HORNSBY SHIRE COUNCIL

ATTACHMENTS

LOCAL PLANNING PANEL MEETING

Thursday 6 August 2020
at 2:00pm

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LOCAL PLANNING PANEL

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REPORT NO. LPP9/20

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ATTACHMENT 1 - ITEM 1

LOCALITY PLAN

DA/1047/2019

No. 17 Bellevue Street, Thornleigh

KEY URBAN PLANNING

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

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

REPORT PREPARED BY:

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

DIRECTOR,

KEY URBAN PLANNING

KEY URBAN PLANNING

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 y 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

- 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"**).

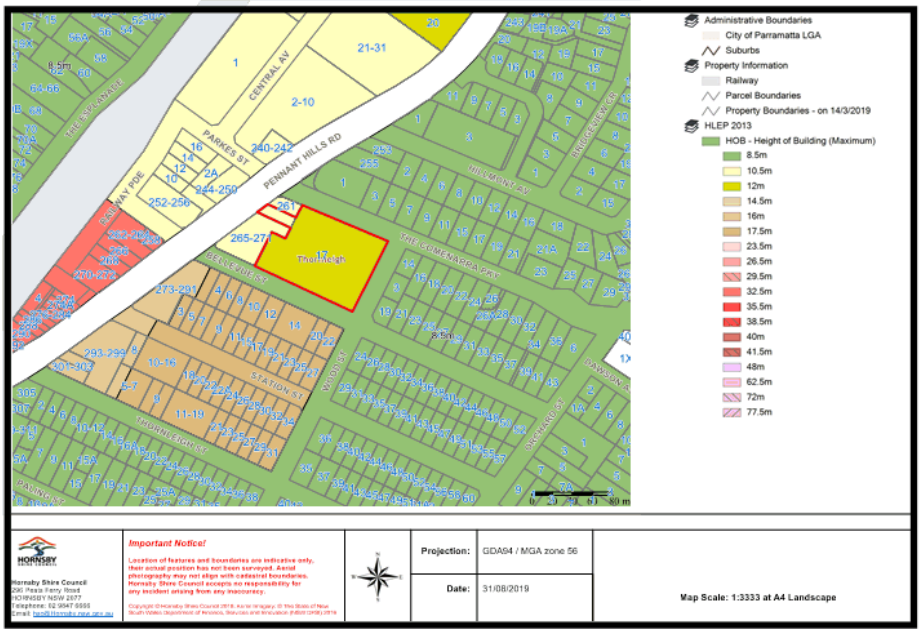
INTRODUCTION

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."*

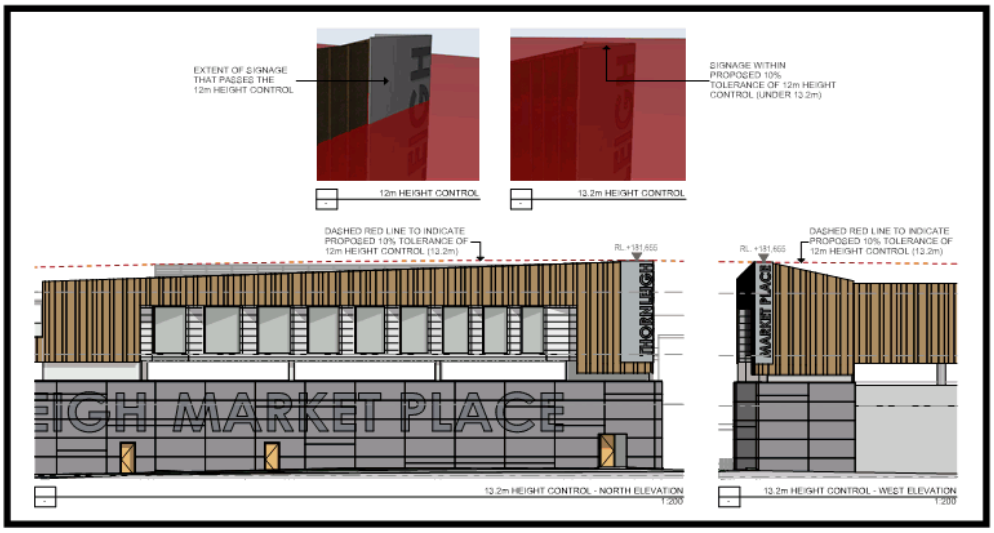
Figure 1- Extract of the LEP height map.



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."*

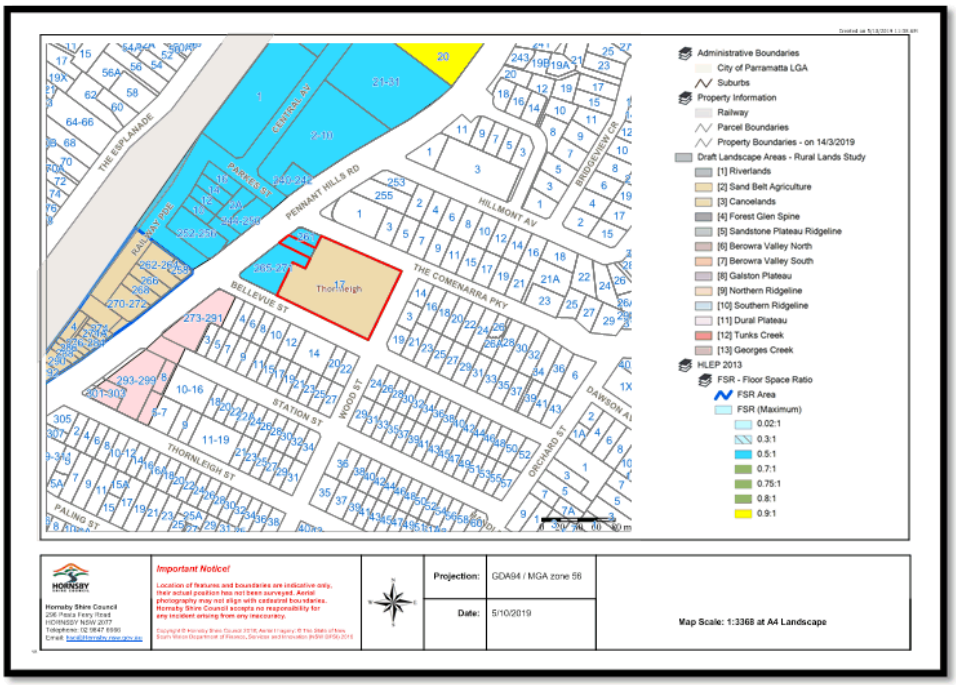
The LEP maps prescribe a maximum Floor Space Ratio (FSR) of 1:1.The court in granting approval to the existing development at para. 6 of the judgement in *Fabcot Pty Ltd y Hornsby Shire Council* states:

> *"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

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 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-[81]*), 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*

> *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

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.

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 exceed1:1. 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:

(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

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.

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.

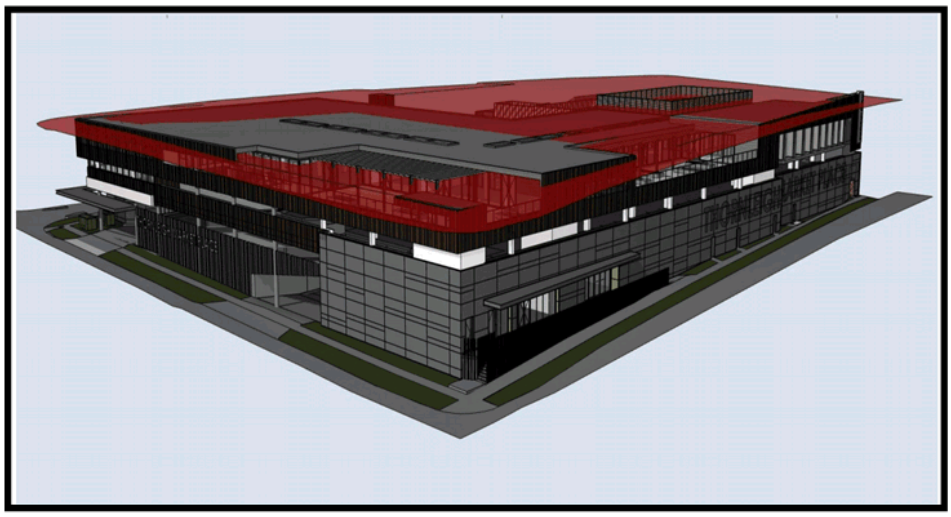
EXTENT OF VARIATION SOUGHT

(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.

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 exceed1:1. 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."

GFA:

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

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.

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.

- *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.

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."

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.

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

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

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.

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.

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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PROJECT THORNLEIGH MARKETPLACE EXTENSION
2-12 THE COMENARRA PARKWAY THORNLEIGH NSW

DATE 28/02/2020

FOR HOLDMARK PROPERTY GROUP

DRAWN BY JP/SD/EO

DRAWING TITLE COVER SHEET

SCALE @A1

PROJECT NO. 1287

DRAWING NO. DA001

REV 04

ATTACHMENT 3 - ITEM 1

01 LOCATION PLAN 1:1000

DRAWING No.	DRAWING NAME	REV	ISSUED
DA001	COVER SHEET	04	20/02/2020 4:20 PM
DA002	DRAWING LIST + LOCATION PLAN	04	20/02/2020 4:20 PM
DA003	SITE ANALYSIS PLAN	04	20/02/2020 4:20 PM
DA004	SITE PLAN	04	20/02/2020 4:20 PM
DA005	PROPOSED GROSS FLOOR AREA DIAGRAM	04	20/02/2020 4:20 PM
DA006	RETAIL AREA & PARKING DIAGRAM	04	20/02/2020 4:20 PM
DA007	EXISTING GROSS FLOOR AREA DIAGRAM	04	20/02/2020 4:20 PM
DA0110	DEMOLITION PERSPECTIVE VIEW	04	20/02/2020 4:20 PM
DA0111	DEMOLITION - GROUND FLOOR	04	20/02/2020 4:20 PM
DA0112	DEMOLITION - FIRST FLOOR	04	20/02/2020 4:20 PM
DA0113	DEMOLITION - ROOF	04	20/02/2020 4:20 PM
DA0114	SECTIONS 01 - DEMOLITION WORKS	04	20/02/2020 4:20 PM
DA0115	SECTIONS 02 - DEMOLITION WORKS	04	20/02/2020 4:20 PM
DAE100	EXISTING PERSPECTIVE VIEW	04	20/02/2020 4:20 PM
DAE101	EXISTING BASEMENT FLOOR PLAN	04	20/02/2020 4:20 PM
DAE102	EXISTING GROUND FLOOR PLAN	04	20/02/2020 4:20 PM
DAE103	EXISTING FIRST FLOOR PLAN	04	20/02/2020 4:20 PM
DAE104	EXISTING ROOF PLAN	04	20/02/2020 4:20 PM
DAP120	PROPOSED BASEMENT FLOOR PLAN	04	20/02/2020 4:20 PM
DAP121	PROPOSED GROUND FLOOR PLAN	04	20/02/2020 4:20 PM
DAP122	PROPOSED FIRST FLOOR PLAN	04	20/02/2020 4:20 PM
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DAP124	PROPOSED ROOF PLAN	04	20/02/2020 4:20 PM
DAP125	PROPOSED PERSPECTIVE VIEW	04	20/02/2020 4:20 PM
DAP126	PROPOSED LOADING AREA	04	20/02/2020 4:20 PM
DAP300	SECTIONS 01	04	20/02/2020 4:20 PM
DAP301	SECTIONS 02	04	20/02/2020 4:20 PM
DAP302	NORTH & EAST ELEVATIONS	04	20/02/2020 4:20 PM
DAP303	SOUTH & WEST ELEVATIONS	04	20/02/2020 4:20 PM
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DAP401	SHADOW DIAGRAMS - WINTER SOLSTICE	04	20/02/2020 4:20 PM
DAP402	SHADOW DIAGRAMS - EQUINOX	04	20/02/2020 4:20 PM
DAP500	HEIGHT CONTROL DIAGRAM	04	20/02/2020 4:20 PM
DAP501	PERSPECTIVE VIEW 01	04	20/02/2020 4:20 PM
DAP502	PERSPECTIVE VIEW 02	04	20/02/2020 4:20 PM
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DAP504	PERSPECTIVE VIEW 04	04	20/02/2020 4:20 PM
DAP505	PERSPECTIVE VIEW 05	04	20/02/2020 4:20 PM
DAP506	NOTIFICATION PLAN	04	20/02/2020 4:20 PM

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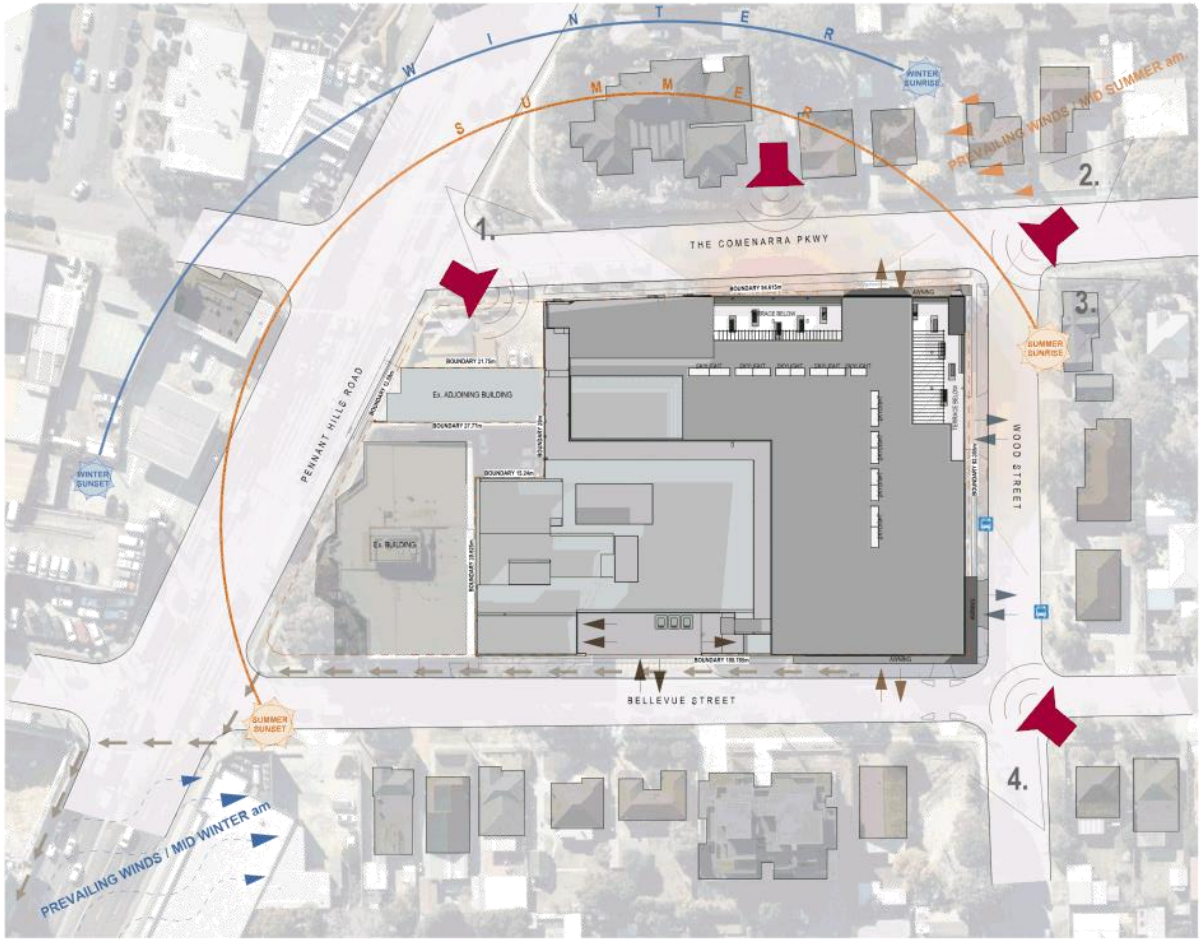
PROJECT: THORNLEIGH MARKETPLACE EXTENSION
2-12 THE COMENARRA PARKWAY THORNLEIGH NSW
DATE: 20/02/2020
FOR: HOLDMARK PROPERTY GROUP
DRAWN BY: JP/SD/EO
DRAWING TITLE: DRAWING LIST + LOCATION PLAN
SCALE: 1:1000@A1
PROJECT NO.: 1287
DRAWING NO.: DA002
REV: 04

ATTACHMENT 3 - ITEM 1



SITE ANALYSIS PLAN 1:500

SITE IMAGE ONE

SITE IMAGE TWO

SITE IMAGE THREE

SITE IMAGE FOUR

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P3	25/02/2020	COUNCIL REQUIRED MODS
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PROJECT: THORNLEIGH MARKETPLACE EXTENSION
2-12 THE COMENARRA PARKWAY THORNLEIGH NSW
DATE: 28/02/2020
FOR: HOLDMARK PROPERTY GROUP
DRAWN BY: JP/SD/EO
DRAWING TITLE: SITE ANALYSIS PLAN
SCALE: 1:500@A1
PROJECT NO.: 1287
DRAWING NO.: DA003
REV: 04

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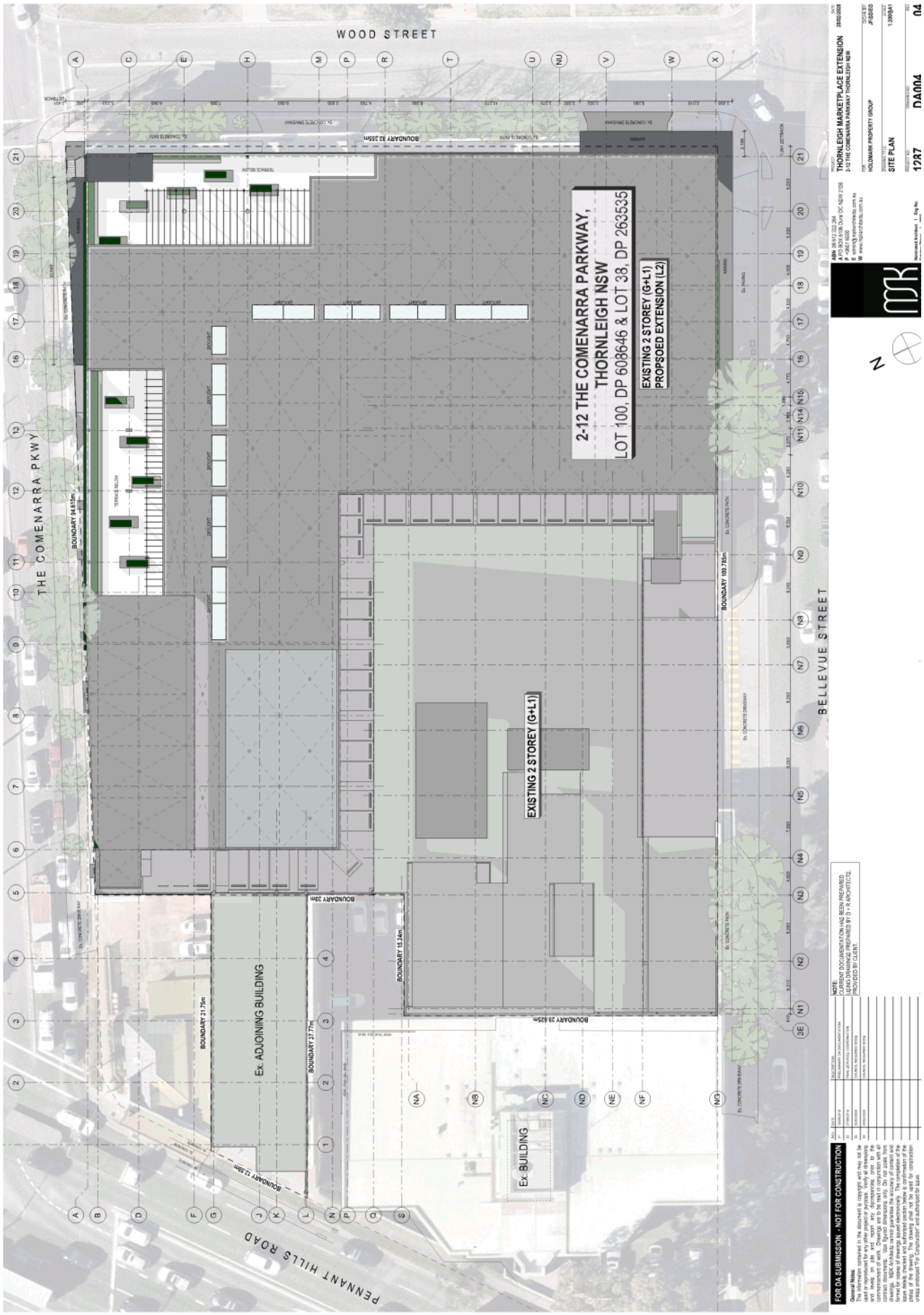
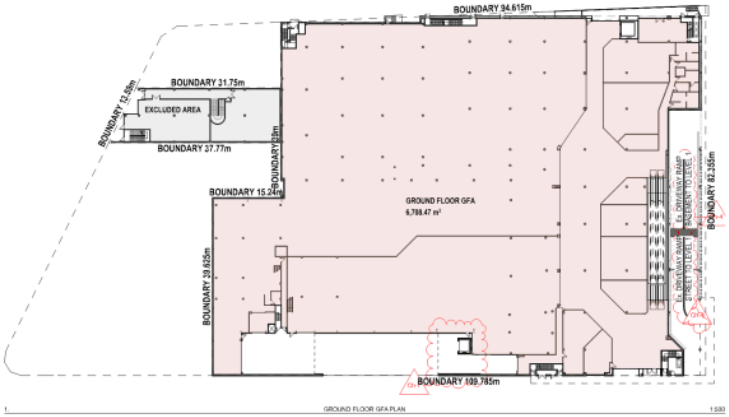
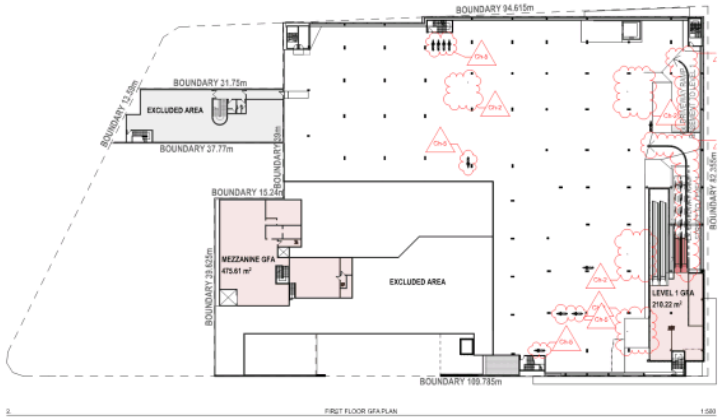


ATTACHMENT 3 - ITEM 1

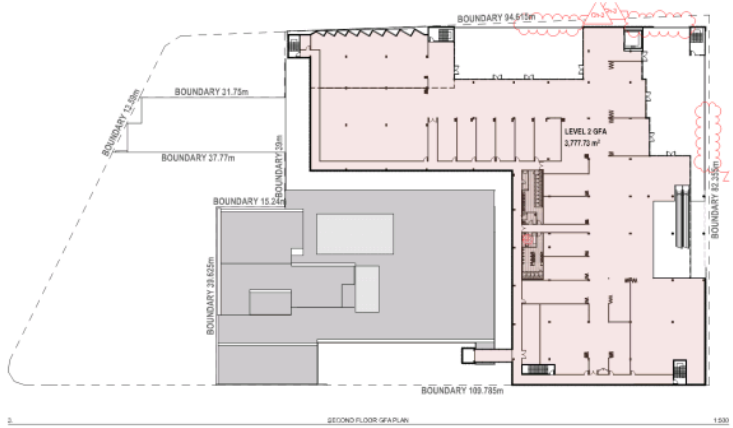
BASEMENT FLOOR GFA PLAN 1:500



GROUND FLOOR GFA PLAN 1:500



FIRST FLOOR GFA PLAN 1:500



SECOND FLOOR GFA PLAN 1:500

GROSS FLOOR AREA (GFA) SCHEDULE

LOCATION	MEASURED AREA
BASEMENT GFA	193.35
GROUND FLOOR GFA	6,788.47
LEVEL 1 GFA	210.22
LEVEL 2 GFA	3,777.70
MEZZANINE GFA	475.61
	11,355.28 m²

FLOOR SPACE RATIO

SITE AREA	8,288m²
PROPOSED GFA	11,261.66m²
PROPOSED FLOOR SPACE RATIO	1.36:1

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PROJECT: THORNLEIGH MARKETPLACE EXTENSION
2-12 THE COMENARRA PARKWAY THORNLEIGH NSW

DATE: 28/02/2020

FOR: HOLDMARK PROPERTY GROUP

DRAWN BY: JP/SD/EO

DRAWING TITLE: PROPOSED GROSS FLOOR AREA DIAGRAM

SCALE: 1:500@A1

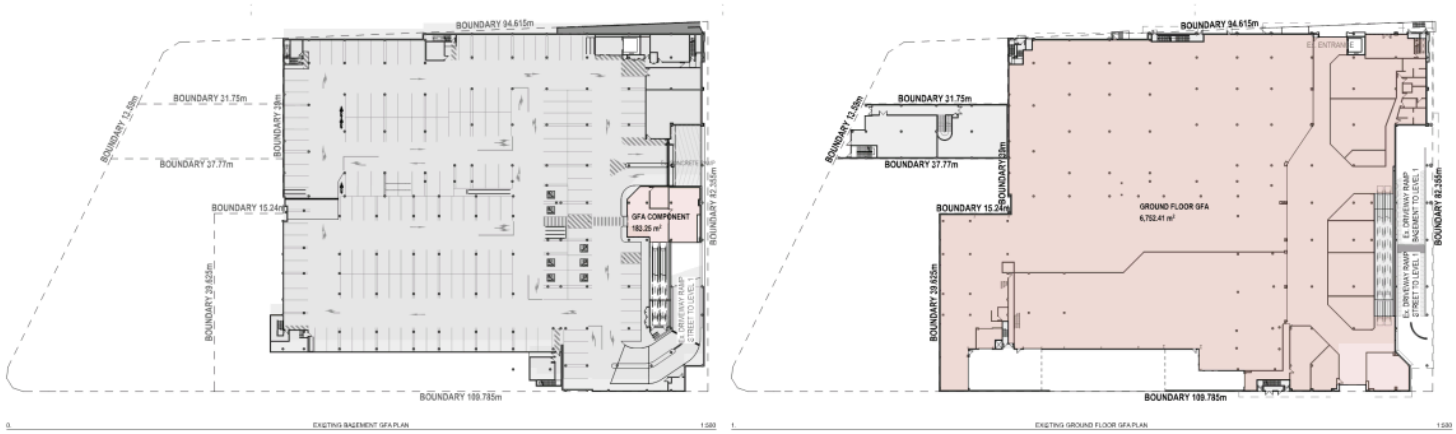
PROJECT NO.: 1287

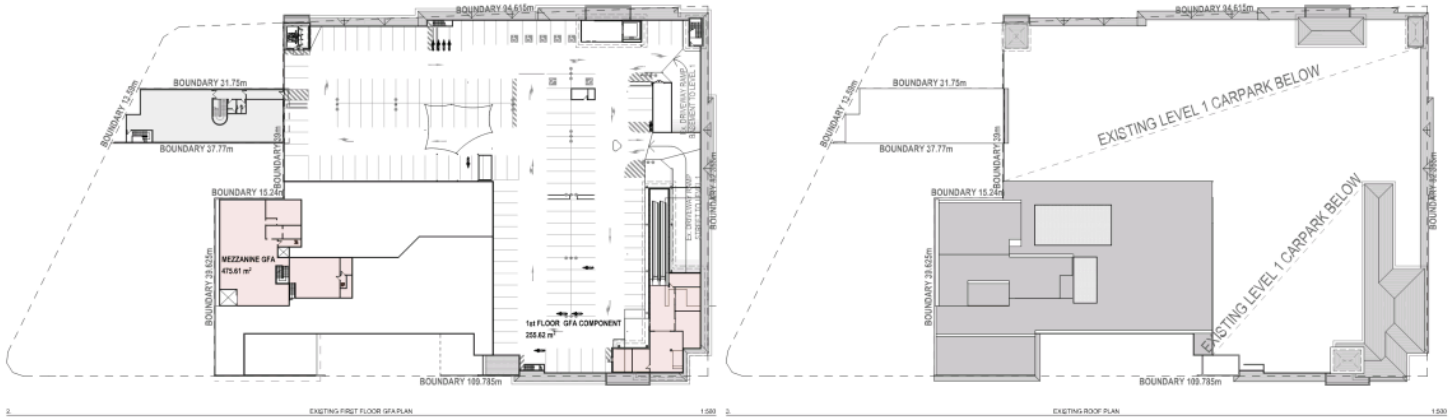
DRAWING NO.: DA005

REV: 04

ATTACHMENT 3 - ITEM 1

ATTACHMENT 3 - ITEM 1





EXISTING GROSS FLOOR AREA SCHEDULE

LOCATION	MEASURED AREA
1st FLOOR GFA COMPONENT	255.62
GFA COMPONENT	180.25
GROUND FLOOR GFA	6,752.41
MEZZANINE GFA	475.61
	7,664.89 m²

FLOOR SPACE RATIO

SITE AREA	8,288m²
EXISTING GFA	7,664.89m²
EXISTING FLOOR SPACE RATIO	0.92:1

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REV.	DATE	DESCRIPTION
02	25/02/2020	COUNCIL REQUIRED MODS
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Nominated Architect | Reg No.

PROJECT: THORNLEIGH MARKETPLACE EXTENSION
2-12 THE COMENARRA PARKWAY THORNLEIGH NSW

DATE: 28/02/2020

FOR: HOLDMARK PROPERTY GROUP

DRAWN BY: JP/SD/EO

DRAWING TITLE: EXISTING GROSS FLOOR AREA DIAGRAM

SCALE: 1:500, 1:1@A1

PROJECT NO.: 1287

DRAWING NO.: DA007

REV: 04

ATTACHMENT 3 - ITEM 1

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01	19/08/2019	PRELIMINARY DA DOCUMENTATION
02	27/09/2019	FINAL (SERVICES) COORDINATION
03	20/02/2020	COUNCIL REQUIRED MODS
04	28/02/2020	COUNCIL REQUIRED MODS

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PROJECT: THORNLEIGH MARKETPLACE EXTENSION
2-12 THE COMENARRA PARKWAY THORNLEIGH NSW

DATE: 28/02/2020

FOR: HOLDMARK PROPERTY GROUP

DRAWN BY: JP/SD/EO

DRAWING TITLE: EXISTING PERSPECTIVE VIEW

SCALE: 1:100@A1

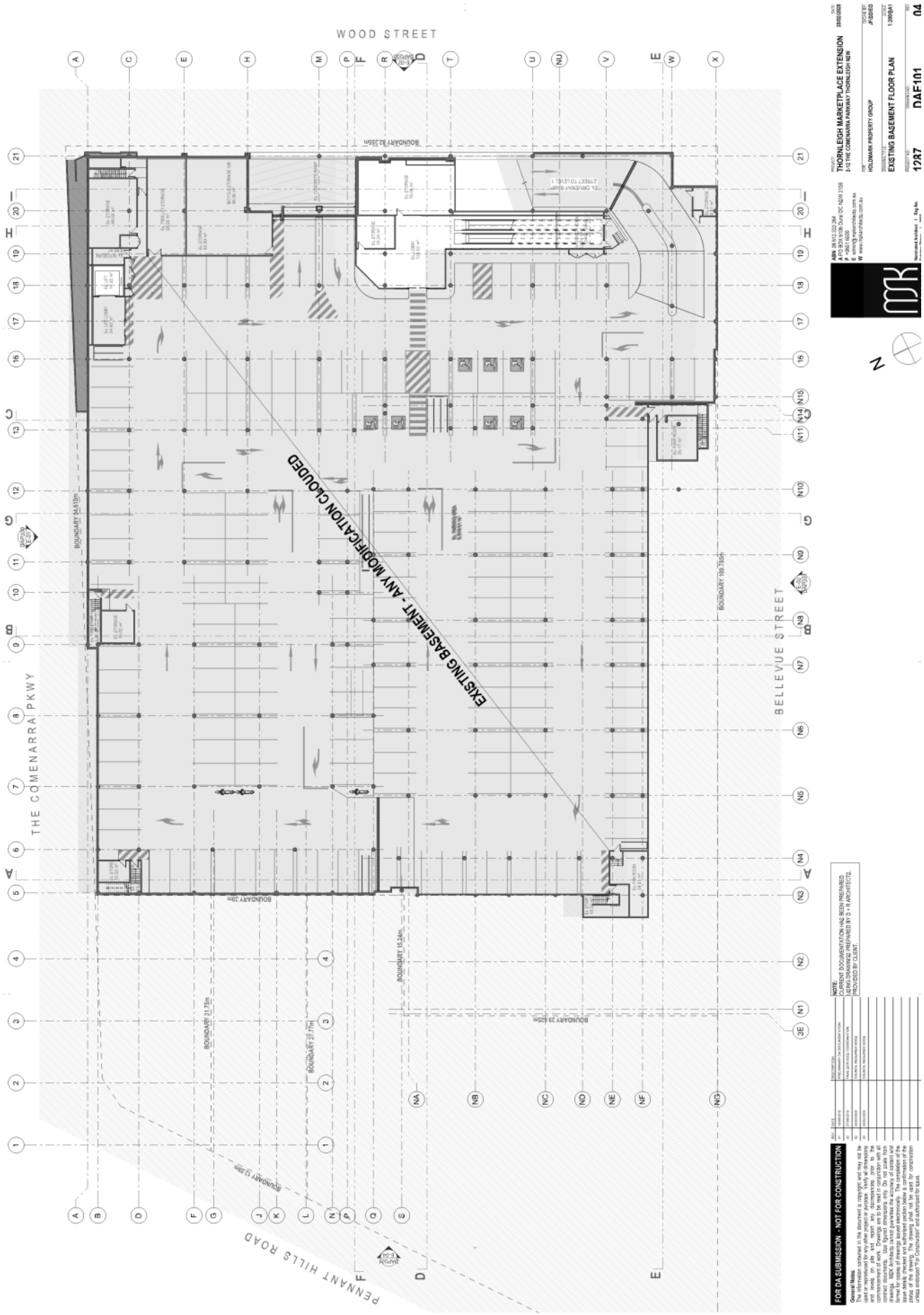
PROJECT NO.: 1287

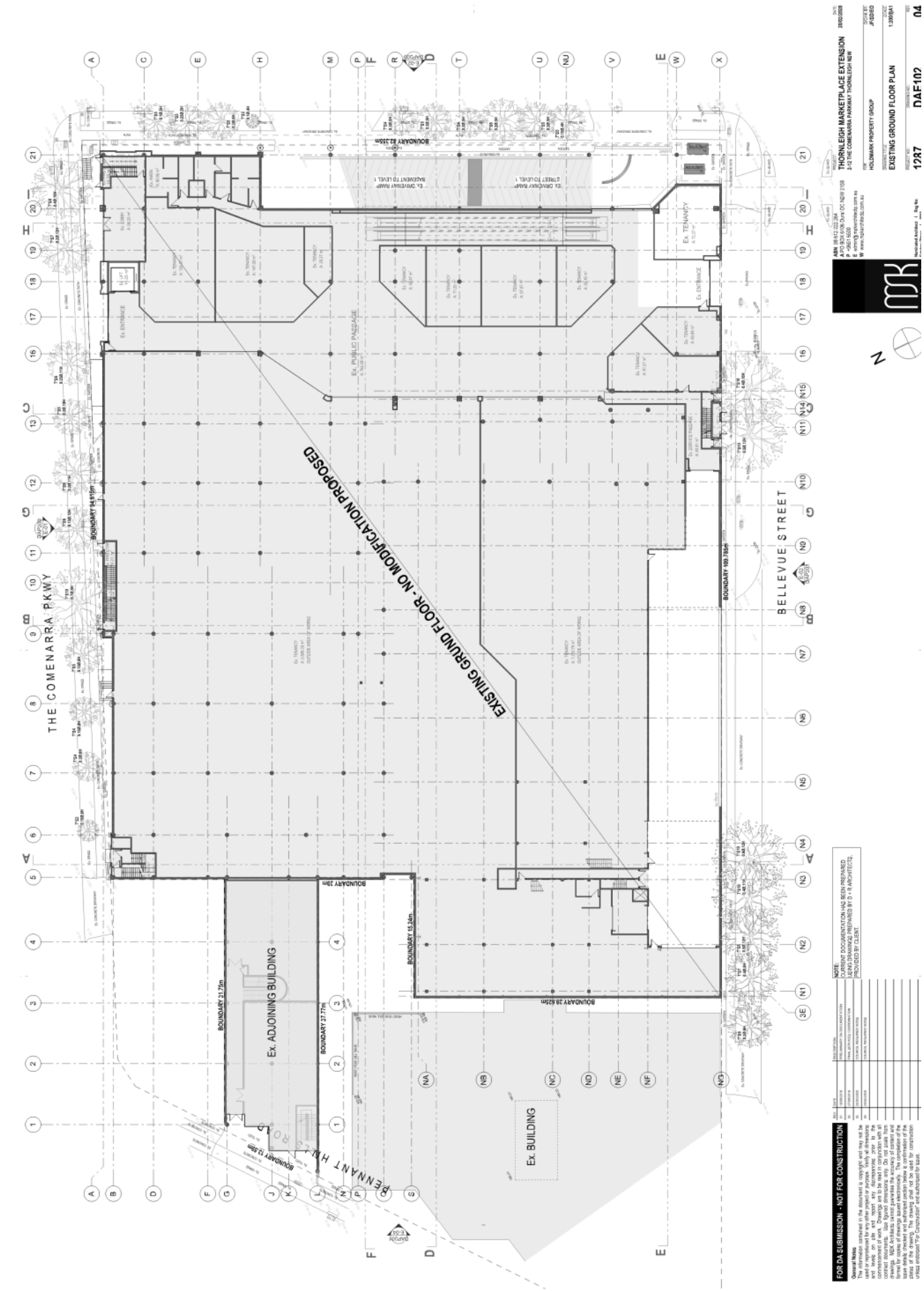
DRAWING NO.: DAE100

REV: 04

ATTACHMENT 3 - ITEM 1

ATTACHMENT 3 - ITEM 1





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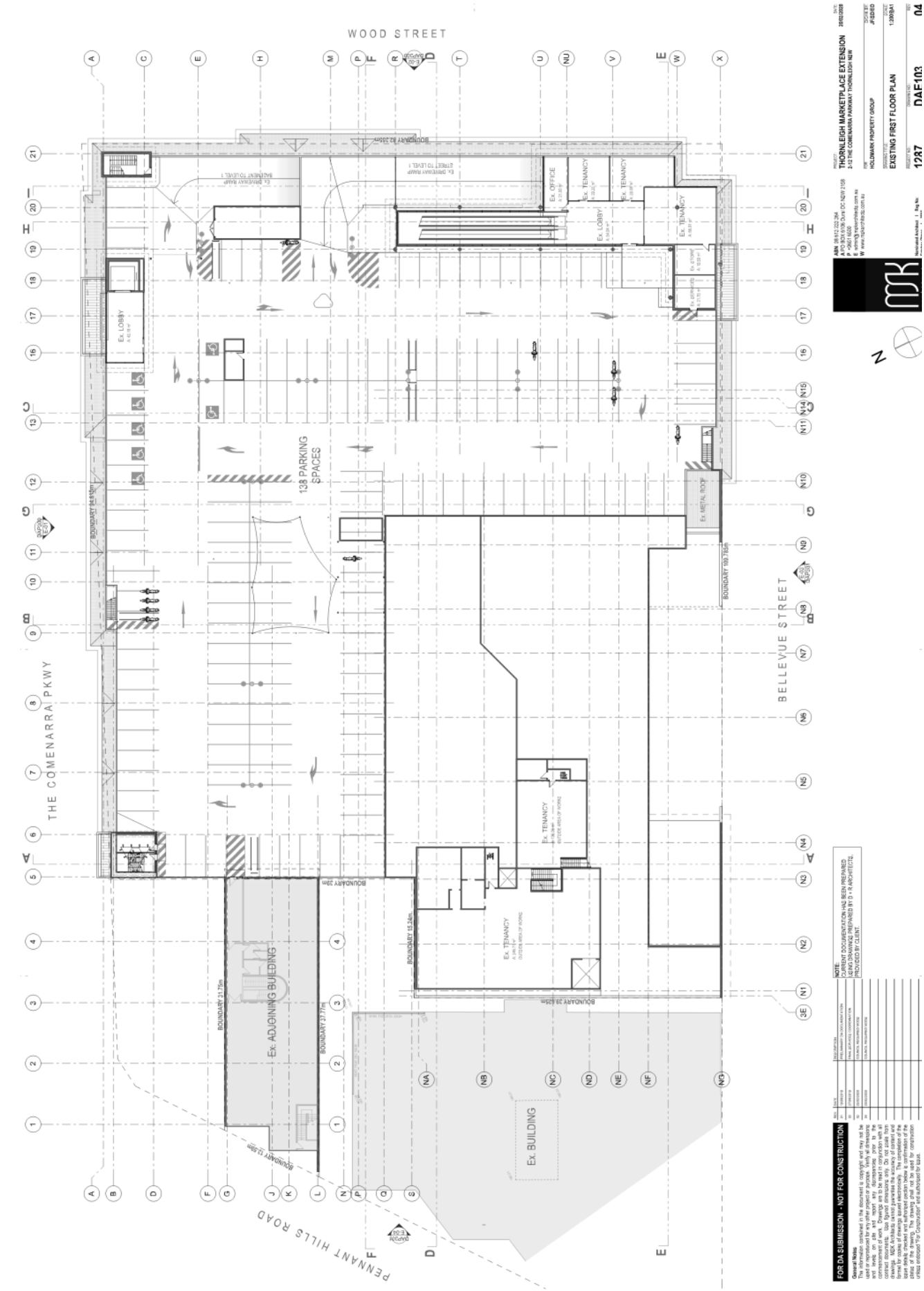

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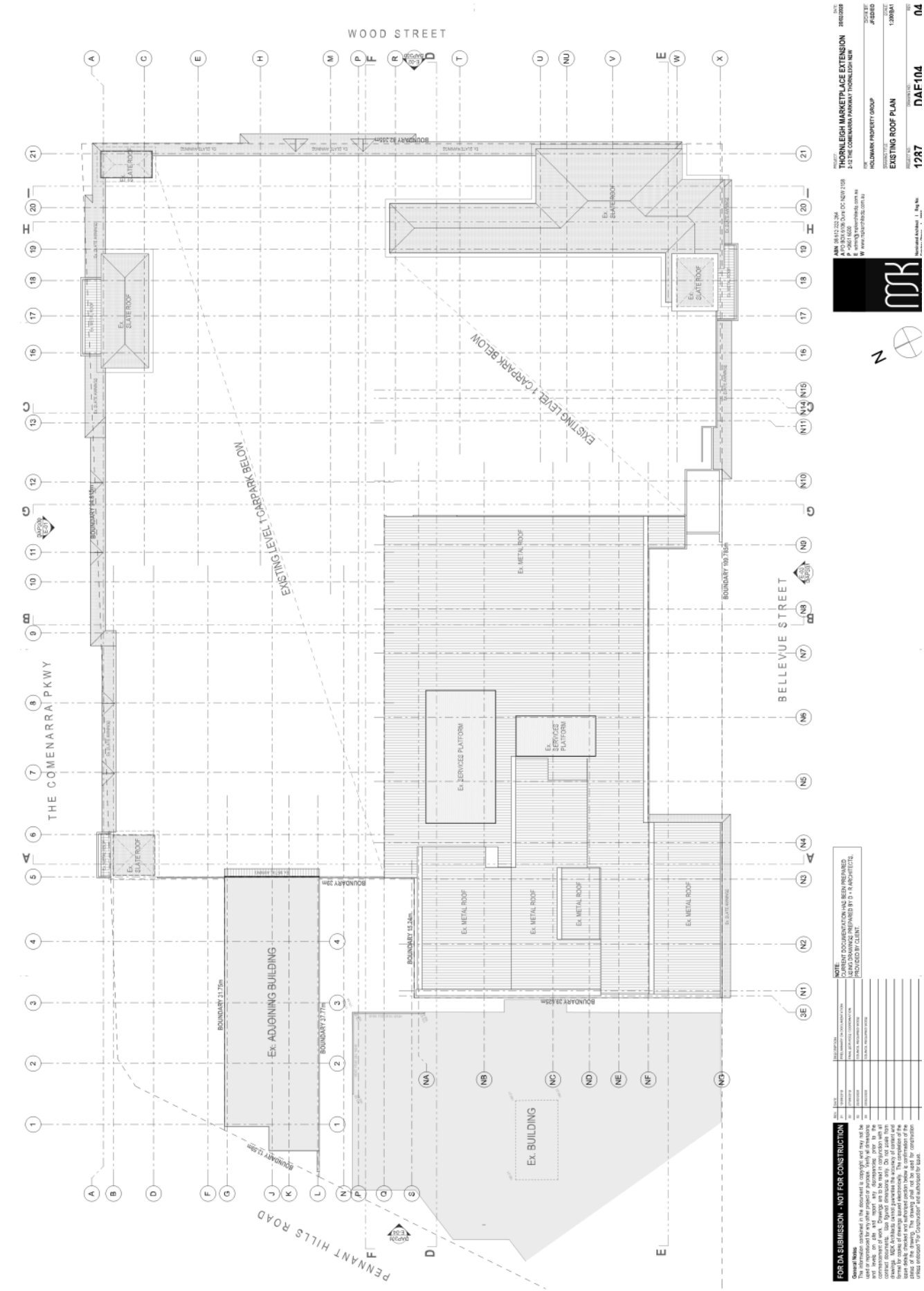

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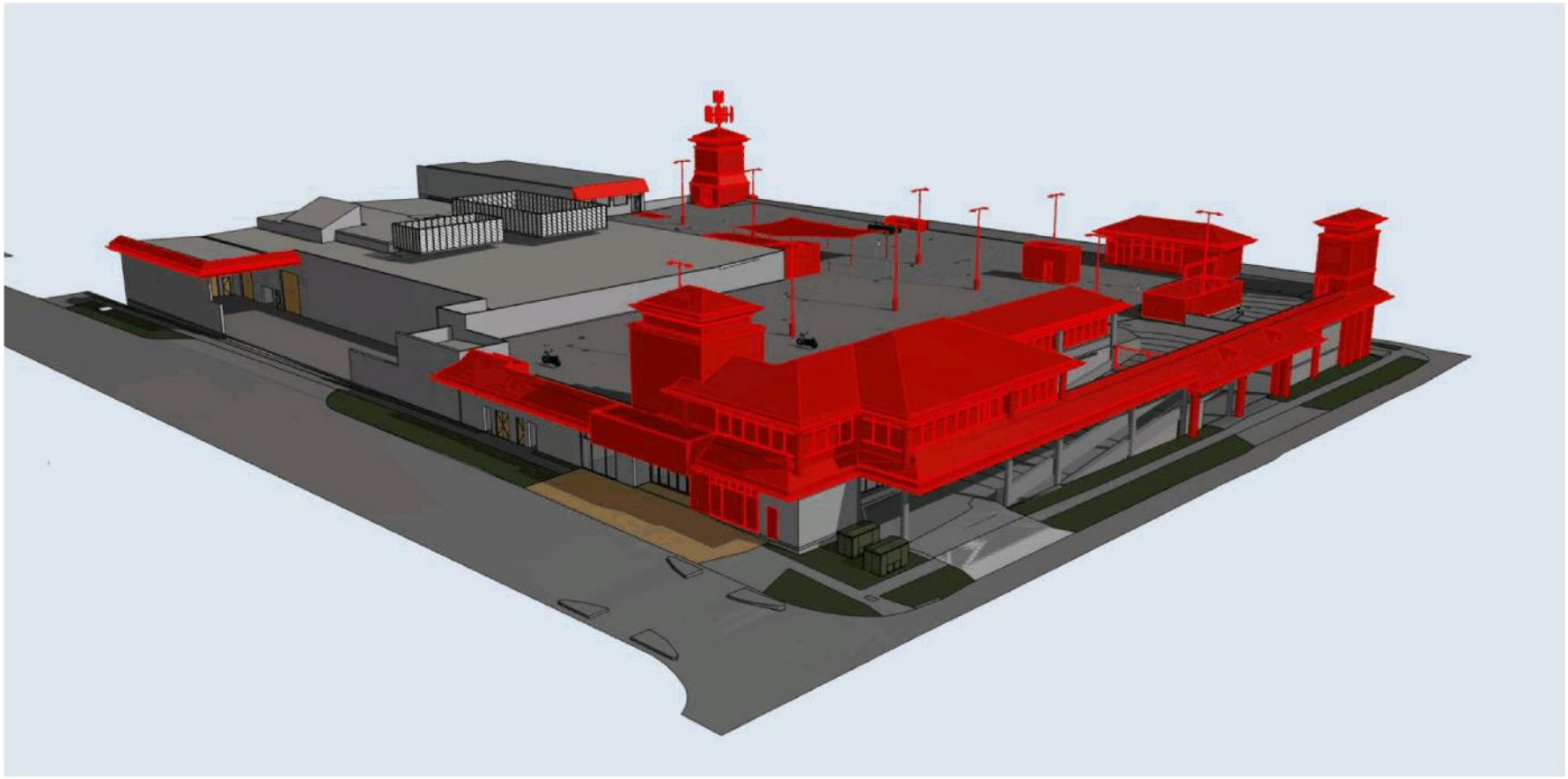

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01	18/09/2019	PRELIMINARY DA DOCUMENTATION
03	27/09/2019	FINAL SERVICES COORDINATION
02	23/10/2019	COUNCIL REQUIRED MODS
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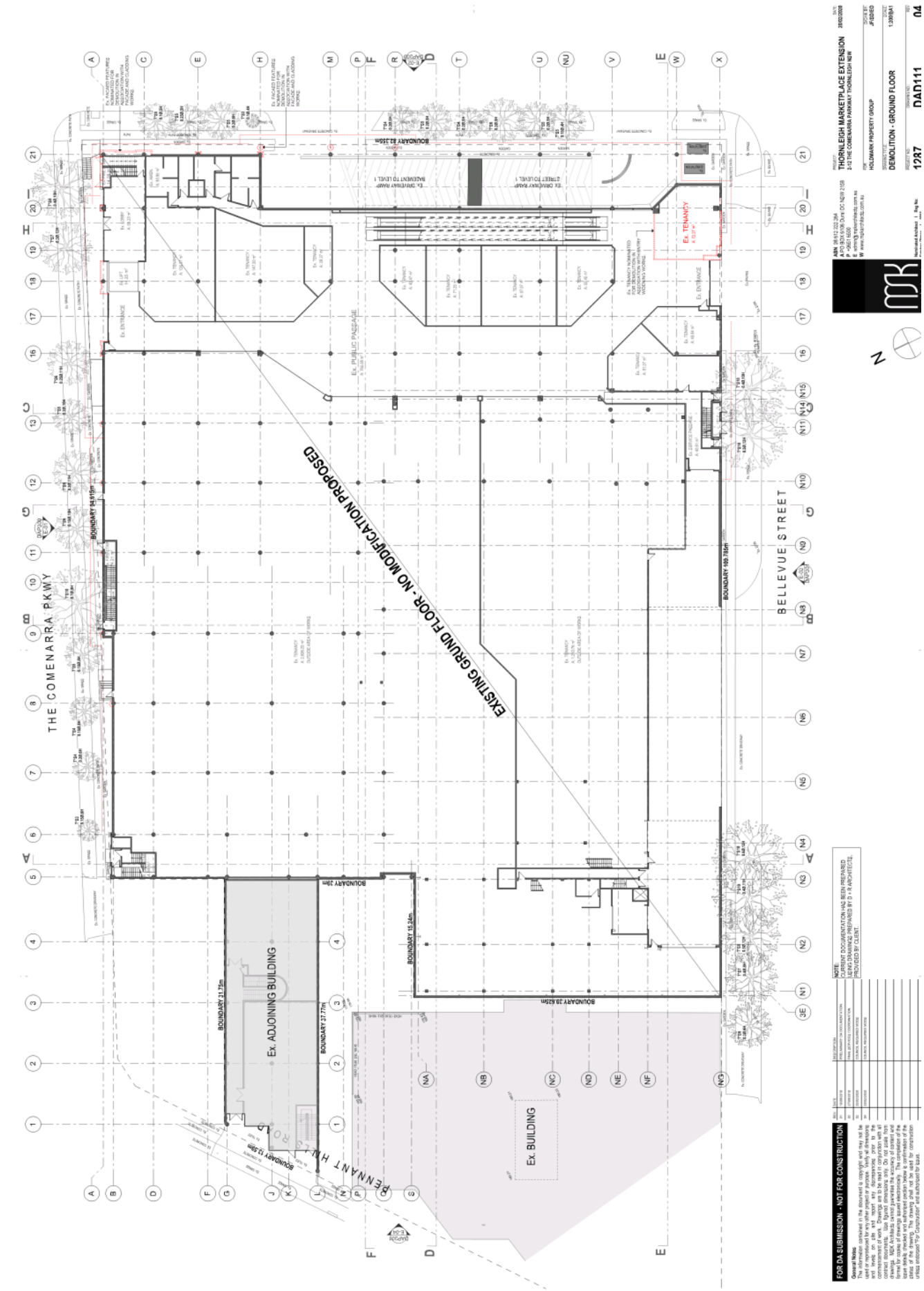
PROJECT: THORNLEIGH MARKETPLACE EXTENSION
2-12 THE COMENARRA PARKWAY THORNLEIGH NSW
DATE: 28/02/2020

FOR: HOLDMARK PROPERTY GROUP
DRAWN BY: JP/SD/EO

DRAWING TITLE: DEMOLITION PERSPECTIVE VIEW
SCALE: 1:100@A1

PROJECT NO.: 1287
DRAWING NO.: DAD110
REV: 04

ATTACHMENT 3 - ITEM 1



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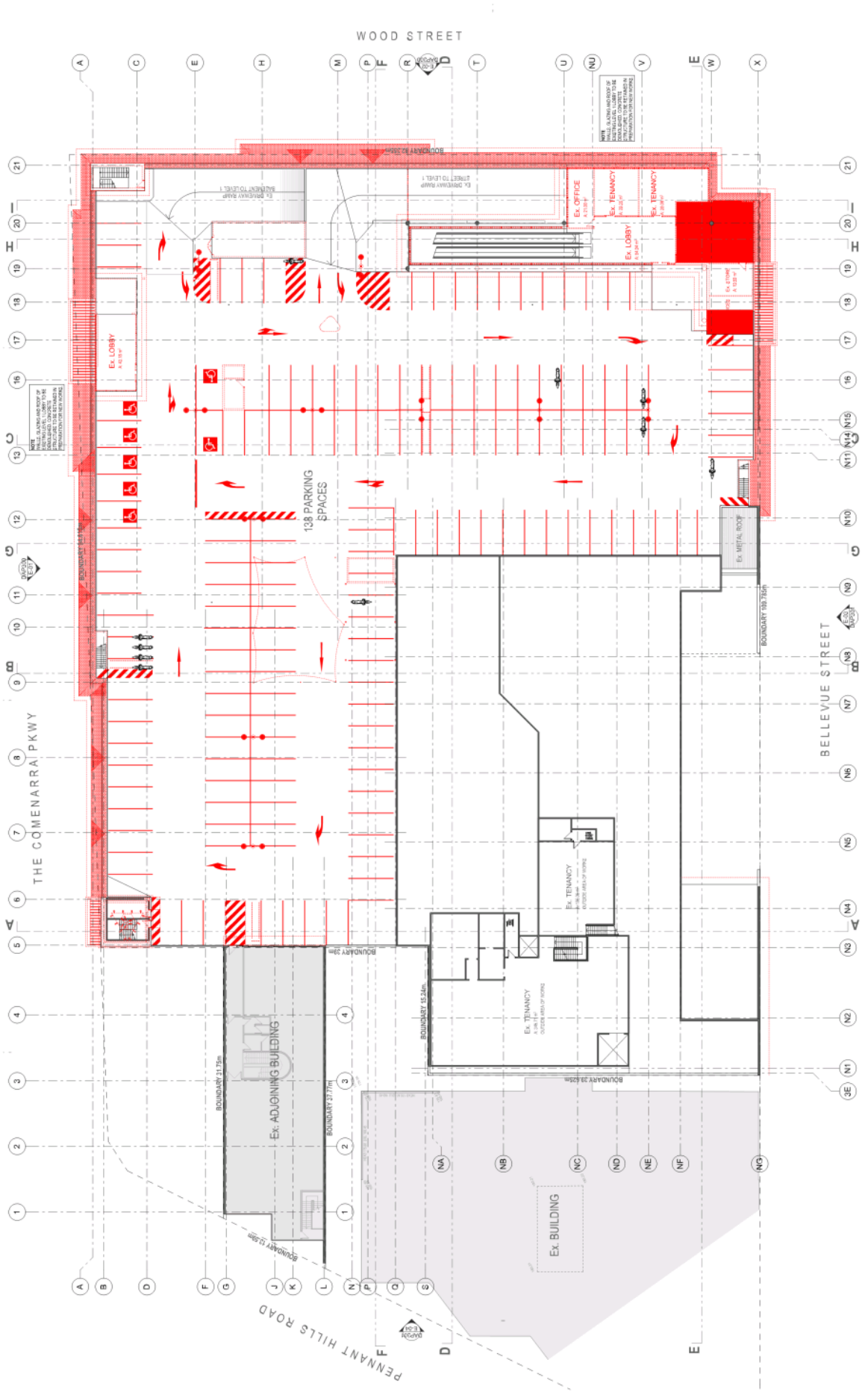

ATTACHMENT 3 - ITEM 1

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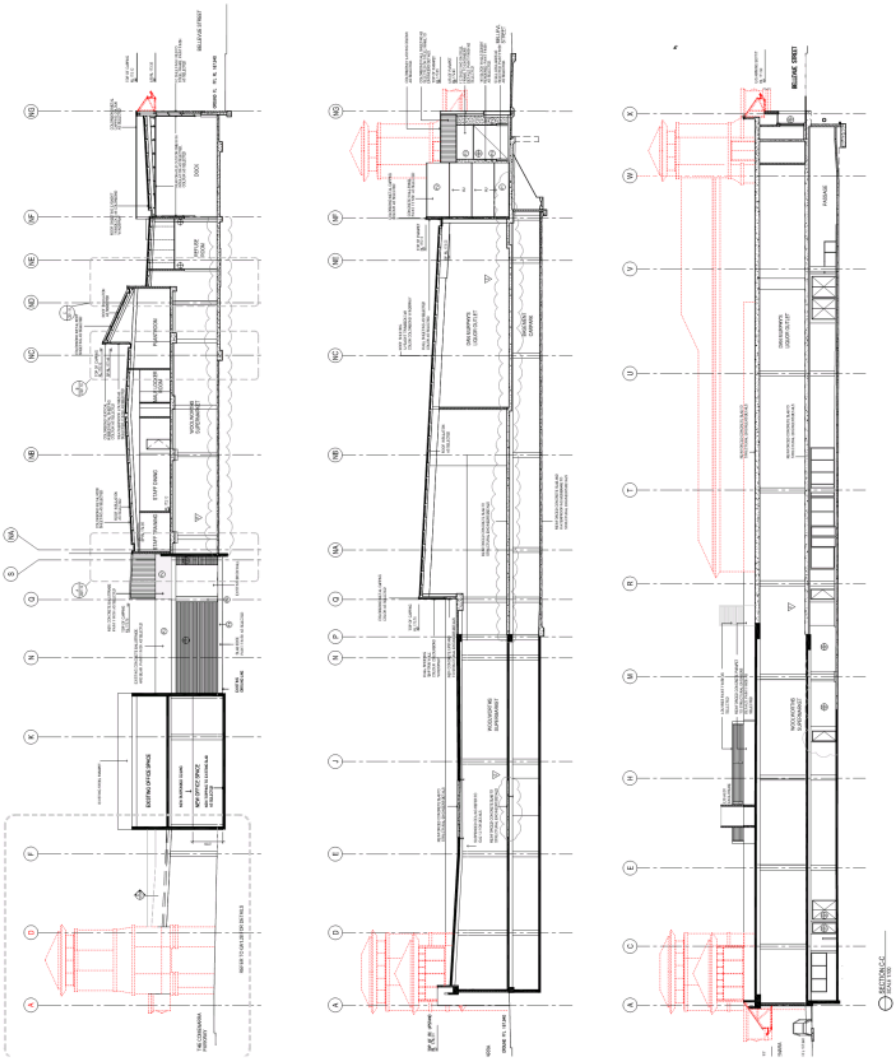

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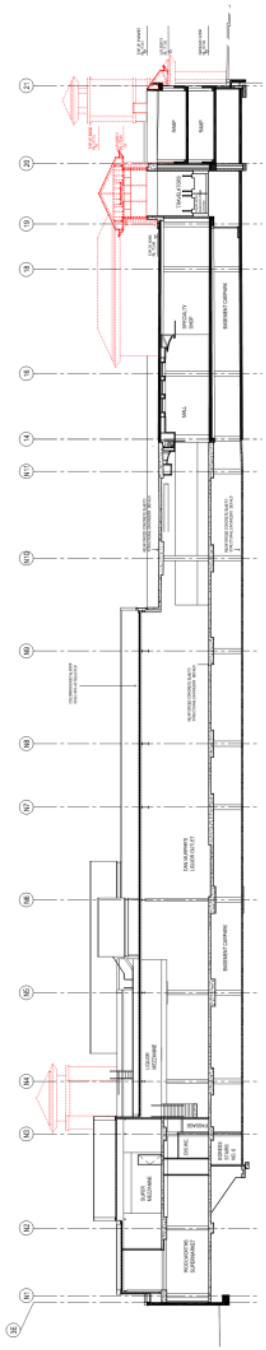

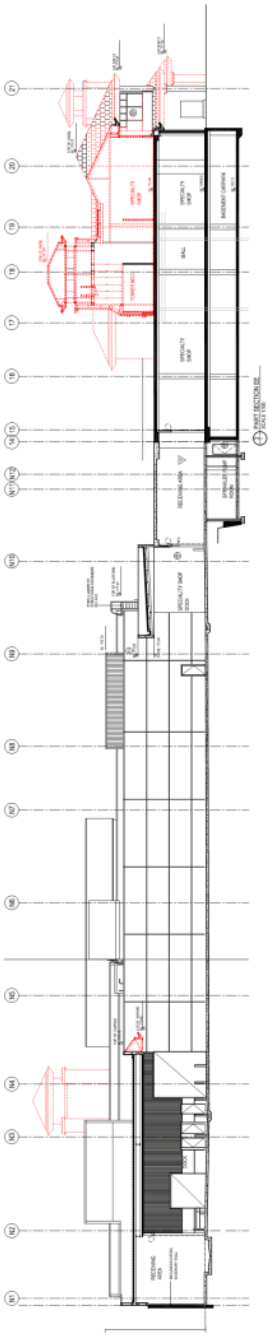

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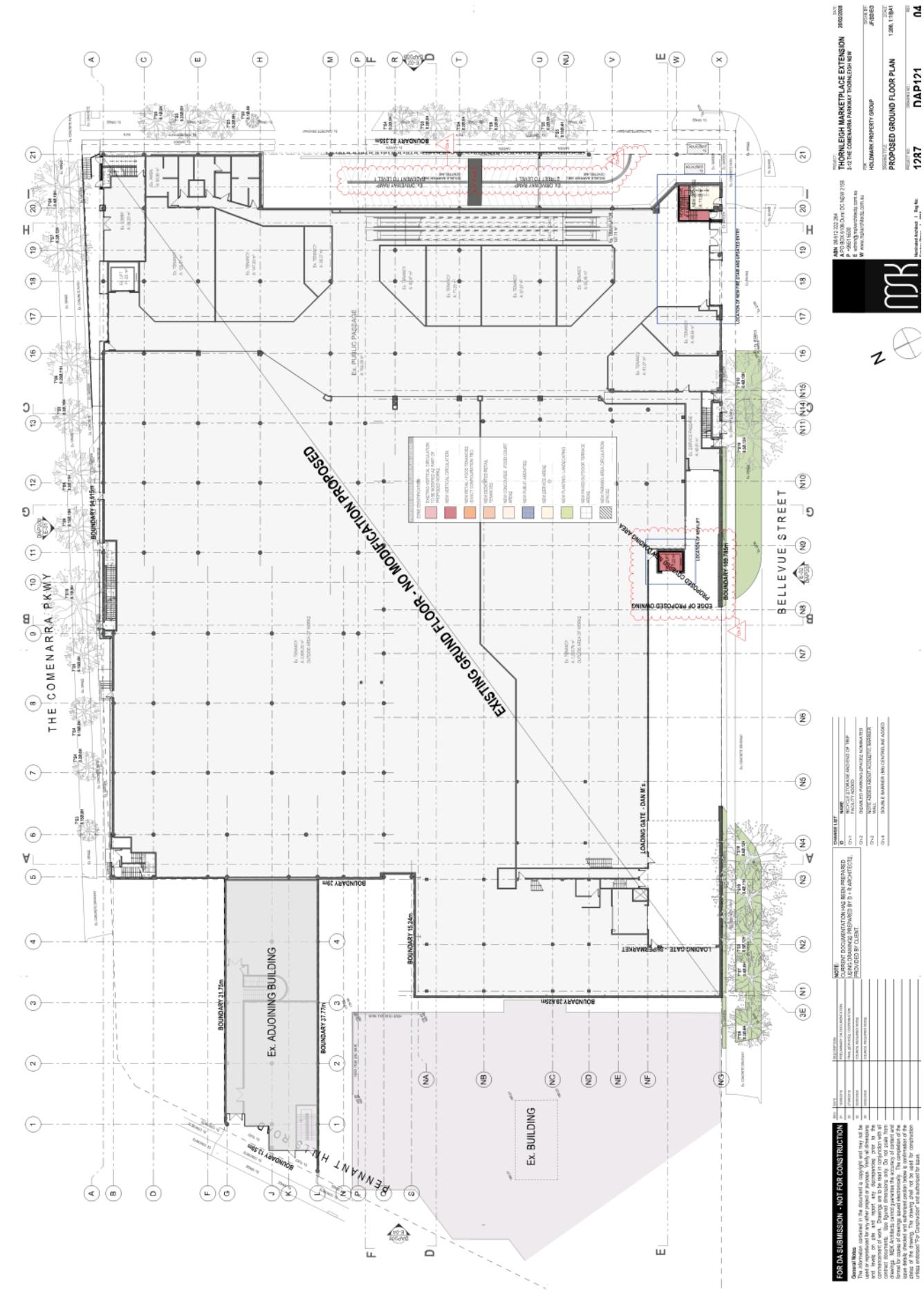

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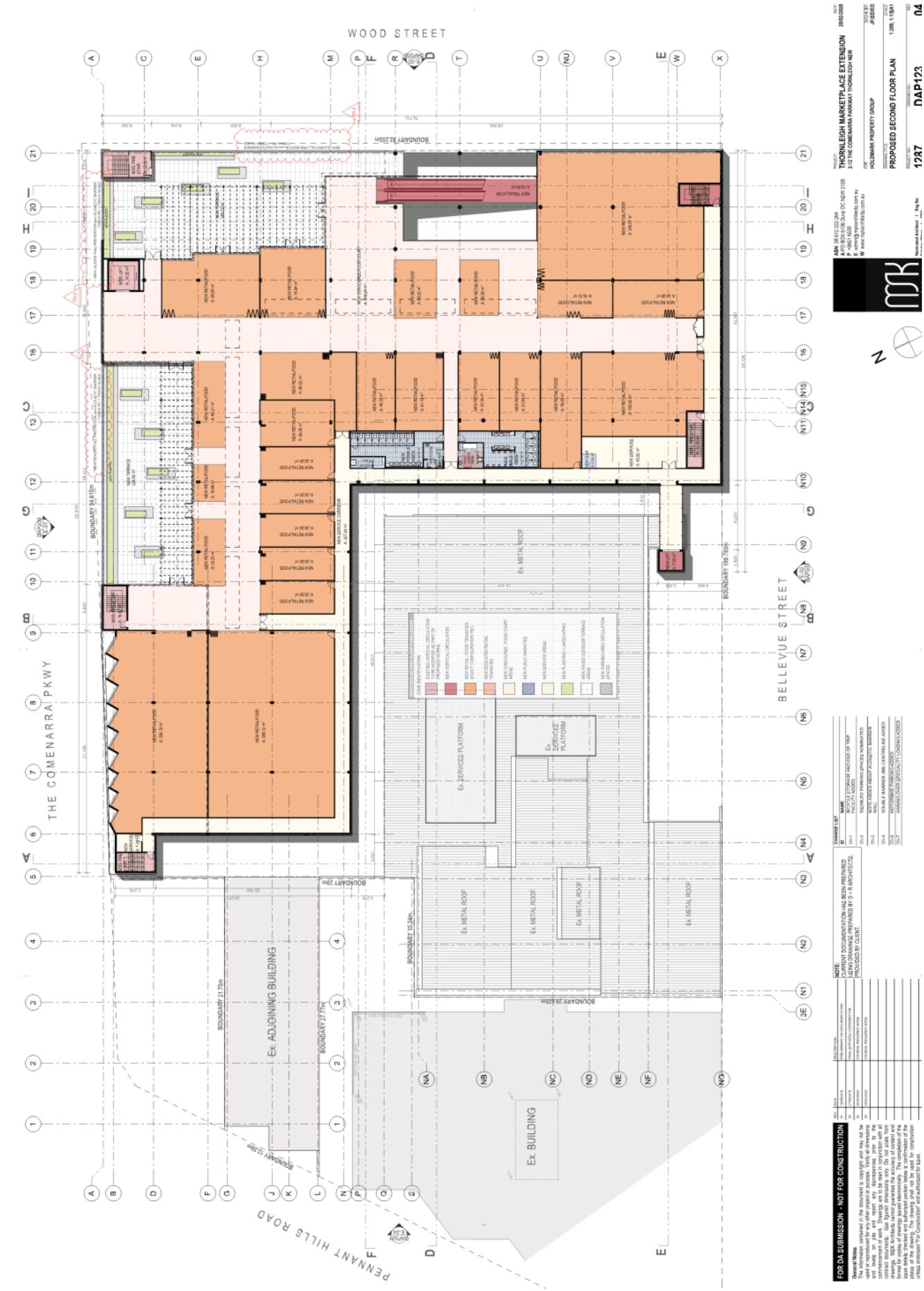

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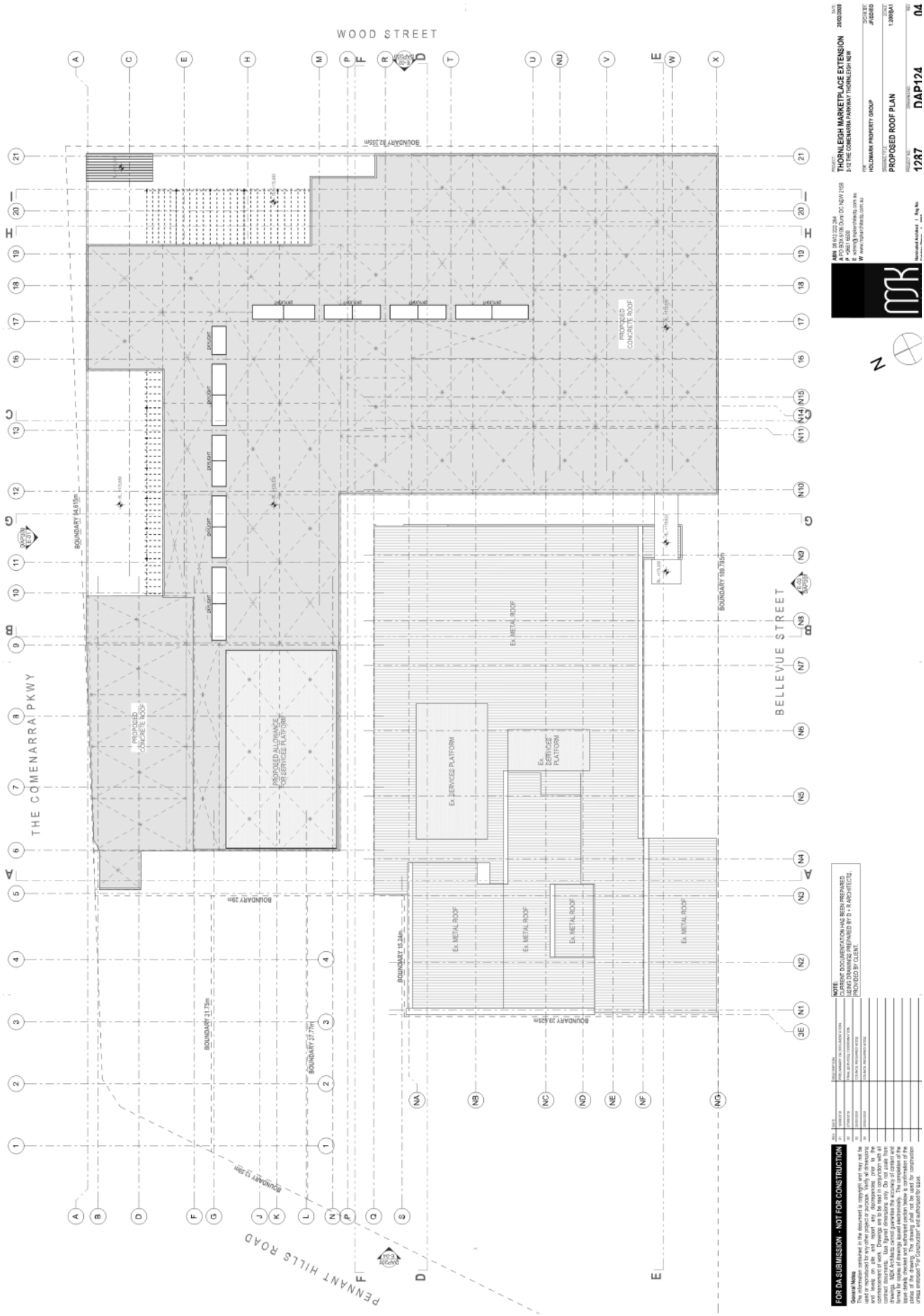

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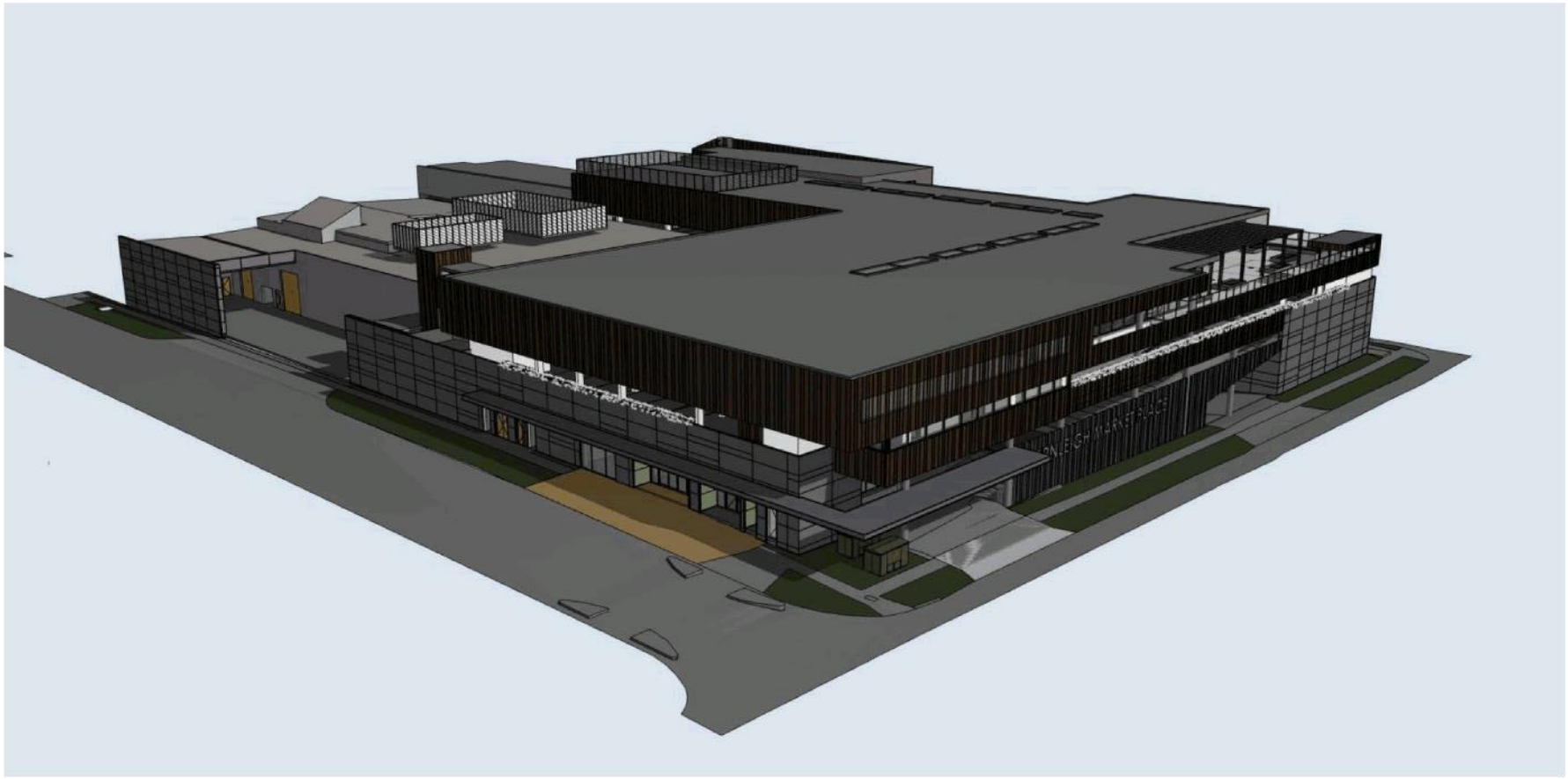

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01	13/08/2019	PRELIMINARY DA DOCUMENTATION
02	07/09/2019	FINAL (SERVICES COORDINATION
03	05/02/2020	COUNCIL REQUIRED MODS
04	28/02/2020	COUNCIL REQUIRED MODS

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PROJECT: THORNLEIGH MARKETPLACE EXTENSION
2-12 THE COMENARRA PARKWAY THORNLEIGH NSW

DATE: 28/02/2020

FOR: HOLDMARK PROPERTY GROUP

DRAWN BY: JP/SD/EO

DRAWING TITLE: PROPOSED PERSPECTIVE VIEW

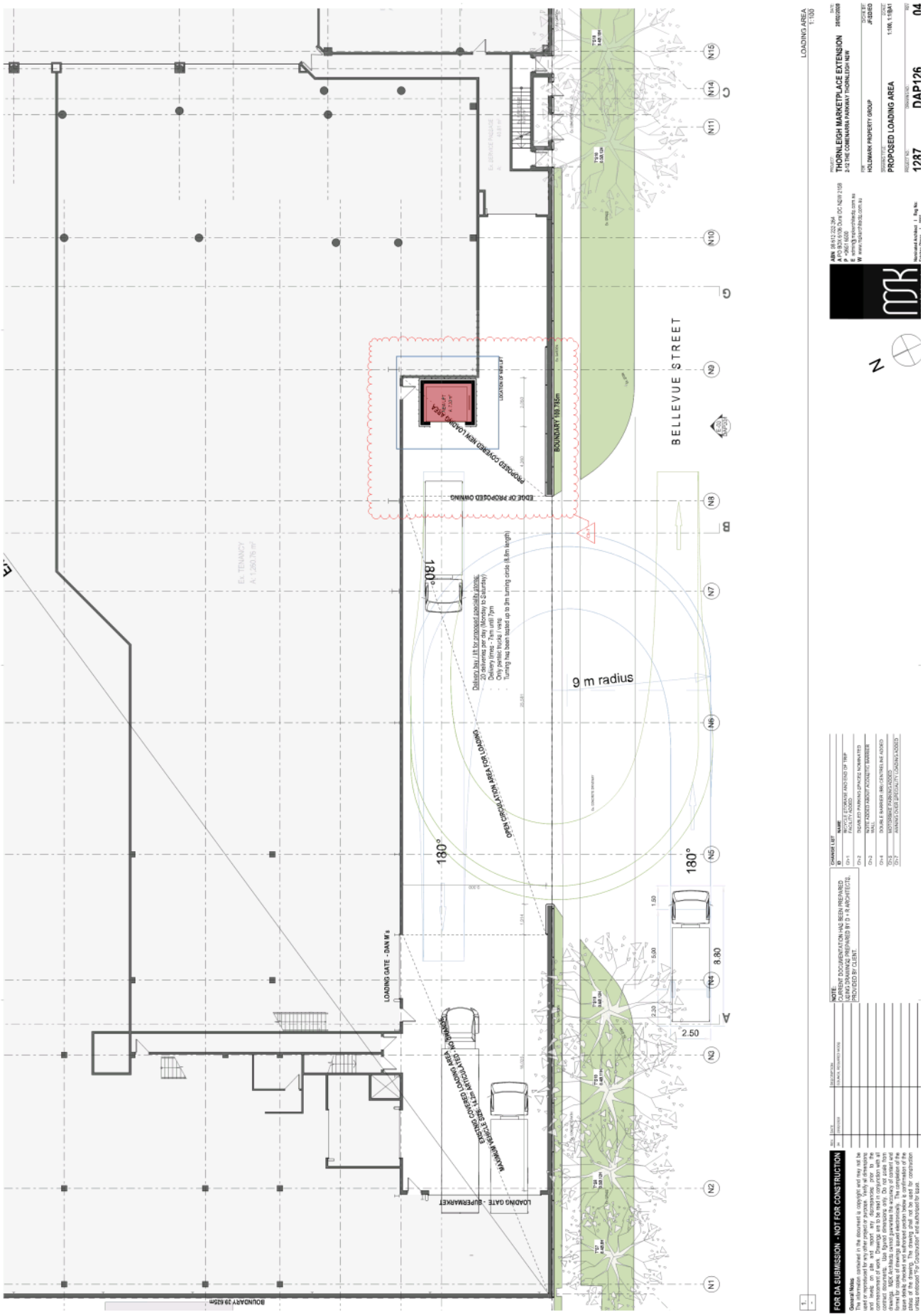
SCALE: 1:100@A1

PROJECT NO.: 1287

DRAWING NO.: DAP125

REV: 04

ATTACHMENT 3 - ITEM 1



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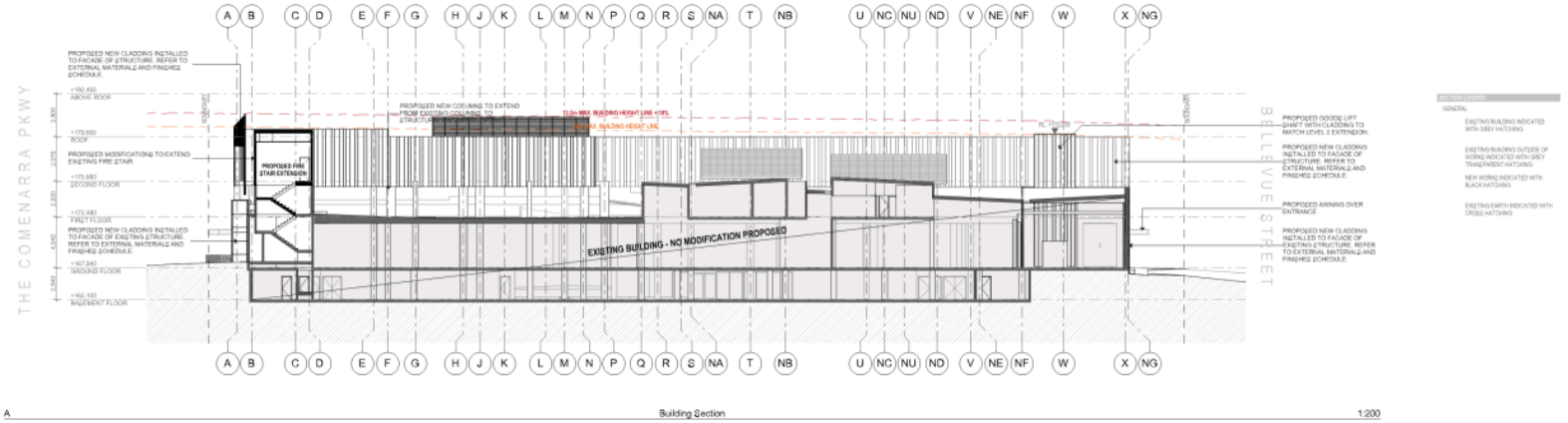
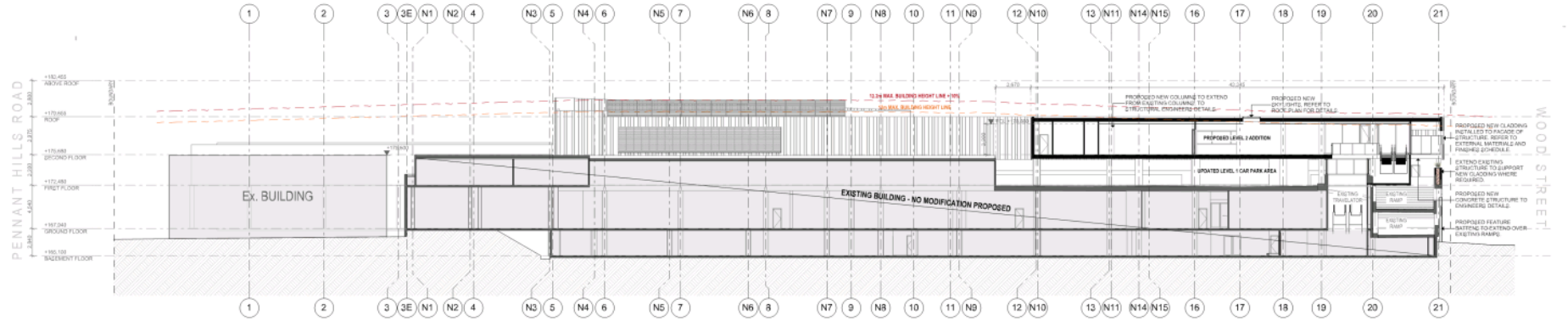


A Building Section 1:200



D Building Section 1:200

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01	10/09/2019	PRELIMINARY DA DOCUMENTATION
02	27/09/2019	FINAL (SERVICES COORDINATION
03	25/02/2020	COUNCIL REQUIRED MODS
04	28/02/2020	COUNCIL REQUIRED MODS

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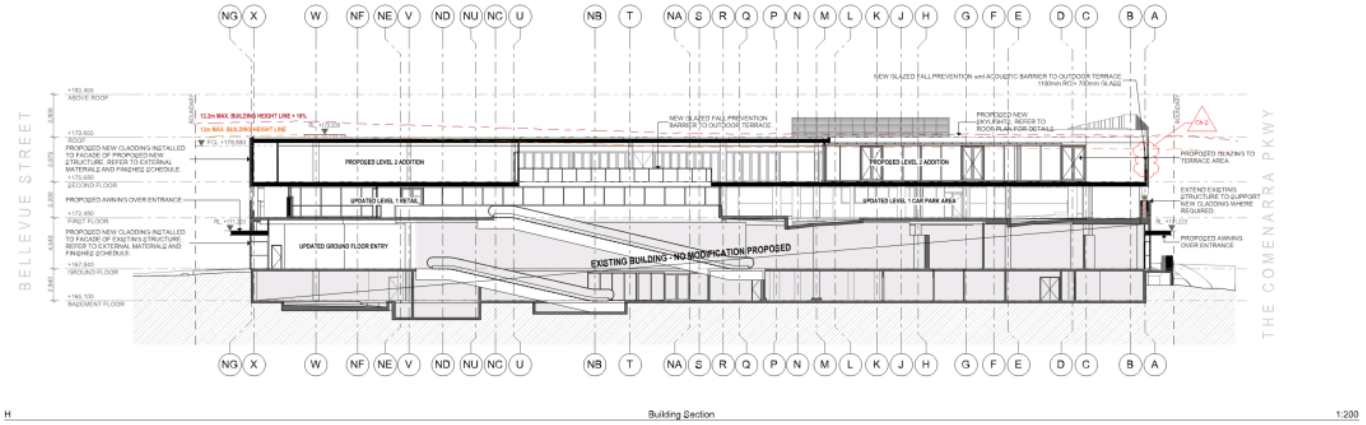
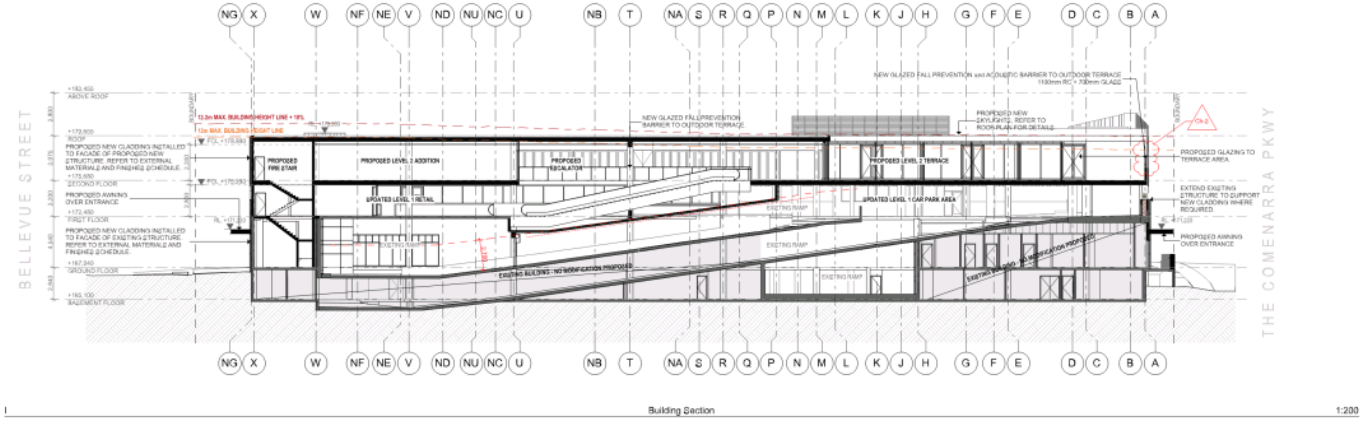
PROJECT: THORNLEIGH MARKETPLACE EXTENSION
2-12 THE COMENARRA PARKWAY THORNLEIGH NSW
DATE: 28/02/2020
FOR: HOLDMARK PROPERTY GROUP
DRAWN BY: JP/SD/EO
DRAWING TITLE: SECTIONS 01
SCALE: 1:200@A1
PROJECT NO.: 1287
DRAWING NO.: DAP200
REV: 04

ATTACHMENT 3 - ITEM 1



H Building Section 1:200



I Building Section 1:200

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P1	10/09/2018	PRELIMINARY DA DOCUMENTATION
P2	27/09/2018	FINAL (SERVICES COORDINATION
P3	25/02/2020	COUNCIL REQUIRED MODS
P4	20/03/2020	COUNCIL REQUIRED MODS

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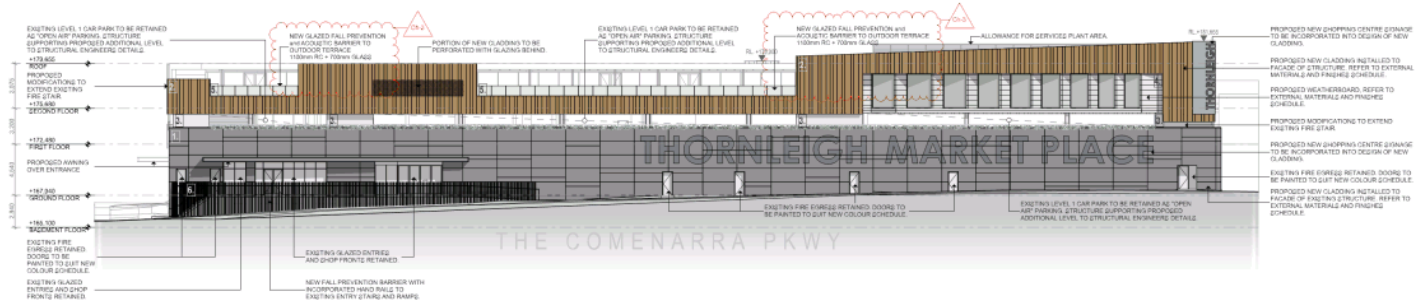
PROJECT: THORNLEIGH MARKETPLACE EXTENSION
2-12 THE COMENARRA PARKWAY THORNLEIGH NSW
DATE: 28/02/2020
FOR: HOLDMARK PROPERTY GROUP
DRAWN BY: JP/SD/EO
DRAWING TITLE: SECTIONS 02
SCALE: 1:200@A1
PROJECT NO.: 1287
DRAWING NO.: DAP201
REV: 04

ATTACHMENT 3 - ITEM 1



E-01 NORTH ELEVATION 1:200

E-02 EAST ELEVATION 1:200

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01	10/09/2019	PRELIMINARY DA DOCUMENTATION
02	07/08/2019	FINAL SERVICES COORDINATION
03	23/02/2020	COUNCIL REQUIRED MODS
04	28/02/2020	COUNCIL REQUIRED MODS

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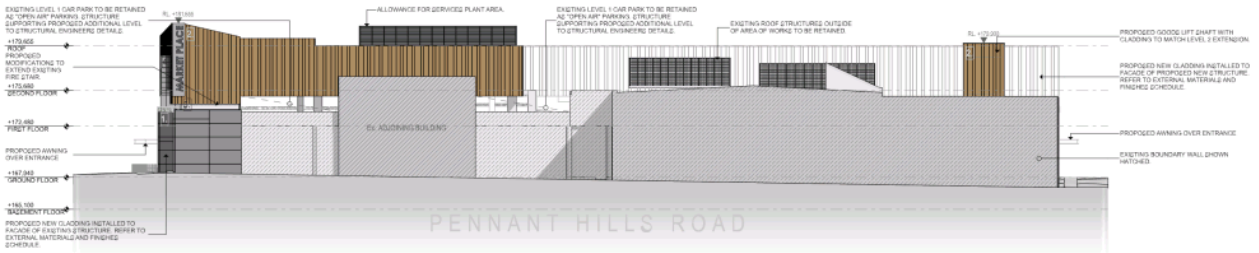
PROJECT: THORNLEIGH MARKETPLACE EXTENSION
2-12 THE COMENARRA PARKWAY THORNLEIGH NSW
DATE: 28/02/2020
FOR: HOLDMARK PROPERTY GROUP
DRAWN BY: JP/SD/EO
DRAWING TITLE: NORTH & EAST ELEVATIONS
SCALE: 1:200@A1
PROJECT NO.: 1287
DRAWING NO.: DAP300
REV: 04

ATTACHMENT 3 - ITEM 1

E-03 SOUTH ELEVATION 1:200



E-04 WEST ELEVATION 1:200

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01	12/09/2019	PRELIMINARY DA DOCUMENTATION
02	27/09/2019	FINAL SERVICES COORDINATION
03	23/01/2020	COUNCIL REQUIRED MODS
04	20/02/2020	COUNCIL REQUIRED MODS

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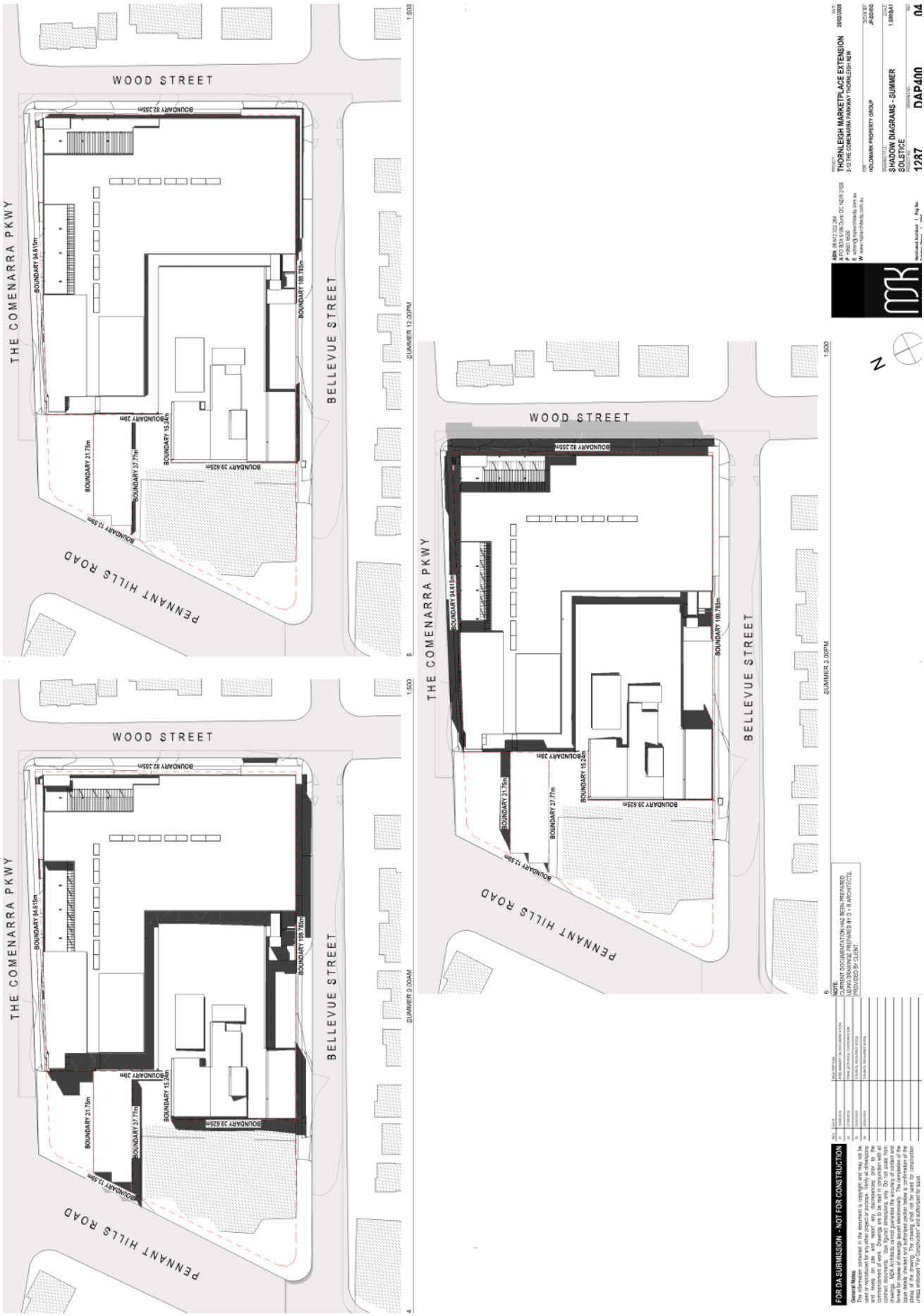
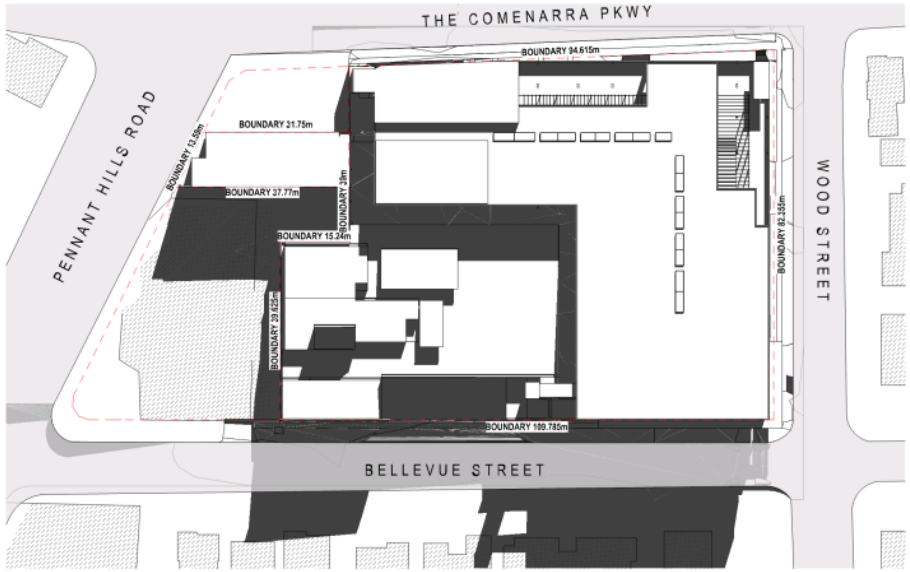
PROJECT: THORNLEIGH MARKETPLACE EXTENSION
2-12 THE COMENARRA PARKWAY THORNLEIGH NSW
DATE: 28/02/2020
FOR: HOLDMARK PROPERTY GROUP
DRAWN BY: JP/SD/EO
DRAWING TITLE: SOUTH & WEST ELEVATIONS
SCALE: 1:200@A1
PROJECT NO.: 1287
DRAWING NO.: DAP301
REV: 04

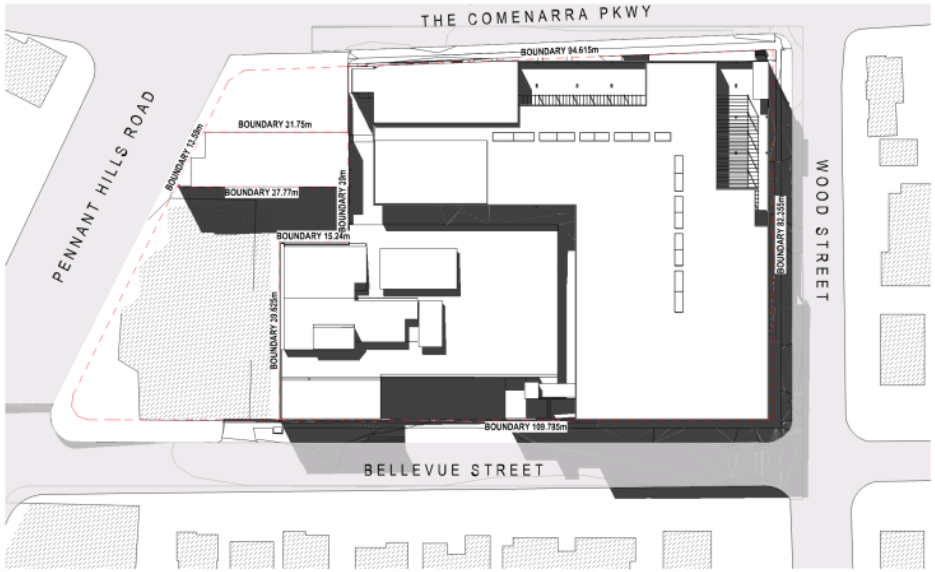
ATTACHMENT 3 - ITEM 1

ATTACHMENT 3 - ITEM 1





7 WINTER 9.00AM 1:500



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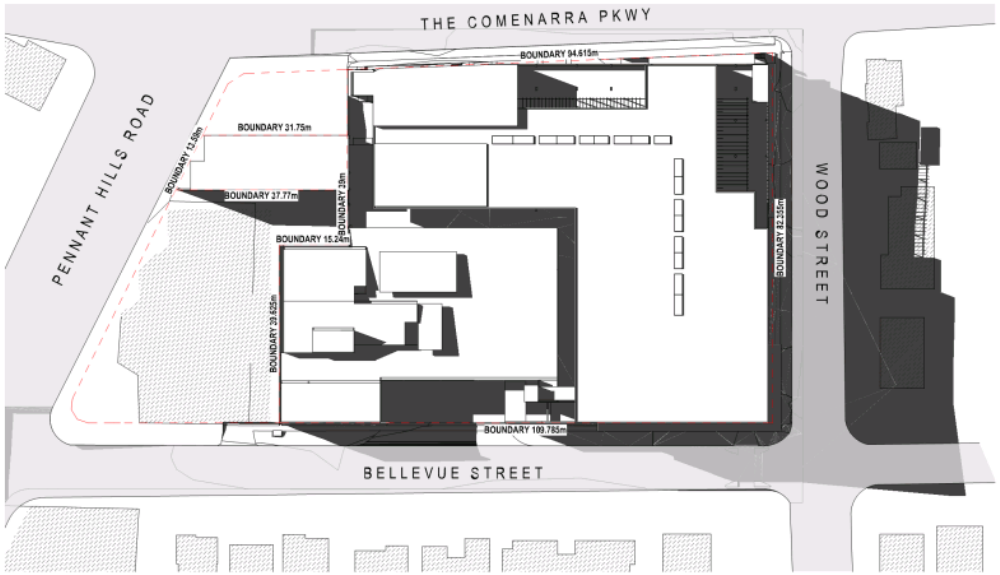

9 WINTER 3.00PM 1:500

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REV.	DATE	DESCRIPTION
P1	10/09/2019	PRELIMINARY DA DOCUMENTATION
R2	27/09/2019	FINAL (SERVICES) COORDINATION
R3	25/02/2020	COUNCIL REQUIRED MODS
R4	03/03/2020	COUNCIL REQUIRED MODS

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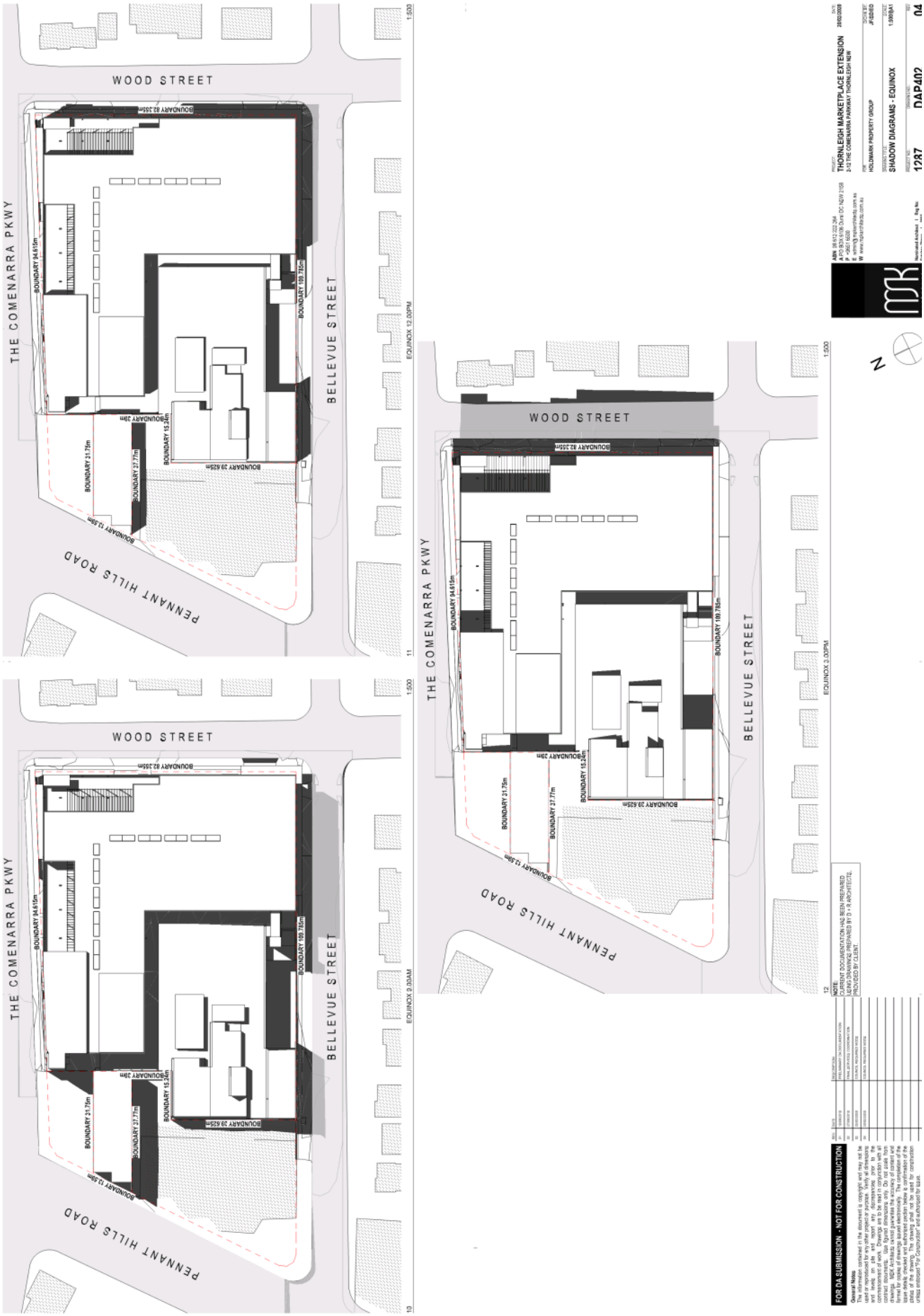
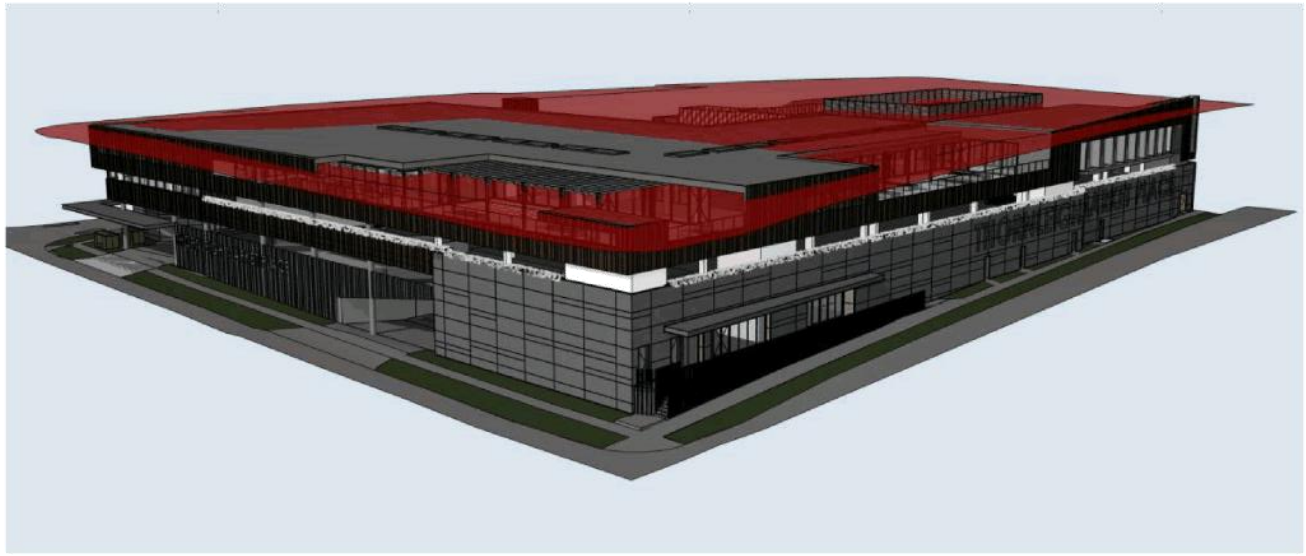
PROJECT: THORNLEIGH MARKETPLACE EXTENSION
2-12 THE COMENARRA PARKWAY THORNLEIGH NSW
DATE: 28/02/2020
FOR: HOLDMARK PROPERTY GROUP
DRAWN BY: JP/SD/EO
DRAWING TITLE: SHADOW DIAGRAMS - WINTER SOLSTICE
SCALE: 1:500@A1
PROJECT NO.: 1287
DRAWING NO.: DAP401
REV: 04

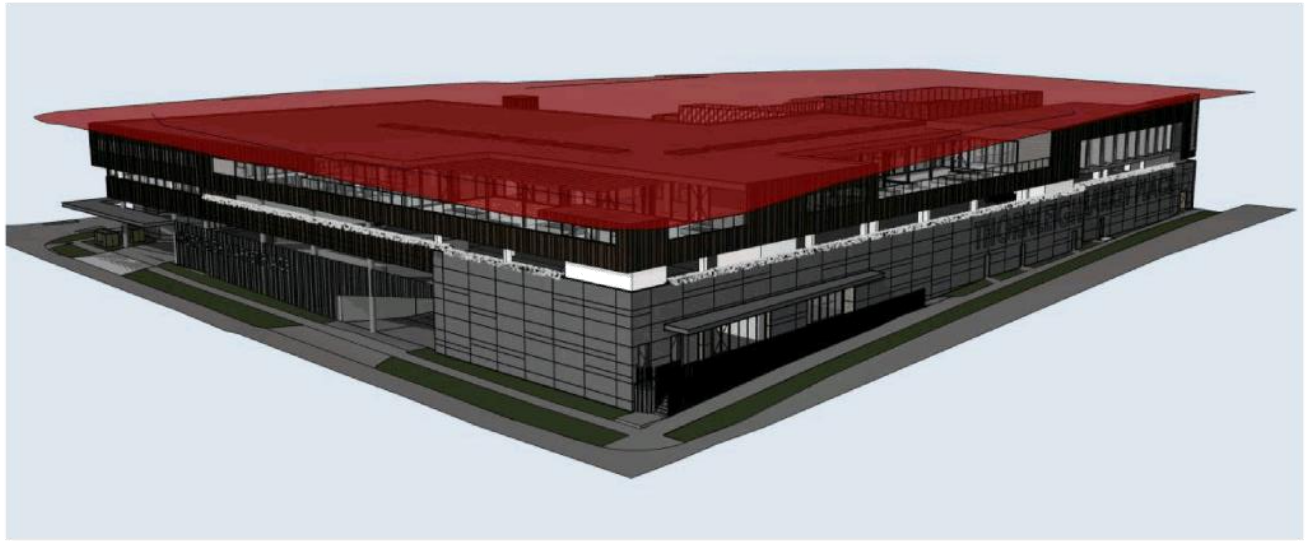
ATTACHMENT 3 - ITEM 1

ATTACHMENT 3 - ITEM 1





12m HEIGHT CONTROL



12m HEIGHT CONTROL + 10% (13.2m)

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03	23/09/2020	COUNCIL REQUIRED MODS
04	28/09/2020	COUNCIL REQUIRED MODS

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Nominated Architect | Reg No:

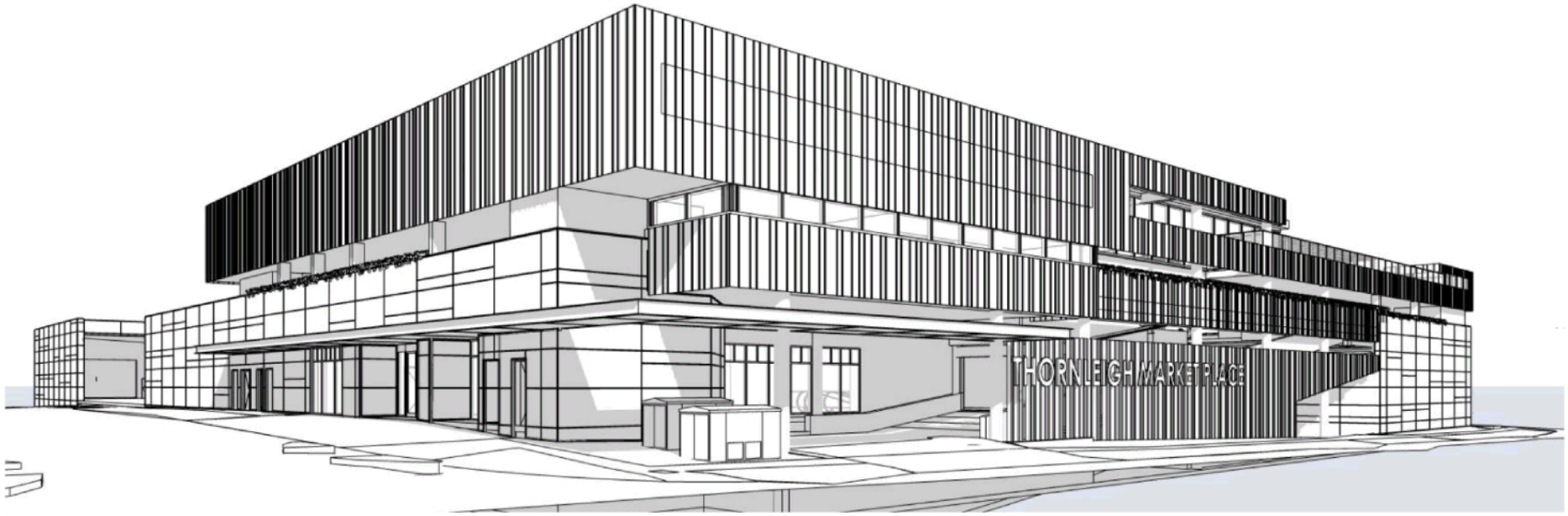
PROJECT: THORNLEIGH MARKETPLACE EXTENSION
2-12 THE COMENARRA PARKWAY THORNLEIGH NSW
DATE: 28/02/2020

FOR: HOLDMARK PROPERTY GROUP
DRAWN BY: JP/SD/EO

DRAWING TITLE: HEIGHT CONTROL DIAGRAM
SCALE: @A1

PROJECT NO.: 1287
DRAWING NO.: DAP500
REV: 04

ATTACHMENT 3 - ITEM 1



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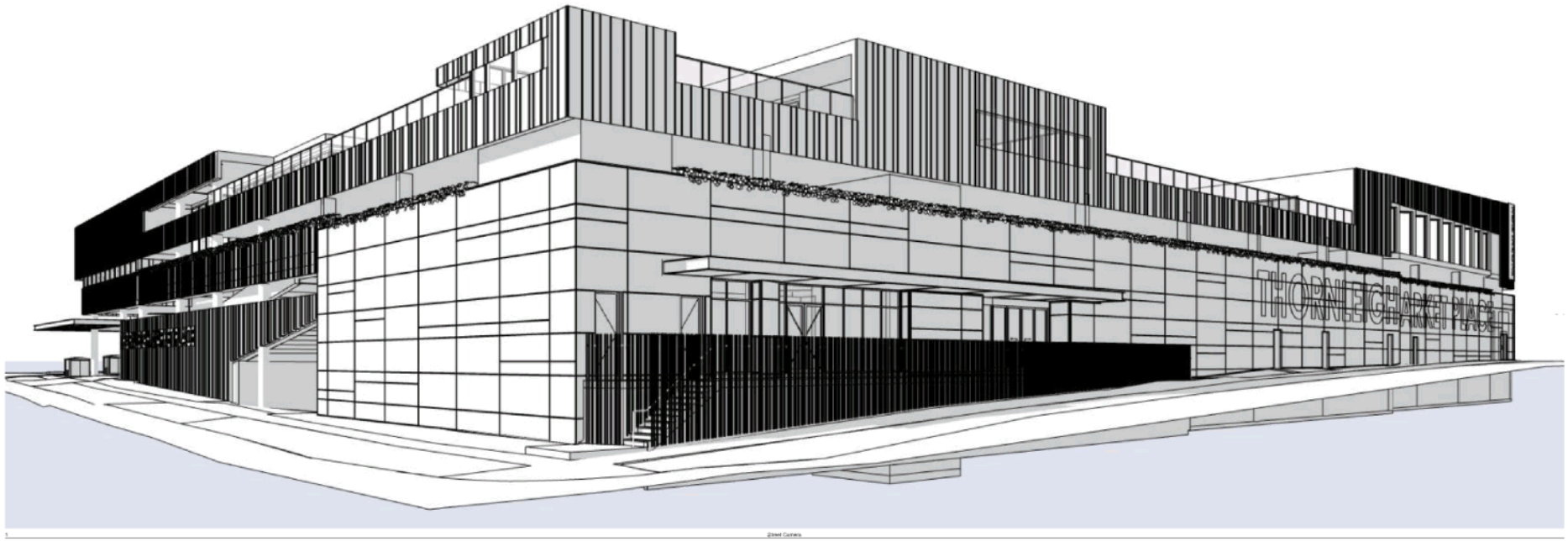
2-12 THE COMENARRA PARKWAY THORNLEIGH NSW
DATE: 28/02/2020

FOR: HOLDMARK PROPERTY GROUP
DRAWN BY: JP/SD/EO

DRAWING TITLE: PERSPECTIVE VIEW 01
SCALE: @A1

PROJECT NO.: 1287
DRAWING NO.: DAP501
REV: 04

ATTACHMENT 3 - ITEM 1



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2-12 THE COMENARRA PARKWAY THORNLEIGH NSW
DATE: 28/02/2020
FOR: HOLDMARK PROPERTY GROUP
DRAWN BY: JP/SD/EO
DRAWING TITLE: PERSPECTIVE VIEW 02
SCALE: @A1
PROJECT NO.: 1287
DRAWING NO.: DAP502
REV: 04

ATTACHMENT 3 - ITEM 1

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PROJECT: THORNLEIGH MARKETPLACE EXTENSION
2-12 THE COMENARRA PARKWAY THORNLEIGH NSW

DATE: 28/02/2020

FOR: HOLDMARK PROPERTY GROUP

DRAWN BY: JP/SD/EO

DRAWING TITLE: PERSPECTIVE VIEW 03

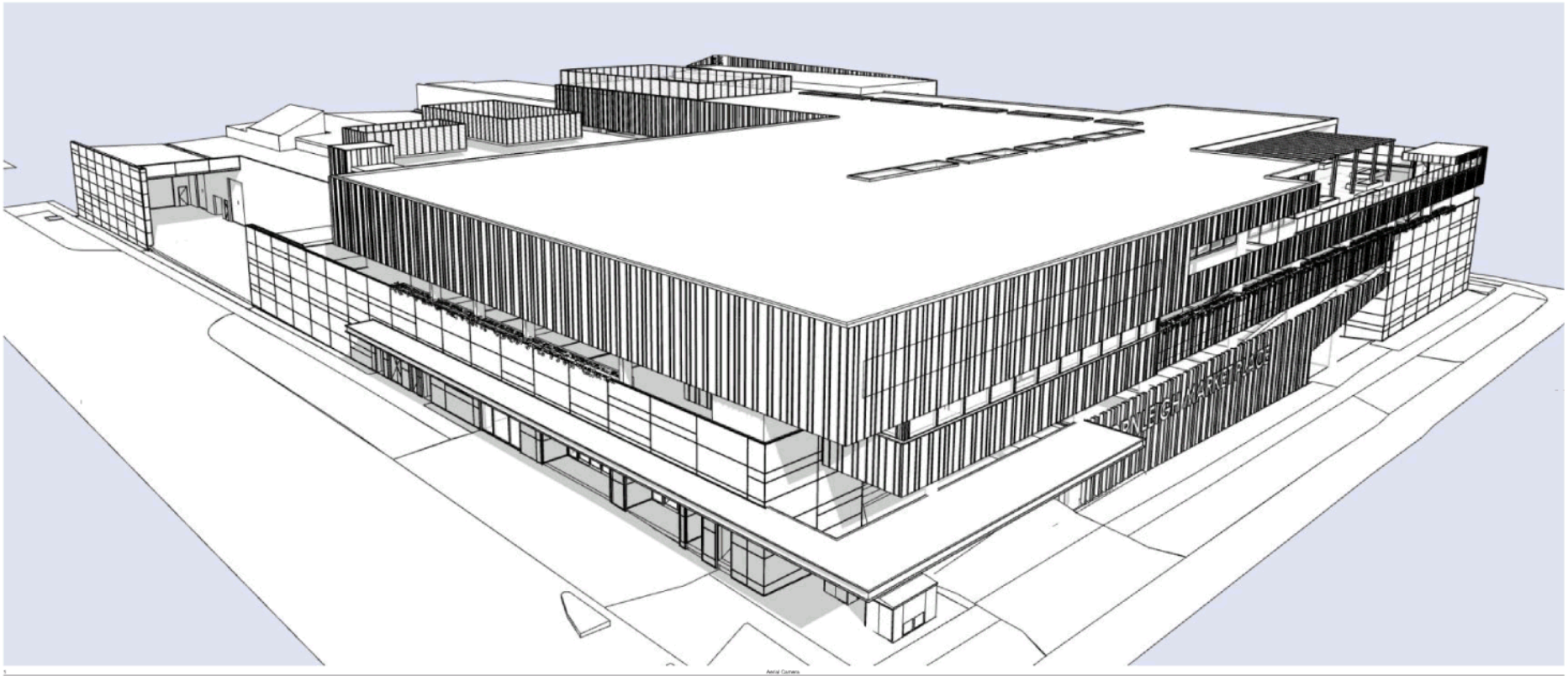
SCALE: @A1

PROJECT NO.: 1287

DRAWING NO.: DAP503

REV: 04

ATTACHMENT 3 - ITEM 1



Aerial Camera

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03	20/02/2019	COUNCIL REQUIRED MODS

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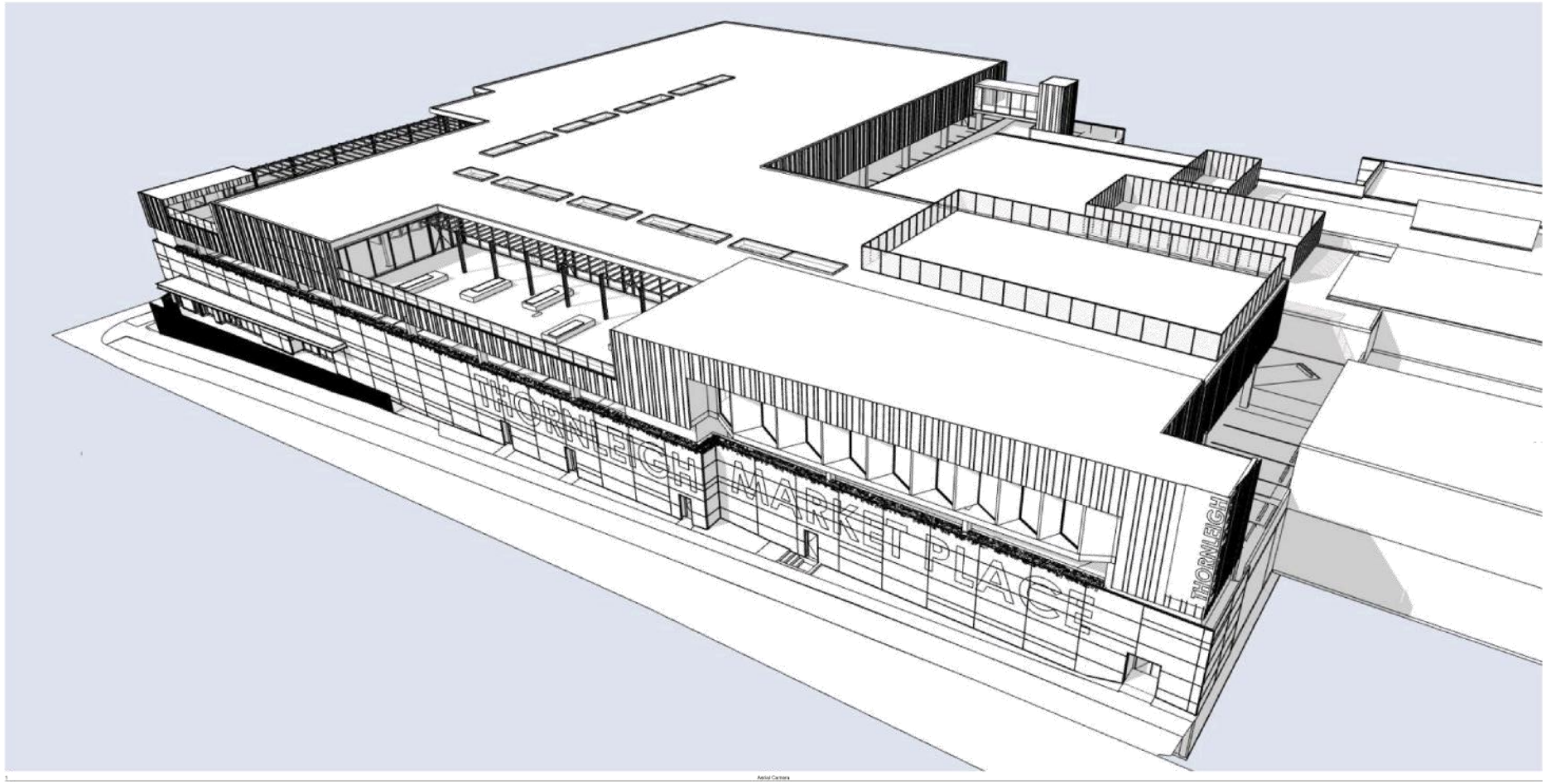
2-12 THE COMENARRA PARKWAY THORNLEIGH NSW
DATE: 28/02/2020
FOR: HOLDMARK PROPERTY GROUP
DRAWN BY: JP/SD/EO
DRAWING TITLE: PERSPECTIVE VIEW 04
SCALE: @A1
PROJECT NO.: 1287
DRAWING NO.: DAP504
REV: 04

ATTACHMENT 3 - ITEM 1



Aerial Camera

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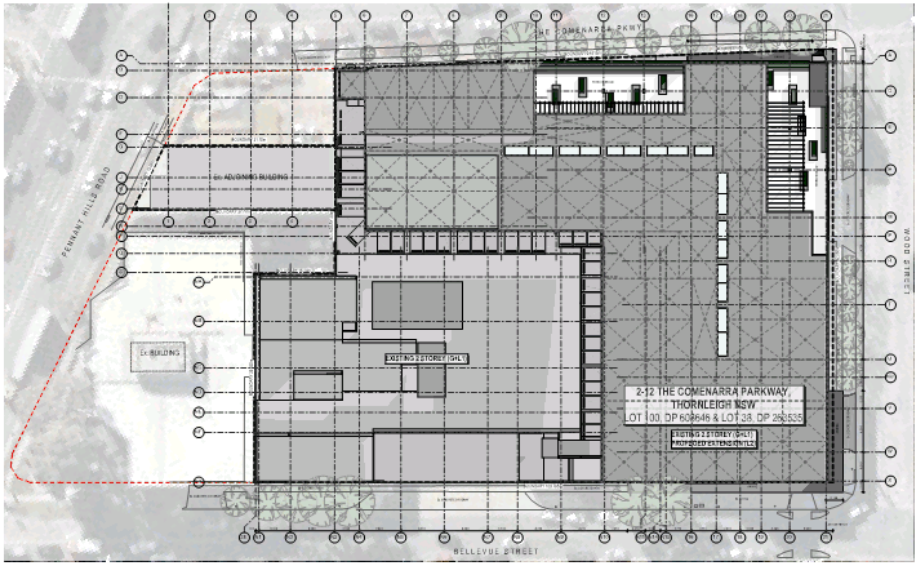
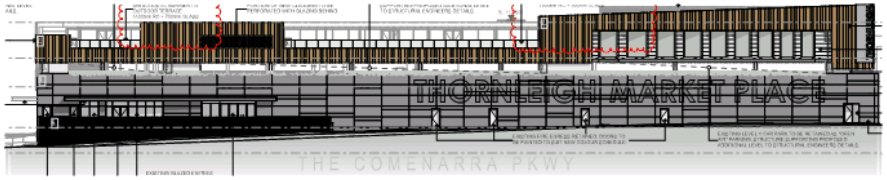
PROJECT: THORNLEIGH MARKETPLACE EXTENSION
2-12 THE COMENARRA PARKWAY THORNLEIGH NSW
DATE: 28/02/2020
FOR: HOLDMARK PROPERTY GROUP
DRAWN BY: JF/SD/EO
DRAWING TITLE: PERSPECTIVE VIEW 05
SCALE: @A1
PROJECT NO: 1287
DRAWING NO: DAP505
REV: 04

ATTACHMENT 3 - ITEM 1



1 SITE PLAN



2 NORTH ELEVATION

3 EAST ELEVATION

4 SOUTH ELEVATION

5 WEST ELEVATION

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General Notes

REV.	DATE	DESC.
00	20/03/2020	ISSUED FOR COUNCIL

N

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D/CHK BY: JF/SD/EO
Nominated Architect Reg No: Esteban Olmos 8565

PROJECT:
THORNLEIGH MARKETPLACE EXTENSION
2-12 THE COMENARRA PARKWAY THORNLEIGH NSW

FOR
HOLDMARK PROPERTY GROUP

DRAWING TITLE:
NOTIFICATION PLAN

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

ATTACHMENT 3 - ITEM 1

Thornleigh Marketplace Extension

Landscape Development Application

2-12 The Comenarra Parkway Thornleigh

Drawing Schedule

Drawing Number	Drawing Title	Scale
000	Landscape Coversheet	N/A
101	Landscape Plan	1:100
501	Landscape Details	N/A

PLANT SCHEDULE

Symbol	Botanic Name	Common Name	Size (m)	Pot size	Spacing	Quantity
TREES						
MTB	*Magnolia 'Teddy Bear'*	Dwarf Magnolia	5 x 3	200L	As Shown	7
SHRUBS & ACCENTS						
PX	*Philodendron Xanadu*	Xanadu	1 x 1	300mm	As Shown	60
ROP	*Raphiolepis indica 'Oriental Pearl'*	Oriental Pearl	1 x 1	300mm	As Shown	101
GRASSES AND GROUNDCOVERS						
LEB	*Lomandra 'Evergreen Baby'*	Evergreen Baby	0.4 x 0.4	150mm	5/m2	152
Tj	Trachelospermum jasminoides	Star Jasmine	.15 x 1	150mm	5/m2	90

NOT FOR CONSTRUCTION

Issue	Revision Description	Drawn	Check	Date
B	For Submission	JM	NM	24.10.2019
A	For Review	JM	NM	30.07.2019

LEGEND

Client
Holdmark Property Group

Project
Thornleigh Marketplace Extension

SITE IMAGE
Level 1, 3-5 Baptist Street
Redfern NSW 2016
Australia
Tel: (61 2) 8332 9600
Fax: (61 2) 9698 2677
www.siteimage.com.au
Site Image (NSW) Pty Ltd
ABN 44 601 352 380
Landscape Architects

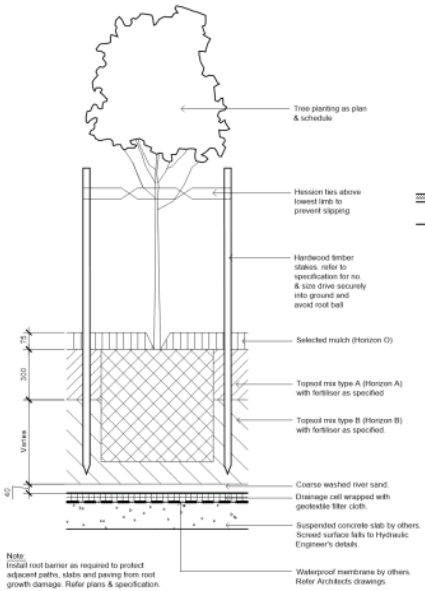
DEVELOPMENT APPLICATION

Drawing Name:
Landscape Coversheet

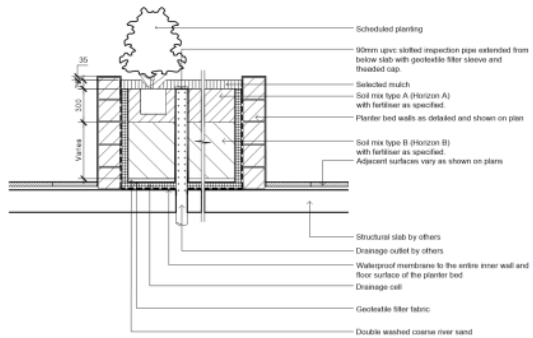
Scale:		
Job Number:	Drawing Number:	Issue:
SS19-4138	000	B

ATTACHMENT 4 - ITEM 1

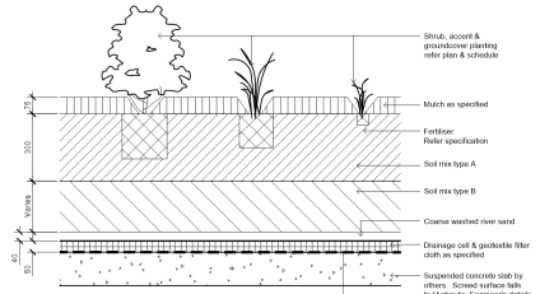

ATTACHMENT 4 - ITEM 1
NOT FOR CONSTRUCTION
LEGEND
Boundary
Pergola Over
Proposed Tree
(Refer Detail & Plant Schedule)
Shrubs & Accents
(Refer Detail & Plant Schedule)
Groundcover/ Grasses
(Refer Detail & Plant Schedule)
Client:
Holdmark Property Group
Project:
Thornleigh Marketplace Extension
DEVELOPMENT APPLICATION
Drawing Name:
Landscape Plan
Scale: 1:100 @ A1
Job Number:
SS19-4138
Drawing Number:
101
B
SITE IMAGE
Landscape Architects
22 x ROP
40 x LEB
21 x ROP
112 x LEB
59 x ROP



00 / 000 Detail 75-200L Tree Planting on Structure
1:10



Section - Typical Raised Planter Bed on Structure
1:20
Inspection riser pipe



Detail Shrub Accent & Groundcover Planting on Structure
1:10

NOT FOR CONSTRUCTION

SPECIFICATION

GENERAL NOTES

References
All plans and details included in the project documents shall be read in conjunction with this specification. All structural and civil works components of the landscape design shall be referenced to engineers' details and specifications. Read this specification in conjunction with the plant and materials schedules on the drawings. If in doubt about any detail or if conflicts are found in the documents, seek advice.

Workmanship and Materials
The whole of the landscape works shall be carried out by a competent, trained and qualified landscape contractor who is experienced in horticultural practices, landscape construction and planting techniques. The landscape contractor shall hold a current Building Contractors Licence and/or be a financial member of LNA Landscape Association NSW & ACT or equivalent organisations in other states.

EXISTING TREES AND SHRUBS

Trees and Shrubs to be Retained and Protected
Identify and mark trees and shrubs to be retained using a suitable non-injurious, easily visible and removable means of identification. Protect from damage the trees and shrubs to be retained, including those beyond the site area, both above and below the ground. If a tree becomes damaged during the works or it is proposed to perform work on a tree, give written notice immediately and obtain instructions.

Work Near Trees and Shrubs
Keep the area of the drip-line free from construction material and debris. Do not place bulk materials and harmful materials under foliage canopies or near trees. Do not place spoil from excavations against tree trunks. Prevent wind-blown building materials, such as cement, from covering trees and other plants. Do not remove topsoil from, or add topsoil to, the area within the drip-line of trees.

EARTHWORKS

Excavation, Trimming and Filling
Except as otherwise noted in the contract, bulk excavation is excluded from the landscape works. After the completion of bulk excavation by others, trim and fill the excavated ground surfaces to achieve design levels to accommodate finish materials as detailed. Prepare the sub-grade surface as required for the various finished ground treatments.

Sub-soil Drainage
Keep the excavated works drained and free of standing water. Allow to supply and install sub-soil drainage pipes as required for the new works to ensure that all gardens are well drained. Connect the sub-soil drainage pipes to the nearest downstream stormwater pits. Include pipe filter socks and course sharp aggregate backfilling of trenches.

HARDWORKS

Garden Walls, Fences, Steps, TGSI and Edging
Construct garden walls, fences, steps, TGSI and edging as shown on plan, as detailed and of the material scheduled. Provide footings, step nosings, tactile surfaces to comply with Australian Standards and applicable legislation. Refer to engineer's details for structural retaining walls, concrete stairs, concrete strength, reinforcing and joint placement.

SOFTWORKS

Site Soil Testing
Where site soil is to be retrieved from site and stored on site for reuse, undertake at least two (2) soil tests in locations as advised by the Project Manager or as shown on the plans. Provide results and recommendations regarding soil additives for the benefit of healthy plant growth and to adjust the soil components to achieve an appropriate planting medium for successful plant development.

Subsoil
Excavate and/or fill all garden beds to bring the top of subsoil to at least 300mm below finished design soil levels. Excavate all turf areas to bring the subsoil to at least 100mm below finished design levels. In all areas shape the subsoil to fall to subsoil drains where applicable. Do not excavate within the drip line of trees and shrubs to be retained. Cultivate or rip the subsoil to a further depth of 100mm before placing top soil. Remove stones of size exceeding 25mm, clods of earth exceeding 50mm, and weeds, rubbish or other deleterious material brought to the surface during cultivation. Do not disturb services or existing tree roots. If necessary cultivate these areas by hand. During cultivation, thoroughly mix in materials required to be incorporated into the subsoil, as recommended in the soil testing results and to manufacturer's recommendations. Trim the surface to design levels again after cultivation.

Topsoil
Import topsoil for the garden and turf areas, unless the topsoil can be provided from material recovered from the site, as recommended in the soil testing results. Spread the topsoil on the prepared subsoil and grade evenly, compact lightly and uniformly in 150mm layers. Avoid differential subsidence and excess compaction and produce a finished topsoil surface which has the following characteristics:
- Finished to design levels, allowing for mulch or turf, which is to finish flush with adjoining hard surfaces such as paths and edges;
- Smooth and free from inorganic matter, stones or clods of soil;
- Graded to drain freely, without ponding, to catchment and/or sub-soil drains;
- Graded evenly to adjoining surfaces; and
- Ready for planting.

Compost
Provide, in accordance with AS 4454, well rotted vegetative material or animal manure, free from harmful chemicals, inorganic matter, grass, weeds and the reproductive parts of unwanted plants.

Fertiliser
Provide proprietary fertilisers, delivered to the site in sealed containers marked to show manufacturer or vendor, weight, fertiliser type, N:P:K ratio, recommended uses, application rates and safety procedures. Apply appropriate fertiliser suited to the provenance of plants (indigenous or exotic) included in the design.

Plants
Supply plants in accordance with the landscape design drawings and schedules, which have the following characteristics:
- Large healthy root systems, with no evidence of root curl, restriction or damage;
- Vigorous, well established, free from disease and pests, of good form consistent with the species/variety;
- Hardened off, not soft or forced, and suitable for planting in the natural climatic conditions prevailing at the site in full sun, partial shade or full shade conditions;
- Grown in final containers for not less than twelve weeks;
- Trees, unless required to be multi-stemmed, shall have a single leading shoot; and
- Containers shall be free from weeds and of appropriate size in relation to the specified plant size.

Plant Installation
Following excavation of the planting hole, place and spread 15gms of wetting agent pre-mixed with one (1) litre of water. Place the plant correctly orientated to north or for best presentation. Backfill the planting holes with specified topsoil mixture. Lightly tamp and water to eliminate air pockets. Ensure that the backfill soil is not placed over the top of the root ball and that the root ball is not higher than the soil in which it is planted. Apply fertiliser, as specified around the plants in the soil at the time of planting.

Root Barrier
Supply and install root control barriers to all new tree plantings adjacent to walls, paths, kerbs and all service trenches, where their proximity poses a threat to the stability of the built infrastructure. Install in accordance with manufacturer's recommendations.

Mulch
Unless noted otherwise, mulch shall be approved proprietary recycled wood fibre or pine bark material. Place mulch in all garden beds to a depth of 75mm after all specified plants are installed. Keep mulch clear of all plant stems and rake to an even plane, flush with the surrounding surfaces evenly graded between design surface levels. Over fill to allow mulch to settle to the specified depth.

Stakes and Ties
Stakes shall be durable hardwood, straight, free of knots and twists, pointed at one end, in the following quantities and sizes for each of the various plant pot sizes:
- Plants >25 lt: 1 off 38 x 38 x 1200mm;
- Semi-advanced plants >75 lt: 2 off 50x50x 1800mm;
- Advanced plants >100 lt: 3 off 50 x 50 x 2400mm.

IRRIGATION

Scope: Unless otherwise noted or instructed irrigate all planted areas shown on plans including planters, tubs, gardens, turf and the like.
The irrigation system shall be an automatic permanent system, with an irrigation controller self operated via a soil moisture sensor. The system shall be calibrated to deliver the optimum rate and volume of water appropriate to the type of plants in the design. The system shall be adjustable and fully serviceable. The layout of the entire irrigation system shall focus on delivering the required amount of water to maintain healthy and vigorous growth. The irrigation system shall be such that, component theft, vandalism, over-spray and wetting of paths shall be reduced to a minimum or completely eliminated by the use of drip, pop-up sprinklers and judiciously placed fixed spray emitters. Generally do not use fine mist emitters that provide a drifting mist that may wet paths and the buildings unless specifically required by the design.

LANDSCAPE MAINTENANCE

The Landscape Contractor shall rectify defects during installation and that become apparent in the works under normal use for the duration of the contract Defects Liability Period. Unless contracted otherwise, the Landscape Contractor shall maintain the contract areas by the implementation of industry accepted horticultural practices for 52 weeks from Practical Completion of the works. The landscape maintenance works shall include, but not be limited to:
- Replacing failed plants;
- Pruning;
- Insect and pest control;
- Fertilising;
- Maintaining and removing stakes and ties;
- Maintaining mulch;
- Mowing and top dressing;
- Irrigation and watering;
- Erosion control; and
- Weeding and rubbish removal.

Maintenance Log Book
Implement and keep a maintenance log book recording when and what maintenance work has been undertaken and what materials, actions and decisions have been used, implemented and concluded to keep the landscape always looking its best. Enter data daily and review information every 2 weeks. Observe trends and develop a maintenance regime around seasonal and observed event occurrences.

Maintenance Activities
During the defects maintenance period schedule the following activities to occur on a timely basis.

- **Plant replacement** - Replace plants that have failed to mature, die or are damaged. Replacement plants shall be in a similar size and quality and identical species or variety to the plant that has failed. Replacement of plants shall be at the cost of the landscape contractor unless advised otherwise. If the cause of the failure is due to a controllable situation then correct the situation prior to replacing plants. Observe and replace failed plants within 2 weeks of observation.
- **Pruning** - Prune dead wood, broken limbs, dead or infected foliage and as needed to develop strong, healthy plants to achieve the shape and form expected of the plant type. Observe daily and prune plants on a needs basis.
- **Insect, disease and pest control** - Avoid spraying:
  - if ever possible;
  - in wet weather or if wet weather is imminent;
  - if target plants are still wet after rain;
  - in windy weather; and
  - if non-target species are too close.

  Immediately report to the Project Manager any evidence of intensive weed infestation, insect attack or disease amongst plant material. Submit all proposals to apply chemicals and obtain approval before starting this work. When approved, spray with herbicide, insecticide, fungicide as appropriate in accordance with the manufacturers' recommendations. Observe daily and act as necessary to control any infestation or disease. Record in the logbook all relevant details of spraying activities including:
  - Product brand / manufacturer's name,
  - Chemical / product name,
  - Chemical contents,
  - Application quantity and rate,
  - Date of application and location,
  - Results of application, and
  - Use approval authority.
- **Fertilising** - Fertilise gardens with a proprietary slow release fertiliser applied in accordance with the manufacturer's directions and recommendations. Apply 6-12 monthly. Record in the logbook all relevant details of fertilising including:
  - Product brand / manufacturer's name,
  - Fertiliser / product name,
  - Application quantity and rate, and
  - Date of application and location.
- **Stakes and ties** - Adjust and replace as required to ensure plants remain correctly staked. Remove those not required at the end of the planting establishment period (Defects Liability Period). Inspect and act at least every 2 weeks.
- **Maintaining mulch** - Maintain the surface in a clean, tidy and weed free condition and reinstate the mulch as necessary to ensure correct depth as specified. Observe weekly and replenish mulch as required.
- **Irrigation and watering** - Maintain the irrigation system to sure that each individual plant receives the required amount of water to maintain healthy and vigorous growth. Adjust and calibrate as required. Provide additional watering, if necessary but inspect irrigation weekly and make repairs as necessary.
- **Erosion control** - Where necessary, maintain the erosion control fabric in a tidy and weed free condition and reinstate as necessary to ensure control measures are effective where deemed necessary. Inspect every 2 weeks and act to repair any damage as soon as possible.
- **Weeding and rubbish removal** - During the plant establishment period remove by hand, rubbish and weed growth that may occur or re-occur throughout all planted, mulched and paved areas. The contractor shall target weeds that are capable of producing a major infestation of unwanted plants by seed distribution. Whenever possible, time weed removal to precede flowering and seed set. Constant observation and removal of weeds is essential.

Issue	Revision Description	Drawn	Check	Date
B	For Submission	JM	NM	24.10.2019
A	For Review	JM	NM	30.07.2019

LEGEND

Client
Holdmark Property Group

Project
Thornleigh Marketplace Extension

SITE IMAGE
Level 1, 3-5 Baptist Street
Redfern NSW 2016
Australia
Tel: (61 2) 8332 9600
Fax: (61 2) 9698 2677
www.siteimage.com.au
Site Image (NSW) Pty Ltd
ABN 44 601 352 380
Landscape Architects

DEVELOPMENT APPLICATION

Drawing Name:
Landscape Details

Scale:
Job Number: SS19-4138
Drawing Number: 501
Issue: B

ATTACHMENT 4 - ITEM 1

ITEM 2

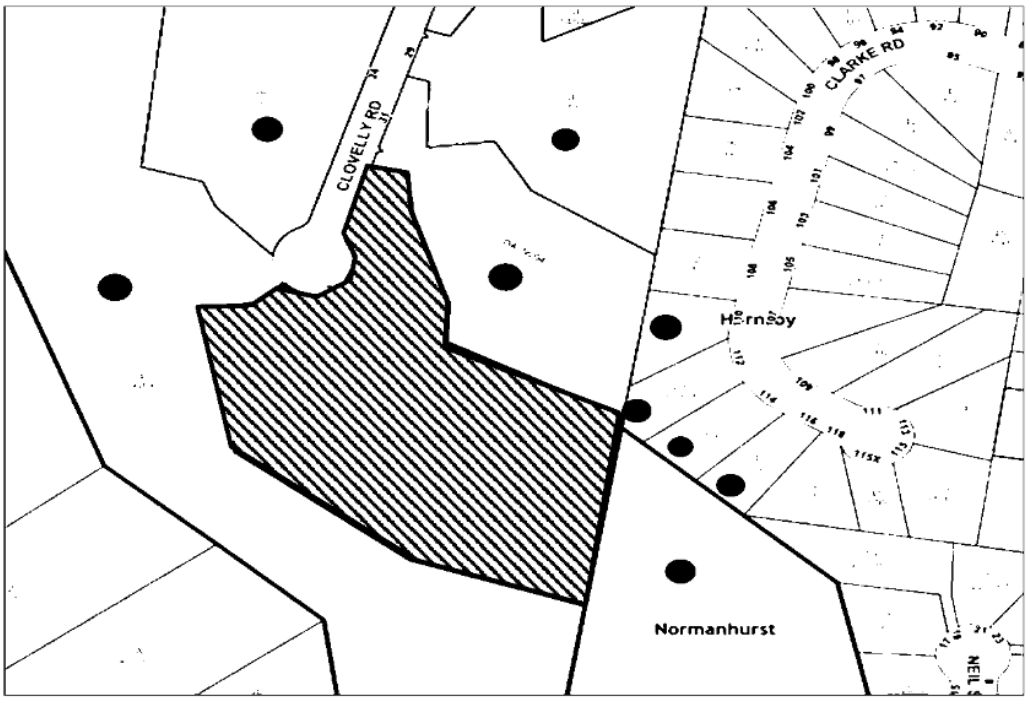
ATTACHMENT/S

REPORT NO. LPP17/20

ITEM 2

1. LOCALITY MAP
2. CLAUSE 4.6 VARIATION
3. SUBDIVISION PLAN

ATTACHMENT 1 - ITEM 2



LOCALITY PLAN

DA/730/2019

33 Clovelly Road Hornsby

ATTACHMENT 2 - ITEM 2

STATEMENT OF ENVIRONMENTAL EFFECTS

KEY URBAN PLANNING

9TH AUGUST 2019

ISSUE NO	AMENDMENT	DATE
A	INITIAL DRAFT REPORT	7TH AUGUST 2019
B	FINAL FOR ISSUE TO CLIENT	9TH AUGUST 2019

REPORT PREPARED BY:

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

DIRECTOR,
KEY URBAN PLANNING

WAIVER

THIS REPORT HAS BEEN PREPARED IN ACCORDANCE WITH AND FOR THE PURPOSES OUTLINED IN THE SCOPE OF SERVICES AGREED WITH KEY URBAN PLANNING AND THE CLIENT. IT HAS BEEN PREPARED BASED ON THE INFORMATION SUPPLIED BY THE CLIENT, AS WELL AS INVESTIGATION UNDERTAKEN BY KEY URBAN PLANNING AND ANY SUB-CONSULTANTS ENGAGED BY THE CLIENT FOR THE PROJECT.

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KEY URBAN PLANNING

VARIATION UNDER CLAUSE 4.6 OF THE HORNSBY LOCAL ENVIRONMENTAL PLAN 2013 TO DEVELOPMENT STANDARD FOR MINIMUM SITE AREA FOR SUBDIVISION (CLAUSE 4.1AA).

Peter Fryar of Key Urban Planning has prepared this clause 4.6 request (the **"request"**) to assist in gaining development consent for the conversion of property title of an existing '*multi-unit housing*' development from Strata Title to Community Title pursuant to the Community Land Development Act 1989. The proposal involves the re-subdivision of the existing strata title into twelve (12) lots and one (1) community lot under the provisions of the community Land Development act 1989.

- 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 1-12 in Strata Plan 18948, No.33 Clovelly Road, Hornsby (the **"site"**). The site is located on the eastern side of the terminus of Clovelly Road, Hornsby. The site has an area of 1.19 Ha and experiences an average grade of 37% to the south-west of the site. The site is strata subdivided into 12 lots. Access to the lot is via a shared carriageway for the entire site. A natural water course is located to the south of the site, which is heavily obscured by bushland.

The total site area is 1.19ha.

The existing development of the site was granted development consent in the early 1980's. Council records indicate that twelve (12) individual development applications (**"DA"**) were submitted to Council and approved in late 1982 (BA/1271/1981 – BA/1282/1981). The applicable planning law at that time was the Hornsby Planning Scheme Ordinance adopted under the provisions of part xiia of the Local Government Act, 1919. The development of the land for multiple dwellings and strata subdivision was permitted on the site with development consent at the date of the original approval. We note from our review of the Council files that a number of development consents have been granted by Council for the site with reference to a '*multi unit housing development*'.

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"**);
- 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"**);and
- Consulted with relevant Duty Officers of the Council.

INTRODUCTION

Key Urban Planning is providing urban planning services to owners of Strata Plan 18948 in support of the above described development application to be submitted to Hornsby Shire Council.

The purpose of this request is to seek a variation to Clause 4.1AA (Minimum Subdivision Lot Size for Community Title Development) of the Hornsby Local Environmental Plan 2013. It is proposed that the conversion of the site land tenure from Strata Title to Community Title involve essentially maintaining the existing 'status quo' whereby Lots 3,4 and 6 in the plan of proposed subdivision currently do not comply with the minimum lot size standard of 500m^2 and the variations being sought under the DA are a reduction of 2.6m^2 (Lot 3) an increase of 0.1m^2 (Lot 4) and a reduction of 0.4m^2 (Lot 6). Proposed Lots 9 and 11 will have a minor reconfiguration of the lot boundaries and are currently less than the minimum lot development standard prescribed under the LEP.

The request seeks a variation to the minimum lot standard prescribed under the LEP in regard to proposed Lots 3,4,6,9 and 11.

All other lots in the proposed plan of subdivision are in excess of the minimum 500m^2 standard.

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-[81]*), 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 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 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.

DEVELOPMENT STANDARD PROPOSED TO BE VARIED

The Development Standard proposed to be varied by this application is Clause 4.1AA (Minimum subdivision lot size for community title schemes) of the Hornsby LEP 2013.

The map indicates that the minimum lot size for subdivision shall be 500m^2. The purpose of this request is to seek a variation to Clause 4.1AA (Minimum Subdivision Lot Size for Community Title Schemes) of the Hornsby Local Environmental Plan 2013. It is proposed that the conversion of the site land tenure from Strata Title to Community Title involve essentially maintaining the existing 'status quo' whereby Lots 3,4 and 6 in the plan of proposed subdivision currently do not comply with the minimum lot size standard of 500m^2 and the variations being sought under the DA are a reduction of 2.6m^2 (Lot 3) an increase of 0.1m^2 (Lot 4) and a reduction of 0.4m^2 (Lot 6). Proposed Lots 9 and 11 will have a minor reconfiguration of the lot boundaries and are currently less than the minimum lot development standard prescribed under the LEP.

The request seeks a variation to the minimum lot standard prescribed under the LEP in regard to proposed Lots 3,4,6,9 and 11.

All other lots in the proposed plan of subdivision are in excess of the minimum 500m^2 standard.

The site is zoned R2 Low Density Residential under the LEP.

The Dictionary to LEP 2013 defines "Lot size Map" as:

> *"**Lot Size Map** means the Hornsby Local Environmental Plan 2013 Lot Size Map."*

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 minimum site area of 500m^2 identified on the 'Lot size 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."

Accordingly, the proposed subdivision forming part of the DA constitutes a variation to the minimum site area development standard contained within the LEP and requires the proponent to formally seek a variation under the provisions of clause 4.6 of the LEP.

2. EXTENT OF VARIATION SOUGHT

The purpose of this request is to seek a variation to Clause 4.1AA (Minimum Subdivision Lot Size for Community Title Development) of the Hornsby Local Environmental Plan 2013. It is proposed that the conversion of the site land tenure from Strata Title to Community Title involve essentially maintaining the existing 'status quo' whereby Lots 3,4 and 6 in the plan of proposed subdivision currently do not comply with the minimum lot size standard of 500m^2 and the variations being sought under the DA are a reduction of 2.6m^2 (Lot 3) an increase of 0.1m^2 (Lot 4) and a reduction of 0.4m^2 (Lot 6). Proposed Lots 9 and 11 will have a minor reconfiguration of the lot boundaries and are currently less than the minimum lot development standard prescribed under the LEP.

The request seeks a variation to the minimum lot standard prescribed under the LEP in regard to proposed Lots 3,4,6,9 and 11.

All other lots in the proposed plan of subdivision are in excess of the minimum 500m^2 standard.

The proposed lot areas are:

- Proposed Lot 2 - 642.9.9m^2 (Existing 642.9m^2) - *No change.*
- Proposed Lot 3 - 438.6m^2 (Existing 436m^2) - *Reduction 2.6m^2.*

- Proposed Lot 4 – 439.1m^2 (Existing 439m^2) – *Increase 0.1m^2*
- Proposed Lot 5 – 784m^2 (Existing 784m^2) – *No change minor reconfiguration.*
- Proposed Lot 6 – 371.4m^2 (Existing 371m^2) – *Reduction 0.4m^2.*
- Proposed Lot 7 – 1719m^2 (Existing 1719m^2) - *No change minor reconfiguration.*
- Proposed Lot 8 – 1145m^2 (Existing 1145m^2) - *No change minor reconfiguration.*
- Proposed Lot 9 – 484m^2 (Existing 484m^2) - *No change minor reconfiguration.*
- Proposed Lot 10 – 1569m^2 (Existing 1569m^2) - *No change minor reconfiguration.*
- Proposed Lot 11 – 367m^2 (Existing 367m^2) - *No change minor reconfiguration.*
- Proposed Lot 12 – 1154m^2 (Existing 1154m^2) - *No change minor reconfiguration.*
- Proposed Lot 13 – 1289m^2 (Existing 1289m^2) - *No change minor reconfiguration.*
- Proposed Community Lot – 1510m^2 – *Complies.*

3. JUSTIFICATION FOR CONTRAVENTION OF THE DEVELOPMENT STANDARD

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, 2010. Recent 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 minimum subdivision lot size. These include:

- The shape and locality of the site and the opportunities and constraints that arise for its subdivision as a result – specifically the opportunity to provide benefits in the form of community title subdivision that did not exist as an available form of land tenure at the time of the development of the 'multi –unit dwellings' and subsequent strata subdivision;

- 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 subdivision will maintain and enhance these

and the character of the locality;

- The character, operation and appearance of the current development will not be altered by the subdivision. In fact, the subdivision will bring the land tenure in keeping with the current legislative regime and will assist in a more efficient management of the operations of the site by the landowners;

- The minor boundary adjustments proposed will not demonstrably alter the existing lot layout and aim to merely reflect the current 'as built' environment with buildings and structures on the site.

4. 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 objectives underpinning the minimum subdivision lot size for community title schemes development standard are:

> *"(1) The objectives of this clause are as follows:*
>
> *(a) to provide for the subdivision of land under a community title scheme at a density that is appropriate for the site constraints, development potential and infrastructure capacity of the land,*
>
> *(b) to ensure that community title lots are of a sufficient size to accommodate development."*

The proposed subdivision will have no consequence in regard to the existing layout and functioning of the current development of the site. Future development of lots created within the proposed community title subdivision will be the subject of separate development consent enabling the consent authority to regulate the future built form on the site..

The existing site density is maintained. The density that could be achieved by a fully compliant subdivision proposal is far greater than the current/proposed situation.

Objective (b) is satisfied as the change in land tenure will adopt current practices under the Community titles schemes that lend themselves to the current site development. Such arrangements for land tenure were not available at the time of strata subdivision of the development. Furthermore, the current strata title scheme is complicated and not conducive to efficient operational issues for the landowners.

- *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 the development in that the density and character will not be changed. The existing site density is maintained. The density that could be achieved by a fully compliant subdivision proposal is far greater than the current/proposed situation.

Objective (b) is satisfied as the change in land tenure will adopt current practices under the Community titles schemes that lend themselves to the current site development. Such arrangements for land tenure were not available at the time of strata subdivision of the development. Furthermore, the current strata title scheme is complicated and not conducive to efficient operational issues for the landowners

- *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 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;*

To our knowledge, Council has departed on the development standard for similar historic planning circumstances.

- *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 and in the accompanying SEE provides strong evidence that the proposed minimum lot area variation would have clear positive outcomes including the change in land tenure consistent with adopted practices for multi-dwelling housing in NSW. The protection and enhancement of identified values specific to the site will be maintained as there will be no material alteration to the current site development.

The departure on site area is a negligible issue within the context of the greater planning benefit, including opportunities for protection and enhancement of local values and provision of high quality residential development.

In this regard, there are sufficient environmental planning grounds specific to this site to justify the proposed 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 in the SEE indicates that the proposed variation in minimum site area will result in a development that is consistent with the objectives of the R2 zone and the lot area standard clause within the LEP.

6. 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 minimum lot area development standard will raise no matters that could be deemed to have State or Regional Significance. The proposed variation 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.

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.

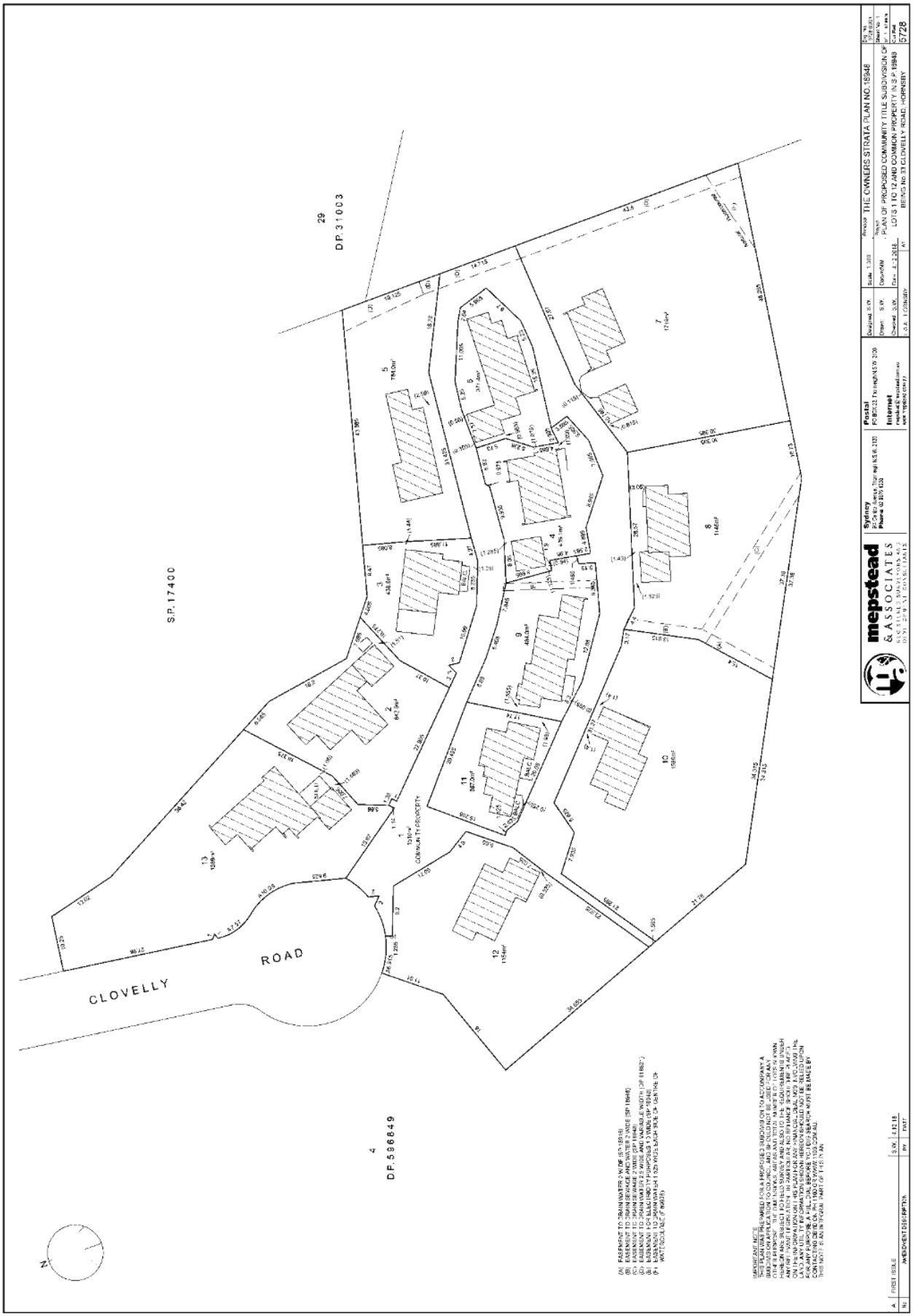
Please do not hesitate contacting the undersigned on **0432 678 268** should you require any further assistance in this matter.

Yours faithfully,

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

Director,
KEY URBAN PLANNING

ATTACHMENT 3 - ITEM 2



ATTACHMENT 3 - ITEM 2