



# **DETERMINATION ATTACHMENTS**

## **LOCAL PLANNING PANEL MEETING**

**Wednesday 31 August 2022  
at 2:30pm**



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**ATTACHMENT/S**

**REPORT NO. LPP42/22**

**ITEM 1**

- 1. LOCALITY PLAN**
- 2. CLAUSE 4.6**
- 3. SUBDIVISION PLAN**



**LOCALITY PLAN**

**DA/568/2022**

**No. 15 Carlisle Crescent Beecroft**

**ATTACHMENT 1 - ITEM 1**



**Clause 4.6 written request  
to vary development  
standard:  
Proposed Boundary  
Adjustment, Strata  
Termination and  
conversion to conventional  
Torrens Title Subdivision.**

**LOTS 1 AND 2 SP 41548  
(WITHIN LOT 118 DP 1213697)  
15 CARLISLE CRESCENT  
BEECROFT.**

Ref: 55795 BOUNDARY ADJUSTMENT

29/06/2022

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**ATTACHMENT 2 - ITEM 1**

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# ATTACHMENT 2 - ITEM 1



## 1. INTRODUCTION

This is a Clause 4.6 written request regarding the proposed 2 Lot strata subdivision conversion to a two lot conventional land Torrens title subdivision at 15 Carlisle Crescent, Beecroft. The written request relates to the minimum subdivision lot size of the proposed development. The site consists of two established freestanding dwellings. The two dwellings form a detached dual occupancy within Strata plan 41548 , approved by Hornsby Shire Council and registered with Land Registry Services 30 years ago.

This request together with attached Statement of Environmental Effects seeks development consent to subdivide the land into two lots and change the title tenure from strata to conventional Torrens Title land Subdivision. The proposal is more fully described in the attached Statement of Environmental Effects and subdivision plan prepared by Barry Hunt Associates dated 29/6/22.

The purpose of this request is to seek a variation to the minimum subdivision lot size prescribed under clause 4.1 of Hornsby Local Environmental Plan (LEP) 2013, being a development standard as defined under section 1.4 of the Environmental Planning and Assessment Act. This written request demonstrates compliance with the development standard is unreasonable or unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to justify contravening the minimum 600 m<sup>2</sup> lot size development standard.

Part 2 of this written request describes the proposed contravention of the development standard and describes the key elements of Clause 4.6 of Hornsby Local Environmental Plan (HELP) 2013.

Part 3 establishes compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Part 4 confirms there are sufficient environmental planning grounds to justify the contravention of the development standard.

Part 5 confirms the proposed development is in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the R2 Low Density Residential zone.

Part 5 also addresses the matters to be considered by the Secretary.

Part 6 provides a conclusion.

## 2. PROPOSED CONTRAVENTION TO DEVELOPMENT STANDARD

Is The 'Minimum Lot Size' For Subdivision a Development Standard?

Section 1.4 of the Environmental Planning and Assessment 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:

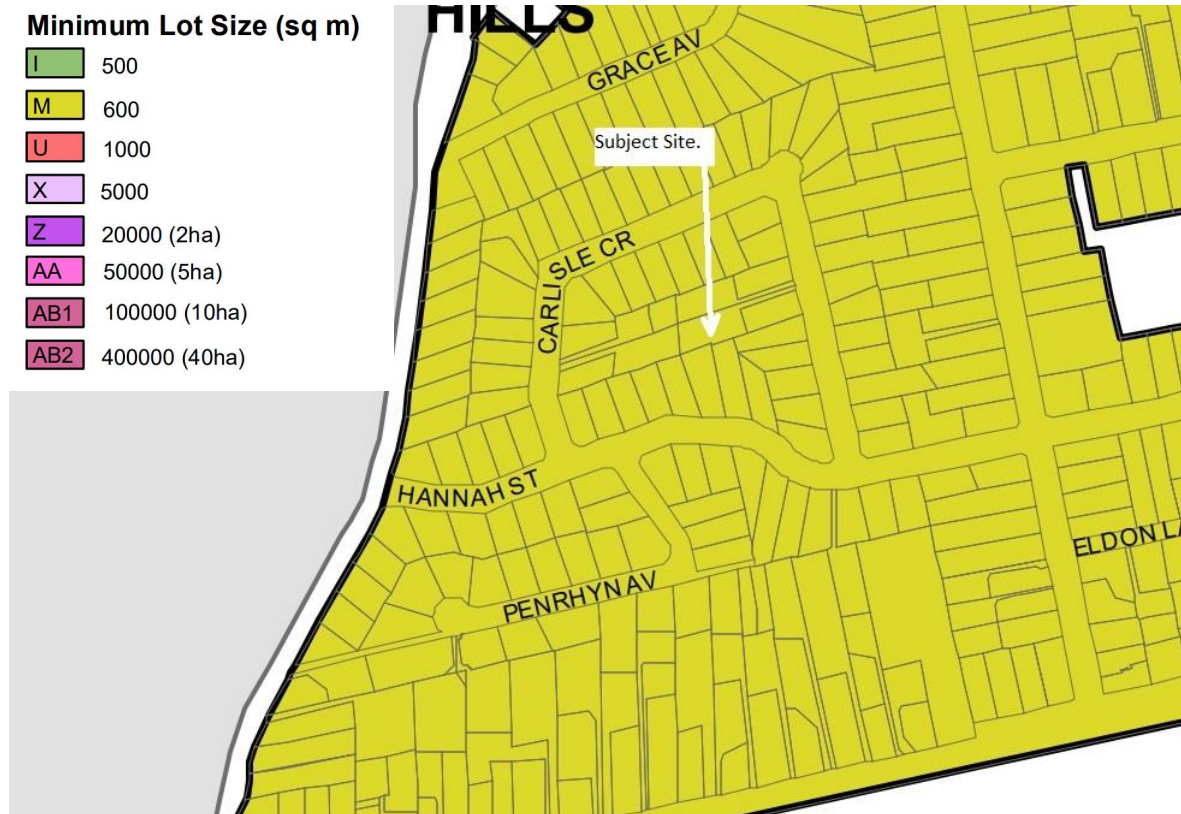
- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- (b) the proportion or percentage of the area of a site which a building or work may occupy,
- (c) the character, location, siting, bulk, 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.”

Hornsby Local Environmental Plan (LEP) 2013, Part 4, Section 4.1, minimum subdivision lot size, clauses 2 and 3 state:

- (2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.

(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

In accordance with the following extract from HLEP, the subject lot is identified on the Lot size map. The Lot size map defining the minimum subdivision lot size for the subject site is 600 m<sup>2</sup>.

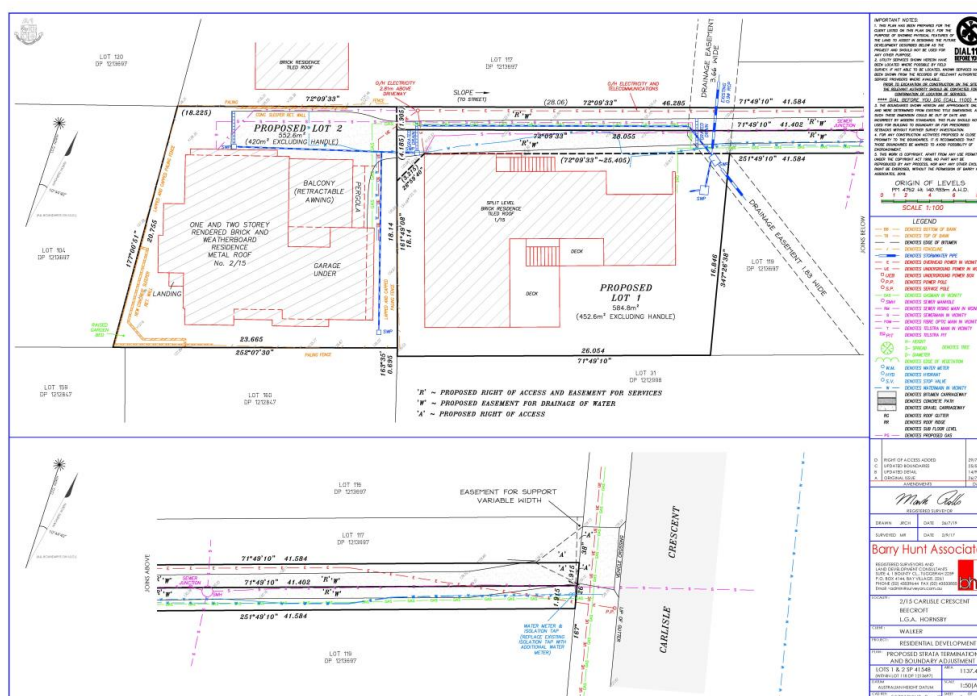


Extract from Hornsby Local Environmental Plan Lot size map indicating subject site.

Map identification number: 4000\_COM\_LSZ\_010\_020\_20140818.

The minimum subdivision lot size of the HLEP 2013 is a development standard as defined under section 1.4 of the Act.

As detailed in the below subdivision plan, Lot 1 is 452.6 m<sup>2</sup> (excluding battleaxe handle) and Lot 2 is 420.0 m<sup>2</sup> (excluding battleaxe handle). The degree of variation to the 600 m<sup>2</sup> minimum lot size development standard is 25% and 30% for lots 1 and 2 respectively.



Plan showing proposed subdivision layout.

**3. COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE.**

Clause 4.6 (Exceptions to Development Standards) of the HLEP provides a mechanism for Council 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.



It would be unreasonable and unnecessary for the development to comply with the development standard due to the following particular circumstances of the present case:

1. The dwellings located on the site are existing and are to be retained as part of this application.
2. No physical works are proposed on the site other than replacement of a water isolation valve with a water metre to effect the change in title tenure and therefore no environmental impact will occur.
3. The proposed dividing boundary between the 2 properties replicates the existing 1992 strata dividing boundary.
4. The proposed subdivision is required to rectify an outdated Strata Plan which no longer reflects approved buildings on the site.
5. The approved detached dual occupancy buildings have provided separately titled dwellings for over 30 years. The proposal continues to reflect the existing site conditions, generating no adverse impacts on adjoining properties.
6. The proposed development will not alter the residential capacity of the site.
7. The proposed conventional land Torrens Title Subdivision removes the management burden of a strata scheme, that serves no benefit for 2 freestanding detached dwellings.
8. Following subdivision, the 2 lots can be can function separately and be managed independently without the need for an Owners Corporation, removing the burden of a strata scheme that provides no positive effects on the property owners.
9. Conversion from strata title to conventional land Torrens Title Subdivision will allow existing and future owners freedom of choice on lots and dwellings with proven suitability for residential purposes.
10. The proposed subdivision pattern matches the existing strata boundaries and is consistent with the adjoining subdivision pattern in the area. The proposed subdivision pattern will not adversely impact other landowners in the area.
11. The change in area from the 600 m<sup>2</sup> development standard does not undermine the underlying objectives of the R2 Low Density Residential zone to provide for the housing needs of the community within a low density residential environment.
12. No physical change is proposed as a result of this application to vary the subdivision tenure from strata to conventional land Torrens Title Subdivision. Conversion of the existing strata subdivision to a conventional land Torrens Title Subdivision maintains the as-built status quo.
13. Subdivision replicates what is already in existence on the ground and simply changes the titling system utilised to define ownership on paper. The shape and size of lots correspond with existing lot layout. Lots are limited by existing dwellings, driveways and services. All site constraints have been considered in defining the proposed boundary locations.

14. No additional dwelling entitlements are created by the boundary adjustment. The opportunity to create a conventional land Torrens Title subdivision, reflecting the current built form, with independent ownership of each lot is considered a desirable outcome.
15. The variation to the minimum lot size standard is considered inconsequential relative to the benefit of correcting a superseded Strata Plan and providing a legal and viable subdivision alternative with independent housing choice.
16. The underlying objectives or purpose of the standard to provide land at a density that is appropriate for site constraints has been demonstrated by the existence of established long-standing dwellings on each of the lots which are of sufficient size to accommodate development.
17. The underlying objectives or purpose would be defeated or thwarted if compliance was required, as strict compliance with the development standard would result in a missed opportunity to create independent living with each registered proprietor responsible for decisions pertaining to their own property. Therefore, compliance is unreasonable.
18. There is no public benefit in maintaining the 600 m<sup>2</sup> minimum lot size development standard as both lots already have an existing approved dwelling and no additional dwelling entitlements will arise from the termination of the existing strata and conversion to conventional land Subdivision. Varying the development standard will not compromise the development form envisaged by the planning controls adopted by Council.
19. The development standard has effectively been annulled by Council as prior approvals have granted consent for construction of buildings and the subdivision thereof, creating lots less than 600 m<sup>2</sup>.

Thus, compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

#### **4. ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD.**

Justification of contravening the development standard specified in Clause 4.6(3)(b) of HLEP on the grounds of sufficient environmental planning considerations, are itemised below:

1. Approval of existing dwellings on each of the lots demonstrates compliance with environmental planning controls such as access for light and air, open space areas, carparking, traffic movement enabling vehicle ingress and egress and a forward direction, provision for landscaping, private and public amenity, streetscape, building form, height and setbacks.

Each of these residential design guidelines have been considered by Council and approved with prior development consents. The conversion of subdivision tenure proposed by this application will not result in any physical construction works or corresponding environmental impact.

2. Subdivision density is not changing. It is only the title tenure system that requires amendment because the existing Strata Plan no longer reflects buildings approved and constructed on the site. No amendment to Development potential, site constraints and infrastructure capacity are required.
3. Long-standing, existing functioning dwellings are evidence that lots are of sufficient size to accommodate development. Adequate site area, solar access, open space, parking, vehicular access and site amenity exist on the site and were addressed with prior approvals for construction of dwellings on the site. No changes are sought as a consequence of this application.
4. Areas of each of the proposed lots correspond to the existing approved lots (see table in attached statement of environmental effects).
5. Contravention of the development standard does not raise any matter of significance for State or regional environmental planning. The existing and proposed development form part of infill development in an established residential precinct, with no potential for impact outside the immediate vicinity of the site. Thus, no matters of significance for State or regional environmental planning exist.
6. Both existing lots are already smaller than the minimum lot size requirements under the R2-low density residential zoning. The dual occupancy use, comprising freestanding single dwellings on each lot and the subsequent strata subdivision was approved prior to the gazettal of the Hornsby Local Environmental Plan (LEP) on 11/10/2013.

Under clause 4.65 (b) of The Environmental Planning and Assessment Act 1979 “the use of the building, work or land... for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use”, affords existing use rights. Thus, converting the existing strata subdivision to a conventional land Torrens Title Subdivision maintains the status quo and utilises existing use rights.

7. Both strata title and conventional land Subdivision are governed by the Torrens Title system where the state guarantees title. Thus, as the land is already subdivided the right to subdivide exists. Albeit a different tenure within the same Torrens Title system.

Furthermore, the proposed works are in line with the objectives of the Environmental Planning and Assessment Act 1979 (EPA). Clause 1.3 of the EPA states:

The objects of this Act are as follows—

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,

- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The proposal satisfies these planning objectives in accordance with the corresponding itemised responses:

- a) The proposal maintains the social and economic welfare of the community and the established landscaped precinct allowing for the proper management, development and conservation of the state's natural resources. The development will continue to present aesthetically and provide economic benefits derived from the removal of an unnecessary and superseded strata it is creating a burden on property owners.
- b) Integration of economic, environmental and social considerations by varying the development standard will facilitate ecologically sustainable development with 30 years of established landscape and built form. Proven ecologically sustainable development principles have been adopted by in the design of the development. No physical works are proposed.
- c) The proposal provides orderly and economic use and development of the land removing a redundant Strata Plan and providing independent ownership of property. The development has proven over a 30 year period to operate sustainability and suitability with 2 dwellings on site. The proposed subdivision replicates the existing strata boundary alignment creating 2 lots with the same effective area as the parent Strata plan (See area summary table in Statement of Environmental Effects).
- d) The smaller land size increases affordability, thus promoting the maintenance of affordable housing.
- e) The proposed development maintains the established built and landscaped environment providing habitats for birds, plants and animals. No physical works are proposed as part of this development. The proposal will not impact on the conservation of threatened species of native animals and plants, ecological communities and their habitats.
- f) No built forms pertaining to cultural or aboriginal heritage exist on the site. Thus, no impact on heritage significant structures or heritage conservation areas results from the development.
- g) The proposed development replicates established built form incorporating good design and established vegetation, maintaining the amenity of the built environment.



- h) The proposal maintains the existing approved built forms. No works are proposed as part of this development; thus, the proposal will not impact on built form.
- i) The development requires Council consent, thus promoting the sharing of responsibility for environmental planning and assessment between different levels of government in the state.
- j) The proposal has been advertised providing opportunity for community participation in the environmental planning and assessment process.

Thus, there are sufficient environmental planning controls satisfied specifically by the development on this site to justify the proposed departure from the development standard.

## **5. CONSISTENCY WITH THE OBJECTIVES OF THE ZONE AND OF THE STANDARD.**

### **5.1 Objectives of the R2 Low Density Residential**

The objectives of the **R2 Low Density Residential zone** are:

- a) To provide for the housing needs of the community within a low density residential environment.
- b) To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The development is consistent with objective a), as the land is zoned and utilised as residential land providing housing needs for the community within a low density residential environment. The site is a managed residential precinct, consisting of 2 free standing, fully serviced, functioning dwellings, landscaped open space and driveway with established and recent vegetation.

As no works are proposed, the development remains consistent with the existing approved density of the site.

The development is consistent with objective b), as existing community facilities including parks, shops, walking trails, transportation infrastructure, schools and restaurants are located within close proximity to the development. Occupants of this development participate in facilitating demand for and use of established facilities and services required to meet the day to day needs of residents.

### **5.2 Objectives of the minimum subdivision lot size Standard**

Clause 4.1 of Hornsby Local Environmental Plan 2013 specifies minimum lot size objectives as:

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

(a) to provide for the subdivision of land at a density that is appropriate for the site constraints, development potential and infrastructure capacity of the land,

(b) to ensure that lots are of a sufficient size to accommodate development.

**Objective a)** is satisfied as the proposed conventional land Torrens Title Subdivision has been designed with appropriate regard to site constraints, existing built form and established service infrastructure. The development incorporates site constraints and the capacity of the land, providing lots at a density appropriate for the site. The existing dwellings reflect the development potential of the site and are proposed to be retained as part of this development. The existing built form will continue to function effectively as separate dwelling houses into the future.

Subdivision density is not changing. It is only the title tenure system that requires amendment. Arising because the existing Strata Plan no longer reflects buildings approved and constructed on the site. No amendment to Development potential, site constraints and infrastructure capacity are requested as part of this application.

The variation to the minimum lot size standard is considered inconsequential relative to the benefit of correcting a superseded Strata Plan and providing a legal and viable subdivision alternative with independent housing choice.

**Objective b)** is satisfied as lots have a proven functional 30 year history of accommodating development. No change in lot area is proposed and the conventional land subdivision boundaries will replicate the primary strata boundaries with reciprocal rights of access and easement for services over the shared driveway.

Adequate site area, solar access, open space, parking, vehicular access and site amenity exist on the site and were addressed with prior approvals for construction of dwellings on the site. The existing functioning dwellings are evidence that lots are of sufficient size to accommodate development. No changes are sought as a consequence of this application.

### 5.3 Further considerations for clause 4.6 exceptions to development standards

#### **Public interest**

There is no public benefit in maintaining the 600 m<sup>2</sup> minimum lot size development standard as both lots already have an existing approved dwelling and no additional dwelling entitlements will arise from the termination of the existing strata and conversion to conventional land Subdivision. As there is no physical change proposed as a consequence of development, there are no adverse impacts created in relation to the public benefit by varying the development standard. Varying the development standard will not compromise the development form envisaged by the planning controls adopted by Council.

#### **Planning secretary concurrence**

Contravention of the development standard does not raise any matter of significance for State or regional environmental planning. The existing and proposed development form

part of a small scale infill development in an established residential precinct, with no potential for impact outside the immediate vicinity of the site. Thus, no matters of significance for State or regional environmental planning exist.

## 6. CONCLUSION.

The proposed boundary adjustment subdivision creates 2 undersized lots from 2 existing undersized lots. Existing and proposed lots are less than the 600 m<sup>2</sup> standard. The proposed boundary adjustment relies upon the provisions of clause 4.6 of the LEP that provides an appropriate degree of flexibility in applying the 600 m<sup>2</sup> minimum lot size development standard to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

No change in area results from the boundary adjustment. There will be no physical impacts arising from the boundary adjustment, strata termination and conversion to Conventional Land Torrens Title Subdivision. The conventional subdivision replicates what is already in existence on the ground and simply changes the titling system utilised to define ownership on paper.

The underlying objectives or purpose of the standard to provide land at a density that is appropriate for site constraints has been demonstrated by the existence of established long-standing dwellings on each of the lots which are of sufficient size to accommodate development.

The merit-based justification in this request provides strong evidence that the proposed lot size variation will have clear positive outcomes correcting a superseded Strata Plan and providing independent living for registered proprietors. The variation to the lot size standard is inconsequential in the scheme of the overall residential viability of the site.

I request exception to 600 m<sup>2</sup> minimum lot size development standard as the development standard is unreasonable or unnecessary in the circumstances of this case and there are sufficient environmental planning controls satisfied specifically by the development on this site to justify the proposed departure from the development standard.

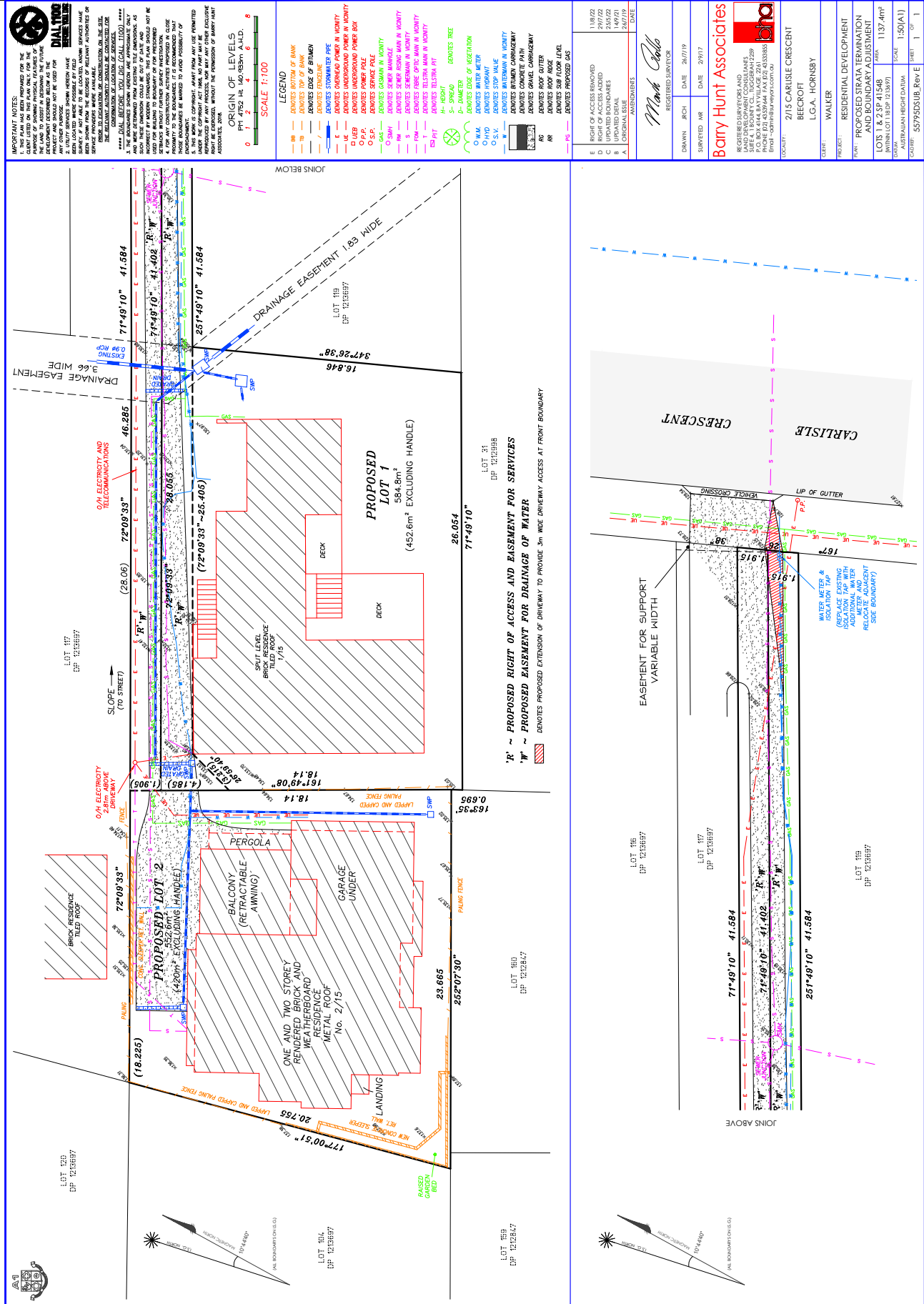
Yours Faithfully

**BARRY HUNT ASSOCIATES**



**M.A. Rolls**

Surveyor Registered under  
The Surveying and Spatial Information Act, 2002.



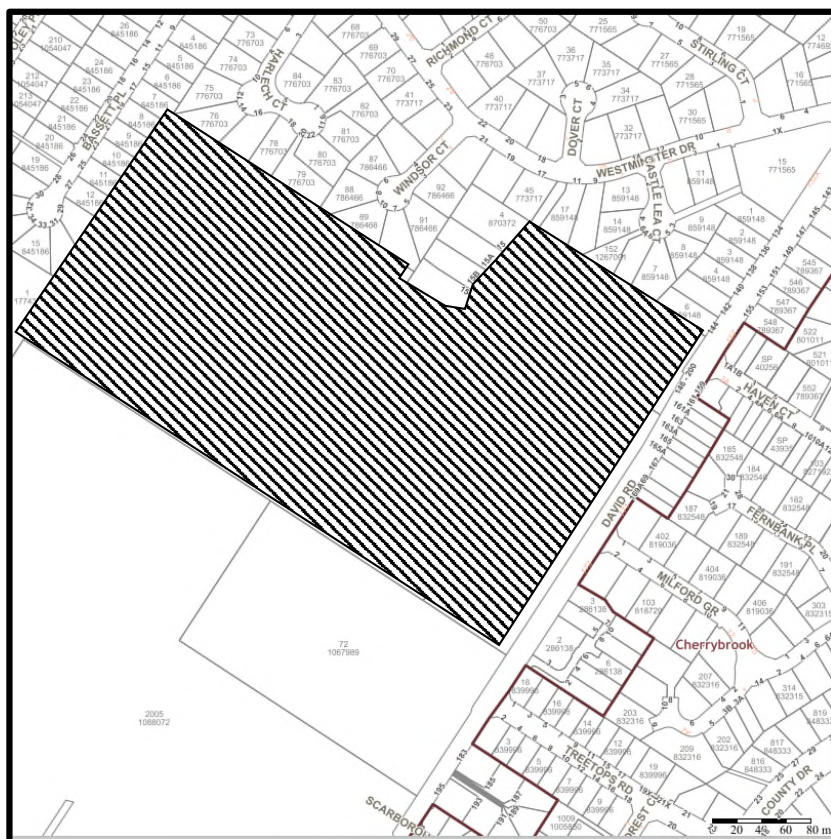


**ATTACHMENT/S**

**REPORT NO. LPP43/22**

**ITEM 2**

- 1. LOCALITY PLAN**
- 2. ARCHITECTURAL PLANS**



**LOCALITY PLAN**

**DA/604/2022**

**No. 146-200 Castle Hill Road Castle Hill**

**ATTACHMENT 1 - ITEM 2**

LOCATION PLAN  
1:5000

DL DA SUBMISSION - Hopetoun			
Subset ID and Name	Drawing ID	Drawing Name	Revision
DAO General Drawings	DA000	Site Plan	03
	DA001	Unit Works - Schedule for DA Works	05
	DA002	Site - Slope analysis	03
	DA003	Site - Accessible paths to accessible units	03
	DA004	Site - Level 1 Floor Plan	03
	DA005	Site - Level 2 Floor Plan	03
	DA006	Site - Level 3 Floor Plan	03
	DA007	AZALEA COURT - Existing Floor Plans	01
	DA008	BERGONIA COURT - Existing Floor Plans	01
	DA009	CAMELLIA COURT - Existing Floor Plans	01
	DA010	FERNTREE COURT - Existing Floor Plans	01
	DA011	ROSE COURT - Existing Floor Plans	01
	DA012	WARATAH COURT - Existing Floor Plans	01
DA10 AZALEA COURT			
	DA100	AZALEA COURT - Floor Plans	03
	DA101	AZALEA COURT - Elevations	03
DA20 BERGONIA COURT			
	DA200	BERGONIA COURT - Floor Plans	03
	DA201	BERGONIA COURT - Elevations	03
DA30 CAMELLIA COURT			
	DA300	CAMELLIA COURT - Floor Plans	03
	DA301	CAMELLIA COURT - Elevations	03
DA40 FERNTREE COURT			
	DA400	FERNTREE COURT - Floor Plans	03
	DA401	FERNTREE COURT - Elevations	03
DA50 ROSE COURT			
	DA500	ROSE COURT - Floor Plans	03
	DA501	ROSE COURT - Elevations	03
DA60 WARATAH COURT			
	DA600	WARATAH COURT - Floor Plans	03
	DA601	WARATAH COURT - Elevations	03
DA70 SITE ELEVATIONS			
	DA700	North & South Elevations	03
	DA701	East & West Elevations	03
DA92 Accessible Unit Plans			
	DA920	Level 1 (Ground Floor) Accessible Units - Floor Plans	03



SITE PLAN  
1:500

 <b>McNally Architects</b> <small>           Suite 101, 61 Crisp Road,            Crows Nest, 1585 NSW, Australia            Tel: 02 9550 4400            Email: info@mcnally.com.au            www.mcnally.com.au         </small>	Project Name <b>Anglicare Hopetoun Village</b>	Date <b>18/22</b>	Drawing No. <b>03</b>
	Project No. <b>2003</b>	Drawing Scale <b>@ A1</b>	Drawing Title <b>DA000</b>
Site Plan			

# ATTACHMENT 2 - ITEM 2

DALIL RENOVATION MATRIX										DALIL RENOVATION MATRIX									
Level	Unit	Unit Conversion	Stage	No. of Beds	Residential Vertical Screen	Repurpose Balcony Tiles	Repurpose Lower Awning	For DA		Level	Unit	Unit Conversion	Stage	No. of Beds	Residential Vertical Screen	Repurpose Balcony Tiles	Repurpose Lower Awning	For DA	
<b>AZALEA COURT</b>																			
Level 1	263	262 & 263	Stage 02	2	YES	YES	N/A	☐		Level 2	202	204	204a & 204b	Stage 03	2	YES	YES	N/A	☐
Level 2	264	265 & 266	Stage 01	2	YES	YES	N/A	☐		Level 3	205	205a & 205b	Stage 03	2	YES	YES	YES	☐	
Level 2	265	265 & 266	Stage 01	2	YES	YES	N/A	☐		Level 3	206	206a & 206b	Stage 03	2	YES	YES	YES	☐	
Level 2	266	267 & 268	Stage 01	2	YES	YES	N/A	☐		Level 3	207	207a & 207b	Stage 03	2	YES	YES	YES	☐	
Level 3	277		Stage 01	2	YES	YES	YES	☐		Level 3	210		Stage 03	2	YES	YES	YES	☐	
Level 3	279	278 & 279	Stage 01	2	YES	YES	YES	☐		Level 3	213	212 & 213	Stage 03	2	YES	YES	YES	☐	
Level 3	282		Stage 01	2	YES	YES	YES	☐		Level 3	214		Stage 03	2	YES	YES	YES	☐	
Level 3	283		Stage 02	1	YES	YES	YES	☐		Level 3	219		Stage 03	2	YES	YES	YES	☐	
Level 3	284		Stage 02	1	YES	YES	YES	☐		Level 3	221		Stage 03	2	YES	YES	YES	☐	
<b>BERGONIA COURT</b>																			
Level 1	227	228 & 227	Stage 04	2	YES	YES	N/A	☐		Level 1	111		Stage 04	2	YES	YES	N/A	☐	
Level 2	230		Stage 02	2	YES	YES	N/A	☐		Level 2	115		Stage 04	2	YES	YES	N/A	☐	
Level 2	232		Stage 02	1	YES	YES	N/A	☐		Level 2	117		Stage 04	2	YES	YES	N/A	☐	
Level 2	233		Stage 02	1	YES	YES	N/A	☐		Level 2	118		Stage 04	2	YES	YES	N/A	☐	
Level 2	234		Stage 02	2	YES	YES	N/A	☐		Level 2	119		Stage 04	2	YES	YES	N/A	☐	
Level 3	243		Stage 02	1	YES	YES	YES	☐		Level 2	127		Stage 04	2	YES	YES	N/A	☐	
Level 3	247		Stage 02	2	YES	YES	YES	☐		Level 3	128		Stage 04	2	YES	YES	YES	☐	
Level 3	248		Stage 02	1	YES	YES	YES	☐		Level 3	130		Stage 04	2	YES	YES	YES	☐	
Level 3	249		Stage 02	1	YES	YES	YES	☐		Level 3	133		Stage 04	1	YES	YES	YES	☐	
Level 3	250		Stage 02	1	YES	YES	YES	☐		Level 3	134		Stage 04	1	YES	YES	YES	☐	
Level 3	254	253 & 254	Stage 02	2	YES	YES	YES	☐		Level 3	138		Stage 04	2	YES	YES	YES	☐	
<b>CAMELIA COURT</b>																			
Level 2	296		Stage 01	1	YES	YES	YES	☐		Level 3	141		Stage 04	2	YES	YES	YES	☐	
Level 2	299		Stage 01	1	YES	YES	YES	☐		<b>WARATAH COURT</b>									
Level 2	300		Stage 01	1	YES	YES	YES	☐		Level 2	151		Stage 03	2	YES	YES	N/A	☐	
Level 2	301		Stage 01	1	YES	YES	YES	☐		Level 2	152		Stage 03	1	YES	YES	N/A	☐	
Level 2	313		Stage 01	1	YES	YES	YES	☐		Level 2	153		Stage 03	1	YES	YES	N/A	☐	
<b>FERNTREE COURT</b>																			
Level 1	179	179a & 179b	Stage 02	2	YES	YES	N/A	☐		Level 2	156	155 & 156	Stage 04	2	YES	YES	N/A	☐	
Level 2	188		Stage 03	2	YES	YES	N/A	☐		Level 2	159	158 & 159	Stage 04	2	YES	YES	N/A	☐	
Level 2	189		Stage 03	1	YES	YES	N/A	☐		Level 3	165		Stage 03	2	YES	YES	YES	☐	
Level 2	190		Stage 03	1	YES	YES	N/A	☐		Level 3	166		Stage 03	1	YES	YES	YES	☐	
Level 2	191		Stage 03	1	YES	YES	N/A	☐		Level 3	168		Stage 03	2	YES	YES	YES	☐	
Level 2	193		Stage 03	1	YES	YES	N/A	☐		Level 3	170	169 & 170	Stage 04	2	YES	YES	YES	☐	
Level 2	194		Stage 03	1	YES	YES	N/A	☐		Level 3	171		Stage 04	1	YES	YES	YES	☐	
Level 2	195		Stage 03	1	YES	YES	N/A	☐		Level 3	172		Stage 04	2	YES	YES	YES	☐	
Level 2	196		Stage 03	1	YES	YES	N/A	☐		<b>71</b>									
Level 2	197		Stage 03	2	YES	YES	N/A	☐											

TOTAL UNITS CALCULATIONS	
1 & 2 BED UNIT ALTERATIONS	55
1 BED UNIT CONVERSIONS	322 = 16
TOTAL 2 BED UNITS	71
UNITS FOR DA	TOTAL 71



Unit Works - Schedule for DA Works

Angicare Hopetoun Village

Angicare

Unit Works - Schedule for DA Works

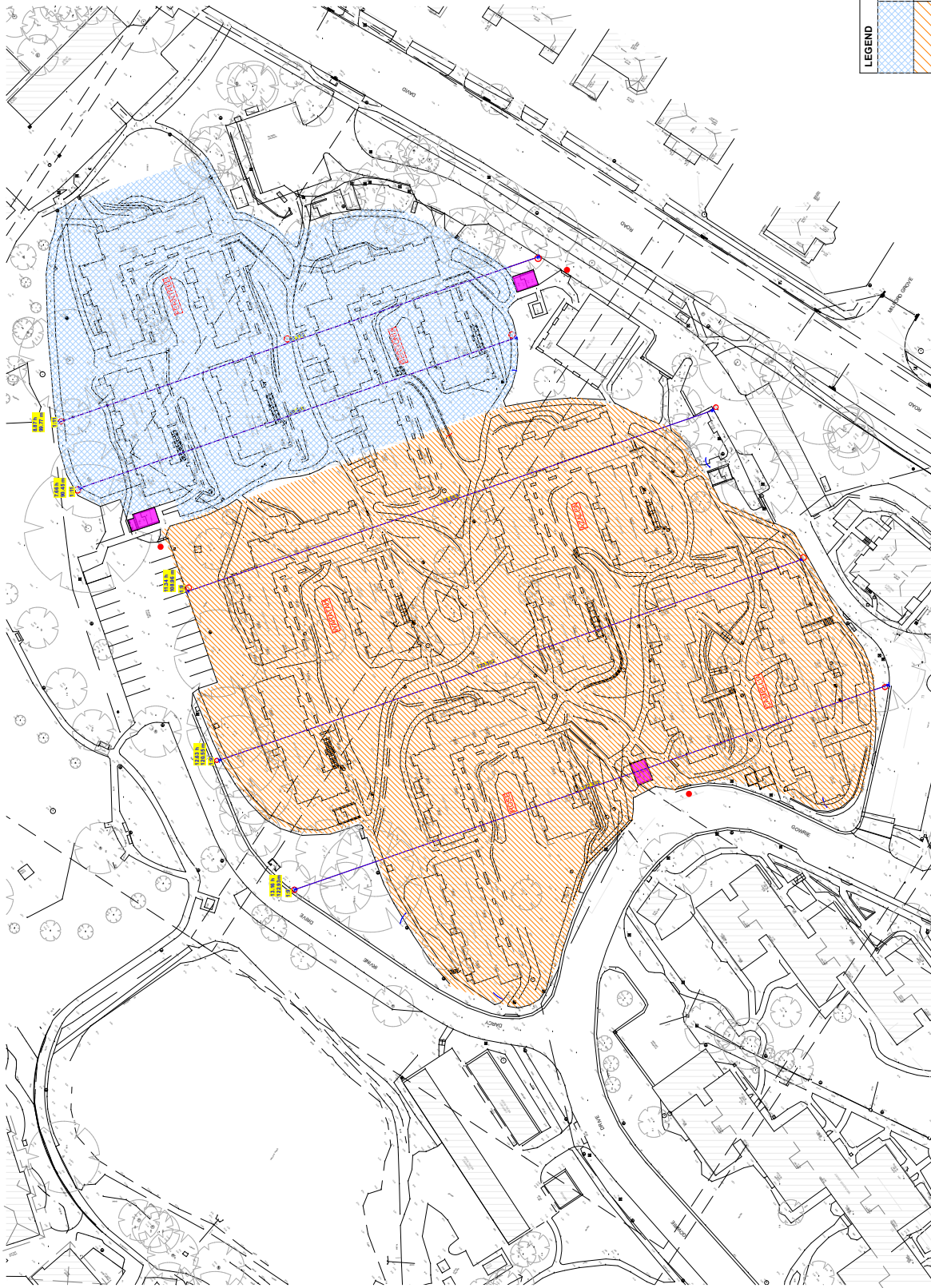
16/22

05

DA001

ATTACHMENT 2 - ITEM 2





LEGEND	
	SITE SLOPE > 1:10
	SITE SLOPE < 1:10

 McNally Architects Suite 101, 61 Crisp Road, Crows Nest, NSW, Australia Tel: 02 9550 1234 Email: info@mcnally.com.au ABN 58 581 541 541	Project Name Anglicare Hopetoun Village	Date 18/22	Drawing No. 03
	Project No. 2003	Drawing Scale @ A1	Drawing Title DA002
Site - Slope analysis			

# ATTACHMENT 2 - ITEM 2



## ATTACHMENT 2 - ITEM 2



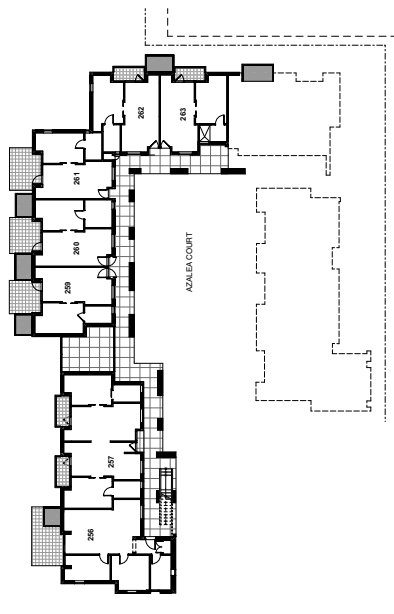
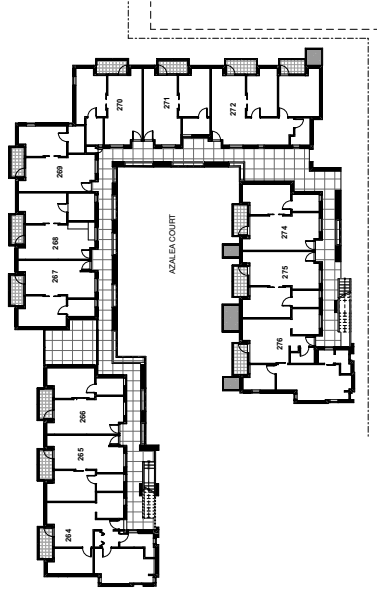
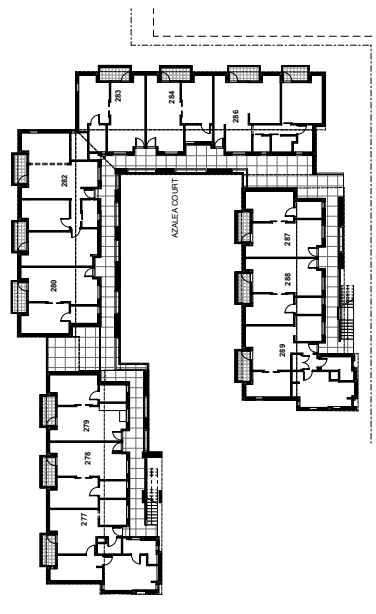
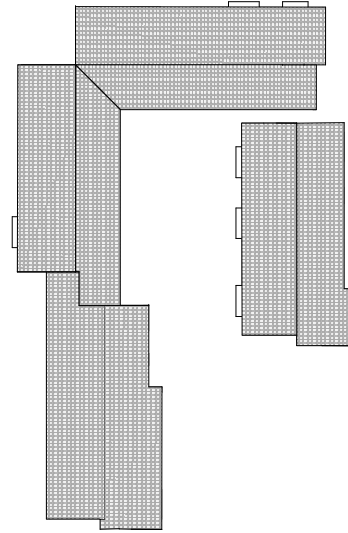





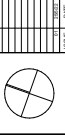




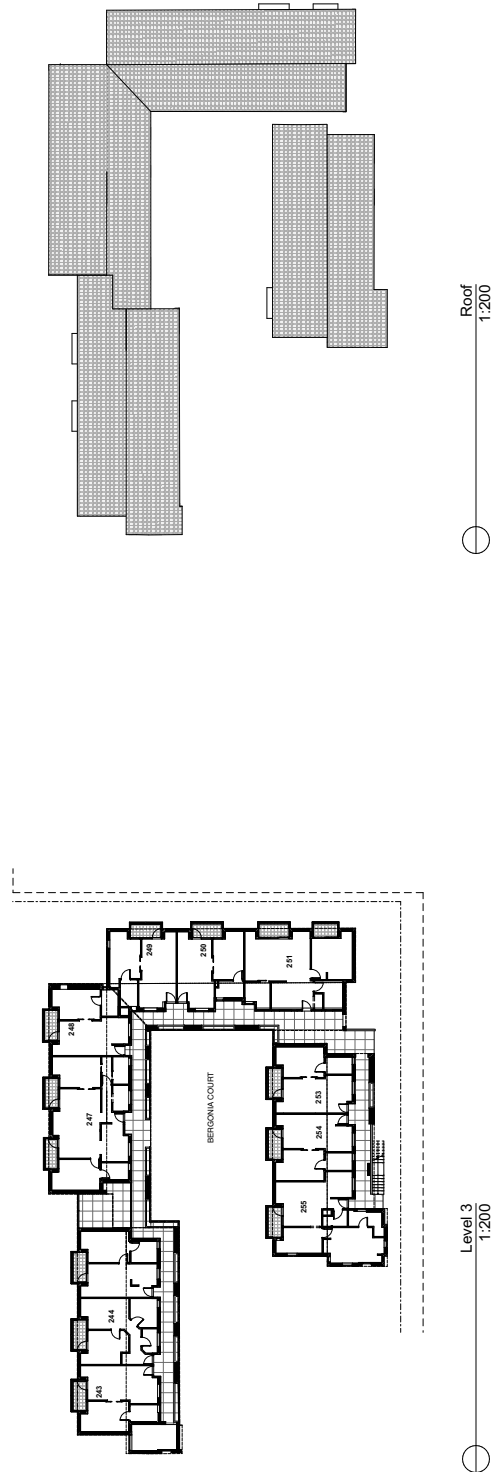
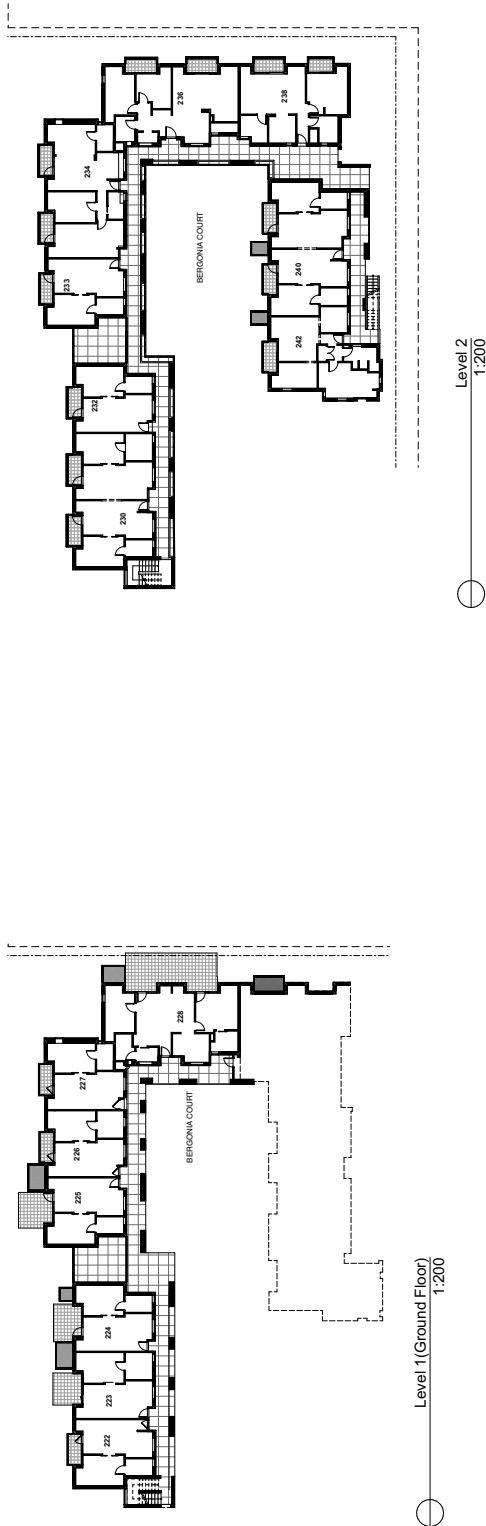


## ATTACHMENT 2 - ITEM 2

Level 1 (Ground Floor)  
1:200Level 2  
1:200Level 3  
1:200Roof  
1:200

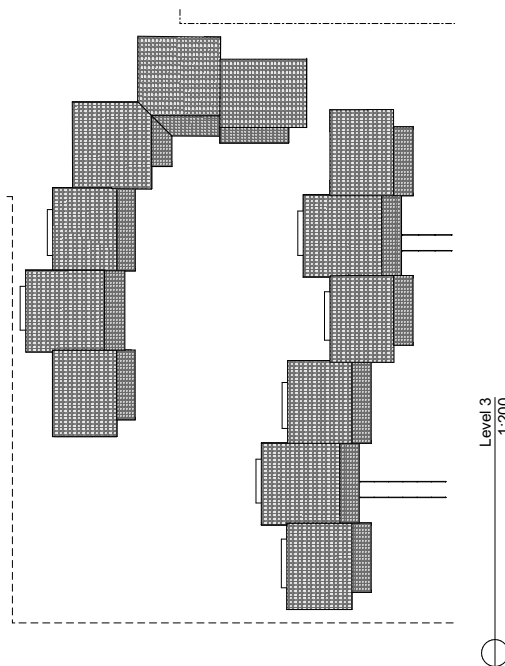
				<p>South 255, 64 Crisp Street, Crows Nest, 1585 NSW, Australia Tel: 02 9550 1234 www.mcnallyarchitects.com.au ANGICARE 200303 ANGICARE 200303</p>	<p>Anglicare Hopetoun Village 200303 Anglicare AZALEA COURT - Existing Floor Plans</p>	<p>18/22 1:200 @ A1</p>	<p>01 DA007</p>
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# ATTACHMENT 2 - ITEM 2



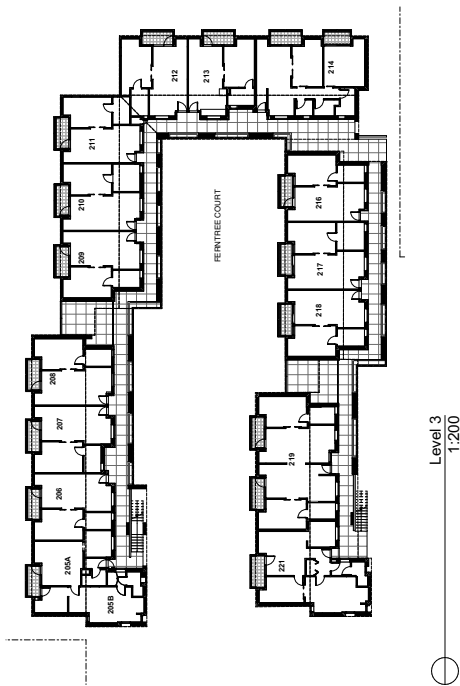
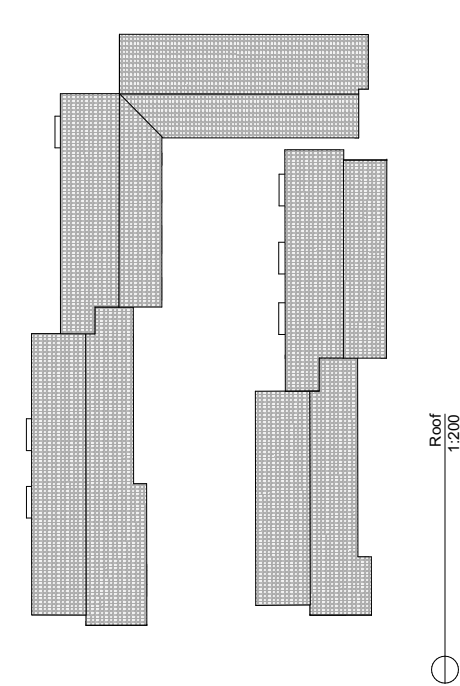
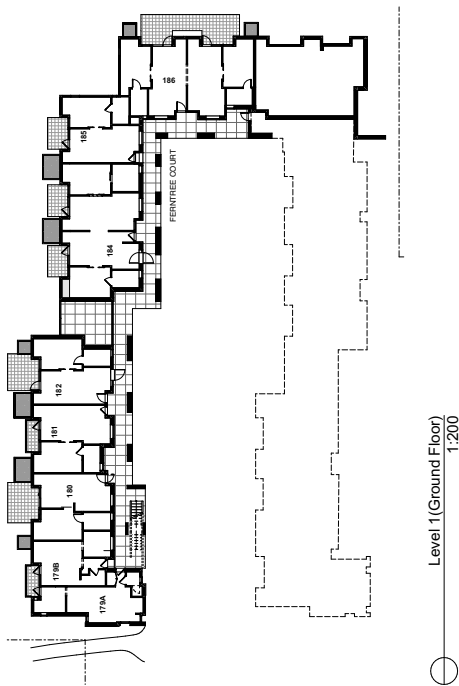
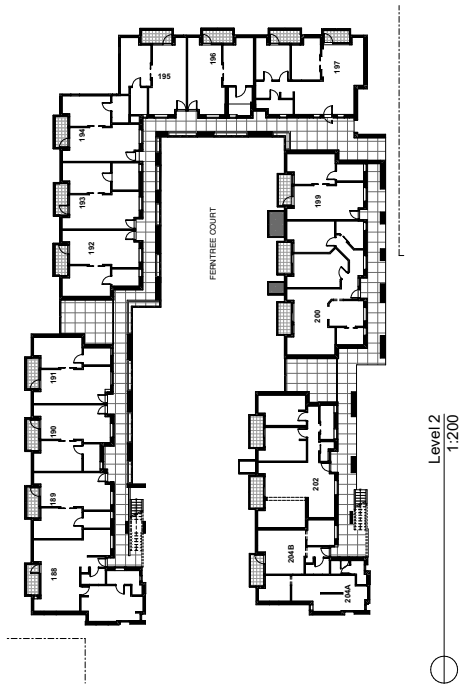
				<p>McNally Architects 10/110 Pacific Highway, North Sydney, NSW 1585 Phone: 02 9339 1234 Email: info@mcnally.com.au</p>	<p>Project Name: Anglicare Hopetoun Village Project Number: 20003 Project Location: BERGONIA COURT - Existing Floor Plans</p>	<p>Date: 18/22 Drawing Scale: 1:200 @ A1 Drawing No: DA008</p>
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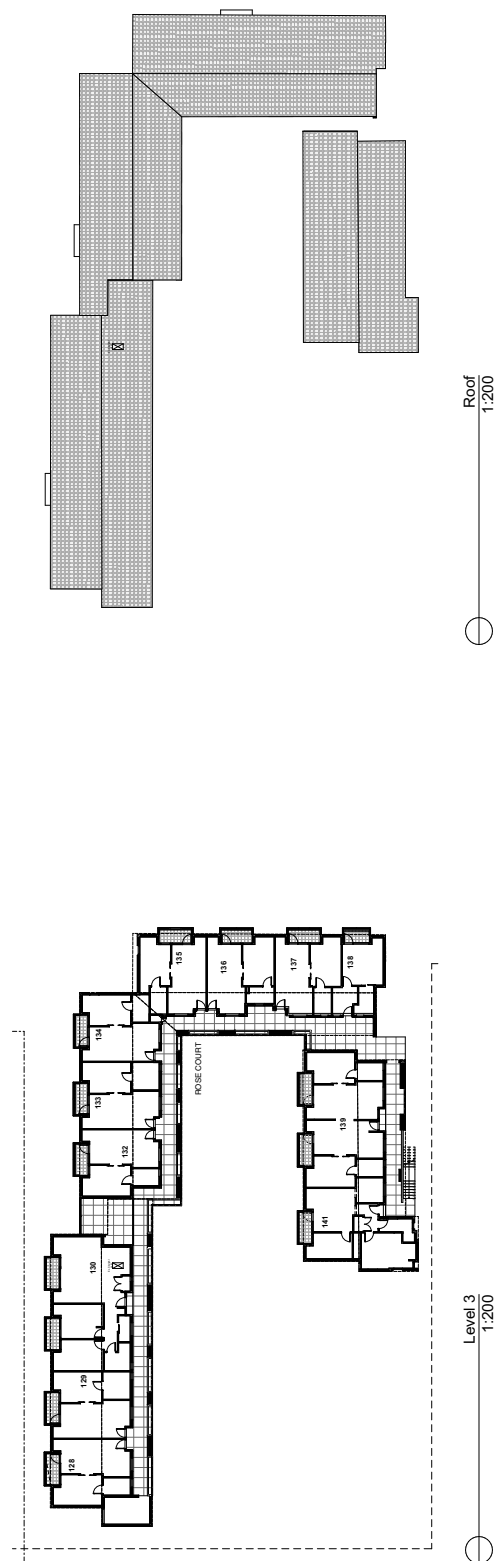
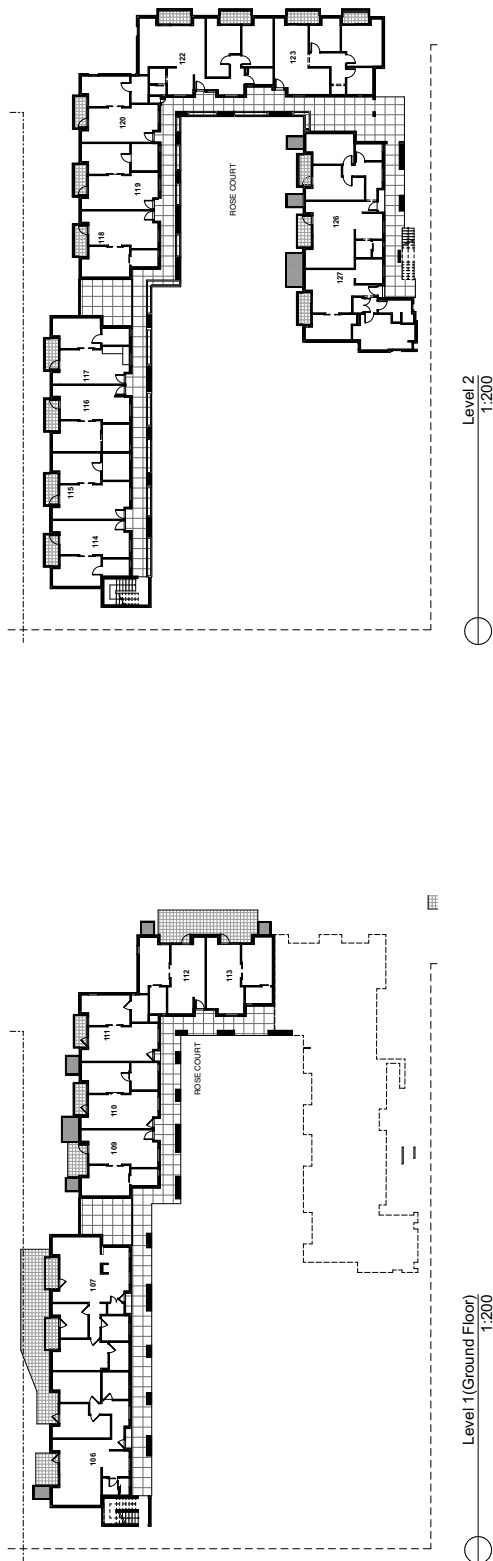
# ATTACHMENT 2 - ITEM 2





 <b>Anglicare</b> 1100 11th Avenue Suite 100 New York, NY 10019 Tel: 212 693 1000 Fax: 212 693 1001 Email: info@anglicare.org	 <b>RJA</b> PROJECTS 1100 11th Avenue Suite 100 New York, NY 10019 Tel: 212 693 1000 Fax: 212 693 1001 Email: info@rja.com		 <b>McNally Architects</b> 1100 11th Avenue Suite 100 New York, NY 10019 Tel: 212 693 1000 Fax: 212 693 1001 Email: info@mcnally.com	Project Name: <b>Anglicare Hopebourn Village</b> Project Number: <b>20003</b> Project Location: <b>Anglicare</b> Project Status: <b>Completed</b>	Project Start Date: <b>1/8/22</b> Project End Date: <b>1/200 @ A1</b> Project Manager: <b>DA009</b>
				Project Description: <b>Anglicare Hopebourn Village</b> Project Details: <b>Anglicare</b> Project Location: <b>Anglicare</b> Project Status: <b>Completed</b>	Project Start Date: <b>1/8/22</b> Project End Date: <b>1/200 @ A1</b> Project Manager: <b>DA009</b>

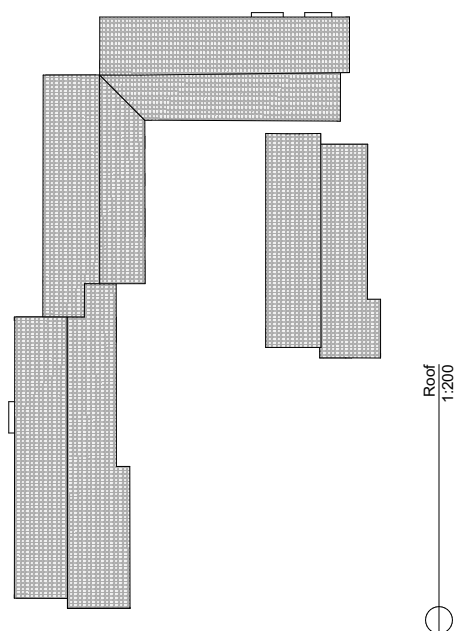
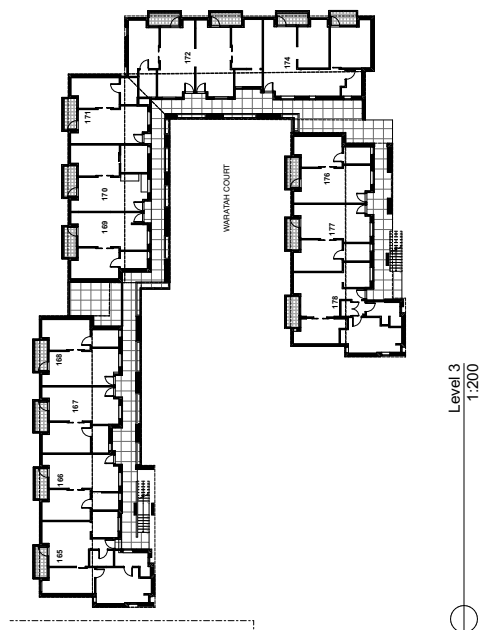
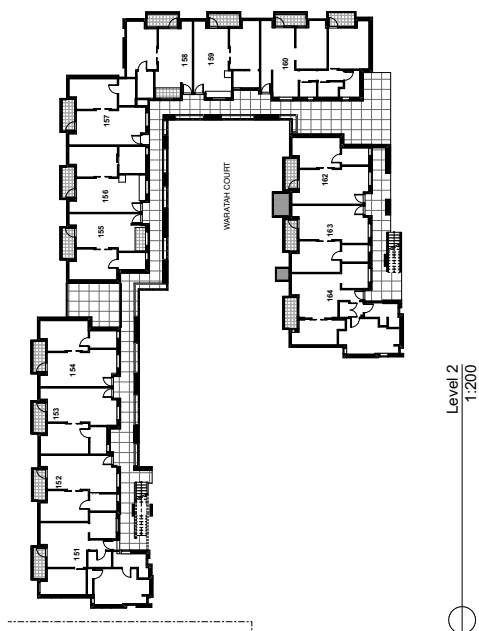
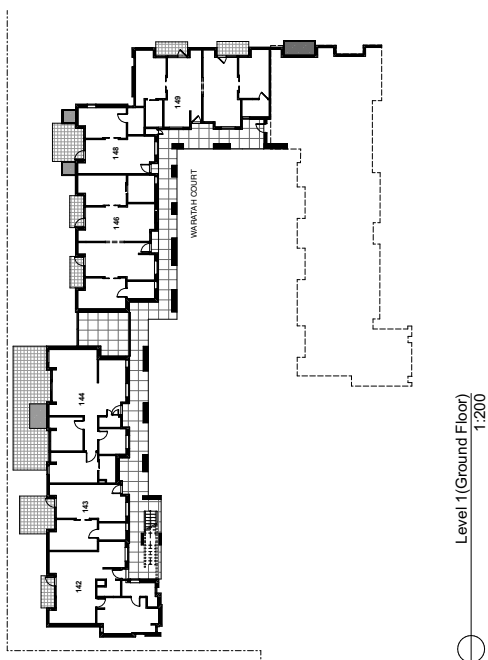
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




		Anglicare Hopetoun Village 2003 Rose Court - Existing Floor Plans		Date 18/22	Drawing No. DA011
		Scale 1:200 North 100° 00' 00" E Project No. 2003 Drawing No. DA011		Date 18/22	Drawing No. DA011

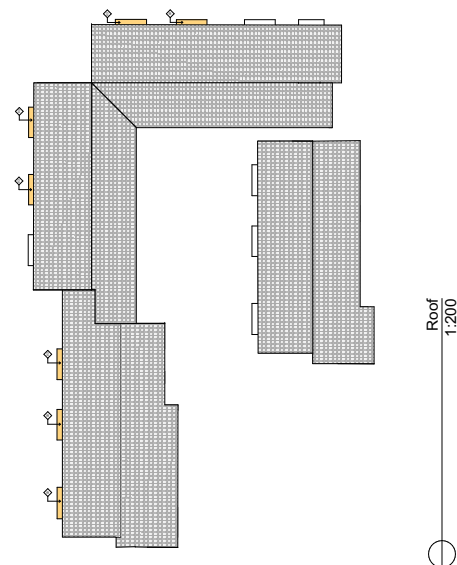
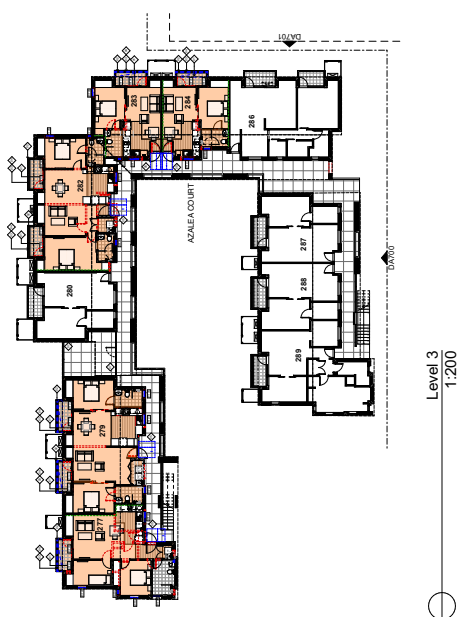
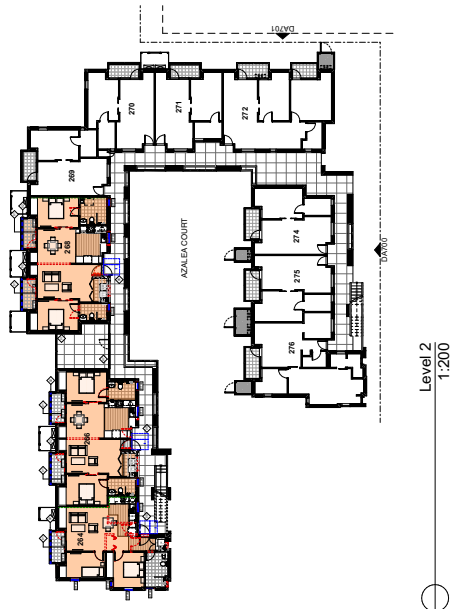
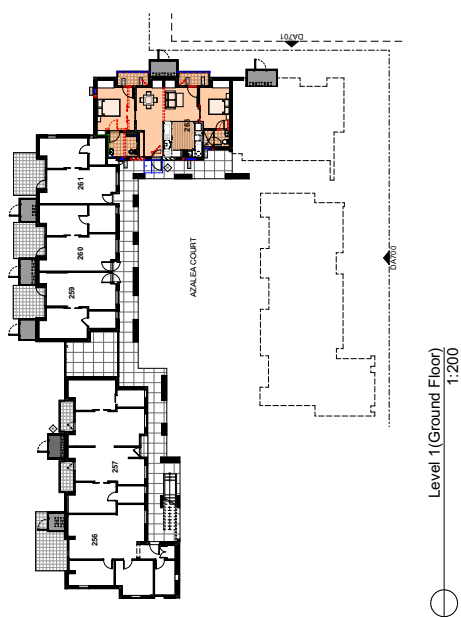
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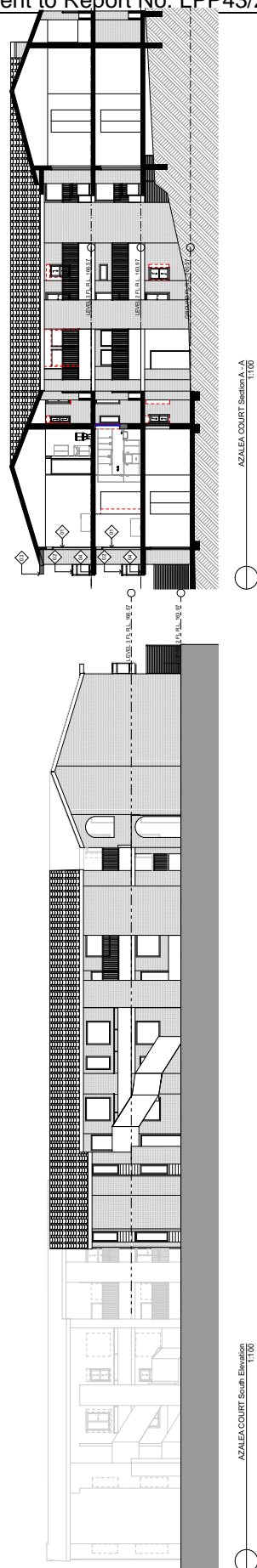


				 <p>McNally Architects Suite 105, 64 Crisp Road Crows Nest, NSW 1585, Australia Tel: 02 9550 1234 www.mcnally.com.au</p>	<p>Project Name: Anglicare Hopetoun Village Project Number: 20003 Project Location: Anglicare Project Type: WARATAH COURT - Existing Floor Plans</p>	<p>Date: 18/22 Drawing Scale: 1:200 @ A1</p>	<p>Sheet Number: 01 Drawing Title: DA012</p>
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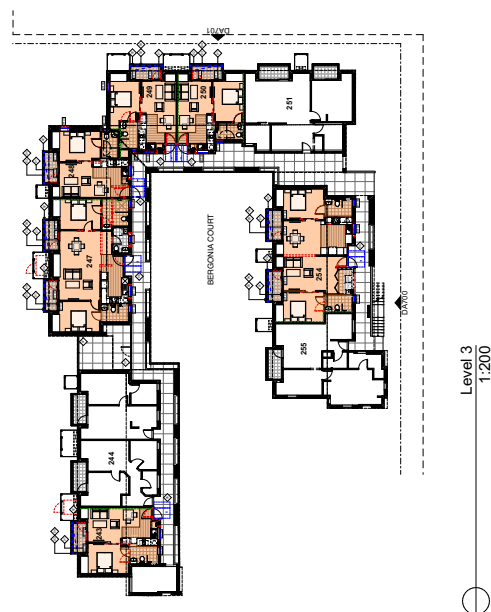
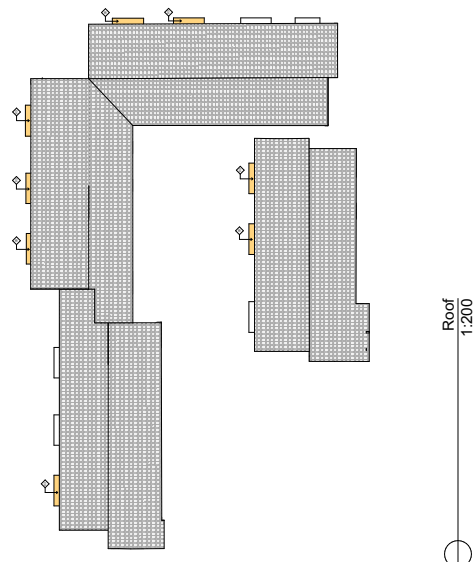
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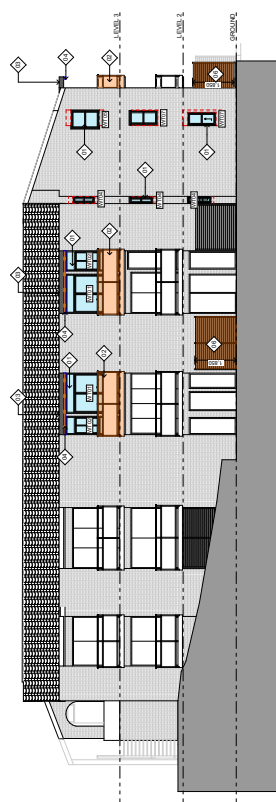
## ATTACHMENT 2 - ITEM 2



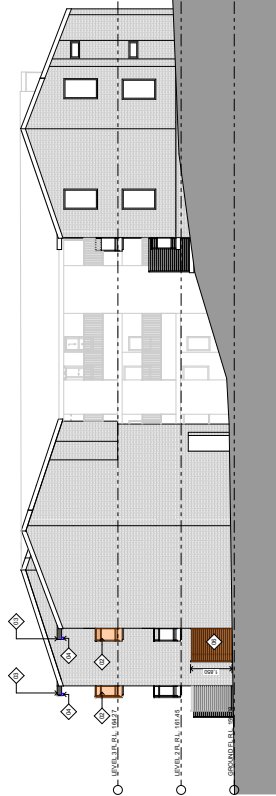
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						1-1 NEW ACZ EXISTING UNDERGROUNDS
						2-1 NEW ACZ EXISTING UNDERGROUNDS
						3-1 NEW ACZ EXISTING UNDERGROUNDS
						4-1 NEW ACZ EXISTING UNDERGROUNDS

Roof  
1:200[illegible]

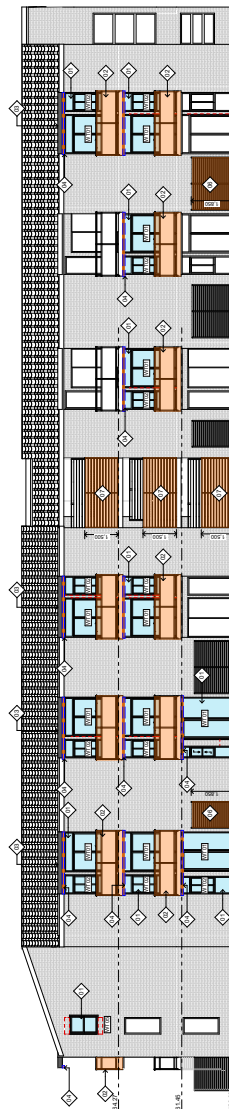
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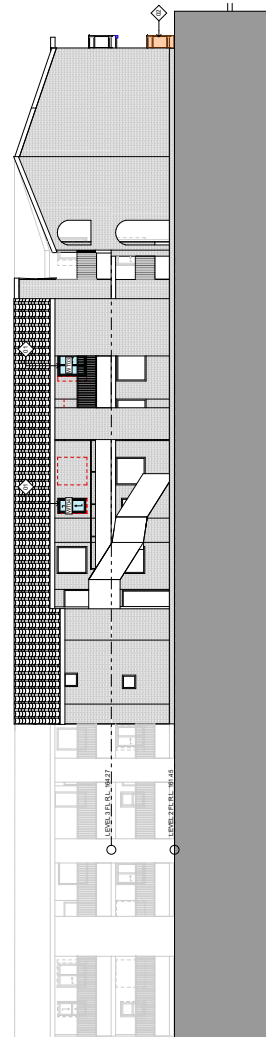
BERGONIA COURT East Elevation  
1:100



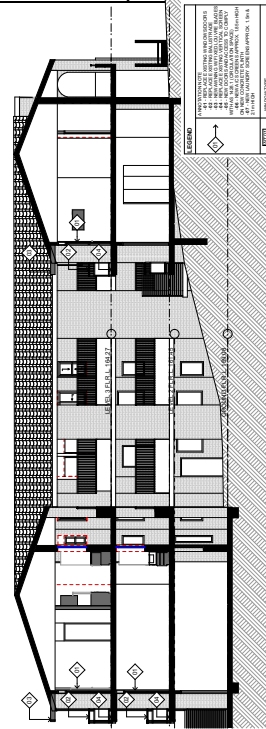
BERGONIA COURT West Elevation  
1:100





BERGONIA COURT North Elevation  
1:100

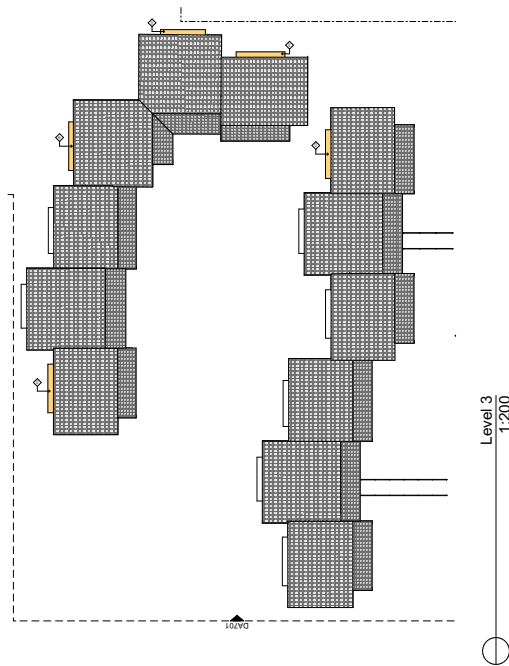
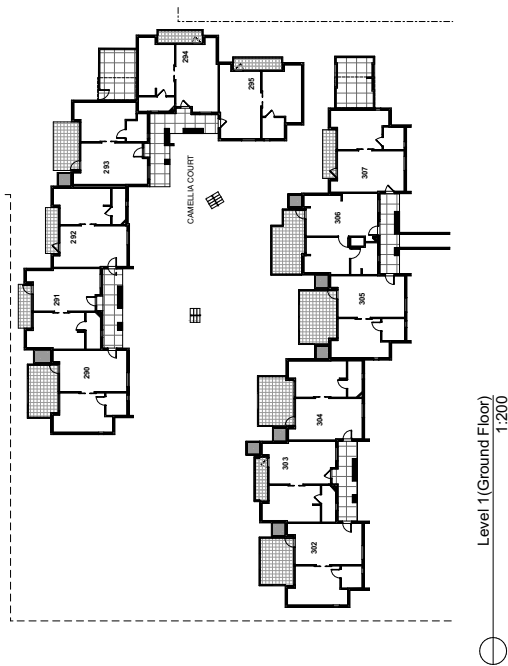
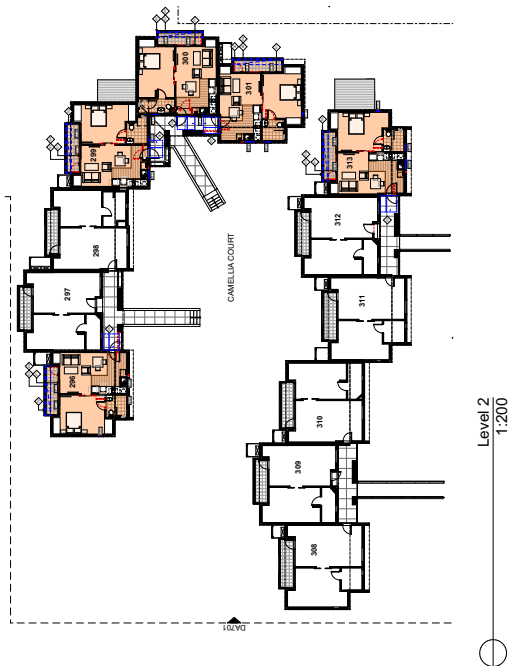


BERGONIA COURT South Elevation  
1:100



BERGONIA COURT Section A-A  
1:100

																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																										
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DATE	18/22
PROJECT NO.	03
PROJECT NAME	DA300
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PROJECT NAME	Anglicare Hopetoun Village
PROJECT ADDRESS	20003
PROJECT ADDRESS	ANGELICARE
PROJECT ADDRESS	CAMELLIA COURT - Floor Plans

PROJECT NAME	Anglicare Hopetoun Village
PROJECT ADDRESS	20003
PROJECT ADDRESS	ANGELICARE
PROJECT ADDRESS	CAMELLIA COURT - Floor Plans

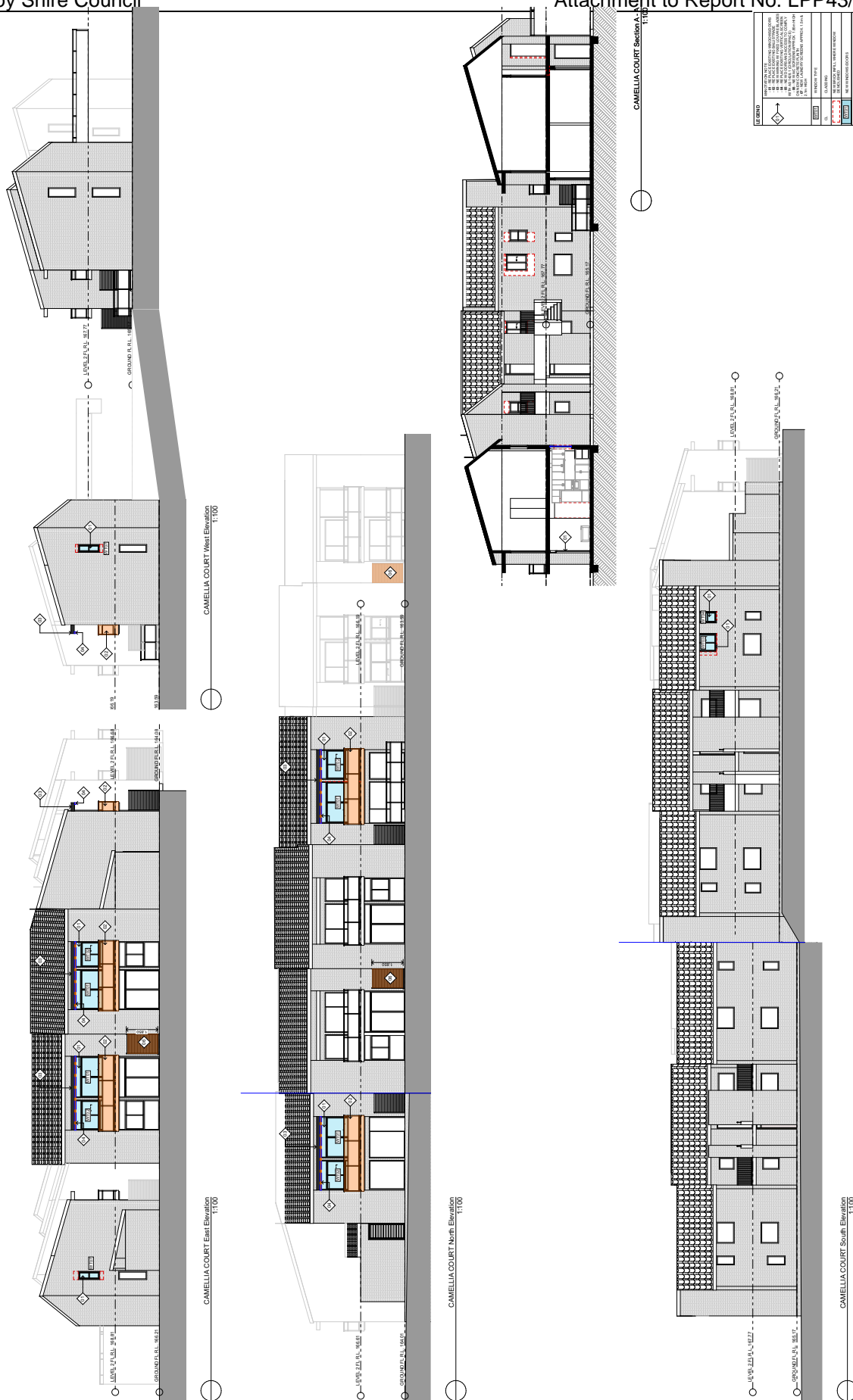
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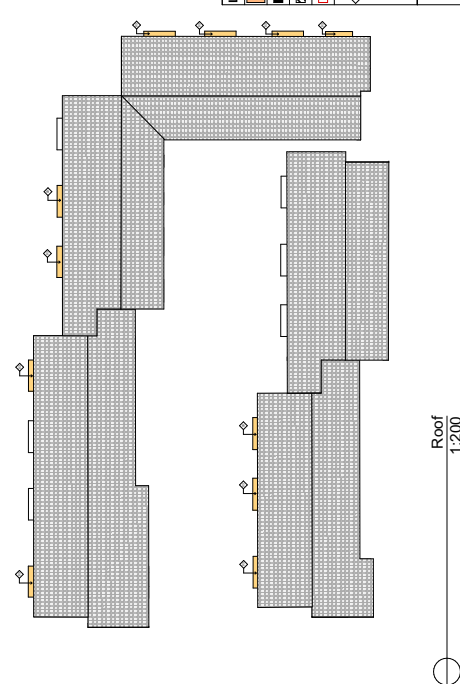
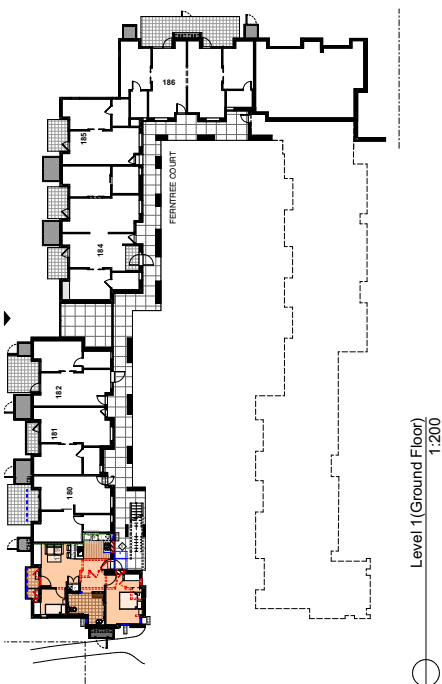
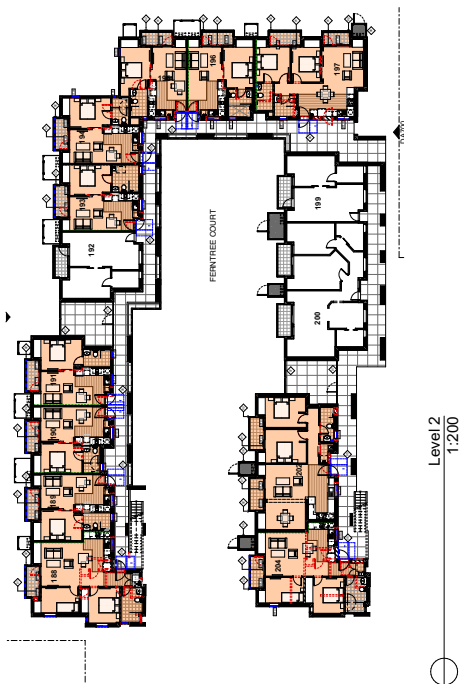
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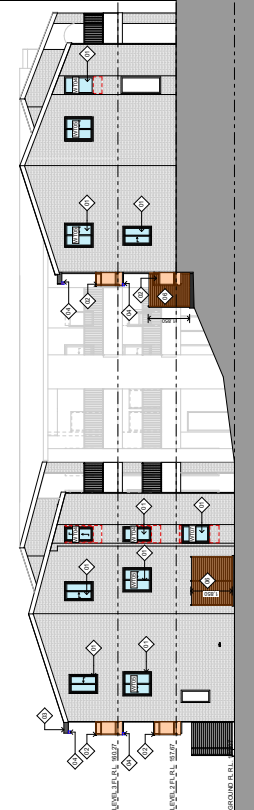


 Anglicare	 RIA PROJECTS	Camellia Court - Elevations	
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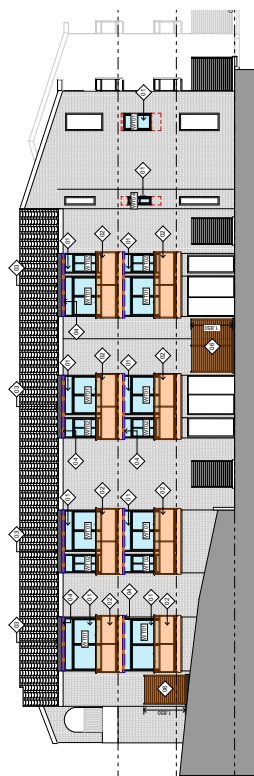
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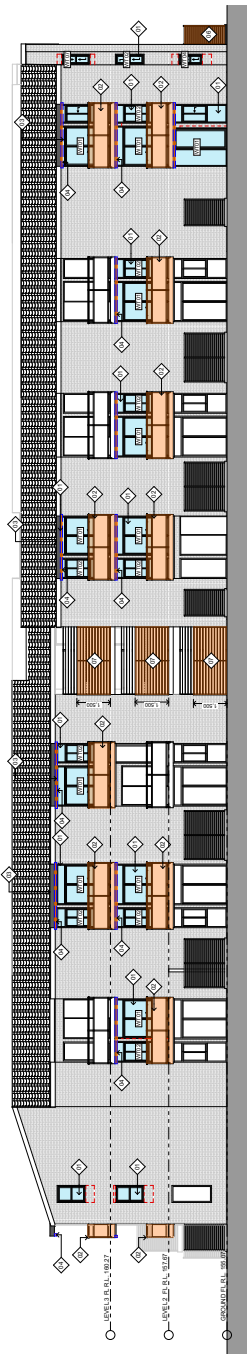




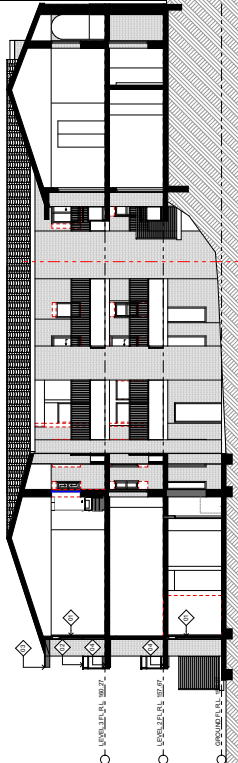
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1:100



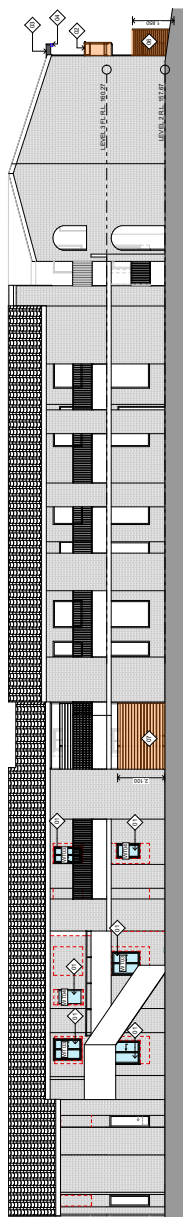
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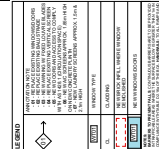
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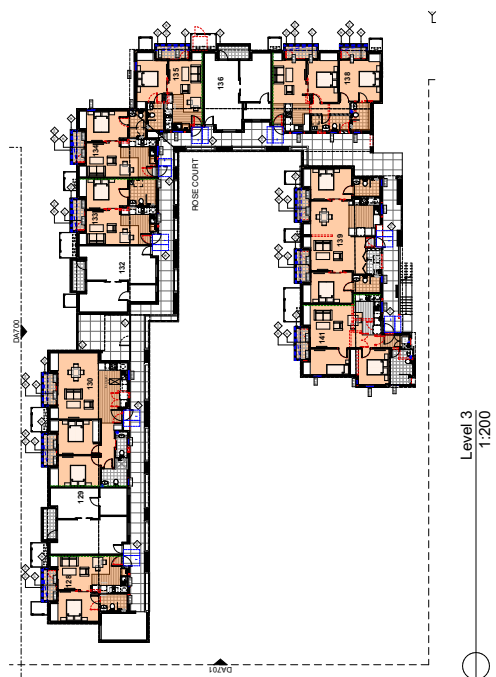
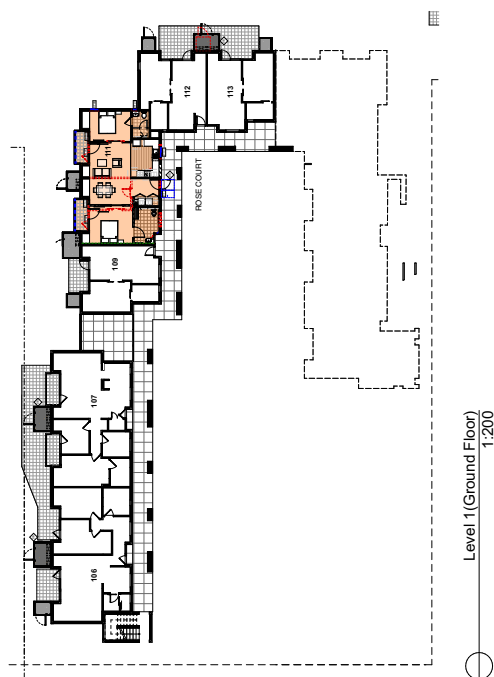


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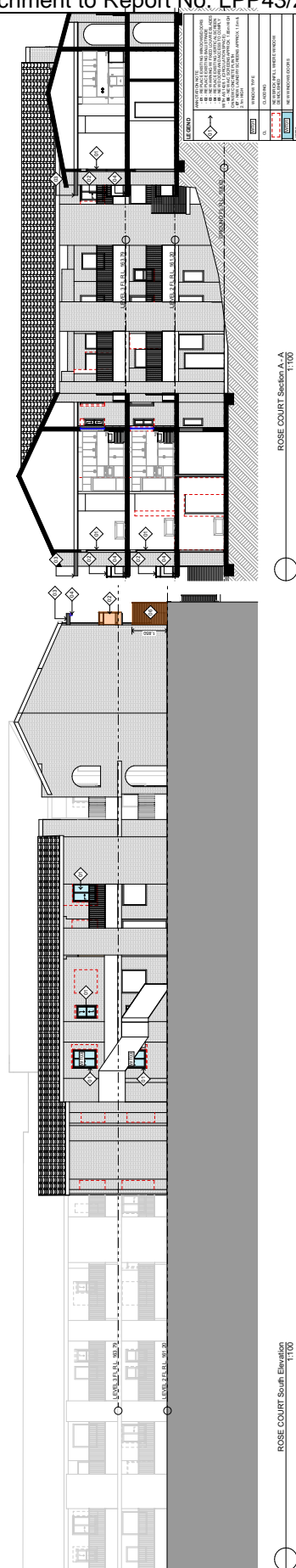


		<p><b>McNally Architects</b></p> <p>18/22 1:200 @ A1 DA401</p> <p>Anglicare Hopetoun Village 2003 FERNTREE COURT - Elevations</p>
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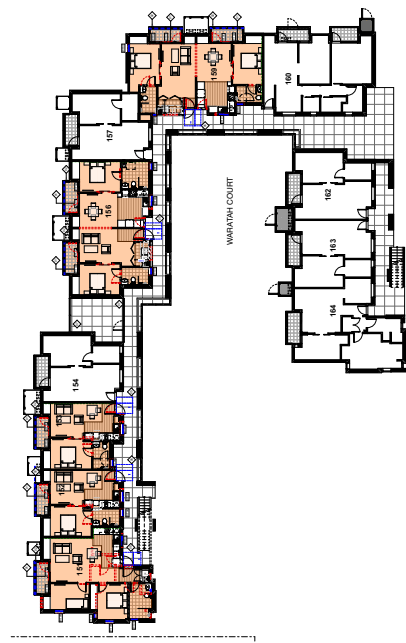
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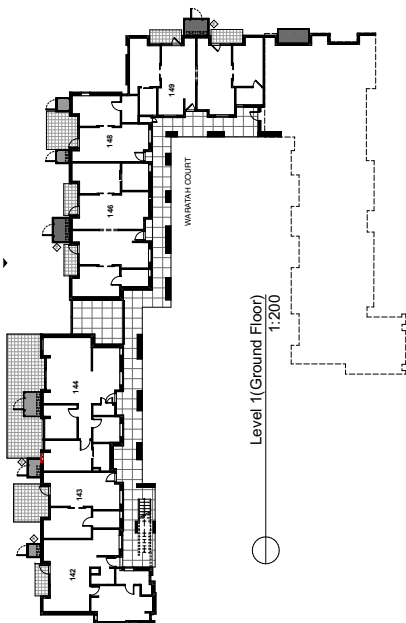
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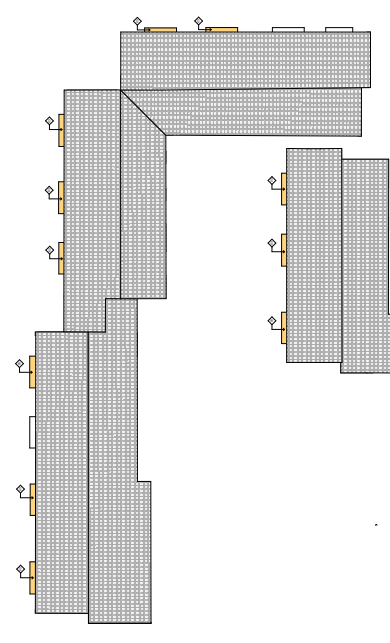
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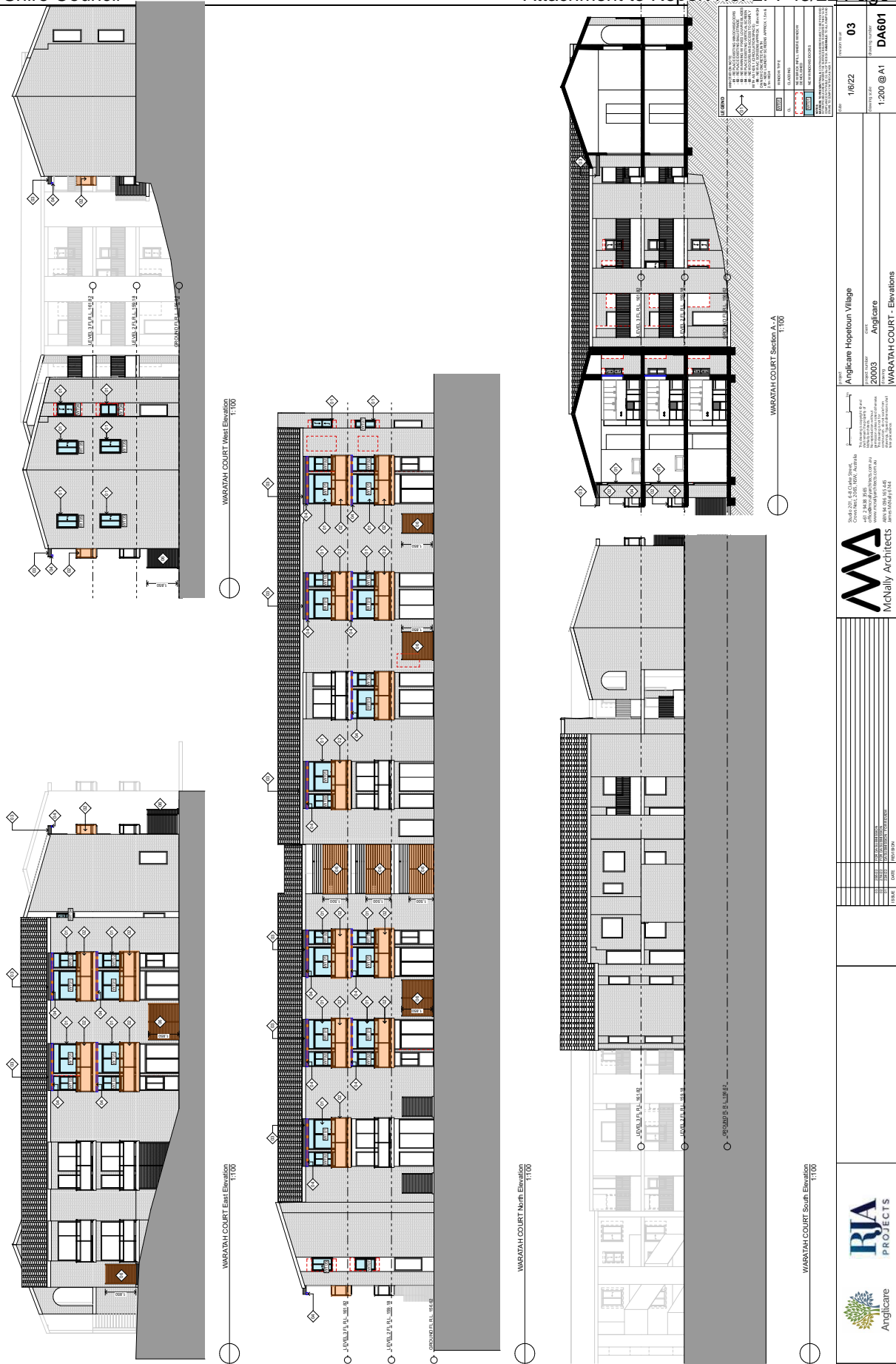
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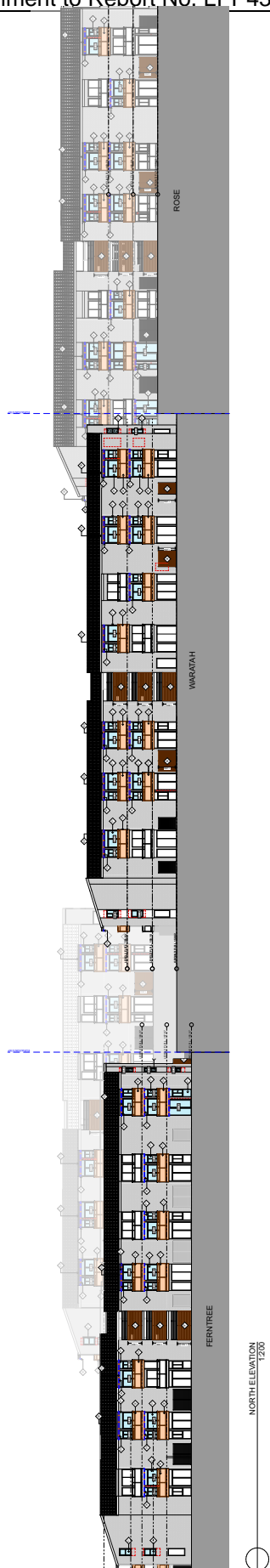
Level 1(Ground Floor)  
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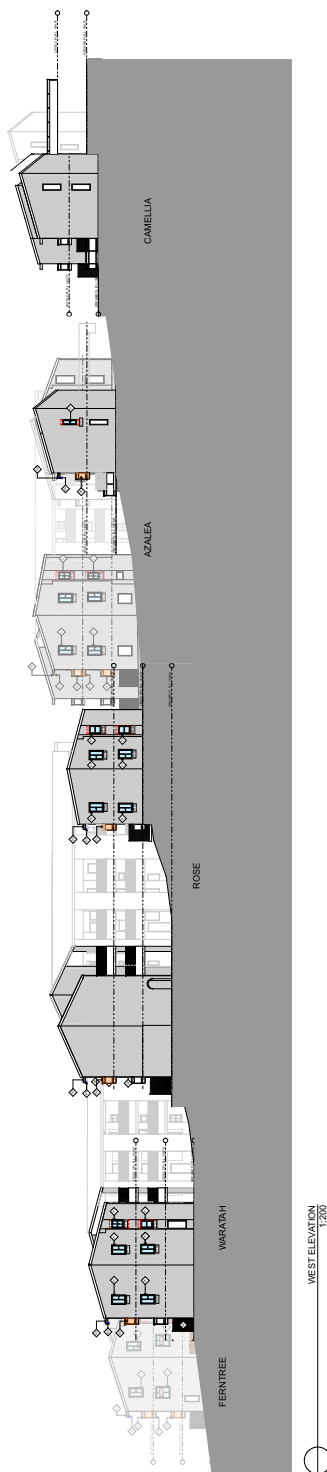




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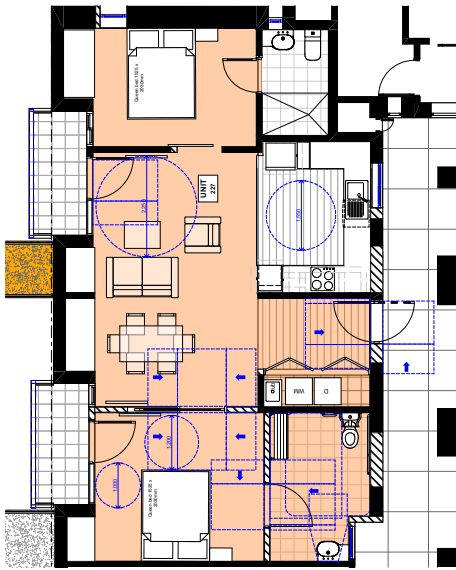
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SYMBOL	DESCRIPTION
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	PROPOSED BUILDING FOOTPRINT
	EXISTING LANDSCAPE
	PROPOSED LANDSCAPE
	EXISTING ROADS
	PROPOSED ROADS
	EXISTING SERVICES
	PROPOSED SERVICES
	EXISTING TREES
	PROPOSED TREES
	EXISTING WALLS
	PROPOSED WALLS
	EXISTING FENCES
	PROPOSED FENCES
	EXISTING BOUNDARIES
	PROPOSED BOUNDARIES
	EXISTING EASEMENTS
	PROPOSED EASEMENTS
	EXISTING SETBACKS
	PROPOSED SETBACKS
	EXISTING HEIGHTS
	PROPOSED HEIGHTS
	EXISTING MATERIALS
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	PROPOSED DETAILS



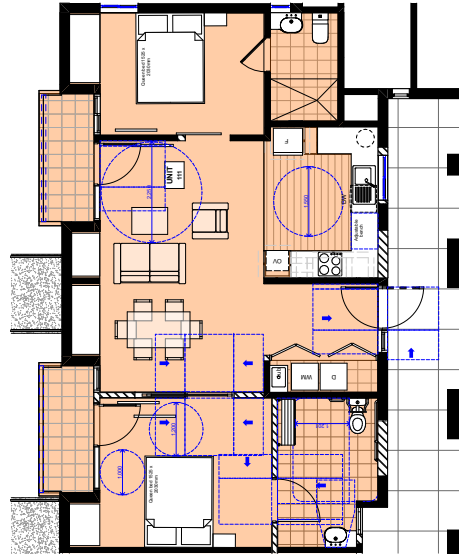
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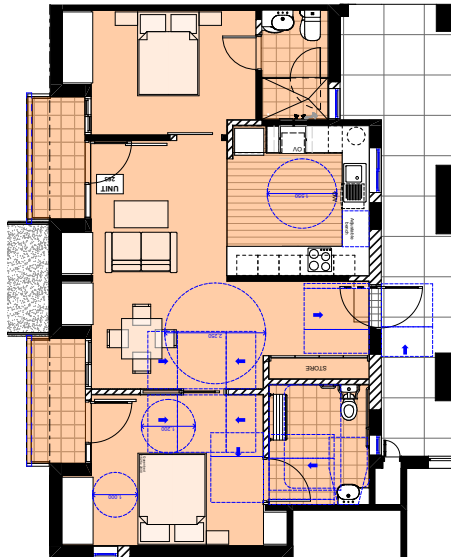
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1:50



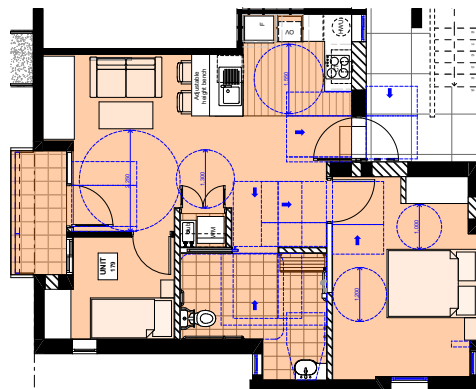
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1:50





Accessible Unit 262/ 263 - Azalea - Level 1 (Ground Floor)

1:50



Accessible Unit 179a - Fentree - Level 1 (Ground Floor)

1:50

		Anglicare Hopetoun Village 20030 Anglicare Level 1 (Ground Floor) Accessible Units - Floor Plans		Date: 18/22 Drawing No: DA920	Scale: 1:50 @ A1
		South 100, 64 Crisp Road, Crows Nest, NSW, Australia Tel: 02 9550 1234 Email: info@anglicare.org.au Website: www.anglicare.org.au		Project No: 20030 Drawing No: DA920	

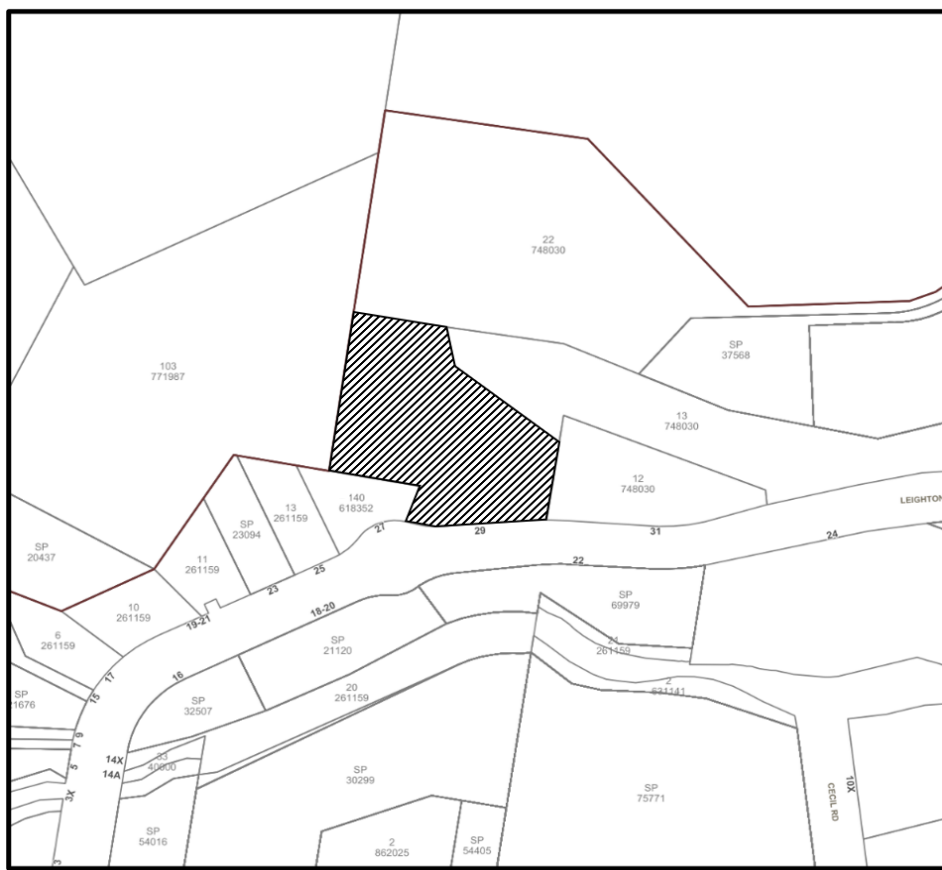
# ATTACHMENT 2 - ITEM 2

**ATTACHMENT/S**

**REPORT NO. LPP48/22**

**ITEM 3**

- 1. LOCALITY PLAN**
- 2. CLAUSE 4.6**
- 3. ARCHITECTURAL PLANS**
- 4. REQUEST FOR ADDITIONAL INFORMATION**



**LOCALITY PLAN**  
**DA/1308/2021**  
**29 Leighton Place. Hornsby**

CLAUSE 4.6 VARIATION REQUEST



ATTACHMENT 2 - ITEM 3

**CLAUSE 4.6 – EXCEPTIONS TO DEVELOPMENT STANDARDS**

**VARIATION TO THE MAXIMUM HEIGHT OF  
BUILDINGS STANDARD UNDER CL. 4.3 HORNSBY  
LEP 2013**

**Lot 11 in DP 748030 No. 29 Leighton Place, HORNSBY**

Construction of an additional eight (8) Industrial Units within approved Strata Lots under DA/829/2018 and associated car parking as part of an existing industrial complex.

5<sup>TH</sup> NOVEMBER 2021

## CLAUSE 4.6 VARIATION REQUEST

ISSUE NO	AMENDMENT	DATE
A	INITIAL DRAFT REPORT	5 <sup>TH</sup> NOVEMBER 2021
B	ISSUE TO CLIENT	5 <sup>TH</sup> NOVEMBER 2021

REPORT PREPARED BY:**Peter Fryar**

BTP (UNSW), CERT T&amp;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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## CLAUSE 4.6 VARIATION REQUEST



### VARIATION UNDER CLAUSE 4.6 OF THE HORNSBY LOCAL ENVIRONMENTAL PLAN 2013 TO DEVELOPMENT STANDARD FOR MAXIMUM HEIGHT OF BUILDINGS (CLAUSE 4.3).

Peter Fryar of Key Urban Planning has prepared this clause 4.6 request (the “request”) to assist in gaining development consent for *‘Construction of an additional eight (8) Industrial Units within approved Strata Lots under DA/829/2018 and associated car parking as part of an existing industrial complex.’*

The property is known as Lot 11 in DP 748030 No. 29 Leighton Place, Hornsby (the “site”). The site is located on the northern side of Leighton Place.

The site has an area of 5,041m<sup>2</sup> and is located on the northern side of Leighton Place. The site comprises an existing four storey industrial building with a fifth storey mezzanine level. The existing thirty-three (33) industrial units occupies a total floor area of 4,121m<sup>2</sup> and includes an on-site carparking provision for fifty-four (54) car parking spaces.

The proposed development detailed under the Statement of Environmental Effects prepared in support of the development application includes an assessment of the proposed works. 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 the site 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) of the Hornsby Local Environmental Plan 2013. The proposal involves the construction of an additional eight (8) industrial units within an existing complex with associated car parking. The proposed

# CLAUSE 4.6 VARIATION REQUEST

works will result in a portion of the new building works along the southern façade of the building to exceed the maximum height control prescribed under the LEP.

Clause 4.3 of the LEP states:

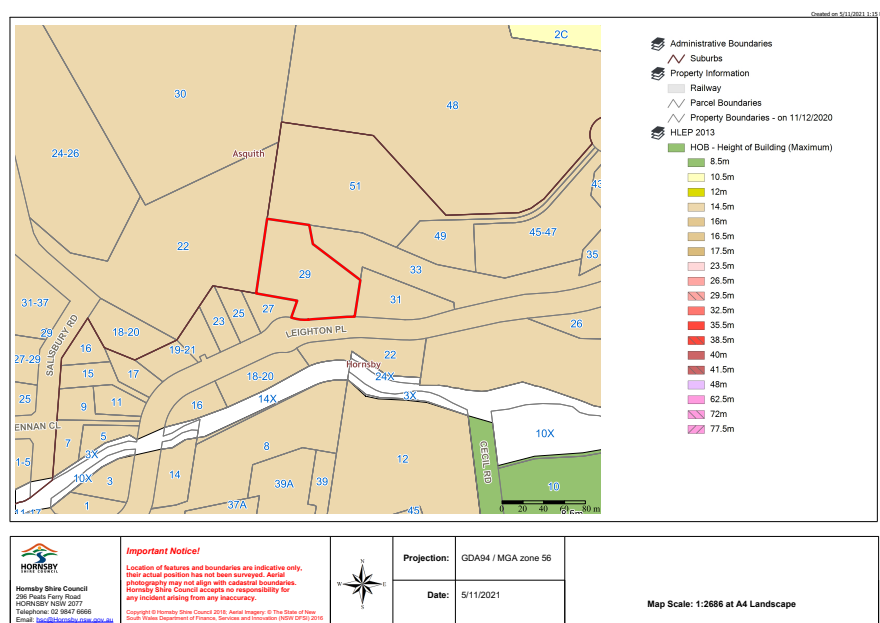
## **"4.3 Height of buildings**

(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 fourteen and one half (14.5) metre maximum height standard prescribed under the LEP. A revised scheme has been prepared and the amended plans form the basis for this clause 4.6 variation request. ***The maximum proposed height on the revised scheme is 24.25m.*** The breach of the maximum height control is along elements of the southern elevation of the proposed building at portions where the building projects above the existing rooftop concrete slab.



## CLAUSE 4.6 VARIATION REQUEST

### CLAUSE 4.6 FRAMEWORK

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

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

*“(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard;”*

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

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

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

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

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

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

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

After a detailed consideration of the issue (at [74-[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*

## CLAUSE 4.6 VARIATION REQUEST

*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

After 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

**CLAUSE 4.6 VARIATION REQUEST**

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 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 14.5 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 IN1 General Industrial 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."*

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,*

**CLAUSE 4.6 VARIATION REQUEST**

- (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 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)(iii)). 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))."*

#### CLAUSE 4.6 VARIATION REQUEST

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 & additions to the existing industrial complex development forming part of the DA constitutes a variation to the maximum building height 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 4.3 (Height of buildings) of the Hornsby Local Environmental Plan 2013. It is proposed that elements of the upper level of the additional units will exceed the maximum height control predominantly at the southern elevation of the existing building.

The extent of the non-compliance with the maximum height standard being a maximum height at the southern elevation of 24.25 metres. Most of the building will remain unaltered. The breach of the maximum height control is along elements of the southern elevation of the existing building and in the context of the site and the existing development is negligible in the impacts.

#### 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 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 several outcomes for the development on this site that go to justification of the variation request for maximum building height.

# CLAUSE 4.6 VARIATION REQUEST

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 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 in the context of the existing built form.
- There is limited opportunity to 'step' the design and the additional height is within an envelope already approved for development under the approved strata plan.
- In order to achieve the development potential of the site envisaged by controls such as FSR, the site constraints created when the original subdivision occurred have caused strict compliance with the height standard adopted under the current LEP unfeasible. The historic height provisions that were envisaged at the time the subdivision creating the site occurred would allow building height greater than proposed. This is evident in the heights of older industrial developments in the locality.
- Scale of the building as viewed from the adjoining roadway is negligible due to existing site topography. The proposed building in the context of the backdrop of existing buildings constructed to the rear of the site is considered reasonable.

## 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.

# CLAUSE 4.6 VARIATION REQUEST

- *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 permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality."*

The relatively modest additional height proposed (above the existing building) contributes to the delivery of a high-quality development on this site. The zoning of the site and surrounding industrial lands includes land of relatively steep topography that may be considered in some respects unsuitable for industrial development. Consequently, a number of industrial complexes in the locality have been approved by Council in contravention of the current LEP height standard. The proposed building works are consistent with the height and scale of the building constructed immediately adjoining the site to the west.

The existing building has been constructed more than 25 metres in height. The minor additional breach in height at small elements of the building is considered acceptable in the circumstances and in the context of the surrounding development.

The lateral expansion of the building to achieve the councils floor space expectations for industrial development of the site will impact adversely on the endangered ecological community situated upon the site and the additional height responds to the ecological constraints on the site. The natural topography of the site will result in unreasonable impacts by way of excavation should the additional floor space be provided outside the existing building envelope.

The council in the granting of development consent for the creation of the strata lots upon which the additional industrial units are proposed has envisaged additional 'height' occurring as part of the development subject of this DA.

The objectives of the standard can be achieved, notwithstanding the additional height, and that a superior development outcome would result.

- *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. This also accounts for the natural/modified topography of the land and a desire to achieve the allowable floor space standard under the LEP (FSR proposed 0.93:1 - FSR allowed 1:1).

- *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

#### CLAUSE 4.6 VARIATION REQUEST

opportunity specific to this site to develop a high-quality development that will present in a positive manner to Leighton Place.

- *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 and on surrounding sites.

A number of industrial buildings that have been constructed within the surrounding industrial precinct are well in excess of the current height standard and in many cases are built at heights of 25-30 metres. It is considered that compliance with the standard in the circumstances is unreasonable and unnecessary when considering historic approvals by the council in the locality.

- *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.*

The zoning of the site and surrounding industrial lands includes land of relatively steep topography that may be considered in some respects unsuitable for industrial development. Consequently, a number of industrial complexes in the locality have been approved by Council in contravention of the current LEP height standard. The proposed building is consistent with the height and scale of the building constructed immediately adjoining the site to the west.

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 the protection and enhancement of identified values specific to the site and provision of high-quality industrial development in the locality.

The additional height is a negligible issue within the context of the greater planning benefit, including opportunities for the protection and enhancement of local values and provision of high-quality industrial 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 departure from the development standard.

The underlying objective of the height standard is to minimise potential adverse environmental impacts of development of the site on the surrounding area. It is noted that the height standard was applied to the site at a time historically when the subdivision of the locality had occurred that created industrial



#### CLAUSE 4.6 VARIATION REQUEST

allotments on extremely steep topography. 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.

Although the proposal breaches the height of buildings control, the development achieves appropriate building envelopes and separation to the adjacent industrial land. It is also worth noting that the development does comply with solar access, site coverage and other similar requirements adopted by Council.

*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 IN1 General Industrial zone and the Height Standard clause within the LEP 2013. 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*

**CLAUSE 4.6 VARIATION REQUEST**

*4.6(3) and (4)(a)(i))."*

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

**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.

CLAUSE 4.6 VARIATION REQUEST

**Peter Fryar**

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

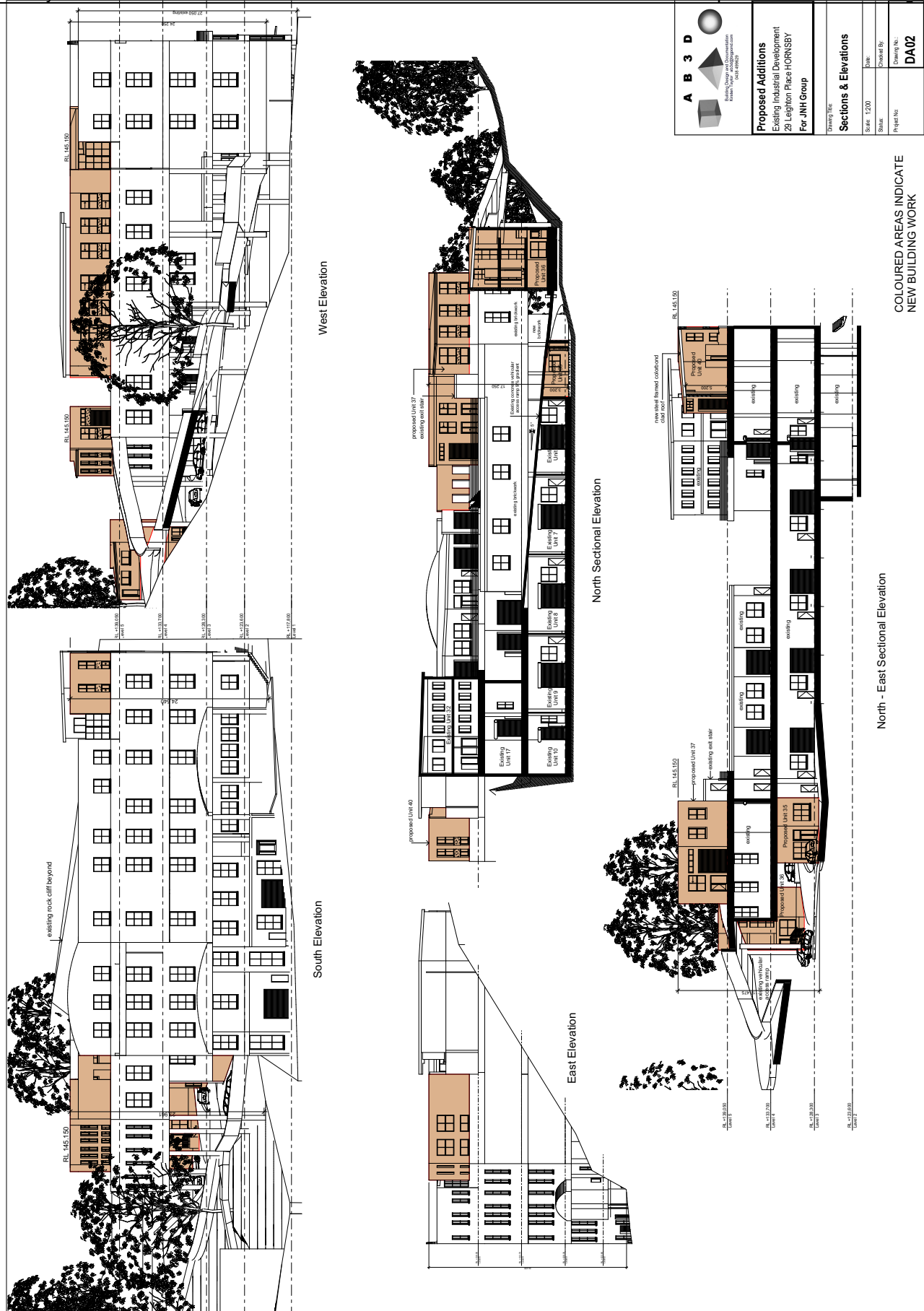


Director,

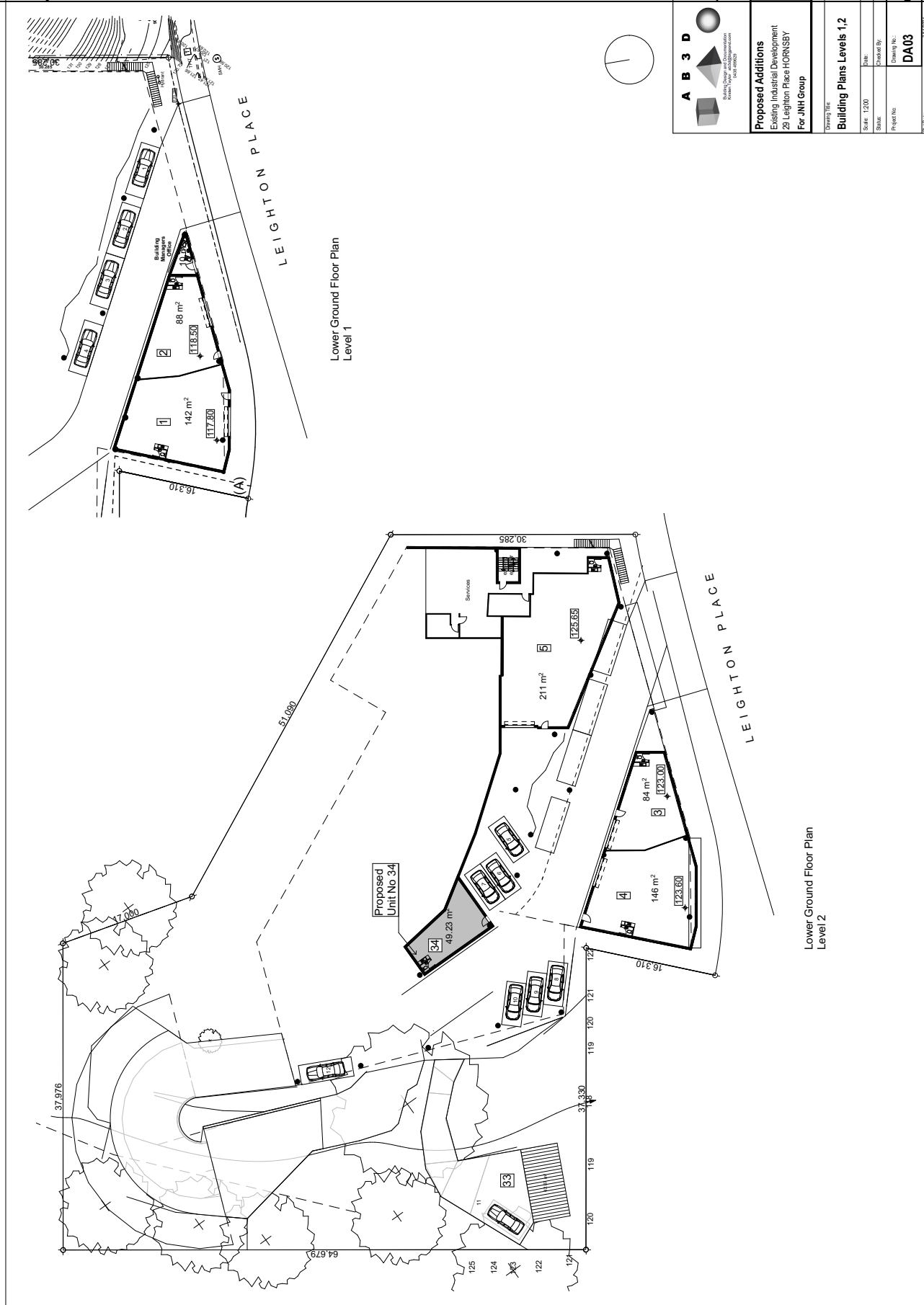
KEY URBAN PLANNING

ATTACHMENT 2 - ITEM 3

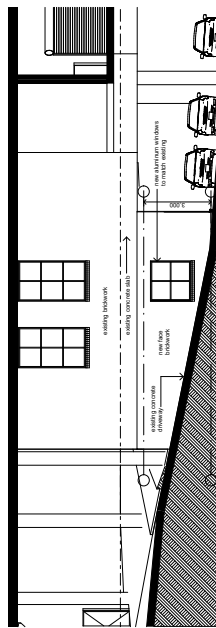




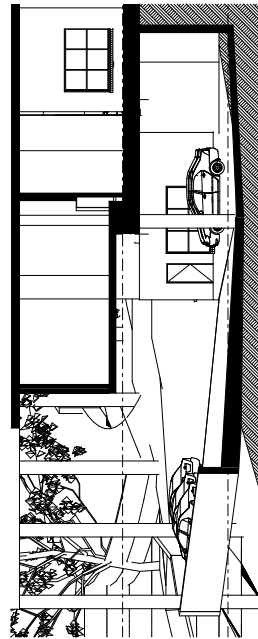
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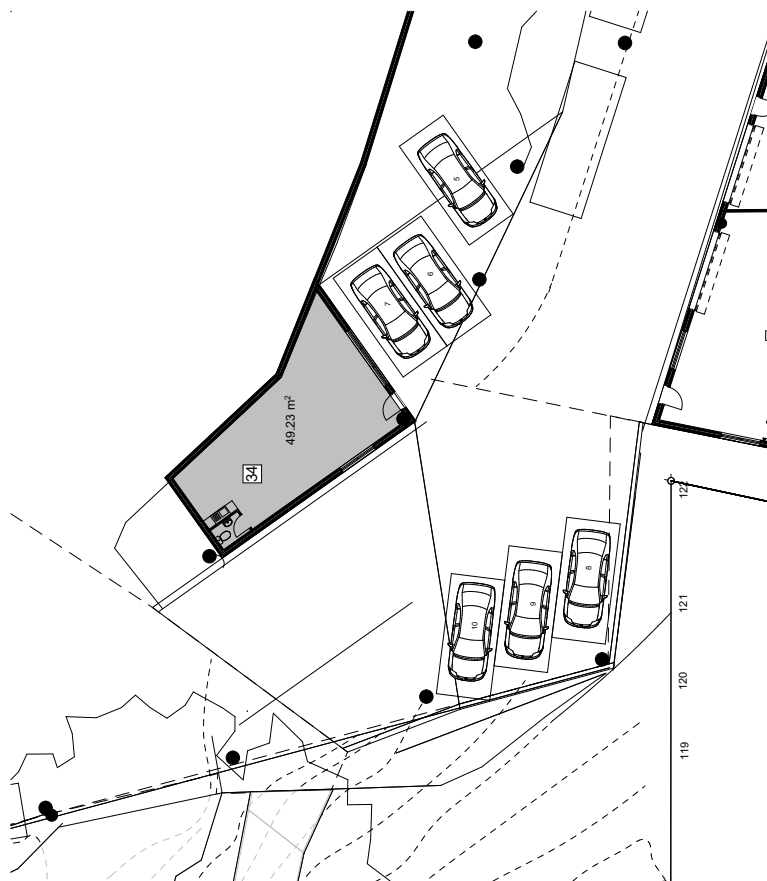
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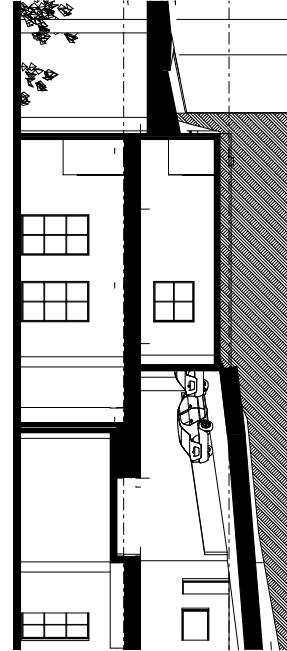
South-West Elevation



South-East Elevation



Floor Plan Level 2



South-East Elevation



<p><b>A B 3 D</b></p> <p>Architectural Drawing Hornsby Shire Council 1:100 Scale</p>	<p><b>Proposed Additions</b> Existing Industrial Development 29 Legation Place HORNSBY For JNH Group</p>	<p><b>Proposed Unit 34 Level 2</b></p> <p>Scale: 1:100 Date: Drawn By: Project No: Drawing No: <b>DA04</b></p>
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# ATTACHMENT 3 - ITEM 3





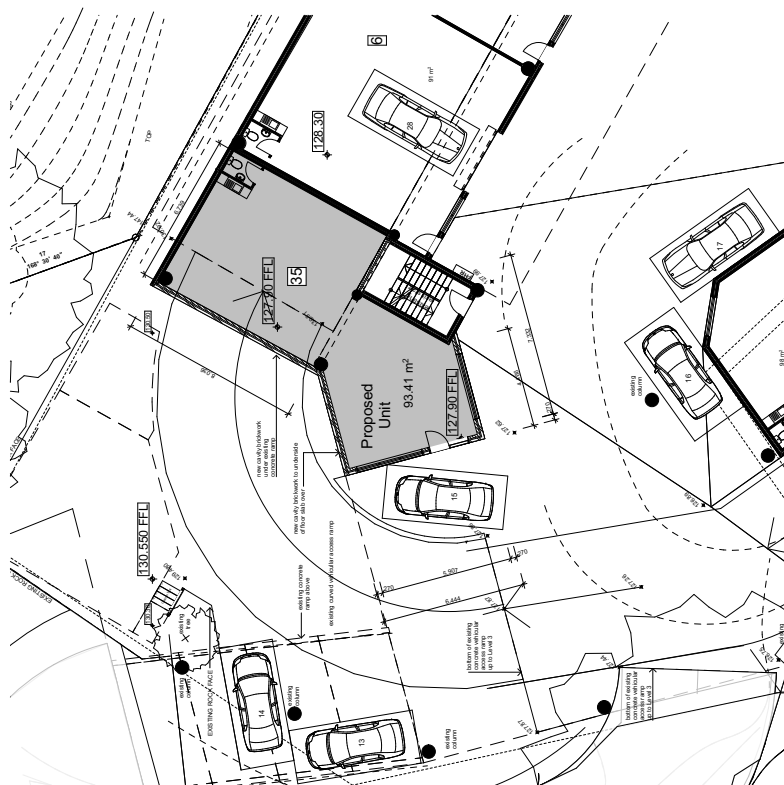
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Existing Industrial Development  
29 Leighton Place HORNSBY  
For JNH Group

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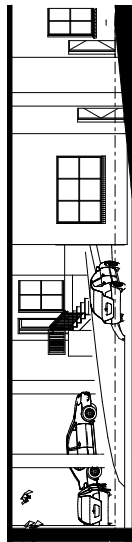
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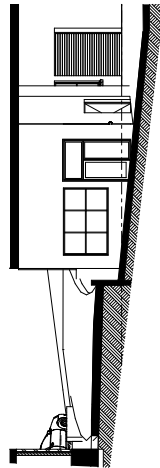
# ATTACHMENT 3 - ITEM 3



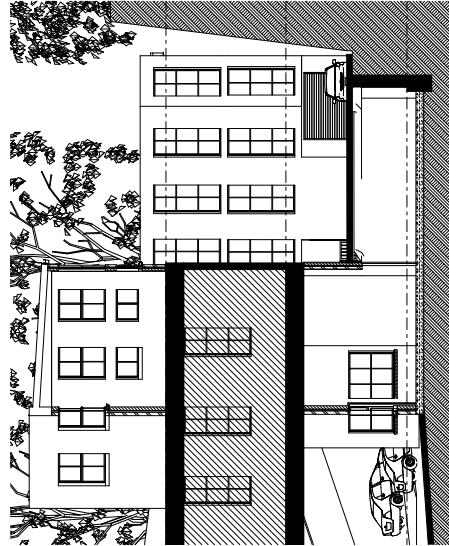
Floor Plan Level 2



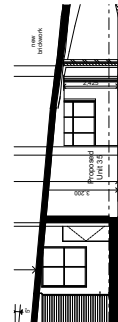
South Elevation



West Elevation



Section B



Section A

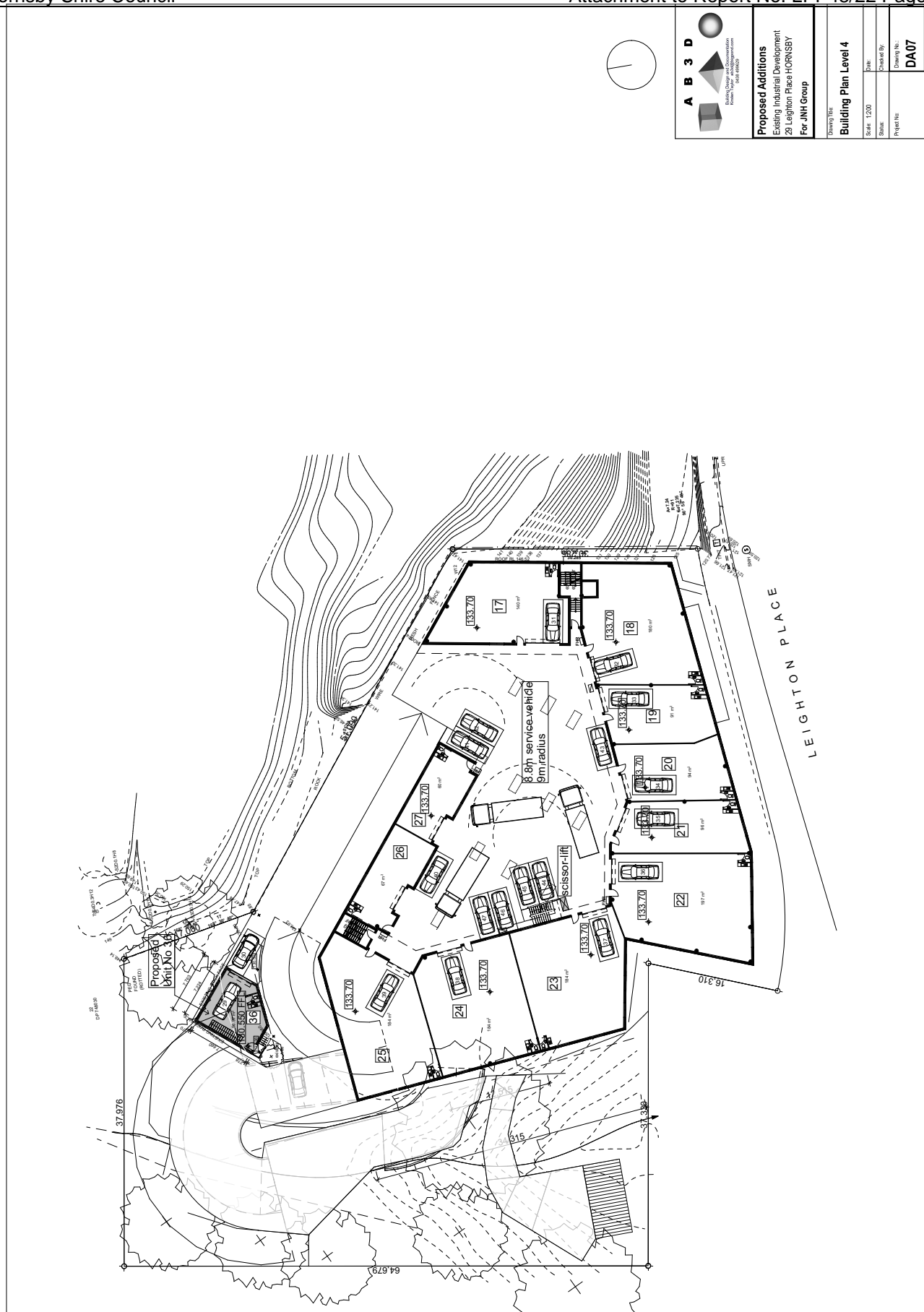


**Proposed Additions**  
Existing Industrial Development  
29 Leighton Place HORNSBY  
For JNH Group

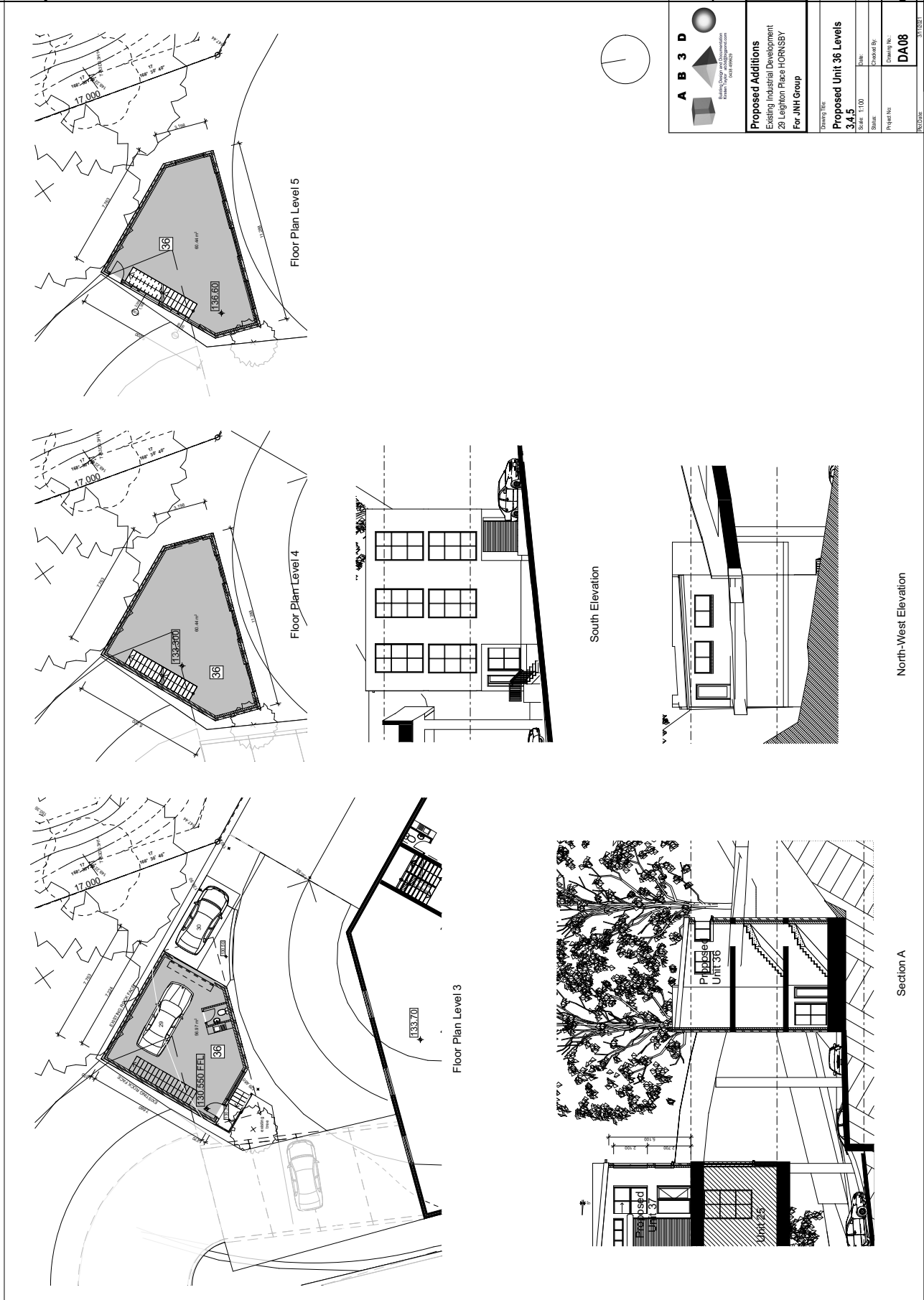
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Project No:  
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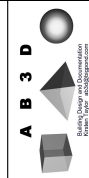
SECTION

# ATTACHMENT 3 - ITEM 3



# ATTACHMENT 3 - ITEM 3





**Proposed Additions**  
Existing Industrial Development  
29 Leighton Place HORNSBY  
For JNH Group

## Building Plan Level 5

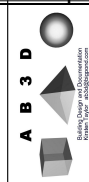
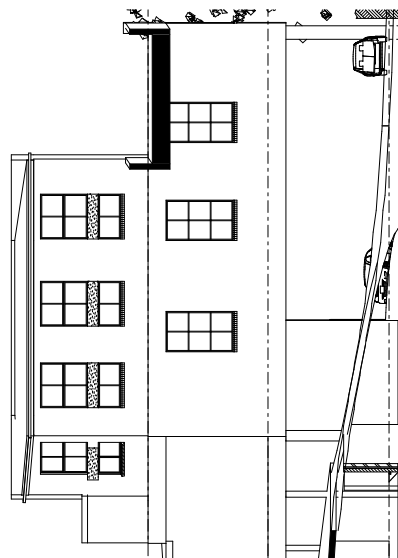
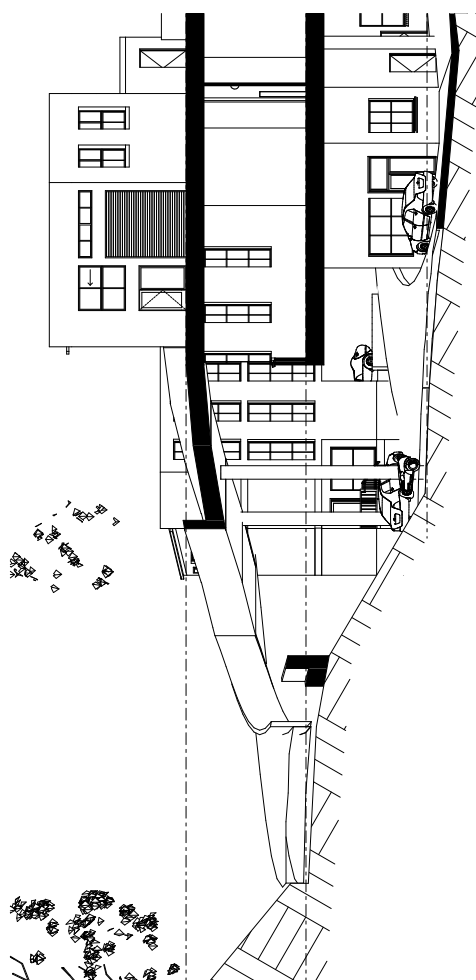
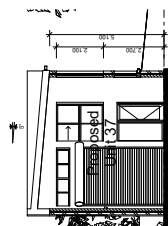
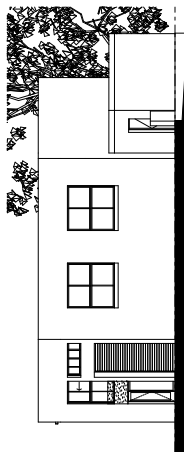
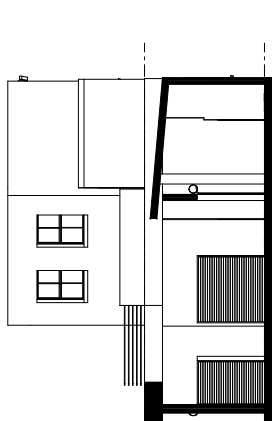
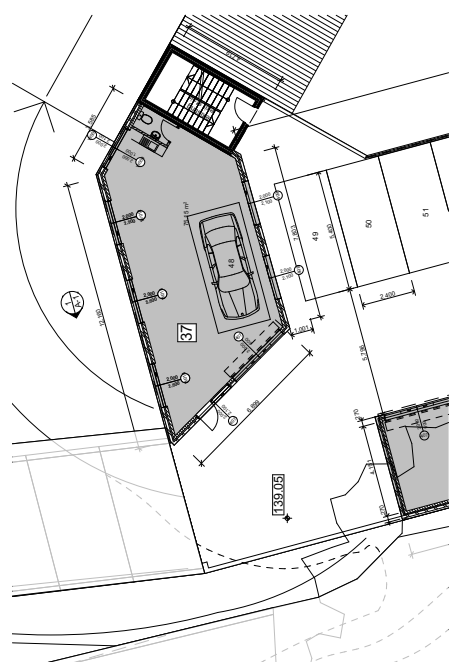
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# ATTACHMENT 3 - ITEM 3



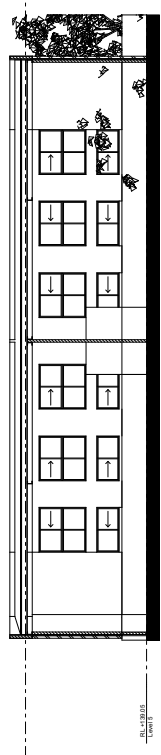
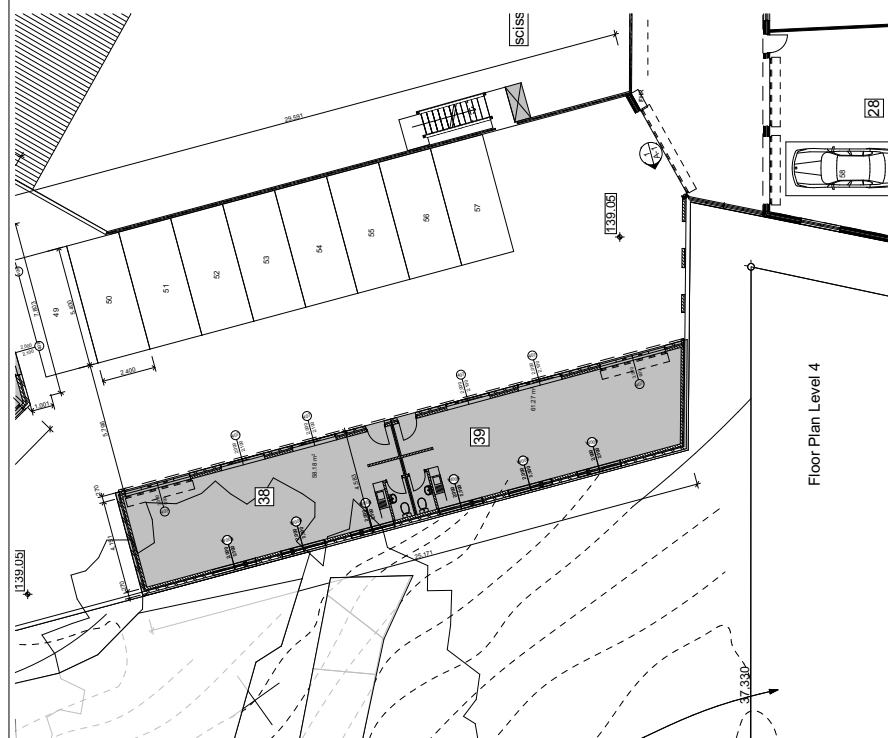
**Proposed Additions**  
Existing Industrial Development  
29 Leighton Place HORNSEY  
For JNH Group

Drawing Title	Proposed Unit 37 Level 5
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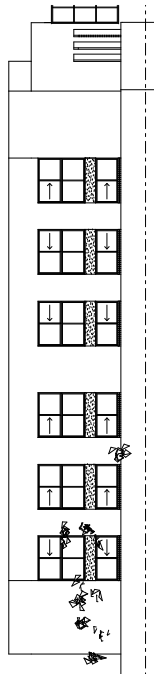
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# ATTACHMENT 3 - ITEM 3

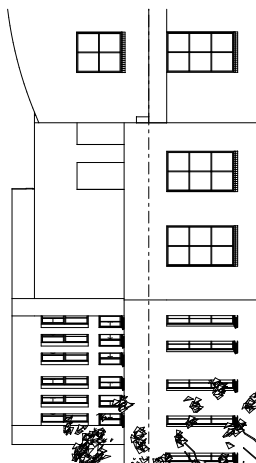




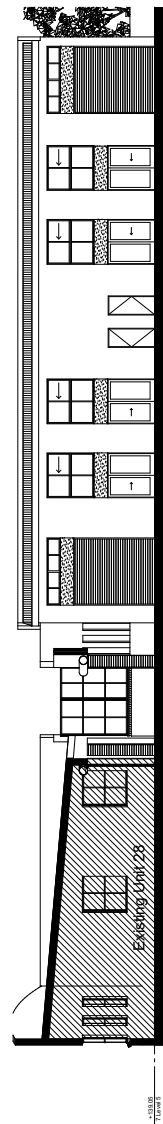
Section A



West Elevation



South Elevation



East Elevation

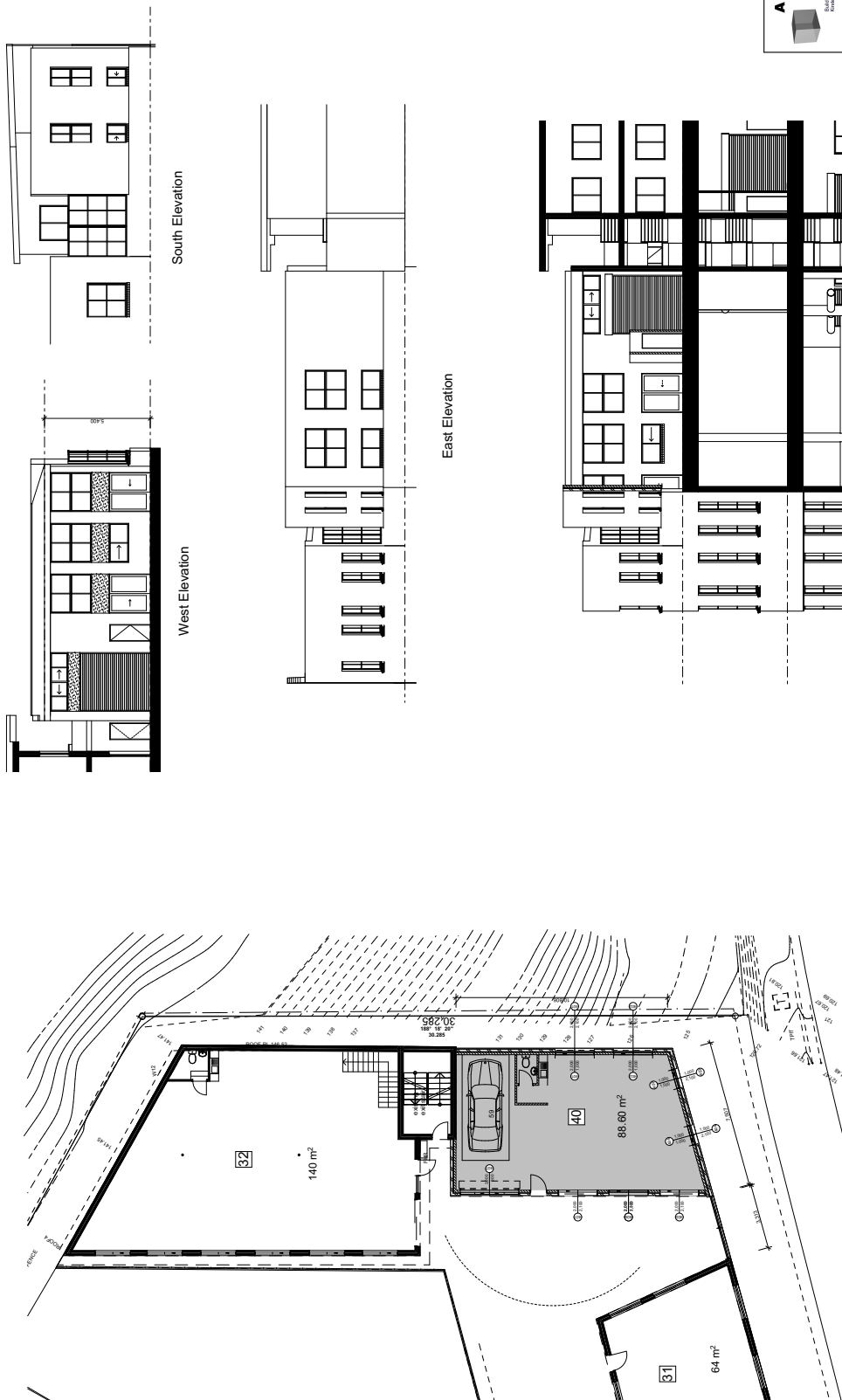


**Proposed Additions**  
Existing Industrial Development  
29 Leighton Place HORNBSY  
For JNH Group

Drawing Title	Proposed Units 38 & 39 Level
	5

Scale: 1:100	Date:
Status:	Checked By:
Project No:	Drawing No.: <b>DA11</b>

# ATTACHMENT 3 - ITEM 3



Floor Plan Level 4



**Proposed Additions**  
Existing Industrial Development  
29 Leighton Place HORNSBY  
For JNH Group

Drawing Title	
Proposed Unit 40 Level 5	
Scale: 1:100	Date:
Sheet:	Created By:
Project No:	Drawing No:
	DA12

# ATTACHMENT 3 - ITEM 3





**Proposed Additions**  
Existing Industrial Development  
29 Leighton Place HORNSEY  
For JNH Group

Drawing Title  
**Building Plan Level 6**

code 1200	date:
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Status:	Checked By:
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Project No:	Drawing No.:
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DA13

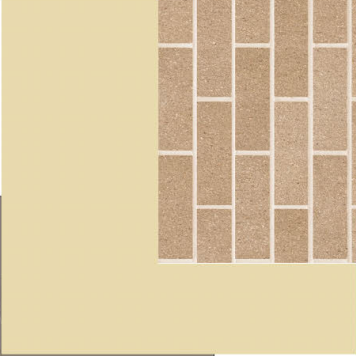
# ATTACHMENT 3 - ITEM 3



New Roofing:  
Colorbond Steel 'Gully'



Windows and Doors  
to match existing 'Primrose'



Walls:  
Face brick to match existing  
Austral Bricks Everyday Life  
Engage



Floors:  
Off form  
concrete  
grey



**A B 3 D**

Building Design and Construction  
Krisnan Toller | atd@boudgroup.com  
0438 496629

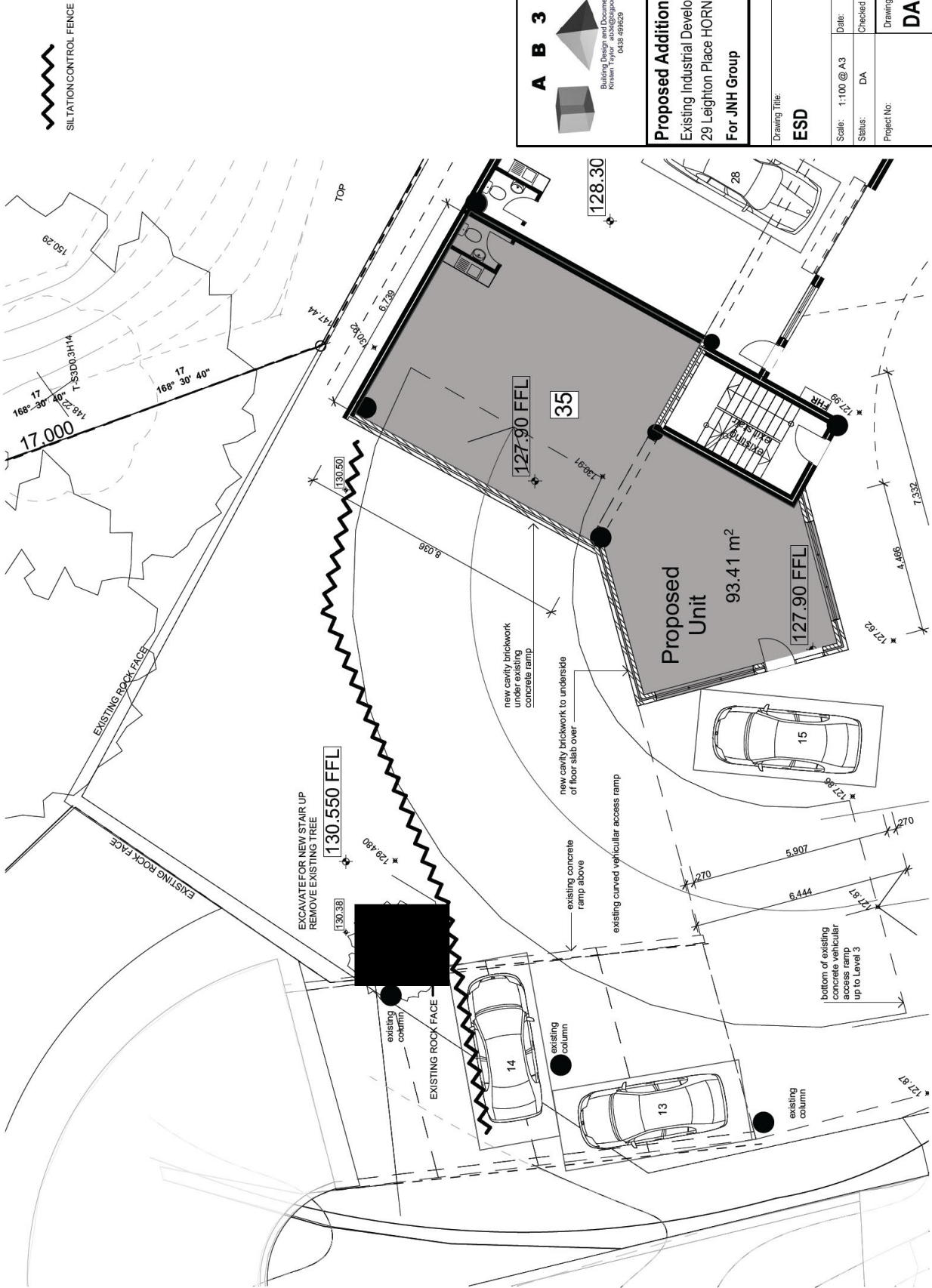
**Proposed Additions**  
Existing Industrial Development  
29 Leighton Place HORNSBY  
For JNH Group

Drawing Title:  
**Schedule of External  
Finishes**

Scale:	Date:	25/11/2021
Status:	Checked By:	DA
Project No.:	Drawing No.:	DA002

Plot Date: 25/11/2021

# ATTACHMENT 3 - ITEM 3



**A B 3 D**

Building Design and Construction  
Krisian Taylor - atd@bluepoint.com  
0438 49629

**Proposed Additions**  
Existing Industrial Development  
29 Leighton Place HORNSBY  
For JNH Group

Drawing Title:  
**ESD**

Scale: 1:100 @ A3  
Status: DA  
Project No.:  
Drawing No.: **DA003**

Date: 25/11/2021  
Checked By:  
Plot Date: 25/11/2021

# ATTACHMENT 3 - ITEM 3



5 August 2022

P S Graham & Associates  
PO Box 263  
BEECROFT NSW 2119

Dear Sir / Madam,

Request for additional information - Development Application No. DA/1146/2020 – Demolition of structures and the Torrens title subdivision of one lot into ten including a voluntary planning agreement for road acquisition - Lot 18 DP 16975, No. 90-92 Franklin Road, CHERRYBROOK NSW 2126

---

Council is writing to inform you of the progress of your development application.

As discussed in the meeting at Council's administration building on 5 August 2022, Council's officers have undertaken a detailed assessment of your application and would be further assisted by you providing the following additional information:

**1. Amended Subdivision Plan**

Council's environmental review of the subdivision plan identifies that the proposed development would have an unacceptable impact on vegetation, particularly vegetation that has been identified as being Cumberland Plain Woodland in the centre-portion of the site.

Council considers that insufficient regard has been taken in regards to preservation of vegetation on site and as such, it is recommended that an amended subdivision plan is prepared that minimises impacts to vegetation on the site.

In this regard it is recommended that the applicant's ecologists meet with Council officers to discuss the proposal, and potential options for the reduction of impacts on significant on-site vegetation. To facilitate this discussion, Council's initial assessment is attached (**Attachment 1**) to this correspondence for preliminary review prior to a future meeting taking place.

Following the meeting described above, it is requested that amended subdivision plans and documentation be prepared. A full list of documentation that will require amendment will be provided following the conclusion of the aforementioned meeting.

**2. Road Design**

As discussed in the meeting with Council officers on 5 August 2022, Council has undertaken a full design review of potential road widening options for John and Franklin Roads. This review has identified two preferred design options, which are identified as Option 1 and 2.

---

**Hornsby Shire Council**

ABN 20 706 996 972  
296 Peats Ferry Rd, Hornsby 2077

PO Box 37, Hornsby NSW 1630

**Phone** 02 9847 6666  
**Fax** 02 9847 6999

**Email** hsc@hornsby.nsw.gov.au  
**Web** hornsby.nsw.gov.au

Options 1 and 2 would involve widening John Road reserve (from 10m to 18m) and Franklin Road reserve (from 15m to 15.5m or 18.5m) to meet current road design standards. The primary difference between the two concepts is option 1 would include a bus bay outside No.90-92 Franklin Road (i.e. wider 18.5 m road reserve) that would allow northbound motorists to pass a stopped bus.

Option 1 has superior road safety impacts and would improve traffic flows, however it would require acquisition of additional land beyond the currently identified portion for road widening. The additional land required to facilitate the construction of Option 1 is minimal, with the exact area to be identified upon detailed survey / design work being undertaken.

Conceptual plans are provided for both Option 1 and 2 are attached to this document (**Attachment 2**).

Council would appreciate full consideration of design Options 1 and 2, with the identification from the applicant as to the preferred option to progress, including detailed reasoning as to why this option has been chosen. Further Council feedback can be provided upon request.

### 3. Initial Feedback

Council would appreciate initial feedback from the applicant as to whether they would be willing to undertake additional work on the amended subdivision plan and road design as described above, so that this initial feedback can be reported to the elected Councillors for consideration at a future Councillor workshop meeting. It is requested that this feedback be provided **within 7 days** of the date of this written correspondence, so that this process can run concurrently to the preparation of amended documentation.

If you would like to discuss any aspect of this matter please do not hesitate to contact me on 9847 6799.

Yours faithfully,

Benjamin Jones  
Assessment Officer  
Planning and Compliance Division

---

**Hornsby Shire Council**

ABN 20 706 996 972  
296 Peats Ferry Rd, Hornsby 2077

PO Box 37, Hornsby NSW 1630

**Phone** 02 9847 6666  
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**Web** [hornsby.nsw.gov.au](http://hornsby.nsw.gov.au)



## **Attachment 1 – Initial Environmental Review**

### **Background**

The site contains remnant vegetation mapped by ELA (2017) as described by Smith & Smith (2008) as Cumberland Plain Woodland (CPW), a Critically Endangered Ecological Community (CEEC) listed under the *Commonwealth Environmental Protection and Biodiversity Conservation Act 1999* and the *NSW Biodiversity Conservation Act 2016*. The vegetation to the west of the property is dominated by remnant canopy trees, with a mixed native/exotic grass understory. The eastern boundary contains an existing dwelling and landscaping. A Pre-lodgement application was lodged under PL/87/2019 which identified that Natural Resources was unlikely to support the proposal as the property contains the largest patch of remnant Cumberland Plain Woodland in Hornsby Shire LGA. The property is not mapped as bushfire prone land.

The proposal involves the subdivision of one lot into ten, one of which is proposed to be acquired by Hornsby Council for the widening of John Road. The design involves full tree and vegetation removal within the proposed road reserve and some vegetation removal throughout the remaining nine lots to facilitate future dwellings.

### **Biodiversity Offsets Scheme**

The NSW *Biodiversity Conservation Regulation 2017* sets out thresholds for when the Biodiversity Offsets Scheme (BOS) would be triggered. The application has submitted information that addresses the following triggers for the BOS:

Biodiversity Values Map	Not triggered
Area threshold	Not triggered
Likely to significantly affect threatened species	Triggered

A Biodiversity Development Assessment Report has been provided, including the determination that the removal of 0.16ha of Blue Gum High Forest, as a Serious and Irreversible Impact Entity, will generate 3 ecosystem credits under the Biodiversity Offset Scheme. The removal of 0.07ha of Blackbutt Gully Forest will generate 1 ecosystem credit.

### **Impacts of the proposal**

The application includes a Plan of Subdivision, Biodiversity Development Assessment Report (BDAR), Arborist Report, Sediment and Erosion Plan and Drainage Plan.

The Biodiversity Development Assessment Report provided by Cumberland Ecology (dated 10/12/20, D08075117) has identified that 0.16ha of Blue Gum High Forest (PCT 1237) vegetation and 0.07ha of Blackbutt Gully Forest (PCT 1776) is to be removed to facilitate the development. The report argues that Blue Gum High Forest is the most suitable PCT due to the higher elevation and rainfall experienced in the Hornsby LGA, compared to the lower elevation and rainfall typically associated with CPW. Both BGHF and CPW are listed as Critically Endangered Ecological Communities and both

are derived from shale soils. No threatened species or habitat features were identified within the property in the report.

The Arborist Report provided by Tree Wise Men (dated 22/09/20, D08075116) identified 15 trees for removal and another 31 located within the proposed road reserve (lot 1). Of the 15 trees proposed for removal, 8 are identified to be *Eucalyptus tereticornis*, a diagnostic species of the Cumberland Plain Woodland vegetation community. Within the lot identified for road-widening, a total of 19 canopy trees proposed for removal are locally indigenous to the Hornsby LGA. This includes 6 *Eucalyptus tereticornis*, and 2 *Eucalyptus saligna*. The Tree Protection Plan provided on pages 39 and 40 identify the building envelopes for future dwellings, indicating the encroachments which will be experienced by trees to be retained. Many of the trees will experience major encroachment for road-widening, footpaths, building envelopes, driveways and services construction.

The Sediment and Erosion Plan provided by P.S. Graham (dated 22/05/20, D08075122) identifies the location of kerb inlet geotextile logs however the location of sediment fences and earthen mounds are not clearly identified. The Subdivision Works and Drainage Plan provided by P.S. Graham (dated 22/05/20, D08075097) identifies the location of stormwater pits for each lot within the tree protection zones of trees to be retained. Additional drainage infrastructure is proposed to the rear of lots 8, 9 and 10 however this area is currently cleared of vegetation. The location of pits along John Road relies on the acquisition and clearing of vegetation within lot 1.

#### Discussion of impacts

Due to the presence of shale soils and known populations of BGHF in the surrounding area, it is not unreasonable of the ecologist to determine that the vegetation could comprise BGHF. It is considered however that the dominance of CPW species, particularly *Eucalyptus tereticornis*, justifies the presence of CPW on the site. Both communities are shale derived, but an assessment of the species identified in the BDAR floristic survey plots identifies that only four species within the two plots are diagnostic species of BGHF (*Dianella caerulea*, *Elaeocarpus reticulatus*, *Eucalyptus saligna*, *Oplismenus aemulus*). The remaining native species are characteristic of CPW, which aligns with the strong presence of *Eucalyptus tereticornis*. While the BDAR lists PCT 1237 (BGHF), the development has not been designed to retain all BGHF species. Two *Eucalyptus saligna* are proposed for removal to facilitate the works within lot 1 for road widening. Taking into consideration that the PCT is incorrect, the removal of 14 *Eucalyptus tereticornis* will have a significant impact on the integrity of the CPW vegetation community.

In accordance with Section 1C.1.1 Biodiversity of the HDCP 2013 and the *Biodiversity Conservation Act 2016*, development must demonstrate avoidance and minimisation of impacts to biodiversity. While the proposal has been placed to reduce vegetation loss, 13 trees of 'A' retention value experience encroachments, 9 of which are *Eucalyptus tereticornis*. Of 62 trees of 'B' retention value, 31 will experience encroachments. The significant number of trees experiencing encroachment raises the concern that additional impacts will be experienced during future dwelling construction. Of particular concern are the trees located in proposed lots 2, 3, 4, 5 and 6. It is considered that while strict building envelopes have been provided, these will



not be followed in the future leading to additional tree loss within a CEEC as a result. While an effort to minimise impacts to existing vegetation is noted, the density of subdivision is determined to be too high for the significance of vegetation within the site.

The HDCP 2013 also identifies in table 1C.1.1(a) that development should incorporate a 20-metre buffer to endangered ecological communities and a 10-metre buffer to groups of remnant indigenous trees. This buffer is proposed to minimise the impact of development on existing communities of vegetation to ensure their longevity and protection. The placement of dwellings amongst a CEEC does not demonstrate consideration of this principle.

Pre-lodgement advice recommended that a Vegetation Management Plan (VMP) be prepared for the property to ensure that CPW vegetation is conserved. As the subdivision layout proposes residential lots within the mapped area of CPW, a VMP is less likely to be successful in maintaining the biodiversity values of the community. While a BDAR has been provided in accordance with the requirements of the Biodiversity Offset Scheme, the Hornsby Council Green Offsets Code requires that vegetation removal is offset locally to ensure that Hornsby LGA maintains vegetation cover on private land. There is some opportunity for future applications to replace lost vegetation in the shrub and ground layers however the constrained lots 2, 3, 4, 5 and 6 will not be capable of facilitating replacement canopy planting. As the proposal does not provide an offset for the loss of 15 trees within private land and 31 trees within the proposed road reserve, the development will result in a net loss of biodiversity for the site.

Council has assessed this Application and considers that it cannot be supported due to non-compliance with the Hornsby Development Control Plan 2013

**Recommendation:**

Council have assessed the application and does not support the proposal for the following reasons

- The property contains one of the two remnant patches of Cumberland Plain Woodland in the Hornsby LGA
- The proposal will result in the loss of 0.16ha of Cumberland Plain Woodland, a Critically Endangered Ecological Community under NSW and Commonwealth legislation. The community is also listed as a Serious and Irreversible Impact entity under the Biodiversity Offset Scheme.
- The proposal has not demonstrated consideration of Section 1C.1.1 Biodiversity of the HDCP 2013
  - 1B.6.1 Tree Preservation – the development will result in the removal of 46 canopy trees with major encroachments into the TPZ of trees to be retained
  - 1C.1.1 Biodiversity – the development has not demonstrated avoidance of impacts or provided a 10-20 metre buffer to a Critically Endangered Ecological Community
- The development will result in cumulative impacts on vegetation to be retained, resulting in a net loss of biodiversity.

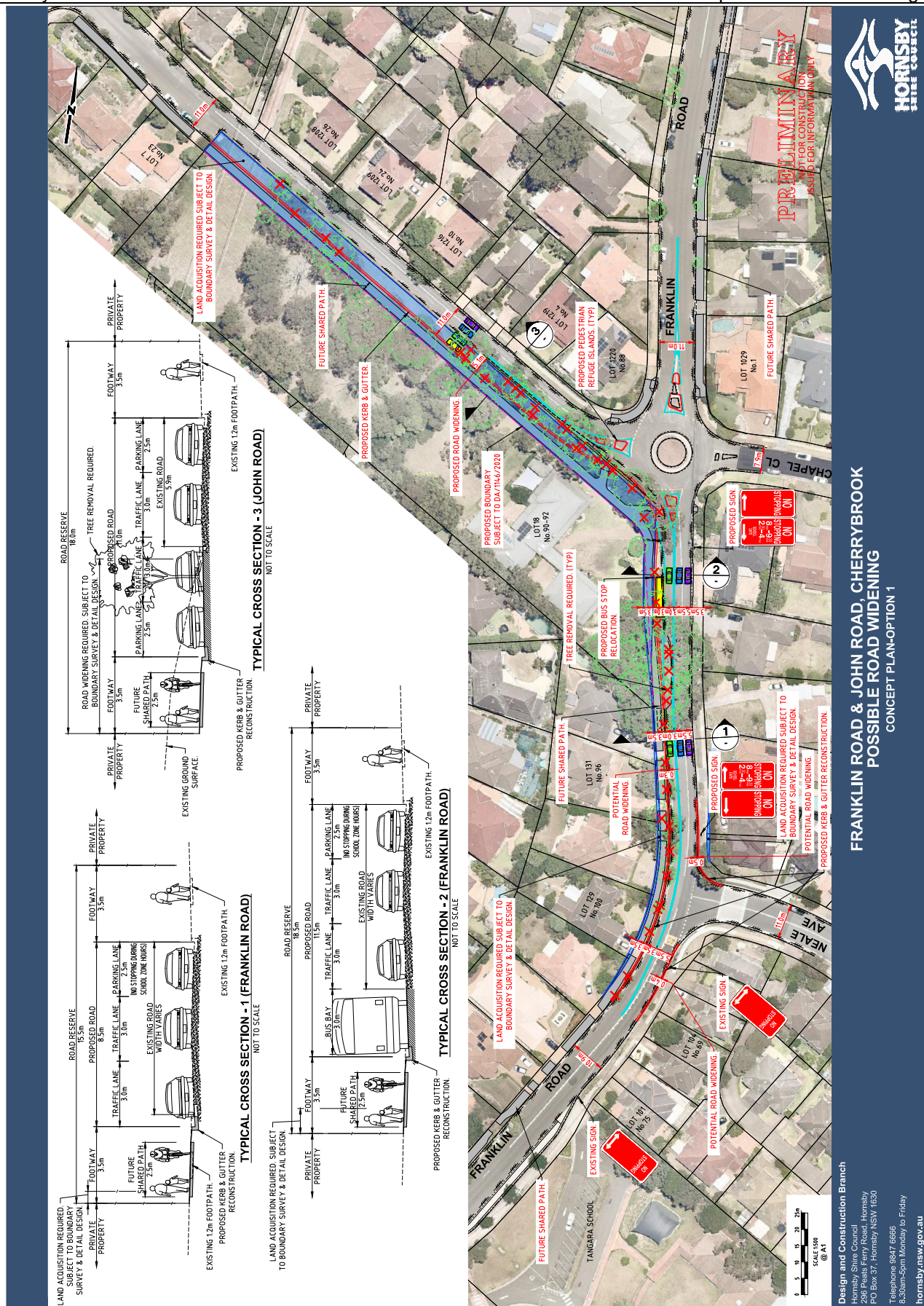
- The proposal has not proposed adequate measures to protect the Cumberland Plain Woodland vegetation to be retained within the lots

## ATTACHMENT 4 - ITEM 3

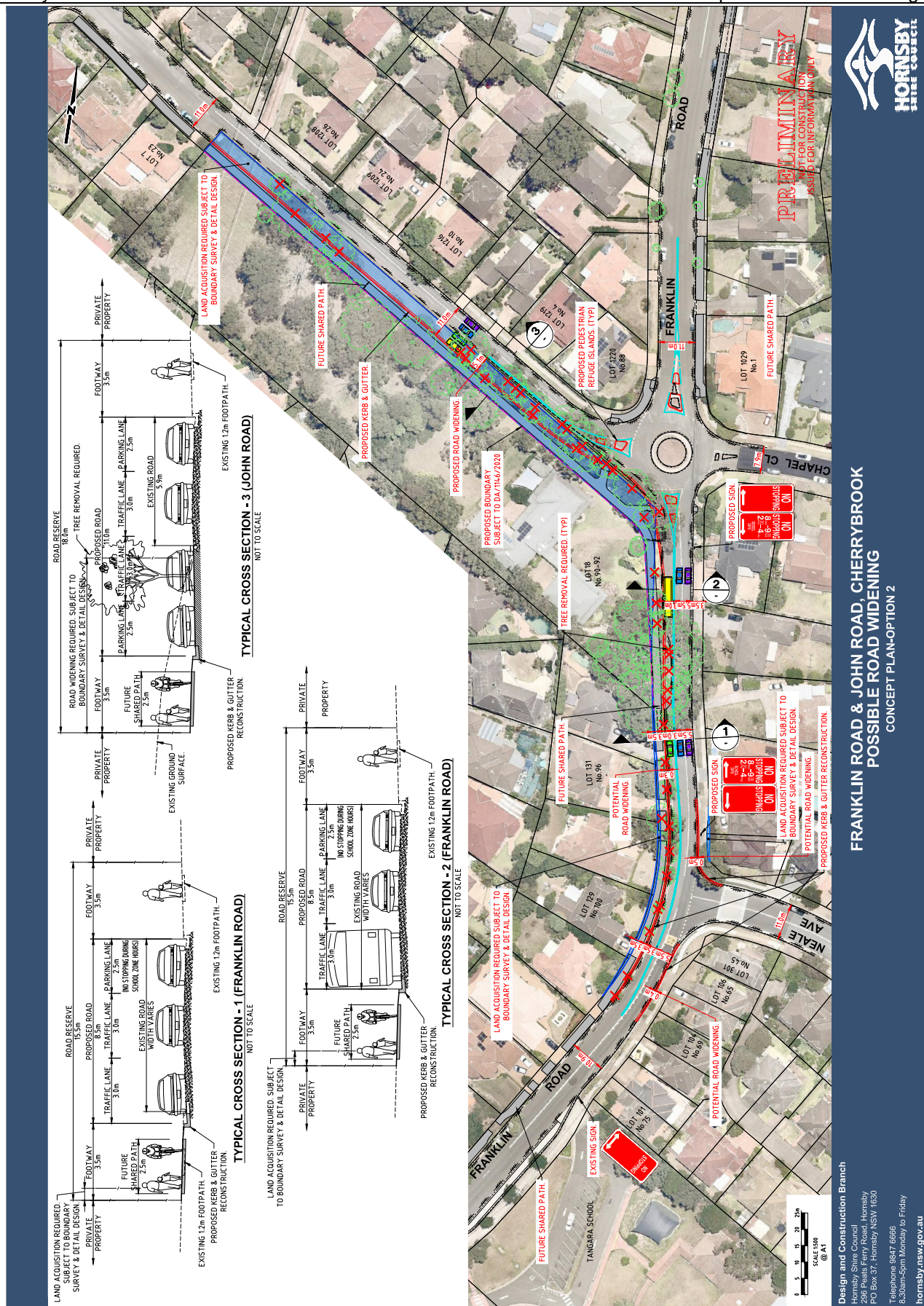
**Attachment 2 - Concept Options 1 and 2**

**ATTACHMENT 4 - ITEM 3**

# ATTACHMENT 4 - ITEM 3







FRANKLIN ROAD & JOHN ROAD, CHERRYBROOK  
POSSIBLE ROAD WIDENING  
CONCEPT PLAN-OPTION 2

**Design and Construction Branch**  
Hornsby Shire Council  
296 Peats Ferry Road, Hornsby  
PO Box 37, Hornsby NSW 1530  
Telephone 8947 6666  
8.30am-5pm Monday to Friday  
hornsby.nsw.gov.au

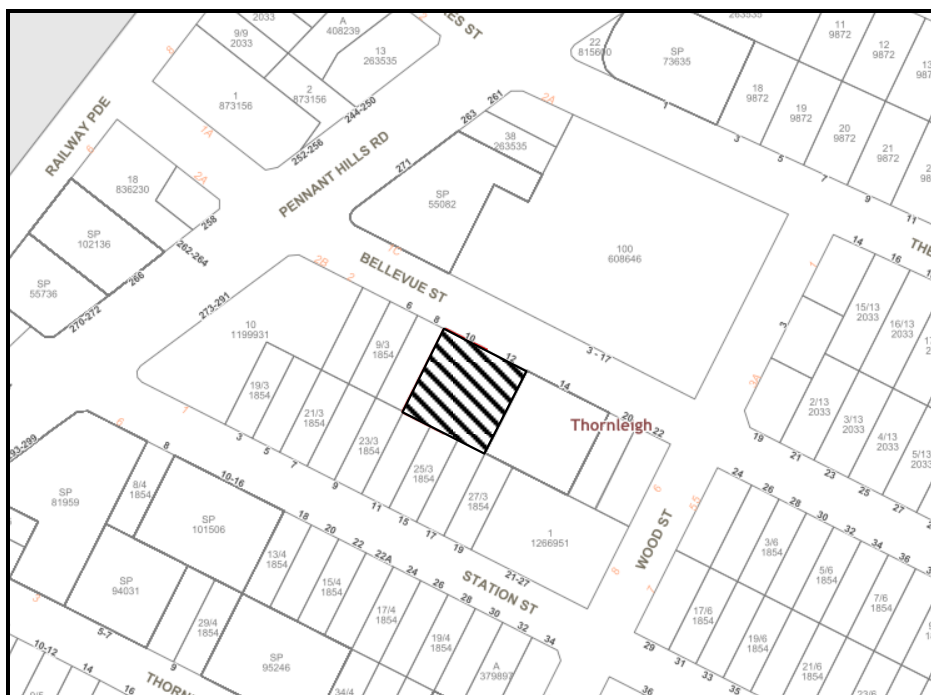
# ATTACHMENT 4 - ITEM 3

**ATTACHMENT/S**

**REPORT NO. LPP49/22**

**ITEM 4**

- 1. LOCALITY PLAN**
- 2. SEE AND CLAUSE 4.6**
- 3. SITE PLAN**
- 4. FLOOR PLANS**
- 5. ELEVATIONS AND SECTIONS**
- 6. LANDSCAPE PLAN**

**LOCALITY PLAN****DA/181/2022****No's. 10 & 12 Bellevue Street, Thornleigh****ATTACHMENT 1 - ITEM 4**





**Amended**

**Statement of Environmental Effects**

**Residential Flat Building**

**10-12 Bellevue Street**

**Thornleigh**

**1 August 2022**

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**ATTACHMENT 2 - ITEM 4**

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Appendix 1 – Clause 4.6 – Exceptions to Height Control

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*Amended Statement of Environmental Effects – 10-12 Bellevue Street Thornleigh.....Page 2*

### 1.0 Introduction

This amended Statement of Environmental Effects (SEE) has been prepared by Caladines Town Planning Pty Ltd on instructions from Zhinar Architects Pty Ltd and accompanies a development application (DA) to Hornsby Shire Council (HSC), seeking development consent to carry out on-site preparation works, including demolition of all existing structures, excavation works and the removal of trees to facilitate the construction of a five (5) storey residential flat building (RFB) containing 21 residential apartments over two (2) levels of basement car parking, provision of extensive landscaping throughout the site as well as private and communal open space at 10-12 Bellevue Street Thornleigh.

Because of the sites topography, which is higher in the south-eastern corner, the proposal also seeks consent to vary the 16.5m building height control by between 160mm or 0.99% (small portion of roof) and 970mm or 5.9% (lift overrun).

This SEE has been prepared pursuant to Section 4.12 "Application" of the Environmental Planning and Assessment Act, 1979 and Clause 50 of the Environmental Planning and Assessment Regulation, 2000.

/

The SEE provides a description of the site and surrounds, a comprehensive description of the proposed development, a summary of the relevant planning controls, and an assessment of the environmental effects the proposed development will have on the surrounding urban environment.

The report concludes that after examining the environmental effects of the proposed development when measured against the Evaluation criteria prescribed under Section 4.15 (1) of the Environmental Planning and Assessment Act, 1979, the proposal is appropriate for the site, having no adverse environmental impacts upon the surrounding transitional urban environment, and will assist in contributing towards housing targets for the Hornsby LGA. Accordingly, the application is, in our opinion worthy of approval.

### 2.0 Regional Context

The subject site is located approximately 19km South West of the Sydney CBD, 4km from Hornsby Town Centre and within the Local Government Area (LGA) of Hornsby

The Hornsby LGA accommodates a diverse mix of residential, business and industrial forms of development in close proximity to the site. The new Northconnex Tunnel connects with the M1 Freeway that has a direct linkage with Gosford and the remaining portion of the Central Coast.

The commercial and retail uses within Thornleigh are quite diverse and within a short walk of most new medium to high density residential development in this neighbourhood. See the suburb of Thornleigh (shaded) and surrounding suburbs at **Figure 1**.

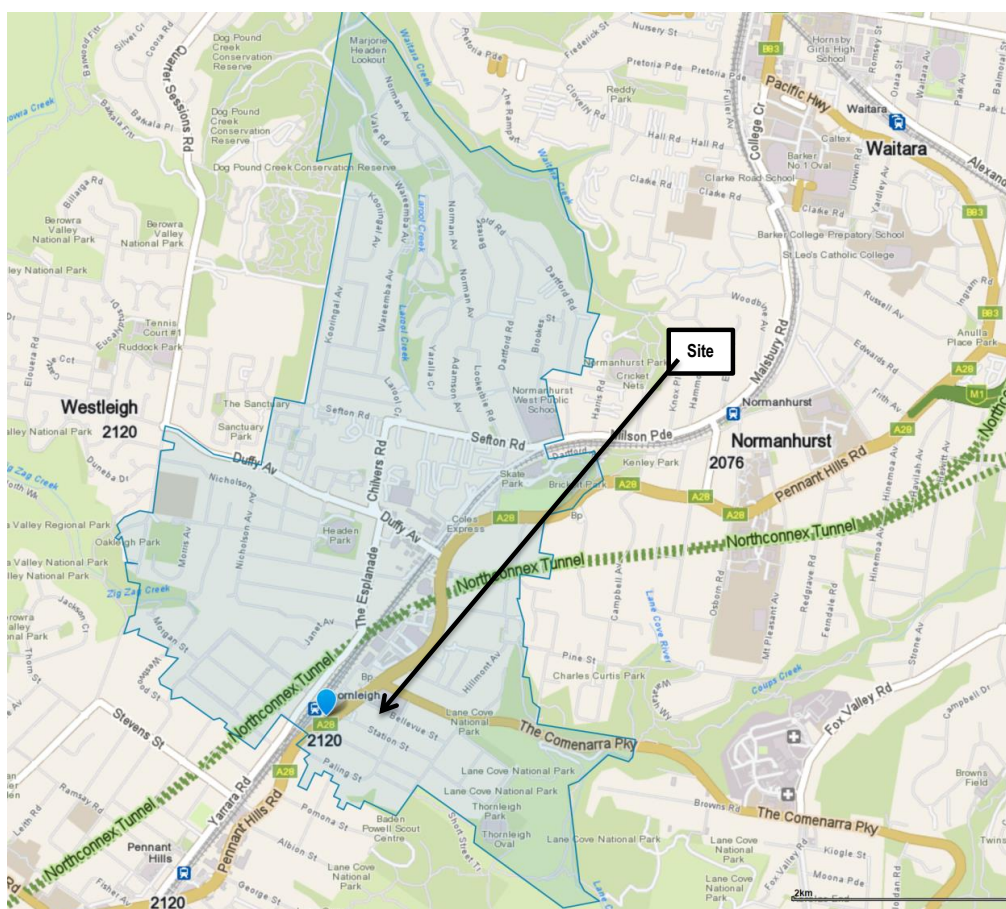


Figure 1  
Source: Whereis

### 2.1 The Site and Surrounding Neighbourhood

The development site is located on the southern side of Bellevue Street between Wood Street and Pennant Hills Road Thornleigh. See location map at **Figure 2**.

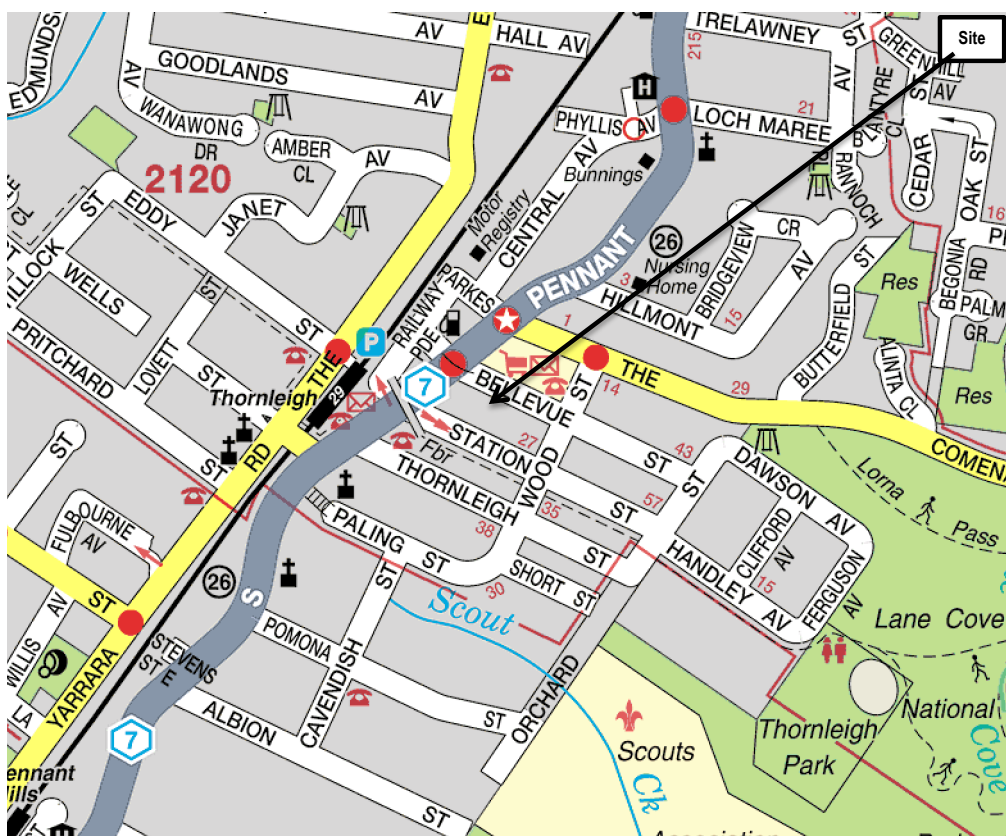


Figure 2  
Source: UBD

The site is strategically located, within close proximity of Pennant Hills Road as well as the below listed amenities and public transport facilities:

- Thornleigh Railway Station;
- Thornleigh Community Centre;
- Aldi Supermarket;
- Thornleigh Park;
- Thornleigh Market Place including Woolworths Supermarket, Post Office and other small shops opposite the site;
- Bunnings;
- Hope Medical Centre;
- Motor dealerships;
- Restaurants and cafes;
- Fitness centre;
- McDonalds and KFC takeaway food restaurants;
- Churches

The development site consists of two (2) rectangular shaped lots, each containing a single detached dwelling house with associated structures. See aerial photo of the site and surrounds at **Figure 3**.





Figure 3  
Source: Six Maps

The character of built form within this precinct consists predominantly of single detached dwelling houses with pitched tile roofing forms and landscaped front, side and rear setbacks however there are some sprinkles of new residential flat buildings and commercial/retail premises within the surrounding precinct.

The surrounding neighbourhood precinct is in a state of transition with older detached dwelling houses being replaced by an emerging character of medium to high density residential development. This urban renewal forms part of Council's Housing Strategy to increase the population density of the area by better utilising public transport amenities and services. The residential flat buildings typically have articulated facades and basement car parking.

Lower density residential streetscapes are still prevalent further from the train station and shopping centres. The dwelling houses are from a variety of architectural periods and include an eclectic variety of designs and material. Many of the houses include granny flats and ancillary buildings within their rear setbacks. The underlying topography is quite flat, with a consistent rectangular subdivision pattern creating similar lot sizes throughout the locality. This is changing as higher density development consolidates smaller Torrens title allotments.

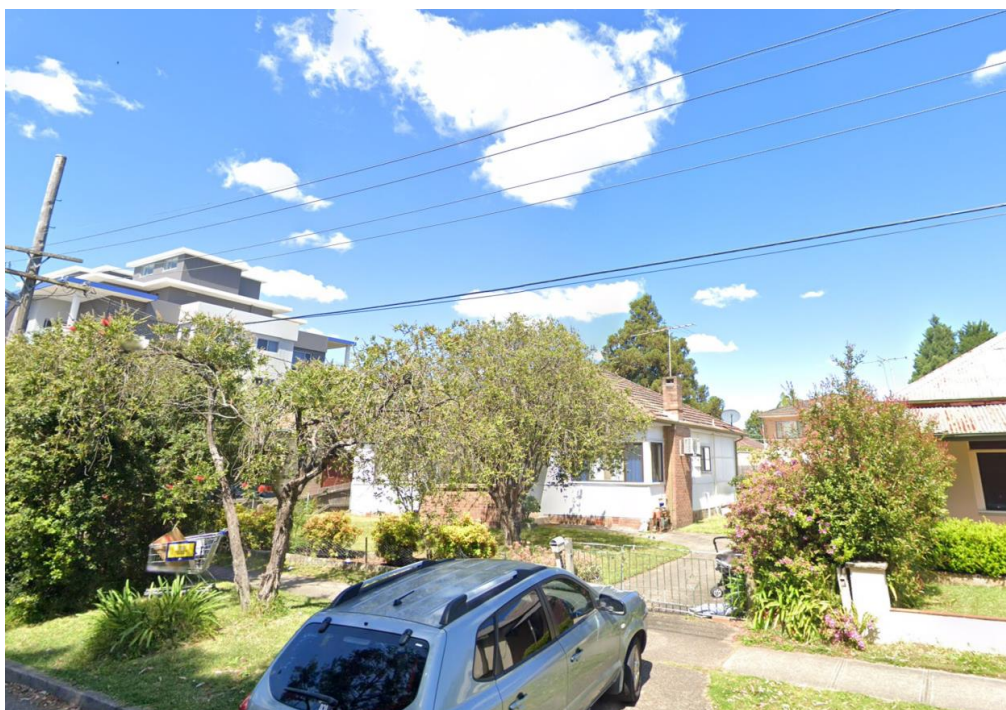
The site is located within 250m (approximately) of the Thornleigh Railway Station and approximately 80m of Pennant Hills Road, which is a State classified road that affords commuters with regular bus services 7 days a week. Directly across the road from the site is a medium scale shopping centre that includes a Woolworths Shopping Centre. Approximately 80m west of the subject site is an Aldi Supermarket.

Photos of the dwellings on each property and other building forms surrounding the site are provided at **Figure 4 to Figure 14.**





Figure 4  
View South Towards 12 Bellevue Street



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Figure 5  
View South Towards 10 Bellevue Street



Figure 6  
View West Along Bellevue Street Towards RFB at 14-16 Bellevue Street and House at 12 Bellevue Street



Figure 7

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View South Towards RFB at 14-16 Bellevue Street



Figure 8  
View South Towards 4 and 6 Bellevue Street



Figure 9  
View South Towards 8 Bellevue Street

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Figure 10  
View West Along Streetscape of Bellevue Street



Figure 11  
View North - Corner Wood Street and Bellevue Street

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Figure 12  
View East Along Bellevue Street - Shopping Centre Loading Area on Left Hand Side

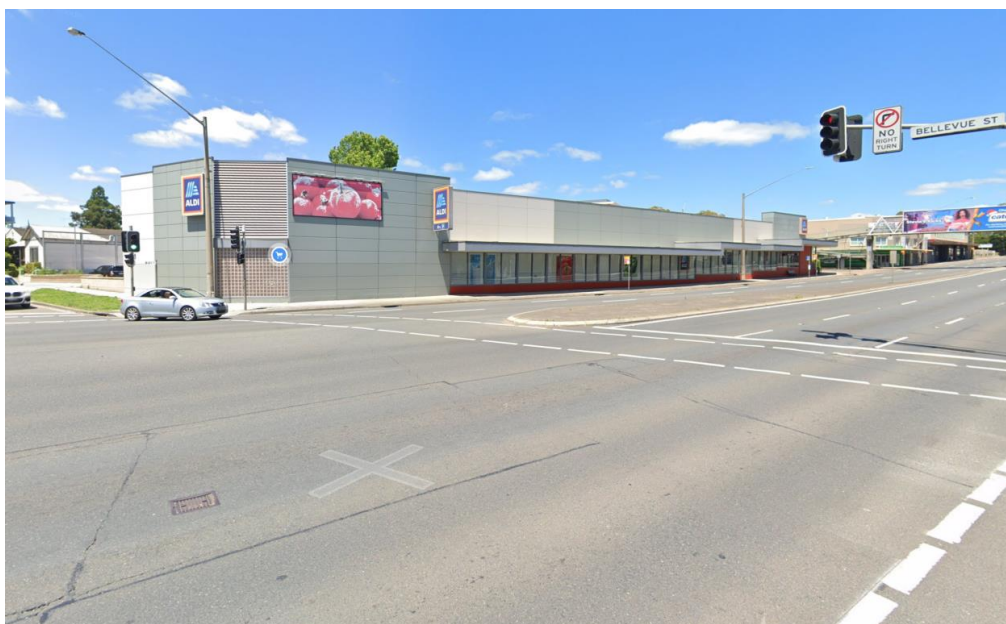


Figure 13  
View South Along Pennant Hills Road Towards Existing Aldi Supermarket

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Figure 14  
View West Along Bellevue Street Towards Intersection of Bellevue Street and Pennant Hills Road

### 3.0 Site Details

The site is legally described as Lot A and Lot B in DP 360224, generally known as 10-12 Bellevue Street Thornleigh. See cadastral map at **Figure 15**

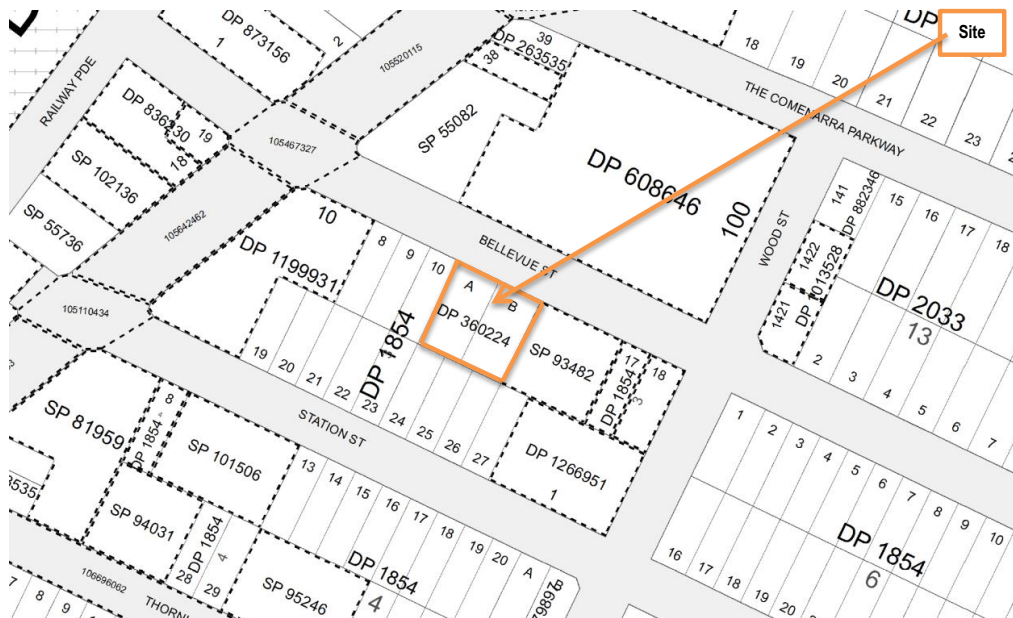


Figure 15  
Source: NSW Land Registry Service



### 3.1 Town Planning Background To Application

On 21 September 2021 the project architect from Zhinar Architects Pty Ltd and Consultant Town Planner from Caladines Town Planning Pty Ltd attended a Design Excellence Panel Meeting where a number of design issues were discussed, including:

- the desired future character for this precinct;
- building height
- setbacks;
- building form and separation;
- landscaping;
- open space;
- privacy and security;
- sunlight and ventilation;
- housing choice;
- vehicles access and parking;
- public domain and traffic management and
- ESD issues.

On 7 October 2021 the project architect from Zhinar Architects Pty Ltd and Consultant Town Planner from Caladines Town Planning Pty Ltd attended a Pre-DA Meeting where a number of planning and design issues were discussed, including:

- Site context;
- Design Excellence Minutes;
- Setbacks;
- Landscaping;
- Height;
- Noise;
- Air Quality;
- Waste Management;
- Traffic;
- Engineering;
- Car parking, circulation ramps and parking aisles;
- Stormwater Drainage;
- Water quality;
- Trees and
- Construction Management Plan

The proposal before Council has considered all of the issues discussed at both meetings and has addressed the above issues by modifying the building design and also by engaging relevant consultants to prepare plans or reports to address the issues raised.

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# ATTACHMENT 2 - ITEM 4

Because of the sites topography, which is higher in the south-eastern corner to that of other parts of the site, the proposal also seeks consent to vary the 16.5m building height control by between 160mm or 0.99% (small portion of roof) and 970mm or 5.9% (lift overrun).

- 3 x 1 bedroom
- 14 x 2 bedroom
- 4 x 3 bedroom

Total = 21 units, 3 of which are adaptable.

UNIT SUMMARY & ADG COMPLIANCE											
10-12 BELLEVUE STREET, THORNLEIGH NSW 2120											
  											
LEVEL	NUMBER	TYPE	AREA (m <sup>2</sup> )	POS (m <sup>2</sup> )	UNIT		CROSS VENTILATION	SOLAR - ZHR	SOLAR NO DIRECT SOLAR	INTERNAL BASEMENT	TOTAL
GROUND	001	2 BED	81.47	53	ADAPTABLE	LIVABLE	I	I		4.7	8.7
GROUND	002	2 BED	87.05	50			I	I		4.2	8.2
GROUND	003	3 BED	97.98	27			I	I		7.2	11.2
GROUND	004	3 BED	100.38	30			I	I		5.1	10.1
LEVEL 1	101	2 BED	76.31	11			I	I		4.7	8.7
LEVEL 1	102	2 BED	78.91	11			I			3.4	7.4
LEVEL 1	103	2 BED	76.61	11		I	I	I		4	8
LEVEL 1	104	2 BED	75.39	10			I	I		5	9
LEVEL 1	105	1 BED	52.73	9	I			I		4	8
LEVEL 2	201	2 BED	76.31	11			I	I		4.7	8.7
LEVEL 2	202	2 BED	78.91	11			I			3.4	7.4
LEVEL 2	203	2 BED	76.61	11		I	I	I		4	8
LEVEL 2	204	2 BED	75.39	10			I	I		5	9
LEVEL 2	205	1 BED	52.73	9	I			I		4	8
LEVEL 3	301	2 BED	76.31	11			I	I		4.7	8.7
LEVEL 3	302	2 BED	78.91	11			I			3.4	7.4
LEVEL 3	303	2 BED	76.61	11		I	I	I		4	8
LEVEL 3	304	2 BED	75.39	10			I	I		5	9
LEVEL 3	305	1 BED	52.73	9	I			I		4	8
LEVEL 4	401	3 BED	104.87	40			I	I	I	6.7	10.7
LEVEL 4	402	3 BED	107.5	50			I	I	I	6.6	10.6

The proposal over each level is set out in detail below:

#### **Basement - 2**

- Excavation works to create an irregular shaped basement containing 19 resident car spaces, including 3 accessible car spaces. **Basement 1 and 2;**
- 4 bicycle rack and 1 motor bike space;
- Lockable storage cages;
- 1 lift;
- Pump holding tank;
- Ramp down from upper level and
- Fire stairs x 2.

#### **Basement - 1**

- 10 car spaces comprising of 6 resident spaces and 4 visitor spaces;
- Access basement 2 ramp to ground level above;
- Remote controlled metal security door allowing ingress/egress to and from this basement level;
- Lockable storage cages;
- Bulk waste storage area;
- Bin room;
- Plant rooms;
- Fire stairs – both ends;
- 1 lift.

#### **Ground Floor Plan**

- Hydrant booster;
- Substation;
- Temporary bin area;
- Modified floor plate (eastern side);
- Pergola, table and seating now on eastern side;
- Rear balcony (unit U002) has been deleted and replaced with landscaping;
- Pathway along rear of unit block removed to allow more landscaping/deep soil;
- Delete main entry way find feature to front door;
- Generous foyer;
- Vehicular access to site over a 6.1m wide concrete driveway off Bellevue Street;
- 2 x 2 bedrooms and 2 x 3 bedrooms;
- Each unit is provided with bedrooms, living/dining room, kitchen, bathrooms and laundry;
- Each unit is provided with a generous sized terrace/balcony;
- Garbage bin holding and collection area next to the driveway;
- The garbage bins will be collected and emptied by a Council contractor next to the driveway;
- Passive recreation area along the rear of the site;
- Central pathway off the street to lobby;
- On-site stormwater detention system is to be provided along the eastern side of the site;
- 5,500 litre underground rainwater tank at rear of site;
- Access into the building is through individual swipe cards or coded security doors;
- Generous landscaping/deep soil zones are provided around the perimeter of the site;
- Paved communal open space provided in south-western corner of site;
- 1 lift and
- fire stairs;

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*Amended Statement of Environmental Effects – 10-12 Bellevue Street Thornleigh.....Page 15*

**Level 1 to 3**

- 1 x 1 bedroom, 3 x 2 bedroom and 1 x 3 bedroom;
- 3 x 1 bedroom adaptable units. One on each floor;
- Each unit is provided with bedrooms, living/dining room, kitchen, laundry and balcony/balconies;
- Central lift and fire stairs;

**Level 4**

- 2 x 3 bedroom units;
- Each unit is provided with bedrooms, living/dining room, kitchen, bathrooms, laundry and landscaped balconies;
- Central lift and fire stairs;

**Roof Plan**

- Light weight color bond roof and lift overrun;

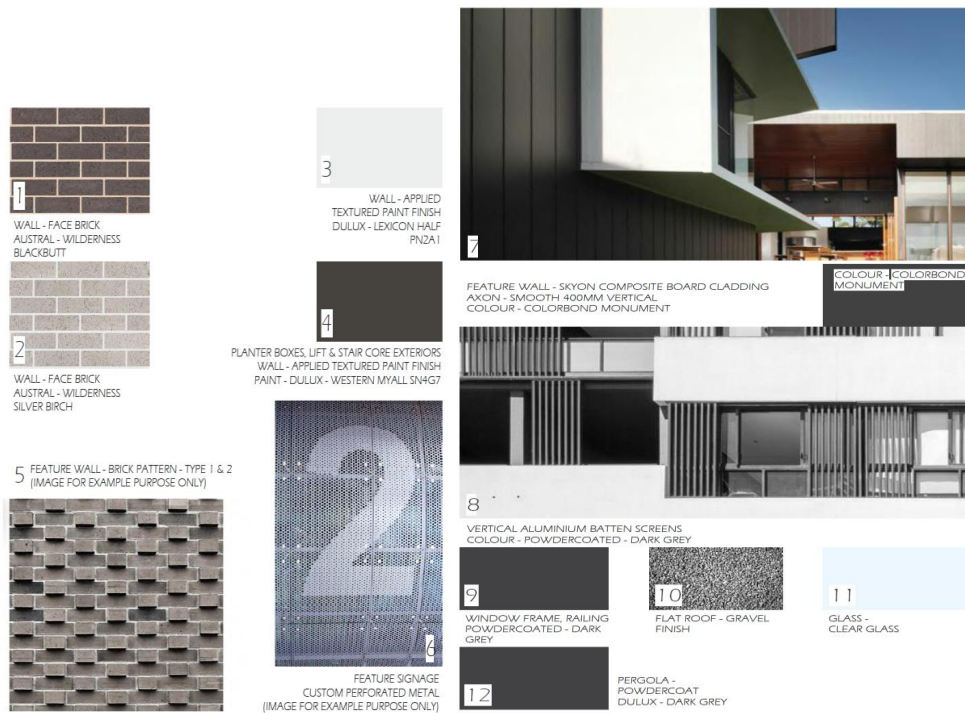
**Materials**

The building is to be constructed primarily of face brickwork of light and dark colour tones. These traditional earthy colour tones will compliment the traditional leafy character of this neighbourhood. Glass balustrading is provided with aluminium framed glass windows and sliding glass doors onto balconies and terraces. See photomontage of building at **Figure 16** and colour material and schedule at **Figure 17**.



Figure 16  
View South  
Source: Zhinar Architects

# ATTACHMENT 2 - ITEM 4



/Figure 17  
Material and Colour Schedule

**Environmentally Sustainable Development**

A range of design initiatives and elements have been employed to ensure that the proposed development optimises its sustainability.

Resource, energy and water efficiency have been incorporated into the design and layout to contribute to this high quality residential scheme.

The proposal adopts a philosophy of reducing the amount of waste to land fill and a waste management hierarchy of avoid/reuse/recycle/dispose which is proposed in the excavation and construction processes.

The approximate quantity and destination of waste generated during the demolition and construction works with regard to re-use and recycling are outlined in the waste management plan.

Building materials incorporate the properties of high thermal mass, glazing and insulation, thereby reducing the need for artificial heating, cooling and lighting.

Demolished structures and materials will be directed to recycling facilities. See Waste Management Plan accompanying the application.

Use of high efficiency water fixtures and fittings throughout the development will further reduce water consumption.

Natural cross-ventilation is achieved for 18 of the 21 units or 86% apartments due to the orientation of the building, thereby reducing the need for continuous use of air conditioning during summer.

A total of 18 of the 21 units or 86% apartments receive 2 or more hours of sunlight into each unit during mid-winter.

Passive solar and ventilation principles will reduce energy usage. Gas hot water systems are proposed to be installed to reduce energy demand.

Common walls between the units will be constructed in accordance with the noise transmission and insulation requirements of the BCA. See BASIX Certificate that accompanies the application.

**5.0 Statutory Compliance Assessment**

The following is a summary assessment of the proposed development under the heads of consideration pursuant to Section 4.15 (1) of the Environmental Planning and Assessment Act 1979 as amended.

**Section 4.15 (1) (a) (i)**

**The provisions of any environmental planning instrument.**

**State Environmental Planning Policy (SEPP) (Building Sustainability Index: BASIX) 2004 NSW**  
**Comment**

The aim of this policy is to ensure there is consistency in the implementation of the BASIX Scheme throughout the State.

The policy overrides the provisions of other environmental planning instruments and development control plans that would otherwise add to, subtract from or modify any obligation to comply with this policy.

The application is accompanied by a BASIX Certificate, which has considered the objectives of the SEPP and concludes that the standards set out by the SEPP have been satisfied.



**State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017****3 Aims of Policy**

*The aims of this Policy are:*

- (a) *to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and*
- (b) *to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.*

**Comment**

Whilst the proposed development seeks consent to remove seven (7) trees from the site, numerous new native trees and shrubs are proposed to replace them. These new trees and shrubs are of greater benefit to the site and biodiversity to the neighbourhood as they are not only a more suitable native species for this region they are more likely to survive in this areas hot dry climate. As shown on the landscape plan, a total of sixteen (16) trees are to be preserved and protected through the implementation of adequate measures for their integration into the development. Both the existing vegetation and new landscaping proposed will conserve habitat, attract more native wildlife to the neighbourhood and provide shade to the betterment of future residents and neighbours. Given the above comments, it is considered that the aims of this policy are satisfied.

**State Environmental Planning Policy No. 55 – Remediation of Land**

SEPP 55 – Remediation of Land aims to provide a State wide planning approach to the remediation of contaminated land, in particular, it promotes the remediation of contaminated land for the purpose of reducing the risk of harm to human health or to the environment in general:

*“by specifying when consent is required, and when it is not required, for a remediation work, and by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work, in particular, and by requiring that a remediation work meet certain standards and notification requirements.”*

**Comment**

Clause 7 of SEPP 55 requires the consent authority when assessing a DA for residential development to consider whether the subject land is contaminated. Council must be satisfied that the land is suitable for the purpose for which development consent is sought or whether remediation of the land needs to occur prior to such use occurring. It is noted from searches of Council's records and a review of archival aerial photos that the site has never in the past been used for industrial or commercial purposes and the site is not listed on Council's records as being subject to contamination. In view of the above comments, there is nothing on record that would suggest the site is contaminated.

**State Environmental Planning Policy (SEPP) No 65****Design Quality of Residential Flat Development****Comment**

The provisions of SEPP 65 apply to the proposed multi-storey residential development. SEPP 65 seeks to increase the design quality of residential flat development throughout NSW. It is well accepted that good design is a creative process which, when applied to towns and cities, results in the development of good urban places: buildings, streets, squares and parks. Good design is inextricably linked to its site and locality, responding to the landscape, existing built form, culture and attitudes. It provides sustainable living environments, both in private and public areas. Good design serves the public interest and includes appropriate innovation to respond to technical, social, aesthetic, economic and environmental challenges. These design quality principles do not generate design solutions, but provide a guide to achieving good design and a means of evaluating the merit of the proposed solutions.

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Ian Conry from Zhinar Architects, being the projects registered architect has carried out a comprehensive assessment of the proposal against the 9 design principles. See Ian's Design Verification Statement accompanying the application.

Ian has formed the view that the proposal is a responsive design approach to architecture and urban planning, which will ensure the proposed building form will comfortably fit within the surrounding transitional neighbourhood context.

The Design Principles are set out and addressed below:

Principle 1: Context and neighbourhood character

Principle 2: Built Form and Scale

Principle 3: Built Form

Principle 4: Sustainability

Principle 5: Landscape

Principle 6: Amenity

Principle 7: Safety

Principle 8: Housing diversity and social interaction

Principle 9: Aesthetics

### **Design Quality Principles**

The following town planning comments are made on each principle. The conclusion after he assessing these principles demonstrates that the proposed development achieves the design quality principles set out under SEPP 65.

#### **Principle 1: Context and Neighbourhood Character**

The site is located within 240m (5 minute walk) of the Thornleigh Railway Station and public bus services that operate along Pennant Hills Road. The site is within 50-80, of two (2) supermarkets (Woolworths and Aldi) as well as shops and offices.

Within the visual catchment of the site are a number of new, multi-storey RFB's constructed over the last 2 - 5 years. The site is located within a mixed use neighbourhood precinct that supports the objectives of increasing residential densities in close proximity to excellent neighbourhood support services, including major employment areas.

#### **Principle 2: Built Form and Scale**

The scale of the proposed development does not result in any noncomplying impacts on the surrounding properties in terms of loss of solar access, loss of privacy or visual impacts

The building has been designed to be in keeping with the desired scale and building form envisaged for this precinct.

The building responds to the sites topography, which is generally flat. The architectural expression of the proposed RFB ensures it readily fits within the eclectic character of Thornleigh town centre.

In materiality, proportion, scale and form, the proposal is responsive to the existing and future desired character of the area. Included are: A good quality landscape to the perimeter of the ground floor apartments, with single, well defined entry points into the building. A strong 'Sense of Address' and both vertical and horizontal breaks along the façade are provided. Visual relief through the use of material, colour and various articulation elements. Materials that provide texture at lower levels. provision of solid upstands at the lower levels.

#### **Principle 3: Density**

The proposed high density residential development provides for 21 apartments, providing a mix of 3 x 1 bedroom, 14 x 2 bedroom and 4 x 3 bedroom. The number of units proposed is at a comparable density to other new apartment developments within the Thornleigh neighbourhood precinct. The site

is ideally located to serve the needs of future residents in terms of local shopping, commercial offices, public transport, jobs, churches, childcare, public parks, schools and community services.

The proposed density is supported by close proximity to excellent public transport facilities. The broad range of unit types and sizes (including some oversized apartment suitable for families) caters to a wide variety of end users and promotes a diverse demographic mix. Solar access and cross ventilation to apartments, along with daylight and natural ventilation to lobbies on each floor achieves a high level of amenity for future residents.

#### **Principle 4: Sustainability**

The proposed development achieves the minimum 2hr control for solar access for 18 or 86% of the 21 units proposed.

In regards to cross ventilation, 18 or 86% of units in the development are cross ventilated, which will reduce the heat load in the building.

In addition, energy, thermal comfort and water initiatives have been identified within the BASIX Certificate. The building materials proposed incorporate a high thermal mass, glazing and insulation, thereby reducing the need for artificial heating, cooling and lighting.

The proposal maximises the principles of sustainability, including on-site rainwater harvesting and re-use for the watering of landscaping. Maximising direct sun to apartments while utilising overhangs and shading devices to control summer heat gain. Providing energy-efficient lighting, water-efficient fixtures and other appliances in each unit promote the buildings sustainability.

#### **Principle 5: Landscape**

A total of 16 trees are being retained and protected on site during construction of the building. Extensive native landscaping is proposed in private and public areas with a focus on creating a development that is in keeping with the envisaged 'green' character of this neighbourhood.

The provided setbacks at ground level allow deep soil zones to be provided with generous sized perimeter landscaping. Coupled with the private gardens of the ground floor units, these will provide both variety and a sense of individuality. Lawn areas and groups of native trees, communal areas, play areas, paths, seating, raised planters and ornamental grasses will provide an attractive softness to the building edges. See Landscape Plan accompanying the DA.

#### **Principle 6: Amenity**

The site is located in close proximity to excellent public transport, 80m to nearest bus stop along Pennant Hills Road and approximately 240m to Thornleigh Railway Station.

The proposed RFB is designed to maximise visual and acoustic privacy for future residents, ensuring neighbouring properties maintain a reasonable level of amenity.

While the side boundary setbacks are less than the 6m prescribed by the ADG, highlight windows are provided to those rooms that face the east and west

The number of units with access to natural ventilation and light has been maximised with 86% or 18 of the 21 units provided cross ventilation and solar access.

The design of the proposed RFB demonstrates adequate separation between existing and future buildings on neighbouring properties. While side building setbacks between ground floor and level 3 have setbacks less than the ADG Standard, highlight windows or fixed louvres have been introduced. Further, a row of dense screening tall trees are provided on each side elevation as well as privacy screens around each terrace to further reduce any perceive amenity issues such as overlooking.

An Acoustic Report prepared by Acoustic Logic accompanying the DA. It sets out a number of measures which will be implemented to ensure future residents of the proposed development and those living in neighbouring properties are not adversely affected by noise. Further, the acoustic report also addresses the interface with the loading dock across the road that services the shopping centre.

**Principle 7: Safety**

Safety is enhanced within the proposed development with the design of pedestrian entry points separate to vehicular access points. Pathways are clearly visible and will be well-lit of an evening to improve safety and ease of access. CCTV is being introduced to enhance safety at all entry and exit points into the site. Suitable security gates and fencing are proposed to enhance residential safety from any antisocial issues.

In addition, passive surveillance over the street is enhanced through the placement of windows and balconies overlooking these areas. Further, an increase in residential population and the ability for social interaction to occur further reduces anti-social issues to occur.

Security access in the form of swipe card access will be provided to all residents and no visitors will be allowed into the complex (either basement car park or into the building without the resident being within their unit).

**Principle 8: Housing Diversity and Social interaction**

The proposed development provides for a diverse mix of 1, 2 and 3 bedroom apartments that vary in size, design and layout, including a 10% mix of each type of unit. Provision is also made for 3 adaptable units, which is in keeping with Council's DCP controls and market expectations for the neighbourhood. The apartments cater to a large diversity of age groups and house hold types with stair cases, lift and the common/communal areas provide opportunities for social interaction between residents.

In a broader context, this project offers an excellent opportunity to provide activity in an area that has excellent access to public transport with rail and bus services provided within a short 'level' walk.

**Principle 9: Aesthetics**

The proposed RFB offers a high quality, aesthetically pleasing residential design with appropriate scale and articulation. The design reflects a modern approach with a flat roofing form that ensures an interesting and attractive new building form in the streetscape.

The development is an exemplary example of the type of density and capacity envisioned by the LEP and DCP controls for this neighbourhood precinct. The proposed RFB will present a degree of amenity and generous areas of open space with large trees and shrubs to promote a quality living environment for future residents.

In addition, the development achieves an appropriate fit with the eclectic character of the precinct and it could easily be argued that it provides a more sensitive response to the surrounding residential apartments. Therefore, the proposed density achieves a balanced streetscape, appropriate built form outcomes and high amenity for public domain open spaces.

The use of 'natural' colours and materials will require minimal maintenance, including the use of face brickwork and applied colours are found naturally rather than primary colours.

**Apartment Design Guide**

Clause 6A of the SEPP states that development control plans cannot be inconsistent with Apartment Design Guide (ADG) states. "This clause applies in respect of the objectives, design criteria and design guidance set out in Part 3 and Part 4 of the ADG. See below:

- (a) Visual privacy
- (b) Solar and daylight access
- (c) Common circulation and spaces
- (d) Apartment size and layout
- (e) Ceiling heights
- (f) Private open space and balconies
- (g) Natural ventilation
- (h) Storage

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SEPP 65 states that if a development control plan (DCP) contains provisions that specify requirements, standards or controls in relation to a matter to which this clause applies, those provisions are of no effect.

Except for the side building setback controls, the proposal complies with all numeric standards within SEPP 65 and its companion ADG.

#### **State Environmental Planning Policy (SEPP) (Infrastructure) 2007**

SEPP (Infrastructure) 2007 was gazetted on 21 December 2007 and aims to facilitate the effective delivery of infrastructure across the State by:

- *“improving regulatory certainty through efficiency through a consistent planning regime for infrastructure and the provisions of services;*
- *providing greater flexibility in the location of infrastructure and service facilities, and*
- *allowing for the efficient development, redevelopment or disposal of surplus government owned land, and*
- *identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development, and*
- *identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and*
- *providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing.”*

#### **Traffic Generation**

##### **Comment**

The proposed development is provided with vehicular ingress/egress over a 6.1m wide concrete driveway off Bellevue Street.

This location and width of the proposed driveway allows for good sight distance in both directions for motorists entering and leaving the site.

Bellevue Street is a local road and does not carry excessive traffic. The site is directly opposite a local major shopping centre and its loading/unloading bay, which generates small and large rigid trucks. At the western end of Bellevue Street, traffic signals service this eastern side of Pennant Hills Road.

The SEPP provides for a number of traffic generating thresholds that may trigger the need for the application to be referred onto the Transport for NSW (TfNSW) for either concurrence or for informational purposes.

Clause 104 of the SEPP “Traffic Generating Development” identifies the type of land uses that are required to be referred onto the RMS for concurrence or for information purposes. This clause refers to Column 1 of the Table to Schedule 3 and involves premises that are of a relevant size or capacity or an enlargement or extension of existing premises, or direct frontage to a classified road.

In this particular case, the proposal is for 21 apartments, which does not exceed the 75 apartment threshold however it does trigger a referral to TfNSW because it is less than 90m of Pennant Hills Road, being a State road. A traffic report prepared by Varga Traffic Planning accompanies the DA.

#### **Noise and Vibration**

The SEPP provides controls that must be considered when a development site is located in close proximity to major classified roads or railway lines.

In this respect the site is located approximately 80m to the east of Pennant Hills Road and approximately 240m east of the Thornleigh Railway Station.

The applicant engaged the services of Acoustic Logic to carry out an acoustic assessment of the impact of noise from Pennant Hills Road and the northern railway line (west).

The report establishes relevant noise criteria, details the acoustic assessment and provides comments and recommendations for the proposed development.

Provided the acoustic issues outlined in that report are addressed in the design and the recommendations are correctly implemented, the proposed development is expected to comply with the Hornsby Shire Council and TfNSW relevant standards and guidelines, and will have no adverse noise or vibration impacts at the nearest affected receivers.

#### **Regional Environmental Plans (REP's) (Deemed SEPP)**

##### **Sydney Regional Environmental plan No.20 – Hawkesbury – Nepean River (No. 2 - 1997).**

###### **Comment**

SREP No.20 – Hawkesbury – Nepean River aims to "protect the environment of the Hawkesbury – Nepean River system by ensuring that the impacts of future land uses are considered in a regional context".

The SREP contains a list of both general planning considerations and specific planning policies and recommended strategies.

The proposed development through sedimentation control measures during construction and the provision of quality native landscaping before the building is occupied can only enhance the quality of water entering local water catchments that link with the Nepean River system and sub catchments.

Finally, as a consequence of the proposal, it is considered that the relevant aims and objectives of this deemed SEPP are met so as not to endanger threatened species or aquatic ecosystems.

##### **Sydney Regional Environmental Plan (SREP) (Sydney Harbour Catchment) 2005 (Now Deemed SEPP)**

###### **Comment**

This planning policy applies to the subject site and other areas of Sydney Harbour; it introduces zones for the waterways and provides a planning framework for Sydney Harbour and its tributaries.

The aims of this plan are set out as follows:

- (1) *This plan has the following aims with respect to the Sydney Harbour Catchment:*
  - (a) *To ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognized, protected, enhanced and maintained:*
    - (i) *As an outstanding natural asset, and*
    - (ii) *As a public asset of national and heritage significance, for existing and future generations,*
  - (b) *To ensure a healthy, sustainable environment on land and water,*
  - (c) *To achieve a high quality and ecologically sustainable urban environment,*
  - (d) *To ensure a prosperous working harbor and an effective transport corridor,*
  - (e) *To encourage a culturally rich and vibrant place for people,*
  - (f) *To ensure accessibility to and along Sydney Harbour and its foreshores,*
  - (g) *To ensure the protection, maintenance and rehabilitation of watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity,*
  - (h) *To provide a consolidated, simplified and updated legislative framework for future planning.*
- (2) *For the purpose of enabling these aims to be achieved in relation to the Foreshores and Waterways Area, this plan adopts the following principles:*
  - (a) *Sydney Harbour is to be recognized as a public resource, owned by the public, to be protected for the public good,*
  - (b) *The public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores,*
  - (c) *Protection of the natural assets of Sydney Harbour has precedence over all other interests.*



**Comment**

The site is located in the broader areas of the SREP (Sydney Harbour Catchment) 2005 and therefore this policy is a consideration in the assessment of this application.

The proposal provides details on stormwater management by providing on-site detention and identifies how it is to be managed on-site.

As a result of the above considerations and views provided in other expert plans and reports that accompany this DA, it has been concluded that the proposed RFB works will have no impact upon the Sydney Harbour Catchment.

**Hornsby Local Environmental Plan (HSLEP) 2013**

The site is zoned R4 High Density Residential under the provisions of Hornsby LEP 2013. See **Figure 18**.

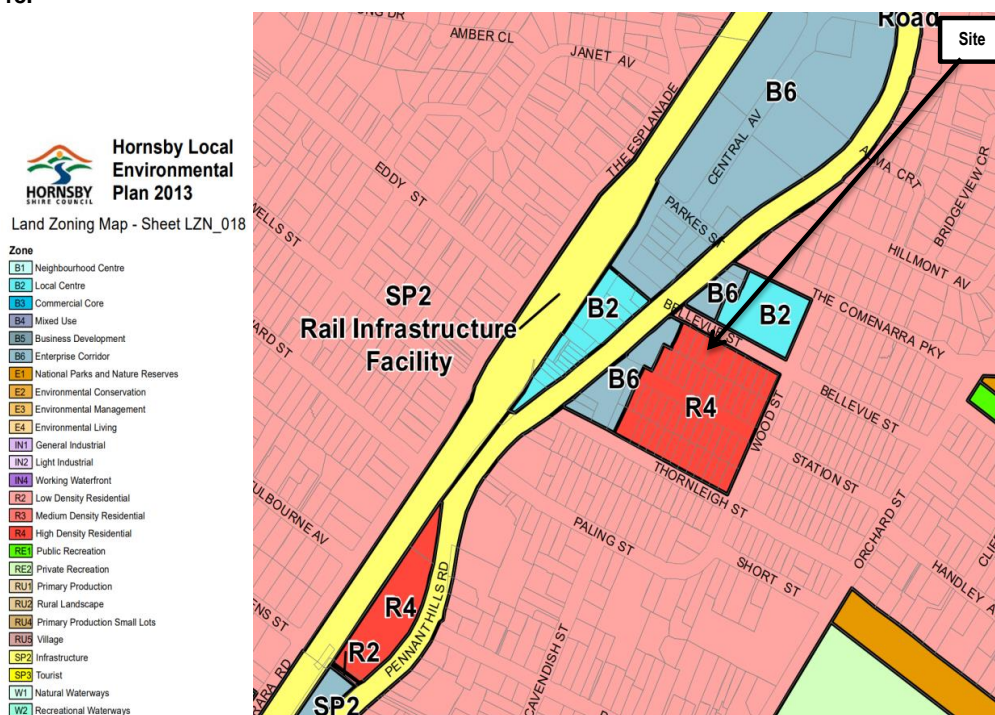


Figure 18

Source: Zone Map - Hornsby LEP 2013

The zone objectives and permissible uses in the zone are set out as follows:

**Zone R4 High Density Residential****1 Objectives of zone**

- To provide for the housing needs of the community within a high density residential environment.
- To provide a variety of housing types within a high density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

**2 Permitted without consent**

Environmental protection works

**3 Permitted with consent**

Boarding houses; Building identification signs; Business identification signs; Child care centres; Community facilities; Dwelling houses; Emergency services facilities; Flood mitigation works; Home-

*gbased child care; Home occupations; Neighbourhood shops; Places of public worship; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Residential flat buildings; Respite day care centres; Roads; Shop top housing; Water reticulation systems*

#### **4 Prohibited**

*Any development not specified in item 2 or 3*

#### **Comment**

The proposal satisfies the zone objectives for the following reasons:

- The proposed units offer quality, affordable housing stock that promote housing choice, size and economic value in that a mix of 1, 2 and 3 bedroom apartments are provided, which is consistent with Council's strategic planning vision for this neighbourhood;
- The site is located within a medium-high density housing precinct where buildings up to 5 storeys are promoted by Council's strategic planning controls although it is noted that within the visual catchment of the site there are high rise mixed use developments and low-medium rise employment buildings. These tall mixed use buildings are located towards the west of the site and demonstrate Council's desire to increase residential housing densities in this neighbourhood;
- The proposal provides for two (2) levels of basement car parking, which will reduce noise and enhance the visual amenity of the building with cars being located below the building and out of sight. The units have excellent outlook, incorporating privacy features into the design to ensure residential amenity both within and outside of the building is not unreasonably impacted upon;
- The building is comfortably sited on the land, respecting the lands topography;
- The site is strategically located in a neighbourhood that can readily absorb an increase in population density as a result of the sites proximity to public amenities and services such as the Thornleigh Railway Station, neighbourhood shops, public buses, open space, community facilities and local primary and high schools;
- The proposed development will generate approximately 4 traffic movements along Bellevue Street during peak periods, which is well within acceptable standards and there is good sight distance in both directions for residents and visitors cars to enter and leave the site in a forward direction and
- Balconies, terraces and windows are designed and orientated to enhance passive surveillance over both the public and private domains;

Given the above comments, the proposal is considered to be consistent with the objectives of the R4 High Density Residential zone.

The relevant controls within Council's LEP are set out and addressed as follows:

#### **2.4 Unzoned Land**

##### **Comment**

The land is zoned R4 High Density Residential under the provisions of Hornsby LEP 2013 and as such this control is not applicable to this application.

#### **2.5 Additional Permitted Uses of Particular Land**

##### **Comment**

Not applicable to this application.

#### **2.6 Subdivision – Consent Requirements**

##### **Comment**

Not applicable to this application.

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**2.7 Demolition Requires Consent****Comment**

The proposal involves demolition works to the existing dwellings and associated structures. See waste management plan accompanying the DA.

**2.8 Temporary Use of Land****Comment**

Not applicable to this application.

**Part 3 Exempt and Complying Development****Comment**

Not applicable to this application.

**Part 4 Principal Development Standards****4.1 Minimum Subdivision Lot Size****Comment**

Not applicable to this application.

**4.1AA Minimum Subdivision Lot Size for Community Title Schemes****Comment**

Not adopted

**4.1A Minimum Subdivision Lot for Strata Plan Schemes in Certain Zones****Comment**

Not applicable to this application.

**4.1B Minimum Lot Size for Certain Split Lots****Comment**

Not applicable to this application.

**4.2 Rural Subdivision****Comment**

Not applicable to the subject land.

**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.*

**Comment**

Hornsby LEP 2013 sets a maximum building height control of 16.5m for the subject site. See extract of Building Height Control map at **Figure 19** and architectural height plane diagram at **Figure 20**.

Except for the lift overrun (970mm or 5.9% over) and a small portion of the roof (east side -160mm or 0.99% over), the remainder of the proposed RFB is at or below the height control. We believe the variations sought are not unreasonable and as such a clause 4.6 Exceptions to Development Standards submission has been prepared and in our view justifies the minor variations sought. See Appendix 1.



### Hornsby Local Environmental Plan 2013

#### Height of Buildings Map - Sheet HOB\_018

##### Maximum Building Height (m)

I	8.5
K	10.5
M	12
N	14.5
O1	16
O2	16.5
P	17.5
S	23.5
T1	26.5
T2	29.5
U	32.5
V1	35.5
V2	38.5
W1	40
W2	41.5
X	48
AA1	62.5
AA2	72
AA3	77.5



Figure 19

Source: Hornsby LEP – Height of Buildings Map

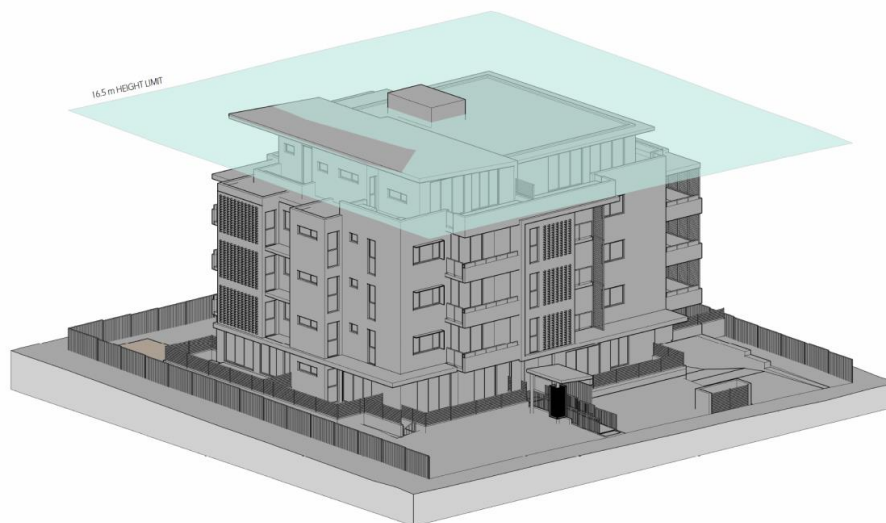


Figure 20

Source: Zhinar Architects – Amended Building Height Plane Diagram

**4.4 Floor space ratio****Comment**

The subject site is not subject to a floor space ratio (FSR) and as such this control is not applicable to this application.

**4.5 Calculation of floor space ratio and site area****Comment**

Because there is no FSR control applicable to this site, this control is not a consideration in the assessment of this application.

**4.6 Exceptions to Development Standards****Comment**

As previously mentioned, the lift overrun and a small portion of the roof extends above the maximum building height control by between 160mm (small portion of roof on eastern side of building) and 970mm (lift overrun). See **Figure 20**.

A written exception to vary the 16.5m building height control is provided at Appendix 1.

**Miscellaneous Provisions****5.1 Relevant Acquisition Authority****Comment**

This clause is not relevant to the application before Council.

**5.1A Development on Land Intended to be Acquired for Public Purposes****Comment**

This clause is not relevant to the application before Council

**5.2 Classification and Reclassification of Public Land****Comment**

This clause is not relevant to the application before Council.

**5.3 Development Near Zone Boundaries****Comment**

This clause is not relevant to the application before Council.

**5.4 Controls Relating to Miscellaneous Permissible Uses****Comment**

This clause is not relevant to the application before Council

**5.5 controls Relating to Secondary Dwellings on Land in Rural Zones****Comment**

This clause is not relevant to the application before Council

**5.6 Architectural Roof Features****Comment**

There are no architectural roof features that require approval.

**5.7 Development Below Mean High Water Mark****Comment**

This clause is not relevant to the application before Council



**5.8 Conversion of Fire Alarms****Comment**

This clause is not relevant to the application before Council

**5.9 Dwelling Houses or Secondary Dwellings Affected By Natural Disaster****Comment**

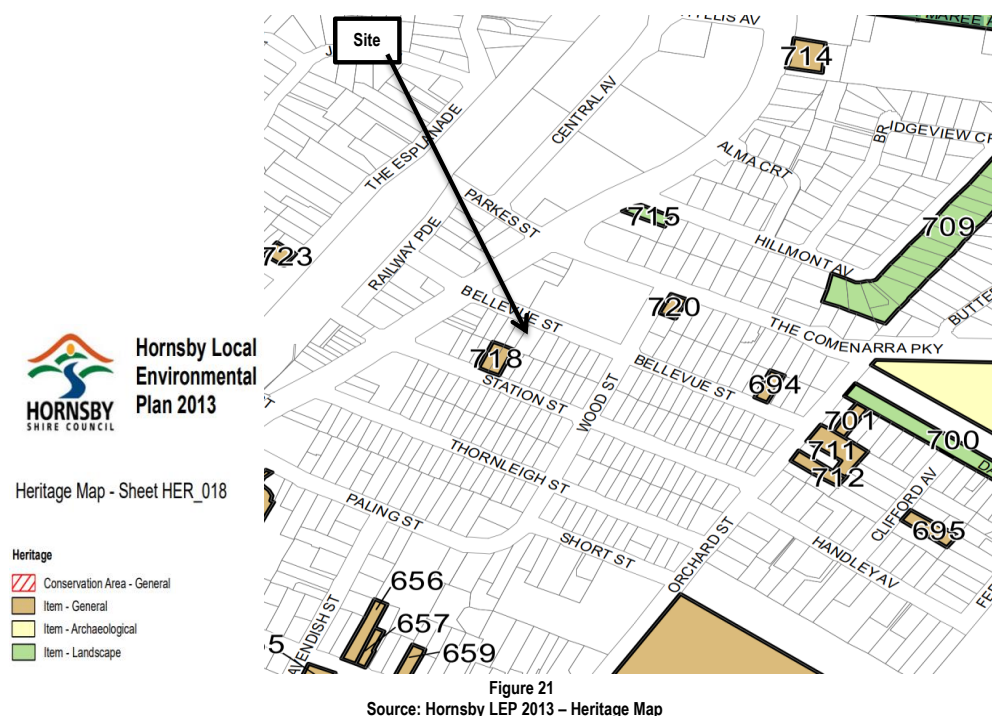
Not applicable to this development.

**5.10 Heritage Conservation****Comment**

The development site is not listed as a heritage item or within a heritage conservation area.

To the south of the site is a heritage item generally known as 9 Station Street Thornleigh.

See extract of Heritage Map at **Figure 21**.

**5.11 Bushfire Hazard Reduction****Comment**

This clause is not relevant to the application before Council as the site is not located within a precinct that is subject to bushfires.

**5.12 Infrastructure Development and Use of Existing Buildings of the Crown****Comment**

This clause is not relevant to the application before Council.

**5.13 Eco-Tourist Facilities****Comment**

This clause is not relevant to the application before Council.



**5.14 Sliding Spring Observatory – Maintaining Dark Sky****Comment**

This clause is not relevant to the application before Council.

**5.15 Defence Communication Facility****Comment**

This clause is not relevant to the application before Council.

**5.16 Subdivision of, or dwellings on, Land in Certain Rural, Residential or Conservation Zones****Comment**

This clause is not relevant to the application before Council.

**5.17 Artificial Waterbodies in Environmentally Sensitive Areas in Areas of Operation of Irrigation Corporations****Comment**

Not applicable.

**5.18 Intensive livestock agriculture****Comment**

This clause is not relevant to the application before Council.

**5.19 Pond-based, tank-based and oyster aquaculture****Comment**

This clause is not relevant to the application before Council.

**5.20 Standards that cannot be used to refuse consent—playing and performing Music****Comment**

/This clause is not relevant to the application before Council.

**5.21 Flood Planning****Comment**

This clause is not relevant to the application before Council.

**Part 6 Additional local provisions****6.1 Acid Sulfate Soils****Comment**

The land is not identified on Council's Acid Sulfate Soils maps. This control is therefore not applicable to this site.

**6.2 Earthworks****Comment**

This control is met because:

- development consent is sought to carry out earth works to construct 2 levels of basement car parking as well as redistribute soil throughout the site to respond to the topography of the land;
- the site is not flood prone or within an area that is subject to overland flow paths;
- the proposed works will not impact upon any heritage item in the vicinity of the site or the conservation area located at the rear of the site;
- existing drainage patterns will not be altered by the proposal;
- the overland flow path of stormwater can only be enhanced by the proposal because it will be captured on-site and redirected towards the street and

- no natural watercourses or rivers are being adversely impacted upon by the proposed development.

### 6.3 Repealed

### 6.4 Terrestrial Biodiversity

#### Comment

The subject site is not identified as being Biodiversity land pursuant to Hornsby LEP 2013. This clause is therefore not relevant to the application before Council.

### 6.5 Limited Development on Foreshore Area

#### Comment

This clause is not relevant to the application as the land is not located in a Foreshore Area.

### 6.6 Restrictions on Certain Development in Dural Village

#### Comment

This clause is not relevant to the application before Council

### 6.7 Location of Sex Service Premises

#### Comment

This clause is not relevant to the application before Council.

### 6.8 Design Excellence

#### Comment

The proposal satisfies this control as the proposed RFB is considered to be aesthetically pleasing and quite sympathetic to its context and the transitional character that this neighbourhood is undergoing. Further, the proposal is able to demonstrate that the development is of a high standard design and able to comply with all relevant DCP controls applicable to RFB development within the Hornsby Shire LGA.

Whilst the proposal seeks a minor variation to the buildings height, the additional height is minor and is justified from a town planning perspective as it does not generate any additional amenity impacts to that of a fully compliant RFB.

We believe the proposal achieves design excellence under these circumstances.

### 6.9 Dual occupancies (attached) on land in certain rural zones

#### Comment

This clause is not applicable to the RFB application now before Council

### Section 4.15 (1) (a) (ii)

#### The Provisions of Proposed Environmental Planning Instruments

Currently, there are no draft environmental planning instruments that are on exhibition or being considered by Council or the Department of Planning Industry and Environment that would prohibit or modify the form of high density housing proposed on the subject site

**Section 4.15 (1) (a) (iii)****Development Control Plans (DCPs)**

Hornsby DCP 2013 was adopted on 19 December 2012 and came into effect on 11 October 2013. Since its adoption by Council, a number of parts of this DCP relating to the form of development proposed have been amended and each relevant section of the DCP is addressed as follows:

**General Part 1****1C.2.1 Transport and Parking**

The site is located approximately 250m of the Thornleigh Railway Station and 80m of Pennant Hills Road where regular buses operate 7 days a week.

The proposal provides for 29 car spaces within 2 levels of basement car parking. Of the 29 spaces, provided 25 comprise of resident spaces, 3 of which are accessible spaces and 4 visitor spaces are provided. The proposed 29 car spaces exceed the Council DCP standard by 3 spaces. See below:

Application of the DCP controls requires the following car parking numbers to be provided:

•	3 x 1 bed =	3 spaces
•	14 x 2 bed =	14 spaces
•	4 x 3 bed =	6 spaces
•	3 x visitors =	3 spaces
	<b>Total</b>	<b>26</b>

The proposal also provides for resident and visitor bike racks and a motor bike space, all of which will service residents and therefore comply with this control. SEPP 65 allows variations to on site car parking numbers, allowing a lesser number if the site is within 800m of a railway station. Because the proposed RFB is within 250m, the provisions within the RMS controls prevail over the DCP controls.

The following is provided for motor bikes and bicycles:

**Bicycles**

- Residents 8 spaces
  - Visitors 4 spaces
- Total 12 spaces**

**1C.2.3 Waste Management**

The application is accompanied by a Waste Management Plan (WMP) prepared by Garry Dickens of Dickens Solution (DS).

The WMP identifies in detail the waste management procedures for the demolition of the existing buildings and structures, recycling components of the demolition materials and on-going waste management for future residents of the proposed RFB.

## Part 3 Residential

### 3.4.1 Desired Future Character

#### Desired Outcome

- Development that contributes to the desired future character of the area.

#### Comment

The proposed RFB is consistent with the desired future character of this neighbourhood and zone objectives. Within the visual catchment of the site there are a number of new RFB's of similar bulk and scale. The proposal will complement and integrate well into the transitional character of this neighbourhood.

### 3.4.2 Design Quality – SEPP 65

#### Desired Outcome

- A built form which responds to the site, locality and landscape and includes appropriate innovation to respond to technical, social, aesthetic, economic and environmental challenges.

#### Comment

See comments set out under the Statutory Compliance controls, specifically the SEPP 65 controls. Also, refer to the registered architects assessment of the 9 design principles accompanying the DA.

### 3.4.3 Site Requirements

#### Desired Outcome

- *Buildings located on consolidated development sites that provide soft landscaping surrounding the building and limit the number of driveway crossings.*

#### Comment

The site has a Bellevue Street frontage of 36.575m (rectangular in shape) and is therefore in excess of the minimum control of 30m.

### 3.4.4 Height within Hornsby LGA

#### Desired Outcome

- A built form not exceeding 5 storeys in height and comprising multi-unit housing.

#### Comment

The proposed RFB comprises a single building that is 5 storeys in height. The maximum building height controls prescribed under HLEP 2013 is 16.5m. There is a minor encroachment above the maximum building height control but this relates to the lift overrun and a small portion of the flat roof. The lift overrun is 970mm or 5.9% above the standard and part of the roof extends above the height control by 160mm 0.99%. See **Figure 20**. The application is accompanied by a Clause 4.6 Exception to Development Standards submission that seeks to justify the standard. See Appendix 1.

### 3.4.5 Setbacks

#### Desired Outcome

- *Well-articulated building forms that are set back to incorporate landscaping, open space and separation between buildings.*
- *Development which have coordinated basement and services located to minimise loss of landscaped open space and reduction of deep soil;*
- *Setbacks that preserve and protect existing trees around the perimeter of sites and provide effective deep soil areas that are able to create garden setting, including substantial tree canopy to all sides of the building.*

#### Comment

The proposed RFB is well articulated with balconies and facades stepping in and out on all elevations. Excellent landscaping and deep soil is provided around the perimeter of the site to ensure large trees are provided and overland stormwater is able to filter into the natural surface.

The design allows a number of existing trees to be retained on site. Turf and shrubs are also provided throughout the site to enhance the communal open space area in the rear setback.

This design response will have no impacts upon the amenity of residents in adjoining properties. Residents living in neighbouring RFB's expect their amenity in high rise residential development will be different to the amenity of residents living in a single dwelling house in a low density residential neighbourhood.

#### Basements

There are some minor departures from the basement setbacks. This is along each boundary except the eastern boundary which complies with the standard 4m. The variations on the front, rear and side (western) basements are considered minor, with all except the western side boundary having part compliant and part non-compliant components.

As shown on the landscape plan, where non-compliance occurs, existing trees are to be retained and additional landscaping provided, which is consistent with the desired outcome of this control.

The basement setback along the western side boundary is reduced to 2m however as shown on the landscape plan, dense landscape screening is to be provided along this boundary to soften the built form proposed above NGL.

#### Front Boundary

The front building setback complies with Council's controls of 10m that can be reduced to 8m for a maximum of 1/3 of the building width.

#### Rear Boundary

It should be noted that as a consequence of the sites topography and articulated shape of the buildings floor plate, there is a minor departure from the rear boundary setback control of 10m that can be reduced to 8m for a maximum of 1/3 of the building width. In this particular case, the rear setback varies between 7.005m to 8.005m, which is less than the standard. However, the rear setback proposed is consistent with those rear boundary setbacks approved in RFB design schemes on either side of the development site. See **Figure 22**. Having regards to the proposed RFB, it should be noted that it has greater articulation on all elevations and new landscaping is superior to that of the RFB's on either side.





Figure 22

Source: Zhinar Architects

In regards to the 5<sup>th</sup> storey, the control requires an “additional 3m for external walls of the fifth storey, measured from the walls of the lowest storey”. In considering this 5<sup>th</sup> storey control to the rear boundary, habitable rooms are setback between 9.005m and 10.005m, being slightly below the standard.

While this is also a non-compliance with the control, it is consistent with the approved RFB’s setbacks on either side and those setbacks on the ground floor. We see this as also a minor variation and the objective of the control is satisfied as the building form is well articulated by having the building stepping in and out, further adding interest to the building’s façade.

Quality landscaping and fencing is provided along the rear boundary to respect the amenity of future residents and provide security for the complex.

#### Side Boundaries

The DCP sets a 6m side boundary setback control, which can be reduced to 4.5m for non-habitable rooms only, to a maximum of 1/3 of the building width.

The proposed side boundary setbacks vary between 4.5m to 6.0m however to achieve greater articulation in the building design, some of the rooms within the 4.5m setback are habitable rooms, mostly in the form of bedrooms. In order to mitigate overlooking opportunities from these bedrooms, highlight windows are provided. Those units on levels 1- 4 in the south-eastern corner have living rooms within the 4.5m setback are afforded fixed louvres to prevent overlooking.

Ground floor Unit 002 also located in the south-eastern corner has its living room setback 4.5 from the boundary but is enclosed by landscaping and common side boundary fencing.

**Fifth Storey Setback**

Balconies with planter box screening are provided on the 5<sup>th</sup> storey. The separation distance at this level and landscaping all assist by mitigating overlooking.

**3.4.6 Building Form and Separation****Desired Outcome**

- *Buildings that are limited in width and depth, incorporating articulated facades and separated by garden areas.*

**Comment**

The proposed building is afforded a depth less than 25m and is well articulated. The proposed building length provides clear articulated facades to break up the buildings overall bulk and scale. Further, the additional depth of the building does not increase the extent of overshadowing or overlooking onto adjoining properties.

The proposal incorporates a mix of retaining large trees on the site and provision for new native and exotic landscaping. This softens the buildings presentation to the street and surrounding neighbourhood.

The well designed landscaping and use of a variety of materials and colours will soften the RFB's appearance to the surrounding neighbourhood, in particular the proposed buildings presentation to each boundary.

The building form and building separation respond well to Council's controls, incorporating design elements to ensure privacy and amenity is not adversely impacted upon including efficient apartment layouts and orientation, screening, strategically placed planter boxes on the 5<sup>th</sup> storey to mitigate opportunities for overlooking. Further, provision of highlight windows and landscape embellishment works should offset amenity impacts.

The proposal adopts an articulated form that aligns with the DCP design controls and use of varying building materials, protruding balconies, indentations and projections in the alignment of the external walls. Further, the recessed upper level is afforded a contemporary flat roof that is consistent with Council's DCP control.

Overall, the proposal incorporates good articulation in the built form and a mixed palette of building materials, earthy colours and finishes to compliment the leafy character of Thornleigh.

**3.4.7 Landscaping****Desired Outcome**

- *Landscaping that integrates the built form with the locality and enhances the tree canopy.*

**Comment**

The perimeter of the site is generously landscaped, including large areas of deep soil to provide a building in a landscaped setting. See landscape plan for the number and species of landscaping selected.

A total of 7 trees on this site are required to be removed because they are either sited within the building's footprint or in close proximity to it. It is noted that a large native tree located within the rear setback is to be retained and protected during construction works.

An Arborists report prepared by Redgum Horticultural Services accompanies the application to justify each trees removal. The conclusions and recommendations of the Arborist are set out below:

**CONCLUSION**

*Seven (7) trees are nominated for removal and replacement with species in accordance with the associated Landscape documentation for the development. The sixteen (16) trees to be preserved will be retained and protected through the implementation of adequate measures for their integration into the development by the application of appropriate technology as detailed in this report. Where appropriate, the Landscape Plan will include planting with new trees including street tree/s.*

*It is often a consequence of redevelopment, and subject to the nature of the proposed land use that some or all the trees present on the site prior to that redevelopment may be required to be removed and replaced with new tree plantings in different locations. This may be dependent upon the type of development and its design constraints and the requirements of the local planning instruments and any Landscape Design Codes if existing. Where tree removal is required for this development, it is considered that those trees identified within this report are not sustainable within the context of the proposed development. Where tree retention has been considered, those trees are expected to survive the redevelopment process and remain stable and viable. The retention and protection of existing trees on site is a significant aspect of the development process, allowing those trees as components of the current curtilage to be process and remain stable and viable.*

#### **RECOMMENDATIONS – Retention.**

- *Trees 4x16 are to be retained in situ within the site and are to be protected as detailed in 14.2 - 14.21 of Part B of this report. Tree protection fences, or works, to be located in accordance with Site Plan B – Trees to be Retained and Tree Protection Zones (Appendix F).*
- *16.2 Where Tree Protection Zone fences are to be moved or relocated this must be undertaken in consultation with the Consultant Arboriculturist for the project to ensure that tree protection is maintained. If the fences are relocated areas are to be mulched in accordance with 14.8 of this report to reduce compaction to the root system of the retained specimens.*
- *To minimise damage to retained crowns, all Tree Protection Zones are to be adhered to. This must be undertaken in consultation with the Consultant Arboriculturist for the project to ensure that tree protection is maintained. Minor pruning may be required if damage occurs, work to undertaken in accordance with section 4 of this report.*
- *Milestone/s - Project/Site arborist is to inspect/assess all retained specimens prior to Demolition and Tree Removal, Post Demolition, Prior to Construction during Construction and on completion in relation to trees protected and the protection measures have been carried out as per the approved D/A conditions for the site. Documentation is to be submitted to the consenting authority after each inspection.*
- *Any work to be undertaken within Tree Protection Zones is to be undertaken in accordance with 16.2 of this report.*
- *Tree removal near retained specimens is to be undertaken in accordance with 14.11 of this report.*
- *There is to be no storage of materials, rubbish, soil, equipment, structures or goods of any type to be kept or placed within 5 metres from the trunk or within the dripline of any tree for the duration of the development. This will ensure protection of the tree/s to be retained on or adjacent to site.*
- *Each of the replacement are to be a vigorous specimen with a straight trunk, gradually tapering and continuous, crown excurrent, symmetrical, with roots established but not pot bound in a volume container or approved similar and be maintained by an appropriately qualified and experienced landscape contractor for up to one (1) year after planting, or as appropriate.*

**3.4.8 Open Space****Desired Outcome**

- *Development that incorporates passive and active recreation areas with privacy and access to sunlight;*
- *Communal open space comprising landscaped setbacks, landscaping between dwellings, and principal communal open space area.*

**Comment**

The proposed development is provided with generous areas of communal open space (front and rear) of the site. Landscaping is required to be provided at 25% of the site area, which in this particular case generate 331.95m<sup>2</sup>.

The proposal generates 336m<sup>2</sup> or approximately 25.31% of communal open space/deep soil, which exceeds the 25% standard within Council's DCP and the ADG.

A large area of communal open space is provided at the rear of the site, which includes bench seating and barbecue facilities below a pergola. Good deep soil zones are provided for in the rear yard, which will attract residents as it will receive good sunlight exposure during the morning and afternoon periods.

**3.4.9 Privacy and Security****Desired Outcome**

- *Development designed to provide reasonable privacy to proposed and adjacent and adjacent residential properties and high levels of security.*

**Comment**

Units on the ground floor are provided with secured terraces, while units on the upper levels are afforded balconies but have been designed to reduce impacts on privacy and security for future residents. This includes screening devices to reduce or off-set direct views into neighbour's properties.

The private open space areas within the development have some form of overlooking onto the private and public domains, however this increases security and promotes safety for this neighbourhood.

**3.4.10 Materials, Finishes and Services****Desired Outcome**

- Development that enhances the visual quality of the public domain.

**Comment****Materials**

The building is to be constructed primarily of face brickwork of light and dark colour tones. These traditional earthy colour tones will complement the traditional leafy character of this neighbourhood.

Glass balustrading is provided with aluminium framed glass windows and sliding glass doors onto balconies and terraces. See colour material and schedule at **Figure 22**.

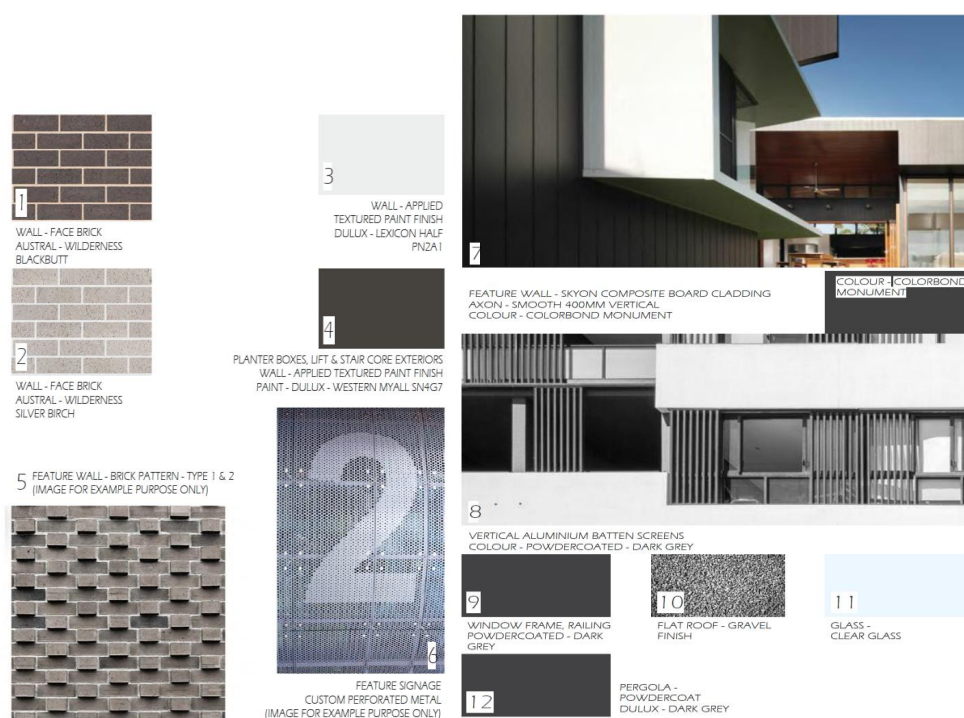


Figure 22

Source: Hornsby LEP 2013 – Heritage Map

### 3.4.11 Sunlight and Ventilation

#### Desired Outcome

- Development designed to provide reasonable solar access to living areas and open space areas.
- Development designed to provide natural cross ventilation

#### Comment

A total of 84% or 18 units are cross ventilated, while 18 or 84% of all units receive a minimum of 2 hours of sunlight during the winter solstice to provide a quality living environment for future residents. See Table 1. Previously set out in this report. .

### 3.4.12 Housing Choice

#### Desired Outcome

A range of dwelling types that match the demographic diversity of the Hornsby Shire and are accessible or may be adapted to meet the needs of people who have limited physical mobility.

#### Comment

The mix of units within the complex is set out below:

- 3 x 1 bedroom
- 14 x 2 bedroom
- 4 x 3 bedroom

Total = 21 units of which 3 are adaptable

Depending on the number of bedrooms each unit is afforded, the units vary in size, shape and flexibility and as such provide affordability and diversity in housing stock.

This unit mix proposed meets the 10% prescribed number set by this control.



**3.4.13 Vehicle Access and Parking****Desired Outcome**

- Development that provides sufficient and convenient parking for residents and visitors with vehicular access that is simple, safe and direct.

**Comment**

The proposal seeks to carry out excavation works to create two (2) levels of basement car parking for 29 vehicle spaces including 3 visitor spaces, bicycles, storage cages and rooms and a garbage housing area in the upper basement level. A temporary bin storage area abuts the driveway.

Vehicular access into and out of the site is over a combined 6.1m wide driveway off Bellevue Street. Council's strategic plan for this neighbourhood seeks to promote underground car parking with landscaped setbacks and clear lines of sight, which is a fundamental design factor in this proposed development.

**3.4.14 Public Domain and Traffic Management Works****Desired Outcomes**

- *A public domain that encourages vitality around and within development precincts;*
- *Traffic Management works that provide for the safe and efficient movement of vehicles to, from and within precincts.*

**Comment**

The applicant understands that Council will impose reasonable conditions relevant to public domain works. There are no known traffic management works required by Council's planning instrument or DCP.

The applicant is aware that Council will frame a suitably worded condition of consent that will require the payment of a Section 7.10 monetary contribution towards the ongoing maintenance of public amenities and services as a result of the increase in population in this area.

**3.4.15 Key Development Principles****Comment**

The site is located within the Station Street, Thornleigh Precinct.

**Public Domain**

Paul Scrivener Landscape was engaged by the applicant to prepare a landscape plan, which provides detail on the proposed landscaping of public and private areas. The key themes for the precinct are:

- Strategy;
- Landscape Setting;
- Built Form.

The proposed RFB is five (5) storeys in height. The landscape design creates a high degree of visual privacy, visual character to the street, functional open space for residents living and creating a green breathing space.

Provides an appropriate setting with three (3) street trees provided along the nature strip. Large trees are sprinkled throughout the site to promote privacy and offering a green setting.

The proposal will increase housing stock and provide for a range of housing types and choice for future residents. The proposed RFB is aesthetically pleasing, incorporating a varied and modulated pattern of articulation with balconies carefully integrated into the overall architectural composition.

The design of the building's facade will present itself to the streetscape as an example of appropriate, modern residential design and at the same time create a barrier for negative environmental externalities from its surrounds.

Whilst the proposed development involves an increase in bulk and scale on the site, it is considered that the impact on the public domain will be acceptable as the proposal represents the form and scale of Council's strategic planning vision for this neighbourhood precinct.

The provision of new landscaping elements as a comprehensive uniform landscape concept for the site will contribute to the proposal integrating well within the public domain and providing a more amenable pedestrian environment.

The design and siting of the proposed RFB ensures 18 or 84% of units receive solar access into living areas.

#### **Section 4.15 (a) (iii) (a)**

##### **Any Planning Agreement That Has Been Entered Into Under Section 7.4, or any Draft Planning Agreement That a Developer Has Offered to Enter into Under Section 7.4**

The applicant has not agreed to enter into or discussed entering into a planning agreement with Council.

#### **Section 4.15 (1) (a) (iv)**

##### **Matters prescribed by the Regulations**

There are no matters prescribed by the Regulations that are applicable to this application.

#### **Section 4.15 (1) (b)**

##### **The Likely Impacts of That Development**

The proposed development has been designed with particular attention to the amenity of its future occupants, neighbouring properties and the public domain.

As previously discussed under the Part 5, Statutory Compliance section of this report, the development is responsive to the constraints of the site, in particular vegetation, neighbouring buildings, impact of street traffic, noise, solar access and views. This has culminated in generating a unique design which creates a sense of space, connectivity to public and private space, and fixed and manoeuvrable louvres, highlight windows to enable users to control acoustics, solar access and privacy to their units. This is achieved by the following design initiatives:

- providing suitable separation not only between buildings, but also separation to living areas and bedrooms;
- short paths of travel between units to access stairs and lifts, enable ease of access and minimises the volume of persons travelling past each unit;
- the access framework throughout the site is efficient and legible;
- generous floor plan layout will afford a high level of privacy for persons within each unit;
- the balconies of all units are provided with an attractive outlook over the public domain and or common open space areas;
- accessible vehicular entry/exit points and a legible parking and circulation network; and
- safety by design initiatives have been incorporated into the design to enhance a sense of safety and security.

It has been demonstrated that the existing services and facilities have more than sufficient capacity to accommodate the proposed additional density on this site.

The proposed RFB will not be over-taxing on existing services and amenities however should there be a need to augment services, this would be carried out during construction of the proposed building. There will be no traffic impact resulting from the additional density as discussed in the traffic report with the increase in traffic movement being 2 trips during peak periods, being well within acceptable thresholds. It is envisaged that greater use of public transport will occur via the use of public buses along Pennant Hills Road and trains from the Thornleigh Railway Station, located approximately 240m north of the site, placing less reliance on the use of private motor vehicles.

In concluding, the proposed density increase is acceptable because:

- The proposal satisfies the objectives of Council's DCP for 5 storey residential apartment buildings in that the proposed building is 5 storeys in height and set within a garden setting;
- Local services and facilities have the capacity to accommodate the increase in density;
- The proposal supports the provision of additional population density in meeting the Metropolitan Plan targets and Council's housing studies;
- The proposed increased density will positively affect housing affordability and choice in the types of units available to the population;
- Principle 4 – Density under SEPP 65 is met as the proposal responds to the sites regional context, availability of infrastructure, public transport (rail and bus), community facilities, and environmental quality and
- The proposed increased density will not result in amenity impacts upon public amenities and services.

#### Accessibility

The application is accompanied by an accessibility report, which confirms the design has been assessed and complies with:

- The prescriptive Deemed to Satisfy (DtS) Accessibility Provisions of Part D3 of the Building Code of Australia (BCA) Volume One Edition 2014;
- AS 4299 -1995 (Adaptable Housing); and
- The Disability Access to Premises - Buildings Standards (DAPS) 2010.

The outcomes of this assessment report concludes that the proposed design is capable of achieving compliance with the abovementioned prescribed standards subject to the recommendations referenced in the report.

#### Air Quality

As a result of the sites location to Pennant Hills Road, an air quality assessment was undertaken by RWDI to assess the potential air quality impacts from road traffic on the future residents of the proposed development. The report concludes as follows:

*"The development site is located close to Pennant Hills Road to the northwest, Wood Street to the east and Station Street to the south. Of these streets, Pennant Hills Road, located approximately 70m from the proposed development, has by far the largest volume of traffic and has been selected as the subject of screening level modelling.*

*Information from the Traffic Volume Viewer from Transport for NSW*

*<https://roadswaterways.transport.nsw.gov.au/> indicated a morning peak hour traffic volume for Pennant Hills Road of 7,791 vehicles eastbound and 7,944 vehicles westbound, based on data collected in 2019".*

*These results indicate that compliance is achieved at the proposed site for carbon monoxide (CO) and nitrogen dioxide (NO<sub>2</sub>), and inhalable particulate matter (PM<sub>10</sub>).*

*These findings indicate that vehicle emissions on Pennant Hills Road are currently compliant with NSW air quality criteria anywhere at the development site. We conclude that no further study of transportation-related air quality is warranted".*

**Building Code of Australia (BCA)**

A detailed BCA report has been prepared by Building Control Group (BCG) who have demonstrated that the proposed development's compliance with the BCA. They have made the following comments:

*The architectural design documentation as referred to in this report has been assessed against the applicable provisions of the Building Code of Australia, (BCA) and it is considered that such documentation complies or is capable of complying (as outlined in Annexure B) with that Code. Although demonstrating compliance with the BCA at the DA assessment stage is not a principal consideration under Section 4.15 of the Environmental Planning & Assessment Act 1979, Council has an obligation to consider whether the proposal, as lodged, is capable of complying with the BCA - without further modifications to those plans for which approval is sought.*

*In this instance we are confident that any modifications and advancement in the level of detailing required to the proposal in order to satisfy the requirements of the BCA (in force at the time the Construction Certificate application is lodged) will not necessitate any significant design changes that in turn would necessitate the submission of an application under Section 4.55 of the Environmental Planning and Assessment Act 1979.*

*Furthermore, we draw Council's attention to the requirements of clause 145 of the Environmental Planning & Assessment Regulation 2000 and suggest that detailed & specific BCA compliance matters shall be addressed to the satisfaction of the appointed Certifying Authority prior to the issue of the Construction Certificate. It is considered that this BCA review and the additional preparation of the required Construction Certificate documentation will be sufficient to ensure that the proposed design will achieve the necessary compliance with the BCA.*

Therefore, the proposal is able to satisfy all relevant BCA requirements, and the applicant understands that suitably framed conditions of consent will be imposed to ensure compliance with these.

**Visual Amenity and Impacts Upon Views**

Based on an assessment of the proposed development on the surrounding neighbourhood, it is considered that there will be no significant views or view corridors lost or interrupted by the proposed RFB.

The assessment has investigated the existing visual character and resources of the site and the surrounding context to identify the visual opportunities and constraints. The visual assessment has concluded that the potential visual impacts of the proposed development are within an acceptable threshold and will cause a positive change to the transitional character of the site and surrounds and will be compatible of emerging in conjunction with the desired future character of the site and the surrounds.

As envisaged by Council's planning controls, the proposed building will have a greater prominence on the surrounding urban fabric than that which currently exists. This same prominence is reflected in Council's 2013 LEP and DCP.

One can take from that observation that the proposal will therefore be in keeping with the desired future character of development for this neighbourhood precinct.

**Air and Microclimate**

The proposed development represents an intensification of use, albeit residential in nature, which will generate a small number of additional traffic movements and therefore marginally increase vehicle emissions.

Whilst there will be substantial disturbance of the site during construction, upon completion of the development, the site will be landscaped with shrubs, turf and native trees, thus reinstating the microclimatic conditions on the site.

**Drainage Control****Comment**

The application is accompanied by stormwater management plans prepared by Quantum Engineers, which proposes to capture, and disperse stormwater from the site during heavy rain. These plans have been prepared in accordance with best practice guidelines. The objective of the overall design is to:

- (i) Reduce the amount of stormwater leaving the site at any one time during heavy rainfall;
- (ii) Redirect the flow of existing stormwater within the site to appropriately sited pits.

An above ground on-site detention tank is proposed along the northern street frontage of the site that will allow stormwater to be slowly dispersed to the street during heavy rain.

**Soil and Water Management****Comment**

Prior to any building works being carried out on site, a sedimentation control fence will be erected around any part of the site that is to be disturbed. Such fencing will be erected in accordance with best practice guidelines. See sedimentation control plan accompanying the stormwater plans.

**Environment Protection****Comment**

The site is located within a well-established urban neighbourhood. The land falls from north to south and stormwater management is provided in the form of an underground on-site detention facility for holding and later disbursement of stormwater.

The amount of deep soil/landscaping is in excess of that required by Council's DCP control and will ensure water is also absorbed into the natural surface of the site.

The site has no environmental constraints such as:

- Excessive topography;
- Proximity to natural watercourses;
- Soil landscapes;
- Threatened plant communities;
- Bushland;
- Fauna habitat or
- Bushfire hazards that would impact place constraints on developing the site.

**Nuisance During Construction**

All building works on site will be carried out in accordance with the State Governments statutory construction hours for building works.

Initial excavation work is to be carried out on site to prepare the proposed basement car park, which will require excavation machinery on site for a short period of time. The period would be for a number of weeks depending upon the prevailing weather at the time.

Trucks leaving the site will be checked by a designated worker to ensure soil and other material does not spill onto the public road, however if this was to occur for some unforeseen circumstance, the matter will be quickly cleaned from the road surface by the designated worker.

While concrete and material trucks will be servicing the site at various times, these will be supervised by an on-site foreman to ensure vehicles are able to unload and depart from the site as quickly and safely as is reasonably possible.

Overall, the amount of nuisance caused by the proposed development will not be unreasonable to cause undue loss of amenity to residents.



**Safety, Security and Crime Prevention**

The proposal has been designed to incorporate principles of Crime Prevention Through Environmental Design (CPTED), with these design measures supplemented by future security management strategies.

The design of the residential apartments and their internal layout have addressed potential safety problems such as potential entrapment and hiding places.

These principles are set out and addressed below:

- Surveillance;
- Access Control;
- Territorial Reinforcement;
- Space Management:

**Surveillance****Comment**

The proposed development encourages casual surveillance by providing an appropriately designed pedestrian entrance in the centre of the site off Bellevue Street, promoting passive surveillance and creating an active environment for residents and their visitors to walk conveniently into the site.

Private open space areas such as balconies, terraces and primary living spaces are orientated to overlook the street and the private domain within the site. This design will also better activate the communal open space and central walkway.

The landscaping strategy ensures a high level of amenity whilst maintaining clear sight lines and minimising potential hiding places.

The proposed access to the site is readily available off Bellevue Street along a well-lit walkway to the buildings entry point.

Access into the lobby is through a security coded door lock or swipe card entry. Access to each level will only be available to residents, meaning visitors will not be allowed access into the building without the permission of a resident who is already in the building.

All access ways will be well lit in order to provide residents and users of the site's pedestrian links with a sense of security.

**Access Control****Comment**

The use of physical barriers to attract, channel or restrict the movement of people has been incorporated into the design.

The pathway allowing direct entry into the site will be clearly visible from living areas and balconies with all pathways well lit of an evening without causing light spill into units.

Access into the building and basement parking levels will be controlled through security doors and an intercom system, limiting access to residents and permitted visitors only. This type of access control minimises opportunities for crime and increases the effort required to commit crime.

The proposal incorporates clear sight lines between public and private domains, with external lighting throughout the site.

All lighting will be carefully designed and placed to further improve security and as mentioned above, ensure light spill does not occur.

**Territorial Reinforcement****Comment**

Territorial reinforcement will be focused on the open landscaped zone through shared ownership.

As shown on the architectural plans, boundaries between private and public spaces are clearly defined.

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The proposed common open space will consist of high quality landscaping, which will ensure it receives regular use, and in turn, promotes the principle of 'territorial reinforcement'. The central common open space is provided with bench seating and a barbecue area with shrubs, small trees and low level lighting, promoting a secure, active environment where residents will feel safe.

### Space Management

#### Comment

The creation of well-kept and attractive spaces will help attract more people, and thus reduce the likelihood of crime occurring.

A security camera system should be installed at the point of entry to the building's lobby and swipe card/coded door entry provided to access the building. The camera system will allow residents to see the person at the entry door before allowing any non-resident into the building.

The Body Corporate when formed will put in place guidelines to reinforce to residents of their responsibilities to maintain a secure environment.

Communal open space is proposed to be established and maintained to a high quality level so these spaces remain attractive and inviting for residents and visitors to utilise.

Crime Prevention Through Environmental Design (CPTED) is a recognized model which provides that if development is appropriately designed it can reduce the likelihood of crimes being committed. By introducing CPTED measures within the design, it is anticipated that this will assist in minimizing the incidence of crime and contribute to perceptions of increased public safety.

The increase in residential population in this neighbourhood can only have positive benefits because it will allow greater passive surveillance of both the public and private domains.

The proposal offers a high level of public surveillance by designing balconies and primary living areas to overlook Bellevue Street, in particular, the sites main point of entry.

### Acoustics

Acoustic Logic have assessed noise impacts relating to the proposed residential development at 10-12 Bellevue Street, Thornleigh have been assessed.

Provided that the acoustic treatments set out in Section 6 of this report are adopted, external noise impacts on the development will comply with the requirements of:

- Hornsby Council '*Development Control Plan DCP 2013*'
- Australian and New Zealand AS/NZS 3671:1989 '*Acoustics—Road traffic noise intrusion—Building siting and construction*'
- Australian and New Zealand AS/NZS 2107:2016 '*Recommended design sound levels and reverberation times for building interiors*'
- NSW Department of Planning document – '*Development Near Rail Corridors and Busy Roads - Interim Guideline*'

External noise emissions criteria have been established in Section 7 of this report based on the requirements of the following:

- Hornsby Council Development Control Plan (DCP) 2013
- Protection of the Environment Operations Act 1997
- Protection of Environmental Operation Act Regulation 2000

- NSW Department of Environment and Heritage, Environmental Protection Authority document Noise Policy for Industry (NPfI) 2017'.

Detailed acoustic treatment will be determined as part of the CC drawings.

#### **Section 4.15 (1) (c)**

##### **The Suitability of the site for the development**

The site is considered suitable for the proposed development as outlined below:

The site is specifically zoned to accommodate residential apartments under the R4 High Density Residential zone.

The site has very unique, physical characteristics which make it ideally suited to accommodate higher density residential development, including a very large site area, generous street frontages, and excellent access to Thornleigh Railway Station and bus services along Pennant Hills Road.

Given that the site is located within an established urban area, existing essential services are available to the site including water, sewer, electricity, gas and telecommunications.

The site is located within the vicinity of a range of services and facilities, located in relatively close proximity to the site.

The site is located within a well-established residential neighbourhood where there are excellent amenities and services (shops, schools, public transport (bus and rail), and open space etc.) available which will provide future residents with a quality living environment.

The site is suitably zoned for the proposed RFB and is consistent with the intended future character for the locality as set out by Councils planning controls.

The analysis provided with the application demonstrates that the project is suitable given the lack of encumbrances constraining the site, and the size, location and context of the land.

The site is appropriately sized to permit high density residential development. The standard of design will help promote a sustainable built form and interconnection with the environment through the incorporation of landscaping, including street trees and other public improvements such as footpaths, stormwater and roads.

#### **Section 4.15 (1) (d)**

##### **Any submissions made in accordance with this Act or the regulations**

To be determined by Council following exhibiting the application to nearby property owners and the general public.

#### **Section 4.15 (e)**

##### **The Public Interest**

It is considered that proposal serves to benefit the public interest through the provision of a well sited RFB that will fit well within this neighbourhood's transitional environment, which is moving from low to high density housing forms.

Pursuant to case law of *Ex Gratia P/L v Dungog Council (NSWLEC 148)*, the question that needs to be answered is "*Whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development*".

The assessment of this application needs recognition that the provision of new affordable housing stock is a balanced consideration that serves to benefit the social and economic impacts of the community where it can readily be demonstrated that a sensitive design approach responds to

Council's strategic objectives with a high degree of accessibility and usability with consideration of any environmental impacts arising from its physical form and the resultant public benefit.

The physical appearance of the proposal will contribute to the transitional streetscape that will occur over time and complement the strategic controls now in place to increase residential densities in this neighbourhood.

There are no impacts that will arise from the proposed development, therefore, the benefits outweigh any disadvantage and as such the proposed development in our view will have an overall public benefit.

In summary, the public advantages of this development are:

- Generate short term employment of builders and sub-contractors;
- Increasing housing supply, mix and choice in an area which is free of any adverse natural constraints;
- The proposal generates a substantial monetary sum of Section 7.10 Monetary Contributions to benefit public amenities and services;
- Provide housing in close proximity to local and major business precincts;
- Provide housing in close proximity to public bus and rail transport;
- Creating a design outcome that promotes the controls expected by the objectives of the LEP and DCP for this neighbourhood precinct;
- Providing a high quality built form and presentation which will set a standard for future urban renewal.

Overall the proposal is considered to be in the public interest as it will provide the local community with a form of high quality, diverse housing stock to take advantage of its proximity to a full range of urban facilities and services in the locality.

#### 6.0 Conclusion

The proposed multi storey residential flat development is permissible under the R4 High Density Residential zone with consent of Council.

The proposal responds well to its transitional neighbourhood context, which is to provide the neighbourhood with new affordable housing stock that compliments Council's residential housing strategy, by increasing residential densities to better utilize the excellent public transport networks, schools, open space and the nearby business centres such as West Pennant Hills, Pennant Hills, and Hornsby.

The subject proposal seeks to provide a built form that will achieve the desired future character of this neighbourhood and afford future residents with a high quality living environment. While there are two (2) very small variations to the maximum building height, these have been justified in the Clause 4.6 submission at Appendix 1. In summary the proposal will:

- provide a built form which strengthens the neighbourhood's sense of identity, and visual appearance. This includes maintaining an appropriate scale to the street frontages without generating adverse overshadowing or amenity impacts on surrounding properties;
- provide an increase in housing choice to meet demands within the locality;
- provide an opportunity for higher densities in a transitional residential neighbourhood, which will reduce pressure for up zoning land in other areas for high density purposes;
- provide quality residential apartments which are afforded a high level of amenity and privacy for future residents;

- allow a good opportunity to redevelop a site, which will assist in achieving the desired regional objectives and
- have no adverse environmental impacts on adjoining properties.

The proposed development is subject to a number of statutory planning instruments and policy controls of which the proposal has been assessed against, enabling a conclusion that the proposal complies with the intent of such controls.

Other plans and reports comprising the project application address key aspects of the development and its implications, such as BCA, design, BASIX, Traffic, noise, air quality, drainage, accessibility, stormwater management and landscaping.

Collectively, these reports and the assessment of other issues in this report confirm that the development will have no unreasonable amenity impacts upon the environment in which the development is to be set.

In view of the comments contained within this report, we are satisfied that this proposal has properly responded to all relevant matters for consideration contained within Section 4.15 of the Environmental Planning and Assessment Act 1979, and its companion Regulation, that the proposal will fit comfortably within its urban context and consent may reasonably be granted

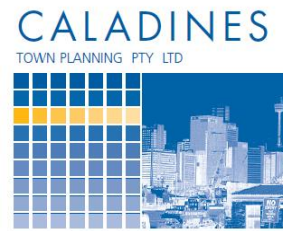
# APPENDIX 1

## ATTACHMENT 2 - ITEM 4

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**Amended Clause 4.6 Exceptions to Development Standards  
Hornsby Local Environmental Plan 2013  
Clause 4.3 - Height of Buildings  
Proposed five (5) Storey RFB  
10 – 12 Bellevue Street Thornleigh**

### 1.0 Introduction

This amended written request is made pursuant to Clause 4.6 “Exceptions to Development Standards” as set out under Hornsby Local Environmental Plan (HLEP) 2013.

The written request seeks to vary Clause 4.3 “Height of Buildings” contained within HLEP 2013, relating to this DA which seeks to demolish all existing structures on the land to permit the construction of a proposed five (5) storey RFB on land at 10-12 Bellevue Street Thornleigh.

The amended RFB design now before Council lowers the building by 200mm from that of the original design that was lodged as part of the DA. The original design sought approval for a roof encroachment of 360mm (larger portion of roof to that now proposed) and the lift overrun extended 1.170m above the height control.

While the proposal still seeks to exceed the maximum 16.5m building height control, the variations have been reduced by 200mm and those parts that encroach above the standard are much smaller. These include:

- the lift overrun extends 970mm or 5.9% above the 16.5m building height control and
- a small portion of the flat roof structure (eastern side) extends 160mm or 0.99% above the 16.5m building height control.

The planning reasons why both structures extend above the height control relate to the topography of the land, which falls towards the south-east (rear corner) where it is approximately 1m above the NGL.

Clause 4.6 of HLEP 2013 states that a development standard may be varied through a written request that seeks to justify the contravention of the standard by demonstrating:

- *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- *that there are sufficient environmental planning grounds to justify contravening that development standard.*

The consent authority then has to be satisfied that:

- *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,*

This submission contends that strict compliance with the maximum building height control of 16.5m is unreasonable or unnecessary in the circumstances of the case and that the variation sought can be justified on environmental planning grounds as the proposal will have no environmental impacts on the surrounding built urban environment.

The above statement is made because the variations are minor in the context of the overall development and neighbourhood characteristics, and the transitional change to the urban character

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and streetscape along Bellevue Street, is consistent with the adopted planning controls for transforming land in this precinct to a much higher density.

Accordingly, we are of the view that this written exception to the building height control justifies the minor variations sought.

## 2.0 Definition of Development Standards

"Development Standards" has the following definition under Section 1(4) of the *Environmental Planning & Assessment Act 1979*:

*"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.*

### Comment

Clause 4.3 "Height of Buildings" and Clause 4.6 "Exceptions to Development Standards are contained within HLEP 2013, which is a statutory planning instrument and as such the building height control is a development standard.

## 3.0 Varying Development Standards: A Guide August 2011

In accordance with the notification given under Clause 12 of Circular B1 states that:

*"As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small and in other cases it may be numerically large, but nevertheless be consistent with the purpose of the standard..."*

*In deciding whether to consent to a development application the Council should test whether the proposed development is consistent with the State regional or local planning objectives for the locality; and in particular the underlying objective of the standard. If the development is not only consistent with the underlying purposes of the standard, but also with the broader planning objectives of the locality, strict compliance with the standard would be unreasonable and unnecessary"*

### Comment

On demonstrating that the development standard is unreasonable or unnecessary in the circumstances of the case, the consent authority may assume the Planning Secretary concurrence to

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the objection pursuant to Clause 4.6 Exceptions to Development Standards under HLEP 2013 in the circumstances of the objection.

#### 4.0 Land and Environment Court Judgments

The following Land and Environment Court judgments are a relevant consideration in the assessment of this submission:

1. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118
2. *Wehbe v Pittwater Council* (2007) 156 LGERA 446
3. *Winten Property Group Ltd v North Sydney Council* (2001) NSWLEC 24
4. *Rebel MH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130
5. *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC
6. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009

#### Comment

1.1 In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (**Initial Action**), Preston CJ held that that the consent authority must form two positive opinions of satisfaction, being:

- (a) That the applicant's written request has adequately addressed both matters required to be addressed by clause 4.6(3)(a) and (b). The consent authority does not have to directly form the opinion of satisfaction regarding the matters in clause 4.6 (3)(a) and (b), but only indirectly form the opinion of satisfaction that the written request adequately addresses the matters required to be demonstrated by those clauses (see paragraph [25] of *Initial Action*). Clause 4.6 (3)(b) does not require any better "environmental planning outcome" to be proven, but rather that there be "sufficient environmental planning grounds" to justify contravening the development standard (see paragraph [41] of *Initial Action*);
- (b) That in accordance with clause 4.6(3)(b), the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out (see paragraph [26] of *Initial Action*); and

For a clause 4.6 variation request to be adequate, the consent authority is still required to be directly satisfied about the matters described in clause 4.6(4)(a)(ii) (see paragraph [26] of *Initial Action*).

In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 Preston CJ identified five (5) different ways in which it could be demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. These five (5) ways are set out below and addressed later in this request:

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *the development standard has been virtually abandoned or thwarted by Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

5. 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.

## 5.0 Development Standards

### Clause 4.6 Exceptions to Development standards

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

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and**
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.**

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

**(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and**

**(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and**

(b) the concurrence of the Director-General has been obtained.

(5) In deciding whether to grant concurrence, the Director-General must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

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

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

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

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- (a) a development standard for complying development,  
 (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,  
 (c) clause 5.4.

#### **Comment**

Clause 4.6 permits flexibility in the consideration of a development standard, in this particular case, relevant to the building height of the proposed RFB.

It is considered that the proposed minor height variations ensure the building achieves the density and built form that is strategically envisaged by Council for the site and precinct as a whole.

Because of the topography of the land, the building design has required substantial sculpturing, requiring flexible application of the standard, where the merits of the application are substantially relevant to the orderly and economic development of the land.

We have formed the view that there is no public benefit in maintaining strict compliance with the development standard in this instance given the departure from the height control is minor and will have no negative consequences in terms of the proper management, development and conservation of natural and artificial resources, including promoting the social and economic welfare of the community and achieving a better natural and built environment.

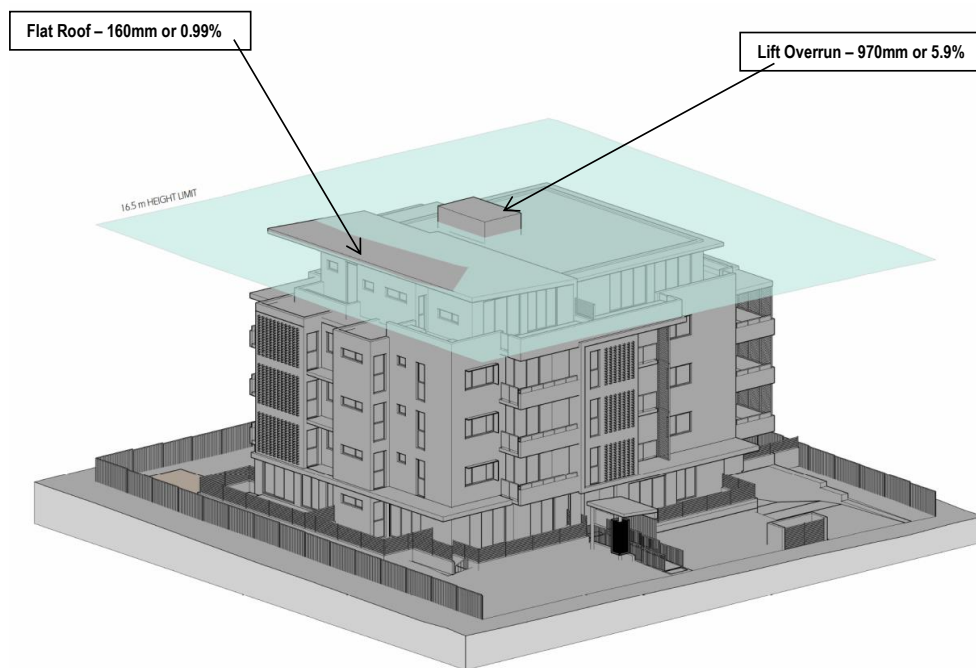
The departure from the height control allows for the orderly and economic use of the site in a manner which would otherwise not be strictly achieved with a reduced yield by removing one floor or part of a floor with no noticeable benefits.

The additional shadow cast does not create any noticeable impacts to that of a fully compliant development on the internal amenity of common open space, neighbouring sites nor any public reserves or the general amenity within the private and public domains.

The building maintains satisfactory sky exposure and daylight to those private areas adjoining the site.

As set out below, the minor building encroachments above the 16.5m height control are in the following areas:

- Lift overrun 970mm or 5.9% and
- Small portion of flat roof - 160mm or 0.99%



**Figure 1**  
Source: Building Height Plane – Zhinar Architects

This Clause 4.6 variation demonstrates that the increased building height is not unreasonable in these circumstances because:

- the objectives of the height standard are still achieved in that it provides a transition in built form and will not unreasonably impact upon the amenity of adjoining neighbours nor block or interrupt any known view corridors or vistas;
- sky exposure and daylight to public areas are maintained;
- the sites R4 High Density Residential zone objectives are met because the proposal increases the population of this neighbourhood;
- the variation is consistent with all relevant environmental planning instruments to increase densities around public transport corridors and employment zones, such as buses along Pennant Hills Rd, Thornleigh Railway Station and the Thornleigh town centre;
- the orderly and economic use of the land achieves a planning outcome that does not impact upon neighbours or future residents within the proposed RFB;
- is in the public interest because it provides greater choice, affordability and size of housing stock, allowing for the orderly and economic use of the land and
- urban consolidation initiatives in that the type of housing proposed, which includes 3 adaptable units, and will assist in achieving strategic housing targets for this region.

The combined effect of these assessments confirms that the flexible application of the height standard is appropriate in this instance because the variation proposed is well founded and that the height standard is unreasonable or unnecessary in the circumstances of this application.

#### **Height of Buildings**

The provisions of clause 4.3 are set out below and a part copy of the height of building map is provided at **Figure 2**.



**4.3 Height of buildings**

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

- (a) *to establish and maintain the desirable attributes and character of an area,*
- (b) *to minimise overshadowing and ensure there is a desired level of solar access and public open space,*
- (c) *to support building design that contributes positively to the streetscape and visual amenity of an area,*
- (d) *to reinforce important road frontages in specific localities.*

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

(2A) *Despite subclause (2), the height of a dwelling house or dual occupancy must not exceed 8.5 metres if the dwelling house or dual occupancy is to be located on land in Zone R4 High Density Residential.*

**Comment**

As set out below, the minor building encroachments above the 16.5m height control are in the following areas:

- Lift overrun 970mm or 5.9% and
- Part flat roof 160mm or 0.99%

The residential floor plates allow more than 18 or 84% of the apartments to be cross ventilated and 18 or 84% of units in the development will receive 2 or more hours of direct sunlight.

As can be seen from the above minor height departures, the majority of the proposed building is below the 16.5m prescribed by Council's LEP, allowing units on adjoining land to not be impacted upon in any manner as the majority of any additional shadow (lift overrun) will be cast onto the buildings own roof or in regards to the additional 160mm, this relates to a portion of the buildings roof that would not cause loss of amenity or increase the buildings overall bulk and scale to that of a fully compliant scheme.



Height of Buildings Map -  
Sheet HOB\_018

Maximum Building Height (m)

I	8.5
K	10.5
M	12
N	14.5
O1	16
O2	16.5
P	17.5
S	23.5
T1	26.5
T2	29.5
U	32.5
V1	35.5
V2	38.5
W1	40
W2	41.5
X	48
AA1	62.5
AA2	72
AA3	77.5



Figure 2

Source: Building Height Map HLEP 2013

The surrounding context also justifies a variation to the height controls that apply to the site as the proposal offers a more balanced urban design and planning outcome for the streetscape, in order to deliver an appropriate response that is in scale with other new developments in this locality.

The Clause 4.6 variation submission demonstrates that the proposed increase in height above the permissible standard of 16.5m is not unreasonable or unnecessary and is readily supportable because:

- Council's height controls surrounding the site promote buildings of similar scale to that proposed. The average person walking past the site or from a distance would not realize there is a departure from the height control of between 160mm or 0.99% (small portion of roof-eastern side) and lift overrun by 970mm or 5.9%;
- Because of the orientation of the site, the proposed development does not cast any additional shadow onto the public domain to that of a fully compliant 16.5m high design scheme;
- It satisfies the relevant objectives of the height standard in that no identified views will be interrupted or lost to that of a fully compliant 16.5m RFB;
- It satisfies the intent of Council's strategic planning vision for new high rise development in this precinct;
- provides housing choice, size and affordability;
- allows for satisfactory sky exposure and daylight to be achieved;
- promotes the orderly and economic use of the land;
- does not generate any adverse social impacts;
- has sufficient environmental planning grounds to serve the public interest;
- encourage greater use of public transport, given the site is located within a short walk of Pennant Hills Road and Thornleigh Railway Station;
- privacy impacts have been mitigated to that of a fully compliant design scheme and

- the proposed height variation ensures the orderly and economic use of land as envisaged by the Environmental Planning and Assessment Act, 1979.

The above factors demonstrate that there are both numerous internal and external factors which confirm there are sufficient environmental planning grounds to permit the minor height variations sought.

## 5.0 Land and Environment Courts Assessment

Winten Property Group Ltd v North Sydney Council (2001) NSWLEC 24

Justice Lloyd's Questions - Winten Property Group v North Sydney Council 2001

Justice Lloyd raised in this case, five questions that must be considered in the assessment of a SEPP 1 Objection, in the subject application, it relates to Clause 4.6 of HLEP 2013 because SEPP 1 does not apply to this new planning instrument.

The provisions of SEPP 1 differ from the provisions of clause 4.6. The decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 now confirms that the decision of Preston CJ in *Wehbe v. Pittwater Council* [2007] NSWLEC 827 is only of indirect assistance in determining ways of establishing that compliance with a development standard in an environmental planning instrument might be seen as unreasonable or unnecessary. In *Wehbe* [42] [46] Preston CJ did say however that a way of proving a well-founded objection under SEPP 1 is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting development consents departing from the standard and hence compliance with the standard is unnecessary or unreasonable. The principle should apply to Cl. 4.6 of the HLEP 2013 as well.

The Chief Judge referred to the decision in *North Shore Gas Company v North Sydney Municipal Council* (Land and Environment Court, New South Wales, 15 September 1986, unreported) in which Stein J similarly held that compliance with a development standard was not required where the standard had been virtually abandoned or destroyed by council's own action.

### Question 1

#### Is the Planning Control in Question a Development Standard?

##### *Environmental Planning Instrument*

The standard is contained within an Environmental Planning Instrument (HLEP 2013) that was prepared in accordance with the provisions contained within the EPA Act 1979 and therefore the control is a development standard that controls the height of buildings in the Hornsby LGA.

### Question 2

#### What is the Underlying Object or Purpose of The Standard?

As mentioned previously, the Department of Planning Circular B1, numerical requirements may be departed from if the purpose behind the control is achieved and the locality objectives of the relevant planning instruments are satisfied.

The underlying object of the standard is to:

- Ensure buildings are of a bulk, height and scale to fit within their context;
- Ensure buildings do not unreasonably increase amenity impacts, such as overlooking and overshadowing;
- Protect views;
- Ensure heritage items and conservation areas are not impacted upon by an increase in building height;
- Respect the existing and transitional character that a neighbourhood may be undergoing;
- To allow for building transitions.

**Question 3**

*Is compliance with the development standard consistent with the aims of the policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in Section 1.3 (a)(i) and (ii) of the Environmental Planning & Assessment Act 1979.*

**Comment**

Section 1.3 (a)(i) and (ii) is set out as follows:

*1.3 Objects*

*The objects of this Act are:*

*(a) to encourage:*

*(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*

*(ii) the promotion and co-ordination of the orderly and economic use and development of land,*

This issue in itself would hinder the attainment of the EPA Act 1979 objective, which seeks to promote the orderly and economic use and development of land. The reasons why the new RFB will achieve the objects of the Act are:

- The proposed RFB is permissible in the R4 High Density Residential zone and is consistent with the zones objectives;
- The proposed RFB does not significantly increase overshadowing to that of a fully compliant 16.5m building height scheme. The lift overrun, which encroaches above the height control by 970mm does not cast any shadow outside of the roof and that part of the roof that extends 160mm above the standard generates a very small increase in shadow to that generated by a compliant design scheme;
- No views will be lost to that of a fully compliant scheme;
- The design responds to its eclectic context in that the proposed design is responsive to its urban infill location and will not impact upon the amenity of existing or future residents in this precinct, in terms of overlooking and overshadowing of private and communal open space areas and
- The proposed development is located on a site that is large in size and falls towards the rear. The additional height comfortably fits within its transitional neighbourhood context and ideally suits the sites location;

**Question 4: Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

**Comment**

Compliance with the development standard is deemed to be unreasonable or unnecessary in the circumstances of this case because the departure sought does not create any additional amenity impacts upon the built and natural environments to that of a fully compliant design scheme.

Notwithstanding the non-compliance, the proposed development will perform favourably in relation to the objectives of the standard. In particular, the generic intent behind the height standard is to control the scale of new development and not to unreasonably increase amenity impacts. The proposal achieves this.

The proposed RFB clearly demonstrates that although the roof marginally exceeds the height control in two (2) small areas, the proposed RFB can readily fit within this transitional neighbourhood context.

**Question 5: Is the objection well founded?**

In the decision (*Wehbe v Pittwater Council* [2007] NSW LEC 827) Chief Justice Preston expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. These are:

- 1) *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- 2) *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3) *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 4) *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; or*
- 5) *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.*

We are of the view that the objection is well founded because:

- The proposed RFB has been designed so it does not cast excessive additional shadow within the common open space areas of the development or cast any additional shadow onto neighbouring residential properties or generate a building of increased bulk and scale, which is reflected in the accompanying drawings, photomontages and 3D model;
- The proposed built form responds to Council's LEP controls in that provision is made for a high density RFB that is complimentary to the height control objectives to control future development on this property and other residential development within the visual catchment of the site;
- The departure sought will have no unreasonable impacts upon the amenity of neighbours in this precinct;
- Allows satisfactory sky exposure and daylight to neighbouring properties and from within the development site and
- The proposed design is in the public interest as it promotes a quality built form in that the development will engage in responding to a need for greater economic and social benefits to this neighbourhood.

**Clause 4.6 (4)(b) - Concurrence of the Planning Secretary**

Clause 4.6(4)(b) requires the concurrence of the Planning Secretary to be obtained prior to the granting of consent to a development that contravenes a development standard.

Concurrence can be assumed by Council in accordance with the Planning Secretary's Assumed concurrence notice dated 21 February 2018.

**Whether Contravention of the Development Standard Raises any Matter of Significance of State or Regional Environmental Planning**

The variation to the building height control set out under clause 4.3 of the HLEP 2013 will not raise any matter which could be deemed to have State or Regional significance. The variation sought will not contravene any overarching State or Regional objectives or standards, rather it will contribute to the achievement of dwelling targets. Beyond this the variation sought will have no effects outside of the sites immediate area.

**6.0 Conclusion**

Hornsby Shire Council as the consent authority can be satisfied that pursuant to clause 4.6(4) of HLEP 2013, that:

- (c) This written request has in fact demonstrated, in accordance with clause 4.6(3) of HLEP 2013, that:
  - (i) compliance with the building height development standard in clause 4.1A of HLEP 2013 is unreasonable or unnecessary in the circumstances of this case; and
  - (ii) there are sufficient environmental planning grounds to justify the contravention of the development standard;
- (d) The proposed RFB will be in the public interest because it is consistent with the objectives of the building height standard and the objectives of the R4 Density Residential zone; and
- (e) The Planning Secretary's concurrence has been obtained because concurrence is assumed.

This written request has demonstrated that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case and the DA should be approved.

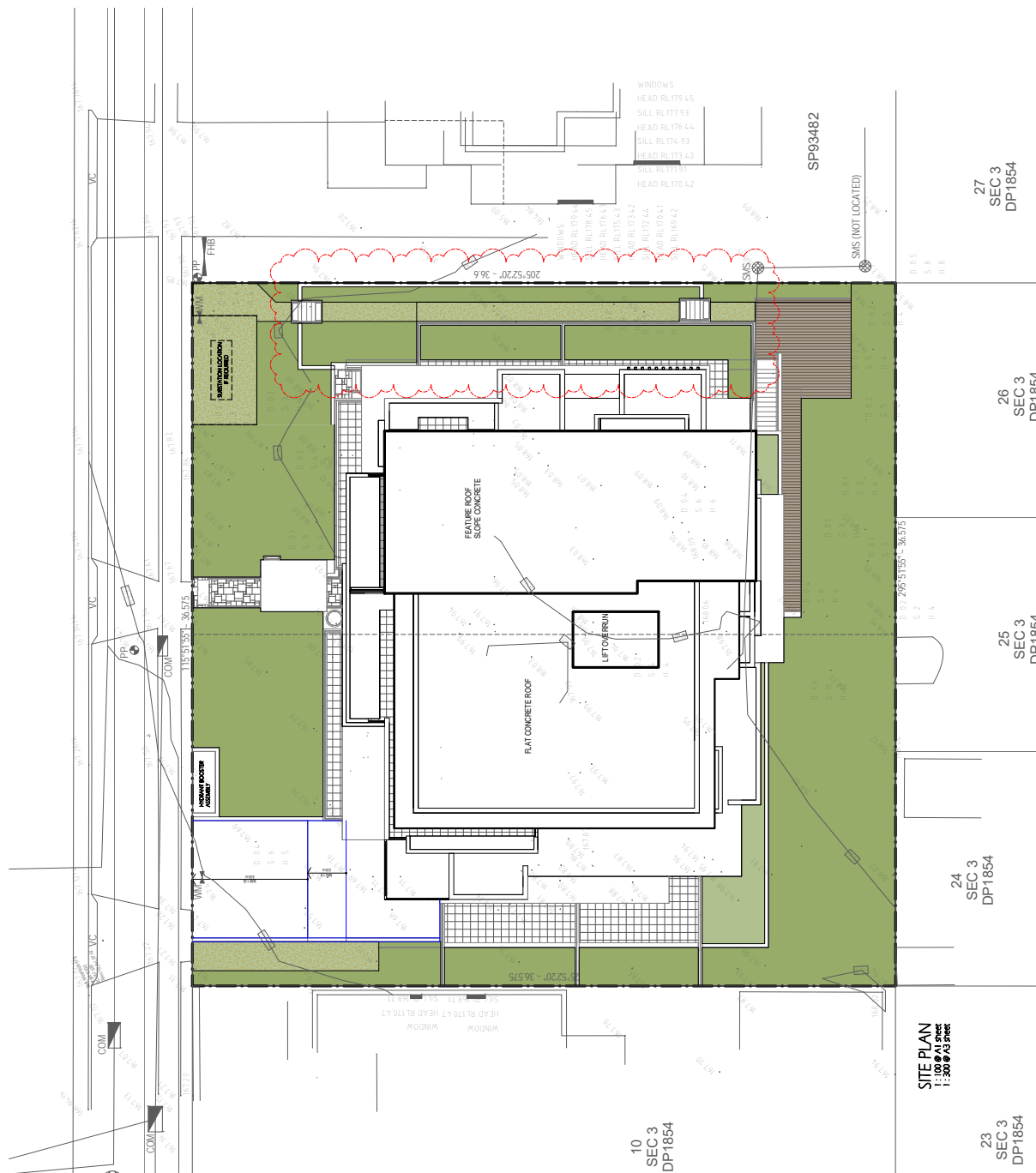


Allan Caladine  
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1 August 2022

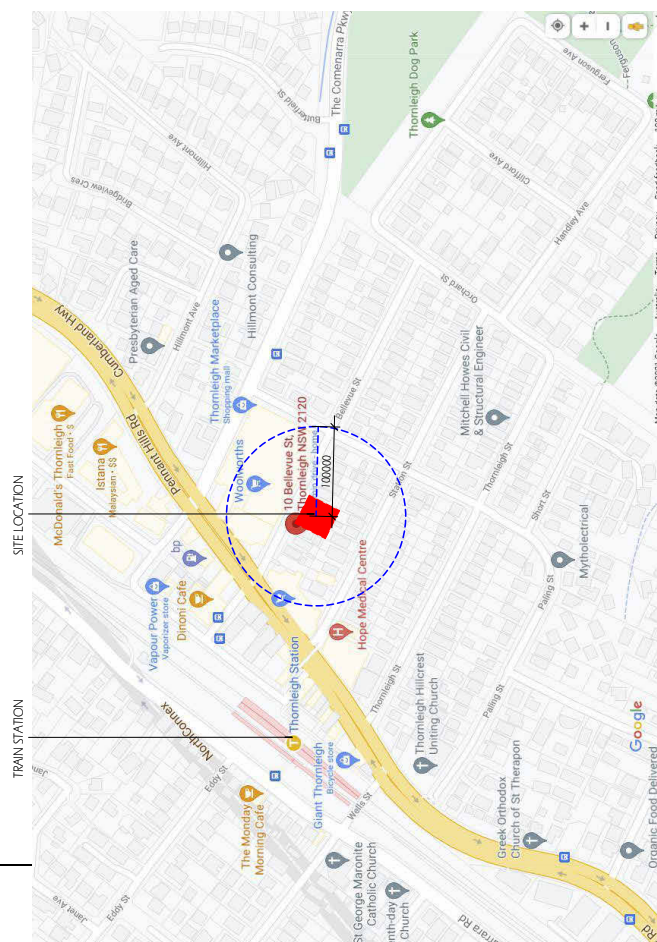
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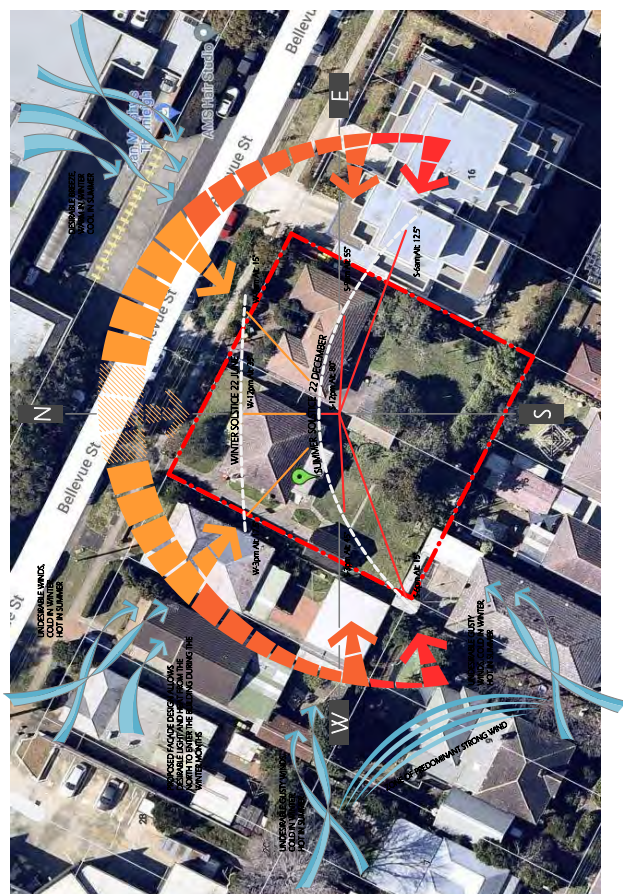




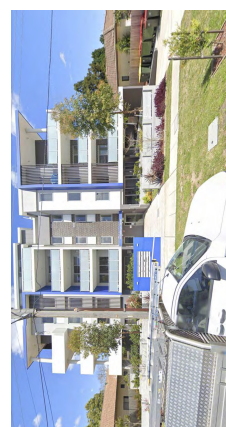
# ATTACHMENT 3 - ITEM 4

# ATTACHMENT 4 - ITEM 4





SITE ANALYSIS  
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1:600 @A3



14 BELLEVUE HILL STREET



10-12 BELLEME HILL STREET (SITE LOCATION)



A BELLEVUE HILL STREET



6 BELLEVUE HILL STREET

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**PROJECT STATUS:**  
Development Application

PRELIMINARY

## PROJECT NAME

### Proposed Development

10-12 BELLEVUE STREET

THORNLEIGH

HOUSING IN THE  
TOWN OF NORFOLK



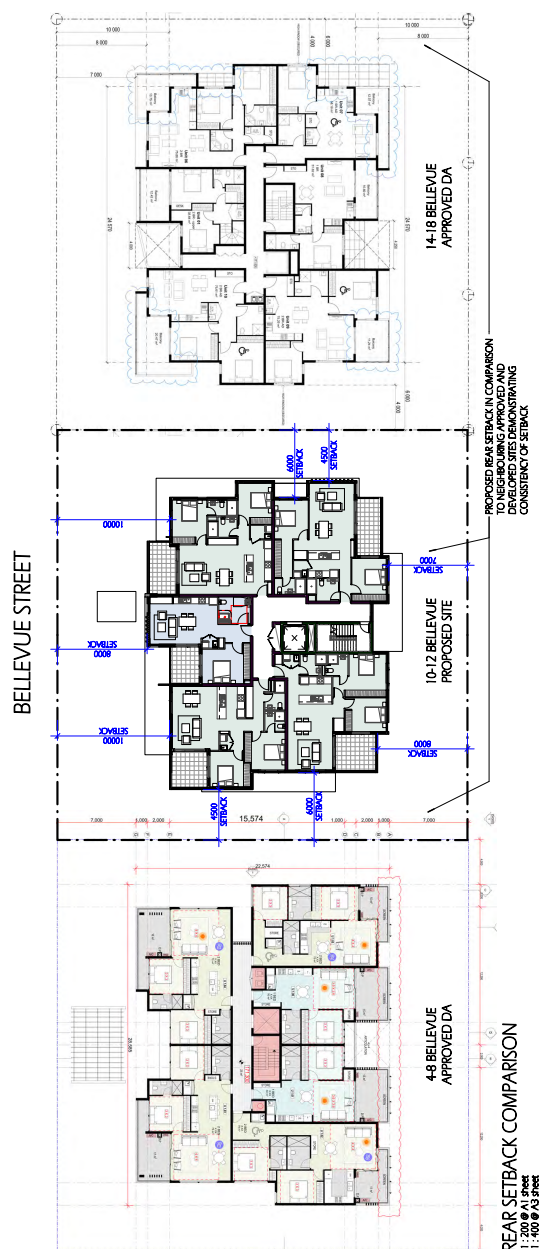
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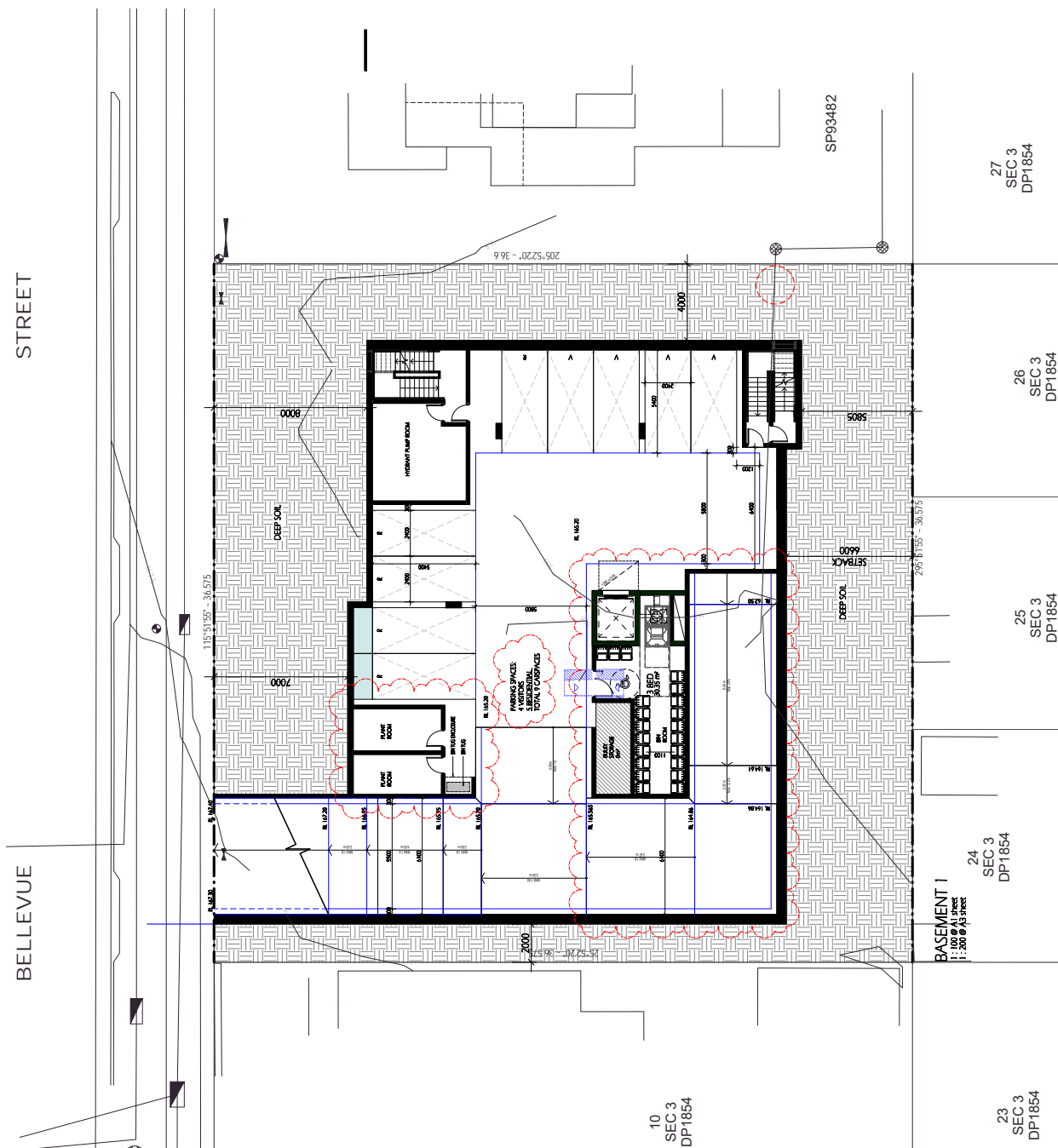
# ATTACHMENT 4 - ITEM 4





# ATTACHMENT 4 - ITEM 4

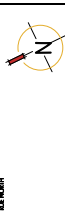


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441 2 8993 0833 /f  
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28 495 849 790 /m

**PROJECT STATUS:**  
Development Application

PROJECT NAME	Proposed Development
0-12 BELLEVUE STREET	
THORNLEIGH	
G.A.: HORNESBY COUNCIL	



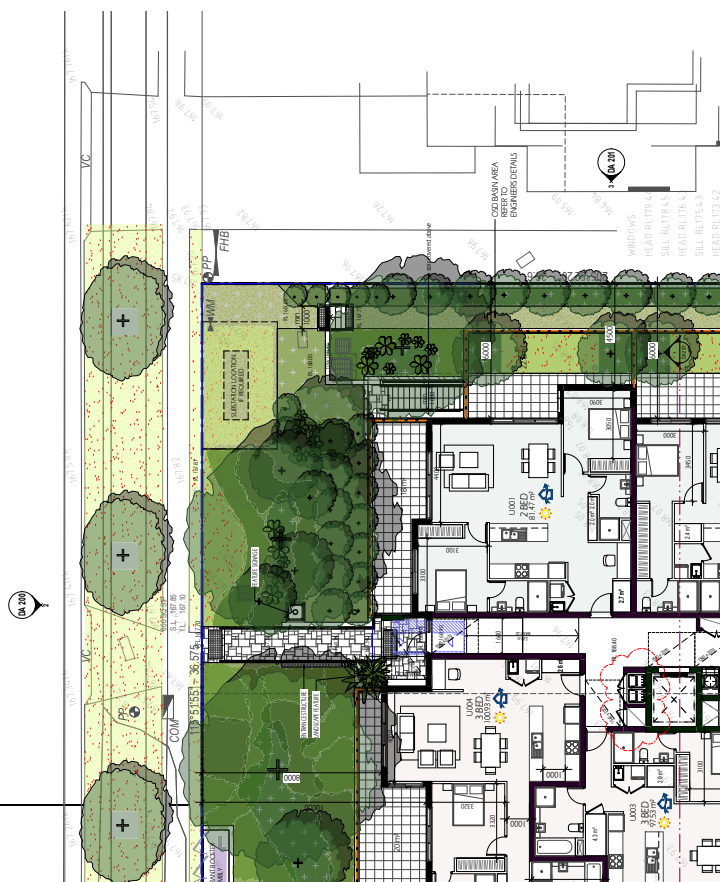
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 1 OF 100  
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 C&P INC. DRAWING INC.

# ATTACHMENT 4 - ITEM 4



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STREET



D	RESPONSE TO COMMENTS 11/18/22	U/18/22	A	V8
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G	RESPONSE TO COMMENTS 11/18/22	U/18/22	A	V8
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# ATTACHMENT 4 - ITEM 4



# ATTACHMENT 4 - ITEM 4

## TACHMENT 4 - ITEM 4



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 9 COMMENTS AND RESPONSES 19/07/22 JAC MEC  
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# TACHMENT 4 - ITEM 4



# TACHMENT 4 - ITEM 4

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1	RESPONSE TO COUNCIL RE 509 Z	8/04/22	JA	461C
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1	ISSUE FOR DA SUBMISSION	DATE	BY	CHECK
	ISSUE AMENDMENT	07/12/21	JA	

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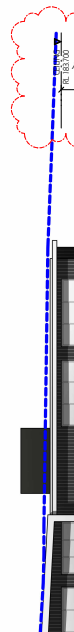
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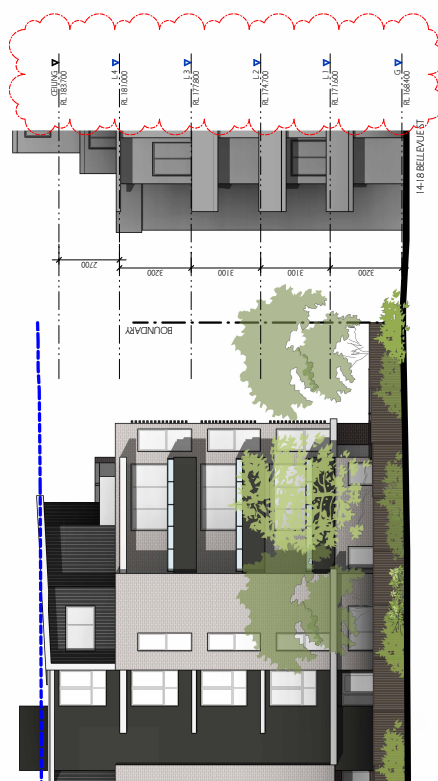
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# ATTACHMENT 4 - ITEM 4



## TACHMENT 5 - ITEM 4

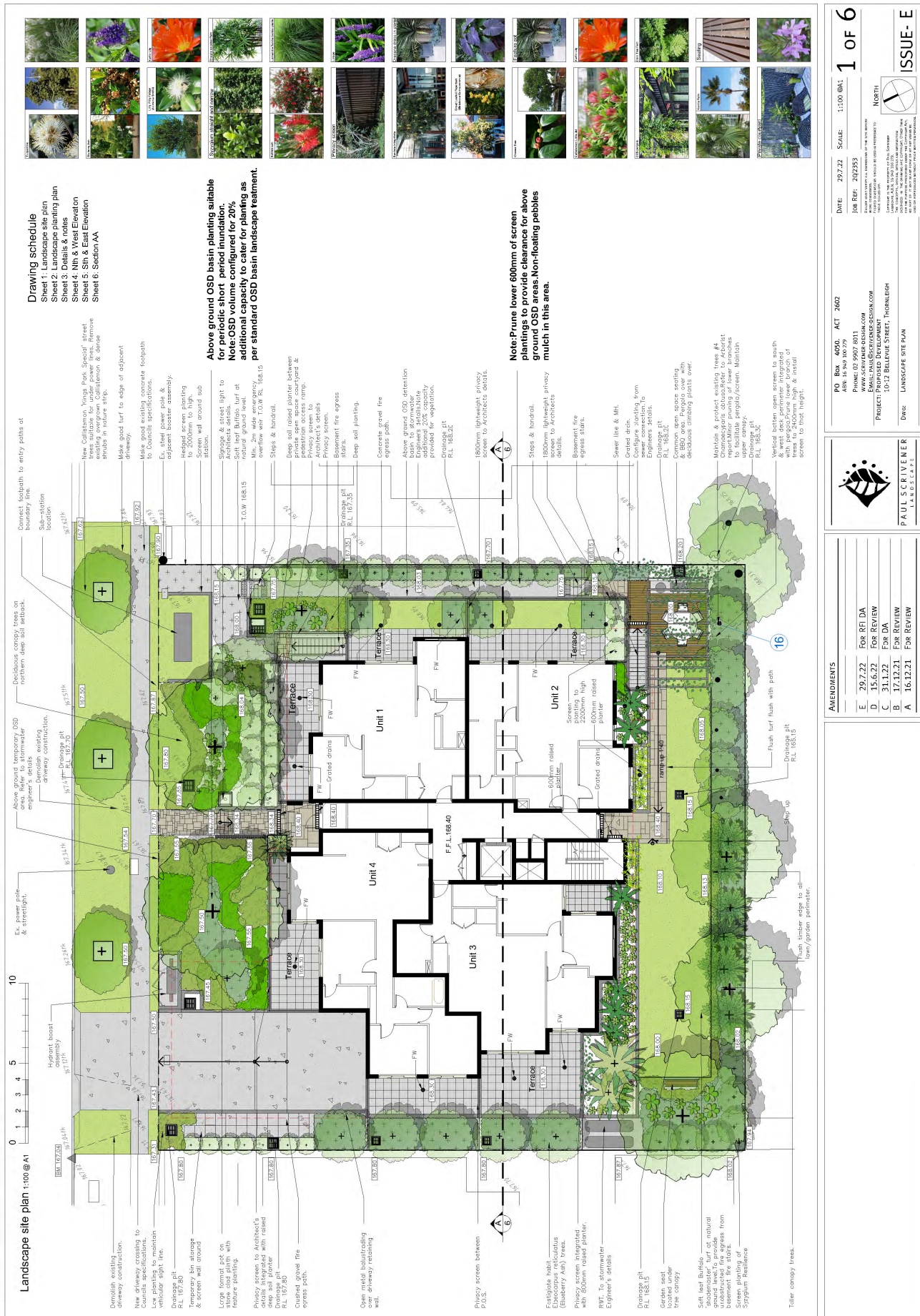
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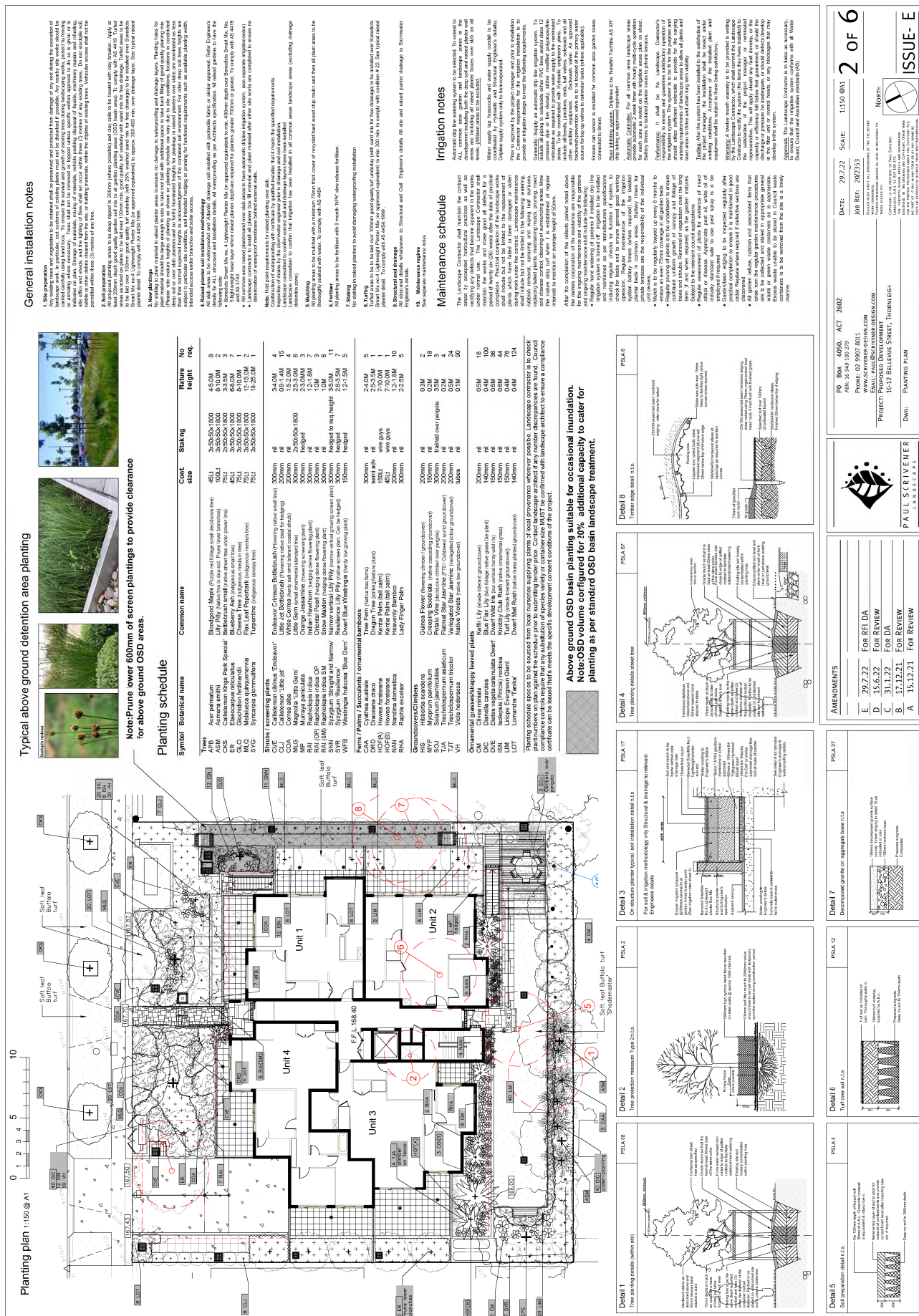
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# ATTACHMENT 6 - ITEM 4



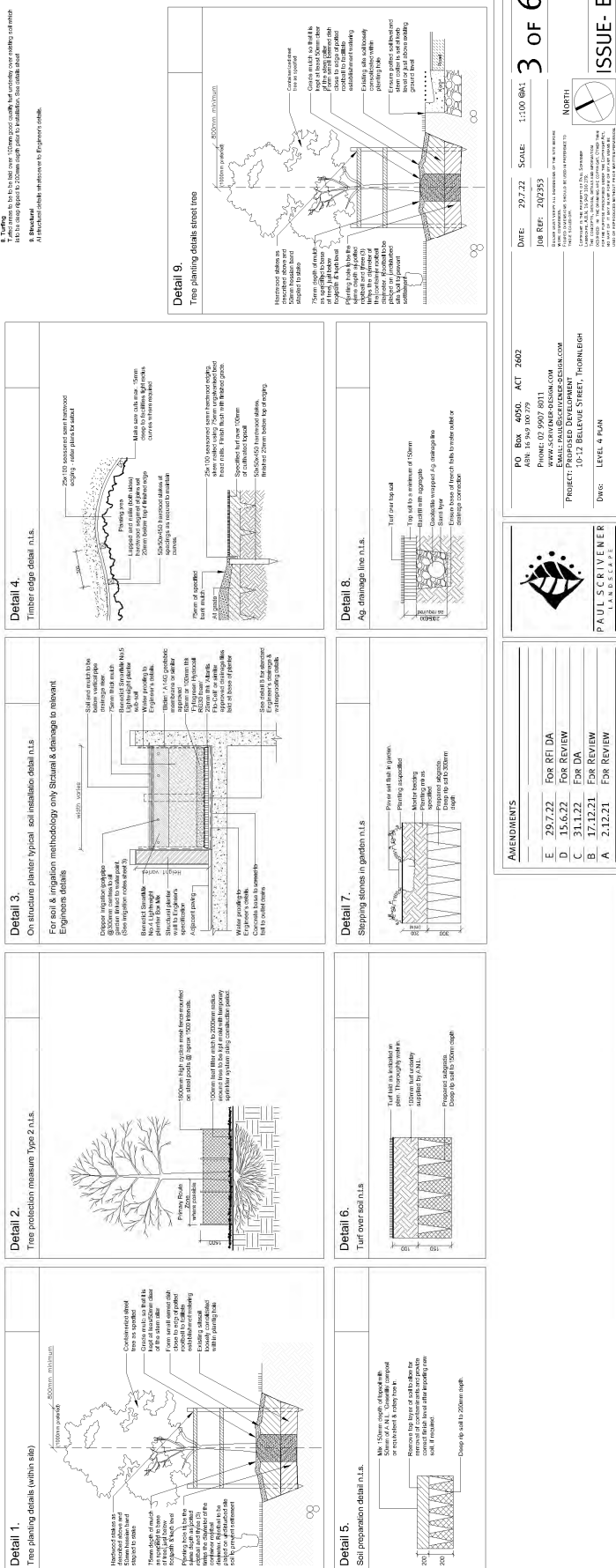
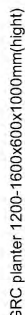
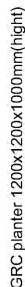
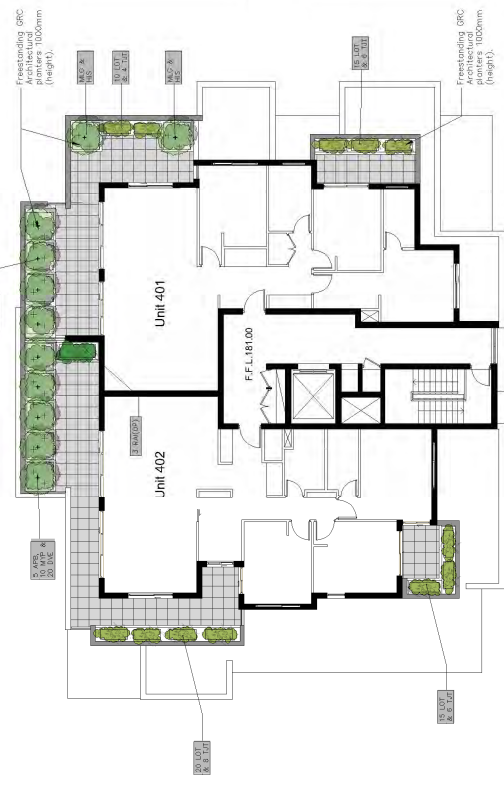


# ATTACHMENT 6 - ITEM 4

#### Typical planters for level 4

## Maintenance schedule

### General construction notes









# ATTACHMENT 6 - ITEM 4



