



ATTACHMENTS

LOCAL PLANNING PANEL MEETING

Wednesday 29 July 2020
at 6:30PM



TABLE OF CONTENTS

LOCAL PLANNING PANEL

1	LPP9/20	Development Application - Alterations and Additions to the 'Thornleigh Marketplace' Shopping Centre	
	Attachment 1:	Locality Map	2
	Attachment 2:	Amended Clause 4.6 Variation	3
	Attachment 3:	Amended Architectural Plans	28
	Attachment 4:	Landscape Plan	67
2	LPP13/20	Development Application - Subdivision One Lot into Two and Construction of a Dwelling - 101-103 Wongala Crescent, Pennant Hills	
	Attachment 1:	Locality Map	71
	Attachment 2:	Architectural Plans	72
	Attachment 3:	Stormwater Management.....	83
	Attachment 4:	Landscape Plan	93

ATTACHMENT/S

REPORT NO. LPP9/20

ITEM 1

- 1. LOCALITY MAP**
- 2. AMENDED CLAUSE 4.6 VARIATION**
- 3. AMENDED ARCHITECTURAL PLANS**
- 4. LANDSCAPE PLAN**



LOCALITY PLAN

DA/1047/2019

No. 17 Bellevue Street, Thornleigh

ATTACHMENT 1 - ITEM 1

CLAUSE 4.6 VARIATION REQUEST



CLAUSE 4.6 – EXCEPTIONS TO DEVELOPMENT STANDARDS

**VARIATION TO THE MAXIMUM HEIGHT OF
BUILDINGS STANDARD UNDER CL. 4.3 & FLOOR
SPACE RATIO UNDER CL. 4.4 HORNSBY LEP
2013**

'Thornleigh Marketplace' No. 17 Bellevue Street, Thornleigh

Alterations and Additions to an Existing Shopping Centre (Thornleigh Marketplace).

29TH MAY 2020

CLAUSE 4.6 VARIATION REQUEST

ISSUE NO	AMENDMENT	DATE
REV A	REVISED ISSUE TO COUNCIL	20 TH FEBRUARY 2020
REV B	REVISED ISSUE TO COUNCIL	19 TH MAY 2020
REV C	REVISED ISSUE TO COUNCIL	29 TH MAY 2020

REPORT PREPARED BY:**Peter Fryar**

BTP (UNSW), CERT T&CP (Ord4), MPIA



DIRECTOR,
KEY URBAN PLANNING

WAIVER

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CLAUSE 4.6 VARIATION REQUEST



VARIATION UNDER CLAUSE 4.6 OF THE HORNSBY LOCAL ENVIRONMENTAL PLAN 2013 TO DEVELOPMENT STANDARD FOR MAXIMUM HEIGHT OF BUILDINGS (CLAUSE 4.3) & FLOOR SPACE RATIO (CLAUSE 4.4).

Peter Fryar of Key Urban Planning has prepared this clause 4.6 request (the “request”) to assist in gaining development consent for ‘*Alterations and Additions to an Existing Shopping Centre (Thornleigh Marketplace)*’. The development proposal includes the demolition of part of the existing shopping centre building.

- Peter is a Town Planner with over 30 years experience in Local Government and private practice.
- Peter holds a Degree as a Bachelor of Town Planning (UNSW) and Certificate under Ordinance 4 as a Town and Country Planner.
- Peter is a Corporate Member of the Planning Institute of Australia (PIA).

The property is known as Lots 100 in Deposited Plan 608646, No. 17 Bellevue Street, Thornleigh (the “site”). The site is located on the southern side of The Commenara Parkway and has frontage to both Wood Street (82.355m) and Bellevue Street (109.785m), Thornleigh. The site has an area of 8,208 m² and experiences a fall from east to west to the frontage at Wood Street. Consequently, the grade of the site with cross fall from east to west and subsequent development for one large building (shopping centre) results in the existing built form protruding at a height greater at the eastern (Wood Street) frontage.

The existing development of the site was granted development consent by the Land and Environment Court of NSW in 2004 (*Fabcot Pty Ltd v Hornsby Shire Council* [2004] NSWLEC 358). A subsequent modification to the Court consent was approved on 22 June 2005.

The proposed development detailed under the Statement of Environmental Effects prepared in support of the development application includes part demolition of the existing building and construction of an additional level of retail floor area above the rooftop car park (approx. 3,798.23 m²). An upgrade to the external façade of the building is proposed.

In consideration of this matter, we have:

- Undertaken an inspection of the site and surrounding locality;
- Undertaken a review of the relevant provisions of the Hornsby Local Environmental Plan 2013 (the “LEP”);
- Undertaken a review of the relevant sections of the Hornsby Development Control Plan 2013 (the “DCP”); and

CLAUSE 4.6 VARIATION REQUEST

- Given consideration to the relevant provisions of the Environmental Planning and Assessment Act, 1979 (the “Act”) and the Environmental Planning & Assessment Regulations, 2000 (the “Regs”).

INTRODUCTION

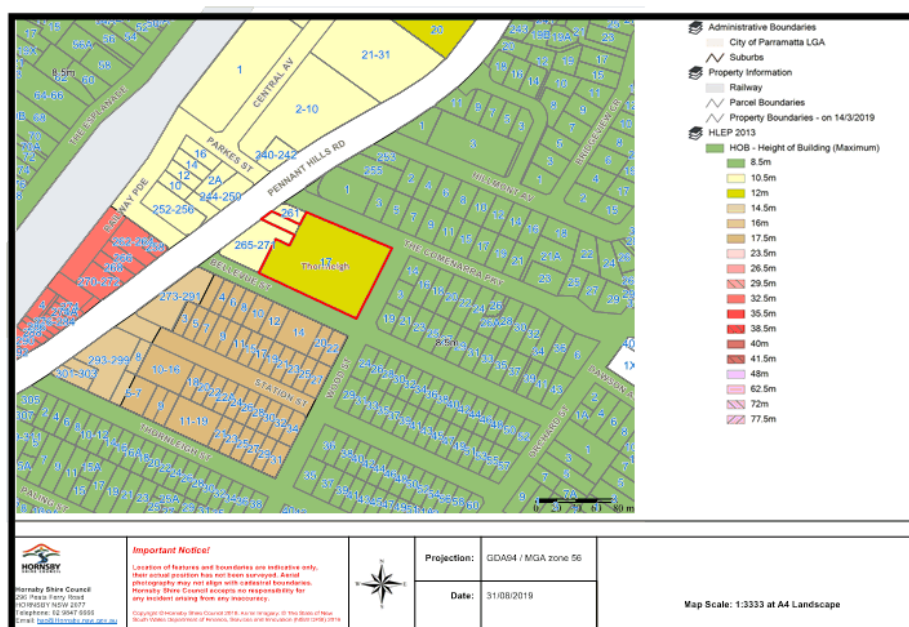
Key Urban Planning is providing urban planning services to the owners of ‘Thornleigh Marketplace’ in support of the above described development application submitted to Hornsby Shire Council. The purpose of this request is to seek a variation to Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) of the Hornsby Local Environmental Plan 2013. It is proposed to undertake the part demolition of the existing shopping centre building including demolition of a number of building elements that currently exceed the maximum height development standard. The proposed works will result in a portion of the new building structure along the frontage (eastern) to Wood Street.

Clause 4.3 of the LEP states:

“4.3 Height of buildings

- (1) The objectives of this clause are as follows:
 - (a) to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.
 - (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.”

Figure 1- Extract of the LEP height map.

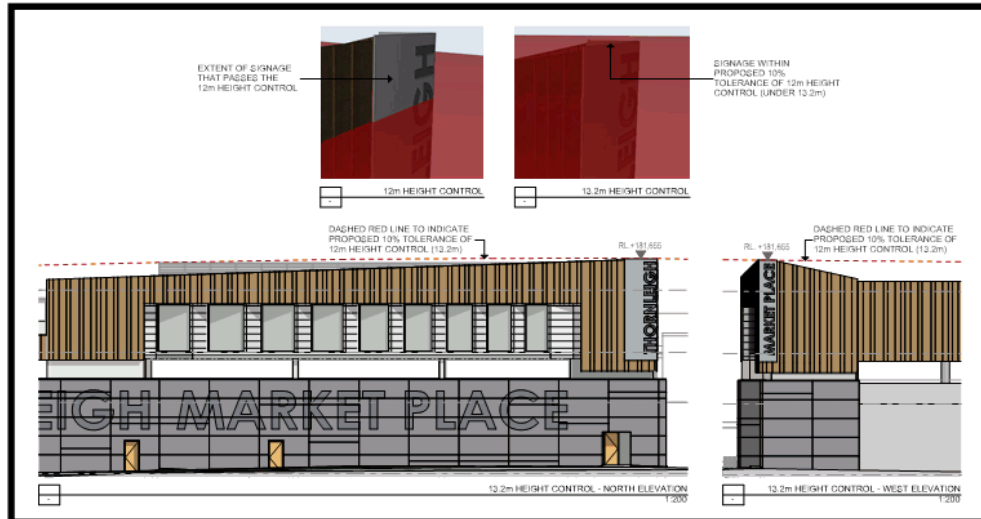


CLAUSE 4.6 VARIATION REQUEST

The request seeks a variation to the twelve (12) metre maximum height standard prescribed under the LEP.

The following 3D height plane diagrams illustrate the extent of the breach of the maximum twelve (12) metre height standard.

Figure 2 - Height control details – (Maximum proposed 13.2 metres)



Clause 4.4 (1) & (2) of the LEP states:

“4.4 Floor space ratio

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

(a) to permit development of a bulk and scale that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#). ”

The LEP maps prescribe a maximum Floor Space Ratio (FSR) of 1:1. The court in granting approval to the existing development at para. 6 of the judgement in *Fabcot Pty Ltd v Hornsby Shire Council* states:

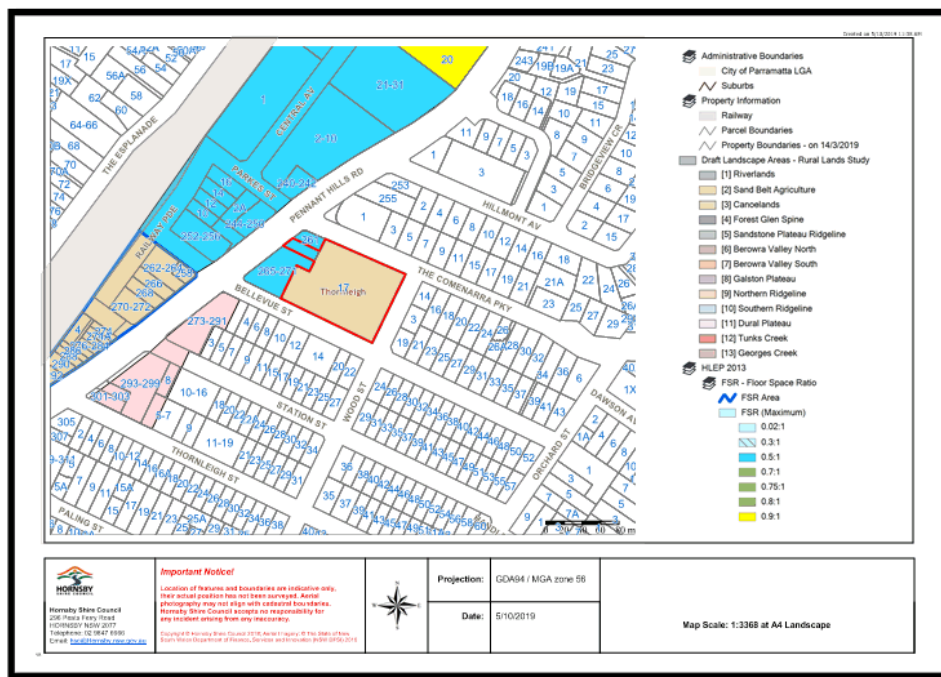
“6 In the documents put before the Court, there are detailed assessment of the proposal by the planners, which demonstrates reasonable compliance with the current controls. However there is a non-compliance with the FSR development standard in cl 15 of the LEP. This non-compliance was dealt with by way of a SEPP 1 objection prepared by City Plan Services. The SEPP 1 objection was then assessed by the Council planners who agree that it is well founded. On the basis of the evidence before the Court and in the absence of any challenge, I accept that the SEPP 1 objection is well founded and should be allowed. ”

The FSR under the previous Hornsby LEP 1994 was a maximum of 1:1. The same FRS (max) applies to

CLAUSE 4.6 VARIATION REQUEST

the site under the current LEP. The total 'gross floor area' proposed under the current development application is 11,362 m². This represents an FSR for the proposed development of 1.38:1.

Figure 3 - Extract of the LEP FSR map.



CLAUSE 4.6 VARIATION REQUEST

CLAUSE 4.6 FRAMEWORK

Clause 4.6 (*Exceptions to Development Standards*) provides a mechanism for a Consent Authority to grant flexibility in Development Standards when it considers this would result in improved planning outcomes for and from a development.

Clause 4.6(3)(a) and (b) requires that a consent authority must not grant a variation to a development standard unless it is satisfied:

- "(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;"*

Additionally, there is Case Law precedence that must be considered prior to determining any variation request under the Clause. The Land and Environment Court Case law has set questions to be addressed in requests for variations facilitated by Clause 4.6. The relevant precedence is in:

- *Wehbe v Pittwater Council (2007)*; and, more recently
- *Four2Five Pty Ltd v Ashfield Council (2015)*.

More recently, in two recent decisions (one in the Court of Appeal and one in the Land and Environment Court), Preston CJ further clarified the requirements for clause 4.6 requests and sought to unify the approaches in *Initial Action* and *Al Maha*.

1. *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61

At first instance, Grey C refused development consent to the DA. One of the bases on which consent was refused was that the Commissioner was not satisfied that the Applicant's 4.6 variation request had adequately addressed the matters required to be demonstrated by cl 4.6(3).

On appeal to a judge of the Land and Environment Court (Preston CJ), Baron argued that the Commissioner had misdirected herself by asking whether she was '*directly and reasonably satisfied*' with the reasons given in the 4.6 request. The applicant made this submission in reliance on Preston CJ's statement in *Initial Action* (at [25]) that:

"...the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b)."

After a detailed consideration of the issue (at [74-78]), His Honour rejected the applicant's argument. At [78], His Honour held:

"The consent authority's consideration of the applicant's written request, required under cl 4.6(3), is to evaluate whether the request has demonstrated the achievement of the outcomes that are the matters in cl 4.6(3)(a) and (b). Only if the request does demonstrate the achievement of these outcomes will the request have "adequately addressed the matters required to be demonstrated" by cl 4.6(3), being the requirement in cl 4.6(4)(a)(i) about which

CLAUSE 4.6 VARIATION REQUEST

the consent authority must be satisfied. The request cannot "adequately" address the matters required to be demonstrated by cl 4.6(3) if it does not in fact demonstrate the matters."

2. *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130

Subsequent to the decision in *Baron Corporation*, the Court of Appeal once again considered the proper construction of clause 4.6 in *RebelMH*. Preston CJ sat in the Court of Appeal and delivered the Court's reasons.

The development in question contravened the height development standard set out in the *North Sydney Local Environmental Plan 2013* ('NSLEP') and a clause 4.6 variation request was therefore required.

At first instance, Moore J dismissed the appeal as he was not satisfied that the request had adequately addressed the matters required to be demonstrated by cl 4.6(3) of the NSLEP. His Honour also found that the proposed development was not in the public interest because it was not consistent with objectives (b) and (f) of the height development standard. Objective (b) was to promote the retention and sharing of existing views and Objective (f) was to encourage an appropriate scale and density of development that was in accordance with the character of an area.

On appeal, the applicant argued that Moore J had misconstrued and misapplied cl 4.6 by finding that to 'adequately address' the matters required to be demonstrated in cl 4.6(3), the request had to actually demonstrate those matters, rather than merely seek to demonstrate those matters.

The Court rejected this argument. After setting out Preston CJ's conclusions in *Baron Corp*, the Court reaffirmed (at [51]):

"... in order for a consent authority to be satisfied that an applicant's written request has "adequately addressed" the matters required to be demonstrated by cl 4.6(3), the consent authority needs to be satisfied that those matters have in fact been demonstrated. It is not sufficient for the request merely to seek to demonstrate the matters in subcl (3) (which is the process required by cl 4.6(3)), the request must in fact demonstrate the matters in subcl (3) (which is the outcome required by cl 4.6(3) and (4)(a)(i))."

This application to vary a development standard is framed to provide responses to each of the heads of consideration under Clause 4.6 and to address the precedence set by this relevant Case Law. It is set out as follows:

- Verification that a statutory Development Standard is proposed to be varied;
- Description and quantification of the proposed variation
- Justification on merit of the validity of the variation requested (with particular attention to the current case law precedence in *Four2Five vs Pty Ltd v Ashfield Council & Wehbe v Pittwater Council (2007)*). Particularly, clause 4.6(3)(a) identifies that the request must demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances.
- Assessment against the remaining relevant statutory heads of consideration in the LEP 2013

CLAUSE 4.6 VARIATION REQUEST

and other relevant case law.

- As required by clause 4.6(3)(b) the request will demonstrate that there are sufficient environmental grounds to justify contravening the development standard.

ATTACHMENT 2 - ITEM 1

CLAUSe 4.6 VARIATION REQUEST

DEVELOPMENT STANDARDS PROPOSED TO BE VARIED

(1) HEIGHT STANDARD

The Development Standard to be varied by this application is Clause 4.3 (Height of buildings) of the Hornsby LEP 2013.

The map indicates that the maximum height for a building must not exceed twelve (12) metres.

The purpose of this request is to seek a variation to Clause 4.3 (Height of Buildings) of the Hornsby Local Environmental Plan 2013.

The site is zoned B2 Local Centre Zone under the LEP.

The Dictionary to LEP 2013 defines "Height of Buildings Map" as:

"Height of Buildings Map means the [Hornsby Local Environmental Plan 2013 Height of Buildings Map](#)."

Building height is defined in the LEP 2013 as:

"building height (or height of building) means:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
 - (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*
- including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like."*

(2) FLOOR SPACE RATIO STANDARD

The Development Standard to be varied by this application is Clause 4.4 (Floor Space Ratio) of Hornsby LEP 2013.

The map indicates that the maximum FSR for a building must not exceed 1:1. The purpose of this request is to seek a variation to Clause 4.4 (Floor Space Ratio) of Hornsby Local Environmental Plan 2013. The site is zoned B2 Local Centre Zone under the LEP.

The Dictionary to LEP 2013 defines "Floor Space Ratio Map" as:

"Floor Space Ratio Map means the [Hornsby Local Environmental Plan 2013 Floor Space Ratio Map](#)."

Floor Space Ratio and the calculation of FSR is defined under clause 4.5 the LEP 2013 as:

"4.5 Calculation of floor space ratio and site area

(1) Objectives

The objectives of this clause are as follows:

- (a) to define **floor space ratio**,*
- (b) to set out rules for the calculation of the site area of development for the purpose of applying permitted floor space ratios, including rules to:*

CLAUSE 4.6 VARIATION REQUEST

- (i) prevent the inclusion in the site area of an area that has no significant development being carried out on it, and
- (ii) prevent the inclusion in the site area of an area that has already been included as part of a site area to maximise floor space area in another building, and
- (iii) require community land and public places to be dealt with separately.

(2) Definition of "floor space ratio"

The **floor space ratio** of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

(3) Site area

In determining the site area of proposed development for the purpose of applying a floor space ratio, the **site area** is taken to be:

- (a) if the proposed development is to be carried out on only one lot, the area of that lot, or
- (b) if the proposed development is to be carried out on 2 or more lots, the area of any lot on which the development is proposed to be carried out that has at least one common boundary with another lot on which the development is being carried out.

In addition, subclauses (4)–(7) apply to the calculation of site area for the purposes of applying a floor space ratio to proposed development.

(4) Exclusions from site area

The following land must be excluded from the site area:

- (a) land on which the proposed development is prohibited, whether under this Plan or any other law,
- (b) community land or a public place (except as provided by subclause (7)).

(5) Strata subdivisions

The area of a lot that is wholly or partly on top of another or others in a strata subdivision is to be included in the calculation of the site area only to the extent that it does not overlap with another lot already included in the site area calculation.

(6) Only significant development to be included

The site area for proposed development must not include a lot additional to a lot or lots on which the development is being carried out unless the proposed development includes significant development on that additional lot.

(7) Certain public land to be separately considered

For the purpose of applying a floor space ratio to any proposed development on, above or below community land or a public place, the site area must only include an area that is on, above or below that community land or public place, and is occupied or physically affected by the proposed development, and may not include any other area on which the proposed development is to be carried out.

(8) Existing buildings

The gross floor area of any existing or proposed buildings within the vertical projection (above or below ground) of the boundaries of a site is to be included in the calculation of the total floor space for the purposes of applying a floor space ratio, whether or not the proposed development relates to all of the buildings.

(9) Covenants to prevent "double dipping"

When development consent is granted to development on a site comprised of 2 or more lots, a condition of the consent may require a covenant to be registered that prevents the creation of floor area on a lot (the restricted lot) if the consent authority is satisfied that an equivalent quantity of floor area will be created on another lot only because the site included the restricted

CLAUSE 4.6 VARIATION REQUEST

lot.

(10) **Covenants affect consolidated sites**

If:

- (a) a covenant of the kind referred to in subclause (9) applies to any land (**affected land**), and
 - (b) proposed development relates to the affected land and other land that together comprise the site of the proposed development,
- the maximum amount of floor area allowed on the other land by the floor space ratio fixed for the site by this Plan is reduced by the quantity of floor space area the covenant prevents being created on the affected land.

(11) **Definition**

In this clause, **public place** has the same meaning as it has in the [Local Government Act 1993](#)."

(3) ARE 'HEIGHT' AND 'FSR' DEVELOPMENT STANDARDS?

Section 1.4 of the Act defines a 'development standard' to mean:

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

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- (b) the proportion or percentage of the area of a site which a building or work may occupy,
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
- (d) the cubic content or floor space of a building,
- (e) the intensity or density of the use of any land, building or work,
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
- (h) the volume, nature and type of traffic generated by the development,
- (i) road patterns,
- (j) drainage,
- (k) the carrying out of earthworks,
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- (m) the provision of services, facilities and amenities demanded by development,
- (n) the emission of pollution and means for its prevention or control or mitigation, and
- (o) such other matters as may be prescribed."

The maximum building height identified on the 'Height of buildings map' is a development standard as defined under section 1.4 of the Act.

CLAUSE 4.6 VARIATION REQUEST

The maximum FSR identified on the 'Floor Space Ratio Map' is a development standard as defined under section 1.4 of the Act.

The Land and Environment Court of NSW in *Bramley v Coffs Harbour City Council* [2014] NSWLEC 1194 considered a development proposal involving a clause 4.6 submission seeking variation to the height standard. Commissioner Brown at para. 28 to 29 described the clause 4.6 assessment framework as follows:

"28. Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i))."

*29. In considering the question of consistency, I have adopted approach of the former Chief Judge, Justice Pearlman in *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21 where, Her Honour expresses the following opinion at [27]:*

The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible."

NOTE: Bold and underlining by author.

Accordingly, the proposed alterations and additions forming part of the DA constitutes a variation to the maximum building height and Floor Space Ratio development standards contained within the LEP and requires the proponent to formally seek a variation under the provisions of clause 4.6 of the LEP.

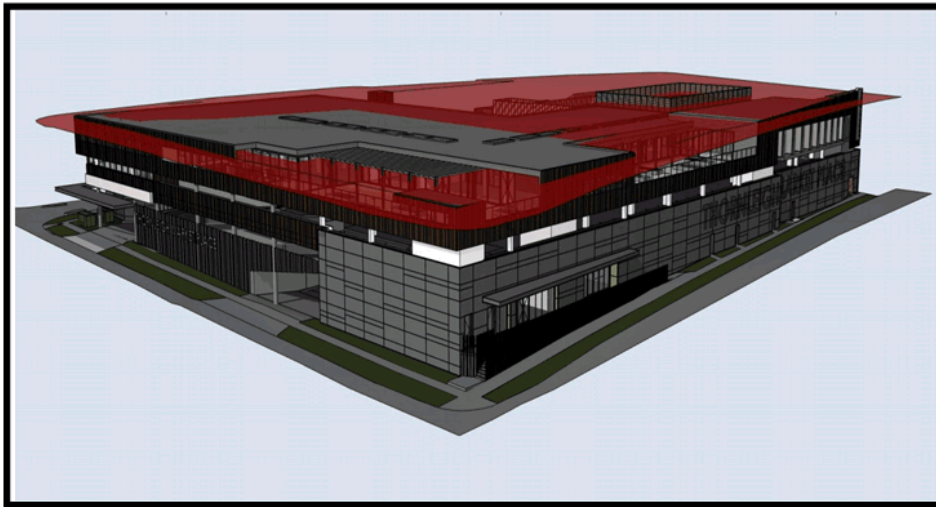
EXTENT OF VARIATION SOUGHT**(1) HEIGHT STANDARD**

The purpose of this request is to seek a variation to Clause 4.3 (Height of buildings) of the Hornsby Local Environmental Plan 2013. It is proposed that elements of the roof of the proposed addition will exceed the maximum height control at the lower (eastern) portion of the site that fronts Wood Street.

Figures 1 and 3 depict the extent of the non-compliance with the maximum height standard being a maximum height at the Wood Street frontage of 13.2 metres or 10% variation (max). The majority of the building will remain within the maximum 12 metre development control.

CLAUSE 4.6 VARIATION REQUEST

Figure 3 - Height control details – (Maximum proposed 13.2 metres)



(2) FLOOR SPACE RATIO STANDARD

The Development Standard to be varied by this application is Clause 4.4 (Floor Space Ratio) of Hornsby LEP 2013. The map indicates that the maximum FSR for a building must not exceed 1:1. The purpose of this request is to seek a variation to Clause 4.4 (Floor Space Ratio) of Hornsby Local Environmental Plan 2013.

The calculation of 'gross floor area' in determining the FSR of a building is defined under the Dictionary in the LEP as being:

"gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*
- but excludes:*
- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement:*
 - (i) storage, and*
 - (ii) vehicular access, loading areas, garbage and services, and*
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) voids above a floor at the level of a storey or storey above."*

CLAUSE 4.6 VARIATION REQUEST**GFA:**

- Proposed building: 11,362m²
- Site area: 8,208m²
- Proposed FSR: 1.38:1

ATTACHMENT 2 - ITEM 1

CLAUSE 4.6 VARIATION REQUEST

JUSTIFICATION FOR CONTRAVENTION OF THE DEVELOPMENT STANDARDS

The proposed variation is justified below firstly via a merit based assessment on the recent case law and subsequently against the relevant heads of consideration in the LEP 2013. Case law (*Winten Property Group v North Sydney Council, 2001* & *Wehbe v Pittwater Council, 2007*) sets the basis for decision making on tests to assess variations to a Development Standard founded in whether the varied development would achieve the objectives of the relevant zoning and the Development Standard. In the decision in *Four2Five Pty Ltd v Ashfield Council, 2015*, Commissioner Pearson found that merely showing that the development achieves the objectives of the development standard would be insufficient to justify that a development is unreasonable or unnecessary in the circumstances of the case for the purposes of a Clause 4.6 objection. This refined the test set in *Wehbe v Pittwater Council* to include an obligation to tie the test to outcomes specific to the proposed development and its site as opposed to grounds that would apply to any similar development on the site or in the vicinity. Consent authorities have since been applying this site & development specific test ("the Four2Five Test") to objections under Clause 4.6. The merit based assessment of this variation request is based on this test.

With respect to the *Four2Five* test, there are a number of outcomes for the development on this site that go to justification of the variation request for maximum building height. These include:

- The shape and locality of the site and the opportunities and constraints that arise for its redevelopment (in part) as a result;
- The potential for negative town planning and urban outcomes that may arise from strict compliance with the requirement are negligible when considering the context of the site with surrounding development;
- The unique qualities of the site and the proposed alterations and additions will maintain and enhance these and the character of the locality;
- The character, operation and appearance of the current development will not be substantially altered by the height.
- The shape and locality of the site and the opportunities and constraints that arise for its development as a result – specifically the opportunity to provide substantial public benefits in the form of a public street frontage with no discernible impacts arising from the additional height proposed on the locality.
- The extent of the non-compliance is minor (max. 10%) with the majority of the building less than the maximum development standard.
- The existing building covers the majority of the site. There is limited opportunity to 'step' the design due to the need to provide a complex series of ramps to enable pedestrian and vehicle access.

CLAUSe 4.6 VARIATION REQUEST

ASSESSMENT AGAINST THE STATUTORY HEADS OF CONSIDERATION

The proposed variation is assessed below against the relevant sub-clauses in Clause 4.6 of the LEP.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Cl.4.6(3)(a))

In his decision in *Wehbe v Pittwater Council [2007] NSW LEC 827* (relating to the now repealed State Environmental Planning Policy No.1), Chief Justice Preston expressed the view that there are 5 different ways in which a Development Standard may be shown to be unreasonable or unnecessary (and so that an objection to the development standard may be well founded). In accordance with this precedent, the proposed variation is tested below against each of these.

- The objectives of the standard are achieved notwithstanding non-compliance with the standard.

The relevant objective underpinning the building height development standard is:

"(a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,"

Our opinion is that the relatively modest additional height proposed contributes to the delivery of a high quality development on this site by transferring ground level GFA that may have negative impacts with regard to ground level activity and converting this to high quality commercial GFA. The proposed height variation realises the development potential of the site and provides a higher quality outcome than the alternative solution.

It is clear that the objectives of the standard are able to be achieved, notwithstanding the additional height, and that a superior development outcome would result.

The relevant objectives underpinning the floor space ratio standard are:

*"(a) to ensure development is compatible with the bulk, scale and character of existing and future surrounding development,
(b) to provide for a built form that is compatible with the role of town and major centres."*

The variation to FSR is inconsequential in the scheme of overall bulk and scale of the development.

- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

The underlying objective or purpose of the standard is relevant to this development but, as illustrated in the plans submitted with the development application, it is achieved through the height variation with a higher quality urban planning and urban design outcome.

The variation to FSR is inconsequential in the scheme of overall bulk and scale of the development.

CLAUSE 4.6 VARIATION REQUEST

- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The underlying object or purpose of the standard would not be defeated or thwarted if compliance was required. However, strict compliance with the development standard would result in a missed opportunity specific to this site to develop a high quality development that will present in a positive manner to the adjoining street.

The proposal maintains the economic viability of the existing shopping centre development while catering for the needs of the increasing population in the Thornleigh commercial precinct and other higher density residential precincts created under the planning instrument. The additional Gross Floor Area responds accordingly to the increase in population density in the immediate vicinity of the site as a consequence of recent zoning changes under the Hornsby Shire Housing Strategy.

- 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;

Council has departed on the development standard in historic planning circumstances on the site. The existing building contains a number of building elements that currently exceed the maximum height standard.

Likewise, the court supported an increase above the maximum FSR in permitting the current development. The current proposal responds to recent changes in housing density that has occurred in close proximity to the site.

- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Not applicable. The zoning of the site is appropriate.

The proposed variation is consistent with the heads of consideration set by the decision of *Wehbe v Pittwater Council* [2007] and thus that for this particular case it would be unreasonable to strictly apply the numerical height standard for the development.

There are sufficient environmental planning grounds to justify contravening the development standard (Cl.4.6(3)(b))

The merit - based justification above in this request provides strong evidence that the proposed height variation would have clear positive outcomes including provision of a high quality public domain, protection and enhancement of identified values specific to the site and provision of high quality commercial development in the locality.

CLAUSE 4.6 VARIATION REQUEST

Our opinion is that the additional height & FSR is a negligible issue within the context of the greater planning benefit, including opportunities for activation of the public domain, protection and enhancement of local values and provision of high quality development that would result from the minor variation to the height standard.

In this regard, there are sufficient environmental planning grounds specific to this site to justify the proposed minor departure from the development standard.

The proposal will be in the public interest because it is consistent with the objectives of the relevant development standard and the objectives for development within the relevant zone (Cl.4.6(4)(a)(ii))

The analysis previously in the SEE indicates that the proposed height variation will result in a development that is consistent with the objectives of the B2 –Local Centre zone and the Height & FSR Standard clause within the LEP 2013.

This revised Clause 4.6 Variation Request (REV A) has been prepared to further satisfy Council that the variations sought to the 'Height' and 'FSR' development standards can be justified on environmental planning ground in that:

- a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- b) There is sufficient environmental planning ground to justify contravening the development standard.

In *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 at [75]-[80].

Case concerned a DA to carry out alterations to an approved but as yet unconstructed residential flat building that exceeded the maximum FSR in Sydney Local Environmental Plan 2012. The Applicant contended that the Commissioner who heard the matter had applied the wrong test of needing to be directly and personally satisfied that compliance with the development standard is unreasonable or unnecessary rather than whether the written request had adequately addressed that matter.

Justice Preston said:

"The upshot is that a consent authority, and the Court on appeal, in order to determine whether the applicant's written request has demonstrated the achievement of the matters (the outcomes) in cl 4.6(3)(a) and (b), might need to form a view about whether the matters have in fact been achieved. Take, for example, the matter in cl 4.6(3)(a). One of the ways in which compliance with the development standard might be shown to be unreasonable or unnecessary in the circumstances of the case is if the development achieves the objectives of the development standard, notwithstanding that the development contravenes the development standard. Demonstrating that the development achieves the objectives of the development standard involves identification of what are the objectives of the development standard and establishing that those objectives are in fact achieved. The applicant's written request will need to demonstrate both of these things: correctly identifying the objectives of the development standard and establishing that the objectives are in fact achieved. The consent authority may not be in a position to be satisfied that the applicant's written request does demonstrate both of these things unless the consent authority forms its own view about these things."

CLAUSE 4.6 VARIATION REQUEST

Height Development Standard

The underlying objective of the height standard is to minimise potential adverse environmental impacts of development of the site on the surrounding residential area. It is noted that the height standard was applied to the site at a time historically when the site was surrounded predominantly by low-density residential development. Since the historic application of the height standard on the site, the council has undertaken rezoning of a number of the surrounding lands to permit increased residential densities and increases in the height of development on the adjoining lands. In other words, the character of the surrounding area to the site has changed substantially since the current height standard was applied to the site. It could be argued that the current height standard is inappropriate when accounting for changes to height controls that have occurred in recent years on surrounding lands.

The underlying objectives of the height standard are to minimise adverse environmental impacts upon the surrounding residential areas from overshadowing, overlooking, intensity of development (e.g noise impacts). The height variation occurs on the lower (eastern) portion of the site only. The majority of the development proposed complies with the maximum height standard.

Although the proposal breaches the height of buildings control, the development achieves appropriate building envelopes and separation to the adjacent residential land. It is also worth noting that the development does comply with solar access, site coverage and other similar requirements adopted by Council. These matters are considered relevant in the context of the site being predominantly surrounded by residential development.

The underlying objective of the height standard prescribed under the LEP is as follows:

"4.3 Height of buildings

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

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

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#)."

The additional building height allows for the efficient and economic use of the site. The minor non-compliance with the height standard is essentially a response to the local topography and does not exacerbate any likely adverse impacts from the development on surrounding lands.

The existing setbacks of the shopping centre are maintained and consequently, the reduction in the height (in part) of the existing building is considered to be an improvement to the external appearance of the building and will reduce the bulk and scale by the removal of a number of existing elements of the shopping centre that currently exceed the height control.

Consideration of the proposed building height must be taken in the context of the existing development of the site compared to the proposed built form. The existing rooftop car park provides overlooking onto a number of the surrounding residential properties. The part of the building that will exceed the height standard will not exacerbate issues relating to overlooking and privacy to the surrounding residential areas.

CLAUSe 4.6 VARIATION REQUEST

The opportunity to 'step' the design of the building does not exist for the existing or proposed purpose of the building, namely a shopping centre. The extent of the non-compliance with the height standard will not result in any adverse environmental outcomes and will essentially be inconsequential when considering the resultant built form of a fully compliant building with the height standard.

Clause 5.6 of the LEP permits variations to the building height standard for '*roof features of visual interest*'. Subclause 5.6(3) of the LEP prescribes matters for the consent authority to give consideration to when permitting architectural roof features that exceed the height standard. The element of the building that will exceed the height standard is considered to be consistent with the matters for consideration prescribed under clause 5.6(3) of the LEP.

The Hornsby DCP does not prescribe any building setbacks for the site nor is there any requirement for a podium to be provided in the building design. The desired outcome under the scale element of the DCP is to ensure that development maintains a height, scale and intensity compatible with the role and function of the centre under the commercial centres hierarchy. As stated above, the height proposed is considered to be consistent with the desired outcome of the 'scale element' under section 4.2.1 of the DCP.

Improvements in the external design and appearance of the building will assist in reducing the bulk and scale of the existing building by the removal of a number of building elements that currently add to the vertical scale of the building. The proposed built form will not detrimentally impact on any identified heritage items in the Thornleigh locality.

Floor Space Ratio Development Standard

The underlying objective of the FSR development standard under clause 4.4(1) of the LEP is as follows:

"4.4 Floor space ratio

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

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

Floor space ratio is a 'crude' planning mechanism that is used in planning instruments to control the bulk and scale of buildings. The non-compliance with the FSR control does not contribute to an increase in bulk and scale that is out of character with the development (current and proposed) in the surrounding locality.

The author in his research has undertaken a review of a number of articles that consider the various 'tools' used historically that have been used as a means of controlling the bulk of development on a plot and across a zone. The calculation of the maximum allowable floor space for a use can be specified by the application of an FSR based on for example, infrastructure constraints. Consequently, the definition of 'gross floor area' in the LEP contains a number of exclusions that may not contribute to the demand on infrastructure capacity e.g. plant rooms.

The origins of FSR controls date back to New York in the early 20th Century where buildings were growing taller and more intense and consequently resulting in increased overshadowing and loss of

CLAUSE 4.6 VARIATION REQUEST

light to streets. The construction of the Equitable Building in New York in the early 20th Century resulted in New York's largest building at the time in terms of floor space that had no setback from the street beyond the depth of the footpath and rising vertically for all of its floors. The unprecedented volume of the building resulted in significant impacts on surrounding properties by the impacts of overshadowing from the building. In response, the city adopted the '1916 Zoning Resolution' which limited the height of new buildings and required setbacks to allow penetration of sunlight to street level. Consequently, the 1916 ordinance relied largely on setback as the means of controlling bulk and scale of buildings essentially setting a building envelope to build within. The ordinance allowed a building to be constructed right up to a plot line and then rise up to a certain height and once you reach that height, the building had to step back then step back again. The height of a building depended on the width of the street. This resulted in the construction of the famous 'wedding cake' skyline of buildings such as the Chrysler Building (1930) and the Empire State Building (1931). Consequently, once a building reached 25% of its lot area, a skyscraper could be built to any height. Consequently, New York skyscrapers built between 1916 and about 1960 had a unique profile namely a bulky building base with setbacks and a slender tower soaring above.

By the middle of the 20th Century the 1916 New York Ordinances were resulting in a city being built beyond a density envisaged in 1916. Consequently, cities applied principles of incentive zoning whereby floor space on a site could be exchanged for creating public plazas and open space. This concept resulted in poor urban design outcomes in many instances resulting in under utilised public plazas. The Trump World Tower is an example whereby a building containing a floor space almost 4 times that permitted under zoning controls for a 'transferable development right' resulted in a building of a bulk and scale completely out of character with surrounding development. In other words, the 'transferable development rights' without overall caps on building height will produce a building out of scale and character with surrounding development.

The underlining objective of the FSR that applies to the subject site is to ensure that the resultant bulk and scale of the building is appropriate for the site in its context to the surrounding development. The proposal involves an overall reduction on building height and a general compliance with the adopted height standard across the majority of the site. In fact, the bulk and scale of the building will be reduced when compared to the existing building which will result in a better urban design outcome. The acceptability of the proposed floor space on the site is also regulated by the building's general compliance across the majority of the site to the adopted height standard.

Floor space ratio is simply a control of the ratio of floor space to the site area. This presumes that controlling factors are equally important and of the same proportion across the site in its entirety. A building that is fully compliant with the FSR could result in the 'stacking' of floor area in one part of the site in the absence of a height control.

The development proposal will result in a gross floor area that will effectively match the resultant development volume to transport and other infrastructure for the site.

In *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130

- Case concerned a DA for a 5 storey residential flat building that did not comply with the applicable development standard for height under North Sydney Local Environmental Plan 2013.
- One of the issues raised in the appeal to the Court of Appeal was whether, in order for a consent

CLAUSE 4.6 VARIATION REQUEST

authority to be satisfied that an applicant's request has "adequately addressed" the matters required to be demonstrated by cl 4.6(3), the consent authority needs to be satisfied that those matters have in fact been demonstrated.

- The appellant contended that clause 4.6(4)(a)(i) should be read as requiring the consent authority to be satisfied that the written request covers or deals with the required matters and that it was not necessary for the consent authority to agree with the conclusions of a request, nor the accuracy of the factual assertions contained within it. In other words the appellant asserted that the consent authority only needed to be satisfied that the written request contained an argument about each of the matters required to be demonstrated by cl 4.6(3).

- Justice Payne said:

"Clause 4.6(3) requires the consent authority to have "considered" the written request and identifies the necessary evaluative elements to be satisfied. To comply with subcl (3), the request must demonstrate that compliance with the development standard is "unreasonable or unnecessary" and that "there are sufficient environmental planning grounds to justify" the contravention. It would give no work to subcl 4.6(4) simply to require the consent authority to be satisfied that an argument addressing the matters required to be addressed under subcl (3) has been advanced."

- Justice Preston (sitting in the Court of Appeal) said at 51:

"...in order for a consent authority to be satisfied that an applicant's written request has "adequately addressed" the matters required to be demonstrated by cl 4.6(3), the consent authority needs to be satisfied that those matters have in fact been demonstrated. It is not sufficient for the request merely to seek to demonstrate the matters in subcl (3) (which is the process required by cl 4.6(3)), the request must in fact demonstrate the matters in subcl (3) (which is the outcome required by cl 4.6(3) and (4)(a)(i))."

It is considered that the public benefit will not be undermined by varying the height and FSR development standards. The proposed development is considered to be generally consistent with the adopted planning controls for the site.

CLAUSE 4.6 VARIATION REQUEST**SECRETARY'S CONCURRENCE**

Under Clause 4.6(5) of the LEP, the Secretary's concurrence is required prior to any variation being granted. The proposal is assessed below against the matters to be considered by the Secretary.

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

The variation to the height and FSR development standards will raise no matters that could be deemed to have State or Regional Significance. The proposed variations will have no potential for impacts outside the immediate vicinity of the site.

(b) the public benefit of maintaining the development standard, and

Maintaining the development standard in this case will not compromise that development form envisaged by the planning controls adopted by council.

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

We know of no other specific matters that would require the Secretary's consideration prior to granting concurrence.

CLAUSE 4.6 VARIATION REQUEST**CONCLUSION**

The proposed development satisfies the test established by the Land and Environment Court of NSW in *Wehbe -v- Pittwater Council* [2007] NSW LEC 827 as being appropriate for consideration of "unreasonable or unnecessary" circumstances in the application of Clause 4.6 variation request because:

- the objectives of the standard are achieved notwithstanding non-compliance with the standard;
- the underlying objective or purpose of the standard is not relevant to the development therefore compliance is unnecessary in the context of the facts of this case;
- the underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable - it would not result in the orderly and economic development of the land;

In the circumstances set out above there are sufficient environmental planning grounds to vary the numerical standard in this matter. Requiring strict compliance with the standard would hinder attainment of the relevant objects of the Environmental Planning and Assessment Act 1979.

Peter Fryar

BTP(UNSW), CERT T&CP(Ord4), MPIA



DIRECTOR,

KEY URBAN PLANNING

DEVELOPMENT APPLICATION FOR
2-12 THE COMENARRA PARKWAY THORNLEIGH NSW
 ALTERATION OF EXISTING SPACES AND ADDITION OF A NEW
 RETAIL LEVEL



FOR DA SUBMISSION - NOT FOR CONSTRUCTION

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DATE	DESCRIPTION	BY
12/07/2020	FOR DA SUBMISSION - NOT FOR CONSTRUCTION	12/07/2020

THORNLEIGH MARKETPLACE EXTENSION
 2-12 THE COMENARRA PARKWAY THORNLEIGH NSW

PROJECT NO: 1287
 PROJECT NAME: THORNLEIGH MARKETPLACE EXTENSION
 PROJECT LOCATION: 2-12 THE COMENARRA PARKWAY THORNLEIGH NSW
 PROJECT DATE: 12/07/2020
 PROJECT STATUS: 04

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ATTACHMENT 3 - ITEM 1



1000

LOCATION PLAN

ISSUANCE NO.	ISSUANCE DATE	REV.	REVISION
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NOTE:
CURRENT DOCUMENTATION HAS BEEN PREPARED
USING DRAWINGS PREPARED BY D + R ARCHITECTS,
PROVIDED BY CLIENT.

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FOR DA SUBMISSION - NOT FOR CONSTRUCTION		Owner/Title		1. Name of the project: _____ 2. Address: _____ 3. City: _____ State: _____ Zip: _____ 4. Phone: _____ Fax: _____ 5. E-mail: _____ 6. Website: _____ 7. Project description: _____ 8. Project status: _____ 9. Project budget: _____ 10. Project completion date: _____ 11. Project start date: _____ 12. Project end date: _____ 13. Project location: _____ 14. Project type: _____ 15. Project phase: _____ 16. Project status: _____ 17. Project budget: _____ 18. Project completion date: _____ 19. Project start date: _____ 20. Project end date: _____ 21. Project location: _____ 22. Project type: _____ 23. Project phase: _____ 24. Project status: _____ 25. Project budget: _____ 26. Project completion date: _____ 27. Project start date: _____ 28. Project end date: _____ 29. Project location: _____ 30. Project type: _____ 31. Project phase: _____ 32. Project status: _____ 33. Project budget: _____ 34. Project completion date: _____ 35. 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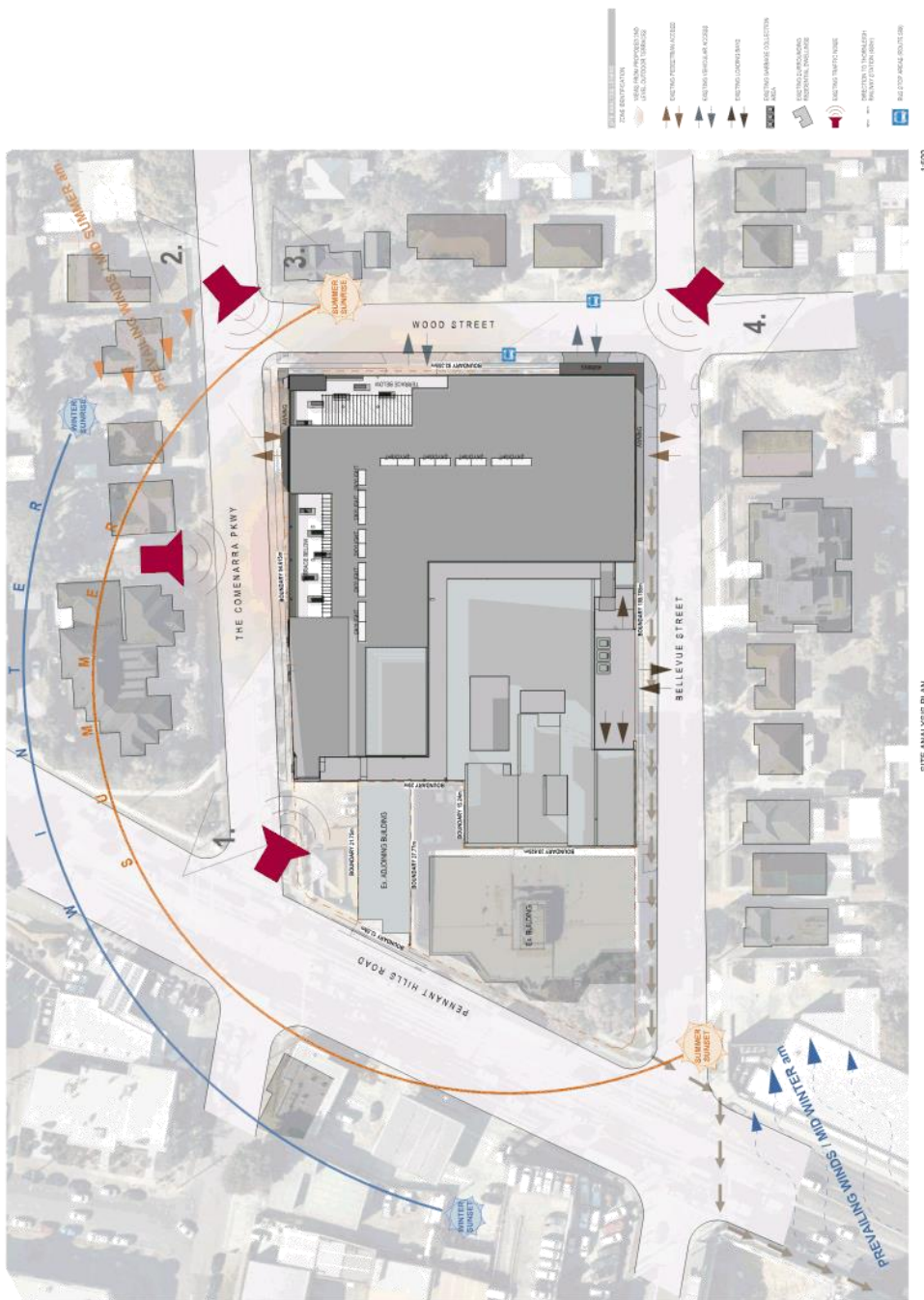


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THORNLEIGH MARKETPLACE EXTENSION 15-12 THE COMENURA PARKWAY THORNLEIGH NSW	HOLMARK PROPERTY GROUP	28/02/2025
ISSUANCE FILE	DESIGN	DATE
DRAWING LIST + LOCATION PLAN	REVISED	1/09/2024
PROJECT NO.	REVISION	NO.
1297	DA002	04

ATTACHMENT 3 - ITEM 1



THORNLEIGH MARKETPLACE EXTENSION
 2/12 THE COMENARRA PARKWAY THORNLEIGH NSW
 HOLDMARK PROPERTY GROUP
 PROJECT NO. 1287
 DRAWING NO. 04
 DATE 12/08/2019
 PROJECT NO. 1287
 DRAWING NO. 04
 DATE 12/08/2019



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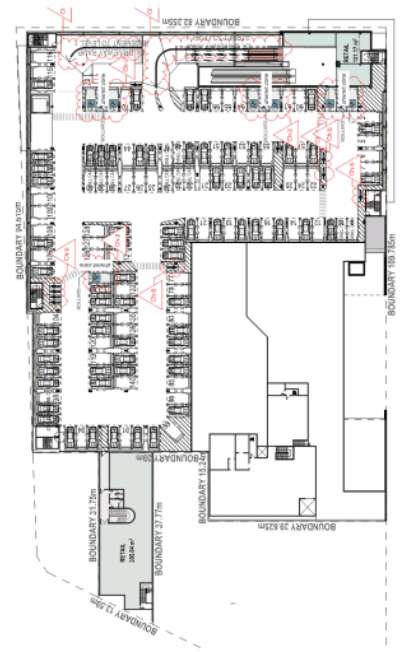
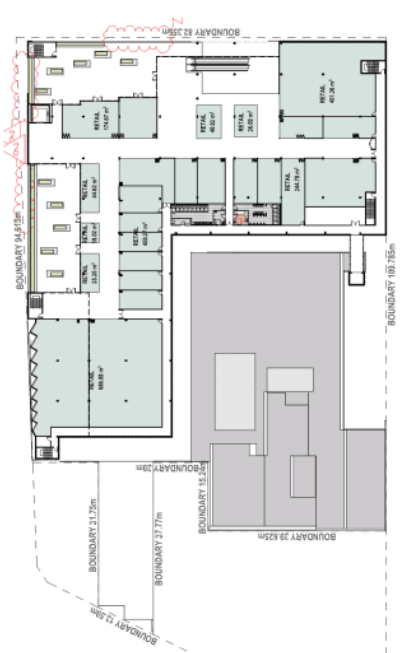
General Notes	Revisions
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10. All dimensions are in millimeters unless otherwise stated.	10. All dimensions are in millimeters unless otherwise stated.

ATTACHMENT 3 - ITEM 1



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ATTACHMENT 3 - ITEM 1



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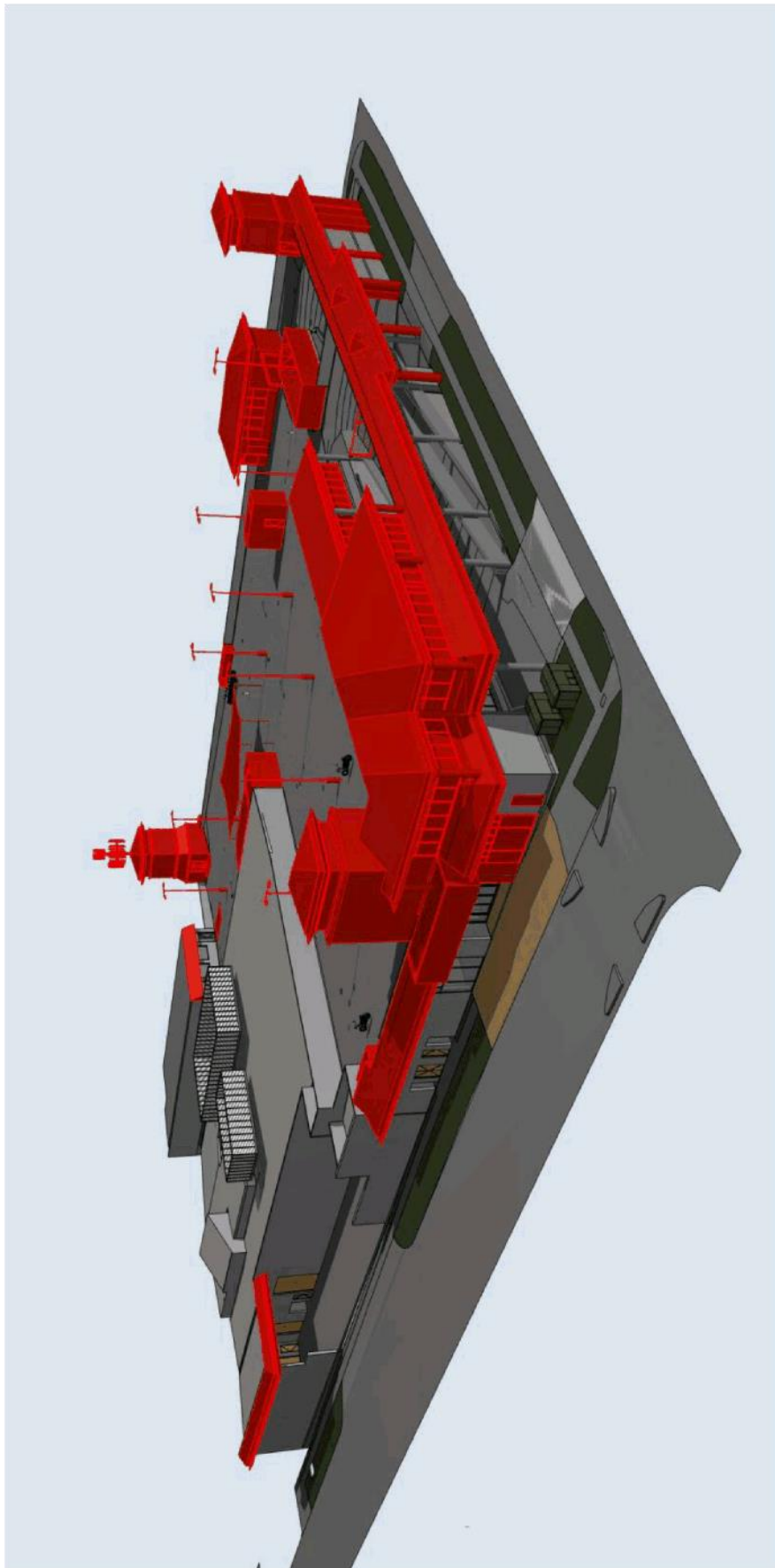


ATTACHMENT 3 - ITEM 1





ATTACHMENT 3 - ITEM 1



FOR DA SUBMISSION - NOT FOR CONSTRUCTION		DATE	
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Client Address	212 THE CONEMARRA PARKWAY THORNLEIGH NSW	Prepared By Client	
Client Contact		Client Name	
Client Phone		Client Address	
Client Email		Client Contact	
Client Website		Client Phone	
Client Fax		Client Email	
Client LinkedIn		Client Website	
Client Instagram		Client Facebook	
Client Twitter		Client YouTube	
Client Other		Client Other	

THORNLEIGH MARKETPLACE EXTENSION		DATE	
Client Name	THORNLEIGH MARKETPLACE EXTENSION	Current Documentation and Design Prepared By	D & H ARCHITECTS
Client Address	212 THE CONEMARRA PARKWAY THORNLEIGH NSW	Prepared By Client	
Client Contact		Client Name	
Client Phone		Client Address	
Client Email		Client Contact	
Client Website		Client Phone	
Client Fax		Client Email	
Client LinkedIn		Client Website	
Client Instagram		Client Facebook	
Client Twitter		Client YouTube	
Client Other		Client Other	



ATTACHMENT 3 - ITEM 1

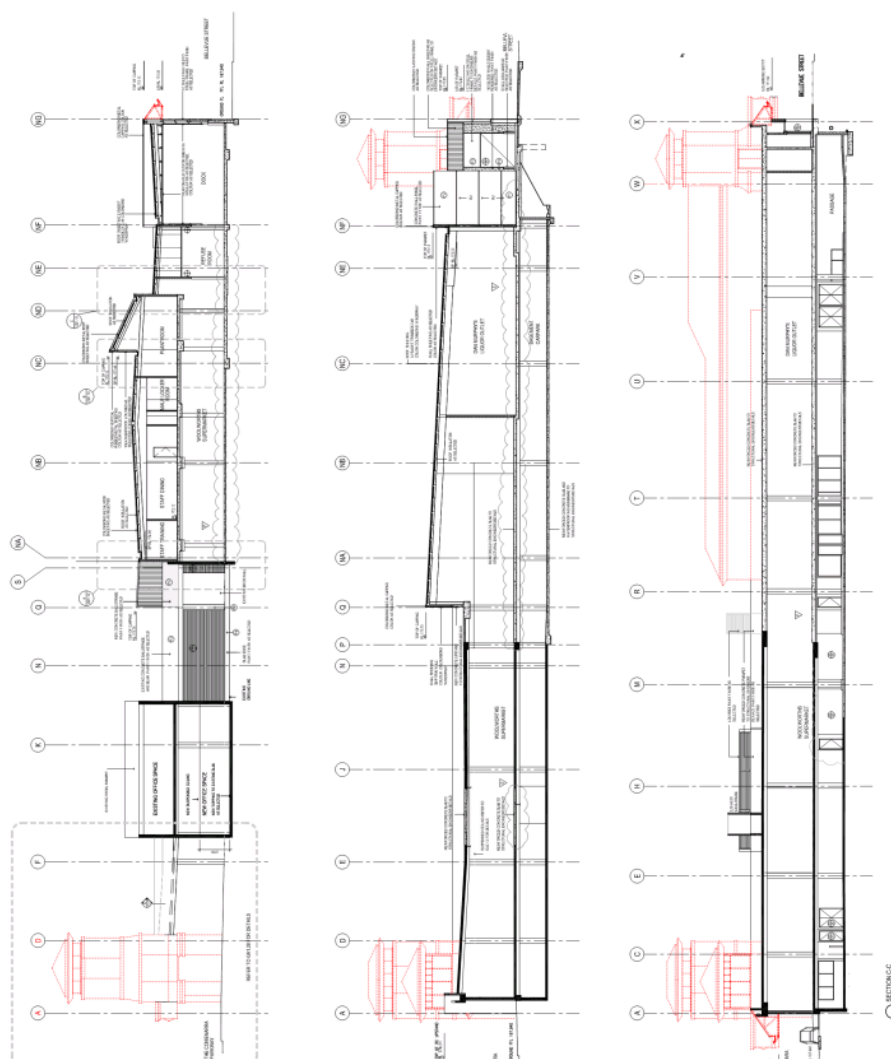


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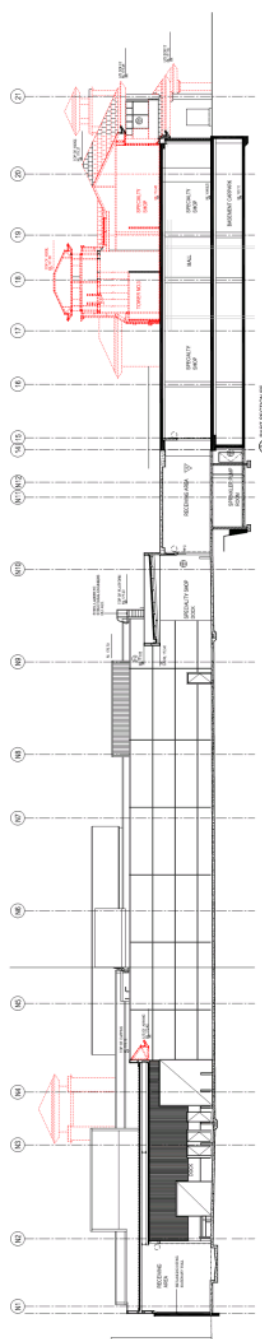
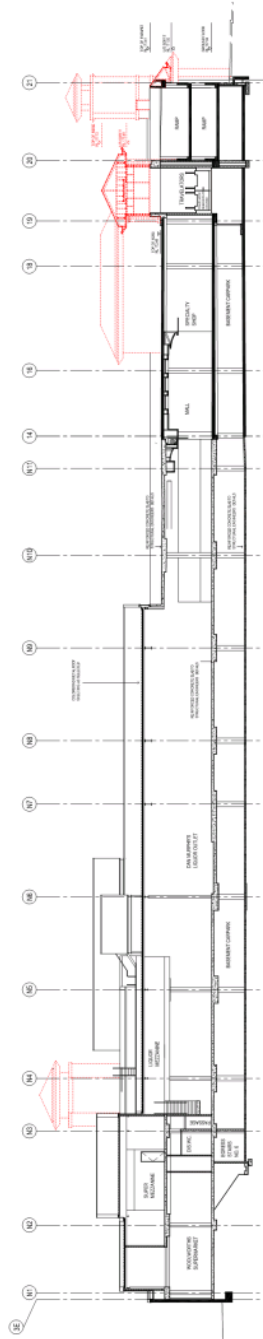




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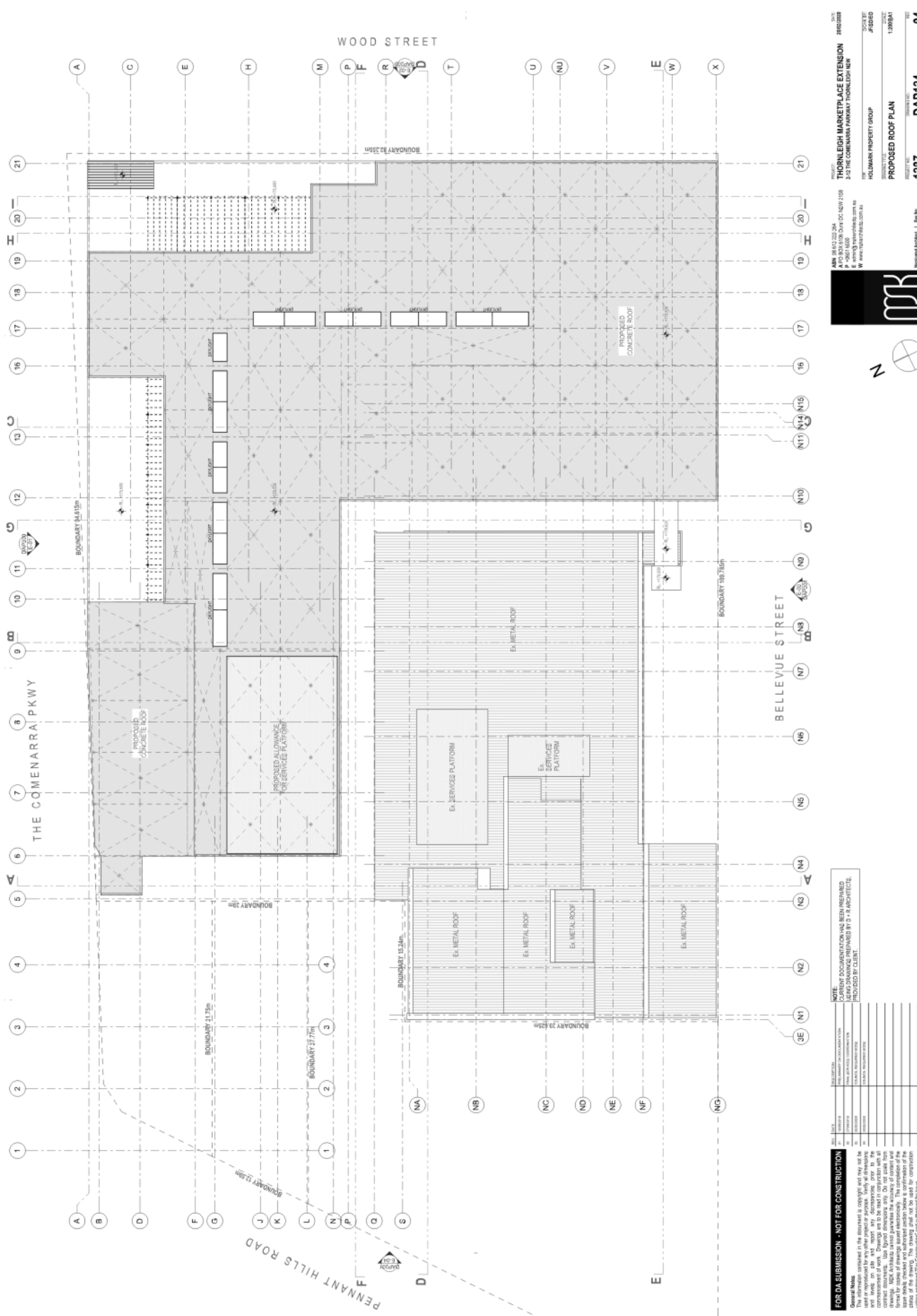
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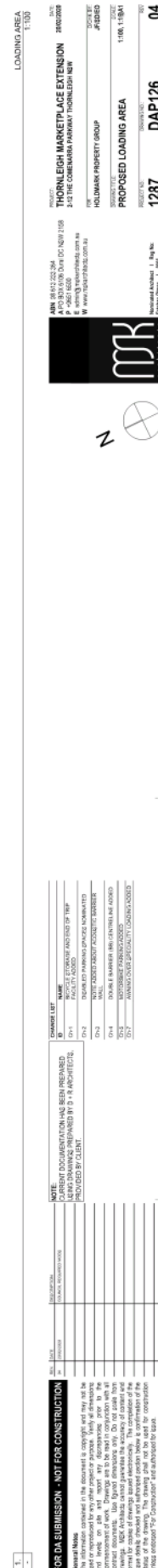




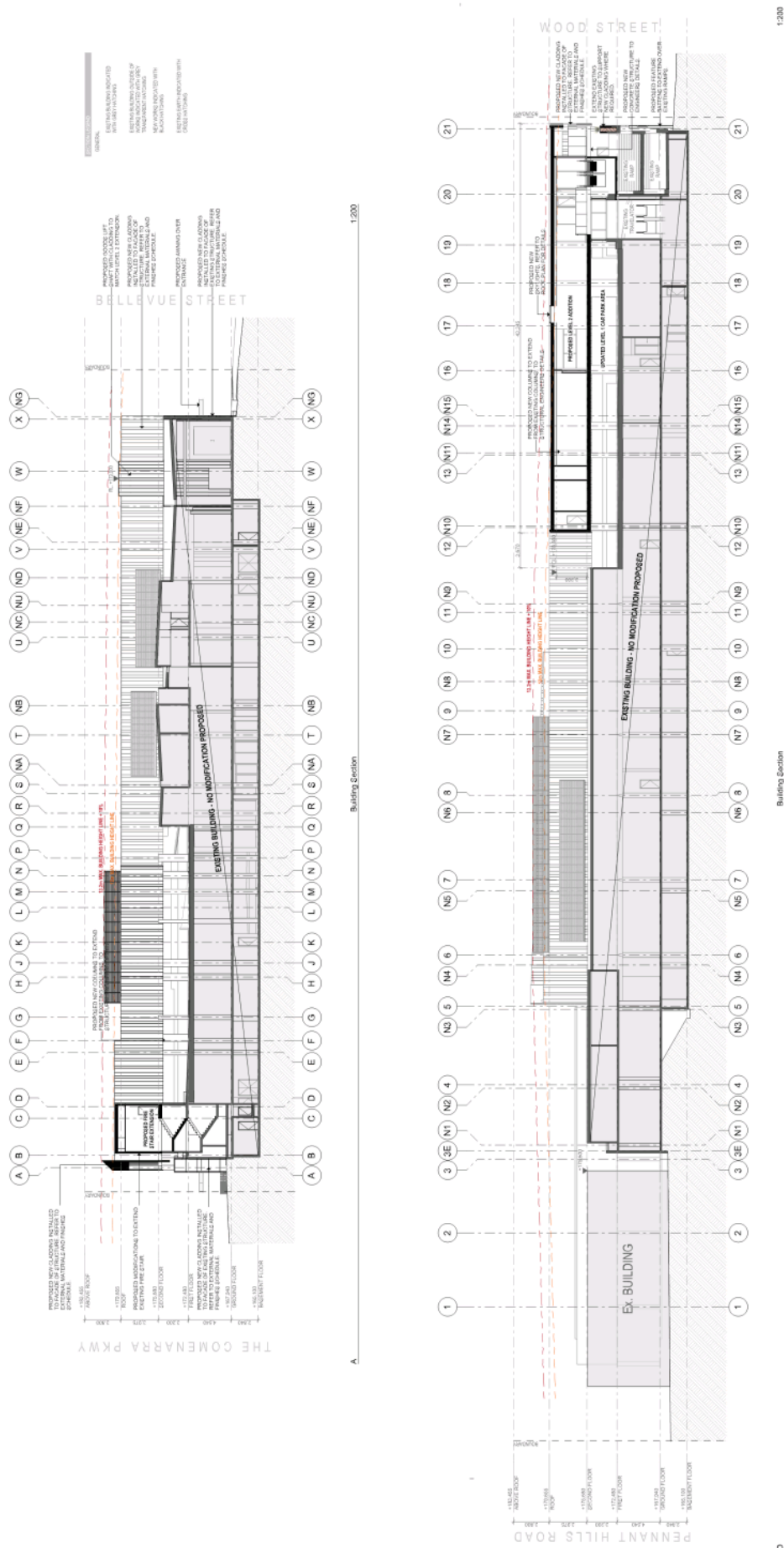
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ATTACHMENT 3 - ITEM 1



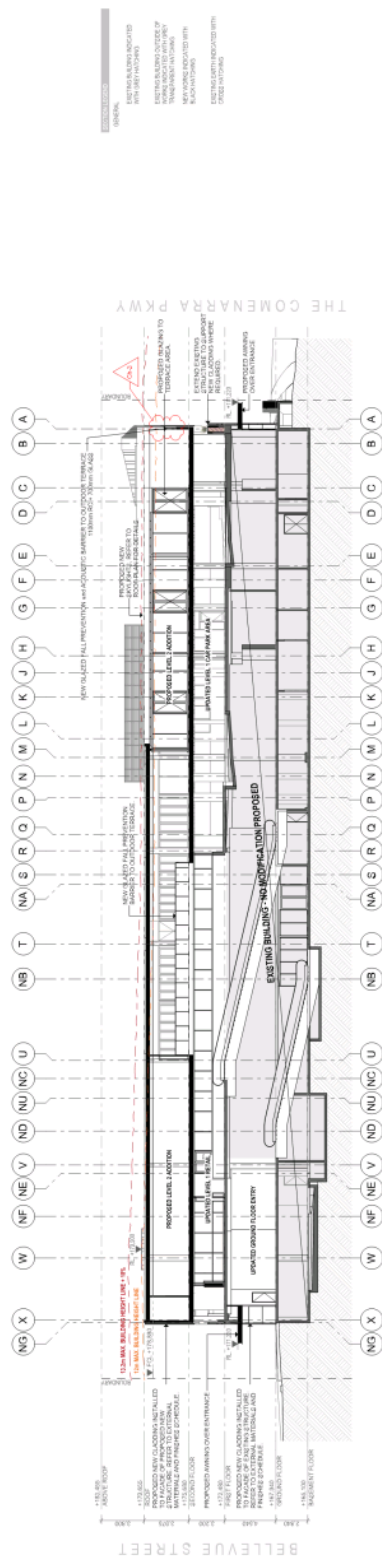
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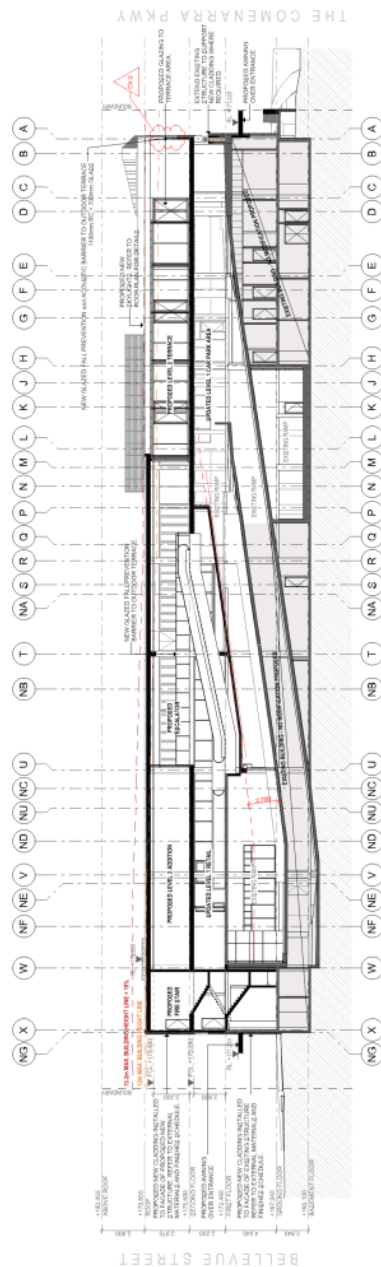
ATTACHMENT 3 - ITEM 1

FOR DA SUBMISSION - NOT FOR CONSTRUCTION	General Notes: 1. The district of Harvey, Texas, is hereby authorized to accept and administer for the state of Texas the following: a. The following: b. The following: c. The following: d. The following: e. The following: f. The following: g. The following: h. The following: i. The following: j. The following: k. The following: l. The following: m. The following: n. The following: o. The following: p. The following: q. The following: r. The following: s. The following: t. The following: u. The following: v. The following: w. The following: x. The following: y. The following: z. The following: aa. The following: ab. The following: ac. The following: ad. The following: ae. The following: af. The following: ag. The following: ah. The following: ai. The following: aj. The following: ak. The following: al. The following: am. The following: an. The following: ao. The following: ap. The following: aq. The following: ar. The following: as. 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ISSUING TITLE	SECTIONS 02	SCALE	1:300@A1
PROJECT NO.	1787	ISSUING NO.	DAP201

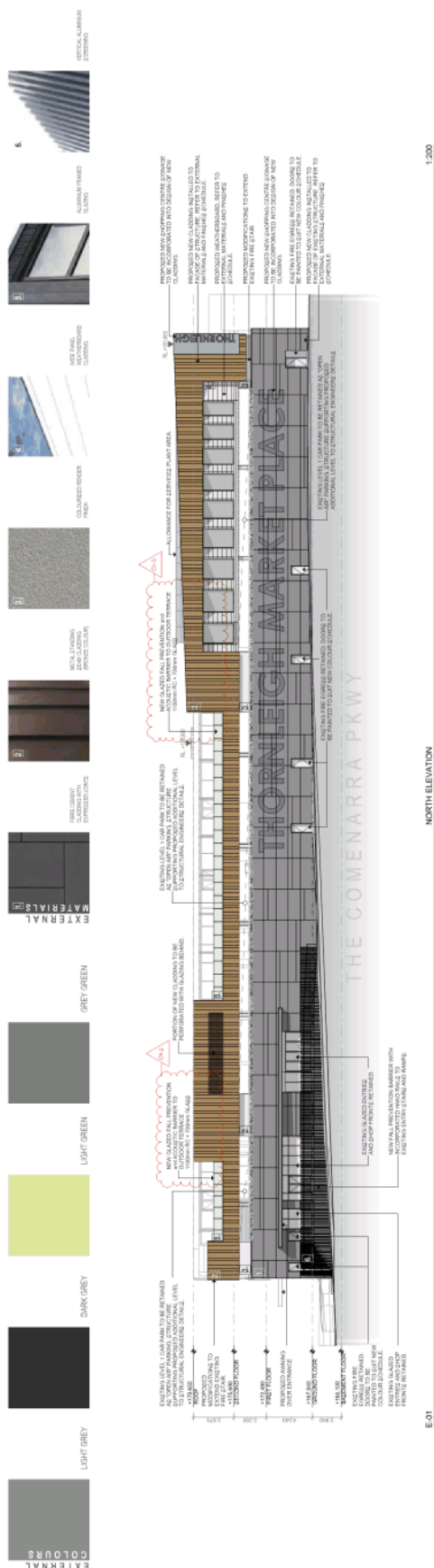
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ATTACHMENT 3 - ITEM 1

ATTACHMENT 3 - ITEM 1

[illegible]

ADAM	BR 412 232 294								
						THORNLEIGH MARKETPLACE EXTENSION	28/02/2008		
						2/3 THE COMBINATION PARKWAY TECHNOLOGY NEW			
HOLMARK PROPERTY GROUP									
FIR						SOUTH BY			
						JESSIE			
SOURCE T/C						PRICE			
NORTH & EAST ELEVATIONS						1,300,941			
RENDERING A						DATE			
4/07/2007						DRAWN BY			
Approved by Mr. Ben Ho						NO.			



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SOUTH ELEVATION

E-03

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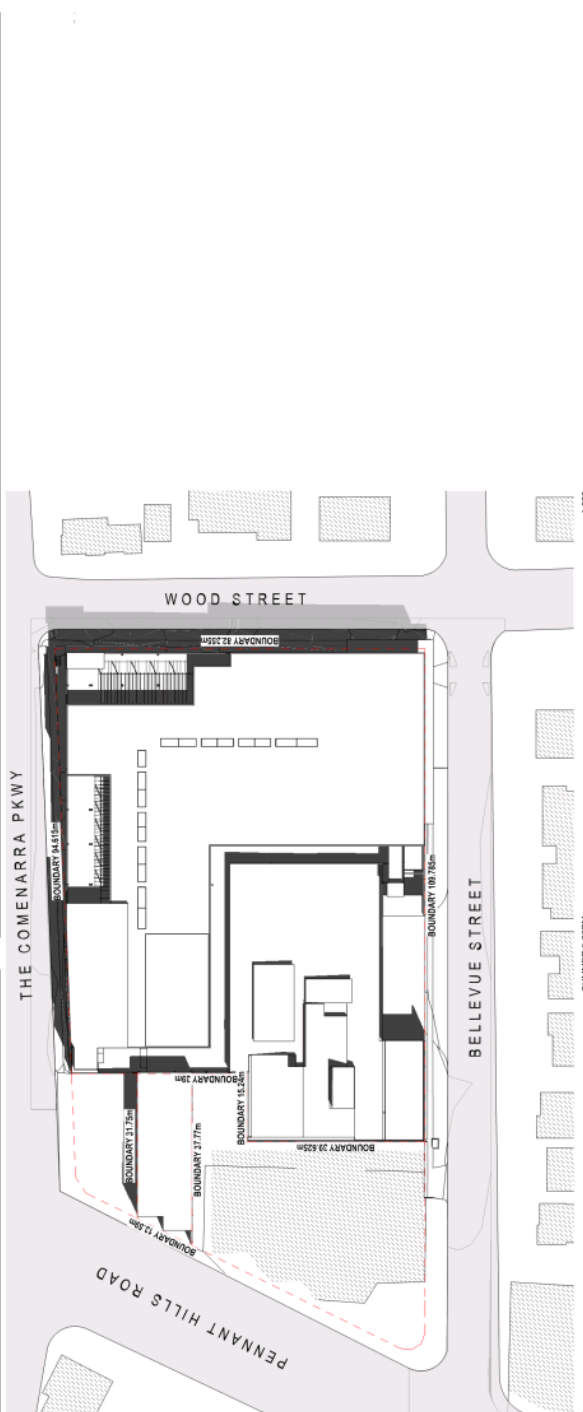
WEST ELEVATION

NO. 3

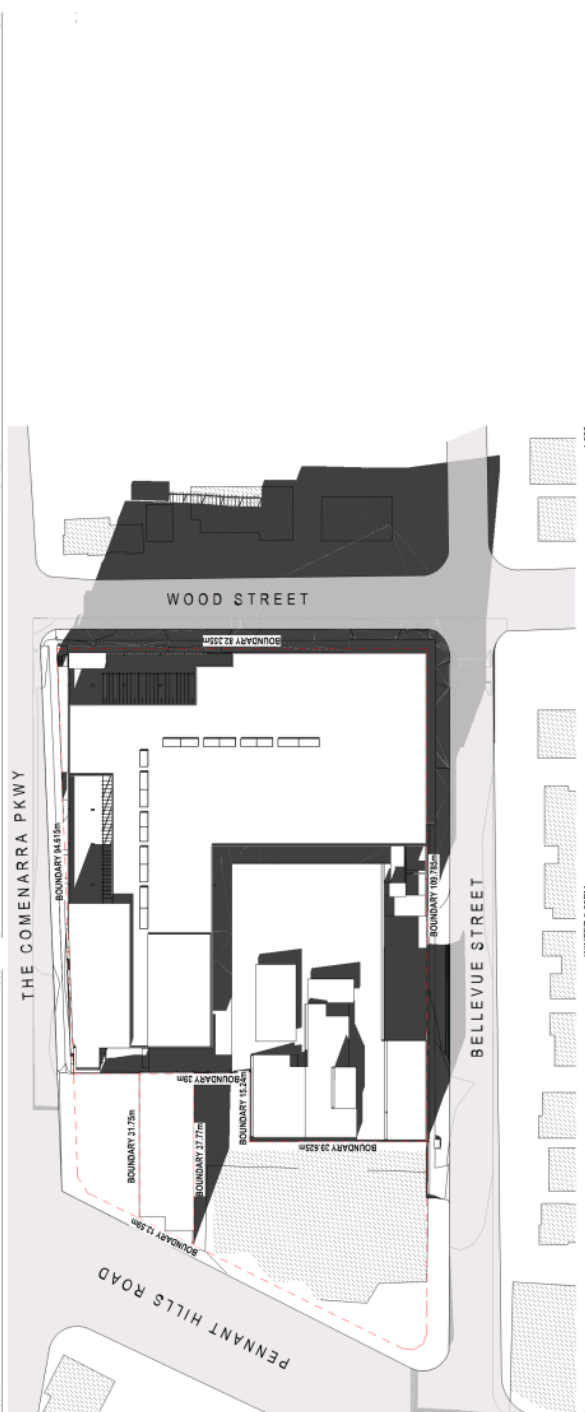
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APRIL 18 & 19, 2014
 10:00 AM - 12:00 PM
 P 2561 6300
 E emery@westcoast.com
 W www.igbt2014.com

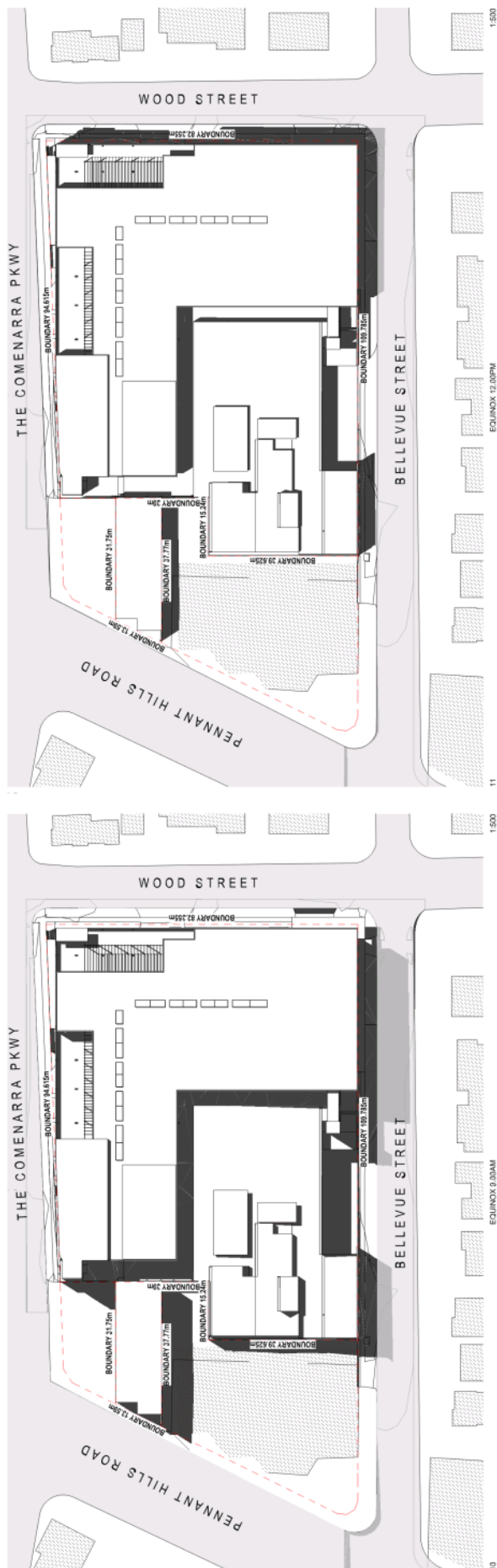
ATTACHMENT 3 - ITEM 1

[illegible]

ATTACHMENT 3 - ITEM 1

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ATTACHMENT 3 - ITEM 1



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General Notes

NO.	REVISION	DATE	BY	DESCRIPTION
1	1	10/07/20	DAVID	ISSUED FOR DA SUBMISSION
2	2	10/07/20	DAVID	ISSUED FOR DA SUBMISSION
3	3	10/07/20	DAVID	ISSUED FOR DA SUBMISSION
4	4	10/07/20	DAVID	ISSUED FOR DA SUBMISSION
5	5	10/07/20	DAVID	ISSUED FOR DA SUBMISSION
6	6	10/07/20	DAVID	ISSUED FOR DA SUBMISSION
7	7	10/07/20	DAVID	ISSUED FOR DA SUBMISSION
8	8	10/07/20	DAVID	ISSUED FOR DA SUBMISSION
9	9	10/07/20	DAVID	ISSUED FOR DA SUBMISSION
10	10	10/07/20	DAVID	ISSUED FOR DA SUBMISSION

PROJECT INFORMATION

PROJECT: THORNLEIGH MARKETPLACE EXTENSION

CLIENT: THORNLEIGH MARKETPLACE GROUP

DESIGNER: MK

DATE: 10/07/20

SCALE: 1:500

PROJECT NO: 1287

PROJECT NAME: THORNLEIGH MARKETPLACE EXTENSION

PROJECT ADDRESS: 2/13 THE COMENARRA PARKWAY THORNLEIGH NSW

PROJECT CONTACT: DAVID

PROJECT PHONE: 02 9437 1108

PROJECT EMAIL: DAVID@MK.COM.AU

PROJECT WEBSITE: WWW.MK.COM.AU

PROJECT DRAWING NO: 1287

PROJECT DRAWING NAME: SHADOW DIAGRAMS - EQUINOX

PROJECT DRAWING DATE: 10/07/20

PROJECT DRAWING SCALE: 1:500

PROJECT DRAWING SHEET NO: 04

PROJECT DRAWING SHEET NAME: SHADOW DIAGRAMS - EQUINOX

PROJECT DRAWING SHEET DATE: 10/07/20

PROJECT DRAWING SHEET SCALE: 1:500

PROJECT DRAWING SHEET SHEET NO: 04

PROJECT DRAWING SHEET SHEET NAME: SHADOW DIAGRAMS - EQUINOX

PROJECT DRAWING SHEET SHEET DATE: 10/07/20

PROJECT DRAWING SHEET SHEET SCALE: 1:500

PROJECT DRAWING SHEET SHEET SHEET NO: 04

PROJECT DRAWING SHEET SHEET SHEET NAME: SHADOW DIAGRAMS - EQUINOX

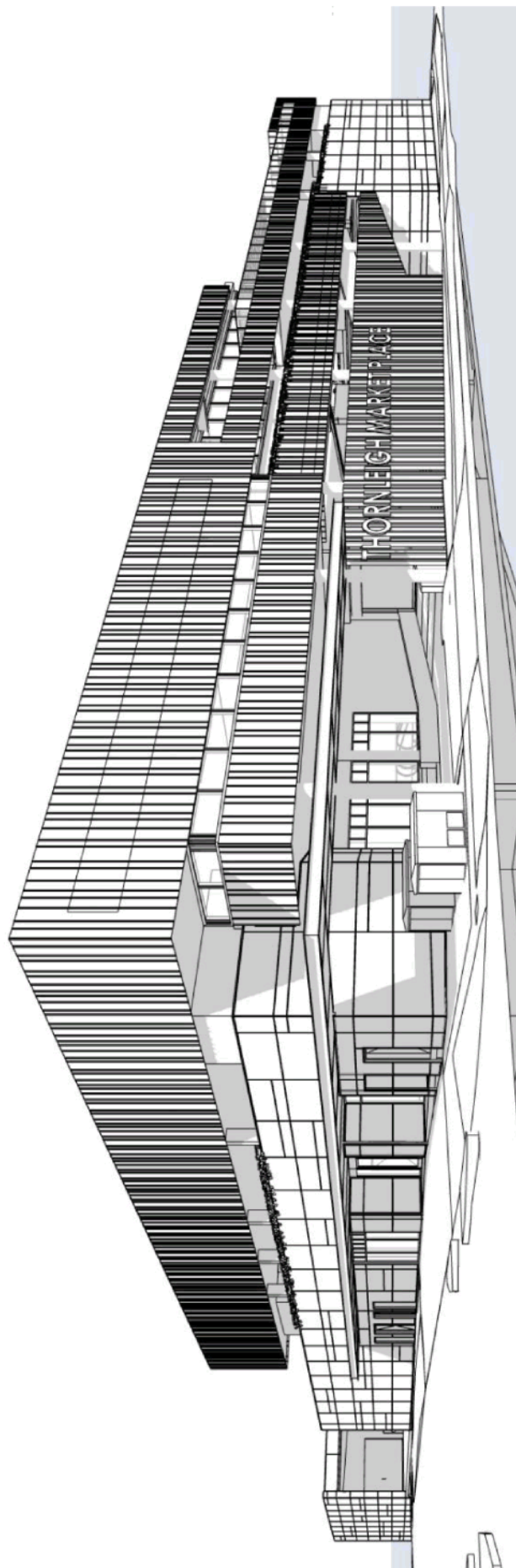
PROJECT DRAWING SHEET SHEET SHEET DATE: 10/07/20

PROJECT DRAWING SHEET SHEET SHEET SCALE: 1:500

ATTACHMENT 3 - ITEM 1

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ATTACHMENT 3 - ITEM 1



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Client Name	
Project Name	
Site Address	
Project Number	
Architect Name	
Architect Address	
Architect Phone	
Architect Fax	
Architect Email	
Architect Website	



PROJECT: THORNLEIGH MARKETPLACE EXTENSION
 2/13 THE COMENIANA PARKWAY THORNLEIGH NSW

DATE: 18/07/2020
BY: JAMES DUNN
FOR: HORNBY ARCHITECTS

PROJECT NO: 1287
DATE: 18/07/2020

PROJECT NAME: THORNLEIGH MARKETPLACE EXTENSION
PROJECT NO: 1287
DATE: 18/07/2020

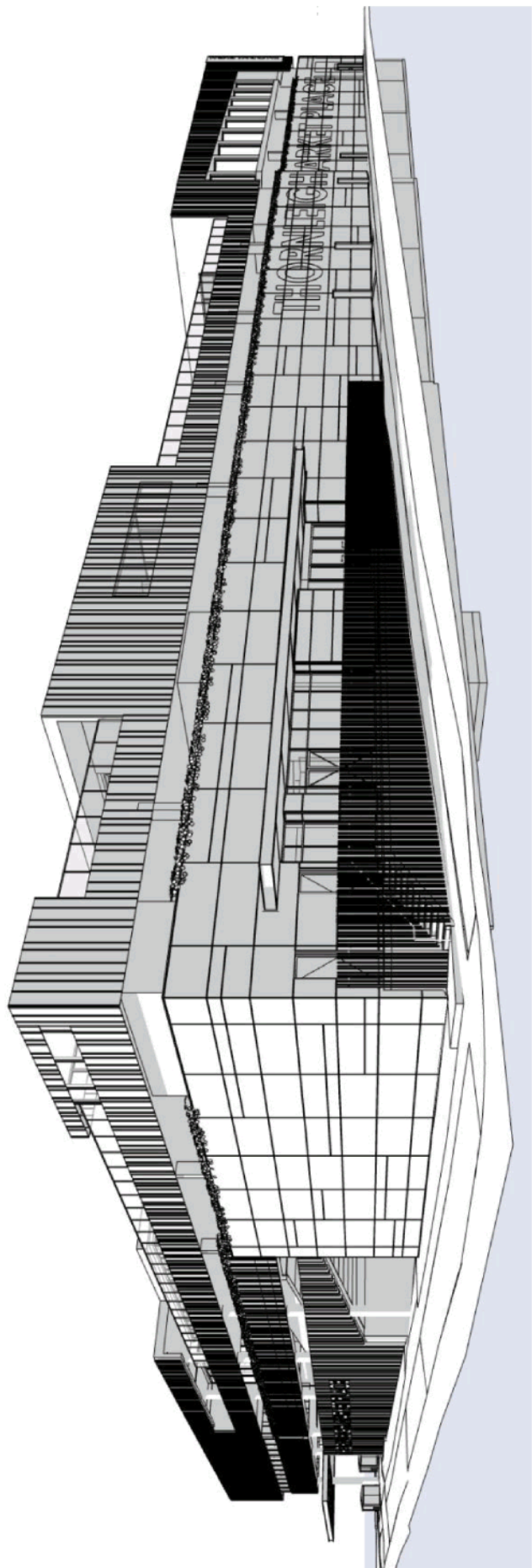
PROJECT TYPE: PERSPECTIVE VIEW 01
PROJECT NO: 1287
DATE: 18/07/2020

PROJECT NO: 1287
DATE: 18/07/2020

PROJECT NO: 1287
DATE: 18/07/2020



ATTACHMENT 3 - ITEM 1

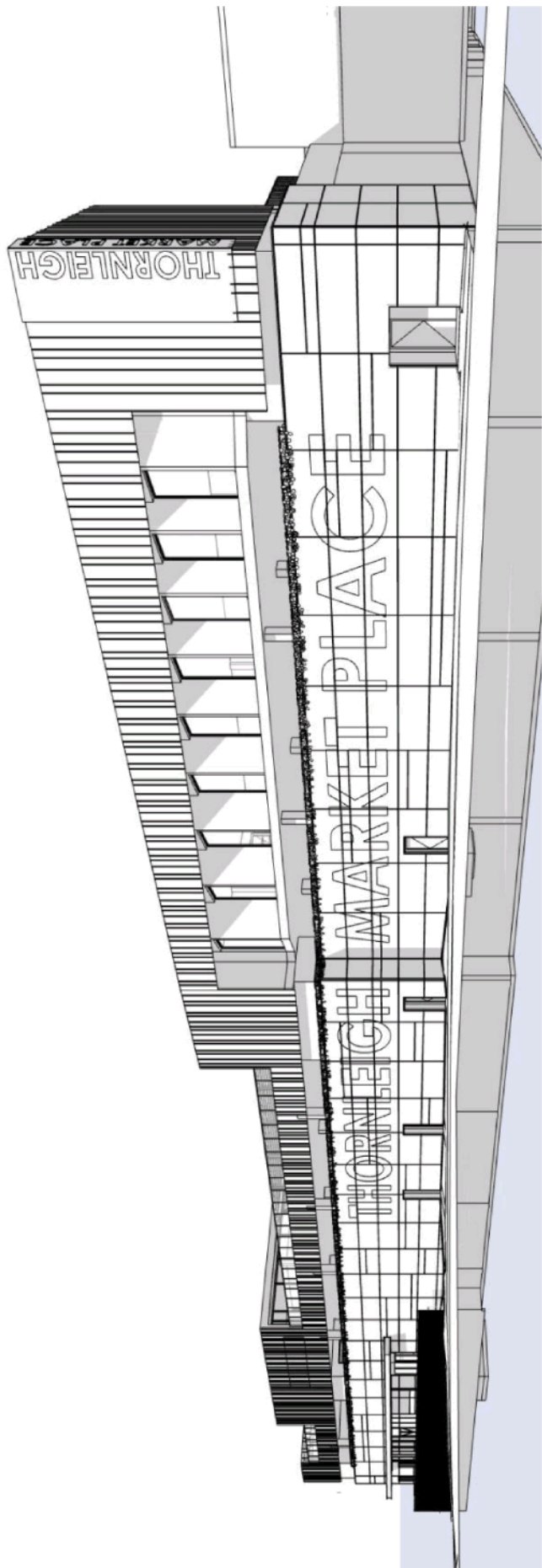


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Project Name	THORNLEIGH MARKETPLACE EXTENSION	Project No.	1287
Client Name	HOLDMARK PROPERTY GROUP	Project Title	PERSPECTIVE VIEW 02
Project Address	213 THE COMENARIA PARKWAY THORNLEIGH NSW	Project Date	12/07/20
Project Description	THORNLEIGH MARKETPLACE EXTENSION	Project Status	04

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Project Name	THORNLEIGH MARKETPLACE EXTENSION	Project No.	1287
Client Name	HOLDMARK PROPERTY GROUP	Project Title	PERSPECTIVE VIEW 02
Project Address	213 THE COMENARIA PARKWAY THORNLEIGH NSW	Project Date	12/07/20
Project Description	THORNLEIGH MARKETPLACE EXTENSION	Project Status	04



ATTACHMENT 3 - ITEM 1



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General Notes		12/07/20	Current documentation and been prepared by D + H ARCHITECT, PROVIDED BY CLIENT.
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THORNLEIGH MARKET PLACE EXTENSION
 2/13 THE COMENIANA PARKWAY THORNLEIGH NSW
 PROJECT NO: 1287
 DATE: 12/07/20
 DRAWN BY: D + H ARCHITECT
 CHECKED BY: D + H ARCHITECT
 PROJECT NO: 1287
 DATE: 12/07/20
 DRAWN BY: D + H ARCHITECT
 CHECKED BY: D + H ARCHITECT



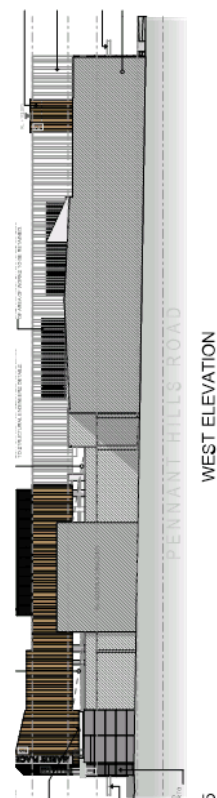
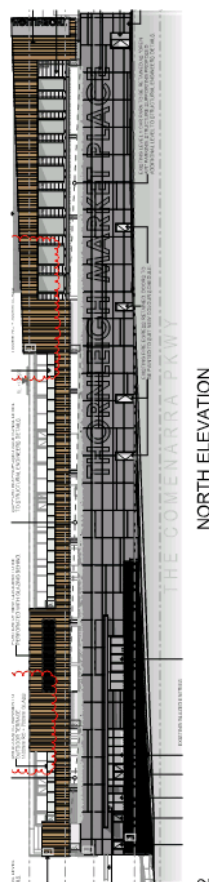
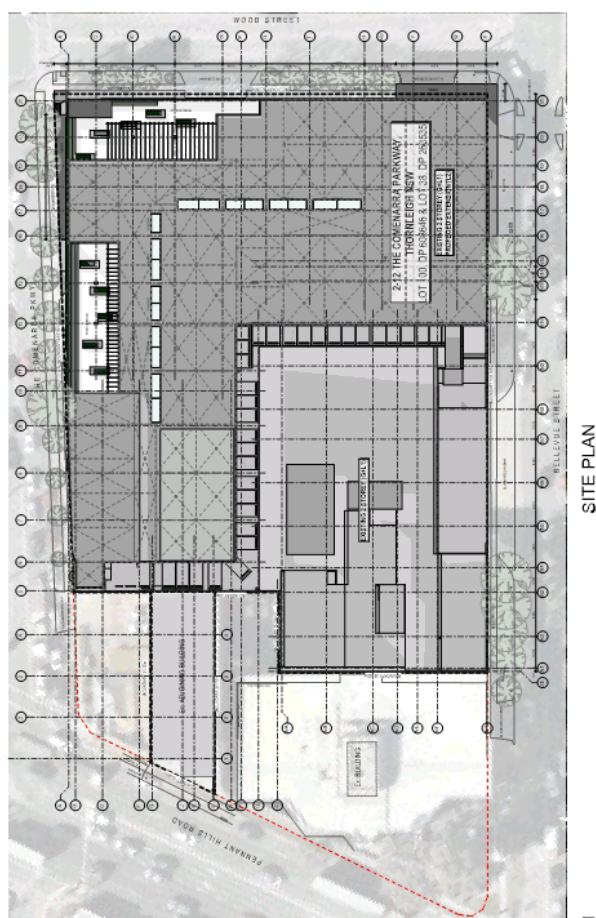
ATTACHMENT 3 - ITEM 1



ATTACHMENT 3 - ITEM 1



ATTACHMENT 3 - ITEM 1

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F +6161 6522
E admin@mkarchitects.com.au
W www.mkarchitects.com.au

CHECK BY:
JF-EAO

Nominated Architect Reg No:
 70269-NSW-0000355

**THORNLEIGH MARKETPLACE
EXTENSION**
2-12 THE COMENARRA PARKWAY THORNLEIGH NSW
FOR
HOLDMARK PROPERTY GROUP

DRAWING TITLE:	SCALE:	PROJECT NO.:	DRAWING NO.:	20/03/2020
NOTIFICATION PLAN	A3	1287	DAP506	REV
			WIP -04	

ATTACHMENT 3 - ITEM 1

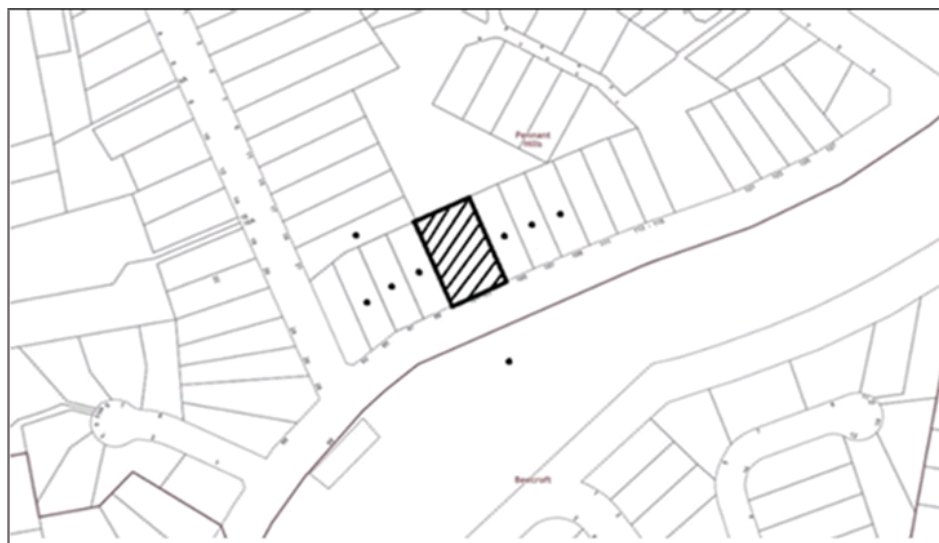
ATTACHMENT 4 - ITEM 1

ATTACHMENT/S

REPORT NO. LPP13/20

ITEM 2

- 1. LOCALITY MAP**
- 2. ARCHITECTURAL PLANS**
- 3. STORMWATER MANAGEMENT**
- 4. LANDSCAPE PLAN**



LOCALITY PLAN

DA/847/2019

101 – 103 Wongala Crescent Pennant Hills

ATTACHMENT 1 - ITEM 2



SHEET LIST				
Sheet Number	Sheet Name	Scale	Revision	Date
00-00	COUNT SHEET	1/8" = 1'-0"	1	11-28-11
01-01	EXISTING TOP PLAN	1/8" = 1'-0"	1	11-28-11
02-02	EXISTING BOTTOM PLAN	1/8" = 1'-0"	1	11-28-11
03-03	PROPOSED TOP PLAN	1/8" = 1'-0"	1	11-28-11
04-04	PROPOSED BOTTOM PLAN	1/8" = 1'-0"	1	11-28-11
05-05	PROPOSED ELEVATION	1/8" = 1'-0"	1	11-28-11
06-06	PROPOSED ELEVATION	1/8" = 1'-0"	1	11-28-11
07-07	PROPOSED ELEVATION	1/8" = 1'-0"	1	11-28-11
08-08	PROPOSED ELEVATION	1/8" = 1'-0"	1	11-28-11
09-09	PROPOSED ELEVATION	1/8" = 1'-0"	1	11-28-11
10-10	PROPOSED ELEVATION	1/8" = 1'-0"	1	11-28-11
11-11	PROPOSED ELEVATION	1/8" = 1'-0"	1	11-28-11
12-12	PROPOSED ELEVATION	1/8" = 1'-0"	1	11-28-11
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14-14	PROPOSED ELEVATION	1/8" = 1'-0"	1	11-28-11
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17-17	PROPOSED ELEVATION	1/8" = 1'-0"	1	11-28-11
18-18	PROPOSED ELEVATION	1/8" = 1'-0"	1	11-28-11
19-19	PROPOSED ELEVATION	1/8" = 1'-0"	1	11-28-11
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56-56	PROPOSED ELEVATION	1/8" = 1'-0"	1	11-28-11
57-57	PROPOSED ELEVATION	1/8" = 1'-0"	1	11-28-11
58-58	PROPOSED ELEVATION	1/8" = 1'-0"	1	11-28-11
59-59	PROPOSED ELEVATION	1/8" = 1'-0"	1	11-28-11
60-60	PROPOSED ELEVATION	1/8" = 1'-0"	1	11-28-11

Client: Jeremy Lung & Megan Neumann Project: NEW BUILD Address: Development Application		Drawn by: DA-00 Checked by: NTS Scale: 1:100	
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Project Location:		Project Date: 05/20/11	
Project Description:		Project Status: 2	
Project Notes:		Project Comments:	
Project Details:		Project Specifications:	
Project Materials:		Project Finishes:	
Project Schedule:		Project Budget:	
Project Risk:		Project Compliance:	
Project Safety:		Project Security:	
Project Health:		Project Environment:	
Project Quality:		Project Performance:	
Project Innovation:		Project Sustainability:	
Project Collaboration:		Project Communication:	
Project Leadership:		Project Teamwork:	
Project Accountability:		Project Transparency:	
Project Integrity:		Project Honesty:	
Project Respect:		Project Compassion:	
Project Kindness:		Project Generosity:	
Project Humility:		Project Gratitude:	
Project Patience:		Project Persistence:	
Project Perseverance:		Project Positivity:	
Project Optimism:		Project Hope:	
Project Faith:		Project Trust:	
Project Love:		Project Joy:	
Project Peace:		Project Harmony:	
Project Unity:		Project Diversity:	
Project Inclusion:		Project Exclusion:	
Project Acceptance:		Project Rejection:	
Project Forgiveness:		Project Punishment:	
Project Mercy:		Project Wrath:	
Project Kindness:		Project Cruelty:	
Project Gentleness:		Project Rudeness:	
Project Politeness:		Project Impoliteness:	
Project Respectfulness:		Project Disrespectfulness:	
Project Consideration:		Project Inconsideration:	
Project Thoughtfulness:		Project Thoughtlessness:	
Project Carefulness:		Project Carelessness:	
Project Responsibility:		Project Irresponsibility:	
Project Accountability:		Project Unaccountability:	
Project Integrity:		Project Lack of Integrity:	
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Project Truthfulness:		Project Untruthfulness:	
Project Openness:		Project Closedness:	
Project Transparency:		Project Opacity:	
Project Communication:		Project Silence:	
Project Collaboration:		Project Isolation:	
Project Teamwork:		Project Conflict:	
Project Cooperation:		Project Non-cooperation:	
Project Support:		Project Opposition:	
Project Assistance:		Project Hindrance:	
Project Help:		Project Obstacle:	
Project Aid:		Project Barrier:	
Project Support:		Project Resistance:	
Project Backing:		Project Opposition:	
Project Endorsement:		Project Disapproval:	
Project Approval:		Project Disapproval:	
Project Praise:		Project Criticism:	
Project Compliment:		Project Insult:	
Project Flattery:		Project Abuse:	
Project Respect:		Project Disrespect:	
Project Honor:		Project Dishonor:	
Project Dignity:		Project Indignity:	
Project Pride:		Project Humiliation:	
Project Self-respect:		Project Self-humiliation:	
Project Self-esteem:		Project Self-loathing:	
Project Self-worth:		Project Self-hatred:	
Project Self-love:		Project Self-hatred:	
Project Self-care:		Project Self-neglect:	
Project Self-protection:		Project Self-harm:	
Project Self-defense:		Project Self-sabotage:	
Project Self-assertion:		Project Self-denial:	
Project Self-advocacy:		Project Self-silencing:	
Project Self-expression:		Project Self-censorship:	
Project Self-fulfillment:		Project Self-sabotage:	
Project Self-actualization:		Project Self-denial:	
Project Self-realization:		Project Self-hatred:	
Project Self-acceptance:		Project Self-rejection:	
Project Self-forgiveness:		Project Self-punishment:	
Project Self-compassion:		Project Self-cruelty:	
Project Self-kindness:		Project Self-hatred:	
Project Self-gentleness:		Project Self-rudeness:	
Project Self-politeness:		Project Self-impoliteness:	
Project Self-respectfulness:		Project Self-disrespectfulness:	
Project Self-consideration:		Project Self-inconsideration:	
Project Self-thoughtfulness:		Project Self-thoughtlessness:	
Project Self-carefulness:		Project Self-carelessness:	
Project Self-responsibility:		Project	

ATTACHMENT 2 - ITEM 2

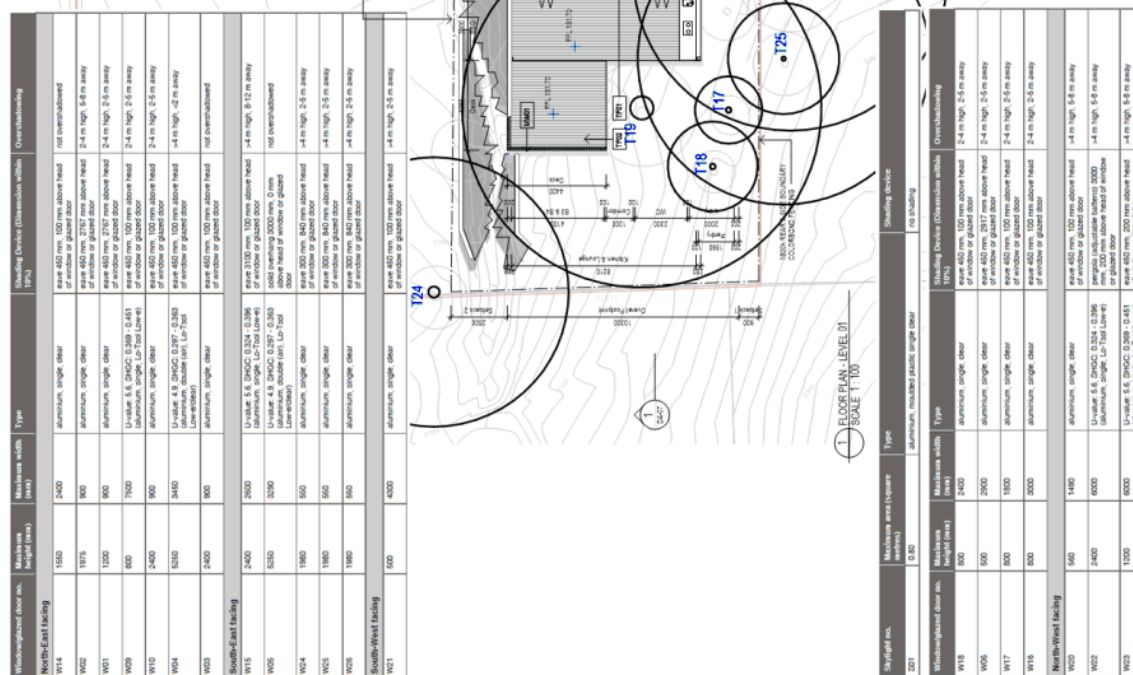
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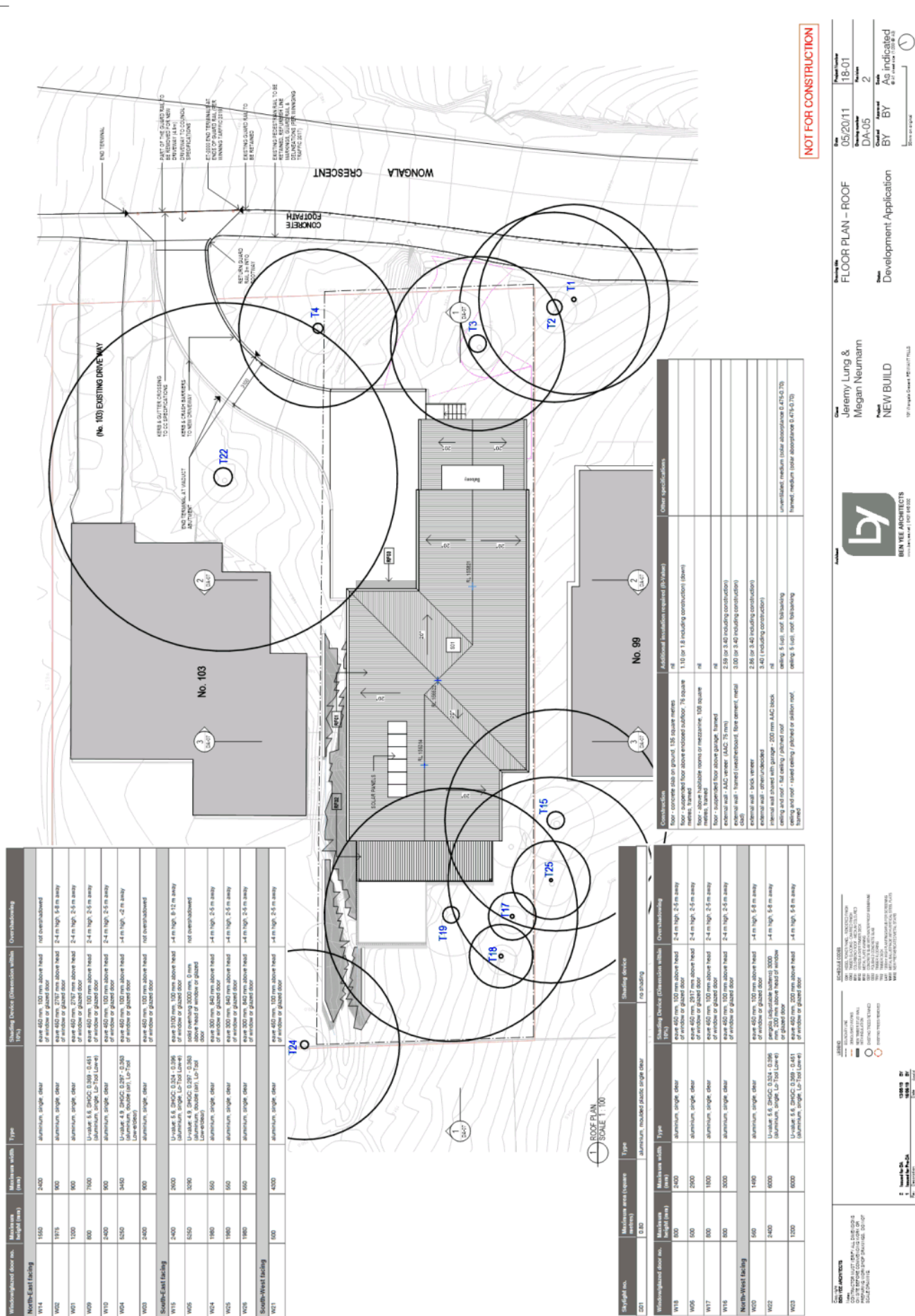


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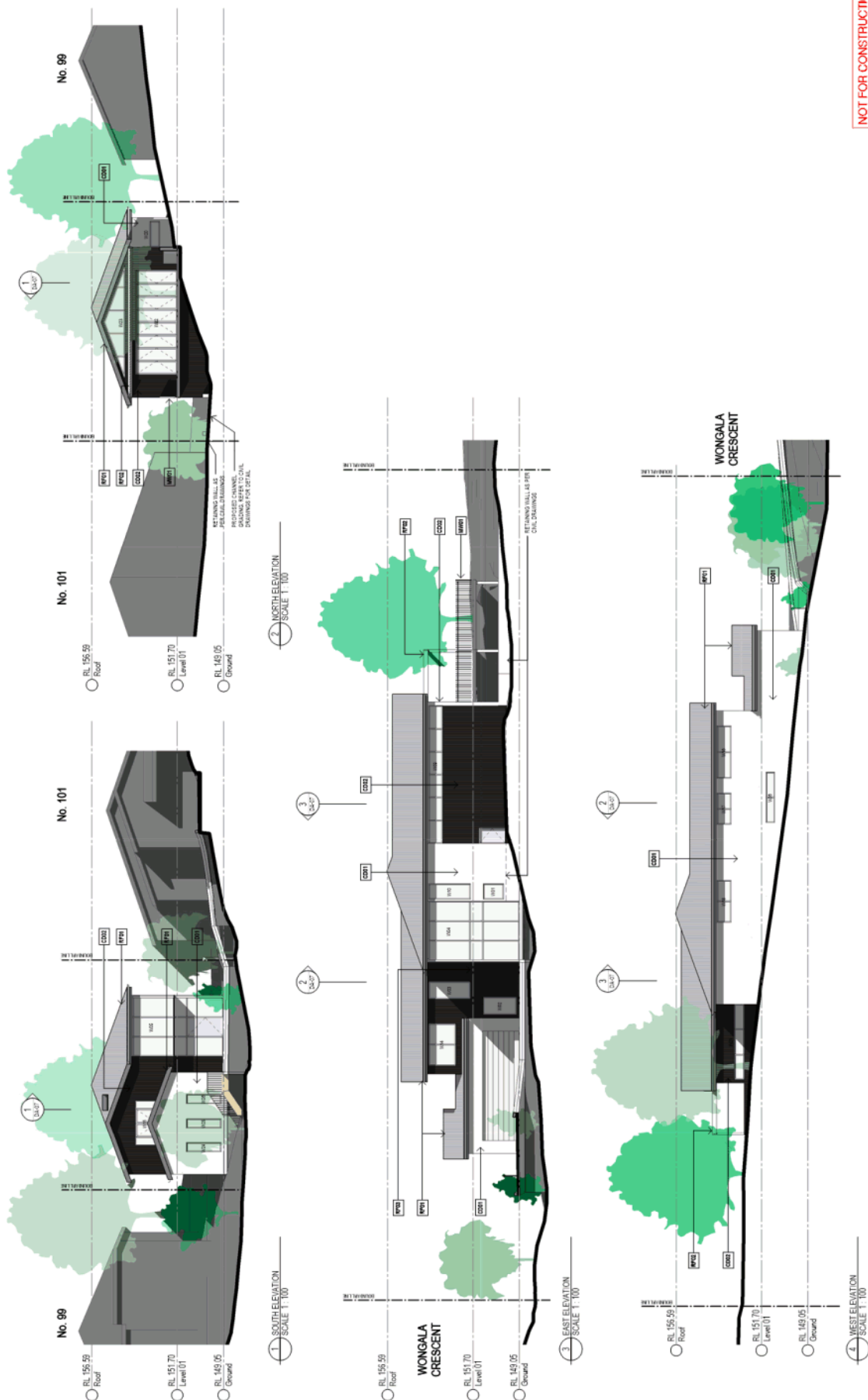
ATTACHMENT 2 - ITEM 2



ATTACHMENT 2 - ITEM 2



ATTACHMENT 2 - ITEM 2



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Project Information

Project Name: ELEVATIONS - 01
Project Number: 18-01
Drawing Number: DA-06
Drawing Date: 05/20/11
Drawing By: BY
Drawing Check: As indicated
Drawing Scale: As indicated

Client Information

Client Name: Jeremy Lung & Megan Neumann
Client Address: NEW BUILD
Client Phone: 02 9371 1111
Client Email: jlung@newbuild.com.au

Architect Information

Architect Name: BEN YEE ARCHITECTS
Architect Address: 1/111 Pacific Street, Sydney NSW 1510
Architect Phone: 02 9371 1111
Architect Email: ben.yee@benyee.com.au

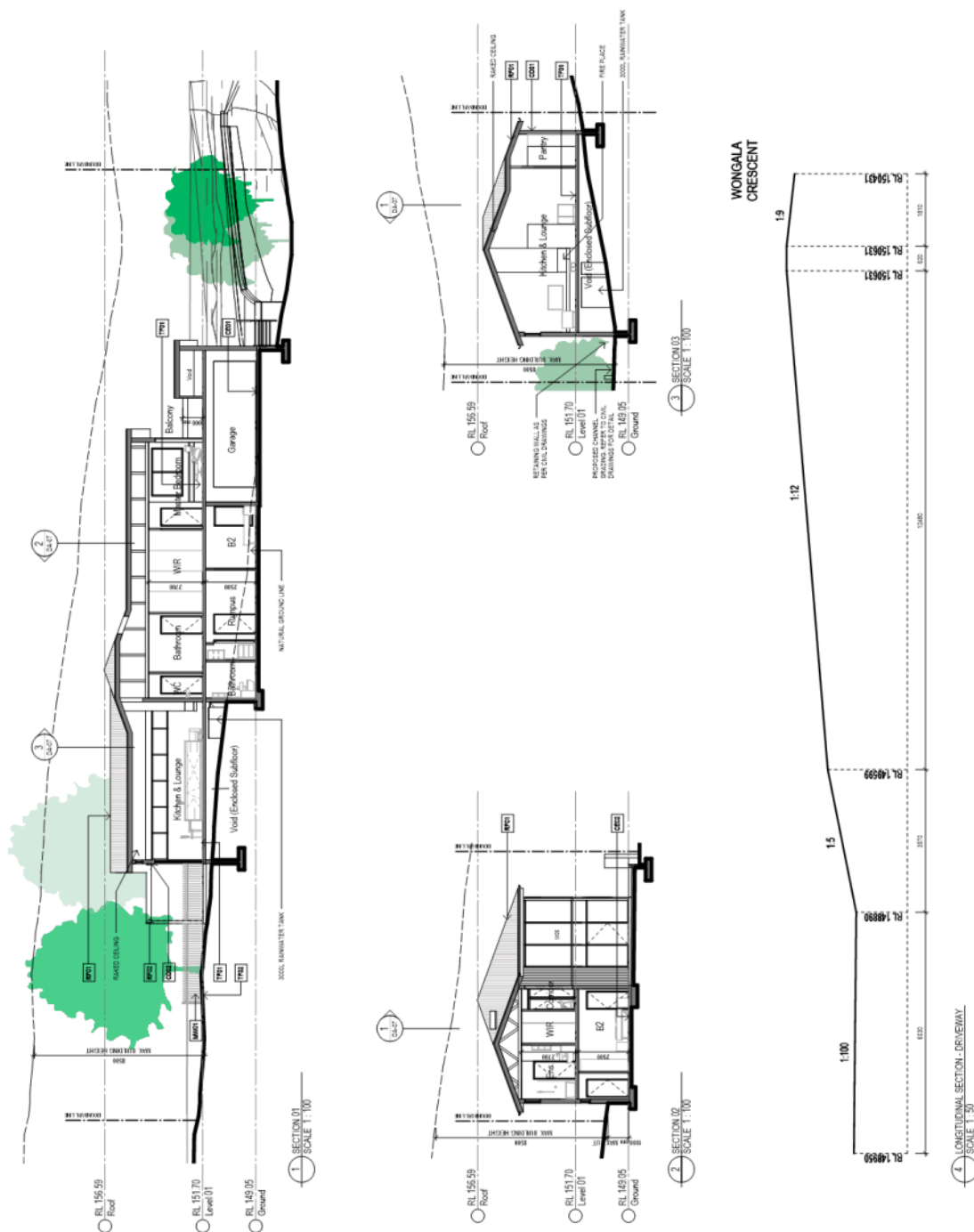
Legend

1. Building Footprint
2. Building Footprint
3. Building Footprint
4. Building Footprint
5. Building Footprint
6. Building Footprint
7. Building Footprint
8. Building Footprint
9. Building Footprint
10. Building Footprint

Notes

1. All dimensions are in millimeters unless otherwise stated.
2. All dimensions are to the centerline of the building unless otherwise stated.
3. All dimensions are to the finished ground level unless otherwise stated.
4. All dimensions are to the finished floor level unless otherwise stated.
5. All dimensions are to the finished roof level unless otherwise stated.
6. All dimensions are to the finished wall level unless otherwise stated.
7. All dimensions are to the finished window level unless otherwise stated.
8. All dimensions are to the finished door level unless otherwise stated.
9. All dimensions are to the finished staircase level unless otherwise stated.
10. All dimensions are to the finished balcony level unless otherwise stated.

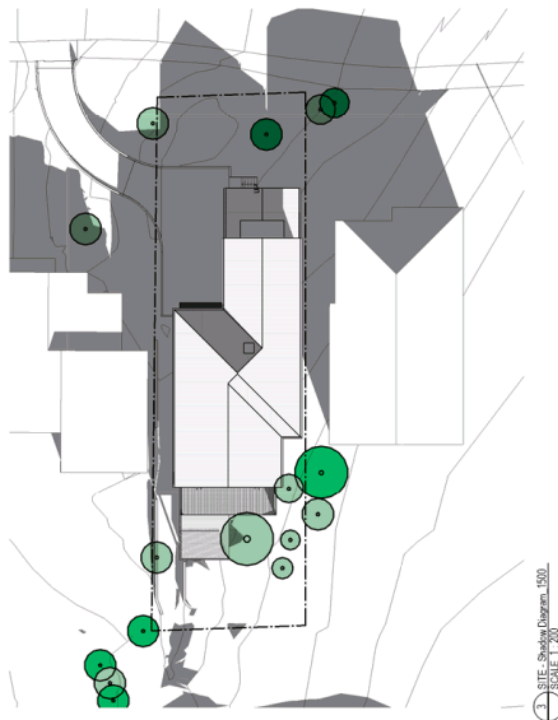
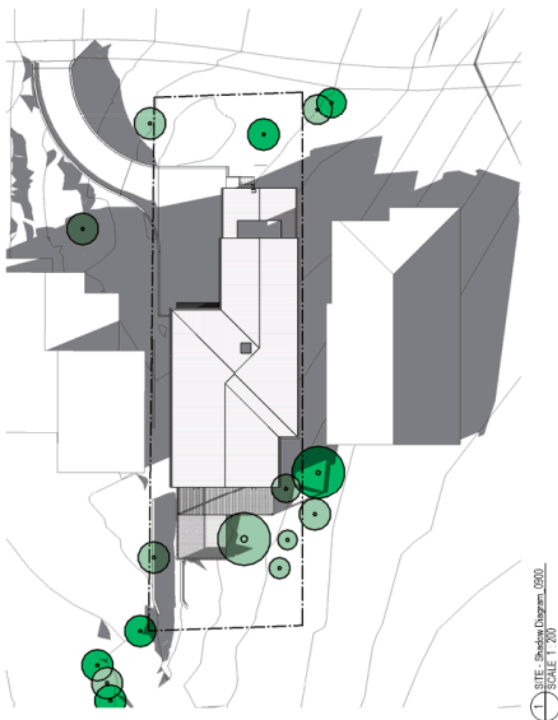
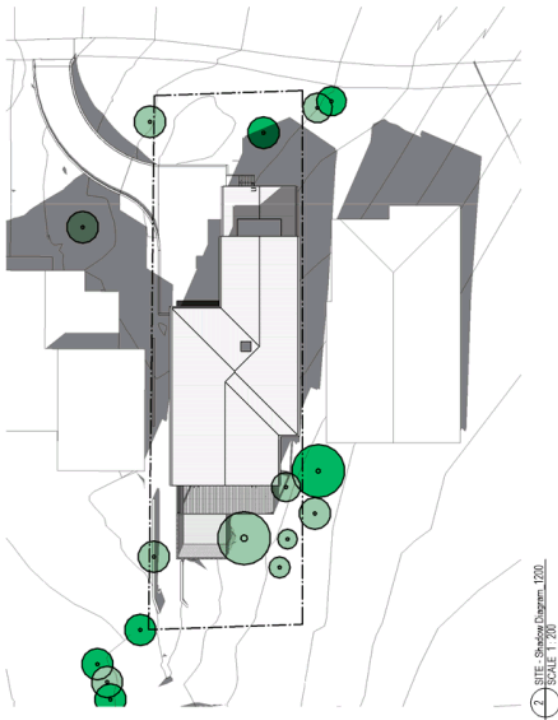
ATTACHMENT 2 - ITEM 2



NOT FOR CONSTRUCTION

[illegible]

ATTACHMENT 2 - ITEM 2



NOT FOR CONSTRUCTION

BEN YEE ARCHITECTS 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ATTACHMENT 2 - ITEM 2



DATE 12/10/18		DATE 12/10/18	
PROJECT SUBDIVISION PLAN		PROJECT SUBDIVISION PLAN	
CLIENT Jeremy Lung & Megan Neumann		CLIENT Jeremy Lung & Megan Neumann	
ADDRESS NEW BUILD		ADDRESS NEW BUILD	
ARCHITECT BEN YEE ARCHITECTS		ARCHITECT BEN YEE ARCHITECTS	
DATE 12/10/18		DATE 12/10/18	
PROJECT SUBDIVISION PLAN		PROJECT SUBDIVISION PLAN	
CLIENT Jeremy Lung & Megan Neumann		CLIENT Jeremy Lung & Megan Neumann	
ADDRESS NEW BUILD		ADDRESS NEW BUILD	
ARCHITECT BEN YEE ARCHITECTS		ARCHITECT BEN YEE ARCHITECTS	
DATE 12/10/18		DATE 12/10/18	
PROJECT SUBDIVISION PLAN		PROJECT SUBDIVISION PLAN	
CLIENT Jeremy Lung & Megan Neumann		CLIENT Jeremy Lung & Megan Neumann	
ADDRESS NEW BUILD		ADDRESS NEW BUILD	
ARCHITECT BEN YEE ARCHITECTS		ARCHITECT BEN YEE ARCHITECTS	

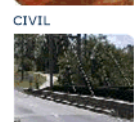
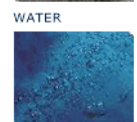
Mr Jeremy Lung

Concept Stormwater Management
Plan:
101 – 103 Wongala Crescent,
Pennant Hills, NSW

P1605383JR02V04
July 2019



ATTACHMENT 3 - ITEM 2



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The sole purpose of this report and the associated services performed by Martens & Associates Pty Ltd is to prepare a stormwater management report in accordance with the scope of services set out in the contract / quotation between Martens & Associates Pty Ltd and Jeremy Lung (hereafter known as the Client). That scope of works and services were defined by the requests of the Client, by the time and budgetary constraints imposed by the Client, and by the availability of access to the site.

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Concept Stormwater Management Report
101 -103 Wongala Crescent, Pennant Hills, NSW
P1605383JR02V04 – July 2019
Page 2

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All enquiries regarding this project are to be directed to the Project Manager.



Concept Stormwater Management Report
101 -103 Wongala Crescent, Pennant Hills, NSW
P1605383JR02V04 – July 2019
Page 3

Contents

1 BACKGROUND	5
1.1 Overview	5
1.2 Proposed Development	5
1.3 Relevant Guidelines	5
2 SITE DESCRIPTION	6
2.1 Location and Existing Land Use	6
2.2 Topography and Hydrology	6
3 STORMWATER QUANTITY MANAGEMENT	7
3.1 Overview	7
3.2 Water Quantity Objectives	7
3.3 Methodology and Approach	7
3.3.1 Approach	7
3.3.2 Model Inputs	7
3.3.3 OSD Tank	8
3.3.4 Results	8
3.4 Conclusion	8
4 REFERENCES	10

1 Background

1.1 Overview

This concept stormwater management plan has been prepared to support a development application for the proposed Torrens Title subdivision and construction of a dwelling house at 101-103 Wongala Crescent, Pennant Hills, NSW.

This report provides an assessment of the proposed development with regard to stormwater quantity management.

1.2 Proposed Development

The proposed development will involve:

- Demolishing an existing deck which crosses an existing drainage depression.
- Creation of one new lot, being Number 101.
- Construction of a new dwelling and driveway.
- Provision of OSD infrastructure for Number 101.

Refer to the accompanying architectural drawings and stormwater plans for the proposed works.

1.3 Relevant Guidelines

This report has been prepared in accordance with the following standards/guidelines:

- Hornsby Shire Council (HSC) – Development Design Specification 0074 Stormwater Drainage (Design) (2016).
- Hornsby Shire Council – Pre-Development Application – PL/41/2019 – 101-103 Wongala Crescent, Pennant Hills (2019).

2 Site Description

2.1 Location and Existing Land Use

The site is located at Lot 15 DP 10463, 101-103 Wongala Crescent, Pennant Hills within the Hornsby Shire Local Government Area (LGA). The site area is approximately 1,449 sqm and is bound by Wongala Crescent to the south, dense vegetation to the north and residential lots the east and west.

2.2 Topography and Hydrology

The site generally drains from the north to the south. A broad, shallow drainage depression located centrally on the site discharges to a Ø750 mm pipe and headwall beneath Wongala Crescent.

3 Stormwater Quantity Management

3.1 Overview

A concept stormwater management plan is provided in MA engineering plan P1605383-PS06-R03 with hydraulic calculation provided in DRAINS model P1605383DRN04V01.

3.2 Water Quantity Objectives

Site stormwater management has been designed to comply with the objectives of HSC (2016) for stormwater quantity management. As follows:

- Stormwater runoff from the post-development 20 year average recurrence interval (ARI) storm is restricted to the 5 year ARI pre-development flow.

Number 103 will not change or increase impervious areas, as such, this lot has no OSD requirements.

3.3 Methodology and Approach

3.3.1 Approach

The DRAINS hydrological and hydraulic software package (version 2018.09) was used to determine the 5 year ARI pre-development flow and 20 year ARI post-development flow for a range of storm durations between 5 minutes and 4.5 hours to model the peak site discharges.

3.3.2 Model Inputs

- IFD data was sourced from the Bureau of Meteorology (BoM) based on Australian Rainfall and Runoff (1987).
- ILSAX parameters have been derived from the suggested values in the DRAINS Content Menu (2016) for similar catchments.
- The proposed lot was modelled as 56% impervious (approximately 380 m²). This includes the proposed dwelling and driveway. The remaining lot area is modelled as 100% pervious.
- Sub-catchment properties were determined based on proposed structures (dwelling and driveway). A breakdown of sub-catchment details can be found in MA engineering plan P1605383-PS06-R03.

3.3.3 OSD Tank

An OSD tank has been designed for the proposed development to satisfy the objectives in Section 3.2. Further details for the OSD tank are provided in MA planset No. PS03-E200 with a summary of key components provided in Table 1.

Table 1: Summary of OSD Components.

Volume (m ³)	Primary orifice (mm)	Primary Weir (mAHD)	Primary Weir Length (m)
13.28	48	148.61	1.80

3.3.4 Results

DRAINS model results for the 5 year ARI pre-development and 20 year ARI post-development with OSD are provided in Table 2.

Table 2. DRAINS modelling results.

Storm Duration	Pre-development 5 yr ARI Q (m ³ /s)	Post-development 20 yr ARI Q (m ³ /s)	Change Q (m ³ /s)	Complies Y/N
5 min	0.007	0.008	0.001	N
10 min	0.014	0.012	-0.002	Y
15 min	0.017	0.014	-0.003	Y
20 min	0.018	0.014	-0.004	Y
25 min	0.020	0.016	-0.004	Y
30 min	0.019	0.015	-0.004	Y
45 min	0.015	0.013	-0.002	Y
1 hr	0.017	0.014	-0.003	Y
1.5 hr	0.019	0.016	-0.003	Y
2 hr	0.020	0.016	-0.004	Y
3 hr	0.011	0.011	0.000	Y
4.5 hr	0.010	0.010	0.000	Y

We note that the 20 year ARI post-development, 5 minute duration does not match the 5 year ARI pre-development flow. MA considers this increase inflow (1L/s) to have immaterial impact on the downslope environment given that the peak critical 5 year ARI pre-development flow is 20 L/s.

3.4 Conclusion

Hydraulic modelling has been undertaken to determine an appropriate OSD design for the proposed Number 101. Preliminary hydraulic modelling demonstrate compliance with HSC (2016) requirements.

Detailed design is to be provided at construction certificate stage for this application.

ATTACHMENT 3 - ITEM 2



Concept Stormwater Management Report
101 -103 Wongala Crescent, Pennant Hills, NSW
P1605383JR02V04 – July 2019
Page 9

4 References

DRAINS (2016) *DRAINS Content Menu*.

Hornsby Shire Council (2016) *Development Design Specification 0074
Stormwater Drainage (Design)*.

ATTACHMENT 4 - ITEM 2

