

CONFIDENTIAL
Without Prejudice Report
APPEAL 2082 OF 2016
MCU013558: 4 WARDLEY STREET, CAPALABA
UNDEFINED USE (ROOMING ACCOMMODATION)

Objective Reference: A1853995
Reports and Attachments (Archives)

Attachment: [Attachment 1 – Aerial Photo](#)
[Attachment 2 – Proposal Plans](#)
[Attachment 3 – Draft Conditions](#)

Authorising Officer: Louise Rusan
General Manager, Community and Customer Services

Responsible Officer: David Jeanes
Group Manager, City Planning and Assessment

Report Author: Emma Martin
Acting Senior Planner, Planning Assessment

PURPOSE

This application is referred to the General Meeting of Council with a recommendation that Council's solicitors be instructed to settle the appeal lodged by the appellant in the Planning and Environment Court subject to conditions to be included in a Consent Order.

BACKGROUND

The appellant has filed an appeal in respect of Council's refusal of their application to regulate the undefined use (rooming accommodation) currently operating at 4 Wardley Street, Capalaba.

It is recommended that Council instruct its solicitors to reinforce the grounds for refusal to refer to the draft City Plan, settle the appeal by way of a Consent Order, subject to conditions generally in accordance with those contained in Attachment 3 and any conditions agreed through mediation.

ISSUES

Development Proposal

The proposal comprises the conversion of an existing dwelling to facilitate rooming accommodation (undefined use under the Redlands Planning Scheme) at 4 Wardley Street, Capalaba. The use will require internal conversion to create 4

rooms (each with a lounge, en suite, mezzanine/bedroom and patio area), a communal kitchen and dining area. The individual units will then be rented out to tenants. There will be a maximum of 5 people residing on the premises at any one time.

The dwelling is two storey. There is an existing swimming pool and landscaping around the house. There is also existing car parking for 4 cars and an internal driveway with access to Wardley Street. No further extensions or additions to the existing dwelling are proposed. The proposal seeks planning approval only for the use occurring within the house.

Background

The application was presented to the General Meeting of Council on 27 April 2016 and was refused on a 6/5 vote. The grounds for refusal were recorded as:

1. The proposal is in conflict with the Urban Residential zone code because it is out of character in this location and would give rise to unacceptable amenity impacts.
2. The use is not anticipated by the current planning scheme and is in conflict with the overall outcomes of the urban residential zone code.

Council received two (2) properly made submissions during the notification and both submitters have elected to join the appeal.

Appellant's Representations

The appellant has requested in their notice of appeal that the appeal be allowed and the application be approved subject to reasonable and relevant conditions. Their grounds for appeals are listed below.

Ground (1)

The bulk and scale of the proposed development creates no or no significant conflict with the Urban Residential Zone code as it utilises an existing dwelling and there is no additional built form.

Ground (2)

Landscaping, private open space and adequate car parking are already provided by the proposed development.

Ground (3)

The proposed development's effect on noise will be of a residential nature and consistent with the surrounds of a residential precinct.

Ground (4)

The proposed development will maintain four on-site car parking spaces which will limit any impact on car parking and traffic congestions in the area.

Ground (5)

The proposed development already has all necessary infrastructure in place including existing kerbside waste collection.

Ground (6)

The proposed development is not in conflict with the probable solutions and specific outcomes of the Zone code and is consistent with the Overall Outcomes.

Ground (7)

The proposed development is wholly contained within the existing single detached dwelling, does not detract from the streetscape, and maintains the existing residential character of the area.

Ground (8)

The proposal is consistent with the purpose of the Low Density Residential Zone (to which this site is intended to be zoned in the Respondent's draft Planning Scheme)

Ground (9)

The proposed development complies with the built form and amenity criteria for assessment under the draft Low Density Residential Zone.

Ground (10)

The development application provides more than sufficient grounds to justify an approval despite any perceived conflicts with the Respondent's Planning Scheme.

Ground (11)

The refusal of the Respondent was erroneous and the Grounds for Refusal do not justify refusal of the development application.

Ground (12)

The reasons for refusal are unreasonable and irrelevant and ought not be allowed to stand for the reasons set out above.

STRATEGIC IMPLICATIONS

Legislative Requirements

The matter has been listed in the Planning and Environment (P&E Court) for mediation by 22 July 2016. If the appeal is not settled at mediation a review has been scheduled for 29 July 2016 and a hearing set for October 2016.

Risk Management

The financial risk is discussed under the Financial heading below.

Financial

If Council opts to continue resistance of the appeal and progresses, it will incur Court and expert witness expenses and considering the advice of our appointed Planning Expert and our external solicitors there is a considerable risk of costs being awarded against Council if it were to lose the appeal.

People

Nil.

Environmental

Nil.

Social

Nil.

Alignment with Council's Policy and Plans

The proposal is considered to meet the Redlands Planning Scheme.

CONSULTATION

The planning assessment unit consulted with General Counsel Group.

OPTIONS

Council's options are to:

1. Adopt the conditions contained within Attachment 3 and instruct Council's solicitors to settle the appeal by Consent Order subject to these conditions;

or

2. Instruct Council's solicitors to amend the grounds of refusal to include references to the draft City Plan; **and**

Adopt the conditions contained within Attachment 3 that will generally be used in order to settle the appeal by Consent Order; **and**

Instruct Council's solicitors to seek further conditions through mediation;

or

3. Adopt amended conditions that will be used in order to settle the appeal by Consent Order;

or

4. Advise the parties that Council takes a position of opposition to the development and wishes to progress the appeal.

OFFICER'S RECOMMENDATION

That Council resolves to:

- Adopt Option 2 presented in this report.
- Maintain this report and recommendation as confidential.

AERIAL PHOTO



GENERAL NOTES:

DO NOT SCALE DRAWINGS. FIGURE DIMENSIONS TAKE PRECEDENCE OVERALL.

THESE DRAWINGS ARE TO BE READ IN CONJUNCTION WITH ENGINEERS COMPUTATIONS & DRAWINGS

THE BUILDER AND SUBCONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS, SETBACKS, LEVELS AND SPECIFICATIONS AND ALL OTHER RELEVANT DOCUMENTATION PRIOR TO THE COMMENCEMENT OF ANY WORKS. REPORT ALL DISCREPANCIES TO THIS OFFICE FOR CLARIFICATION.

INSTALLATION OF ALL SERVICES SHALL COMPLY WITH THE RESPECTIVE SUPPLY AUTHORITY REQUIREMENTS.

ALL WORK TO COMPLY WITH THE BUILDING CODE OF AUSTRALIA, OTHER RELEVANT BYLAWS & AUTHORITIES.

ALL GLASS TO COMPLY WITH AS 1288-2006 SAFETY GLAZING IN ACCORDANCE WITH THE NCC (BCA), AS1288 & AS2047
 ALL TIMBER TO COMPLY WITH AS1684-2006
 ALL MASONRY TO COMPLY WITH AS3700-2011
 INSTALLATION OF SMOKE DETECTORS TO COMPLY WITH AS3786-1993
 WATERPROOFING OF WET AREAS TO COMPLY WITH AS3740-2010

UNLESS NOTED OTHERWISE, EXCAVATIONS TO BE BATTERED AT 45° MAX. FOR SAND/SILT/FILL SITES. ALL BATTERS TO BE KEPT WITHIN PROPERTY BOUNDARIES

THE BUILDER AND SUBCONTRACTOR SHALL ENSURE THAT ALL STORMWATER DRAINS, SEWER PIPES AND THE LIKE ARE LOCATED AT A SUFFICIENT DISTANCE FROM ANY BUILDINGS FOOTING AND / OR SLAB EDGE BEAMS SO AS TO PREVENT MOISTURE PENETRATION, DAMPNES, WEAKENING AND UNDERMINING OF ANY BUILDING AND ITS FOOTING SYSTEM.

LOCATION OF STORMWATER SYSTEM ARE INDICATIVE ONLY

DOWNPIPES TO SERVE <12m OF GUTTER. INSTALL DOWNPIPE WITHIN 1200mm OF VALLEY OR PROVIDE OVERFLOWS TO GUTTER

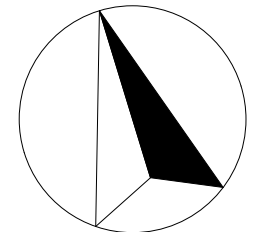
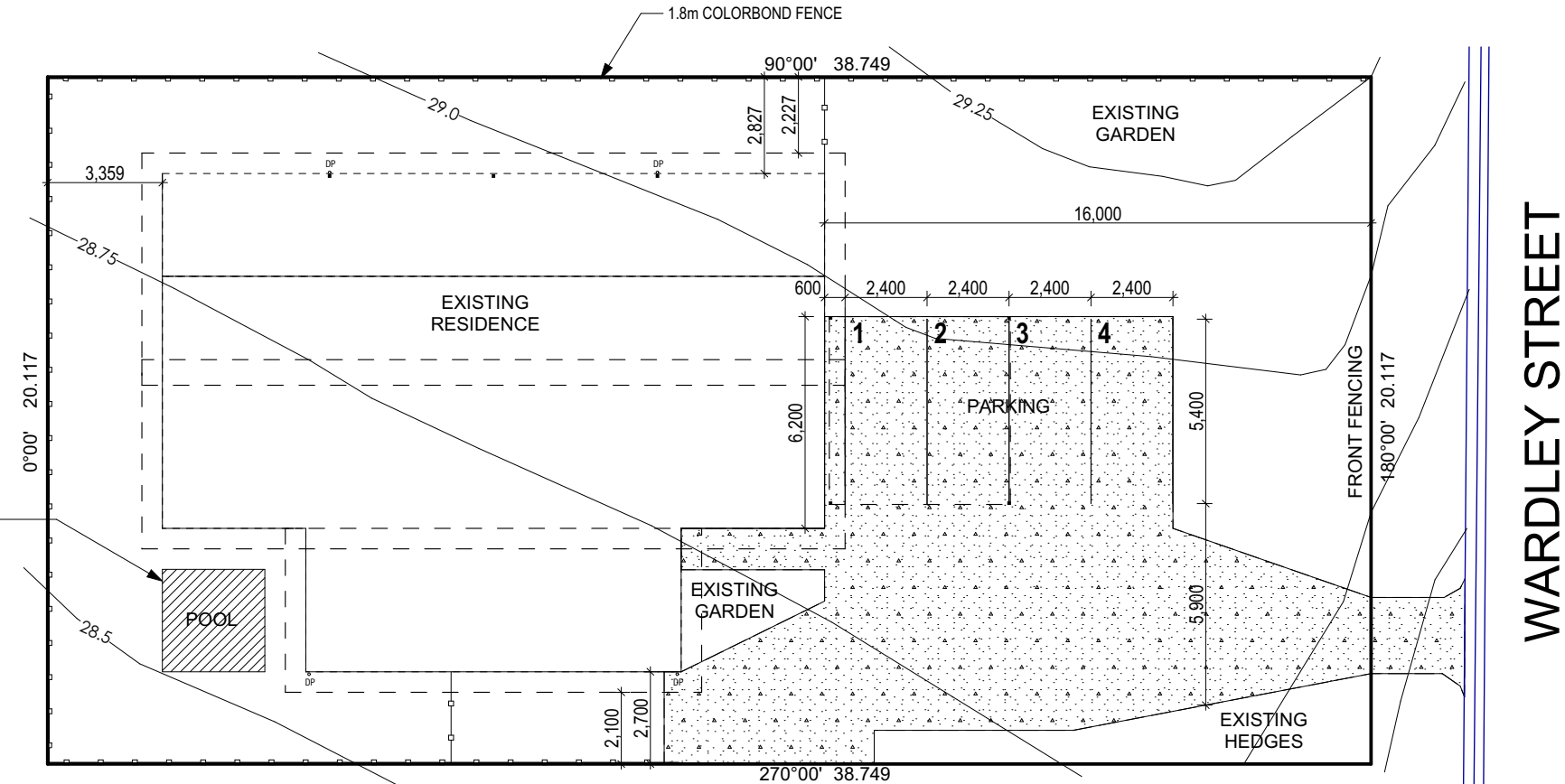
INSULATION TO BE AS PER SPECIFICATION & TO BE READ IN CONJUNCTION WITH ENERGY REPORT

DOORS TO WC TO HAVE LIFT OFF HINGES, UNLESS 1200mm CLEAR BETWEEN PAN & DOORWAY.

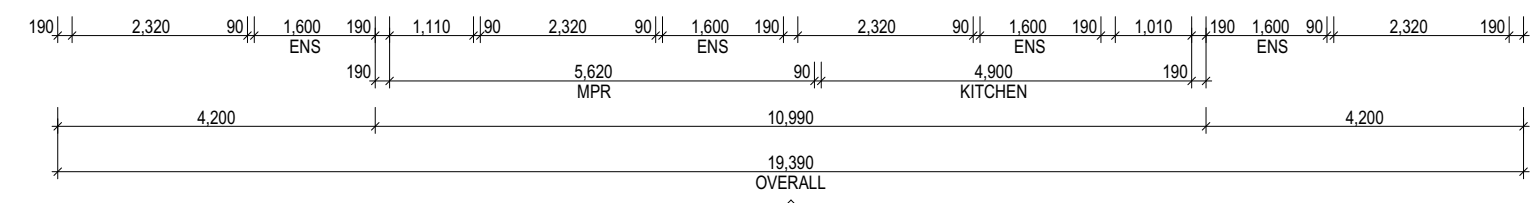
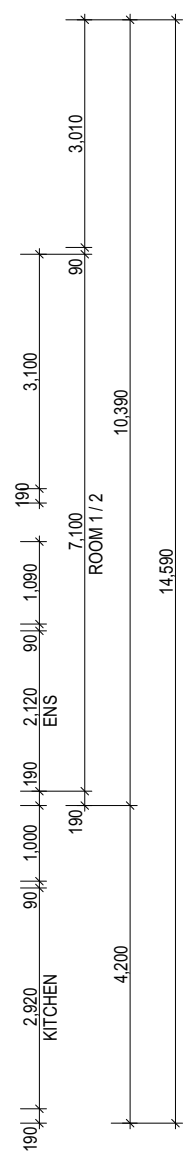
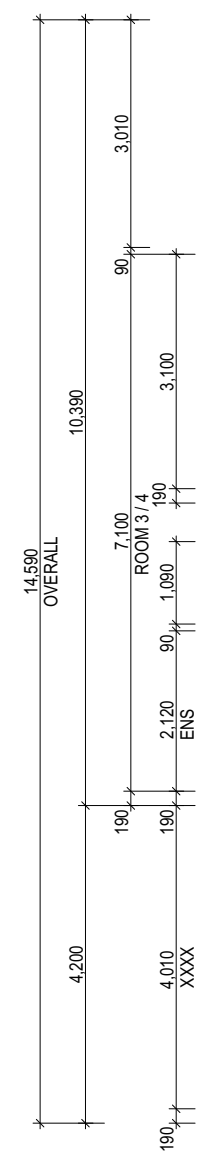
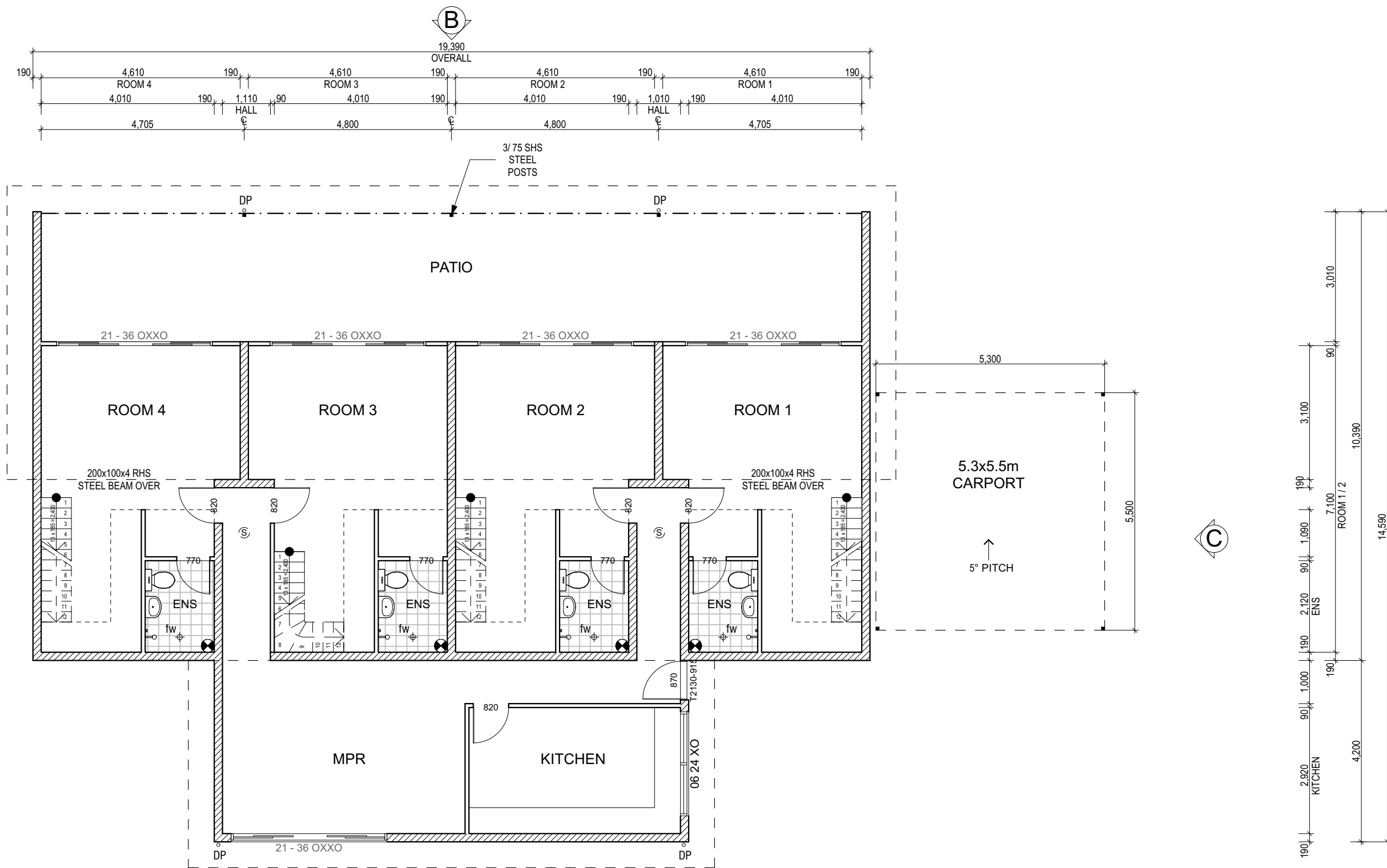
STEP SIZES (OTHER THAN FOR SPIRAL STAIRS) TO BE:
 RISERS (R) 190mm MAXIMUM AND 115mm MINIMUM.
 GOING (G) 355mm MAXIMUM AND 240mm MINIMUM
 2R + 1G = 700mm MAXIMUM AND 550mm MINIMUM
 WHERE NO STEP PROVIDED, SITE MUST BE GRADED TO ENSURE MAXIMUM STEP DOWN OF 190MM FROM EXTERNAL DOOR TO FSL.

SITE ANALYSIS:

BUILDING AREA: 247.62m²
 SITE AREA: 780m²
 SITE COVERAGE: 31.75%



<p>Alec Charwood QBCC: 1043429 Ph: 0410 650 745</p>	<table border="1"> <thead> <tr> <th>Nº</th> <th>AMENDMENTS</th> <th>DATE</th> <th>INT</th> </tr> </thead> <tbody> <tr> <td>001</td> <td>CARPORT</td> <td>17/11/15</td> <td>SMT</td> </tr> <tr> <td>002</td> <td>CARPORT RE-SIZE</td> <td>18/11/15</td> <td>SMT</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Nº	AMENDMENTS	DATE	INT	001	CARPORT	17/11/15	SMT	002	CARPORT RE-SIZE	18/11/15	SMT									<p>COUNCIL PLANS</p>	<p>SITE PLAN</p>	<p>LOT 13</p>
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	002	CARPORT RE-SIZE	18/11/15	SMT																				
	<p>CLIENT: JOHN SINCLAIR</p>	<p>JOB ADDRESS: LOT 13 WARDLEY STREET CAPALABA REDLAND C.C.</p>	<p>SHEET: 1 OF 4</p>	<p>SCALE: 1:200</p>																				
	<p>PLAN NO: RP131142 JOB NO: #PIn</p>		<p>DRAWN BY: SMT</p>	<p>DATE: 13/07/15</p>																				
	<p><small>© The plan & design of this house is owned by Alec Charwood & under the copyright act of 1968 cannot be reproduced in any shape or form without prior written authorisation. Any doing so will be liable for action under the act.</small></p>		<p>CHECK: ASC</p>	<p>DATE: 14/07/15</p>																				



PROPOSED AREA	
GROUND FLOOR:	189.26 m ²
MEZZANINE:	81.24 m ²
PATIO:	58.36 m ²
TOTAL:	328.86m ²

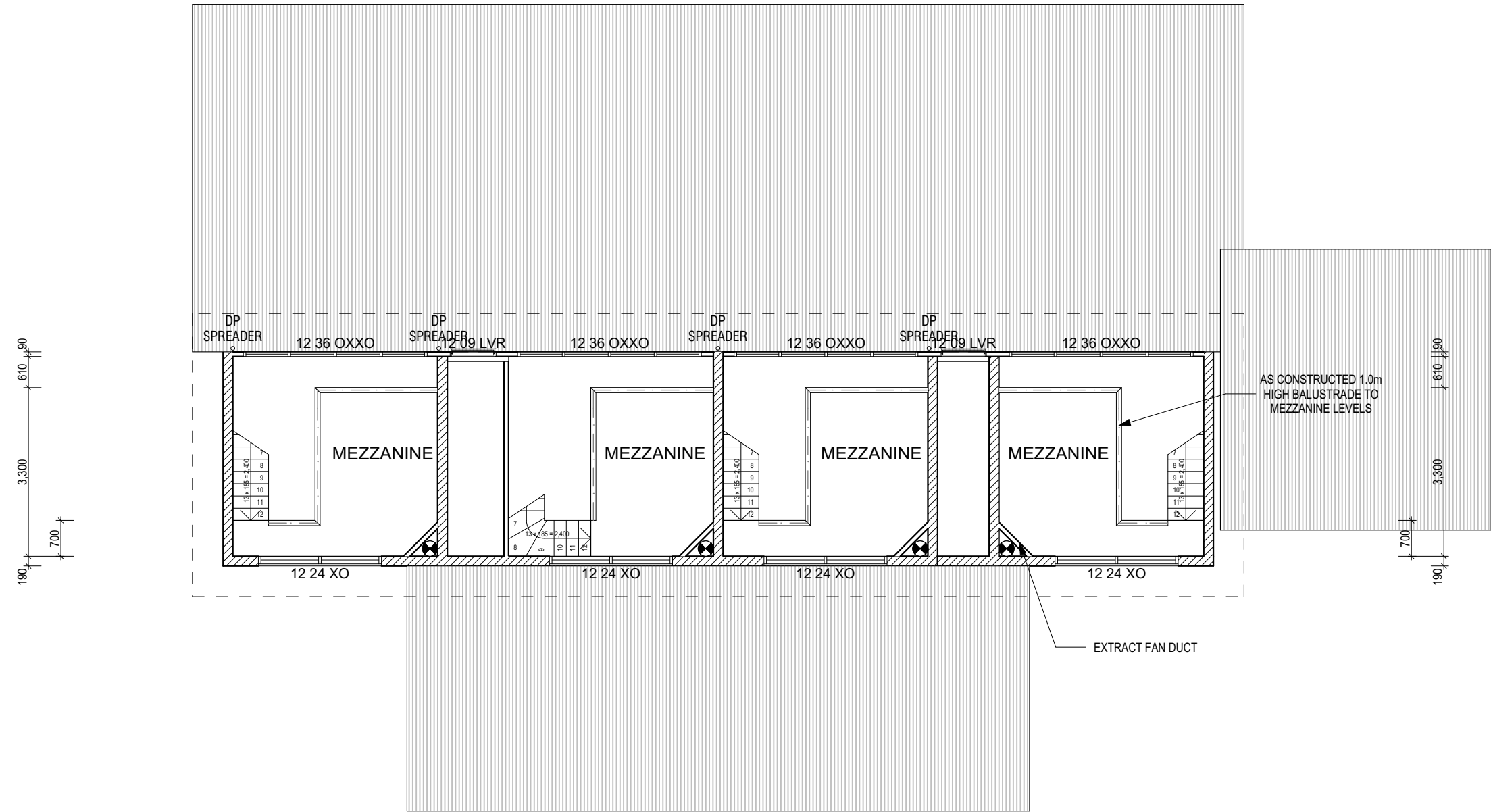
- Ⓢ SMOKE ALARM
- ⦿ EXTRACTION FAN

Alec Charlwood QBCC: 1043429 Ph: 0410 650 745	Nº 001 002	AMENDMENTS CARPORT CARPORT RE-SIZE	DATE 17/11/15 18/11/15	INT SMT SMT	COUNCIL PLANS	GROUND FLOOR PLAN	LOT 13	
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	PLAN NO: RP131142 JOB NO: #PIn					SHEET: 2 OF 4		
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					CHECK: ASC			
					DATE: 13/07/15			
					DATE: 14/07/15			

B

OPENABLE WINDOWS TO BE FITTED WITH A DEVICE TO LIMIT OPENING SIZE

A

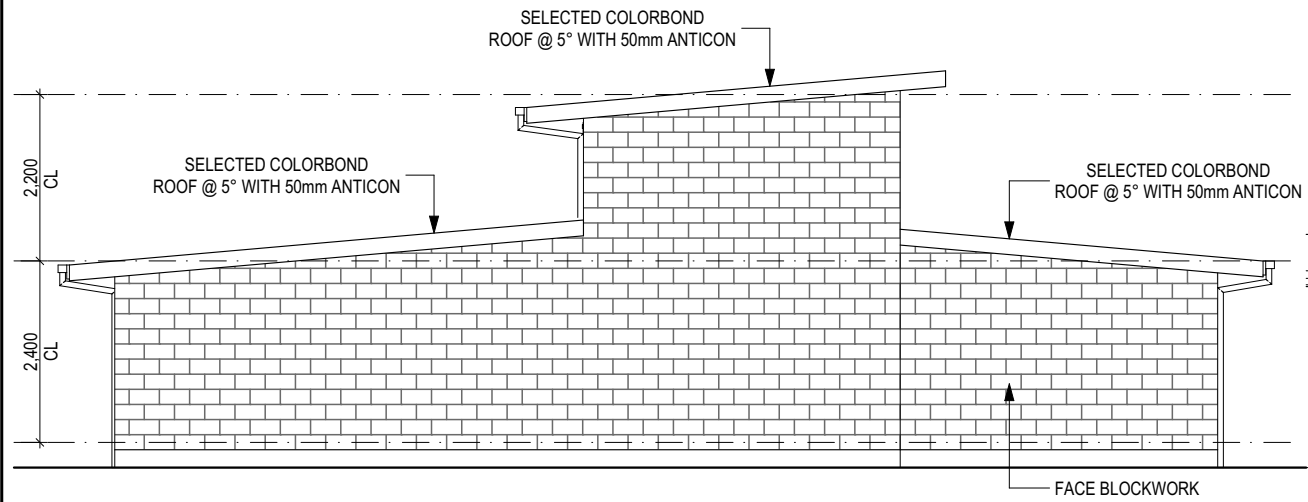


C

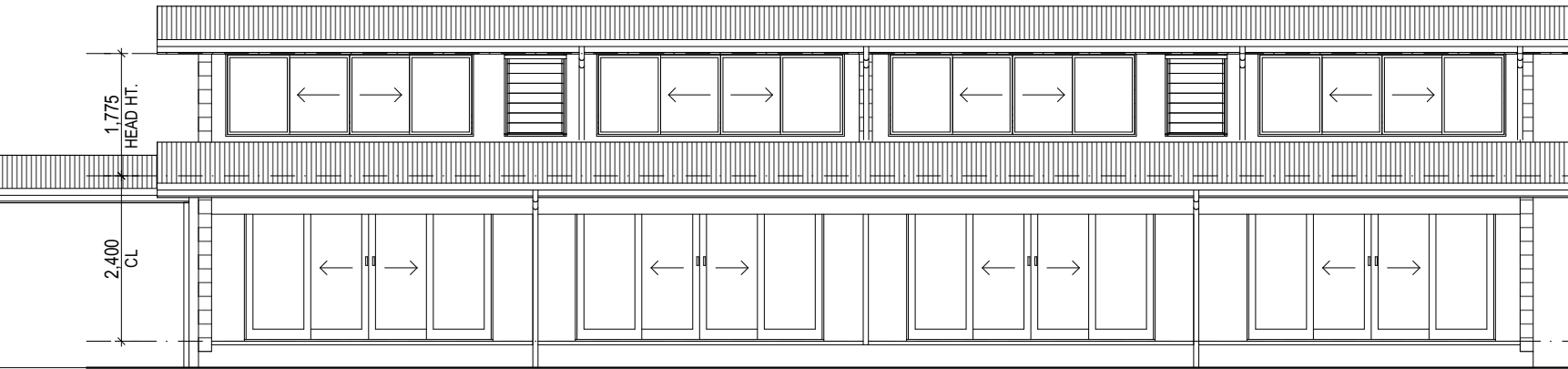
190 | 1,610 | 2,400 | 190 | 1,110 | 190 | 1,610 | 2,400 | 190 | 1,610 | 2,400 | 190 | 1,010 | 190 | 2,400 | 1,610 | 190

D

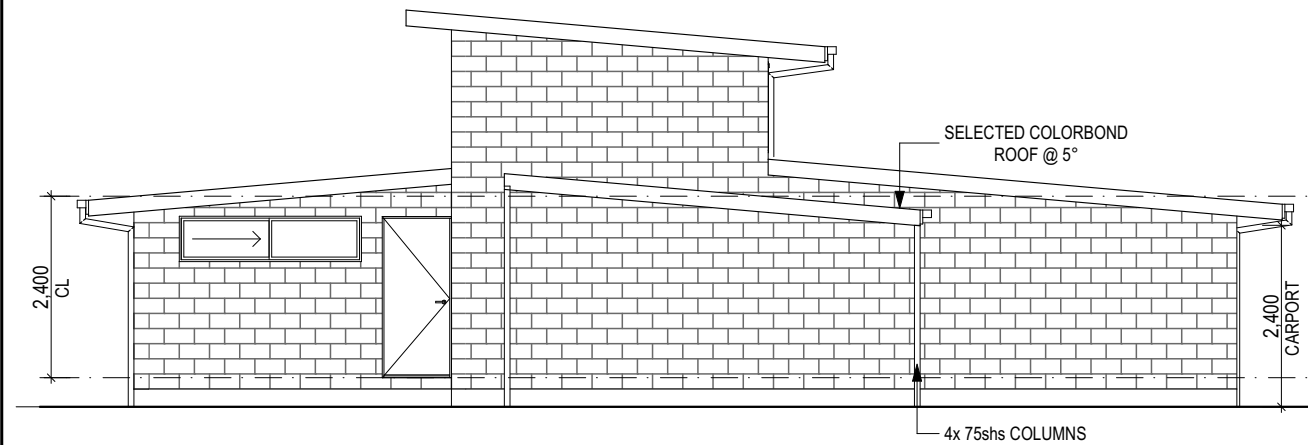
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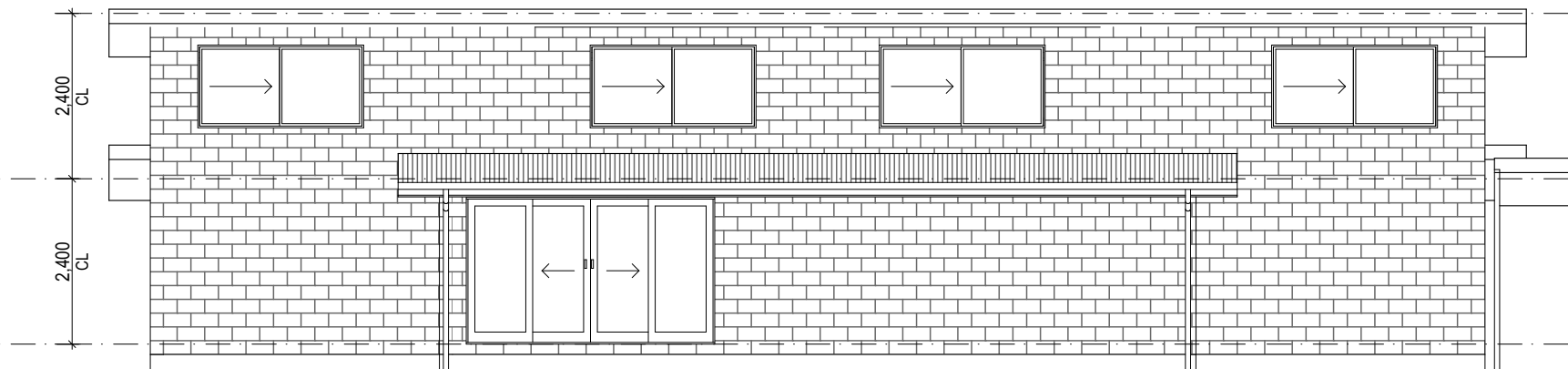
ELEVATION A



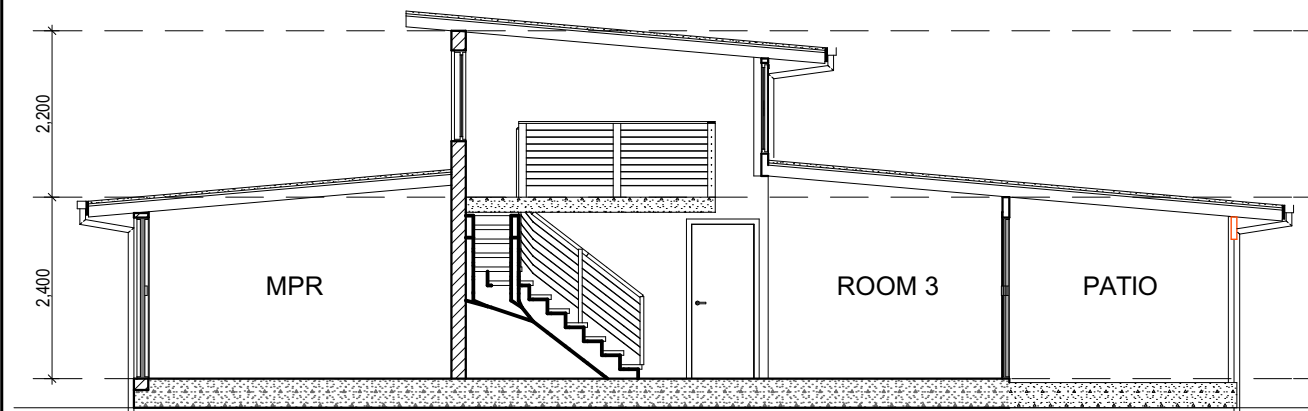
ELEVATION B



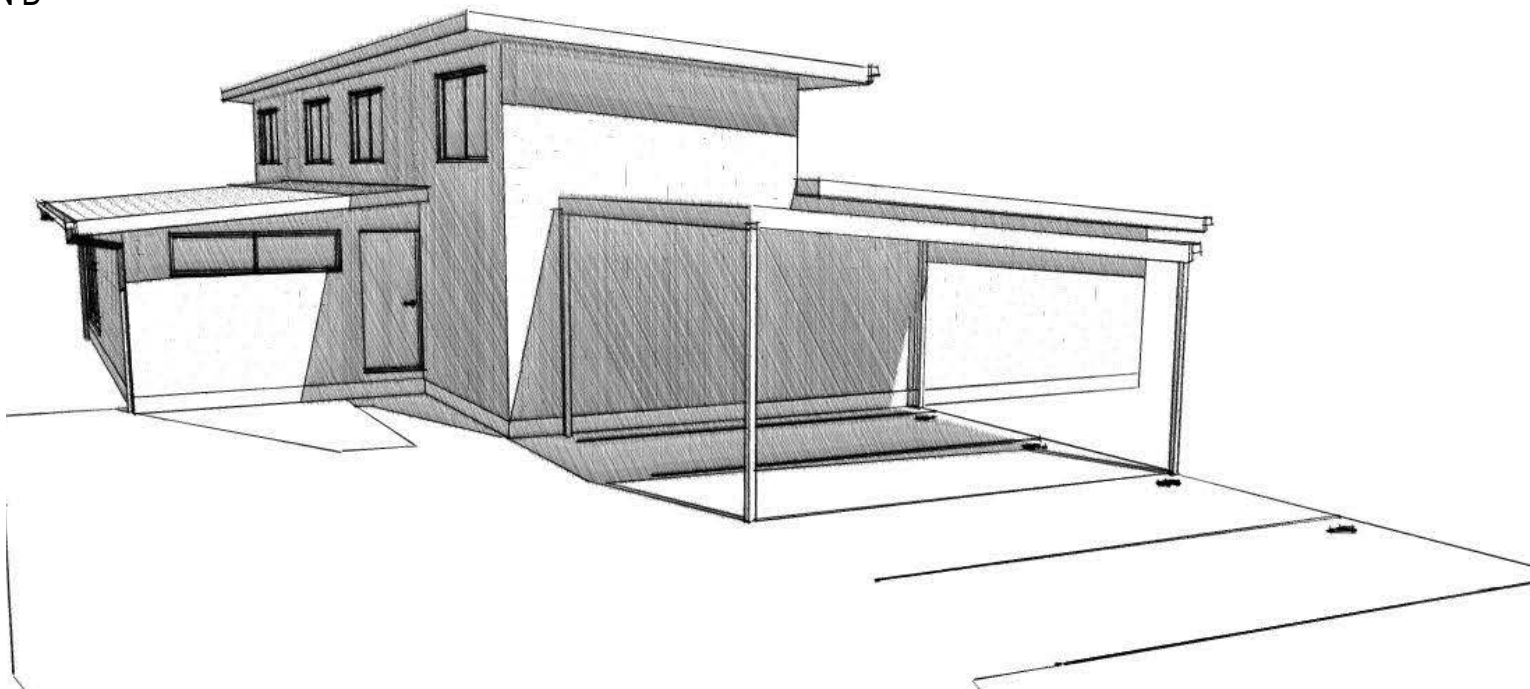
ELEVATION C



ELEVATION D



SECTION Y



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<u>ASSESSMENT MANAGER CONDITIONS</u>	<u>TIMING</u>
1. Comply with all conditions of this approval, at no cost to Council, at the timing periods specified in the right-hand column. Where the column indicates that the condition is an ongoing condition, that condition must be complied with for the life of the development.	
<u>Approved Plans and Documents</u>	
2. Undertake the development in accordance with the approved plans and documents referred to in Table 1, subject to the conditions of this approval and any notations by Council on the plans.	Prior to the use commencing and ongoing.

Plan/Document Title	Reference Number	Prepared By	Amended Date
Site Plan	Sheet 1 of 4 No 002	Alec Charlwood	18/11/2015
Ground Floor Plan	Sheet 2 of 4 No 002	Alec Charlwood	18/11/2015
First Floor Plan	Sheet 3 of 4 No 002	Alec Charlwood	18/11/2015
Elevations	Sheet 4 of 4 No 002	Alec Charlwood	18/11/2015

Table 1: Approved Plans and Documents

<u>Design</u>		
3. Locate, design and install outdoor lighting, where required, to minimise the potential for light spillage to cause nuisance to neighbours.		Prior to the use commencing and ongoing.
4. Ensure the development accommodates no more than 5 persons residing in the Rooming Accommodation at any one time.		Prior to the use commencing and ongoing.
5. Provide no more than: a) 1 meter box; b) 1 letter box; and c) 3 bins.		Prior to the use commencing and ongoing.
<u>Services and Infrastructure</u>		
6. Provide storage for 3 bins which are: a) Located under or behind a structure or a building; or b) If located forward of the building line, within a storage space with a minimum dimension of 1.8m width and 0.7m depth; and c) Screened from view of adjacent streets or public spaces by a 1.5m high permanent screen.		Prior to the use commencing and ongoing.
7. Convey roof water and surface water in accordance with the Redlands Planning Scheme Policy 9 Chapter 6 – Stormwater Management, to a lawful point of discharge.		Prior to the use commencing and ongoing.
8. Manage stormwater discharge from the site in accordance with the		Prior to the use

Redlands Planning Scheme Policy 9 Chapter 6 – Stormwater Management, so as to not cause an actionable nuisance to adjoining properties.

commencing and ongoing.

ADDITIONAL APPROVALS

The following further **Development Permits** and/or **Compliance Permits** are necessary to allow the development to be carried out.

- Building Works approval for change of classification.

Further approvals, other than a Development Permit or Compliance Permit, are also required for your development. This includes, but is not limited to, the following:

- Plumbing and drainage works.
- Permit to operate a residential service in accordance with the Residential Services (Accreditation) Act 2002.

ASSESSMENT MANAGER ADVICE

- **Live Connections**
Redland Water is responsible for all live water and wastewater connections. Contact *must* be made with Redland Water to arrange live works associated with the development.

Further information can be obtained from Redland Water on 07 3829 8999.

-
- **Coastal Processes and Sea Level Rise**
Please be aware that development approvals issued by Redland City Council are based upon current lawful planning provisions which do not necessarily respond immediately to new and developing information on coastal processes and sea level rise. Independent advice about this issue should be sought.

-
- **Hours of Construction**
Please be aware that you are required to comply with the *Environmental Protection Act* in regards to noise standards and hours of construction.

-
- **Survey and As-constructed Information**
Upon request, the following information can be supplied by Council to assist survey and engineering consultants to meet the survey requirements:

- a) A map detailing coordinated and/or levelled PSMs adjacent to the site.
- b) A listing of Council (RCC) coordinates for some adjacent coordinated PSMs.
- c) An extract from Department of Natural Resources and Mines SCDM database for each PSM.
- d) Permanent Survey Mark sketch plan copies.

This information can be supplied without charge once Council received a signed declaration from the consultant agreeing to Council's terms and conditions in relation to the use of the supplied information.

Where specific areas within a lot are being set aside for a special purpose, such as building sites or environmental areas, these areas should be defined by covenants. Covenants are registered against the title as per Division 4A of the *Land Title Act 1994*.

-
- **Services Installation**
It is recommended that where the installation of services and infrastructure will impact on the location of
-

existing vegetation identified for retention, an experienced and qualified arborist that is a member of the Australian Arborist Association or equivalent association, be commissioned to provide impact reports and on site supervision for these works.

- **Fire Ants**

Areas within Redland City have been identified as having an infestation of the Red Imported Fire Ant (RIFA). Biosecurity Queensland should be notified on 13 25 23 of proposed development(s) occurring in the Fire Ant Restricted Area before earthworks commence. It should be noted that works involving movements of soil associated with earthworks may be subject to movement controls and failure to obtain necessary approvals from Biosecurity Queensland is an offence. It is a legal obligation to report any sighting or suspicion of fire ants within 24 hours to Biosecurity Queensland on 13 25 23. The Fire Ant Restricted Area as well as general information can be viewed on the Department of Agriculture and Fisheries (DAF) website www.daf.qld.gov.au/fireants

- **Cultural Heritage**

Should any aboriginal, archaeological or historic sites, items or places be identified, located or exposed during the course or construction or operation of the development, the *Aboriginal and Cultural Heritage Act 2003* requires all activities to cease. For indigenous cultural heritage, contact the Department of Environment and Heritage Protection.
