drawing is and remains copyright and is the property of m m architects p/l. It may not be used or copied in whole or in part without written consent.
 All dimensions to be verified on site.
 This drawing is not to be used for construction purposes.
DEVELOPMENT APPLICATION

mm
 architects
 SUITE 8/21 SYDNEY RD, MANLY NSW 2095
 admin@mmjarchitects.com.au
 nom. arch. David McCrae | NSW ARB 8352
 ABN 79 153 579 867

CLIENTS: **TINA PARADISO & STEFANO IACONO**
 PROJECT: ALTERATIONS & ADDITIONS TO DETACHED DWELLING
11 NAPOLEON STREET ROSEBERY NSW 2018
 TITLE: **3D EXTERNAL VIEWS 02**

SCALE:	DRAWING NO:
DRAWN: CT	DA21
DATE: 8/04/2024	
JOB NO: 1620	ISSUE: A

1620_NAPOLEON 11_AC24_DA_240402_MB.dgn

PLOTTED 8/04/2024 9:41 AM