



DETERMINATION BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

**Wednesday 26 October 2022
at 4:00pm**



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EXECUTIVE SUMMARY

DA No:	DA/893/2019/A (Lodged on 17 June 2022)
Description:	Section 4.55(2) modification of an approved childcare centre comprising an increase in the capacity of the childcare centre from 40 to 48 children and minor alterations to the built form
Property:	Lot 91 DP 8354, No. 9 Stuart Avenue, Normanhurst
Applicant:	Corona Projects Pty Ltd
Owner:	Mrs Saharnaz Pourbozorgi & Mr Mehrak Tavana
Estimated Value:	\$1,472,112
Ward:	B Ward

- The modification application complies with the Hornsby Local Environmental Plan 2013, the Hornsby Development Control Plan 2013 and State Environmental Planning Policy (Transport and Infrastructure) 2021 and maintains compliance with the matters for consideration under the original development application including landscaping, privacy, noise, traffic and safety, site suitability, contamination, setbacks, tree preservation and sunlight access.
- A total of 6 submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as conditions imposed by the Panel are proposed to be modified/deleted.
- It is recommended that the application be approved.

RECOMMENDATION

THAT pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, Development Application No. DA/893/2019 for the demolition of existing structures and construction of a two storey child care centre at Lot 91 DP 8354, No. 9 Stuart Avenue, Normanhurst be amended as detailed in Schedule 1 of LPP Report No. LPP60/22.

BACKGROUND

On 27 May 2020, the Hornsby Local Planning Panel refused DA/893/2019 for the demolition of existing structures and construction of a 71 place purpose-built two storey child care centre on the following grounds:

1. *The proposed development is unsatisfactory in respect to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposed development is not consistent with the objectives of the R2 zone with respect to the Hornsby Local Environmental Plan 2013 as the development would not provide suitable child care facilities to meet the day to day needs of residents.*
2. *The proposed development is unsatisfactory in respect to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposed development does not satisfy Clause 23 of State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017 and the Child Care Planning Guideline 2017 as follows:*
 - 2.1 *The proposal is contrary to the planning objectives within Part 1.3 of the Guideline in that the proposal is not compatible within the existing context and neighbouring land uses and the proposal does not adequately minimise adverse impacts on adjoining properties and the neighbourhood.*
 - 2.2 *The proposal is contrary to the 'design principles of Part 2 of the Guideline in relation to built form, landscaping, safety, amenity, privacy, solar access and noise.*
 - 2.3 *The proposal is contrary to the Part 3 considerations of the Guideline with respect to Part 3.1 Site Selection and Location, Part 3.2 Local Character, Streetscape and the public domain interface, Part 3.3 Building Orientation, Envelope and Design, Part 3.4 Landscaping, Part 3.5 Visual and Acoustic Privacy and Part 3.6 Noise and Pollution and Part 3.8 Traffic, Parking and Pedestrian Circulation.*
3. *The proposed development is unsatisfactory in respect to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the removal of tree No. 1 would pose a detrimental impact to the streetscape and the 'major' incursion into the TPZ of tree No. 4 would pose an adverse impact to the vitality of the tree and is unacceptable with respect to State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.*
4. *The proposed development is unsatisfactory in respect to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the application has not adequately demonstrated whether the site is free of contaminants or whether the site is suitable for children in accordance with the requirements of State Environmental Planning Policy No. 55 Remediation of Land.*
5. *In accordance with Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the desired outcome and the prescriptive measures of Hornsby Development Control Plan 2013 (HDCP) as follows:*
 - 5.1 *The proposal does not comply with the 'Tree Preservation' prescriptive measures within Parts 1B.6 of the HDCP as the removal of tree No. 1 would pose a detrimental impact to the streetscape and consideration should be given to its retention through the reconfiguration of the carpark layout, including the relocation of the proposed driveway and reduction of car parking spaces within the front setback. In addition, the*

development would generate a 'major' incursion into the TPZ of tree No. 4 and would pose an adverse impact to its life expectancy.

- 5.2 *The proposal does not comply with the 'Transport and Parking' prescriptive measures within Part 1C.2.1 of the HDCP as the existing traffic conditions in the vicinity of the site would not be suitable for a child care facility on safety grounds.*
- 5.3 *The proposal does not comply with the 'Waste Management' prescriptive measures within Part 1C.2.3 of the HDCP as the bin carting route includes a ramp and would not allow for safe manoeuvrability of the 660L bins.*
- 5.4 *The proposal does not comply with the 'Noise and Vibration' prescriptive measures within Part 1C.2.5 of the HDCP as the proposed 2.2m high acoustic fences are considered excessive in height and would have an adverse visual impact to adjoining properties.*
- 5.5 *The proposal does not comply with the 'Scale' prescriptive measures within Part 7.1.2 of the HDCP as the proposed development would adversely impact on the amenity of adjoining properties with regard to amenity, noise, landscaping, privacy and bulk and scale.*
- 5.6 *The proposal does not comply with the minimum 2 metre building setback along the northern and southern side boundaries in accordance with the 'Setbacks' prescriptive measures within Part 7.1.3 of the HDCP.*
- 5.7 *The proposal does not comply with the 'Privacy, Security and Sunlight' prescriptive measures within Part 7.1.6 of the HDCP as the main entry landing, elevated pathways and balconies would pose a privacy impact to adjacent residential properties.*
- 5.8 *The proposal does not comply with the 'Landscaping' prescriptive measures within Part 7.1.4 of the HDCP as landscaping within the northern and southern setbacks would not provide adequate vegetation density and screening along the front of the site to appropriately screen the parking spaces from the adjoining properties.*
6. *In accordance with Section 4.15(1)(c) of Environmental Planning and Assessment Act 1979, it is considered that the site is not suitable for the proposed development.*
7. *Pursuant to the provisions of Section 4.15(1)(b) and (e) of Environmental Planning and Assessment Act 1979, it is considered that the proposed development would not be in the public's interest.*

On 25 November 2020, the Hornsby Local Planning Panel approved a Section 8.2(1)(a) Review of DA/893/2019 for demolition of existing structures and construction of a 40 place two storey child care centre.

APPLICATION HISTORY

On 8 September 2022, Council engaged an external acoustic consultant to undertake a peer review of the submitted Acoustic Report prepared by Acouras Consultancy, dated 1 June 2022. The external acoustic consultant completed the peer review on 7 October 2022 and supported the proposal, subject to minor amendments to the Plan of Management (PoM) and additional clarification on the methodology utilised with regard to sound power levels.

On 7 October 2022, Council requested additional information consistent with the recommendations of the external acoustic peer review.

On 10 October 2022, the requested amended Plan of Management and amended Acoustic Letter was received by Council.

SITE

The 1,628.8m² site is located on the eastern side of Stuart Avenue, Normanhurst and contains a partially constructed two storey childcare centre (approved under DA/893/2019).

The site experiences an average fall of 11% (9m) to the rear, eastern boundary.

Stuart Avenue is a low-density residential street with a streetscape predominantly comprising single storey dwelling houses.

The two adjoining properties to the south at Nos. 11 and 11A Stuart Avenue comprise a stepped two storey dwelling house with swimming pool and a single storey dwelling house, respectively. The two adjoining properties to the north at Nos. 7 and 7A Stuart Avenue contain stepped dwelling houses and ancillary outbuildings. The adjacent battle-axe property to the rear at No. 18A Campbell Avenue contains a two-storey dwelling house.

The site adjoins NSW Land and Housing Corporation social housing at No. 4 Stuart Avenue and a BP service station on the corner of Pennant Hills Road and Stuart Avenue, with both located across the street. The Queen of Peace Catholic Church is located at No. 18 Stuart Avenue, 150m south of the site.

The site is not bushfire or flood prone and is not burdened by any easements or restrictions.

The site is moderately vegetated and contains several large trees to the rear of the site. The rear of the site contains remnant canopy trees characteristic of Blue Gum High Forest, listed as a Critically Endangered Ecological Community under the NSW Biodiversity Conservation Act 2016.

The site benefits from a drainage easement through No. 18A Campbell Avenue at the rear of the site.

Normanhurst Railway Station is located approximately 950m walking distance from the site. A bus stop servicing the Transport for NSW '589' bus route is located directly across Stuart Avenue, connecting the site to the Hornsby Town Centre. In addition, the bus stop services numerous school bus routes.

The site does not contain a heritage item, is not in the vicinity of a heritage listed item and is not located within a heritage conservation area.

APPROVED DEVELOPMENT

On 25 November 2020, the Hornsby Local Planning Panel approved the Section 8.2(1)(a) review of DA/893/2019 for demolition of existing structures and construction of a 40 place two storey child care centre.

The approved development is summarised as follows:

The centre would cater for a maximum of 40 children within the following age groups:

- 0-2 years 8 Children
- 2-3 years 15 Children
- 3-5 years 17 Children

The lower ground floor level would comprise two indoor play rooms, an outdoor balcony play area, a lift, kids WC, store room, disabled WC and stairs. The ground floor would contain an indoor play room, outdoor balcony play area, cot room, staff room, WC, laundry, a lift, bottle preparation room, kids WC, reception, directors office, meeting room, kitchen and stairs.

The landscaped outdoor play area to the rear of the site would be serviced by stairs from the lower ground floor balcony and walkways along the southern and northern side boundaries.

An open carpark is approved to the front of the site comprising 12 car parking spaces, including 1 disabled space.

A pedestrian access ramp is approved to the southern side of the frontage which would provide direct access to the front entry of the centre.

Landscaping is proposed within the front, side and rear setbacks, including the planting of 2 trees along the front boundary and 7 trees within the side and rear setbacks. Additionally, 424 shrubs would be planted to the perimeter of the site.

A boundary fence is approved for installation along the perimeter of the site, achieving a maximum height of 2.2m at the rear boundary and tapering to a height of 1.2m at the front boundary.

A 1.25m high acoustic barrier would be installed to the southern and northern elevations of the carpark, with 1.1m high acoustic barriers installed to the northern and southern elevations of the upper floor balcony. The southern and northern elevations of the lower floor balcony would include a 1.1m high acoustic barrier. In addition, privacy screens are to be installed to the side elevations of the lower floor level balcony.

The approved operating hours of the child care centre would be 7:00am to 6:30pm, Monday to Friday.

The centre is to be staffed by a maximum of 7 educators.

Two business identification signs have been approved, located on the front façade of the child care centre and affixed to the front fence.

The Panel resolved to adopt the Council officer's report recommendation and approve the proposed development, subject to the conditions contained in Schedule 1 of the report and the following amendments:

Amend condition No. 18 to read:

18. Acoustic Treatment and Certification

- a) *Acoustic fencing must be installed in accordance with the approved architectural plans prepared by Gardner Wetherill Associates, dated 15 October 2020 and Part 5.4 and 7 recommendations within Acoustic Impact Assessment prepared by Day Designs, dated 27 July 2020 and the following requirements:*
 - i) *The barrier walls shown on the approved architectural plans prepared by Gardner Wetherill Associates, dated 15 October 2020 are to be constructed of either 3 rails 'solid lapped and capped' timber, 10mm thick solid polycarbonate, 6.38mm thick laminate glass or masonry. The construction must be free of visible air gaps (including at the bottom) to provide an impervious sound barrier.*
 - ii) *The 2.2m high barrier walls, shown on the approved architectural plans prepared by Gardner Wetherill Associates, dated 15 October 2020 are to be*

of solid construction in accordance with i) above for 1.8m in height and the top 400mm of the barrier is to be clear polycarbonate to facilitate sunlight access to the adjoining properties.

- b) *Acoustic treatment must be installed for the proposed development in accordance with the recommendations contained within the Acoustic Impact Assessment prepared by Day Design, dated 27 July 2020 and the following requirements:*
- i) *Windows are to be inoperable to the internal play area (play area 3-5) along the lower ground floor, northern, southern and eastern elevation to control noise emissions from the centre to nearby sensitive receivers.*
 - ii) *Sound absorptive insulation is to be fixed directly below the lower ground balcony soffit and consist of 100mm thick polyester insulation (density 3.2kg/m³) with a ceiling consisting of a perforated material (mini orb) or perforated fibre cement sheeting with a minimum open area 20%.*

Amend condition No. 52 to read:

52. Acoustic Certification

On completion of all works and prior to the issue of an Occupation Certificate, the certifier is to be provided with a certificate from a qualified acoustic consultant certifying that all acoustic works have been completed in accordance with the Part 5.4 and Part 7 recommendations contained within the Acoustic Impact Assessment report prepared by Day Design, dated 27 July 2020 and the conditions of this consent.

On 30 March 2022, a Construction Certificate (CC/152/2022) was issued via a private certifier for the construction of the childcare centre. It is noted that numerous façade detail amendments have been made on the approved Construction Certificate plans when compared to the approved Development Application plans, including:

- Modifications to the finishes, window sizes and material of the balustrade along the northern elevation.
- Increase in the window sizes and the deletion of the side access stairs along the southern side elevation.
- The increase in the size of windows and amendments to the finishes to the front façade.

PROPOSED MODIFICATION

The Section 4.55(2) application seeks modifications to the approved childcare centre development comprising an increase in the capacity of the childcare centre from a maximum of 40 children to 48 children.

The proposal also entails an extension of the 3-5 year-old children's room internal area by 27m², including relocation of a wall, storage cupboard and the replacement of an aluminium louvre window with a sliding door. The 1.8m high privacy screen on the balcony is proposed be relocated from the internal to the external face of the balustrade.

The approved landscaping scheme is proposed to be retained. No additional trees/ shrubs are proposed to be removed.

It is noted by Council that the Architectural Plans supporting this Section 4.55(2) application include the changes shown on the approved Construction Certificate plans.

ASSESSMENT

The development application has been assessed having regard to the Greater Sydney Region Plan - A Metropolis of Three Cities, the North District Plan and the matters for consideration prescribed under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act). The following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Greater Sydney Region Plan - A Metropolis of Three Cities and North District Plan

The Greater Sydney Region Plan - A Metropolis of Three Cities has been prepared by the NSW State Government to guide land use planning decisions over the next 40 years to 2056. The Plan sets a strategy and actions for accommodating Sydney's future population growth and identifies dwelling targets to ensure supply meets demand. The Plan also identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

Part 3 of the strategy relates to '*Infrastructure and Collaboration*' and a key objective is to provide services and infrastructure to meet communities' changing needs. Further, the strategy cites changing demographics will affect the types and distribution of services required in neighbourhoods.

Between 2016 to 2036, the number of infants aged 0-4 years is projected to increase by 85,000 and there are projected to be 333,000 more children and young people aged 5-19 years. The identified challenge for Hornsby Shire would be to provide additional infrastructure for students and young people. The proposed modifications would be consistent with the objectives of the strategy by providing 8 additional child care places.

2. STATUTORY CONTROLS

Section 4.15(1)(a) requires Council to consider "*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*".

2.1 Environmental Planning and Assessment Act 1979 - Section 4.55(2)

The proposal constitutes a modification under Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*. Council pursuant to Section 4.55(2), Council may consider an application to amend development consent provided that, inter alia:

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if any at all), and*
- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) *it has notified the application in accordance with—*
 - (i) *the regulations, if the regulations so require, or*

- (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.”*

Subsections (1) and (1A) do not apply to such a modification.

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

With respect to (a), it is considered that the proposal as amended is substantially the same as the development originally approved.

Section 4.55(2)(b) is not applicable as the development is not an integrated development or a State significant development.

With respect to (c) and (d), the amended application was notified, and 6 submissions have been received.

With respect to Section 4.55(3) of the Act and the matters referred to in Section 4.15(1) of the Act, these matters are addressed within the body of this report. With respect to the reasons given by the consent authority for the grant of the consent that is sought to be modified, the reasons provided in granting consent to DA/893/2019 are as follows:

- *The amended proposal now complies with the requirements of the relevant environmental planning instruments, the Hornsby Development Control Plan 2013 and the Child Care Planning Guideline 2017.*
- *The amended proposal now overcomes the issues that resulted in refusal of the development application by the Panel on 27 May 2020.*
- *The amended proposal does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, overshadowing, solar access, amenity, privacy, noise generation, traffic, safety and tree preservation.*

As outlined in the body of this report, the proposed modification would continue to meet the desired outcomes of Council's planning controls and the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

2.2 Hornsby Local Environmental Plan 2013

The proposed development has been assessed having regard to the provisions of the Hornsby Local Environmental Plan 2013 (HLEP).

2.2.1 Zoning of Land and Permissibility

The subject land is zoned R2 Low density residential under the HLEP. The objectives of the R2 zone are:

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

The proposed development is defined as a “*centre-based child care facility*” and is permissible in the zone with Council’s consent. The proposed development would provide facilities and services to meet the day to day needs of residents and would contribute in meeting the increasing demand for child care in Hornsby Shire.

2.2.2 Height of Buildings

Clause 4.3 of the HLEP provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m. The proposal would not alter the approved building height and would maintain a height of 8.27m.

2.2.3 Heritage Conservation

Clause 5.10 of the HLEP sets out heritage conservation provisions for Hornsby Shire.

The site does not include a heritage item and is not located in a heritage conservation area. Accordingly, no further assessment regarding heritage is necessary.

2.2.4 Earthworks

Clause 6.2 of the HLEP states that consent is required for proposed earthworks on site. Before granting consent for earthworks, Council is required to assess the impacts of the works on adjoining properties, drainage patterns and soil stability of the locality.

It is anticipated that the proposed development would require excavation works for the additional 27m² floor area to the western side of the lower ground floor level. Council’s assessment has determined that the proposed development would require the removal of an additional 35m³ of excavated material. Council’s original assessment concluded that the proposal would be satisfactory in regard to earthworks, subject to the implementation of the conditions imposed under the original consent regarding the preparation of a dilapidation report assessing impacts of excavation on adjoining properties and earthwork management measures. No additional conditions are required to be imposed in this regard.

The proposed modification complies with Clause 6.2(3)(h) of the HLEP and is considered acceptable in this regard.

2.3 State Environmental Planning Policy (Transport and Infrastructure) 2021

The application has been assessed against the requirements of chapter 3 of State Environmental Planning Policy (Transport and Infrastructure) 2021.

2.3.1 Educational Establishments and Childcare Facilities

Chapter 3 of the Transport and Infrastructure SEPP aims to facilitate the effective delivery of educational establishments and early education and care facilities.

Section 3.23 of Chapter 3 requires Council to consider the relevant provisions of the Child Care Planning Guideline 2017 (CCPG).

The CCPG will generally take precedence over the HDCP with the exception of building height, side and rear setbacks and car parking rates.

An assessment of the modification against Part 1.3 *Planning objectives*, Part 2 *Design quality principles*, Part 3 *Matters for consideration* and Part 4 *Applying the National Regulations to development proposals* is provided below:

2.3.1.1 Part 1.3 - What are the planning objectives?

The planning objectives contained within Part 1.3 of the CCPG include requirements that child care facilities are compatible with the existing streetscape, context and neighbouring land uses and that they seek to minimise adverse impacts of development on adjoining properties and the neighbourhood.

The discussion provided below in response to Part 3 of the CCPG, demonstrates that the proposed modification is considered consistent with these objectives.

2.3.1.2 Part 2 - Design quality principles

The discussion provided below in response to Part 3 of the CCPG, demonstrates that the proposed modification is consistent with the design quality principles of Part 2 in relation to built-form, landscaping, safety and amenity, privacy, solar access and noise.

2.3.1.3 Part 3 - Matters for Consideration

Part 3.1 - Site selection and location

The objectives of Part 3.1 of the CCPG include that the siting of child care centres should be clear of potential environmental contaminants. In addition, Part 3.1 encourages that the land characteristics be suitable for the scale of the development with regard to adjacent properties.

Centre-based child care facilities are a permissible land use within the R2 low density residential zone. The site is located approximately 950m from the Normanhurst Railway Station. The site is not flood prone or bushfire prone. The site experiences an average slope of 10% to the rear boundary. The site is located approximately 20m from a BP service station at the corner of Pennant Hills Road and Stuart Avenue and a social housing development at No. 4 Stuart Avenue.

The approved development demonstrated that the childcare centre appropriately accommodates for the site constraints relating to land gradient, pedestrian safety, site contamination and vehicular traffic.

Section 2.5.1 of this report addresses site contamination and remediation works.

The visual scale of the proposed development is unaltered from the approved development and is consistent with the capability of the site and is considered acceptable.

The proposal meets the objectives of Part 3.1 of the CCPG and the proposal is supported in this regard.

Part 3.2 - Local character, streetscape and the public domain interface

The objectives of Part 3.2 of the CCPG include that child care centre developments should contribute to and recognise existing streetscape qualities and integrate car parking into the building and site landscaping design.

Stuart Avenue is a low-density residential street with a streetscape predominantly comprising single storey dwelling houses. The child care centre would present to the streetscape as a single storey

structure and two storey at the rear of the site. The approved development includes provision for acoustic barriers around the perimeter of the carpark and a 1.2m high front fence which would be visible from the street.

The proposed works are minor in scale and are located to southern side and rear elevations of the approved development. The proposed works would not be visible from the public domain and would not impact upon the streetscape.

The proposal meets the objectives of Part 3.2 of the CCPG and is supported in this regard.

Part 3.3 - Building orientation, envelope and design

The objectives of Part 3.3 of the CCPG stipulate that childcare centres should be orientated to minimise visual privacy and minimise noise impacts and respond to the adjacent built form.

Sections 2.8.3 and 2.8.4 of this report address the noise and privacy considerations of the proposed development. It is considered that the proposal is consistent with the privacy and noise considerations of the approved development and is deemed acceptable in this regard.

The proposal meets the objectives of Part 3.3 of the CCPG and the proposal is supported in this regard.

Part 3.4 – Landscaping

The objectives of Part 3.4 of the CCPG encourages landscape design that contributes to the streetscape and amenity.

Landscaping is approved within the front, side and rear setbacks, including the planting of 2 large *Water Gum* trees along the front boundary and 7 trees within the side and rear setbacks. Additionally, 424 shrubs have been approved for planting around the perimeter of the site.

The modification application does not seek any alterations to the approved landscaping scheme and further assessment regarding landscaping is not required.

The proposal meets the objectives of Part 3.4 of the CCPG, and the proposal is supported in this regard.

Part 3.5 - Visual and Acoustic Privacy and Part 3.6 - Noise and Air Pollution

The objectives of Part 3.5 of the CCPG include that child care centres minimise overlooking of internal living areas and private open spaces at adjoining sites through appropriate building layout including pathway, window and door locations. The objectives of Part 3.6 of the CCPG include that a suitably qualified acoustic professional prepare an acoustic report to identify an appropriate noise level for a childcare centre facility.

The S4.55(2) application has been supported by an Acoustic Report prepared by Acouras Consultancy dated 10 October 2022 and is to be read in conjunction with the approved Acoustic Report prepared by Day Design Pty Ltd (Revision C), dated 27 July 2020.

A boundary fence has been approved for installation along the perimeter of the site, achieving a maximum height of 2.2m at the rear boundary and tapering to a height of 1.2m at the front boundary.

A 1.25m high acoustic barrier has been approved to be installed to the southern and northern elevations of the carpark, with 1.1m high acoustic barriers installed to the northern and southern elevations of the upper floor balcony. The southern and northern elevations of the lower floor balcony would include a 1.1m high acoustic barrier. In addition, privacy screens are approved to the side elevations of the lower floor level balcony.

Council's assessment of the acoustic and privacy requirements of the child care centre are discussed in detail in Sections 2.8.3 and 2.8.4 of this report.

The proposal meets the objectives of Parts 3.5 and 3.6 of the CCPG and is considered acceptable.

Part 3.7 Hours of operation

Part 3.7 of the CCPG indicates that the hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays.

The hours of use of the childcare facility would remain as approved and complies with this requirement.

Part 3.8 Traffic, parking and pedestrian circulation

Part 3.8 of the CCPG indicates that a Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised. In addition, the CCPG indicates that child care facilities proposed within narrow roads should ensure that safe access can be provided to and from the site and that vehicles can enter and leave the site in a forward direction.

Section 2.8.1 of this report addresses parking, traffic and pedestrian circulation.

2.3.2 Part 4 Applying the National Regulations to development proposals

The following table sets out the proposal's compliance with the measures of Part 4 of the CCPG:

Child Care Planning Guideline 2017 – Part 4				
Control	Approved DA	Proposal	Requirement	Compliance
Unencumbered indoor space	5.25m ² per child	4.37m ² per child	3.25m ² per child	Yes
Unencumbered outdoor space	13.95m ² per child	11.6m ² per child	7m ² per child	Yes
Storage				
- External	0.42m ³ per child	0.35m ³ per child	0.3m ³ per child	Yes
- Internal	0.24m ³ per child	0.2m ³ per child	0.2m ³ per child	Yes
On site laundry	Provided on site	Provided on site	Provided on site	Yes
Child toilet facilities	Provided on site	Provided on site	Provided on site	Yes
Administration space	Provided on site	Provided on site	Provided on site	Yes
Nappy change facilities	Provided on site	Provided on site	Provided on site	Yes
Solar Access for outdoor play	34%	34%	30-60%	Yes

As detailed in the above table, the proposed development complies with Part 4 of the CCPG.

Section 3.25 of the *Transport and Infrastructure SEPP* states that:

“development consent must not be granted for the purposes of a centre-based child care facility in Zone R2 Low Density Residential if the floor space ratio for the building on the site of the facility exceeds 0.5:1”.

The proposed development has a Floor Space Ratio (FSR) of 0.27:1 and complies with Section 3.25 of the *SEPP*.

Section 3.26 of the *Transport and Infrastructure SEPP* contains non-discretionary development standards. This prevents the consent authority from imposing more onerous standards or refusing an application on the basis that they have not been complied with. An assessment of the application against Section 3.26 of the *Transport and Infrastructure SEPP* has been carried out below:

Centre-based child care - non-discretionary development standards

- (a) *Location - the development may be located at any distance from an existing or proposed early childhood education and care facility.*

Whilst there are other child care centres within the vicinity of the site, the child care centre can be located at any distance from an existing or proposed childhood education and care facility in accordance with Section 3.26(2)(a) of the *Transport and Infrastructure SEPP*.

- (b) *Indoor or outdoor space*

- (i) *For development to which clause 107 (indoor unencumbered space requirements) or 108 (outdoor unencumbered space requirements) of the Education and Care Services National Regulations applies - the unencumbered area of indoor space and the unencumbered area of outdoor space for the development complies with the requirements of those clauses, or*
- (ii) *For development to which clause 28 (unencumbered indoor space and useable outdoor play space) of the Children (Education and Care Services) Supplementary Provisions Regulation 2012 applies - the development complies with the indoor space requirements or the useable outdoor play space requirements in that clause;*

Comment: The regulations require a minimum of 3.25m² of unencumbered indoor play area and a minimum of 7m² of unencumbered outdoor play area per child. The modification complies with this requirement.

- (c) *Site area, site coverage and site dimensions—the development may be located on a site of any size, cover any part of the site and have any length of street frontage or any allotment depth.*

Comment: The site has an area of 1,628.8m² and is considered acceptable.

- (d) *Colour of building materials or shade structures—the development may be of any colour or colour scheme unless it is a heritage item or in a heritage conservation area,*

Comment: The centre would not be located within a heritage conservation area and is sited more than 125m from the landscape heritage item at Thornleigh Golf Centre.

In summary, the proposal complies with the *Transport and Infrastructure SEPP* provisions and is assessed as satisfactory in this regard.

2.4 State Environmental Planning Policy (Industry and Employment) 2021

The application has been assessed against the requirements of chapter 3 of State Environmental Planning Policy (Industry and Employment) 2021.

2.4.1 Advertising and Signage

The approved signage has been assessed against the requirements of chapter 3 of the Industry and Employment SEPP as part of the original assessment. The modification application does not propose any changes to this signage and further assessment under this policy is not required.

2.5 State Environmental Planning Policy (Resilience and Hazards) 2021

The application has been assessed against the requirements of chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021.

2.5.1 Chapter 4 Remediation of Land

Section 4.6 of the Resilience and Hazard SEPP states that consent must not be granted to the carrying out of any development on land unless the consent authority has considered whether the land is contaminated or requires remediation for the proposed use.

The approved development included a revised Detailed Site Investigation (DSI) with on-site contamination sampling raising no concerns to the use of the site as a childcare centre.

Having regard to the recommendations of the DSI, appropriate conditions have been imposed on the original consent in this regard and no changes to the existing conditions are proposed under this modification application.

2.6 State Environmental Planning Policy (Biodiversity and Conservation) 2021

The application has been assessed against the requirements of chapter 2 and 10 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

2.6.1 Chapter 2 Vegetation in Non-Rural Areas

Chapter 2 of this policy aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

The proposed modification does not require any additional tree removal from what was approved in the original application, and further consideration of this policy is not required.

2.6.2 Chapter 10 Sydney Harbour Catchment

The site is located within the catchment of Sydney Harbour. The aim of this chapter is to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained. This chapter provides general planning considerations and strategies to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained.

The plan addresses matters related to biodiversity, ecology and environment protection; public access to, and use of, foreshores and waterways; maintenance of a working harbour; interrelationship of waterway and foreshore uses; foreshore and waterways scenic quality; maintenance, protection and enhancement of views and boat storage facilities, which were considered at the time of the assessment of the original application.

The proposed modification would not alter the original assessment and the existing conditions of consent address the requirements of chapter 10 of the Biodiversity and Conservation SEPP.

2.7 Section 3.42 Environmental Planning and Assessment Act 1979 - Purpose and Status of Development Control Plans

Section 3.42 of the *Environmental Planning and Assessment Act 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitate development that is permissible under any such instrument; and achieve the objectives of land zones. The provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Consent authorities have flexibility to consider innovative solutions when assessing development proposals, to assist achieve good planning outcomes.

2.8 Hornsby Development Control Plan 2013

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the Hornsby Development Control Plan 2013 (HDCP). The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

HDCP - Part 7 Community Uses				
Control	Approved	Proposed	Requirement	Compliance
Site Area	1,628.8m ²	1,628.8m ²	N/A	N/A
Floor Area	411m ²	438m ²	430m ²	No
Site Coverage	19%	19%	30%	Yes
Height	8.27m	8.27m	8.5m	Yes
No. of Storeys	2 storeys	2 storeys	max. 2 storey	Yes
Number of Children	40	48	max. 40	No
Recreation Space				
- Indoor	5.25m ² per child	4.37m ² per child	3.25m ² per child	Yes
- Outdoor	13.95m ² per child	11.6m ² per child	7m ² per child	Yes
Landscaping	42%	42%	min. 45%	No* unchanged
Car Parking (@ 1/ 4 children)	12 spaces	12 spaces	10 spaces	Yes
Setbacks				

- Front	27m	27m	6m	Yes
- Side (north)	2m	2m	2m	Yes
- Side (south)	2m	2m	2m	Yes
- Rear	23.5m	23.5m	8m	Yes
- Carpark	2m	2m	2m	Yes

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As detailed in the above table, the proposed development complies with the prescriptive measures within the HDCP, with the exception of floor area, number of children and landscaping. A brief discussion on compliance with relevant performance requirements and Part 1C General Controls is provided below.

2.8.1 Transport, Parking and Traffic

The HDCP requires a minimum of 1 on-site car parking space per 4 children (which equates to 12 spaces for the proposed 48 children). The approved car park would comprise of 12 car parking spaces including one disabled parking space and 5 allocated staff car parking spaces, which complies with this requirement.

The subject Section 4.55 application seeks to retain the approved car park arrangement and no concerns are raised in this regard.

The *RTA Guide to Traffic Generating Developments* (GTGD) prescribes a rate of 0.8 vehicle trips per child during the 7am to 9am peak period and 0.7 vehicle trips per child during the 4pm to 6pm peak period for child care centres. Accordingly, the proposed development would generate 38.4 trips in the AM peak and 33.6 trips in the PM peak.

A letter prepared by Transport and Traffic Planning Associates dated 29 May 2022 has accompanied the Section 4.55(2) application and provided the following commentary: *“that any additional traffic movements resultant to the proposed additional 8 children will be quite minor and largely imperceptible”*.

Council's Traffic Branch has reviewed the proposal and concurs with the conclusions of the applicant's traffic consultant. It is considered that the proposed increase in child numbers would not substantially contribute to traffic along Stuart Avenue.

2.8.2 Waste Management

The proposed development would generate a demand for 2x 660L garbage bins and 3x 240L recycling bins, serviced weekly.

The approved development includes the provision of a bin storage area to the north-western corner of the car park. The bin carting route comprises the use of either the 5% gradient driveway or the 10% gradient pedestrian pathway to deliver the bins to the street frontage prior to collection. Council's waste management assessment has determined that the approved arrangement is satisfactory for the proposed increase in child numbers and raises no concerns to the proposal.

The proposal complies with the waste management requirements of Part 1C.2.3 of the HDCP and is considered acceptable in this regard.

2.8.3 Noise and Vibration

The HDCP requires that childcare centres be accompanied by an acoustic report that demonstrates the development is sited and designed to minimise the effect of noise and vibration on surrounding sensitive land uses. The S4.55(2) application has been supported by an Acoustic Report prepared by Acouras Consultancy dated 1 June 2022 and is to be read in conjunction with the approved Acoustic Report prepared by Day Design Pty Ltd (Revision C), dated 27 July 2020.

Council engaged an external acoustic consultant to undertake a peer review of the submitted Acoustic Report prepared by Acouras Consultancy dated 1 June 2022. The external acoustic consultant has supported the proposal, subject to minor amendments including:

- Amendments to the Plan of Management (PoM) to ensure that the additional children can be accommodated without increasing the number of children in the outdoor play areas and / or limiting the number of hours that the outdoor play areas operate to utilise the higher background +10dB noise limit; and
- Additional clarification on the methodology utilised with regard to sound power levels used in the assessment by Acouras Consultancy.

In response to the findings of the external peer review, the applicant provided an amended Acoustic Report dated 10 October 2022 and an amended Plan of Management prepared by Urbanesque Planning. Clarification has been provided in the amended Acoustic Report indicating that the assumed sound power level from children activity have been extrapolated for each play area or activity room based on the logarithmic increase on the average sound power level. The Acoustic Report concludes that subject to the implementation of the PoM enforcing the number of children outside for each of the proposed scenarios, overall, there would be no change (or a decrease) in the predicted children activity noise compared to the approved noise levels.

The amended PoM indicates that the additional children can be accommodated without increasing the number of children in the outdoor play area at any one time. Accordingly, the proposed noise levels would remain unchanged when compared to the approved noise levels of the centre.

Council's Environmental Protection Team have reviewed the proposal as amended and raise no concerns on noise and vibration grounds.

The proposal meets the objectives of the CCPG and the HDCP and is considered acceptable, subject to conditions.

2.8.4 Privacy

To ensure that privacy is maintained to the adjacent properties, conditions were imposed on the original consent requiring that a 1.5m high privacy screen be erected along the southern, northern and rear elevations of the upper floor balcony and the installation of translucent film to the windows along the side elevations, with the exception of the highlight windows.

The proposal would maintain the privacy afforded to adjoining properties consistent with the approved development. It is noted that the external side access stairs to the southern elevation of the centre have been deleted from the building design and results in reduced overlooking to the adjoining properties to the south in this regard.

The proposal complies with the privacy requirements of Part 7.1.6 of the HDCP and is considered acceptable.

2.8.5 Floor Area & Number of Children

The HDCP provides that the maximum floor area of a childcare centre should be 430m², and the maximum number of children should be 40 children. The Section 4.55(2) application seeks to increase the capacity of the centre from 40 to 48 children and increase the floor area from 411m² to 438m², which does not comply with the HDCP requirements.

Section 3.23 under Chapter 3 of the Transport and Infrastructure SEPP requires Council to consider the relevant provisions of the CCPG. The CCPG takes precedence over the HDCP with the exception of building height, side and rear setbacks and car parking rates. Accordingly, the HDCP does not apply with regard to number of children and floor area. It is noted that the CCPG does not provide limitations on floor area or number of children. Notwithstanding, Section 3.25 of the Transport and Infrastructure SEPP prescribes a maximum FSR on the site of 0.5:1 for childcare centres. The proposed development has an FSR of 0.27:1 and complies with Section 3.25 of the SEPP.

Notwithstanding, it is noted that the proposed additional 27m² of floor area would be located within the approved subfloor void space at the lower ground floor level and would not contribute to bulk and scale.

The implications of the additional child numbers on noise generation has been discussed under Section 2.8.3 of this report.

2.9 Section 7.12 Contributions Plans

Hornsby Shire Council Section 7.12 Contributions Plan 2019-2029 applies to the development as the estimated costs of works is greater than \$100,000. The original consent included a condition of requiring the payment of a contribution in accordance with the Plan.

3. ENVIRONMENTAL IMPACTS

Section 4.15(1)(b) of the Act requires Council to consider *“the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality”*.

3.1 Natural Environment

3.1.1 Stormwater Management

The approved development included the installation of an on-site detention system with all stormwater from the development drained to an approved drainage easement over the adjacent property to the rear at No. 18A Campbell Avenue Normanhurst. Council's stormwater assessment raised no concerns with the proposed method of stormwater disposal, subject to conditions including a deferred commencement condition indicating that the consent does not operate until the proposed easement to drain water over Lot B DP 379644 (No. 18A Campbell Avenue Normanhurst) is registered with the NSW Land Registry Services (NSW LRS).

The deferred commencement condition was satisfied on 9 November 2021 and accordingly the consent is operative.

The proposal seeks to maintain the approved stormwater management design and configuration and no concerns are raised by Council in this respect.

3.2 Social Impacts

The proposed proposal would make a positive social contribution to the local community by providing services for the needs of local residents. This is consistent with the State Government's 'A Metropolis of Three Cities' which identifies the need to provide an additional 85,000 child care places by 2036.

3.3 Economic Impacts

The proposal would have a minor positive impact on the local economy by generating an increase in employment opportunities.

4. SITE SUITABILITY

Section 4.15(1)(c) of the Act requires Council to consider *"the suitability of the site for the development"*.

The site is capable of accommodating the proposed development.

The approved application appropriately demonstrated that the centre addressed the site constraints relating to land gradient, pedestrian safety, site contamination and vehicular traffic. It is considered that the subject Section 4.55(2) application has demonstrated that the proposed increase in child numbers would be suitable for the capacity of the site on acoustic, privacy, car parking and traffic grounds. The visual bulk and scale of the proposed development is unchanged and is consistent with the capability of the site.



5. PUBLIC PARTICIPATION

Section 4.15(1)(d) of the Act requires Council to consider *"any submissions made in accordance with this Act"*.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 21 June 2022 and 12 July 2022 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 6 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.

**NOTIFICATION PLAN**

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED		PROPERTY SUBJECT OF DEVELOPMENT	
4 SUBMISSIONS RECEIVED OUT OF MAP RANGE				

Six submissions objected to the development, generally on the grounds that the development would result in:

- The additional bulk and scale is undesirable to adjoining properties.
- The number of children proposed for the childcare centre exceeds the requirements of the HDCP.
- There are already a number of childcare centres in the vicinity.
- There are errors in the submitted Plan of Management.
- Childcare centre developments should be located away from service stations for safety reasons.
- The existing traffic conditions adjacent to the site are not suitable for a child care centre, summarised as follows:
 - The development would pose a detrimental impact to vehicle and pedestrian safety along Stuart Avenue.

- The street is narrow, and motorists often navigate onto the other side of the road during peak hours due to the banked-up cars at the traffic lights and vehicles parked adjacent to the kerb.
- The site is located at a bend in the road and there is poor vehicle visibility and lines of sight.
- There is constant traffic and queuing of cars during at the traffic lights at the intersection of Pennant Hills Road with Stuart Avenue.
- Bus stops servicing local schools are sited directly across the site and Stuart Avenue is subject to frequent bus services.
- The driveway servicing the townhouse development across the street at No. 4 Stuart Avenue is directly opposite the proposed vehicular access of the proposed development, resulting in substantial traffic through this section of Stuart Avenue.
- A significant number of bins are positioned adjacent to the street prior to garbage collection for the adjoining townhouse development. Due to the large number of bins, the waste truck is required to double park for a number of minutes, creating an obstacle for vehicles and posing an impact to the safety of children.
- Motorists utilise the service station as a 'rat run' to avoid the traffic lights at Pennant Hills Road.
- The BP Service Station is located approximately 20m upslope of the site which generates traffic.
- The Queen of Peace Catholic Church holds frequent services, including funeral services with vehicle convoys during peaks hours.
- On-Street Parking is limited along Stuart Avenue.
- The proposal would result in unacceptable noise impacts to the adjacent property at No. 11A Stuart Avenue and other adjoining properties.
- Additional noise and congestion would occur during construction of the development.
- There is insufficient on-site parking, resulting in an overflow of parking onto the street. In addition, staff cars would be 'parked in' by visitor car parking spaces.

The merits of the matters raised in community submissions have been addressed in the body of the report with the exception of the following:

5.1.1 Concerns with the Approved Development

Numerous submissions have been received raising concerns with the approved development including traffic, safety, proximity of other childcare centres, noise during construction and insufficient car parking.

In addressing the submissions, it is noted that Council has addressed these concerns in the original assessment report considered by the Local Planning Panel in determining the approved development. The proposed development would have negligible impacts upon the original considerations of the approved development as discussed in the body of this report.

5.2 Public Agencies

The development application was not referred to any Public Agencies for comment.

6. THE PUBLIC INTEREST

Section 4.15(1)(e) of the Act requires Council to consider “*the public interest*”.

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

The application is considered to have satisfactorily addressed Council’s and relevant agencies’ criteria and would provide a development outcome that, on balance, would result in a positive impact for the community. Accordingly, it is considered that the approval of the proposed development would be in the public interest.

CONCLUSION

The application proposes modifications to the approved childcare centre development comprising an increase in the capacity of the childcare centre from 40 to 48 children.

The development generally meets the desired outcomes of Council’s planning controls and is satisfactory having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Council received 6 submissions during the public notification period. The matters raised have been addressed in the body of the report.

Having regard to the circumstances of the case, approval of the application is recommended.

The reasons for this decision are:

- The proposed development complies with the requirements of the relevant environmental planning instruments, the Hornsby Development Control Plan 2013 and the Child Care Planning Guideline 2017.
- The proposed development does not create unreasonable amenity impacts to adjoining development with regard to visual bulk, overshadowing, solar access, amenity, privacy, noise generation, traffic, safety and tree preservation.

Note: At the time of the completion of this planning report, no persons have made a Political Donations Disclosure Statement pursuant to Section 10.4 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is Thomas Dales.

CASSANDRA WILLIAMS
Major Development Manager - Development











ROD PICKLES
Manager - Development Assessments

Assessments
Planning and Compliance Division

Planning and Compliance Division

ITEM 2

Attachments:

1.   Locality Plan
2.   Approved Plans
3.   Architectural Plans
4.   Updated Plan of Management
5.   Amended Acoustic Report

File Reference: DA/893/2019/A

Document Number: D08498037

Schedule 1

Date of this modification:	26 October 2022
Details of this modification:	Increase in the capacity of the childcare centre from 40 to 48 children and alterations to the layout of the approved development
Conditions Added:	Nil
Conditions Deleted:	1
Conditions Modified:	2; 18(a)(i) and (ii); 58(b); 61

ITEM 2

CONDITIONS OF APPROVAL

1. ~~Deferred Commencement~~

- ~~a) Pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*, this consent does not operate until the proposed easement to drain water over Lot B DP 379644 (No. 18A Campbell Avenue Normanhurst) is registered with the NSW Land Registry Services (NSW LRS).~~
- ~~b) Such information must be submitted within 36 months of the date of this notice.~~
- ~~Upon Council's written satisfaction of the above information, the following conditions of development consent apply:~~

GENERAL CONDITIONS

The conditions of consent within this notice of determination have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the relevant legislation, planning instruments and Council policies affecting the land and does not disrupt the amenity of the neighbourhood or impact upon the environment.

Note: For the purpose of this consent, the term 'applicant' means any person who has the authority to act on or the benefit of the development consent.

Note: For the purpose of this consent, any reference to an Act, Regulation, Australian Standard or publication by a public authority shall be taken to mean the gazetted Act or Regulation or adopted Australian Standard or publication as in force on the date that the application for a construction certificate is made.

2. Approved Plans and Supporting Documentation

The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by Council and/or other conditions of this consent:

Approved Plans:

Plan No.	Plan Title	Drawn by	Dated	Council Reference
DA1200, Rev J	Site Plan	Gardner Wetherill	14.10.20	D08057607

Plan No.	Plan Title	Drawn by	Dated	Council Reference
		Associates		
DA1201, Rev K	Ground Level Plan	Gardner Wetherill Associates	14.10.20	D08057607
DA1202, Rev K	Lower Ground Plan	Gardner Wetherill Associates	14.10.20	D08057607
DA1500, Rev J	Elevations — Sheet 1	Gardner Wetherill Associates	14.10.20	D08057607
DA1501, Rev J	Elevations — Sheet 2	Gardner Wetherill Associates	14.10.20	D08057607
DA1600, Rev J	Sections	Gardner Wetherill Associates	14.10.20	D08057607
133.20(19)/285'A'	Landscape Plan	iScape Landscape Architecture	21.07.20	D08057607
DA1200, Rev K	Location Plan/ Site Plan/ Roof Plan	Gardner Wetherill Associates	28.4.22	
DA1201, Rev L	Ground Level Plan	Gardner Wetherill Associates	28.4.22	
DA1202, Rev L	Lower Ground 1	Gardner Wetherill Associates	28.4.22	
DA1500, Rev K	Elevations - Sheet 1	Gardner Wetherill Associates	28.4.22	
DA1501, Rev K	Elevations - Sheet 2	Gardner Wetherill Associates	28.4.22	

Supporting Documents:

Document Title	Prepared by	Dated	Council Reference
Waste Management Plan	Ross Gardner	27.07.20	D07972436
Stormwater Drainage Report (NE190258_R01)	ACOR Consultants	28.07.20	D07972434
Plan of Management	Urbanesque Planning	July 2020	D07972430
Plan of Management	Urbanesque Planning	May 2022	D08509804
Environmental Noise Assessment	Day Design Pty Ltd	27.07.20	D07972423
Detailed Site Investigation	Neo Consulting	23.10.20	D08037272
Arboricultural Impact Assessment	Temporal Tree Management	4.03.19	D07882764
Acoustic Letter	Acouras Consultancy	11.10.22	D08509800

3. Amendment of Plans

- a) To comply with Councils requirement in terms of privacy, the approved plans are to be amended as follows:
- i) A 1.5-metre-high close-form lattice/louvre/solid screen must be erected along the southern, northern and rear elevations of the upper floor balcony.

- a. The screen must have no individual openings more than 30mm wide and have a total of all openings less than 30% of the surface area of the screen.
- ii) The installation of translucent/frosted glazing to the windows along the side elevations, with the exception of the highlight windows.
- b) These amended plans must be submitted with the application for the Construction Certificate.

4. Removal of Existing Trees

This development consent permits the removal of one tree numbered '1' as identified on the approved Landscape Plan prepared by iScape dated 21 July 2020.

Note: The removal of any other trees from the site requires separate approval by Council in accordance with Part 1B.6 Tree and Vegetation Preservation of the Hornsby Development Control Plan, 2013 (HDCP).

5. Appointment of a Project Arborist

- a) A project arborist with AQF Level 5 qualifications must be appointed.
- b) Details of the appointed project arborist must be submitted to Council and the PCA for registration with the application for the construction certificate.

6. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any construction works under this consent.
- b) The Construction Certificate plans must not be inconsistent with the Development Consent plans.

7. Section 7.12 Development Contributions

- (a) In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979* and the *Hornsby Shire Council Section 7.12 Development Contributions Plan 2019-2029*, \$14,721.10 must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of \$1,472,112
- (b) The value of this contribution is current as of 2 November 2020. If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.12 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

$$\$C_{PY} = \frac{\$C_{DC} \times CPI_{PY}}{CPI_{DC}}$$

Where:

\$C_{PY} is the amount of the contribution at the date of Payment.

\$C_{PY} is the amount of the contribution at the date of Payment.

\$C_{DC} is the amount of the contribution as set out in this Development Consent.

CPI_{PY} is the latest release of the Consumer Price Index (Sydney – All Groups) at the date of Payment as published by the ABS.

CPI_{DC} is the Consumer Price Index (Sydney – All Groups) for the financial quarter at the date of this Development Consent.

(c) The monetary contributions shall be paid to Council:

- (i) Prior to the issue of the Subdivision Certificate where the development is for subdivision.
- (ii) Prior to the issue of the first Construction Certificate where the development is for building work.
- (iii) Prior to issue of the Subdivision Certificate or first Construction Certificate, whichever occurs first, where the development involves both subdivision and building work.
- (iv) Prior to the works commencing where the development does not require a Construction Certificate or Subdivision Certificate.

Note: It is the professional responsibility of the Principal Certifying Authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.

Note: The Hornsby Shire Council Section 7.12 Development Contributions Plan may be viewed at www.hornsby.nsw.gov.au or a copy may be inspected at Council's Administration Centre during normal business hours.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

8. Dilapidation Report

A 'Dilapidation Report' is to be prepared by a 'chartered structural engineer' detailing the structural condition of the adjoining properties at Nos. 7 (Lot 922 DP 597070), 7A (Lot 921 DP 597070), 11 (Lot 1 DP 596637) and 11A (Lot 1 DP 596637) Stuart Avenue before the commencement of works.

9. Fire Safety Schedule

A schedule of all proposed essential fire safety measures to be installed in the building (e.g. hydrants, hose reels, emergency warning systems etc.) shall be submitted with the Construction Certificate application.

10. Stormwater Drainage

The stormwater drainage system for the development must be designed in accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions) and the following requirements:

- a) Connected directly to Council's street drainage system in Campbell Avenue via the sites on site detention system.
- b) The stormwater drainage system shall be generally in accordance with the plans prepared by ACOR Engineering Consultants (refer to report NE 190258-R01). A Construction Certificate is to be issued by Hornsby Shire Council for all works within Campbell Avenue.
 - i) Where public assets and utilities are impacted by proposed works, the Applicant shall relocate or reconstruct the asset or utility in accordance with the relevant standard at the Applicant's cost.
- c) The proposed stormwater drainage pipeline within Campbell Avenue is to be a minimum of 375mm diameter concrete pipe and be designed to contain the 20-year *Average Recurrence Interval* storm. The pipeline is to be laid under the kerb line in Campbell Avenue and the kerb is to be replaced. The existing pavement is to be saw cut a minimum of 500mm from the lip of gutter and reconstructed.
- d) An inter-allotment stormwater drainage system to service the proposed subdivision with pits being cast in situ or pre-cast concrete pits being used.
- e) Stormwater from the roof and paved areas of the proposed child care centre to be connected to the proposed inter-allotment drainage system via the on-site detention system.

11. On Site Stormwater Detention

An on-site stormwater detention system must be designed by a chartered civil engineer, be generally in accordance with the stormwater design prepared by ACOR Engineering Consultants (refer report NE 190258-R01) and constructed in accordance with the following requirements:

- a) Have a capacity of not less than 27 cubic metres, and a maximum discharge (when full) of 33 litres per second.
- b) Have a surcharge/inspection grate located directly above the outlet.
- c) Discharge from the detention system must be controlled via 1 metre length of pipe, not less than 50 millimetres diameter or via a stainless plate with sharply drilled orifice bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.
- d) Provide for a trash screen at the control pipe.

12. Internal Driveway/Vehicular Areas

The driveway and parking areas on site must be designed, constructed and a Construction Certificate issued in accordance with *Australian Standards AS2890.1, AS2890.2, AS3727* and the following requirements:

- a) Design levels at the front boundary shall be obtained from Council if a private accredited certifier is engaged to obtain a construction certificate for these works.
- b) The driveway be a rigid pavement.
- c) Retaining walls required to support the carriageway and the compaction of all fill batters to be in accordance with the requirements of a chartered structural engineer.

- d) The provision of safety rails where there is a level difference more than 0.3 metres and a 1:4 batter cannot be achieved.

13. Footpath

A concrete footpath must be designed across the full frontage of the subject site at Stuart Avenue in accordance AUS-SPEC

Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions) and the following requirements:

- a) Pouring of the concrete footpath to the full frontage of the subject site.
- b) The land adjoining the footpath to be fully turfed.
- c) Any public utility adjustments to be carried out at the cost of the applicant and to the requirements of the relevant public authority.

14. Vehicular Crossing

A separate application under the *Local Government Act 1993* and the *Roads Act 1993* must be submitted to Council for the installation of a new vehicular crossing and the removal of the redundant crossing. The vehicular crossing must be constructed in accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions) the following requirements:

- a) Design levels at the front boundary must be obtained from Council for the design on the internal driveway.
- b) Any redundant crossings must be replaced with integral kerb and gutter.
- c) The footway area must be restored by turfing.

Note: An application for a vehicular crossing can only be made to one of Council's Authorised Vehicular Crossing Contractors. You are advised to contact Council on 02 9847 6940 to obtain a list of contractors.

15. Identification of Survey Marks

A registered surveyor must identify all survey marks in the vicinity of the proposed development. Any survey marks required to be removed or displaced as a result of the proposed development shall be undertaken by a registered surveyor in accordance with Section 24 (1) of the *Surveying and Spatial Information Act 2002* and following the Surveyor General's Directions No.11 'Preservation of Survey Infrastructure'.

16. Construction Management Plan (CMP)

To assist in the protection of the public, the environment and Council's assets, a separate Construction Management Plan must be prepared by a suitably qualified environmental consultant in consultation with a qualified traffic engineer and AQF 5 arborist, and submitted to Council's Compliance Team at:

<https://www.hornsby.nsw.gov.au/property/build/applicationforms> for review and approval.

The CMP must include the following details:

- a) A Construction Traffic Management Plan (CTMP) including the following:

- i) The order of construction works and arrangement of all construction machines and vehicles being used during all stages.
- ii) The CTMP plans shall be in accordance with all other plans submitted to Council as part of this development proposal.
- iii) A statement confirming that no building materials, work sheds, vehicles, machines or the like shall be allowed to remain in the road reserve area without the written consent of Hornsby Shire Council.
- iv) The Plan shall be in compliance with the requirements of the Roads and Maritime Services *Traffic control at work sites Manual 2018* and detail:
 - a. Public notification of proposed works.
 - b. Long term signage requirements.
 - c. Short term (during actual works) signage.
 - d. Vehicle Movement Plans, where applicable.
 - e. Traffic Management Plans.
 - f. Pedestrian and Cyclist access and safety.
- v) Traffic controls including those used during non-working hours. Pedestrian access and two-way traffic in the public road must be able to be facilitated at all times.
- vi) Details of parking arrangements for all employees and contractors, including layover areas for large trucks during all stages of works. The parking or stopping of truck and dog vehicles associated with the development will not be permitted other than on the site and the plan must demonstrate this will be achieved.
- vii) Confirmation that a street 'scrub and dry' service will be in operation during all stages of works.
- viii) Proposed truck routes to and from the site including details of the frequency of truck movements for all stages of the development.
- ix) Swept path analysis for ingress and egress of the site for all stages of works.
- x) Site plans for all stages of works including the location of site sheds, concrete pump and crane locations, unloading and loading areas, waste and storage areas, existing survey marks, vehicle entry, surrounding pedestrian footpaths and hoarding (fencing) locations.
- xi) The total quantity and size of trucks for all importation and exportation of fill on site throughout all stages of works, and a breakdown of total quantities of trucks for each stage of works.
- xii) The number of weeks trucks will be accessing and leaving the site with excavated or imported fill material.
- xiii) The maximum number of trucks travelling to and from the site on any given day for each stage of works.

- xiv) The maximum number of truck movements on any given day during peak commuting periods for all stages of works.
 - xv) The source site location of any proposed fill to be imported to the site, for all stages of works.
 - xvi) The Plan must state that the applicant and all employees of contractors on the site must obey any direction or notice from the Prescribed Certifying Authority or Hornsby Shire Council in order to ensure the above.
 - xvii) If there is a requirement to obtain a Work Zone, Out of Hours permit, partial Road Closure or Crane Permit, the Plan must detail these requirements and include a statement that an application to Hornsby Shire Council will be made to obtain such a permit.
- b) A Construction Waste Management Plan detailing the following:
- i) Details of the importation or excavation of soil and fill, the classification of the fill, disposal methods and authorised disposal depots that will be used for the fill.
 - ii) Asbestos management requirement and procedures for removal and disposal from the site in accordance with AS 2601-2001 Demolition of Structures, and the Protection of the Environment Operations (Waste) Regulation 2005.
 - iii) General construction waste details including construction waste skip bin locations and litter management for workers.
- d) A Tree Protection Plan (TPP) prepared by an AQF 5 Arborist in accordance with any approved Arboricultural Impact Assessment and tree location plans, detailing the following:
- i) A site plan showing tree protection zones (TPZ) and structural root zones (SRZ) of trees to be retained and specific details of tree protection measures inclusive of distances (in metres) measured from tree trunks.
 - ii) Construction methodology to avoid damage to trees proposed to be retained during construction works.
 - iii) Specifications on tree protection materials used and methods within the TPZ or SRZ.
 - iv) Location of dedicated material storage space on site outside of TPZ's and SRZ's for retained trees.
- e) A Construction Noise and Vibration Management Plan (CNMP) which includes:
- i) Existing noise and vibration levels within the proximity of the proposed development site.
 - ii) Details of the extent of rock breaking or rock sawing works forming part of the proposed development works.
 - iii) The maximum level of noise and vibration predicted to be emitted during each stage of construction.
 - iv) The duration of each stage of works where the maximum level of noise and vibration are predicted to be emitted for.

- v) Details of mitigation measures, inclusive of respite periods, that will meet acoustic standards and guidelines at each stage of works.
- vi) Details of a complaints handling process for the surrounding neighbourhood for each stage of works.
- f) A Pedestrian Access Management Plan (PAMP) which includes:
 - i) Details of how pedestrian movements will be altered and managed during construction works, particularly during any partial or total closure of footpaths.
- g) Identification of approved sediment and erosion control measures.
- h) A Hazardous Materials Survey of the site is to be submitted for review. The Survey must be prepared by a suitably qualified environmental consultant in accordance with the *Work Health and Safety Act 2011* and associated Regulations, including laboratory analysis for asbestos and lead on the site and within the soil.
- i) The CMP must detail the contact information for developers, builder, private certifier and any emergency details during and outside work hours.

17. Mechanical Equipment

A mechanical plant noise assessment for all proposed mechanical equipment and site-specific equipment must be undertaken by a suitably qualified Acoustic Consultant and a report certifying that the operation of all proposed equipment will not exceed 46dB(A) at any boundary upon installation must be submitted to the PCA.

18. Acoustic Treatment and Certification

- a) Acoustic fencing must be installed in accordance with the approved architectural plans prepared by Gardner Wetherill Associates, dated ~~15 October 2020~~ 28 April 2022 and recommendations within Parts 5.4 and 7 of the Acoustic Impact Assessment prepared by Day Designs, dated 27 July 2020 and the following requirements:
 - i) The barrier walls shown on the approved architectural plans prepared by Gardner Wetherill Associates, dated ~~15 October 2020~~ 28 April 2022 are to be constructed of either 3 rails 'solid lapped and capped' timber, 10mm thick solid polycarbonate, 6.38mm thick laminate glass or masonry. The construction must be free of visible air gaps (including at the bottom) to provide an impervious sound barrier.
 - ii) The 2.2m high barrier walls, shown on the approved architectural plans prepared by Gardner Wetherill Associates, dated ~~15 October 2020~~ 28 April 2022 are to be of solid construction in accordance with i) above for 1.8m in height and the top 400mm of the barrier is to be clear polycarbonate to facilitate sunlight access to the adjoining properties.
- b) Acoustic treatment must be installed for the proposed development in accordance with the recommendations contained within the Acoustic Impact Assessment prepared by Day Design, dated 27 July 2020 and the following requirements:

- i) Windows are to be inoperable to the internal play area (play area 3-5) along the lower ground floor, northern, southern and eastern elevation to control noise emissions from the centre to nearby sensitive receivers.
- ii) Sound absorptive insulation is to be fixed directly below the lower ground balcony soffit and consist of 100mm thick polyester insulation (density 3.2kg/m³) with a ceiling consisting of a perforated material (mini orb) or perforated fibre cement sheeting with a minimum open area 20%.

19. Building Code of Australia

All approved building work must be carried out in accordance with the relevant requirements of the Building Code of Australia.

20. Sydney Water – Approval

This application must be submitted to *Sydney Water* for approval to determine whether the development would affect any *Sydney Water* infrastructure, and whether further requirements are to be met.

Note: Building plan approvals can be obtained online via Sydney Water Tap inTM through www.sydneywater.com.au under the Building and Development tab.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

21. Local Traffic Committee Consultation

Prior to the commencement of any works, the applicant must consult with the Local Traffic Committee with respect to the requirements of condition Nos. 32 and 54 and obtain any relevant approvals.

22. Erection of Construction Sign

- a) A sign must be erected in a prominent position on any site on which any approved work is being carried out:
 - i) Showing the name, address and telephone number of the principal certifying authority for the work.
 - ii) Showing the name of the principal contractor (if any) for any demolition or building work and a telephone number on which that person may be contacted outside working hours.
 - iii) Stating that unauthorised entry to the work site is prohibited.
- b) The sign is to be maintained while the approved work is being carried out and must be removed when the work has been completed.

23. Protection of Adjoining Areas

A temporary hoarding, fence or awning must be erected between the work site and adjoining lands before the works begin and must be kept in place until after the completion of the works if the works:

- a) Could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic.
- b) Could cause damage to adjoining lands by falling objects.

- c) Involve the enclosure of a public place or part of a public place.
- d) Have been identified as requiring a temporary hoarding, fence or awning within the Council approved Construction Management Plan (CMP).

Note: Notwithstanding the above, Council's separate written approval is required prior to the erection of any structure or other obstruction on public land.

24. Toilet Facilities

- a) To provide a safe and hygienic workplace, toilet facilities must be available or be installed at the works site before works begin and must be maintained until the works are completed at a ratio of one toilet for every 20 persons employed at the site.
- b) Each toilet must:
 - i) Be a standard flushing toilet connected to a public sewer.
 - ii) Be a temporary chemical closet approved under the *Local Government Act 1993*.
 - iii) Have an on-site effluent disposal system approved under the *Local Government Act 1993*.

25. Erosion and Sediment Control

To protect the water quality of the downstream environment, erosion and sediment control measures must be provided and maintained throughout the construction period in accordance with the manual '*Soils and Construction 2004 (Bluebook)*', the approved plans, Council specifications and to the satisfaction of the principal certifying authority. The erosion and sediment control devices must remain in place until the site has been stabilised and revegetated.

Note: On the spot penalties may be issued for any non-compliance with this requirement without any further notification or warning.

26. Installation of Tree Protection Measures

- a) Trees to be retained must have tree protection measures for the trunk installed by the project arborist as follows:
 - i) For the duration of demolition works, in accordance with the Tree Protection Plan for prepared by Australis Tree Management dated 4 March 2019.
 - ii) For the duration of construction works, in accordance with Tree Protection Plan prepared by Australis Tree Management dated 4 March 2019.
- b) The circumference of the trunk(s) must be wrapped in hessian material to provide cushioning for the installation of timber planks.
- c) Timber planks (50 x100mm) must be spaced at 100mm intervals and must be attached using adjustable ratchet straps.

REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION

27. Maintaining the Health of Trees Approved for Retention

The appointed project arborist must monitor and record any and all necessary actions required to maintain tree health and condition for trees to be retained on the subject site and adjacent sites.

28. Approved Works Within Tree Protection Zone

Where tree root pruning is required for the installation of the proposed development, the pruning must be overseen by the AQF 5 project arborist and must be undertaken as follows:

- a) Using sharp secateurs, pruners, handsaws or chainsaws with the final cut being clean.
- b) The maximum diameter of roots permitted to be cut is 50mm.

29. Compliance with CMP

The approved Construction Management Plan (CMP) must be complied with for the duration of works, unless otherwise approved by Council.

30. Unexpected Finds

Should the presence of asbestos or soil contamination, not recognised during the application process be identified during any stage of works, the applicant must immediately notify the PCA and Council.

31. Local Traffic Committee – Works Zone

All construction vehicles associated with the proposed development are to be contained on site or in a Local Traffic Committee (LTC) approved “Works Zone”, and the following requirements:

- a) The site supervisor to be advised that the Works Zone will be deemed to be in effect, and fees will apply, between the dates nominated by the supervisor, or when parking spaces are managed for the sole use of construction vehicles associated with the site.
- b) The Works Zone signs shall be in effect only apply for the times approved by Council, and the time is to be noted on the sign. E.g., ‘Works Zone Mon – Sat 7am – 5pm’.
- c) The applicant is required to supply a sign posting installation plan for referral to the Local Traffic Committee, noting on it the duration of the Works Zone.
- d) The Works Zone is only to be used for the loading and unloading of vehicles. Parking of workers’ vehicles, or storage of materials, is not permitted.

32. Construction Work Hours

All works on site, including demolition and earth works, must only occur between 7am and 5pm Monday to Saturday.

No work is to be undertaken on Sundays or public holidays.

33. Demolition

To protect the surrounding environment, all demolition work must be carried out in accordance with *Australian Standard AS2601-2001 – The Demolition of Structures* and the following requirements:

- a) Demolition material must be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan.
- b) Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by *SafeWork NSW* in accordance with the *Work Health and Safety Regulation 2017* and be appropriately transported and disposed of in accordance with the *Protection of the Environment Operations (Waste) Regulation 2014*.
- c) On construction sites where any building contains asbestos material, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' and measuring not less than 400mm x 300mm must be displayed in a prominent position visible from the street.

34. Environmental Management

To prevent sediment run-off, excessive dust, noise or odour emanating from the site during the construction, the site must be managed in accordance with the publication '*Managing Urban Stormwater – Landcom (March 2004)*' and the *Protection of the Environment Operations Act 1997*.

35. Council Property

To ensure that the public reserve is kept in a clean, tidy and safe condition during construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath.

36. Disturbance of Existing Site

During construction works, the existing ground levels of open space areas and natural landscape features, including natural rock-outcrops, vegetation, soil and watercourses must not be altered unless otherwise nominated on the approved plans.

37. Landfill not Permitted

The importation of fill material associated with earthworks, or structural or engineering works, is not permitted as part of this consent.

38. Excavated Material

All excavated material removed from the site must be classified by a suitably qualified environmental consultant in accordance with the NSW Environment Protection Authority's *Waste Classification Guidelines* and *Protection of the Environment Operations (Waste) Regulation 2014* prior to disposal to a licensed waste management facility. Tipping dockets for the total volume of excavated material that are received from the licensed waste management facility must be provided to the principal certifying authority prior to the issue of an Occupation Certificate.

39. Survey Report

A report(s) must be prepared by a registered surveyor and submitted to the principal certifying authority:

- a) Prior to the pouring of concrete at each level of the building certifying that:

- i) The building, retaining walls and the like have been correctly positioned on the site.
- ii) The finished floor level(s) are in accordance with the approved plans.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

40. Asbestos Clearance Certificate

Should any asbestos be encountered during demolition or construction works, an independent licensed asbestos assessor is required to undertake a clearance inspection and provide a clearance certificate, certifying the asbestos has been removed and the site is now suitable for use. The certificate is to be provided to the certifier prior to the issue of an Occupation Certificate.

41. External Lighting

- a) To protect the amenity of adjacent premises, all external lighting must be designed and installed in accordance with *Australian Standard AS 4282 Control of the Obtrusive Effects of Outdoor Lighting*.
- b) Certification of compliance with this Standard must be obtained from a suitably qualified person and submitted to the PCA with the application for the Occupation Certificate.

42. Replacement Tree Requirements

- a) The trees approved for removal under this consent must be offset through replacement planting of a minimum of 9 trees on-site, including 2 *Water Gum* trees within the front setback.
- b) The site is to be landscaped in accordance with the approved Landscape Plan prepared by iScape Landscape Architecture dated 21 July 2020.
- c) All replacement plantings must be trees indigenous to Hornsby Shire, as identified at: <http://www.hornsby.nsw.gov.au/environment/flora-and-fauna/tree-management/indigenous-trees>
- d) The location and size of the 9 replacement trees are to be as follows:
 - i) All replacement trees must be located in the front setback and planted 4 metres or greater from the foundation walls of the approved centre.
 - ii) The pot size of the replacement trees must be a minimum 45 litres.
 - iii) All replacement trees must be a minimum of 3 metres in height at planting.
 - iv) Planting methods must meet professional (best practice) industry standards.

43. Final Tree Certification

The AQF 5 Project arborist must submit to the Principal Certifying Authority a certificate that includes the following:

- a) All tree protection requirements complied with the as approved tree protection plan for the duration of demolition and/or construction works.

- b) All completed works relating to tree protection and maintenance have been carried out in compliance with the conditions of consent and approved plans.
- c) Dates, times and reasons for all site attendance.
- d) All works undertaken to maintain the health of retained trees.
- e) Details of tree protection zone maintenance for the duration of works.

Note: Copies of monitoring documentation may be requested throughout DA process.

44. Creation of Easements

The following easements are to be created on the title of the property in accordance with the *Conveyancing Act 1919*:

- a) The creation of an appropriate *"Positive Covenant"* and *"Restriction as to User"* over the constructed on-site detention/retention systems and outlet works, within the lots in favour of Council in accordance with Council's prescribed wording. The position of the on-site detention system is to be clearly indicated on the title.
- b) To register the OSD easement, the restriction on the use of land *"works-as-executed"* details of the on-site-detention system must be submitted verifying that the required storage and discharge rates have been constructed in accordance with the design requirements. The details must show the invert levels of the on-site system together with pipe sizes and grades. Any variations to the approved plans must be shown in red on the *"works-as-executed"* plan and supported by calculations.

Note: Council must be nominated as the authority to release, vary or modify any easement, restriction or covenant.

45. Works as Executed Plan

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for completed road pavement, kerb & gutter, public drainage systems, driveways and on-site detention system.

46. Preservation of Survey Marks

A certificate by a Registered Surveyor must be submitted to the Principal Certifying Authority, certifying that there has been no removal, damage, destruction, displacement or defacing of the existing survey marks in the vicinity of the proposed development or otherwise the re-establishment of damaged, removed or displaced survey marks has been undertaken in accordance with the Surveyor General's Direction No.11 – 'Preservation of Survey Infrastructure'.

47. Construction of Engineering Works

All engineering works identified in this consent are to be completed and a Compliance Certificate issued prior to the release of the Occupation Certificate.

48. Kitchen Fitout

The fit out and operation of that part of the building to be used for the manufacture, preparation or storage of food for sale, must be in accordance with *Australian Standard AS4674-2004 – Design and fit out of food premises*, the *Food Act 2003*, and the *Food*

Regulation 2015 and the Food Standards Code developed by Food Standards Australia New Zealand. Food Standards 3.2.2 and 3.2.3 are mandatory for all food businesses.

Note: Walls are to be of solid construction.

49. Grease Trap & Dry Basket Arrestor

An application must be submitted to *Sydney Water* for the installation of a grease trap and dry basket arrestor (floor and sink) in accordance with the '*Guidelines for the On-Site Pre-Treatment of Trade Wastewater Discharges – Sydney Water (May 2004)*'.

50. Mechanical Ventilation

Mechanical ventilation is to be provided to the kitchen in accordance with *Australian Standard AS 1668.2-2002* in the instance that the kitchen appliance exceeds the following requirements:

- a) A total maximum electrical power input exceeding 8 kilowatts (kW).
- b) A total gas power input exceeding 29 megajoules per hour (MJ/h).
- c) The total maximum power input to more than one apparatus exceeds.
- d) 0.5kW electrical power for each 1m² of floor area of the room or enclosure.
- e) 1.8MJ gas for each 1m² of floor area of the room or enclosure.

51. Excavated Material Tipping Dockets

Tipping dockets for the total volume of excavated material that are received from the licensed waste facility must be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

52. Acoustic Certification

On completion of all works and prior to the issue of an Occupation Certificate, the certifier is to be provided with a certificate from a qualified acoustic consultant certifying that all acoustic works have been completed in accordance with the Part 5.4 and Part 7 recommendations contained within the Acoustic Impact Assessment report prepared by Day Design, dated 27 July 2020 and the conditions of this consent.

53. Car Parking

All car parking must be constructed and operated in accordance with *Australian Standard AS/NZS 2890.1:2004 – Off-street car parking* and *Australian Standard AS 2890.2:2002 – Off-street commercial vehicle facilities*, and the following requirements:

- a) All parking areas and driveways are to be sealed to an all-weather standard, line marked and signposted.
- b) All parking for people with disabilities is to comply with *AS/NZS 2890.6:2009 Off-street parking for people with disabilities*.
- c) Car parking, loading and manoeuvring areas to be used solely for nominated purposes.
- d) Vehicles awaiting loading, unloading or servicing shall be parked on site and not on adjacent or nearby public roads.

- e) All vehicular entry on to the site and egress from the site shall be made in a forward direction.
- f) Any proposed landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists travelling along the footpath.

54. Hornsby Shire Local Traffic Committee

To improve safety and sight distances along Stuart Avenue, on-street parking restrictions are to be applied subject to approval from the *Hornsby Shire Local Traffic Committee* as follows:

- a) A 6m long “Mail Zone” and 20m long “Bus Zone” is to be provided on the western side of Stuart Avenue north of the driveway to No. 2-4 Stuart Avenue.
- b) A “No Parking, 7-10am, 3-6:30pm, Mon-Fri” is to be provided along the frontage of No. 9 Stuart Avenue, 16m to the north and 6m to the south of the proposed driveway.

Note: A signage plan is to be prepared showing a 6m long “Mail Zone” and 20m long “Bus Zone” on the western side of Stuart Avenue north of the driveway to No. 2-4 Stuart Avenue for submission to the Hornsby Local Traffic Committee.

A signage plan is to be prepared showing “No Parking, 7-10am, 3-6:30pm, Mon-Fri” along the frontage of No. 9 Stuart Avenue, 16m to the north and 6m to the south of the proposed driveway for submission to the Hornsby Local Traffic Committee.

55. Damage to Council Assets

To protect public property and infrastructure, any damage caused to Council's assets as a result of the construction or demolition of the development must be rectified by the applicant in accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions). Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

56. Retaining Walls

All required retaining walls must be constructed as part of the development.

57. Waste Management Details

Prior to the commencement of any works, the on-going waste collection service must be cancelled, and the bins retrieved by the waste collection service provider.

Note: For residential properties, Council is the waste collection service provider.

OPERATIONAL CONDITIONS

58. Use of Premises

- a) The development approved under this consent shall be used for ‘child care centre’ and not for any other purpose without Council's separate written consent.
- b) The child care centre shall accommodate a maximum of 48 children.
- c) The hours of operation of the “child care centre” are restricted to those times listed below:

Monday to Friday 7 am to 6.30 pm

Saturday, Sunday & Public Holidays No work

- d) Waste collection must not occur during the following times:
 - i) During the peak hours of 7.30am to 9.30am and 2.30pm to 4.00pm.
 - ii) After 6pm Monday to Friday.
 - iii) At no time on Saturday or Sunday.

59. Fire Safety Statement - Annual

On at least one occasion in every 12-month period following the date of the first 'Fire Safety Certificate' issued for the property, the owner must provide Council with an annual 'Fire Safety Certificate' certifying each essential service installed in the building.

60. Noise

The cumulative noise generation from the use of the premises (including mechanical plant) is not to exceed background +10 dB(A) up to a total of 2 hours per day with background +5dB(A) for the remainder of the day when assessed as a Leq (15 minute) noise contribution at any point on the residential side of the common boundaries or at any point in or on the adjacent residential properties.

61. Child Care Centre Noise Management

The child care centre must be managed in accordance with the approved Plan of Management prepared by Urbanesque Planning dated ~~July 2020~~ May 2022.

62. Waste Management

The waste management on site must be in accordance with the following requirements:

- a) All commercial tenant(s) must keep written evidence on site of a valid contract with a licensed waste contractor(s) for the regular collection and disposal of the waste and recyclables that are generated on site.
- b) All commercial tenant(s) must have a sufficient number of bins to contain the volume of waste and recycling expected to be generated between collection services.
- c) All bins must be returned to the on-site bin storage area promptly after waste and recycling collection services.
- d) A Work, Health & Safety (WHS) risk assessment is to be carried out by a suitably qualified person with qualifications in Work, Health & Safety Legislation with specific regard to waste management. The recommendations of the WHS Risk Assessment are to be implemented as required.

63. Business Identification Signage

The approved business identification signage is not to be illuminated unless otherwise consented to by Council.

- END OF CONDITIONS OF CONSENT -

ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with *the Environmental Planning and Assessment Act 1979*, Environmental Planning and Assessment Regulation 2021, other relevant legislation and Council's policies and specifications. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

Environmental Planning and Assessment Act 1979 Requirements

The *Environmental Planning and Assessment Act 1979* requires:

- The issue of a construction certificate prior to the commencement of any works. Enquiries can be made to Council's Customer Services Branch on 9847 6760.
- A principal certifying authority to be nominated and Council notified of that appointment prior to the commencement of any works.
- Council to be given at least two days written notice prior to the commencement of any works.
- Mandatory inspections of nominated stages of the construction inspected.
- An occupation certificate to be issued before occupying any building or commencing the use of the land.

Long Service Levy

In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, a 'Long Service Levy' must be paid to the Long Service Payments Corporation or Hornsby Council.

Note: The rate of the Long Service Levy is 0.35% of the total cost of the work.

Note: Hornsby Council requires the payment of the Long Service Levy prior to the issue of a construction certificate.

Tree and Vegetation Preservation

A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation protected under the Hornsby Development Control Plan 2013 without the authority conferred by a development consent or a permit granted by Council.

Notes: A tree is defined as a long lived, woody perennial plant with one or relatively few main stems with the potential to grow to a height greater than three metres (3M). (HDCP 1B.6.1.c).

Tree protection measures and distances are determined using the Australian Standard AS 4970:2009, "Protection of Trees on Development Sites".

Fines may be imposed for non-compliance with the Hornsby Development Control Plan 2013.

Disability Discrimination Act

The applicant's attention is drawn to the existence of the *Disability Discrimination Act 1992*. A construction certificate is required to be obtained for the proposed building/s, which will provide consideration under the *Building Code of Australia*, however, the development may not comply with the requirements of the *Disability Discrimination Act 1992*. This is the sole responsibility of the applicant.

Covenants

The land upon which the subject building is to be constructed may be affected by restrictive covenants. Council issues this approval without enquiry as to whether any restrictive covenant affecting the land would be breached by the construction of the building, the subject of this consent. Applicants must rely on their own enquiries as to whether or not the building breaches any such covenant.

Dial Before You Dig

Prior to commencing any works, the applicant is encouraged to contact *Dial Before You Dig* on 1100 or www.dialbeforeyoudig.com.au for free information on potential underground pipes and cables within the vicinity of the development site.

Asbestos Warning

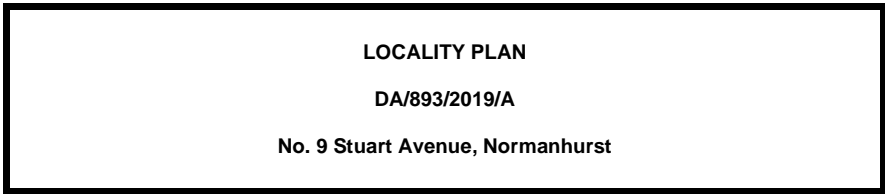
Should asbestos or asbestos products be encountered during demolition or construction works, you are advised to seek advice and information prior to disturbing this material. It is recommended that a contractor holding an asbestos-handling permit (issued by *SafeWork NSW*) be engaged to manage the proper handling of this material. Further information regarding the safe handling and removal of asbestos can be found at:

www.environment.nsw.gov.au

www.adfa.org.au

www.safework.nsw.gov.au

Alternatively, telephone the *SafeWork NSW* on 13 10 50.



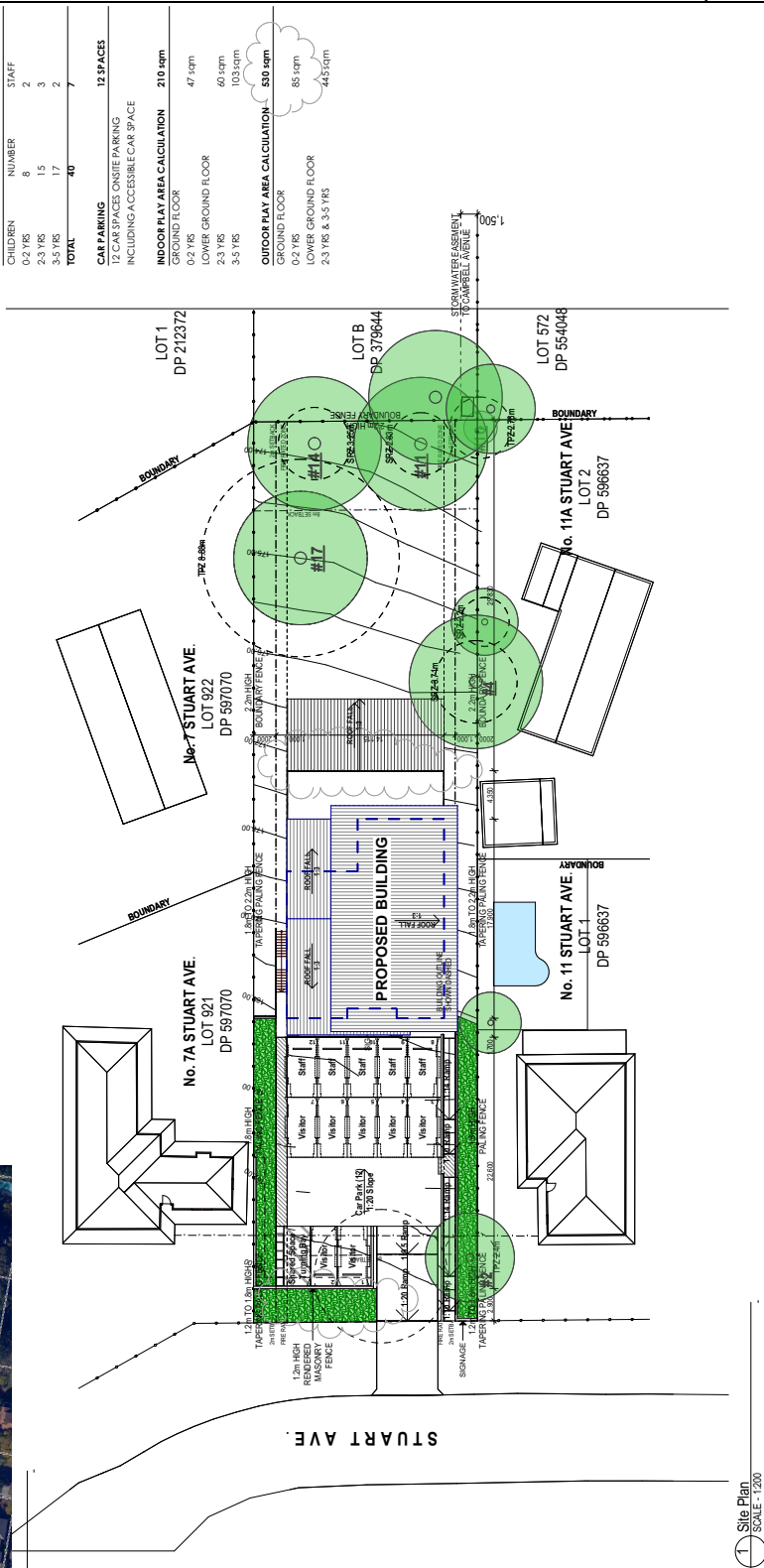


SUMMARY CALCULATION	
TOTAL SITE AREA	14,28.8 sqm
PERMITTED FLOOR SPACE RATIO	N/A
PROPOSED FLOOR SPACE RATIO	0.25 : 1.00
PROPOSED TOTAL FLOOR SPACE	411.4 sqm
BUILDING SETBACKS	
FRONT SETBACK	27.2 m
REAR SETBACK	29.8 m
SIDE SETBACK	3.0 m
BUILDING SITE COVERAGE	33.4 sqm
LOT COVERAGE PERCENTAGE	23.5%
BUILDING & CARPARK SITE COVERAGE	87.5 sqm
LOT COVERAGE PERCENTAGE	53.7%

 **HORNSBURY**
FINANCIAL

This document is approved subject to the notes,
advice and conditions listed in Development
Consent No. DA/183/2016
Dated: 25/11/2020

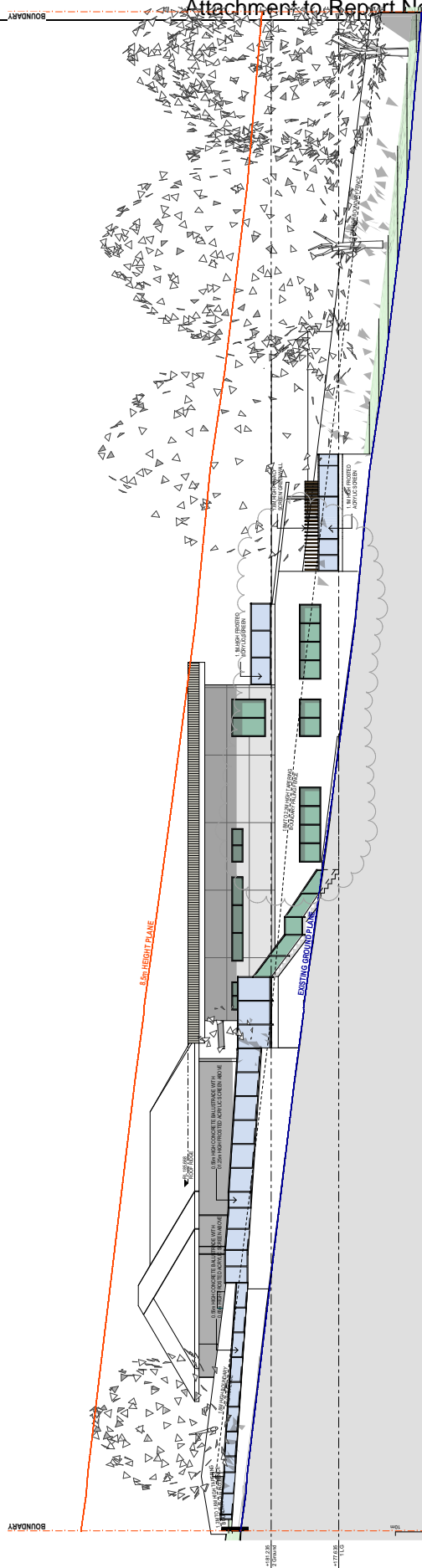
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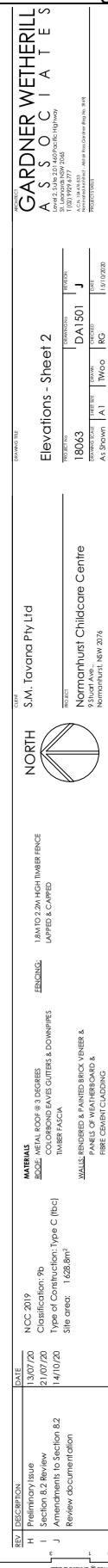
ATTACHMENT 2 - ITEM 2



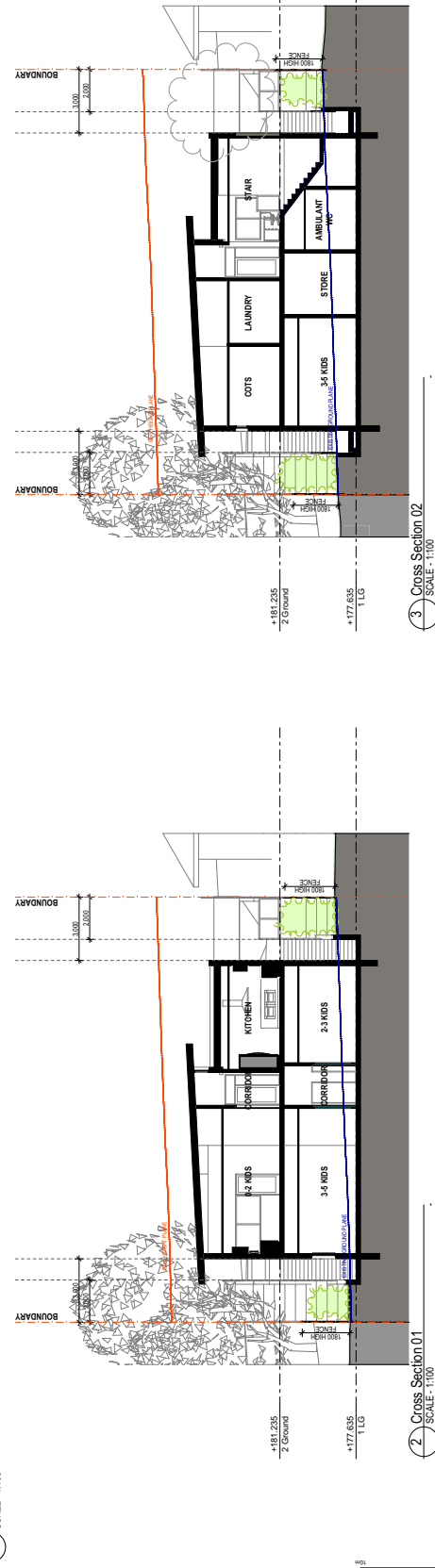
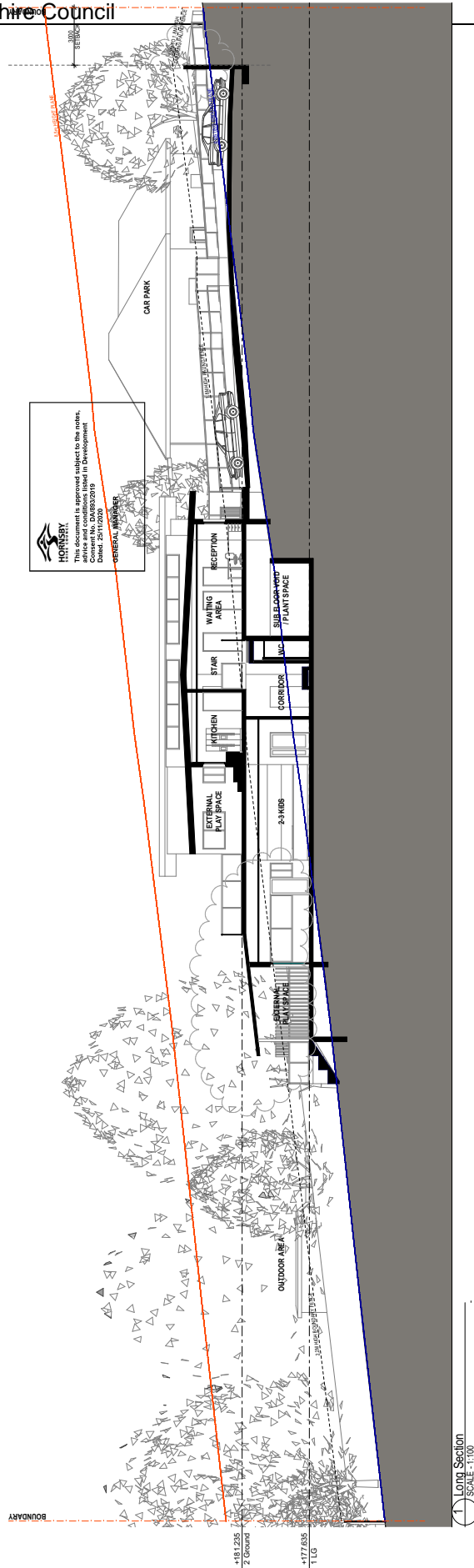


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ATTACHMENT 2 - ITEM 2



ATTACHMENT 2 - ITEM 2



REV	DESCRIPTION	DATE	NCC 2019	Classification: 7b	Type of Construction: Type C (b/c)	Site area: 1.028.817
H	Preliminary Issue	13/07/20				
I	Section 6.2 Review	21/07/20				
J	Amendments to Section 6.2	14/10/20				
	Review documentation					

GARDNER WETHERILL ASSOCIATES		Sections	
1/100 ORIGINAL SIZE		18063	
1/100 ORIGINAL SIZE		DA1600 J	
1/100 ORIGINAL SIZE		As Shown	
1/100 ORIGINAL SIZE		1/100 ORIGINAL SIZE	

S.M. Tavara Pty Ltd		Normanhurst Childcare Centre	
1/100 ORIGINAL SIZE		1/100 ORIGINAL SIZE	
1/100 ORIGINAL SIZE		1/100 ORIGINAL SIZE	
1/100 ORIGINAL SIZE		1/100 ORIGINAL SIZE	

ATTACHMENT 2 - ITEM 2

SUMMARY CALCULATION	
TOTAL SITE AREA	14,298.8 sqm
PERMITTED FLOOR SPACE RATIO	N/A
PROPOSED FLOOR SPACE RATIO	0.25 : 1.00
PROPOSED TOTAL FLOOR SPACE	411.4 sqm
BUILDING SETBACKS	
FRONT SETBACK	27.2 m
REAR SETBACK	29.8 m
SIDE SETBACK	3.0 m
BUILDING SITE COVERAGE	
BUILDING SITE COVERAGE	33.4 sqm
SITE COVERAGE PERCENTAGE	20.5%
BUILDING & CARPARK SITE COVERAGE	
BUILDING & CARPARK SITE COVERAGE	87.5 sqm
SITE COVERAGE PERCENTAGE	53.7%

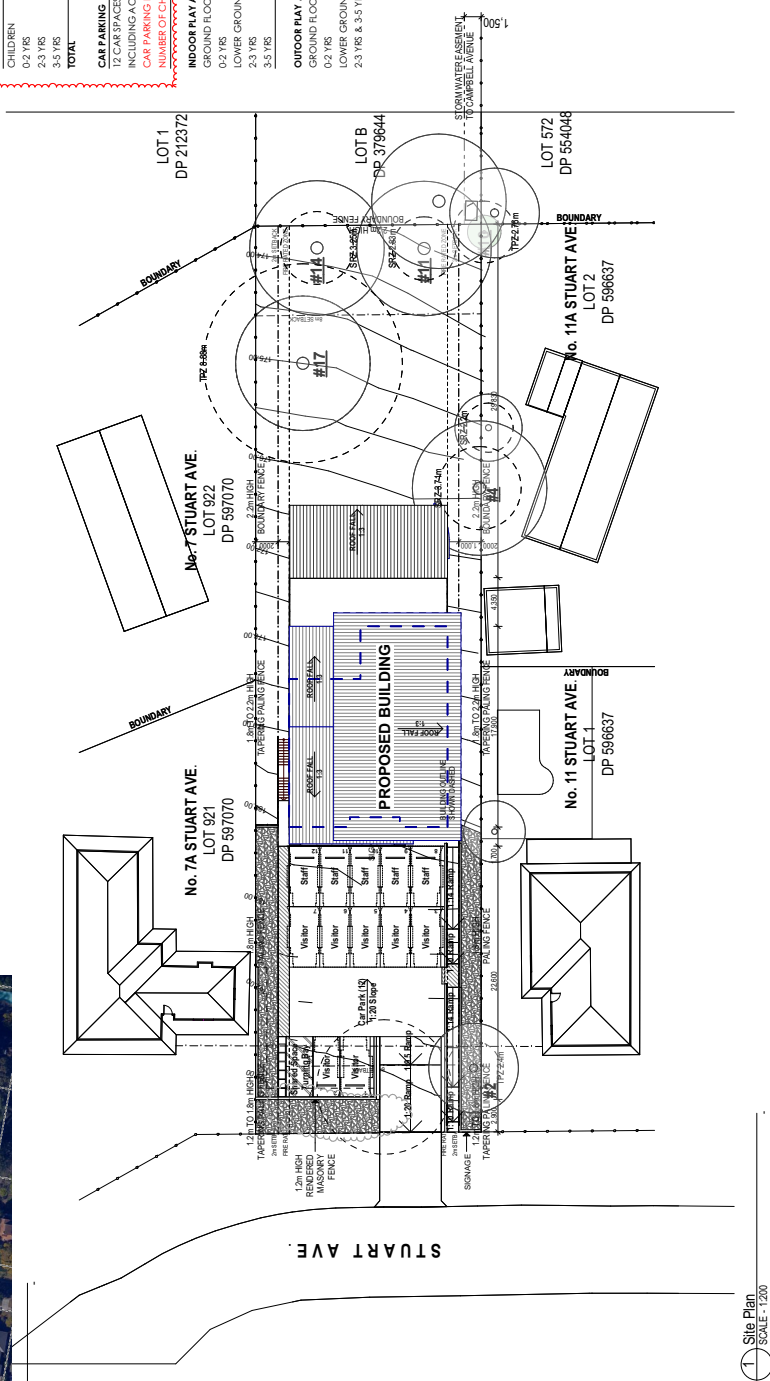
PROPOSED 21 PLACES CHILDREN'S CENTRE	
CHILDREN & STAFF NUMBERS	
CHILDREN	NUMBER
0-2 YRS	2
2-5 YRS	3
5-12 YRS	25
3-5 YRS	3
TOTAL	48
CAR PARKING	
12 CAR SPACES ON-SITE PARKING	12 SPACES
INCLUDING ACCESSIBLE CAR SPACE	
CAR PARKING REQUIREMENTS: 1 SPACE PER 4 CHILDREN	
NUMBER OF CHILDREN PERMISSIBLE: 48 CHILDREN (MAX)	

INDOOR PLAY AREA CALCULATION	
GROUND FLOOR	210 sqm
0-2 YRS	47 sqm
2-5 YRS	60 sqm
5-12 YRS	103 sqm

OUTDOOR PLAY AREA CALCULATION	
GROUND FLOOR	530 sqm
0-2 YRS	85 sqm
2-5 YRS	85 sqm
5-12 YRS	445 sqm



Location Map

1 Site Plan
SCALE: 1:200

REVISION		DATE	NCC 2019	Classification: 7b
H	Preliminary Issue	13/07/20		
I	Section 6.2 Review	21/07/20		
J	Amendments to Section 6.2	14/10/20		
K	Review documentation			
	S4.35 Application	28/04/22		
100% @ ORIGINAL SIZE				



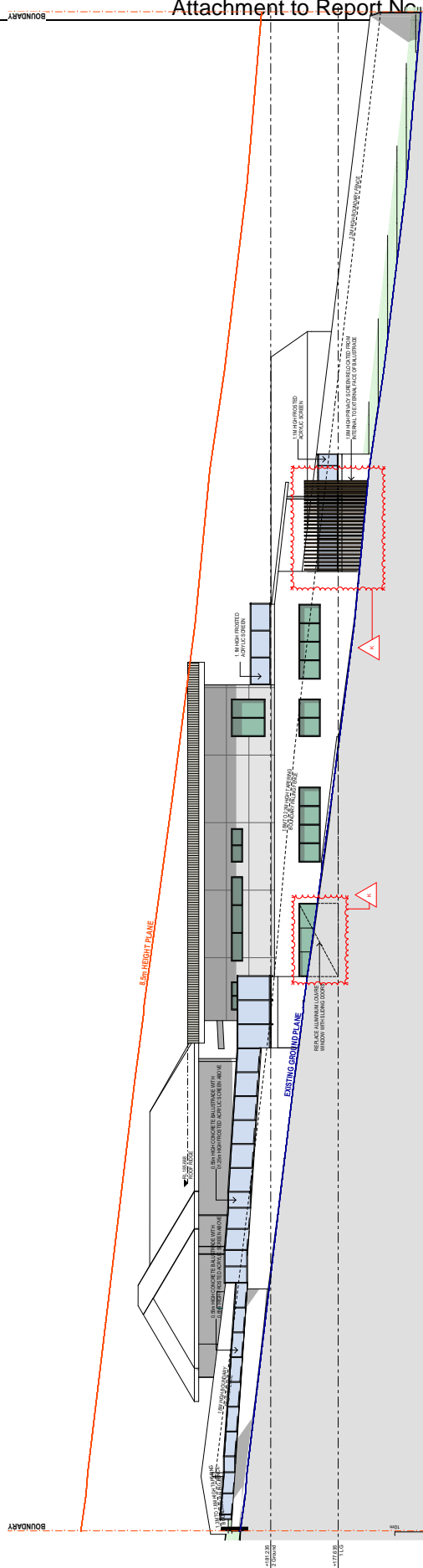
S.M. Tavara Pty Ltd

Normanhurst Childcare Centre
7 Stuart Ave
Normanhurst NSW 2076Location Plan / Site Plan / Roof Plan
Drawing No: 18063
Project No: DA1200
As Shown | A1 | Two | RG | 13/09/22Approved by: [Signature]
Approved on: 13/09/22
Approved by: [Signature]
Approved on: 13/09/22

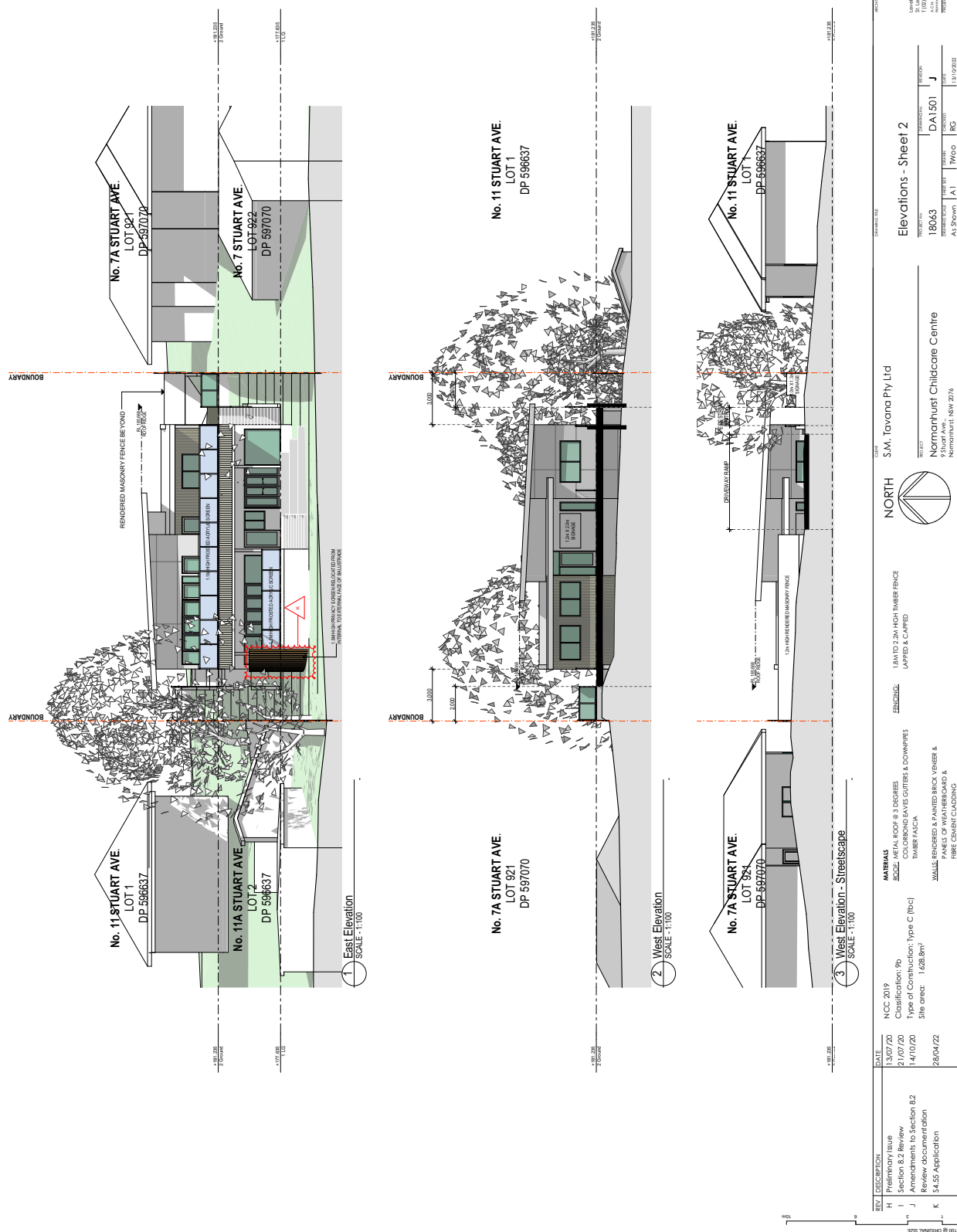
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ATTACHMENT 3 - ITEM 2



ATTACHMENT 3 - ITEM 2



Updated OPERATIONAL PLAN OF MANAGEMENT

48 Place Child Care Centre

9 Stuart Avenue Normanhurst

May 2022

ATTACHMENT 4 - ITEM 2

OPERATIONAL PLAN OF MANAGEMENT

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OPERATIONAL PLAN OF MANAGEMENT

1. Introduction

- This Operational Management Plan forms an essential part of the ongoing management requirements for the approved child care centre at 9 Stuart Avenue Normanhurst. This document is required by council to accompany DA/893/2019. Adherence to the plan of management will minimise any adverse effects upon our neighbouring properties and the wider community.

2. Executive Summary

- The proposed child care centre is designed to cater for forty-eight (48) children from birth to five (5) years of age. The building is designed for effective operational activity and the approved plans indicate ease of supervision for staffing and management. The natural play spaces and the outdoor area and the activity areas provided, reflect compliance with the National Quality Standards. The design of this child care facility is compliant with the Education and Care Services National Law and Regulations.

3. Business Name

- [To be inserted]

4. Location

- 9 Stuart Avenue Normanhurst (Lot 91 DP 8354)

5. Licensee

- [To be inserted]

6. Centre Objectives

- To provide high quality care and education for children aged 0-5 years old, serving both residents and workers in the local community.
- To provide state of the art children's service whilst maintaining a welcoming home-like atmosphere for the comfort and care of children.
- To provide a service where the protection, wellbeing, and rights of each child are paramount.
- To integrate the centre into the locality and build relationships with the local community.

7. Number of children

- The proposed centre will have a capacity of forty-eight (48) children as its daily maximum and will be providing care for children ages 0–5 years old.
- The centre will be divided into three (3) classrooms based on ages and in accordance with the child care regulations. Daily programs will be based on their needs, individual development and progress.
- Each classroom will be required to maintain staff to children ratios in accordance with childcare regulations.

OPERATIONAL PLAN OF MANAGEMENT

The following table shows a breakdown of the 48 children into age groups

AGE GROUP	STAFF TO CHILDREN RATIO	PROPOSED NO. OF CHILDREN	STAFF REQUIRED (PROVIDED)
Birth – 2 yrs	1:4	8	2 (2)
2 yrs – 3 yrs	1:5	15	3 (3)
3 yrs – 5 yrs	1:10	25	3 (3)
Total		48	8

8. Number of Staff

- The centre will be operated by eight (8) educators.
- The proposed centre will aim to operate 51 weeks of the year, closing on all Public Holidays. Hours of operation are 7.00am until 6.30pm Monday to Friday.

10. Drop off & Pick up - Staff Parking

- Peak times for arrival of families/children and staff will be between 8.00–9.00am each weekday morning, and peak times for departure of families/children will be between 3.00–4.00pm each weekday afternoon.
- Being in a suburban location it is expected that a majority of families and staff would be in the local area and will travel to and from the centre by short car journeys.

Car parking is to be provided on site (off-street) in a dedicated car park at the front of the centre for twelve (12) vehicles (including 1 accessible space).

- Car park entry is from Stuart Avenue and entry and exit is to be in a forward direction to and from Stuart Avenue.
- Staff will be directed to park in the tandem spaces.

Families will be made aware that pick-up and drop off is internal to the premises. The spaces will be time limited to ten (10) minutes during the peak periods.

11. Meals and Food

Food will be handled, prepared and cooked on the premises by certified staff (cook) in the centre's kitchen. The cook will be required to work approximately 3-4 hours per day.

12. Deliveries

Deliveries would be necessary from time to time as the child care centre will be purchasing items such as food, equipment, stationery, sanitary items and cleaning products. Delivery vehicles will use the car park on site to avoid parking on the street. Deliveries will be outside of peak times.

OPERATIONAL PLAN OF MANAGEMENT

13. Routine / Program

The indoor/outdoor program and routine is structured depending on the children needs and developmental stages. A sample daily routine is tabled below which may be varied.

7:00-8:00am	Free play
8:00-8:30	Song / story time
8:30-9:00	Free Play outside - weather permitting
9:00-9:30	Morning Tea
9:30- 10:15	Fitness / Sports / Free play – outside: weather permitting
10:15-10:30	Group Learning Time
10:30-11:30	Activities/Indoor experiences/programming
11:30-11:40	Tidy up time
11:40-12:30	Lunch
12:30-2:30	Rest time/quiet activities
2:30- 3:00	Dance/movement
3:00-3:15	Afternoon Tea
3:15-3:30	Show and tell/group singing time
3.30-4:30	Free play outside – weather permitting
4:30-5:00	Song/story time
5:00-5:15	Late snack
5:15-5:25	Tidy up time
5:25-6:30	Free play

Please note: Times may vary according to the time of year, weather, daylight savings and season. Our Programs have been designed to ensure children's 'wellbeing and belonging' are the principal factors for organizing experiences each day.

OPERATIONAL PLAN OF MANAGEMENT

14. Regulations

- The following government regulations will be complied with:

Education and Care Services National Regulation 2012	State and Federal Government
National Quality Framework	ACECQA
Ratios: 2-3yrs 1:5, 3-5yrs 1:10	Department of Education & Communities

15. Noise Management

Management and staff will take reasonable measures to ensure that any adverse impacts do not affect the surrounding neighbourhood. In particular:-

- All staff will be trained (and children educated) to ensure that people enter and leave the premises in a quiet and reasonable way.
- Staff will ensure that people respect surrounding properties and park safely and legally.

Management and staff will aim to ensure that noise levels are minimised from the child care centre into neighbouring or nearby properties, in accordance with the Noise Management Plan prepared by Day Design Pty Ltd, Ref: 6661-2.1R Rev C, dated 22 July 2020, as detailed below:-

- Ensuring all staff and parents are provided with a copy of the Centre's noise management plan and its implications for them during their time at the Centre.
- The name and contact details of the Centre's Manager should be clearly displayed at the front of the building to ensure neighbours can contact that person at any time the Centre is operating.
- Ensuring a sufficient number of educators are provided to supervise children's outside play to discourage unnecessarily loud activities.
- Facilitating children's small group play when outside, and encouraging educators to engage in children's play and facilitate friendships between children.
- Crying children should be comforted as soon as possible and moved indoors.
- Windows in the northern and southern facades should be closed during noisy activities, such as when music is being played.
- Windows in the southern and eastern façade of the lower ground level 3-5 year old indoor play areas should be closed while outdoor play is taking place.

OPERATIONAL PLAN OF MANAGEMENT

To be implemented in conjunction with recommendations in Section 7.2.

- The maximum number of children in the outdoor play area at any one time is to be as follows:-

Scenario 1:

0-2 Year olds = 8
2-3 Year olds = 15; and
3-5 Year olds = 0

Scenario 2:

0-2 Year olds = 8
2-4 Year olds = 0; and
3-5 Year olds = 8 (10 max)

Scenario 3:

0-2 Year olds = 8
2-5 Year olds = 0; and
3-5 Year olds = 8 (10 max)

Scenario 4:

0-2 Year olds = 8
2-6 Year olds = 0; and
3-5 Year olds = 9 (10 max)

A letter has been prepared by the acoustic engineer, Acouras Consultancy, dated 25 May 2022 and assesses the noise activity generated by 8 additional children as part of the proposed modification. The increase in noise generated is considered to result in a negligible change to the existing noise level.

16. Traffic Management

To address any complaints in relation to traffic and parking issues, a sign shall be placed in a conspicuous location on or near the front entry door containing the contact details of the operator including an after-hours emergency contact telephone number.

Management and staff will manage the peak dropping off and picking up periods in order to minimise traffic impacts. Such measures may include:-

- Encouraging parents to walk or ride with the children in lieu of using a car.
- Ensuring a maximum parking period of 10 minutes during the drop off and pick up period.
- Observing activity in the car park.

17. Waste Management

The centre's waste and recycling will be removed on a regular basis by the centre's

OPERATIONAL PLAN OF MANAGEMENT

private waste contractor. Bins will be stored in the dedicated bin storage area adjacent to the northern side of the car park in accordance with the approved plans.

Centre waste includes: food, sanitary items, cleaning consumables and paper/cardboard waste. Landfill, co-mingled, paper/cardboard streams are divided and collected separately – recycling.

Furthermore, the centre will educate children on environmental issues; it is a core objective to recycle waste as best as possible.

18. Centre Cleanliness and Maintenance

The centre is to be kept clean by both staff and external professional cleaners and gardeners.

The centre's manager/director will be a designated Occupational Health and Safety officer who will maintain a schedule of required maintenance which is routinely undertaken by handymen, builders and other tradesmen as required.

19. Administration

All administrative functions required to meet government regulations will be performed by the manager/director. Furthermore, the centre will be a member of several government and non-government childcare bodies such as 'Australian Childcare Alliance (ACA) NSW', which assists and advises on all aspects of childcare operations.

This ensures that centre can have access to highly skilled specialists to ensure that the centre operates at maximum professionalism and efficiency.

20. Fire Safety and Emergency

The centre will carry certified fire equipment corresponding with the Building Code of Australia, while having a designated staff member act as a 'Fire Warden' in the event of an emergency.

All fire safety equipment will be maintained as required by the Australian Standards and New South Wales law.

The centre will have an Emergency Evacuation Plan and will display an Emergency Evacuation Diagram throughout the centre.

21. Security

Security is paramount with limited access provided to all classrooms. The front entrance door will have a security keypad entry system where families access via a personalised key code or buzz-in for visitors.

Furthermore, CCTV cameras will be located throughout the centre (indoor and outdoor) for further security for the safety of children, staff and families.

Each staff member will undergo a *Working With Children Check* before employment and access to children through the NSW Government's Commission for Children and Young People.

OPERATIONAL PLAN OF MANAGEMENT

22. Insurances

In order to be a licensed childcare operator the centre will have the following insurances:-

- a. Public Liability (\$20 Million cover)
- b. Workers Compensation Insurance
- c. Childcare Insurance (covers all aspects of childcare centre operations).

23. Centre Policies and Procedures

The centre's operations will be documented in a *Policies and Procedures* document.

Further, the centre will have and distribute a *Staff Handbook and Parent Handbook*.

All staff must read the Policies and Procedures and confirm that they have done so.

The Policies and Procedures are to be discussed at staff meetings and shall be continually updated and redistributed as they are amended to retain relevance and compliance with the law.

24. Complaints Procedure.

Surrounding properties will be provided with a contact number for registering any concerns regarding the operation of the child care centre.

A complaints procedure will be developed by the operator, which will detail the procedure for the registration of complaints and how complaints will be dealt with and monitored in the future. This information will be available to Council upon request.

Endorsed by Operator/Date

Attention: Habib Hayek

Company: SM Tavana Pty Ltd

From: Fu Siong Hie

Date: 10/10/2022

Subject: Childcare Centre at 9 Stuart Ave, Normanhurst - Noise Impact Assessment

Document Reference: SYD2022-1081-R001D

Habib,

Acouras Consultancy was engaged by Gardner Wetherill Associates on behalf of SM Tavana Pty Ltd to assess noise activity from the additional eight (8) children for the Childcare Centre at 9 Stuart Ave, Normanhurst. The location of the centre and nearest receivers are shown in Figure 1.



Figure 1 – Site Location and Nearest Residents¹

¹ Figure 1 from Day Design 'Environmental Noise Assessment' (Report No: 6661-2.1 Rev C), dated 27 July 2020.

SM Tavana Pty Ltd

Childcare Centre at 9 Stuart Ave, Normanhurst - Noise Impact Assessment
SYD2022-1081-R001D

10/10/2022

The proposal seeks to increase the capacity of the childcare centre from a maximum of 40 children to 48 children as shown in Table 1 below.

Table 1—Current and Proposed Children Numbers

Children Age Group	Approved No. of Kids	Proposed No. of Kids	Increased No. of Kids
0–2 Year olds	8	8	0
2–3 Year olds	15	15	0
3–5 Year olds	17	25	8
TOTAL	40	48	8

Hornsby Shire Council requires that children activity noise associated childcare centre is to comply with the Condition of Consent No.60 and No.61.

60. Noise

The cumulative noise generation from the use of the premises (including mechanical plant) is not to exceed background +10 dB(A) up to a total of 2 hours per day with background +5dB(A) for the remainder of the day when assessed as a Leq (15 minute) noise contribution at any point on the residential side of the common boundaries or at any point in or on the adjacent residential properties.

61. Child Care Centre Noise Management

The child care centre must be managed in accordance with the approved Plan of Management prepared by Urbanesque Planning dated July 2020.

The 'Environmental Noise Assessment' (Report No: 6661-2.1 Rev C) prepared by Day Design, dated 27 July 2020, states the allowable noise limit (more than 2hrs per day) for children activity at this childcare:

'R1' to 'R6' – Based on measured noise levels in Location 'A' and Location 'B'

- (46 + 5 =) **51 dBA** $L_{Aeq, 15 \text{ minute}}$ during the day and in the evening shoulder period.

SM Tavana Pty Ltd

Childcare Centre at 9 Stuart Ave, Normanhurst - Noise Impact Assessment
SYD2022-1081-R001D

10/10/2022

The assessment of children activity noise increase in the outdoor playarea have been predicted based on the following parameters:

- The assumed sound power level from children activity is presented in Table 2 have been extrapolated for each playarea or activity room as previously outlined. We have based the logarithmic increase on the average sound power level.

Table 2—Typical Sound Power Levels from Children (Source: AAAC)

Description	Sound Power Level
10 Children aged 0-2 years	77-80
10 Children aged 2-3 years	83-87
10 Children aged 3-6 years	84-90

- According to the Day Design acoustic report, only the predicted noise at R2 exceeded the noise limits. Noise levels at R1, R3 to R6 complies with the noise limit.
- According to the Day Design acoustic report, the indoor noise level (with windows partially open) were predicted to be between 31dBA to 47dBA at the boundary.
- As part of the noise management plan that:
 - Windows on the northern and southern facades of the lower indoor play areas are to be closed during noisy activities.
 - Windows in the southern and eastern façade of the lower ground level 3-5 year old indoor play areas should be closed while outdoor play is taking place.
- For the outdoor playarea, we recommend the following maximum number children to be divided into the following groups as shown in Table 3 below. Also refer to the Operational Plan of Management prepared by Urbanesque Planning.

Table 3—Recommended Children Number

Children Age Group	Approved Plan of Management for 40 Place Child Care Centre		Proposed Noise Management Plan for 48 Place Child Care Centre			
	Scenario 1	Scenario 2	Scenario 1	Scenario 2	Scenario 3	Scenario 4
0–2 Year olds	8	8	8	8	8	8
2–3 Year olds	15	0	15	0	0	0
3–5 Year olds	0	10	0	8 (10 max)	8 (10 max)	9 (10 max)
TOTAL	23	18	23	16	16	17

3 of 4

SM Tavana Pty Ltd

Childcare Centre at 9 Stuart Ave, Normanhurst - Noise Impact Assessment
SYD2022-1081-R001D

10/10/2022

- Taking the above into consideration, the proposed overall net increase of the additional eight (8) children would theoretically result in a logarithmic increase in noise level of less than 1dB.
- The predicted overall change in noise level for each play group is presented in Table 4.

Table 4 – Predicted Noise Level at Receivers

Receiver	Predicted Noise Level, Leq15min dBA - Current Children	Predicted Change in Noise Level for Increased Children	Noise Limit Leq15min dBA
R2	Outdoor Playarea :51 Indoor Playarea: 36	Scenario 1: 0.0 Scenario 2: -0.7 Scenario 3: -0.7 Scenario 4: -0.3	51

Therefore, with the implementation to manage the number of children outside for each of the proposed scenarios, overall there would be no change (or a decrease) in the predicted children activity noise compared to the existing noise levels.

Regards,



Fu Siong Hie, B.Eng, MAAS
Principal Consultant
Email: f.hie@acouras.com.au
Mobile: 0410 520 972

3 DA/1349/2021/A - SECTION 4.55(2) MODIFICATION OF AN APPROVED SELF-STORAGE FACILITY TO INCREASE THE FLOOR SPACE RATIO - 28 SALISBURY ROAD, ASQUITH

EXECUTIVE SUMMARY

DA No: DA/1349/2021/A (Lodged on 25 August 2022)

Description: Section 4.55(2) application for internal modifications to an approved self-storage unit facility including an increase in the floor space ratio

Property: Lot 101 DP 771987, No. 28 Salisbury Road, Asquith

Applicant: Chapter & Co Pty Ltd

Owner: Salisbury Custodian (RR) Pty Ltd & Salisbury Custodian (RS) Pty Ltd

Estimated Value: \$9,339,328

Ward: B Ward

- The proposed development does not comply with the Hornsby Local Environmental Plan 2013 and the Hornsby Development Control Plan 2013.
- The proposal contravenes the floor space ratio development standard under Clause 4.4 of the Hornsby Local Environmental Plan 2013.
- No submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Local Planning Panel as the development contravenes the maximum floor space ratio (FSR) development standard under Clause 4.4 of the Hornsby Local Environmental Plan 2013 by more than 10%.
- It is recommended that the application be refused.

RECOMMENDATION

THAT pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, Development Application No. DA/1349/2021 for internal modifications to the approved self-storage unit facility at Lot 101 DP 771987, No. 28 Salisbury Road Asquith be refused for the reasons detailed in Schedule 1 of LPP Report No. LPP59/22.

BACKGROUND

On 21 December 2021, Council received Development Application No. DA/1349/2021 for the demolition of the existing buildings on the site and the construction of a four storey self-storage facility comprising 568 self-storage units. During the assessment of the application, Council raised concerns with the proponent that the proposed floor space ratio of 1.278:1 (27.8% contravention of the HLEP development standard) was excessive and considered that the Clause 4.6 written request did not adequately demonstrate that compliance with the development standard was unreasonable or unnecessary in the circumstances of the case and did not demonstrate that there were sufficient environmental planning grounds to justify contravening the development standard. In response to Council's concerns, the applicant submitted an amended proposal and Clause 4.6 which indicated a 1,204.6m² reduction in the gross floor area at Level 2 of the building and a contravention of the FSR development standard of the HLEP by 9.99% (FSR of 1.099:1).

On 28 July 2022, Council approved the four storey self-storage facility development (Development Application No. DA/1349/2021).

On 25 August 2022, the applicant lodged the subject Section 4.55(2) application seeking internal modifications to the approved self-storage unit facility.

At the time of writing, physical works relating to the approved four storey self-storage facility have not commenced.

SITE

The site is irregular in shape and has an area of 6,677.8 square metres. The site has a frontage of 87.435 metres to Salisbury Road, a northern boundary of 63.31 metres and a western boundary of 120.28 metres. The southern boundary is split into three portions with a length of 23.27 metre for the eastern end, a 48 metre central section, and a 17.5 metre western end.

Salisbury Road slopes down from north to south and the subject site is approximately level with the road level at the northern end of the site, however, gradually rises relative to the road level as the site progresses south. The site has been previously benched and has a relatively level upper platform, and the level change to the street is managed either via previously constructed retaining walls, or a natural embankment which is occupied by dense vegetation. The platform on the site rises to be approximately 6 to 7 metres above the street level.

The site is currently used as a self-storage facility as approved under DA/335/1996. The site is currently improved by a large 12 metre tall warehouse which is aligned to the eastern boundary of the site and which extends south across the majority of the site. A smaller three storey office and warehouse component is also annexed to the western side of the main warehouse. The southern end of the site is occupied by a large hardstand car parking area which is accessed via a driveway through the warehouse. There is also a small hardstand area located at the north-eastern corner of the site.

Access to the site is provided via a driveway at the northern end of the frontage of the site to Salisbury Road.

The site is burdened by a variable width right-of-way and easement for electricity purposes to the southern side of the frontage.

The site is not mapped as bushfire prone or flood prone.

Vegetation on the site is predominantly contained on the embankment on the western side, with one other tree at the northern end of the eastern boundary.

The site adjoins industrial land to the immediate west, east and south. The site is located approximately 20m to low density residential zoning to the north and 35m to the west.

APPROVED DEVELOPMENT

On 28 July 2022, Council approved a four storey self-storage facility development comprising 568 self-storage units (Development Application No. DA/1349/2021) comprising the following works:

- Level 1 (Ground Floor)
 - The ground level of the development includes a glazed administration office presenting to the site entrance. The administration component includes a reception area, office and amenities for staff.
 - Internal vehicular circulation is provided with a one-directional driveway arrangement. The site would be capable of supporting Medium Rigid Vehicle (MRV) access.
 - Vehicles enter the site from the upgraded and relocated driveway at the northern end of the street frontage, which will be wholly on the subject site, which provides access to 4 parking spaces outside the office and a circulation driveway around the outside of the building. There are 8 vehicle storage spaces at the southern end of the site. There are three loading bays within the building which are each adjacent to a lift and fire stairs and which allow customers to unload goods from vehicles in the loading dock, transfer storage items into trolleys, and access the upper three floors via the lifts.
 - The ground floor is also occupied by 112 storage units which are either accessed externally from the ring road, or internally via a corridor. Portions of the storage units include voids above to provide for elevated storage for the ground level storage units.
 - The ground floor also contains bicycle parking, garbage room, and various plant rooms.
- Levels 2 to 4
 - Levels 2 to 4 include a variety of small storage units across the floor, separated by corridors used for accessing and loading the storage units. The roof contains photovoltaic panels.
 - Level 2 comprises 62 self-storage units, while levels 3 and 4 each have 197 units.
- Façade Expression and Materials and Finishes
 - The northern portion of the building is comprised of fibre cement cladding in a panel arrangement with a glazed office element. The remainder of the building comprises a unifying skin of metal cladding which sits above a masonry base.
- Signage
 - The approved development includes two illuminated building identification signs, with one at the top northern end of the western façade, and the other at the top western end of the northern facade. The approved development includes an illuminated pylon sign adjacent to the driveway entrance.

- **Tree Removal**
 - The removal of 5 trees have been approved to facilitate the construction of the internal ring-road.
- **Hours of Operation**

The hours of operation of the premise have been approved to those times listed below:

○ Office Hours	Monday to Sunday	7am to 6pm
○ Self-Storage Unit Hours	Monday to Sunday	5am to 10pm
- A CCTV system and PIN code access (with data logging) is to be implemented throughout the building.

PROPOSED MODIFICATION

The Section 4.55(2) application seeks internal modifications to the approved self-storage facility comprising the replacement of the high bay storage units on Level 1 with regular height storage units and the provision of regular height storage units on Level 2 at the location of the previous void.

All physical works subject to the Section 4.55(2) application are located at Level 2 and are wholly internal to the approved building footprint.

The proposed modifications to the approved floor plan would result in the provision of 125 additional self-storage units at Level 2.

The modification would result in an increase in the floor space ratio (FSR) to 1.28:1 (8,539m² GFA) from the approved FSR of 1.099:1.

ASSESSMENT

The development application has been assessed having regard to the Greater Sydney Region Plan - A Metropolis of Three Cities, the North District Plan and the matters for consideration prescribed under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act). The following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Greater Sydney Region Plan - A Metropolis of Three Cities and North District Plan

The Greater Sydney Region Plan - A Metropolis of Three Cities has been prepared by the NSW State Government to guide land use planning decisions over the next 40 years to 2056. The Plan sets a strategy and actions for accommodating Sydney's future population growth and identifies dwelling targets to ensure supply meets demand. The Plan also identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

The NSW Government will use the subregional planning process to define objectives and set goals for job creation, housing supply and choice in each subregion. Hornsby Shire has been grouped with Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Ryde, Northern Beaches and Willoughby to form the North District. The Greater Sydney Commission has released the North District Plan which includes priorities and actions for Northern District over the next 20 years.

Whilst the proposed development would be consistent with the Greater Sydney Region Plan - A Metropolis of Three Cities and North District Plan, by retaining industrial land and providing additional services to support a growing population, overarching concerns are raised by Council to the proposed

contravention of the floor space ratio and the insufficient environmental planning grounds to justify contravening the development standard.

2. STATUTORY CONTROLS

Section 4.15(1)(a) requires Council to consider “any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations”.

2.1 Environmental Planning and Assessment Act 1979 - Section 4.55(2)

The proposal constitutes an amendment under Section 4.55(2). Pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, Council may consider an application to amend development consent provided that, inter alia:

- “(a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) *it has notified the application in accordance with:*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1) and (1A) do not apply to such a modification.

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*
- (4) *The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*
- (5) *(Repealed)*

With respect to (a), it is considered that the proposal as amended is not substantially the same as the development originally approved.

The proposal would result in the provision of 125 additional self-storage units at Level 2 of the approved self-storage facility, resulting in a 1,204.6m² increase in gross floor area (GFA). The subject

site directly adjoins a residential land zone and therefore the intensity of development on an industrial zoned site is an important consideration. Whilst the bulk and scale of the development would remain as approved, it is considered that the intensity of the use of the self-storage facility would be substantially increased. In general, Council anticipates that each unit would be individually tenanted, and accordingly it is anticipated that the number of vehicle and pedestrian trips, waste generation, and noise generation would be increased as a result of the proposal. As noted under Section 2.7 of this report, insufficient information has been provided within the application to accurately determine the extent of the flow-on impacts of the increase in GFA with regard to noise impacts and amenity of nearby residential receivers.

It is noted that during the assessment of the original development application, Council raised concerns with the proponent that the originally proposed floor space ratio of 1.278:1 (27.8% contravention of the HLEP development standard) was excessive, resulting in the applicant reducing the FSR to 1.099:1. The reduction in the FSR was determined to be appropriate and was a primary reason resulting in Council's eventual support of the development.

Section 4.5(2)(b) is not applicable as the development is not an integrated development or a State significant development.

In accordance with Section 4.55(2)(c) and (d), the amended application was advertised, and no submissions have been received.

Section 4.55(3) of the Act requires Council as the consent authority to "*take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified*".

With respect to an assessment of the matters referred to in Section 4.15(1) of the Act, these matters are addressed within the body of this delegated report. With respect to the reasons given by the consent authority for the grant of the consent that is sought to be modified, the reasons provided in granting consent to DA/1349/2021 are as follows:

- *The proposed development complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.*
- *The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, acoustics, parking, traffic, vegetation preservation, overshadowing, solar access, amenity or privacy.*
- *The Clause 4.6 variation seeking to contravene Clause 4.4 of the HLEP is considered well founded and is supported.*

With regard to the first two bullet points, the proposal seeks to increase the contravention of the FSR development standard. As addressed in Sections 2.2.3 and 2.7 of this report, the proposal does not comply with the FSR development standard and insufficient information has been provided to determine whether the increase in GFA and the number of units would pose acoustic impacts.

With respect to the third bullet point, a Clause 4.6 written request is not required to support the application, as discussed in Section 2.2.4.1 of this report.

Council's assessment has concluded that the modified development does not meet the desired outcomes of Council's planning controls and is unsatisfactory having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

2.2 Hornsby Local Environmental Plan 2013

The proposed development has been assessed having regard to the provisions of the Hornsby Local Environmental Plan 2013 (HLEP).

2.2.1 Zoning of Land and Permissibility

The subject land is zoned IN1 General Industrial under the HLEP. The objectives of the IN1 zone are:

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To permit other land uses that provide facilities or services to meet the day-to-day needs of workers in the area.*

The proposed development is defined as 'Self storage units'. The HLEP defines the uses as follows:

Self-storage units means premises that consist of individual enclosed compartments for storing goods or materials (other than hazardous or offensive goods or materials).

The development is permissible in the zone with Council's consent. Whilst the development is consistent with the objectives of the zone as it would allow a wide range of industrial land uses, encourage employment opportunities and maintain land for industrial uses, overarching concerns are raised to the floor space ratio (FSR) contravention with regards to minimising any adverse effect of industry on nearby residential land uses.

2.2.2 Height of Buildings

Clause 4.3 of the HLEP provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 14.5m. The subject application does not seek to alter the approved 14.5m building height and complies with this provision.

2.2.3 Floor space ratio

In accordance with Clause 4.4 of the HLEP, the maximum floor space ratio (FSR) for the site is 1:1.

The approved development (DA/1349/2021) has a gross floor area (GFA) of 7,334.4m², equating to a FSR of 1.099:1 (9.99% contravention of the FSR development standard).

The subject Section 4.55(2) modification seeks to increase the FSR to 1.28:1 (8,539m² GFA) and results in a 28% contravention to the 1:1 FSR Development standard under Clause 4.4 of the HLEP.

Section 2.2.4 of this report discusses the increased contravention of the FSR development standard.

2.2.4 Exceptions to Development Standards

2.2.4.1 Application of Clause 4.6 to Section 4.55 Modifications

A Section 4.55 modification application can be approved by a consent authority without a Clause 4.6 variation even though it would contravene a development standard. The relevant judgments (originating with *North Sydney Council v Michael Standley & Associates Pty Ltd [1998] NSWSC 163*) say that section 96 (now S4.55) is a 'free-standing provision', meaning that "a modification application

may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application". What this means is that it is Section 4.55 itself which authorises the development to be approved notwithstanding any contravention of a development standard. Section 4.55 is a broad power to approve, subject to its own stand-alone tests (such as the "substantially the same" test, and a requirement to consider all relevant S4.15 matters). Section 4.55 does not rely upon having any Clause 4.6 contravention to enliven that power to approve.

In *Gann v Sutherland Shire Council* (2008), Council argued that it would be illogical if a developer could obtain a development consent for a compliant development, and then avoid the need for any a Clause 4.6 contravention by lodging a S4.55 modification to increase the building's bulk to breach the applicable development standard. The Court however cautioned that:

"This does not mean that development standards count for nothing. Section 96(3) still requires the consent authority to take into consideration the matters referred to in s79C [now s4.15], which in turn include the provision of any environmental planning instrument. That is, any development standard in an environmental planning instrument must be taken into consideration by the consent authority, but the absolute prohibition against the carrying out of development otherwise than in accordance with the instrument in s76A(1) does not apply."

Section 96 (now S4.55) itself has not been amended since these decisions were given. It still authorises modification-approval to be given even where there is a breach of development standards. As such, Clause 4.6 is not applicable to a Section 4.55 modification - they only arise at DA stage. Indeed, the Courts have stated that Clause 4.6 cannot ever be used at section S4.55 stage as it only applies 'where a development application is made', not when a modification application is made.

Whilst a formal Clause 4.6 written request is not required for the subject Section 4.55 application, the consent authority is still required to assess the merit of any proposed contravention of a development standard, namely:

- Whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- Whether there are sufficient environmental planning grounds to justify contravening the development standard.
- Whether the proposed development will be in the public interest.

The approved development (DA/1349/2021) has a gross floor area (GFA) of 7,334.4m², equating to a floor space ratio (FSR) of 1.099:1 (9.99% contravention of the FSR development standard). The application seeks to increase the FSR to 1.28:1 (8,539m² GFA) and results in a 28% contravention to the 1:1 FSR development standard under Clause 4.4 of the HLEP.

The objective of Clause 4.4 Floor space ratio of the HLEP is as follows:

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

The applicant has submitted written justification prepared by Sutherland & Associates Planning in support of the contravention to the development standard as part of the Section 4.55 modification.

2.2.4.2 Unreasonable or Unnecessary

There are five common methods by which an applicant can demonstrate that compliance with a development standard is unreasonable or unnecessary in the circumstances of the development.

Initially proposed for objections under clause 6 of SEPP 1 in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 Pearson C summarised and applied these methods to written requests made under Clause 4.6 in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 [61-62]. These five methods are generally as follows:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
2. The underlying objective or purpose is not relevant to the development.
3. That the objective would be defeated or thwarted if compliance was required.
4. That the development standard has been virtually abandoned or destroyed by the Council's own actions in departing from the standard.
5. The zoning of the land is unreasonable or inappropriate.

It is not required to demonstrate that a development meets multiple methods as listed above, and the satisfaction of one can be adequate to demonstrate that the development standard is unreasonable or unnecessary.

The submitted Section 4.55 Planning Statement prepared by Sutherland & Associates Planning provides justification for the contravention of the FSR development standard by seeking to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the development, provided as follows:

- *The proposed amendment is as a consequence of the future operator confirming that there is no market demand for double height self-storage units as there is insufficient room to efficiently make use of the height within the storage unit. Accordingly, it is necessary to reduce the height and insert self-storage units on Level 2 above the Level 1 units to achieve conventional proportions for the self-storage units on Level 1 and make use of the redundant volume on Level 2*

With reference to the reasoning provided by the applicant above, Council objects to the conclusion that the proposed increase in floor area meets the objectives of Clause 4.4 of the HLEP. In reaching this conclusion the following points are noted:

- The proposal has not adequately demonstrated that the proposed increase in intensity of the use is appropriate for the site constraints, development potential and infrastructure capacity of the locality.
- Council acknowledges that whilst there may not be market demand for double height self-storage units, it is considered that the layout and design of the facility may need to be modified in a manner that results in a reduction of the GFA to that previously approved whilst providing single height units.
- During the assessment of the original development application, Council raised concerns with the proponent that the originally proposed FSR of 1.278:1 (27.8% contravention to the HLEP development standard) was excessive and unjustified, resulting in the applicant reducing the FSR to 1.099:1. The reduction in the FSR was determined to be appropriate and was a principal reason resulting in Council's eventual support of the development. The subject proposal seeks to increase the FSR to that previously not supported by Council. Adequate justification has not been provided within this application.

- The subject site directly adjoins a residential land zone and therefore the intensity of development on an industrial zoned site is required to be suitable for the locality having regard to acoustics, vehicle and pedestrian movements and amenity. It is considered that development on industrial zoned sites directly bounding residential areas should seek to minimise the intensity of use. It is determined that the proposed increase in GFA would increase the intensity of the use beyond the capacity of the site and locality.
- The HDCP requires that industrial development be a maximum of 3 storeys on the subject site. In assessing the original development application, the 4-storey built form was deemed acceptable given it facilitated a reduced building footprint at the ground floor level, consequently providing appropriate curtilage for compliance with various HDCP requirements including setbacks, landscaping, tree preservation and driveway width requirements. It is considered that the proposed increase in Gross Floor Area (GFA) at Level 2 is an overreach and does not have any additional environmental planning merit compared to the approved design. On the contrary, the proposal would pose additional acoustic and amenity impacts to adjoining residential properties as a result of the increase in the intensity of the use.

For the reasons outlined above, it is considered that the application has not adequately demonstrated that the objectives of the FSR development standard contained within Clause 4.4 of the HLEP are achieved.

2.2.4.3 Environmental Planning Grounds

In addition to demonstrating that compliance is unreasonable or unnecessary, Clause 4.6(3)(b) of the HLEP requires that there are sufficient environmental planning grounds to justify contravening the development standard. In demonstrating that sufficient environmental planning grounds exist, it must be demonstrated that the planning grounds are particular to the circumstances of the development on the subject site (summarised from *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 [60]).

In demonstrating the environmental planning grounds the submitted Section 4.55 Planning Statement states:

- *The increase in the FSR does not result in any change whatsoever to the overall approved building envelope or bulk and scale of the development, and will not result in any external change to the building. Therefore, there is no material impact associated with the proposed amendment which would warrant refusal of the proposed modification.*
- *The proposed amendment only actually increases the overall gross floor area of the approved development by 16.4% which is very minor and does not represent any meaningful change to the approved density of the overall development.*
- *The increased density of storage area on the site as a result of the proposed FSR variation does not give rise to any unreasonable impacts on the adjoining properties or the locality generally. Self-storage is a very low traffic generating use and therefore the density proposed does not result in any adverse traffic impacts, noting that the proposed entire development with the increased floor space will only generate a total of 11-21 vehicles per hour during the morning peak period and 13-22 vehicles per hour during the evening peak period. The proposal seeks a total FSR variation of 27.8% which on a pro-rata basis only results in an additional 3-6 vehicles per hour during the morning peak period and 4-6 vehicles per hour during the evening peak period. This is a particularly small traffic generation and will not result in any perceptible impact to the local road network.*

- *Having regard to the planning principle established in the matter of Project Venture Developments v Pittwater Council [2005] NSWLEC 191 most observers would not find the amended development offensive, jarring or unsympathetic to its location and the amended development will remain compatible with its context, notwithstanding the minor increase in Gross Floor Area.*

Comment: Council considers that the environmental planning grounds stated within the submitted Section 4.55 Planning Statement are insufficient and that the stated grounds are non-specific to the proposed development and the circumstances of the development site.

The applicant has not demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard and that the planning grounds are particular to the circumstances of the development. The exceedance of the floor space ratio appears to be based solely for economic reasons and there is no planning justification put forward by the applicant as to why a compliant development could not be built on the site and given that there are no particular site constraints.

The proposal is unacceptable in this regard.

2.2.4.4 Public Interest

Clause 4.6(4) states that 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 Planning Secretary has been obtained.*

With regard to part (a), the proposed development is not considered to be in the public interest because it is inconsistent 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.

With regard to part (b), on 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice under clause 64 of the Environmental Planning and Assessment Regulation 2000. The Secretary's concurrence may not be assumed by a delegate of council if:

- The development contravenes a numerical standard by greater than 10%.
- The variation is to a non-numerical standard.

Local Planning Panels constituted under the *Environmental Planning and Assessment Act 1979* exercise consent authority functions on behalf of a Council and are not delegates of Council. Therefore, Local Planning Panels may determine a development application notwithstanding, a numerical non-compliance in excess of 10%.

2.2.5 Heritage Conservation

Clause 5.10 of the HLEP sets out heritage conservation provisions for Hornsby Shire. The site does not include a heritage item, is not located in the vicinity of a heritage item and is not located in a heritage conservation area. Accordingly, no further assessment regarding heritage is necessary.

2.2.6 Earthworks

Clause 6.2 of the HLEP states that consent is required for proposed earthworks on site. Before granting consent for earthworks, Council is required to assess the impacts of the works on adjoining properties, drainage patterns and soil stability of the locality.

The subject Section 4.55(2) application exclusively comprises modifications to the floor plan at Level 2 and does not seek any alterations to the approved earthworks or the approved development at the ground floor level.

The proposal complies with Clause 6.2 of the HLEP.

2.3 State Environmental Planning Policy (Biodiversity and Conservation) 2021

The application has been assessed against the requirements of chapters 2 and 9 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

2.3.1 Chapter 2 Vegetation in Non-Rural Areas

Chapter 2 of this policy aims to protect the biodiversity and amenity values of trees within non-rural areas of the state. Part 2.3 of the policy states that a development control plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1B.6.1 of the HDCP prescribes works that can be undertaken with or without consent to trees and objectives for tree preservation.

All physical works subject to the Section 4.55(2) application would be located at Level 2 and would be internal to the approved building footprint. Accordingly, further assessment under Chapter 2 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 is not required.

2.3.2 Chapter 9 Hawkesbury-Nepean River

The site is located within the catchment of the Hawkesbury-Nepean River. The aim of this chapter is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of development are considered in the regional context. Part 9.2 of this Plan contains general planning considerations and strategies requiring Council to consider the impacts of development on water quality, aquaculture, significant vegetation habitats, extraction, environmental heritage and scenic quality, recreation and tourism, and agriculture.

Subject to the implementation of the sediment and erosion control measures and stormwater management measures imposed as conditions under the original consent, the proposal would not impact on the water quality of the catchment and would comply with the requirements of chapter 9 of the Biodiversity and Conservation SEPP.

2.4 State Environmental Planning Policy (Industry and Employment) 2021

The application has been assessed against the requirements of chapter 3 of State Environmental Planning Policy (Industry and Employment) 2021.

2.4.1 Advertising and Signage

The approved signage was assessed against the requirements of SEPP 64 (now repealed).

The proposal does not seek any modifications to the approved signage and satisfies the assessment criteria under Schedule 5 and is consistent with the objectives of the Industry and Employment SEPP.

2.5 State Environmental Planning Policy (Resilience and Hazards) 2021

The application has been assessed against the requirements of chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021.

2.5.1 Chapter 4 Remediation of Land

Section 4.6 of the Resilience and Hazard SEPP states that consent must not be granted to the carrying out of any development on land unless the consent authority has considered whether the land is contaminated or requires remediation for the proposed use. Should the land be contaminated, Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

Should the land be contaminated Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose. An examination of Council's records and aerial photography has determined that the site has been historically used for warehousing/industrial purposes.

A Detailed Site Investigation prepared by Epic Environmental was submitted with the original Development Application and Council raised no objections with regard to land contamination on the site. Accordingly, no further assessment is necessary under chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021.

2.6 Section 3.42 Environmental Planning and Assessment Act 1979 - Purpose and Status of Development Control Plans

Section 3.42 of the *Environmental Planning and Assessment Act 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitate development that is permissible under any such instrument; and achieve the objectives of land zones. The provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Consent authorities have flexibility to consider innovative solutions when assessing development proposals, to assist achieve good planning outcomes.

2.7 Hornsby Development Control Plan 2013

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the Hornsby Development Control Plan 2013 (HDCP). The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

HDCP - Part 5 Industrial				
Control	Approved	Proposed	Requirement	Compliance

Site Area	6,677.8m ²	6,677.8m ²	N/A	N/A
Gross Floor Area	7,334.4m ²	8,539m ²	N/A	N/A
Floor Space Ratio	1.099:1	1.28:1	1:1	No
Ancillary office space	0.83%	0.72%	Max 30%	Yes
Height	14.5m	14.5m	14.5m	Yes - Unchanged
No. storeys	4 storeys	4 storeys	3 storeys	No - Unchanged
Setbacks				
<i>Front (Salisbury Road)</i>	21.9m	21.9m	5m	Yes - Unchanged
<i>Side (west)</i>	8.44m	8.44m	0m	Yes - Unchanged
<i>Side (north)</i>	6.9m	6.9m	0m	Yes - Unchanged
<i>Rear (east)</i>	20.6m	20.6m	0m	Yes - Unchanged
Driveway Setback	1.2m-5.5m	1.2m-5.5m	2m	No - Unchanged
- <i>west</i>	1.2m-5.5m	1.2m-5.5m	2m	No - Unchanged
- <i>north</i>	0m	0m	2m	No - Unchanged
- <i>east</i>	1.2m-7.5m	1.2m-7.5m	2m	No - Unchanged
Car Parking				
- <i>Staff and visitor</i>	12 spaces	12 spaces	11 spaces	Yes - Unchanged
- <i>Motorcycle</i>	1 space	1 space	1 space	Yes - Unchanged
- <i>Bicycle</i>	7 spaces	7 spaces	7 spaces	Yes - Unchanged
Employee Outdoor Area	16m ²	16m ²	8m ²	Yes - Unchanged

As detailed in the above table, the development complies with the prescriptive measures within the HDCP, with the exception of the Floor space ratio. A brief discussion on compliance with relevant performance requirements and Part 1C General Controls is provided below.

2.7.1 Transport and Parking

The application has not been accompanied by a traffic impact assessment. It is noted that the original development application was supported by a Traffic Impact Assessment prepared by Traffix dated 9 September 2021.

Parking

Neither the HDCP nor the RMS's *"Guide to Traffic Generating Developments"* (October 2002) incorporate a parking requirement specifically for self-storage developments. The originally submitted Traffic Report determined that a total of 11 car parking spaces were required to service the approved development given that the Gross Floor Area was within the 6,000m² - 9,000m² Maximum Leasable Area (MLA) category. The approved development includes 12 parking spaces and Council's traffic branch concurred that these spaces are adequate to service the premises.

Given that the proposed gross floor area would continue to be within the 6,000m²-9,000m² MLA category, Council's traffic assessment has determined that the 12 approved on-site car parking spaces would be adequate for the proposal.

Traffic Generation

Neither the HDCP nor the RMS's *"Guide to Traffic Generating Developments"* (October 2002) incorporate a land use traffic generation rate for self-storage developments. The Traffic Report submitted with the original development application states that the traffic generation of proposed developments can be estimated based on the Facility Traffic & Parking Study (SSFTPS) prepared by Aurecon in 2009 that was undertaken to identify the typical vehicle parking demands and trip generations of self-storage units to be applied throughout Australia. In accordance with the SSFTPS, the approved development falls within the 6,000m² - 9,500m² MLA range, which identify the following anticipated traffic generation during a typical weekday:

- Average of 11 vehicles per hour and 95th percentile of 21 vehicles per hour during the morning peak period.
- Average of 13 vehicles per hour and 95th percentile of 22 vehicles per hour during the evening peak period.

The estimation is in line with Council's observation for similar businesses in the Hornsby Shire.

Council's traffic assessment supports this estimation of traffic generation and raises no concerns with the proposed increase in gross floor area having regard to traffic generation.

Section 2.7.3 of this report addresses the implications of the increase in traffic and pedestrian movements on acoustic generation.

2.7.2 Waste Management

The Waste Management Plan approved under the original development application indicates that waste services will not be provided for tenants of the storage units in accordance with industry practice. Council's original assessment noted that the waste and recycling generated by the office will be adequately contained in 3 x 240L garbage bins and 2 x 240L recycling bins.

The bins are approved to be stored in the separate waste room within the building. The size of the room was considered by Council in its assessment of the original application to be sufficient for the office. The size of the office would remain unaltered as part of the subject Section 4.55 application. Accordingly, the approved bin storage room is of adequate size to support the amended design.

The application does not seek any modifications to the approved on-site waste collection arrangement, whereby the site would be accessed by a Medium Rigid Vehicle (MRV) to collect bins from outside the waste room from the car park.

The proposal is deemed acceptable having regard to the Waste Management requirements of the HDCP.

2.7.3 Noise and Vibration

The subject Section 4.55(2) application has not been supported by an Acoustic Assessment.

Part 1C.2.5 of the HDCP applies to the development and aims to attenuate noise as best as possible to minimise disturbance to surrounding sensitive land uses. The site is located within an industrial precinct and adjacent to residential zones to the north and west.

The Acoustic Assessment and addendum provided as part of the original Development Application concluded that the acoustic impacts of the development on nearby commercial and residential receivers complied with relevant guidelines and protocols including the *Noise Policy for Industry (NPI) 2017* (formerly the NSW Industrial Noise Policy 2000) and the Hornsby Shire Council Noise Guideline. The assessment included the impacts of traffic noise, noise generated by plant and equipment, night time noise and potential sleep disturbance. Council's assessment of the approved development concurred with the findings of the Acoustic Report and Addendum Letter and determined that the proposal complied with the relevant noise criteria, subject to conditions imposed under the consent.

The proposed modifications to the approved floor plan would result in the provision of 125 additional self-storage units at Level 2. Given the proposed increase in the number of units, Council's acoustic assessment of the subject Section 4.55 application has determined that additional vehicular movements and pedestrian movements are anticipated as a result.

Given that the subject Section 4.55 application has not been supported by an Acoustic Assessment, insufficient information has been provided to determine whether the proposed increase in the number of units would result in an increase in noise emissions emanating from the site. Accordingly, Council requires the provision of additional information in the form of an amended Acoustic Assessment detailing the predicted noise levels to be emitted from the modified development and proposed noise attenuation measures to be implemented so that background levels (L90) are not exceeded by 5dB(A) when measured at any sensitive receiver locations.

Council has not requested the submission of additional information to address the above concerns given that significant overarching concerns have been raised with regard to the proposed contravention to the FSR development standard of the HLEP.

The proposal is deemed unacceptable having regard to the Noise and Vibration requirements of the HDCP.

2.7.4 Floor space ratio

The application proposes an FSR of 1.28:1. The HLEP and HDCP requires a maximum FSR of 1:1 and the proposal does not comply in this respect.

Section 2.2.4 of this report addresses the floor space ratio non-compliance. It is considered that the application does not demonstrate that compliance with the FSR development standard is unreasonable and unnecessary in this instance.

2.8 Section 7.12 Contributions Plans

Hornsby Shire Council Section 7.12 Contributions Plan 2019-2029 applies to the development as the estimated costs of works is greater than \$100,000. An appropriate condition has been imposed on the consent requiring the payment of a contribution in accordance with the Plan.

3. ENVIRONMENTAL IMPACTS

Section 4.15(1)(b) of the Act requires Council to consider *“the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality”*.

3.1 Social Impacts

The social impacts of the development on the local and broader community have been considered with specific reference to potential employment generation within the facility during operation and construction. This is consistent with the *State Government’s Greater Sydney Region Plan – A Metropolis of Three Cities’* which identifies the need to provide an additional 689,000 new jobs by 2031.

3.2 Economic Impacts

The proposal would have a minor positive impact on the local economy in conjunction with other industrial development in the locality by generating an increase in demand for local services.

4. SITE SUITABILITY

Section 4.15(1)(c) of the Act requires Council to consider *“the suitability of the site for the development”*.

The subject site has not been identified as bushfire prone or flood prone land.

The site directly adjoins a residential land zone and it is considered that the intensity of development is not suitable for the locality having regard to acoustics, vehicle and pedestrian movements and residential amenity. The intensity of the proposed development is inconsistent with the capability of the site and is considered unacceptable.

5. PUBLIC PARTICIPATION



Section 4.15(1)(d) of the Act requires Council to consider *“any submissions made in accordance with this Act”*.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 1 September 2022 and 22 September 2022 in accordance with the Hornsby Community Engagement Plan. During this period, Council received no submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED		PROPERTY SUBJECT OF DEVELOPMENT	
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5.2 Public Agencies

The development application was not referred to any Public Agencies for comment.

6. THE PUBLIC INTEREST

Section 4.15(1)(e) of the Act requires Council to consider *“the public interest”*.

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

The proposed modifications to the approved development would result in a negative impact for the community. Accordingly, it is considered that the refusal of the proposed development would be in the public interest.

CONCLUSION

The Section 4.55(2) application seeks internal modifications to the approved self-storage facility.

The development does not meet the desired outcomes of Council's planning controls and is unsatisfactory having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Having regard to the circumstances of the case, refusal of the application is recommended.

The reasons for this decision are:

- The proposal does not comply with the floor space ratio (FSR) development standard under Clause 4.4 of the Hornsby Local Environmental Plan 2013. The applicant has not demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.
- The proposed modifications to the development do not comply with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.
- Insufficient information has been provided to determine whether the proposed modifications to the development would result in detrimental amenity impacts to adjoining residential properties.

Note: At the time of the completion of this planning report, no persons have made a Political Donations Disclosure Statement pursuant to Section 10.4 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.







RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is Thomas Dales.

CASSANDRA WILLIAMS
Major Development Manager - Development
Assessments
Planning and Compliance Division

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1.  Locality Plan
2.  S4.55 Planning Statement
3.  Approved Plans from original DA
4.  Gross Floor Area (GFA) Diagram
5.  Floor Plan - Level 2
6.  Section Plan

File Reference: DA/1349/2021/A
Document Number: D08498030

REASONS FOR REFUSAL

1. The proposed development is unsatisfactory in respect to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* with regard to the Hornsby Local Environmental Plan 2013 as follows:
 - 1.1 The proposal would result in an increase in gross floor area (GFA), which would further contravene the floor space ratio development standard and is unacceptable with respect to Clause 4.4 'Floor space ratio' of the Hornsby Local Environmental Plan 2013.
 - 1.2 The applicant has not demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard and that the planning grounds are particular to the circumstances of the development.
2. In accordance with Section 4.55(2)(a) of the *Environmental Planning and Assessment Act 1979*, it is considered that the modified development is not substantially the same development as the development for which consent was originally granted as the intensity of the use would be substantially increased.
3. In accordance with Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal does not comply with the desired outcome and the prescriptive measures of Hornsby Development Control Plan 2013 as follows:
 - 3.1 The proposal does not comply with the 'Scale' prescriptive measures within Part 5.1.1(a) of the Hornsby Development Control Plan 2013 as the proposal seeks an increase in floor space ratio (FSR) above 1:1.
 - 3.2 The proposal does not comply with the 'Noise and Vibration' prescriptive measures within Parts 1C.2.5 (e) and (f) of the Hornsby Development Control Plan 2013 as insufficient information has been provided to determine whether the proposed increase in the number of units and GFA would result in an acceptable increase in noise emissions emanating from the site.
4. In accordance with Section 4.15(1)(b) and (e) of the *Environmental Planning and Assessment Act 1979*, it is considered that the proposed development would not be in the public interest and would result in undesirable environmental impacts.

- END OF REASONS FOR REFUSAL -

ITEM 3



LOCALITY PLAN

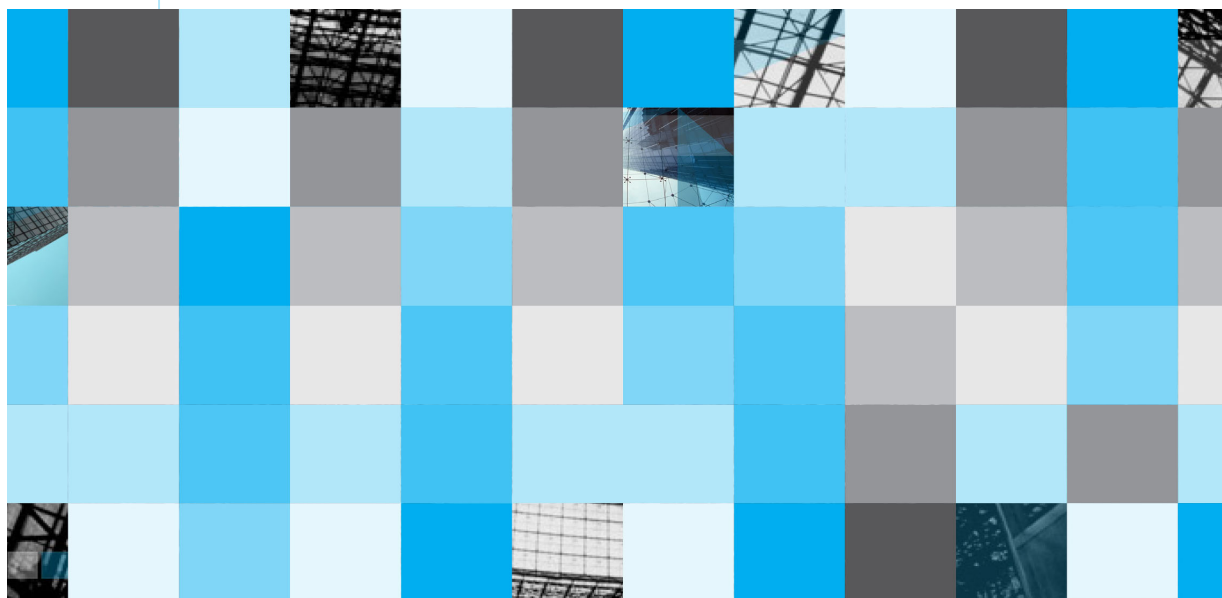
DA/1349/2021/A

No. 28 Salisbury Road, Asquith

ATTACHMENT 1 - ITEM 3

**SUTHERLAND
& ASSOCIATES
PLANNING**

ATTACHMENT 2 - ITEM 3



28 Salisbury Road, Asquith

Section 4.55 Planning Statement

SUTHERLAND & ASSOCIATES PLANNING

ABN 14 118 321 793 ACN 144 979 564

Section 4.55 Planning Statement

28 SALISBURY ROAD, ASQUITH

Proposed internal amendments to approved self
storage facility

August 2022

Prepared under instructions from
[Chapter and Co Pty Ltd](#)

by

[Aaron Sutherland](#)
B Town Planning UNSW

aaron@sutherlandplanning.com.au
Tel: 0410452371
PO BOX 814 Bowral NSW 2576

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ATTACHMENT 2 - ITEM 3

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1.0 INTRODUCTION

This submission has been prepared as supporting documentation for an application made pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* to modify Development Application DA/1349/2021 for the demolition of existing structures and construction of a new 4 storey self-storage facility at 28 Salisbury Road, Asquith.

The application seeks to replace the high bay storage units on Level 1 with regular height storage units, and insert regular height storage units on Level 2 in the location of the previous void.

The modifications result in:

- No external change to the approved building;
- No change in car parking;
- No change in landscaping; and
- A modest increase in the overall gross floor area of 1,204.6 square metres.

The proposed modifications are detailed in this submission and amended architectural package prepared by Mijollo International Architects.

This Statement has been prepared pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*. The Statement provides an assessment of the amended proposal having regard to the relevant legislative context, social economic and environmental impacts, potential amenity impacts of the development on the surrounding locality.

The Statement details the proposed amendments against applicable environmental planning instruments and development control plans including:

- Hornsby Local Environmental Plan 2013
- Hornsby Development Control Plan 2013

Having regard to the applicable legislative framework, the proposed amendments to the approved development retain the same fundamental characteristics and the amended proposal is therefore substantially the same development. The amended development represents an improvement to the functionality of the approved development, remains consistent with the aims and objectives of the relevant environmental planning instruments and development control plan whilst remaining compatible with the character of the locality.

2.0 SITE DESCRIPTION AND LOCATION

2.1 Locality Description

The site is located in the suburb of Asquith which is located within the Hornsby local government area. Asquith is located 26 km north-west of the Sydney central business district. The subject site is located approximately 400 metres from Asquith train station.

The character of Asquith is varied with a predominantly low density residential character throughout the central and western part of the suburb and commercial uses focused around the train station. Part of the Ku-ring-gai Chase National Park occupies the eastern side of the suburb, whilst the south eastern area of Asquith is occupied by a vibrant industrial precinct, within which the subject site is located.

The location of the site is illustrated in Figure 1 below.

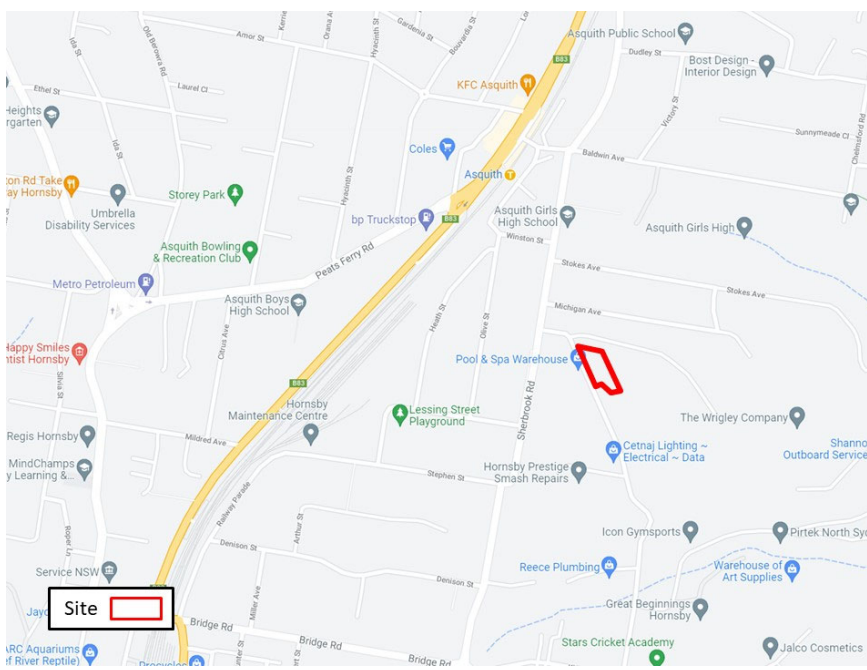


Figure 1:

Site Location: (Source: Google Maps)

2.2 Site Description

The site comprises one allotment and is legally described as Lot 101 in DP 771987 and is known as 28 Salisbury Road, Asquith. An aerial view of the site is included as Figure 2.

The site is irregular in shape and has an area of 6,677.8 square metres. The site has a frontage of 87.435 metres to Salisbury Road, a northern boundary of 63.31 metres and a western boundary of 120.28 metres. The southern boundary is split into three portions with a length of 23.27 metre for the eastern end, a 48 metre central section, and a 17.5 metre western end.

There is a fall down Salisbury Road from north to south and the subject site is approximately level with the road level at the northern end of the site, however, gradually rises relative to the road level as the site progresses south. The site has been previously benched and has a relatively level upper platform, and the level change to the street is managed either via previously constructed retaining walls, or a natural embankment which is occupied by dense vegetation. The platform on the site rises to be approximately 6 to 7 metres above the street level.

The site is currently used as a self storage facility as approved under DA335/1996. The site is currently improved by a large 12 metre tall warehouse which is aligned to the eastern boundary of the site and which extends south across the majority of the site. A smaller three storey office and warehouse component is also annexed to the western side of the main warehouse. The southern end of the site is occupied by a large hardstand car parking area which is accessed via a driveway through the warehouse. There is also a small hardstand area located at the north-eastern corner of the site. Access to the site is provided via a driveway at the northern end of the frontage of the site to Salisbury Road.

Vegetation on the site is predominantly contained on the embankment on the western side, with one other tree at the northern end of the eastern boundary.

The site is not identified as a heritage item pursuant to the Hornsby Local Environmental Plan 2013. The site is also not identified as being located within a heritage conservation area.



Figure 2:

Site (Source: Department of Lands, Six Maps)

2.3 Surrounding Development

To the east and north of the site is 30 Salisbury Road which is a particularly large site which contains a large warehouse and extensive hard stand storage. The site is elevated significantly above the subject site by an embankment. The site is also accessed via a driveway which travels past the northern boundary of the subject site.

Further to the north beyond the driveway which serves 30 Salisbury Road is a row of residential properties which have their street address to Michigan Avenue to the north.

Immediately adjacent to the south of the site is 24-26 Salisbury Road which has a similar configuration to the subject site, with a very long warehouse building that covers the majority of the site which is accessed via a driveway at the northern end of the site. This site and warehouse is separated visually from the subject site by dense vegetation at the northern end of the property.

Opposite the site to the west across Salisbury Road is 57 Salisbury Road which contains a 3 storey office and warehouse building which is occupied by the Pool and Spa Warehouse and child care centre.

3.0 BACKGROUND

3.1 Development Application DA/1349/2021

On 28 July 2022, development consent was granted to D/1349/2021 for demolition of the existing buildings on the site and the construction of a four storey self-storage facility.



Figure 3:

CGI of approved development

4.0 PROPOSED MODIFICATIONS

4.1 Description of Proposed Modification

The application seeks to replace the high bay storage units on Level 1 with regular height storage units, and insert regular height storage units on Level 2 in the location of the previous void.

There is no change to the approved Level 1 floor plan, however, the Level 2 floorplan is amended to reflect the inserted regular height storage units.

The modifications result in:

- No external change to the approved building;
- No change in car parking;
- No change in landscaping; and
- A modest increase in the overall gross floor area of 1,204.6 square metres.

4.2 Basis for Proposed Modifications

During the assessment of the original development application, the proposal was amended to provide double height storage units on Level 1.

However, since this amendment, the future operator has confirmed that there is no market demand for self storage units with this height as it is not usable space due to the disproportionate height to the small footprint of storage units. Logistically, there is insufficient room to efficiently make use of the height within the storage unit. Accordingly, it is proposed to insert self storage units on Level 2 above the Level 1 units to achieve conventional proportions for the self storage units on Level 1 and make use of the redundant volume on Level 2.

4.3 Numerical Overview

Element	Approved	Proposed Amendments	Change
Site Area	6,677.8 square metres total	6,677.8 square metres total	No
Gross Floor Area	7,334.4 square metres	8,539 square metres	Yes
Floor Space Ratio	1.099:1	1.278:1	Yes
Height	14.5 metres maximum	14.5 metres maximum	No
Storeys	4 storeys	4 storeys	No
Setbacks	<ul style="list-style-type: none"> • Front – 21.945 metres • North – 8.44 metres • East – 6.9 metres • South – 20.665 metres 	<ul style="list-style-type: none"> • Front – 21.945 metres • North – 8.44 metres • East – 6.9 metres • South – 20.665 metres 	No
Car Parking	4 visitor spaces 8 staff and vehicle storage spaces	4 visitor spaces 8 staff and vehicle storage spaces	No

ATTACHMENT 2 - ITEM 3

Element	Approved	Proposed Amendments	Change
Bicycle spaces	5	5	No

Section 4.55 Planning Statement - 28 Salisbury Road, Asquith

5.0 STATUTORY PLANNING FRAMEWORK

5.1 Consent Authority

The approved development D/1349/2021 was not Regional Development as defined under Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021.

Furthermore, the approved development was not of a kind which required determination by the Local Planning Panel under Ministerial Direction for Local Planning Panels, in particular noting that the development was not contentious, a category of sensitive development, and did not depart from a development standard by more than 10%.

Accordingly, the development was approved by the Manager of Assessments under delegated authority granted by the Council.

Whilst the proposed amendment does result in a variation to the FSR development standard in Clause 4.4 of the Hornsby Local Environmental Plan 2013 by more than 10%, as the Local Planning Panel was not the consent authority for development the proposed modification is not required to be reported to the Local Planning Panel and can be determined in the same manner as the original development consent.

5.2 Environmental Planning and Assessment Act 1979

Section 4.55(2) of the Environmental Planning and Assessment Act 1979 empowers Council to modify a development consent, as follows:

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

(c) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

The amended proposal retains the fundamental components of the approved layout and spatial characteristics of the development. Conceptually, the proposal remains a 4 storey self storage facility and the amended proposal also retains an identical envelope to the approved development, with external change whatsoever. The amended proposal would appear exactly the same as the approved development.

Quantitatively, the proposed amendments to the approved development are not such that they significantly change the development with no change to height, parking, landscaped area, or number of storeys and a relatively modest change to the gross floor area. The proposed amendments are improvements to the functionality of the building and do not radically transform the proposal.

The proposal is therefore considered to be "essentially or materially" the same as the approved development in that the modification does not materially alter any fundamental elements of the original application such as the use or scale of the development on the site.

On this basis the proposal is appropriately categorised as being "substantially the same" as required by Section 4.55(2) of the EP&A Act.

5.3 Environmental Planning Instruments

In accordance with Section 4.55(3) of the Environmental Planning and Assessment Act 1979 in determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

The provisions contained within the applicable environmental planning instruments and development control plan which are relevant to the proposed modification are addressed below.

5.3.1 Hornsby Local Environmental Plan 2013

Zoning and Permissibility

The site is located within the IN1 General Industrial zone pursuant to the Hornsby Local Environmental Plan 2013 (HLEP). An extract of the Land Zoning Map is included as Figure 4.

Self storage units are permissible with consent in the IN1 General Industrial zone. The proposed amendments do not alter the approved use and the amended development remains permissible with consent.

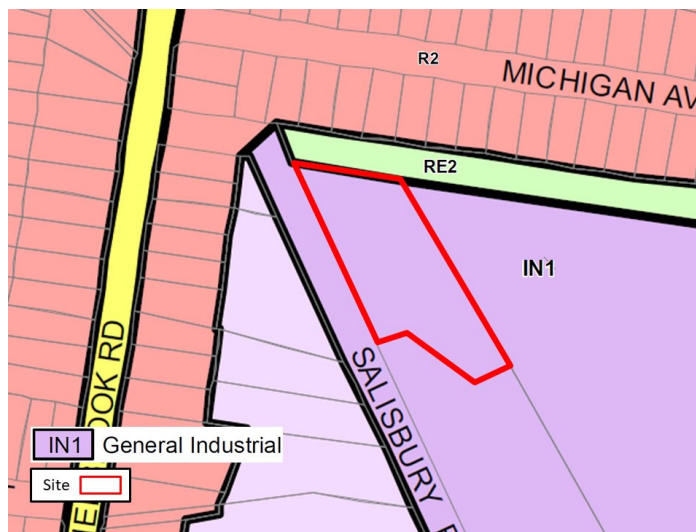


Figure 4:

Extract from
the HLEP Land
Zoning Map

Height

In accordance with clause 4.3 'Height of Buildings' of the HLEP the height of a building on any land is not to exceed the maximum height shown for the land on the 'Height of Buildings Map'.

The maximum height shown for the site is 14.5 metres above ground level as shown in Figure 5.

The approved development had a maximum height of 14.5 metres and the amended proposal does not result in any change to this approved height and remains compliant with the maximum 14.5 metre height control.

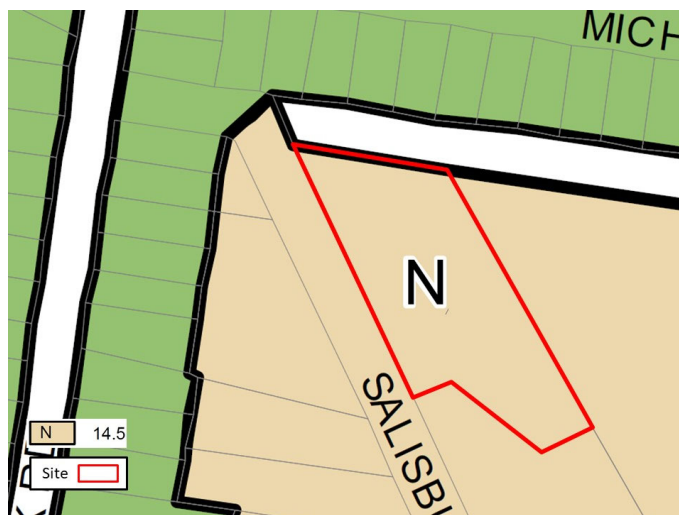


Figure 5:

Extract from the
HLEP Height of
Buildings Map

Section 4.55 Planning Statement - 28 Salisbury Road, Asquith

Floor Space Ratio

Clause 4.4 of the HLEP provides that the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The Floor Space Ratio Map shows a floor space ratio of 1:1 applying to the site. An extract of the Floor Space Ratio Map is included as Figure 6.

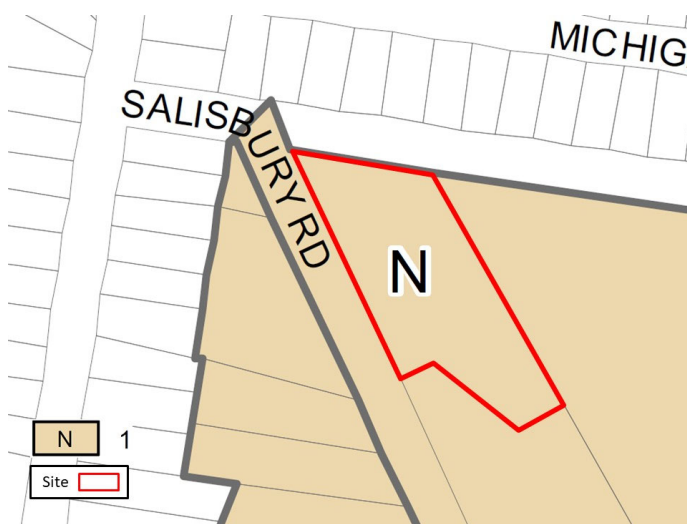


Figure 6:

Extract from the
HLEP FSR Map

A comparison of the approved Gross Floor Area and Floor Space Ratio for the site is shown in the table below:

Element	Approved	Proposed Amendments
Site Area	6,677.8 square metres total	6,677.8 square metres total
Gross Floor Area	7,334.4 square metres	8,539 square metres
Floor Space Ratio	1.099:1	1.278:1

The increase in Gross Floor Area for the development as a consequence of the proposed amendments is 1,204.6 square metres, or an increase of 16.4% of the previously approved floor area.

Whilst the proposed amendment increases the approved FSR from 1.099:1 to 1.278:1, the proposed further variation to the 1:1 FSR control is considered reasonable in this instance for the following reasons:

- The proposed amendment is as a consequence of the future operator confirming that there is no market demand for double height self storage units as there is insufficient room to efficiently make use of the height within the storage unit. Accordingly, it is necessary to reduce the height and insert self storage units on Level 2 above the Level 1 units to achieve conventional proportions for the self storage units on Level 1 and make use of the redundant volume on Level 2.

- The increase in the FSR does not result in any change whatsoever to the overall approved building envelope or bulk and scale of the development, and will not result in any external change to the building. Therefore, there is no material impact associated with the proposed amendment which would warrant refusal of the proposed modification.
- The proposed amendment only actually increases the overall Gross Floor Area of the approved development by 16.4% which is very minor and does not represent any meaningful change to the approved density of the overall development.
- The increased density of storage area on the site as a result of the proposed FSR variation does not give rise to any unreasonable impacts on the adjoining properties or the locality generally. Self storage is a very low traffic generating use and therefore the density proposed does not result in any adverse traffic impacts, noting that the proposed entire development with the increased floor space will only generate a total of 11-21 vehicles per hour during the morning peak period and 13-22 vehicles per hour during the evening peak period. The proposal seeks a total FSR variation of 27.8% which on a pro-rata basis only results in an additional 3-6 vehicles per hour during the morning peak period and 4-6 vehicles per hour during the evening peak period. This is a particularly small traffic generation and will not result in any perceptible impact to the local road network.
- Having regard to the planning principle established in the matter of Project Venture Developments v Pittwater Council [2005] NSWLEC 191 most observers would not find the amended development offensive, jarring or unsympathetic to its location and the amended development will remain compatible with its context, notwithstanding the minor increase in Gross Floor Area.

The proposed amendment does not alter the conclusions of Council's previous assessment of the approved development in relation FSR variation, which are summarised as follows:

- The proposal is compliant with the 14.5 metre height control
- The proposed has setbacks which are well in excess of the HDCP requirements.
- The building sits within the footprint established by the existing buildings on the site.
- The density proposed does not result in any adverse traffic impacts.
- The development is consistent with the bulk and scale of development as anticipated for this form of development.
- Strict compliance with the floor space ratio control would not result in any external change.
- The proposed volume of the building on site is modest having regard to the potential building which could be accommodated on the site, and has a reduced building footprint when compared with the existing buildings on the site.
- The proposed FSR variation is a consequence of the specific building typology being for self storage where it is possible to provide greater internal floor area within the same volume of building which could occur for a conventional warehouse development.

Remaining Provisions

The subject proposal is only for minor internal design amendments to the approved development and does not require any further consideration against the remaining provisions of the HLEP beyond those which were considered in the assessment of the original development application.

5.4 Hornsby Development Control Plan

The amended proposal does not result in any significant difference in relation to compliance with the provisions of the Hornsby Development Control Plan 2013. The following table addresses the provisions of the DCP which are relevant to the proposed amendments:

5.4.1 Part 1 General

Element	Control	Proposed
1C.2 Built Environment		
Transport and Parking	<ul style="list-style-type: none"> Direct vehicular access to main roads should be avoided where alternative access is available via side roads or service lanes. For development (other than single dwelling houses on existing lots), vehicle access and parking should be designed to allow vehicles to enter and exit the site in a forward direction. Design and dimensions of car parks, loading areas and driveways should comply with AS2890.1 and AS2890.2. Planning and design layout of parking areas for people with disabilities should be in accordance with AS2890.6 and AS1428.1. The Hornsby Development Control Plan 2013 (DCP) does not provide car parking rates for self storage facilities, noting that the DCP permits the utilisation of a parking study for 'other uses' not identified within the DCP. Bicycle parking to be provided for industrial developments (over 2,000m² GFA) at a rate of one (1) bicycle space per 1,000m² GFA. 	<ul style="list-style-type: none"> The originally lodged development application was accompanied by a Traffic Impact Assessment prepared by Traffix which examined traffic impact based a GFA of 8,539 square metres, as proposed under this modification application. The Traffix report confirmed that: <ul style="list-style-type: none"> This density of development on the site does not result in any meaningful impact to the performance of the local road network. The approved provision of 12 car parking spaces is sufficient to meet the demand generated by the proposed floor space based on the Self-Storage Facility Traffic and Parking Study (SSFTPS) undertaken by Aurecon for determining an appropriate amount of car parking for self storage facilities.

5.4.2 Part 5 Industrial

Element	Control	Proposed
5.1.1 Scale		
Desired Outcome	Development that contributes to the desired future character of the area	There is no proposed external change to the approved development, which will continue to represents a high quality contemporary industrial aesthetic which will significantly enhance the contribution of the site to Salisbury Road and the broader area.
Prescriptive Measures	Floor Space Ratio 1:1	The amended proposal involves a modest variation to the FSR control. Refer to the discussion under the HLEP assessment.
	Height: 3 storeys	The amended proposal makes no change to the approved height and number of storeys.
5.1.2 Setbacks		
Desired Outcome	a. Setbacks that complement the streetscape and allow for landscaping that reduces the visual mass of buildings. b. Setbacks that allow for the retention of significant landscape features and respect site constraints.	The amended proposal makes no change to the approved setbacks, which exceed the minimum required setbacks.
Prescriptive Measures	Front: 5m Side: 0m Rear: 0m	
5.1.3 Landscaping		
Desired Outcome	a. Landscaping that softens the visual impact of buildings. b. Landscaping that retains existing landscape features.	The amended proposal makes no change to the approved landscaped outcome.
Prescriptive Measures	a. Landscaping should be included in building setback areas to complement the appearance of the building. b. A minimum of 50% of the required setback area to all public roads should be landscaped area. This landscaping is to extend along the	

Element	Control	Proposed
	<p>full length of each street frontage (other than a vehicle entry/exitdriveway).</p> <p>In the Asquith and Mt Kuring-gai Industrial areas, fencing should not be provided in front of the building line.</p>	
5.1.4 Open Space		
Desired Outcome	<p>a. Development that provides adequate communal open space on-site for employees.</p>	<p>The amended proposal requires no change to the approved common open space area which meets the DCP requirements and is located within a landscaped setting which will enjoy shade in summer, and afternoon sub in winter.</p>
Prescriptive Measures (Storeys)	<p>a. An outdoor eating and sitting area should be provided on-site at a rate of 1m2 per employee, with a minimum total area of 10m2 and a minimum dimension of 2 metres.</p> <p>b. On-site communal areas should incorporate green space where possible.</p> <p>c. Communal seating and lunch gathering areas should be shaded in summer and have protected sunny areas in winter.</p> <p>d. Where an outdoor space cannot be accommodated on-site, an internal eating/sitting area is to be provided</p>	
5.1.6 Vehicle Access and Parking		
Desired Outcome	<p>a. Development that provides sufficient and convenient parking for residents and visitors with vehicular access that is simple, safe and direct.</p> <p>b. Developments that incorporate on-site service areas that provide for a range of industrial uses.</p>	<p>The amended proposal makes no change to the approved vehicle access, parking configuration and loading arrangements. It is noted that the approved provision of 12 car parking spaces remains sufficient for the increased floor space.</p>
Prescriptive Measures (Vehicle Access)	<p>a. Direct vehicular access to main roads should be avoided where alternative access is available via service lanes or local roads.</p>	
Prescriptive Measures (Parking)	<p>c. Parking should be provided to the rear of buildings or below ground level.</p>	

Element	Control	Proposed
	<p>d. Parking may be considered in front setback areas where site constraints warrant. A maximum of 50% of the required front setback area should be used for carparking and driveway areas.</p> <p>e. Car parking should be screened from the street by landscaping.</p>	
Prescriptive Measures (Service vehicles)	<p>f. Each industrial unit/ premises should have access to a loading and unloading area on-site.</p> <p>g. Where a development consists of multiple industrial units, at least 1 communal loading area that is capable of accommodating an articulated vehicle should be provided on-site.</p> <p>h. Loading areas should have minimum dimensions of 3 metres x 7 metres and have turning areas that comply with AS 2890.2, applicable to the size of vehicle that may service the site.</p>	
5.1.8 Design Details		
Desired Outcome	a. Development that contributes positively to the streetscape	The proposed amendments result in no change to the approved external appearance of the building and the architectural expression of the building.
Prescriptive Measures (General)	<p>a. Facades should adopt a contemporary appearance, relating to the function of the building.</p> <p>b. The main entry to the building should be easily identifiable from the street and directly accessible from the front of the building or the driveway in the case of a multi-unit complex.</p> <p>c. Corner buildings should be designed to address both streets.</p> <p>d. Architectural features should be included in the design of new buildings to provide for a more visually interesting precinct. These may include:</p> <ul style="list-style-type: none"> elements which punctuate the skyline, 	

ATTACHMENT 2 - ITEM 3

Element	Control	Proposed
	<ul style="list-style-type: none">• distinctive parapets or roof forms,• visually interesting facades,• architectural emphasis in the built form, and• a variety of window patterns. <p>e. Other features that are encouraged include balustrades, pergolas, expressed structure and downpipes, glazed skylights, sun shading devices and distinctive entries.</p> <p>f. Roof fixtures and lift overruns or service plants should be incorporated into the design of the roof to minimise visual intrusiveness and support an integrated building design.</p>	

Section 4.55 Planning Statement - 28 Salisbury Road, Asquith

6.0 CONCLUSION

This application seeks to amend Development Application DA/1349/2021 for the demolition of existing structures and construction of a new 4 storey self-storage facility at 28 Salisbury Road, Asquith.

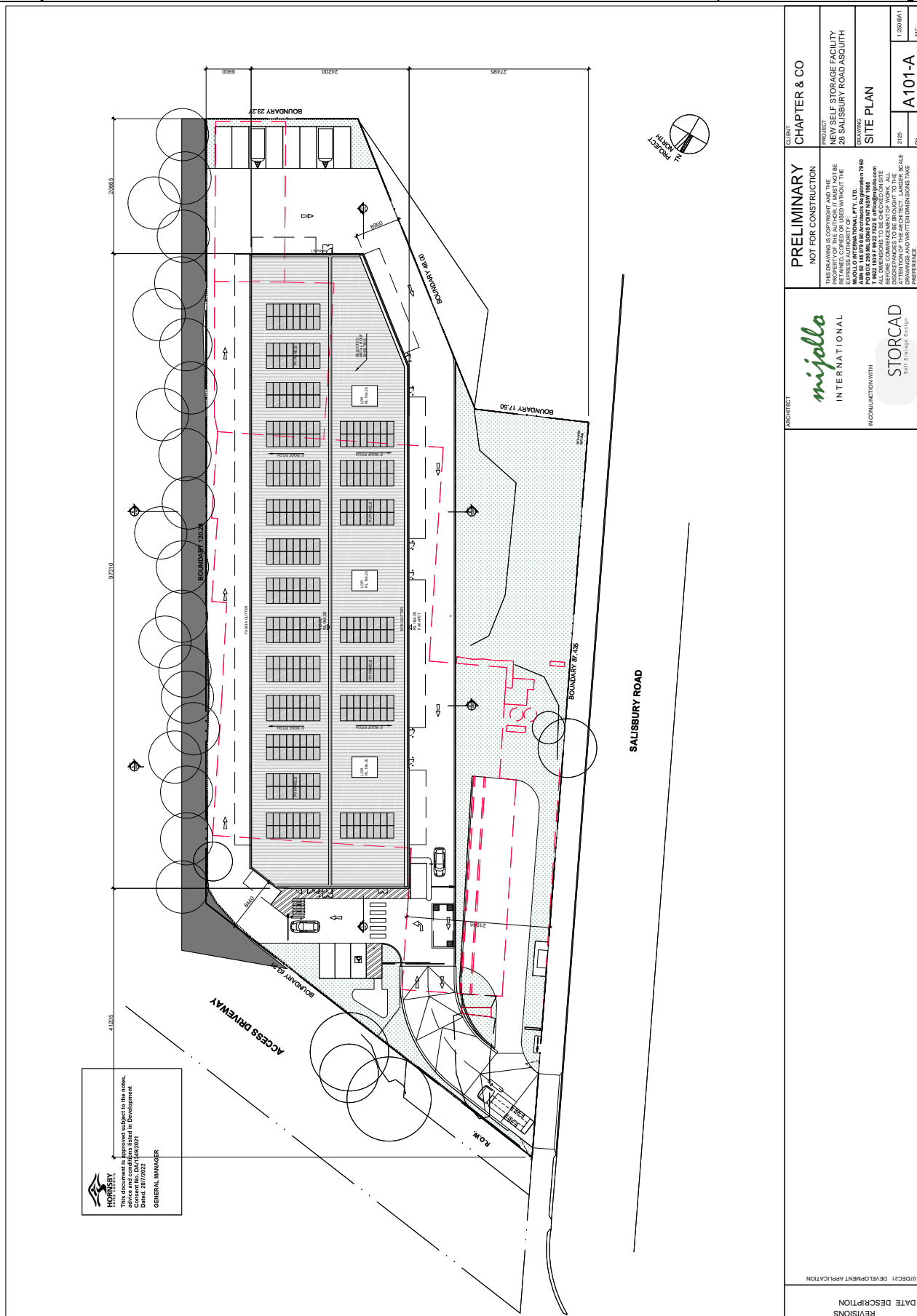
The application seeks to replace the high bay storage units on Level 1 with regular height storage units, and insert regular height storage units on Level 2 in the location of the previous void.

The amended proposal retains the fundamental components of the approved layout and spatial characteristics of the development. The amended proposal also achieves an improved outcome in relation to the functionality of the development.

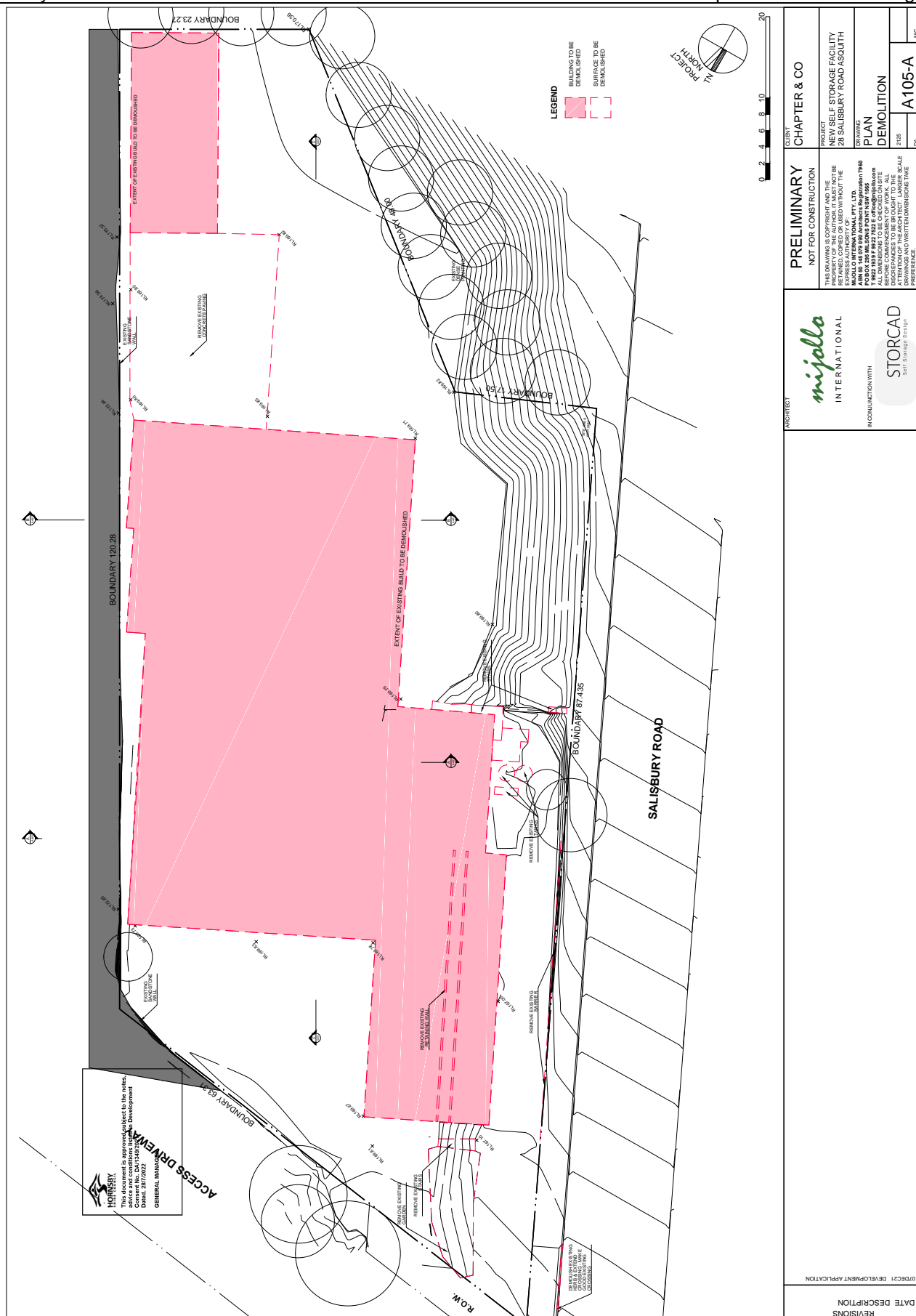
As detailed in this submission the proposed modifications may be made by the consent authority in accordance with Section 4.55(2) of the Environmental Planning and Assessment Act 1979 as the proposed amendments are substantially the same development as originally approved and will not result in any adverse impacts on the amenity of the locality.

The proposed amendments remain consistent with the aims and objectives of the relevant environmental planning instruments and development control plan and will not result in any adverse impacts on the amenity of the locality. Accordingly, the proposed amendments are considered acceptable as they represent a necessary modification to the development to improve the functionality of the approved development and therefore warrant approval.

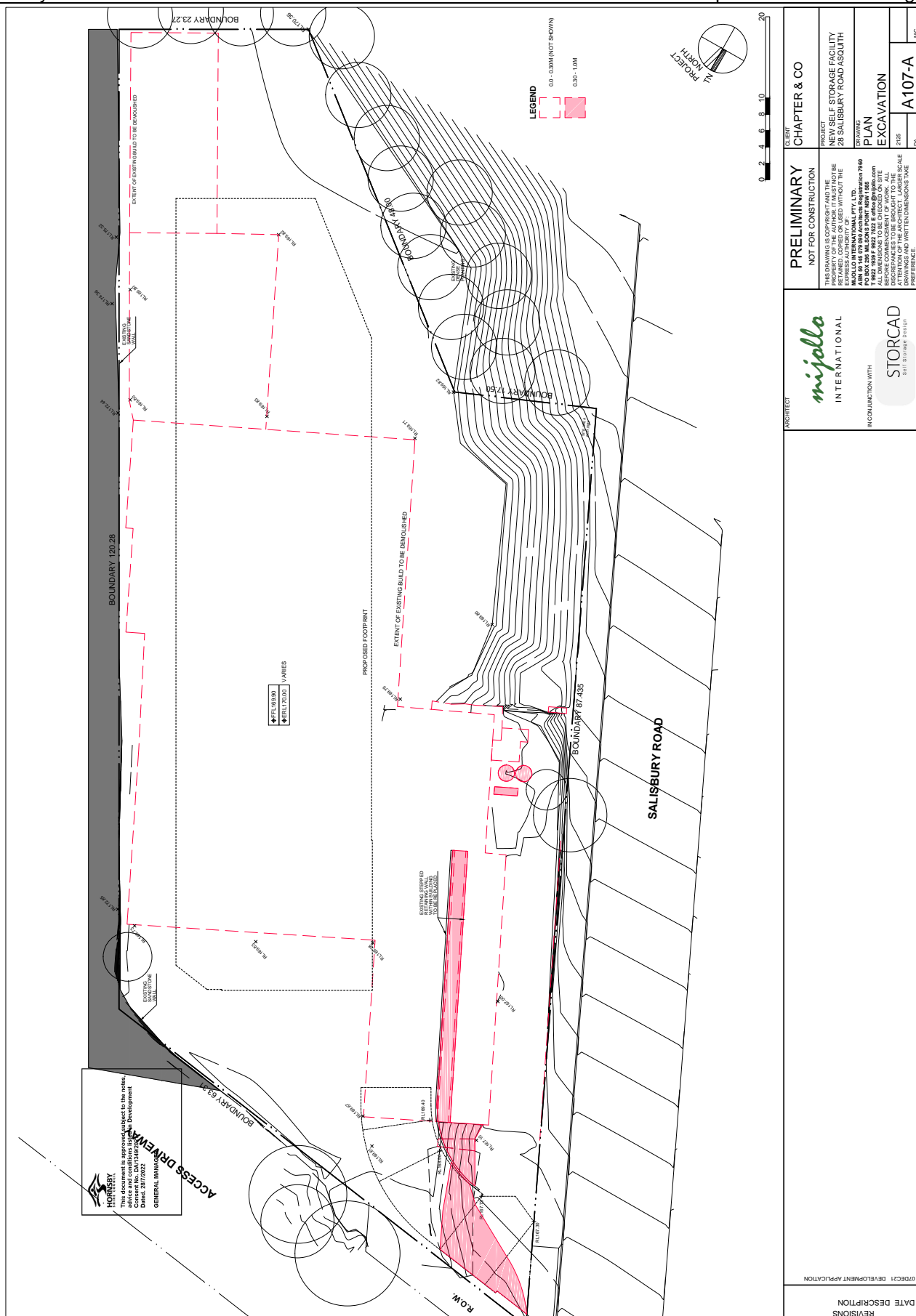
Section 4.55 Planning Statement - 28 Salisbury Road, Asquith



ATTACHMENT 3 - ITEM 3

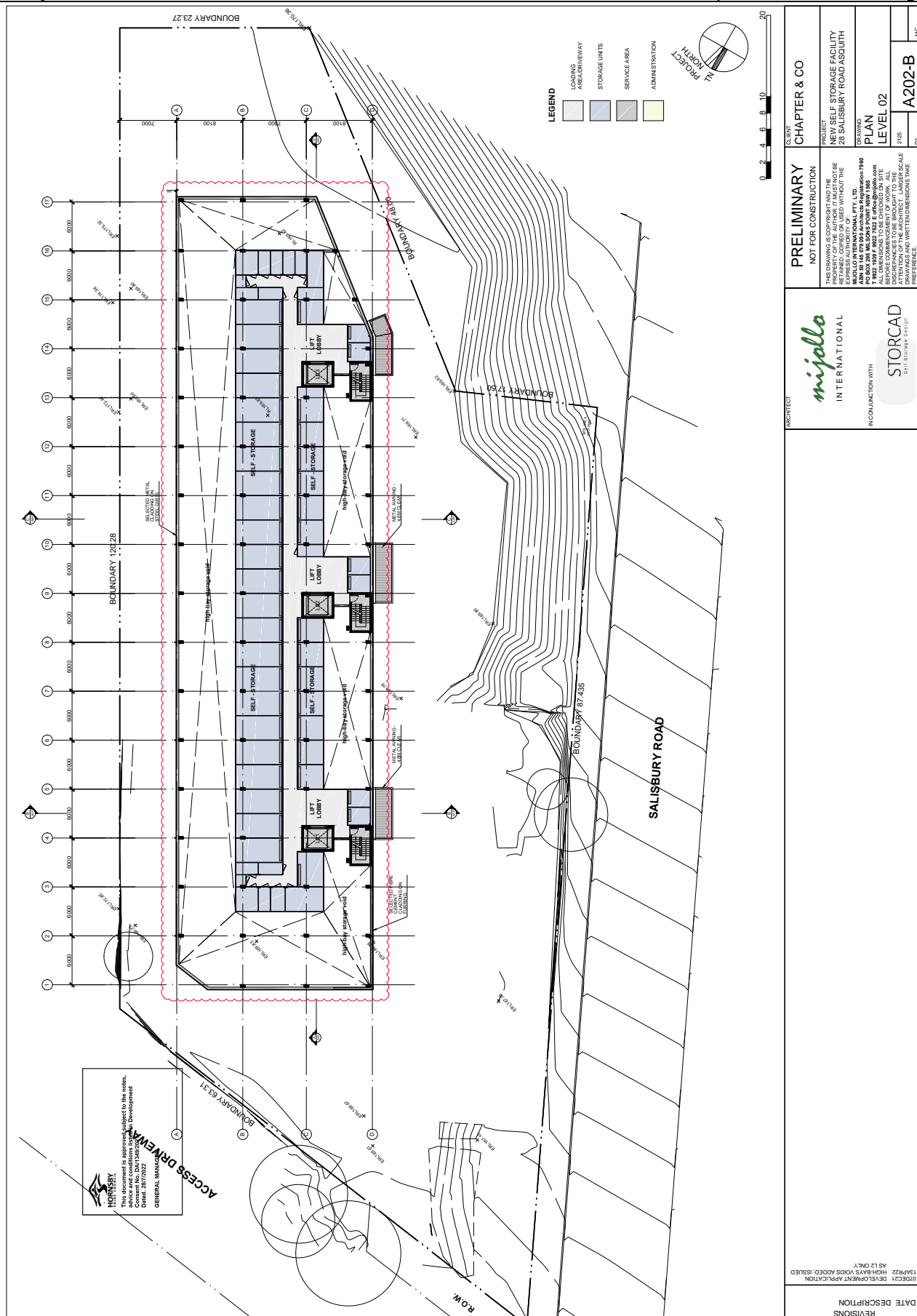


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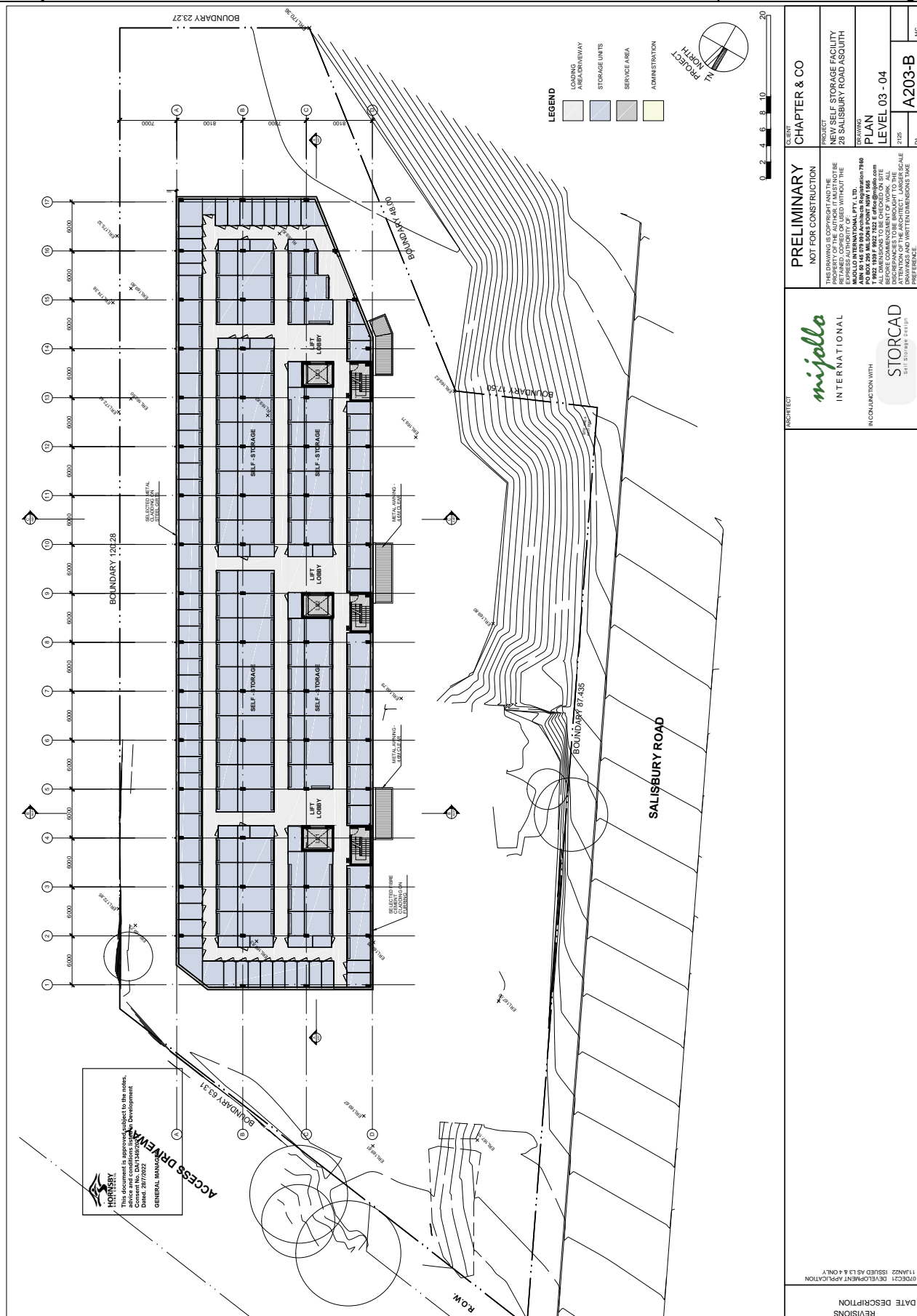


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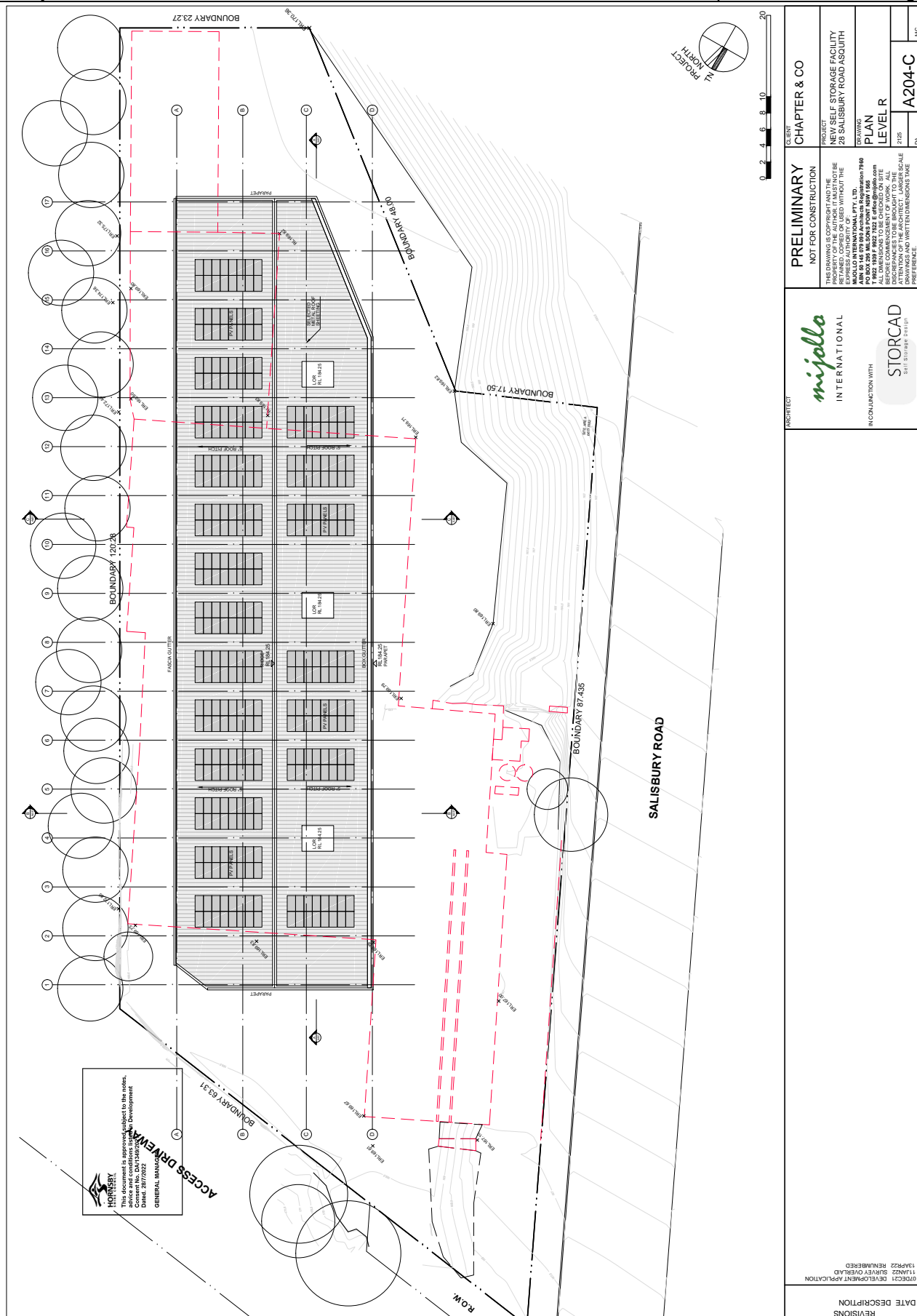




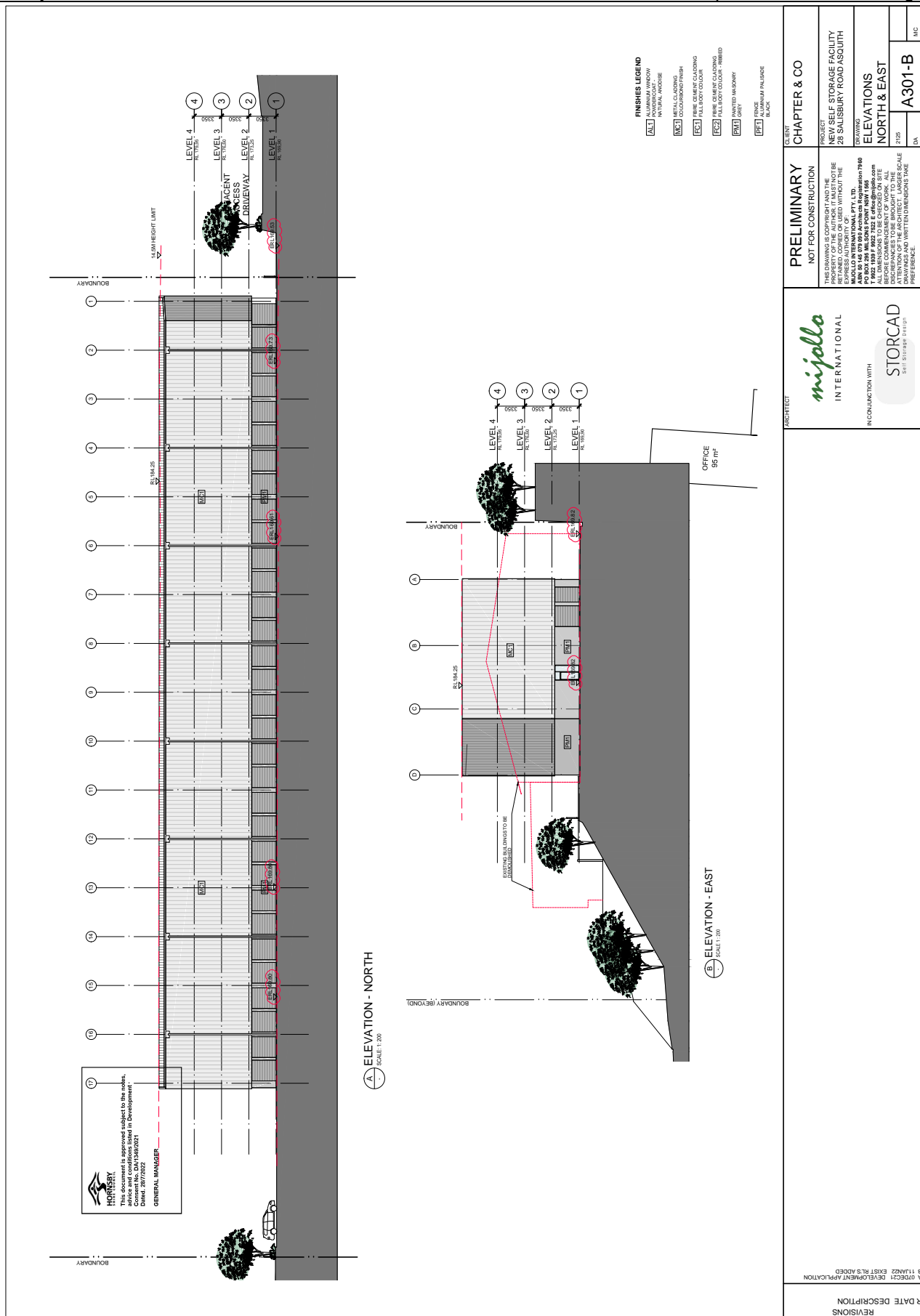
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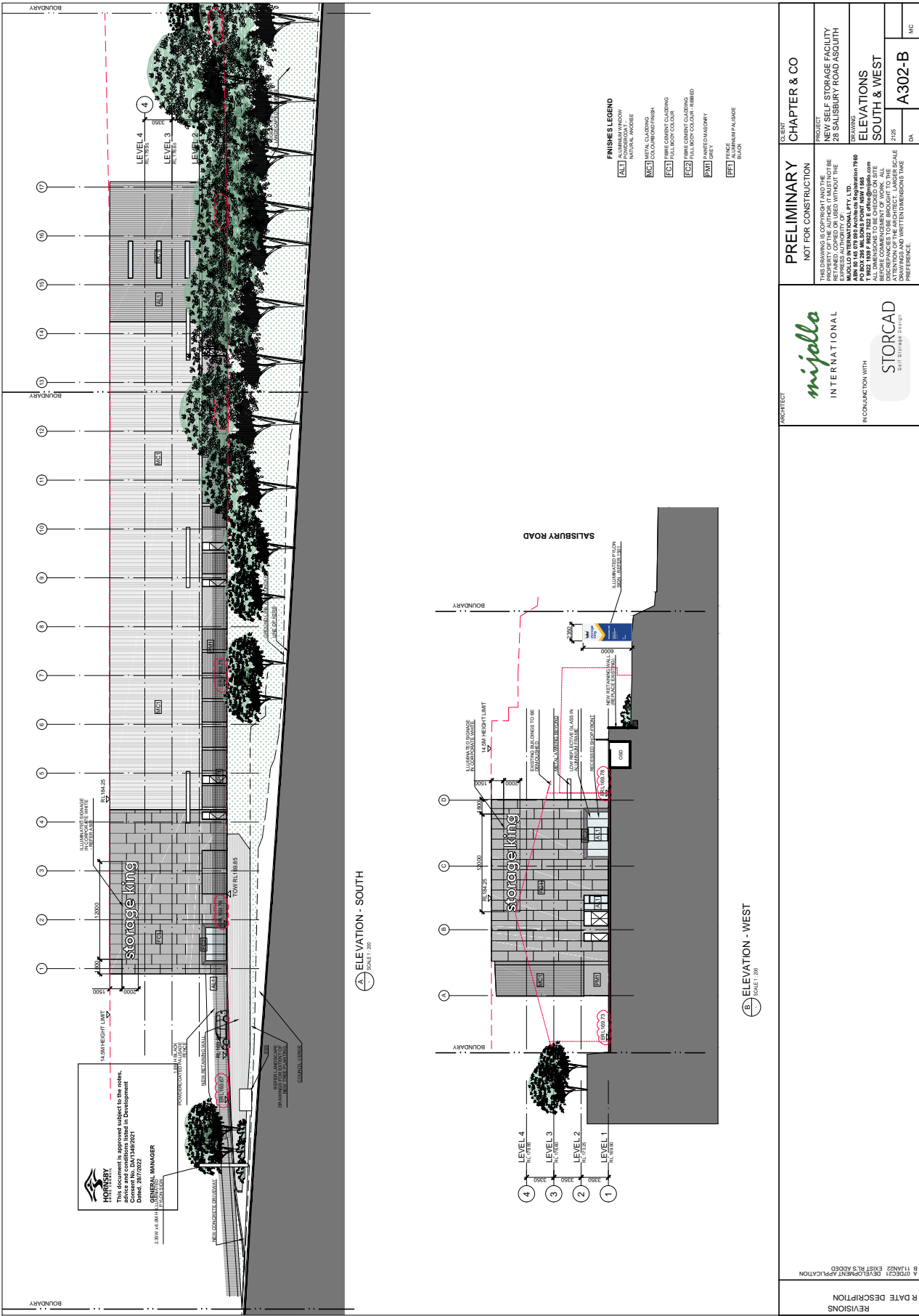


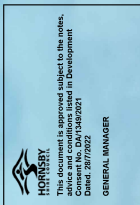
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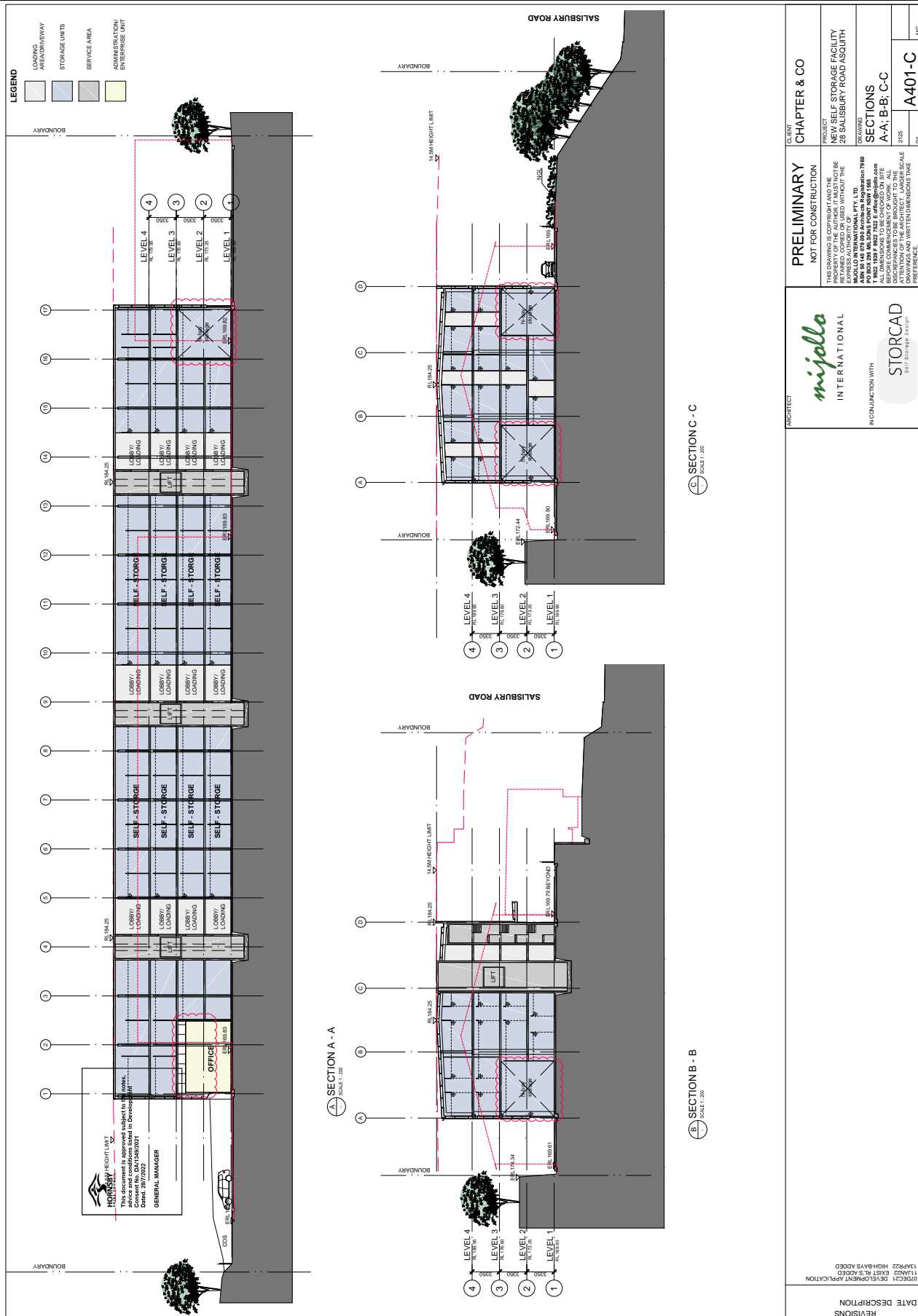
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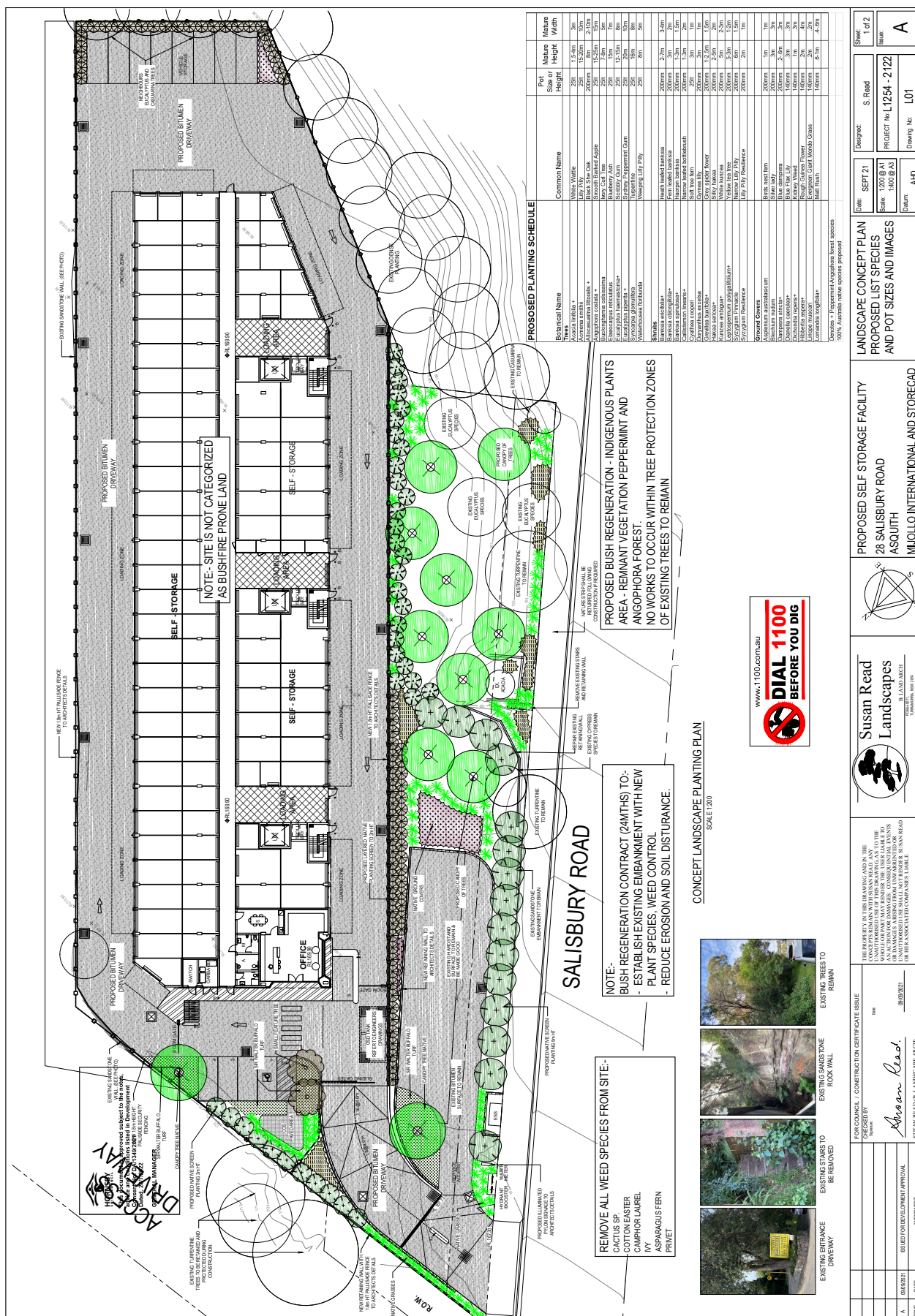
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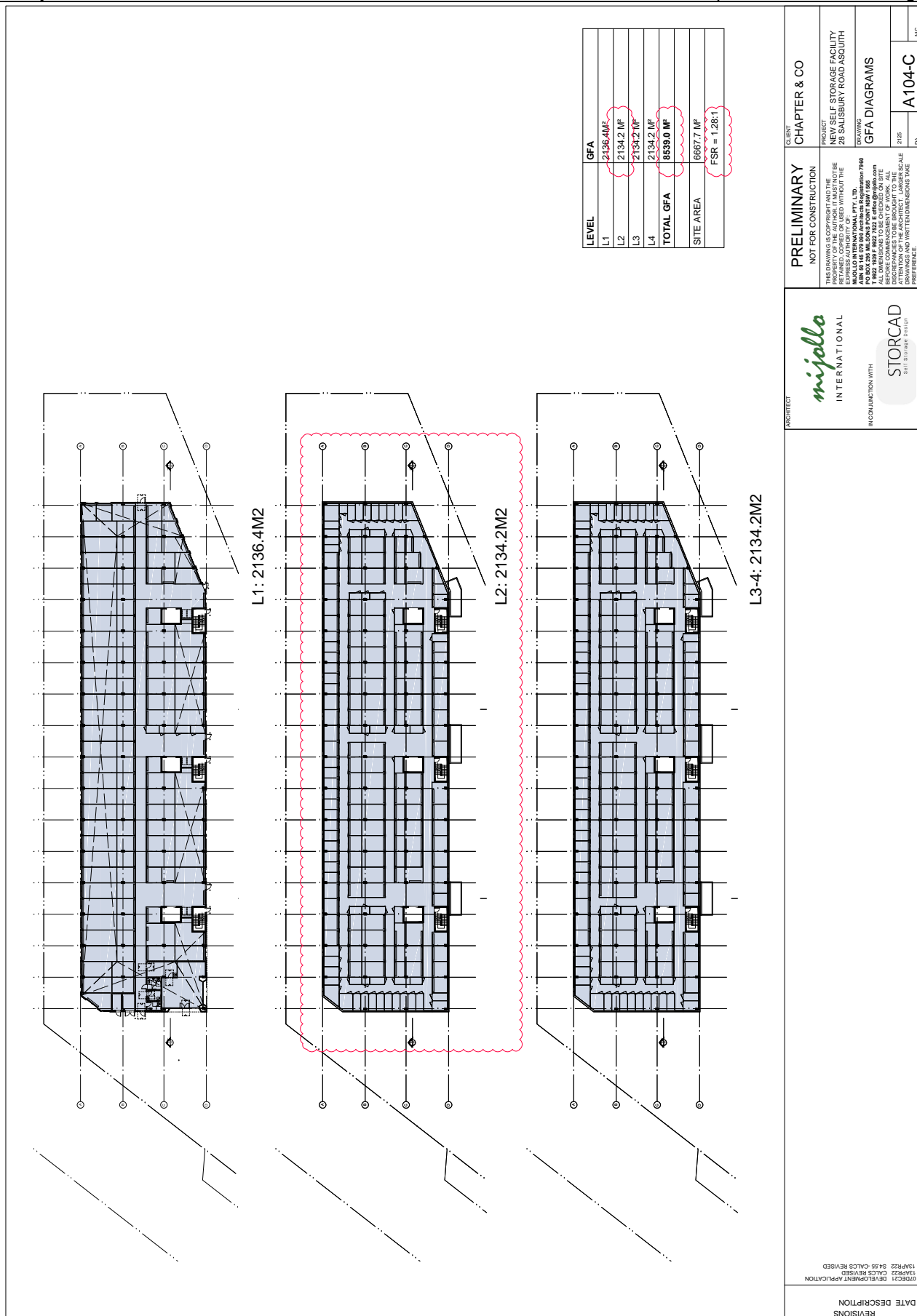


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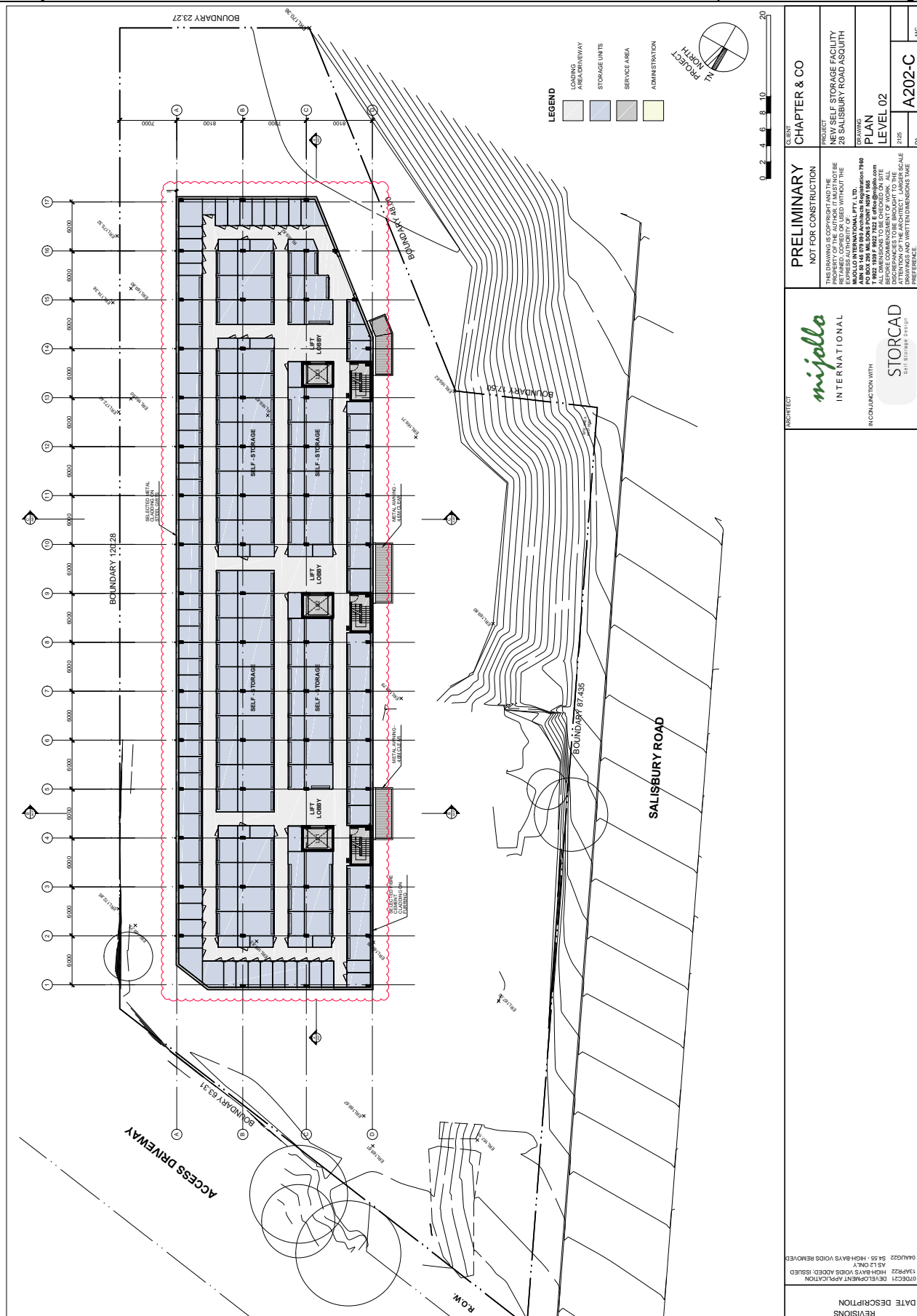


ATTACHMENT 3 - ITEM 3





ATTACHMENT 4 - ITEM 3



ATTACHMENT 5 - ITEM 3



ATTACHMENT 6 - ITEM 3

**4 REPORTING DEVELOPMENT APPLICATIONS FOR DETERMINATION BY THE HORNSBY
LOCAL PLANNING PANEL OVER 180 DAYS**

EXECUTIVE SUMMARY

- In accordance with the Local Planning Panels Directions - Operational Procedures, Council is required to monitor development applications to be determined by the Panel that may be experiencing unreasonable delays of over 180 days from lodgement.
- A list of out outstanding development applications in excess of 180 calendar days from lodgement is attached for the Hornsby Local Planning Panel's advice.

RECOMMENDATION

THAT the contents of LPP Report No. LPP67/22 be received and noted.

PURPOSE

The purpose of this report is to advise the Hornsby Local Planning Panel of development applications required to be determined by the Panel that are over 180 calendar days from lodgement.

DISCUSSION

In 2019 the NSW Productivity Commission conducted a review of the Independent Planning Commission (IPC). The review recommended several actions to streamline processes to optimise efficiency, output and performance.

The planning panel changes were implemented on 1 August 2020 to incorporate a number of the NSW Productivity Commission 's recommendations to the way Local Planning Panels work to make them more efficient and to improve the assessment and determination times of development applications and maintain panel oversight of sensitive and contentious applications.

These changes were made as part of the Planning Acceleration Program to support the State's immediate and long-term economic recovery from the COVID-19 crisis.

The changes will speed up panel determinations by:

1. Reducing the need to conduct public panel meetings for non-contentious matters by applying a '10-or-more' objection trigger for public meetings.
2. Reducing the amount of modifications going to panels.
3. Obliging panel chairs to more actively manage development applications (DAs) coming to the panels to reduce panel deferrals and assessment timeframes.
4. Allowing chairs to bring forward determination on DAs that are experiencing unreasonable delays of over 180 days from lodgement.
5. Introducing panel performance measures.

The Local Planning Panels Directions - Operational Procedures has been amended to:

- Require panels to make determinations within two weeks of being provided an assessment report.
- Require panels to hold a public meeting only where the Development Application has attracted 10 or more unique submissions by way of objection.
- Allow, at the Chair's discretion, applicants to attend a briefing, along with council staff, to explain complex matters or present confidential or commercially sensitive material.
- Oblige panel chairs to work with council to ensure key issues are addressed during assessment in order to minimise deferrals by the panels at determination stage.
- Require the panels to provide reasons for deferring a decision and set timeframes in which any additional information must be provided in order to finalise the determination.
- Give panel chairs the ability to require council to report a DA to the panel within four weeks for determination if the application has experienced unreasonable delays in excess of 180 calendar days from lodgement.

In accordance with Point 6 of the Local Planning Panels Directions - Operational Procedures, attached is a list of development applications required to be determined by the Panel that are over 180 calendar days from lodgement.

CONCLUSION

Council is required to monitor development applications to be determined by the Panel that are over 180 calendar days from lodgement. This report provides advice to the Local Planning Panel on DAs that are experiencing unreasonable delays of over 180 days from lodgement.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is the Major Development Manager, Cassandra Williams.

JAMES FARRINGTON

Director - Planning and Compliance

Planning and Compliance Division

Attachments:

1.  All DAs over 180
 days

File Reference: F2013/00295-003

Document Number: D08506855

List of development applications required to be determined by the LPP that are over 180 calendar days from lodgement

DA No.	Proposal	Address	Ward	Reason	Est. Date to LPP	Advice to Chair	No. Days at 26/10
DA/1146/2020	Torrens title subdivision of 1 into 10	90-92 Franklin Road Cherrybrook	C	VPA	Dec	The applicant submitted draft amended plans for Council's review in late September. Council's internal team and independent consultant reviewed the draft plans and provided further guidance to the applicant prior to formal submission. The applicant has indicated to Council that minor amendments would be made in response to Council's commentary and amended plans will be submitted for review by mid-October, exact date subject to consultant availability.	674
DA/1022/2021	Torrens title subdivision of 1 lot into 64	36-56 David Road Castle Hill	C	VPA	Feb	The submission of amended subdivision layout plans and supporting documentation has been delayed due to conflicts between stormwater and civil works requirements as well as Council's requirements for conservation of the forest allotments. The applicant is undertaking further work to ensure that the required services to support the subdivision do not frustrate the conservation objectives on the site.	391

ATTACHMENT 1 - ITEM 4

List of development applications required to be determined by the LPP that are over 180 calendar days from lodgement

DA No.	Proposal	Address	Ward	Reason	Est. Date to LPP	Advice to Chair	No. Days at 26/10
						Council staff have been in regular contact with the applicant and are satisfied that the application is progressing towards resubmission. Council notes that it is unlikely that the further information can be finalised and submitted to enable a report to be presented to the December meeting.	
DA/1244/2021	Demolition of existing structures and construction of seniors living development comprising 33 self-contained dwellings	15B-21 Penrhyn Ave, Beecroft and 579 Pennant Hills Road, West Pennant Hills	C	>10 submissions	Dec	Amended plans and additional information received and referred to internal branches. Under assessment.	343
DA/1368/2021	Childcare Centre	59 Edwards Road Wahroonga	B	>10 submissions	Nov	Under assessment.	311
DA/121/2022	Demolition and construction 5 storey RFB - 64 units	23-27 Balmoral Street Waitara	B	RFB - SEPP 65 Affected Dev	Nov	Under assessment.	261

ATTACHMENT 1 - ITEM 4