



DETERMINATION BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

**Monday 27 February 2023
at 3:00pm**



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MODIFICATION OF AN APPROVED SELF STORAGE FACILITY TO INCREASE FSR - 28
SALISBURY ROAD, ASQUITH**

EXECUTIVE SUMMARY

DA No: DA/1349/2021/A (Lodged on 25 August 2022) (Section 8.2(1)(b) Lodged on 25 November 2022)

Description: Section 8.2(1)(b) review of the 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 (RS) Pty Ltd and Chapter & Co Pty Ltd

Estimated Value: \$9,339,328

Ward: Ward B

- The modification application was refused by the Hornsby Local Planning Panel on 26 October 2022.
- The proposed modification 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% and the panel determined the modification application.
- It is recommended that the application be approved.

RECOMMENDATION

THAT the Hornsby Local Planning Panel approve the section 8.2 review of the section 4.55(2) modification of Development Application No. DA/893/2021 for internal modifications to the approved self-storage unit facility at Lot 101 DP 771987, No. 28 Salisbury Road Asquith subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP3/23.

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.

On 26 October 2022, the Hornsby Local Planning Panel refused the Section 4.55(2) application for the following reasons:

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.

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 which extends south across the majority of the site. A smaller three storey office and warehouse component is 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 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 land.

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 20 metres to and zoned low density residential to the north and 35 metres 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 and 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 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 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.

SECTION 8.2 REVIEW PROPOSAL

The Section 8.2 review 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.

Part 5 of the Metropolis of Three Cities relates to "Productivity" and a key objective is to ensure industrial and urban services land is planned, retained and managed. It defines a light industry as a "wide range of business that service other business and populations. Include warehousing, freight and logistics, construction and building supplies, and domestic storage". The strategy notes that light industry should be located on mixed lot sizes depending on the sizes and needs of the business as well as being located close to surrounding residential and commercial community they directly serve.

The internal modifications to an approved self-storage unit facility including an increase in the floor space ratio is consistent with A Metropolis of Three Cities and the North District Plan, by enabling further development of land that would serve a wide range of uses to support a growing population.

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 8.2

Section 8.2 of the *Environmental Planning and Assessment Act 1979* (the Act) permits an applicant to request a review of a determination by a Council or Local Planning Panel within 6 months of the

original determination date. Section 8.4 of the Act allows the consent authority to change the original determination.

In addressing the reasons for refusal outlined in the background section of this report, the applicant has submitted an Amended Acoustic Assessment prepared by Sutherland & Associates Planning dated November 2022 (D08541855) and Section 8.2 Review Planning Statement prepared by Sutherland & Associates Planning dated November 2022 (D08541372).

The Section 8.2 application was lodged within 6 months of the original determination date.

An assessment of the environmental planning grounds has been carried out in Section 2.3.4.3 of this report.

2.2 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 substantially the same as the development originally approved.

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.

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

The proposed amendments would not change the description of the approved development, which remains for the demolition of the existing buildings and construction of a four storey self-storage facility.

The proposed increase in the FSR would not result in any external alterations to the approved building, with the bulk and scale, parking provisions, vehicle access and egress and internal circulation of the development remaining substantially the same as the development originally approved.

There was no aspect of the approved development, which was important, material, or essential to the development when it was approved which is proposed to be removed or substantially altered. Accordingly, the proposed amendments to the approved development do not affect an aspect of the development that was considered an essential or critically important component of the overall development as originally approved.

In relation to noise impacts, this application for a Section 8.2 Review is supported by an Amended Acoustic Assessment prepared by Spectrum Acoustics which confirms that the proposed alterations are acoustically indistinguishable from the original proposal, apart from the likelihood of an additional 3 – 6 vehicles per hour during morning and afternoon peaks. A worst-case daytime assessment of vehicle movements associated with the modification is an increase from 5 vehicles in a 15-minute period (daytime peak) to 6 vehicles in a 15-minute period (daytime peak), and the amended proposal would still comply with minimum noise emission criteria. A worst-case night time assessment of vehicle movements associated with the modification is an increase from 3 vehicles in a 15-minute period (daytime peak) to 4 vehicles in a 15-minute period (daytime peak) and the amended proposal would still comply with minimum noise emission criteria.

The proposed increase in density as part of the modification application would not result in any adverse traffic impacts. The proposed increase in FSR would create an additional 3-6 vehicles per hour during the morning peak period and 4-6 vehicles per hour during the evening peak period compared with a strictly compliant FSR. This is a particularly small traffic generation and would not result in any perceptible impact to the local road network.

In conclusion, the proposed Section 4.55(2) modification application to the approved Development Consent DA/1349/2021 has demonstrated to satisfy the “substantially the same development test” pursuant to Section 4.55(2)(a).

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.*

The proposal seeks to increase the contravention of the FSR development standard. As addressed in Sections 2.2 and 2.7 of this report, the proposal has been supported by sufficient information to determine that the proposed increase in GFA would not create unreasonable environmental impacts to adjoining development with regard to visual bulk, acoustics, parking, traffic, vegetation preservation, overshadowing, solar access, amenity or privacy.

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 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*.

2.3 Hornsby Local Environmental Plan 2013

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

2.3.1 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. 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.

2.3.2 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.

2.3.3 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.

2.3.4 Exceptions to Development Standards

2.3.4.1 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 written request 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.

2.3.4.2 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 8.2 Review 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 to the approved development provides for additional self-storage units within the established environmental capacity of the site, without any external visual change or impact to the approved development, and without any meaningful adverse traffic or noise impact*

With reference to the reasoning provided by the applicant, Council agrees with 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 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.
- 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. The amended Acoustic Report demonstrates that the proposed modification would be acoustically indistinguishable from the original approved development except for the likelihood of an additional 3-6 vehicles per hour during morning and afternoon peaks.
- It has been demonstrated that the amended proposal retains an identical bulk and scale as the approved development, which is as anticipated by the planning controls and the increased density does not result in any adverse impact or implication for infrastructure capacity.
- Council acknowledges that there may not be market demand for double height self-storage units.

For the reasons outlined above, it is considered that the application has adequately demonstrated that the objectives of the FSR development standard contained within Clause 4.4 of the HLEP are achieved.

2.3.4.3 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 8.2 Planning Statement states:

- *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.*

Council considers that the applicant has 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 Section 8.2 Review application has been supported by sufficient information to determine that the proposed increase in GFA would 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 proposal is acceptable in this regard.

2.3.4.4 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 considered to 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, as discussed in Section 2.2.4.3.

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%.

2.3.5 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.

2.3.6 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 Section 8.2 review 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.

2.4 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.

2.4.1 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 8.2 review 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.

2.4.2 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.

2.5 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.

2.5.1 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.

2.6 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.

2.6.1 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.

2.7 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 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.

2.8.1 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.

2.8.2 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.

2.8.3 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 determined that additional vehicular movements and pedestrian movements are anticipated as a result.

This application for a Section 8.2 Review is supported by an Amended Acoustic Assessment prepared by Spectrum Acoustics which confirms that the proposed alterations are acoustically indistinguishable from the original proposal, apart from the likelihood of an additional 3 – 6 vehicles per hour during morning and afternoon peaks. A worst-case daytime assessment of vehicle movements associated with the modification is an increase from 5 vehicles in a 15-minute period (daytime peak) to 6 vehicles in a 15-minute period (daytime peak), and the amended proposal would still comply with minimum noise emission criteria. A worst-case night time assessment of vehicle movements associated with the modification is an increase from 3 vehicles in a 15-minute period (daytime peak) to 4 vehicles in a 15-minute period (daytime peak) and the amended proposal would still comply with minimum noise emission criteria.

The proposal has now adequately addressed the 'Noise and Vibration' prescriptive measures within Parts 1C.2.5 (e) and (f) of the Hornsby Development Control Plan 2013.

2.8.4 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 demonstrates that compliance with the FSR development standard is reasonable and necessary in this instance.

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. 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 suitable for the locality having regard to acoustics, vehicle and pedestrian movements and residential amenity. The intensity of the proposed development is consistent with the capability of the site and is considered acceptable.

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 29 November 2022 and 16 December 2022 in accordance with the Hornsby Community Engagement Plan. During this period, Council received nil 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

<ul style="list-style-type: none">• PROPERTIES NOTIFIED	<p>X SUBMISSIONS RECEIVED</p>		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 positive impact for the community. Accordingly, it is considered that the approval of the proposed development would be in the public interest.

CONCLUSION

The Section 8.2 review application proposes internal modifications to the approved self-storage facility.

The development 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*.

Having regard to the circumstances of the case, approval of the section 8.2 review is recommended.

The reasons for this decision are:

- The request under Clause 4.6 of Hornsby Local Environmental Plan 2013 to contravene the Clause 4.4 Floor Space Ratio development standard is well founded. Strict compliance with the development standard is considered unreasonable and unnecessary in the circumstances of the case and sufficient environmental planning grounds have been submitted to justify the contravention to the development standard.
- 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.

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 George Papworth.

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

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1. S4.55 Architectural Plans
2. Section 8.2 Review Planning Statement
3. Section 4.55 Planning Statement
4. S4.55 Acoustic Assessment
5. Approved Plans

File Reference: DA/1349/2021/A/PUBLICACCESS
Document Number: D08576238

SCHEDULE 1

Date of this modification:

Details of this modification: Section 8.2(1)(b) review of the Section 4.55(2) application for internal modifications to an approved self-storage unit facility including an increase in the floor space ratio

Conditions Added: Nil

Conditions Deleted: Nil

Conditions Modified: 1

ITEM 2

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.

1. 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
A101-A, Rev A	Site Plan	Mijollo International	7.12.21	D08458502
A105-A, Rev A	Demolition Plan	Mijollo International	7.12.21	D08458502
A107-A, Rev A	Excavation Plan	Mijollo International	7.12.21	D08458502
A201-C, Rev C	Level 01 Plan	Mijollo International	13.4.22	D08458502
A202-B, Rev B	Level 02 Plan	Mijollo International	13.4.22	D08458502
A202-C Rec C	Level 02 Plan	Mijollo International	4.8.22	
A203-B, Rev B	Levels 03 – 04	Mijollo International	11.1.22	D08458502
A204-C, Rev C	Roof Plan	Mijollo International	13.4.22	D08458502

Plan No.	Plan Title	Drawn by	Dated	Council Reference
A301-B, Rev B	North & East Elevations	Mijollo International	11.1.22	D08458502
A302-B, Rev B	South & West Elevations	Mijollo International	11.1.22	D08458502
A310-A, Rev A	Materials & Finishes	Mijollo International	7.9.21	D08458502
A401-C, Rev C	Sections	Mijollo International	13.4.22	D08458502
A401-D, Rev D	Sections	Mijollo International	4.8.22	
A501-A, Rev A	Signage Plan	Mijollo International	7.12.21	D08458502
L01, Issue A	Landscape Plan	Susan Read Landscapes	9.9.21	D08458502

Supporting Documents

Document Title	Prepared by	Dated	Council Reference
Waste Management Plan	Mijollo International	25.1.22	D08361141
Arboricultural Impact Assessment	Urban Arbor	2.12.21	D08319923
Amended Acoustic Assessment	Spectrum Acoustics	Nov 2022	D08541855
Construction Traffic Management Plan	Traffix Traffic & Transport Planners	8.12.21	D08319907
Geotechnical Investigation	Ade Consulting Group	20.1.2017	D08319904

2. Amendment of Plans

- a) To comply with Council's requirement in terms of landscaping, the approved Site Plan dated 7.12.21 (Reference A101-A Rev A) and Plan Level 01 dated 13.04.22 (Reference No. A201-C, Rev C) prepared Mijollo International and Landscape Plan dated 9.9.21 (Reference No. L01, Issue A) prepared by Mijollo International are to be amended as follows:
- i) The demolition of the existing concrete pad and any existing structures within the front setback.
 - ii) The existing hardstand area to the northern side of the Salisbury Road frontage is to be replaced with landscaping comprising grass, shrubs and a minimum of 4 native trees as follows:
 - a. The species of plantings are to be generally consistent with the Planting Schedule as shown on the Landscape Plan, such as Lilly Lilly trees, Banksia shrubs and Silver Lady groundcovers.
 - b. The density of plantings is to be consistent with the proposed plantings to the northern side of the frontage.
 - c. All trees must be located in the front setback and planted 4 metres or greater from the foundation walls of the approved development.

- d. All trees must have the potential to reach a mature height greater than 10 metres.
- e. The pot size of trees must be a minimum 45 litres.
- b) These amended plans must be submitted with the application for the Construction Certificate.

3. Removal of Existing Trees

This development consent permits the removal of five trees numbered 1, 2, 3, 4 and 22 as identified on pages 9-19 in the Arboricultural Impact Assessment prepared by Urban Arbor dated 2/12/2021.

4. 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) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any subdivision works under this consent.
- c) A separate Construction Certificate must be obtained from Council for all works within the public road reserve under S138 of the *Roads Act*.
- d) A separate Construction Certificate must be obtained from Council for all works within drainage easements vested in Council.
- e) The Construction Certificate plans must be consistent with the Development Consent plans.

5. 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*, **\$93,393.25** must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of **\$9,339,328**.
- b) The value of this contribution is current as of 7 July 2022. 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:

$$\text{\$C}_{PY} = \frac{\text{\$C}_{DC} \times \text{CPI}_{PY}}{\text{CPI}_{DC}}$$

Where:

- \\$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: In accordance with Ministerial Directions, the payment of contribution fees for development with a cost of works of over \$10 million can be deferred to prior to Occupation Certificate.

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

6. Appointment of a Project Arborist

To ensure the trees that must be retained are protected, a project arborist with AQF Level 5 qualifications must be appointed to assist in ensuring compliance with the conditions of consent and provide monitoring reports as specified by the conditions of consent.

- a) Details of the appointed project arborist must be submitted to Council and the PCA with the application for the construction certificate.

7. Building Code of Australia

Detailed plans, specifications and supporting information is required to be submitted to the certifying authority detailing how the proposed building work achieves compliance with the

National Construction Code - Building Code of Australia. All building work must be carried out in accordance with the requirements of the National Construction Code - Building Code of Australia.

8. 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.

9. 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.

10. Stormwater Drainage

- a) 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:

- b) Connected directly to the Council's street drainage system in Salisbury Road.
- 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;
- ii) Prior to the issue of an Occupation Certificate a Compliance Certificate must be obtained from Council for the connection to Council's drainage system.
- c) The existing kerb inlet pit is to be replaced with a Butterfly Pit generally in accordance with the plans prepared by Henry and Hymas Consulting Engineers.
- d) A new kerb inlet pit with a 1.8m inlet is to be constructed downstream of the proposed access to the development site.
- e) A separate Construction Certificate must be obtained from Council for all works within the public road reserve under S138 of the *Roads Act*.

11. On Site Stormwater Detention/WSUD

- a) An on-site stormwater detention system must be designed by a chartered civil engineer and constructed in accordance with the following requirements:
- b) Have a capacity of not less than 32.5 cubic metres, and a maximum discharge (when full) of 213 litres per second.
- c) The on-site detention system is incorporate a water saving treatment generally in accordance with the stormwater plans prepared by Henry and Hymas.
- d) Have a surcharge/inspection grate located directly above the outlet.

- e) 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.

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 be obtained from Council.
- b) The driveway be a rigid pavement.
- c) The driveway grade must not exceed 15.4 percent and changes in grade must not exceed 6.25 percent in 7m of travel.
- d) 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.
- e) 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. Waste Management Details

The following waste management requirements must be complied with:

- a) There must be no steps along any bin carting route. Ramps and service lifts are acceptable.
- b) A design certificate and detailed plans are to accompany any Construction Certificate application, which demonstrate that all waste storage room(s) have been designed to be constructed in accordance with the Waste Minimisation and Management Guidelines and including the following requirements:
 - i) The floor is to be constructed of concrete at least 75mm thick and adequately graded to drain to a Sydney Water approved drainage fitting.
 - ii) The floor must be finished so that it is non-slip, sealed and impervious, and has a smooth and even surface coved at all intersections.
 - iii) The ceilings and walls must be finished with smooth faced non-absorbent material capable of being cleaned.
 - iv) The room is to be provided with artificial light controllable within the room and adequate ventilation.
 - v) The room is to be provided with an adequate supply of hot and cold water mixed through a centralised mixing valve with hose cock.
 - vi) The doors are to be robust and lockable, with a door opening of no less than 2m. The doors must be able to be opened from inside the room without a key.
 - vii) The bin storage room must have sufficient space to comfortably house the required number of bins (3 of 240 L garbage bins and 2 of 240 L recycling

bins) and aisle space to access and manoeuvre these bins with every bin being accessible (no stacking of bins 2 or more deep) by persons with a disability (in accordance with AS1428).

14. 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 via Council's Online Services Portal for review and written 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 – *‘The 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.
- c) 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.
- d) 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.
- e) Identification of approved sediment and erosion control measures.
- f) The CMP must detail the contact information for developers, builder, private certifier and any emergency details during and outside work hours.

Note: The CMP must be lodged via Council's Online Services Portal at: <https://hornsbyprd-pwy-epw.cloud.infor.com/ePathway/Production/Web/Default.aspx> and by selecting the following menu options: Applications > New Applications > Under 'Application Types': Management Plans.

15. Mechanical Equipment

A mechanical plant noise assessment for all proposed mechanical equipment must be undertaken by a suitably qualified Acoustic Consultant and a report be submitted to the PCA prior to the issue of the construction certificate. The report must certify that the operation of all proposed mechanical plant will not exceed the project noise trigger levels as detailed in the Acoustic Assessment, prepared by Spectrum Acoustics, dated February 2022 reference 212174-9425 (TRIM: D08361155), at any boundary upon installation.

16. Certification of Traffic Engineer

Prior to the issue of a Construction Certificate, a Certificate from an appropriate qualified Traffic Engineer is to be submitted to the Principal Certifying Authority (PCA) certifying that the parking modules and loading areas comply with AS 2890.1 Off-street car parking 2004 and AS 2890.2 Off-street commercial vehicle facilities 2002.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

17. 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.

18. 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.

19. 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*.

20. 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.

21. Garbage Receptacle

- a) A garbage receptacle must be provided at the work site before works begin and must be maintained until all works are completed.
- b) The garbage receptacle must have a tight fitting lid and be suitable for the reception of food scraps and papers.
- c) The receptacle lid must be kept closed at all times, other than when garbage is being deposited.
- d) Food scraps must be placed in the garbage receptacle and not in demolition and construction waste bins.

22. Installation of Tree Protection Measures

- a) Trees to be retained and numbered 5-21, 23-98 and G3 as identified on the Tree Protection Plan located on page 37 of the Arboricultural Impact Assessment prepared by Urban Arbor dated 2/12/2021 (TRIM: D08319923) must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:
 - i) For the duration of demolition works, in accordance with the Tree Protection Plan for prepared by Urban Arbor dated 2/12/2021.
 - ii) For the duration of construction works, in accordance with Tree Protection Plan prepared by Urban Arbor dated 2/12/2021.
- b) Tree protection fencing for the trees to be retained numbered 5-21, 23-98 and G3 must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with *Australian Standard AS4687-2007 Temporary fencing and hoardings*.
- c) The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates and liquids from entering the tree protection zone.
- d) Tree crown protection measures are required and must be installed by the AQF 5 project arborist.
- e) The circumference of the trunk(s) must be wrapped in hessian material to provide cushioning for the installation of timber planks.
- f) Timber planks (50 x100mm) must be spaced at 100mm intervals and must be attached using adjustable ratchet straps.
- g) All tree protection zones must have a layer of wood-chip mulch at a depth of between 150mm and 300mm.
- h) Where wood-chip mulch is permitted by Council instead of tree protection fencing within the tree protection zones, the wood-chip must be covered with a layer of geotextile fabric and rumble boards.

REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION
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23. Construction Work Hours

All work on site (including demolition and earth works) must only occur between 7am and 5pm Monday to Saturday (unless otherwise approved in writing by Council due to extenuating circumstances). No work is to be undertaken on Sundays or public holidays.

24. Demolition

To protect the surrounding environment, all demolition work must be carried out in accordance with Australian Standard AS2601-2001 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; and
- 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*; and
- c) On construction sites where any building contain 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.

25. 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*.

26. 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.

Note: This consent does not give right of access to the site via Council's park or reserve. Should such access be required, separate written approval is to be obtained from Council.

27. 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.

28. 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.

29. Waste Management

All work must be carried out in accordance with the approved waste management plan.

30. Prohibited actions within the fenced tree protection zone

The following activities are prohibited within the approved fenced tree protection zones unless otherwise approved by Council:

- a) Soil cutting or filling, including excavation and trenching
- b) Soil cultivation, disturbance or compaction
- c) Stockpiling storage or mixing of materials
- d) The parking, storing, washing and repairing of tools, equipment and machinery
- e) The disposal of liquids and refuelling
- f) The disposal of building materials
- g) The siting of offices or sheds
- h) Any action leading to the impact on tree health or structure

31. 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 approved plans.

32. Maintaining Tree Protection Measures

Tree Protection Measures must be maintained by the project arborist in accordance with the conditions of this consent for the duration of works.

33. Approved Works within Tree Protection Zone incursions

- a) Where tree root pruning is required for the installation of piers, driveway or underground services, the pruning must be overseen by the AQF 5 project arborist and must be undertaken as follows:
 - i) Using sharp secateurs, pruners, handsaws or chainsaws with the final cut being clean.
 - ii) The maximum diameter of roots permitted to be cut is 30mm.
- b) To minimise impacts within the Tree Protection Zone (TPZ) of trees numbered 5-21, on the approved plans, the installation of services must be undertaken as follows:
 - i) The AQF 5 project arborist must be present to oversee the installation of any underground services which enter or transect the tree protection.
 - ii) The installation of any underground services which either enter or transect the designated TPZ must be undertaken manually.

- iii) For manually excavated trenches the AQF 5 project arborist must designate roots to be retained. Manual excavation may include the use of pneumatic and hydraulic tools.

34. Building materials and Site Waste

The stockpiling of building materials, the parking of vehicles or plant, the disposal of cement slurry, waste water or other contaminants must be located outside the tree protection zones as prescribed in the conditions of this consent of any tree to be retained.

35. Construction Vehicles

- a) All construction vehicles associated with the proposed development are to be contained on site or in a Local Traffic Committee (LTC) approved "Works Zone".
- b) 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.
- c) The Works Zone signs shall be in effect only for the times approved by Council, and the time is to be noted on the sign. E.g., 'Works Zone Mon – Sat 7am – 5pm'.
- d) 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.
- e) 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.

36. Street Sweeping

During works and until exposed ground surfaces across the site have been stabilised, street sweeping must be undertaken following sediment tracking from the site.

The street cleaning service must utilise a 'scrub and dry' method and be undertaken for the full extent of any sediment tracking.

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. Maintenance of Public Footpaths

Public footpaths must be maintained for the duration of works to ensure they are free of trip hazards, displacements, breaks or debris to enable pedestrians to travel along the footpath safely.

40. Compliance with Construction Management Plan

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

41. 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.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

42. 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.

43. Retaining Walls

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

44. Fire Safety Statement – Final

In accordance with the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, upon completion of the building, the owner must provide Council with a certificate in relation to each fire safety measure implemented in the building.

45. Replacement Tree Requirements

- a) The existing hardstand area to the northern side of the Salisbury Road frontage is to be replaced with landscaping comprising grass, shrubs and a minimum of 4 native canopy trees.
- b) All required landscaping works are to be completed in accordance with the approved landscape plans.
- c) All replacement plantings must be species selected from the '*Trees Indigenous to Hornsby Shire (as of 1 September 2011)*' document available for viewing on the Hornsby Council's website <http://www.hornsby.nsw.gov.au/environment/flora-and-fauna/tree-management/indigenous-trees>
- d) The location and size of tree replacement planting must comply with the following:
 - i) All replacement trees must be located in either the front or rear setbacks and planted 4 metres or greater from the foundation walls of the approved development.

- 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 the time of planting.
- iv) All replacement trees must have the potential to reach a mature height greater than 10 metres.

46. Landscaping Certification

A certificate must be submitted to the PCA by a practicing landscape architect, horticulturalist or person with similar qualifications and experience certifying that all required landscaping works have been satisfactorily completed in accordance with the approved landscape plans.

47. Final Tree Certification

- a) The AQF 5 Project arborist must submit to the Principal Certifying Authority a certificate that includes the following:
- b) All tree protection requirements complied with the as approved tree protection plan for the duration of demolition and/or construction works.
- c) All completed works relating to tree protection and maintenance have been carried out in compliance with the conditions of consent and approved plans.
- d) Dates, times and reasons for all site attendance.
- e) All works undertaken to maintain the health of retained trees.
- f) Details of tree protection zone maintenance for the duration of works.
- g) A statement to confirm that tree replacement planting meets NATSPEC guidelines and the approved landscape plan.

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

48. Sydney Water – s73 Certificate

A s73 Certificate must be obtained from Sydney Water and submitted to the PCA.

Note: Sydney Water requires that s73 applications are to be made through an authorised Sydney Water Servicing Coordinator. Refer to www.sydneywater.com.au or telephone 13 20 92 for assistance.

49. Water Saving Urban Design

A Water Saving Urban Design (WSUD) is to be constructed generally in accordance with the engineering report and plans prepared Henry and Hymas Consulting Engineers. The Water Quality Targets as detailed within the report and Hornsby Development Control Plan 2013 are to be achieved in the design and supported by a MUSIC model.

50. Creation of Easements

The following easements are to be created on the title of 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, water saving facility 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.

51. 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.

52. 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) and 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.
- d) Approval must be obtained from all relevant utility providers that all necessary conduits be provided and protected under the crossing.

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.

53. 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.

54. 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.

55. Asbestos Clearance Certificate

Should any asbestos be encountered during demolition or construction works, a licenced asbestos assessor is required to provide a Clearance Certificate to the Certifier prior to the issue of an Occupation Certificate, certifying that the asbestos has been removed and appropriately disposed of, and the site is now suitable for its approved use.

56. Submission of Excavated Material Tipping Dockets to Principal Certifying Authority

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.

57. External Lighting

- a) To protect the amenity of adjacent premises, all lighting on the site must be controlled as to not cause a nuisance to other residences in the area. Flashing, moving or intermittent lights or signs are prohibited.
- b) All external lighting must be designed and installed in accordance with Australian Standard AS 4282 – Control of the Obtrusive Effects of Outdoor Lighting.
- c) Lighting outside approved hours of operation must be sensor security lighting only and angled internally at a low level.
- d) 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.

58. CCTV and PIN Code Access

A CCTV system and PIN code access (with data logging) is to be installed throughout the building. Certification of compliance with this condition must be obtained from a suitably qualified person and submitted to the PCA with the application for the Occupation Certificate.

59. Geotechnical Investigation

In accordance with the recommendations of the submitted Geotechnical Investigation prepared by Ade Consulting Group dated 20 January 2017, the following geotechnical measures are to be undertaken prior to the issue of an Occupation Certificate:

- a) Shotcrete is to be used on the weathered rock on the upper slope surface (zones 1 and 2) to prevent the localized instability and deteriorating the slope surface.
- b) The timber retaining wall is degraded and is to be redesigned and constructed for stability (zone 3)
- c) The sandstone boulder must be removed in order to prevent the adjacent road from unexpected falling and its consequences (zone 4).

OPERATIONAL CONDITIONS**60. Use of Premises**

The development approved under this consent shall be used for 'self-storage unit' purposes and not for any other purpose without Council's separate written consent.

61. Hours of Operation – Self Storage Units

The hours of operation of the premise are restricted to those times listed below:

Office Hours

Monday to Sunday 7am to 6pm

Self-Storage Unit Hours

Monday to Sunday 5am to 10pm

62. Signage illumination

The signage approved under this consent must comply with the following:

- a) The signage must not flash, move or display electronic images.
- b) The sign must be fitted with an automatic timing device to extinguish the illumination outside of the approved hours of operation.

63. External Lighting

- a) Lighting outside approved hours of operation must be sensor security lighting only and angled internally at a low level.
- b) Flashing, moving or intermittent lights or signs are prohibited.

64. Noise

All noise generated by the development must be attenuated to prevent levels of noise being emitted to adjacent premises which possess tonal, beating and similar characteristics or which exceeds background noise levels by more than 5dB(A).

65. 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.

66. 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 and current 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) The land and adjoining areas are to be kept in clean and tidy conditions at all times.
- d) Adequate signage is to be provided and maintained on how to use the waste management system and what materials are acceptable for recycling within all waste storage areas of the development. Signage is also to be provided and maintained which clearly identifies which bins (and containers) are to be used for general waste and recycling and what materials can be placed in each bin.

- e) All surfaces trafficable by the waste collection vehicle must be kept in good and substantial repair.
- f) Vegetation adjacent to the driveway/accessway/roadway must be regularly pruned to maintain a 4.5m vertical clearance over the driveway/accessway/roadway and to ensure the vegetation does not encroach on the vehicular travel path.

67. Car Parking and Vehicle Access

- a) All car parking must be constructed and operated in accordance with Australian Standard AS/NZS2890.1:2004 Off-street car parking and Australian Standard AS2890.2:2002 Off-street commercial vehicle facilities.
- b) All parking areas and driveways are to be sealed to an all-weather standard, line marked and signposted.
- 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.
- g) Visitor parking spaces are not to be used by tenants/owners as storage or parking spaces.
- h) No heavy vehicles larger than a standard MRV should access and service the site.
- i) All parking for people with disabilities is to comply with AS/NZS2890.6:2009 Off-street parking for people with disabilities.
- j) Bicycle parking spaces are to be designed in accordance with AS2890.3-1993 Bicycle parking facilities.
- k) Motorcycle parking spaces are to be designed in accordance with AS/NZS2890.1:2004 Figure 2.7.

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 2000*, 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.

Note: The rate of the Long Service Levy is 0.25% 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.

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 *SafeWork NSW* on 13 10 50.

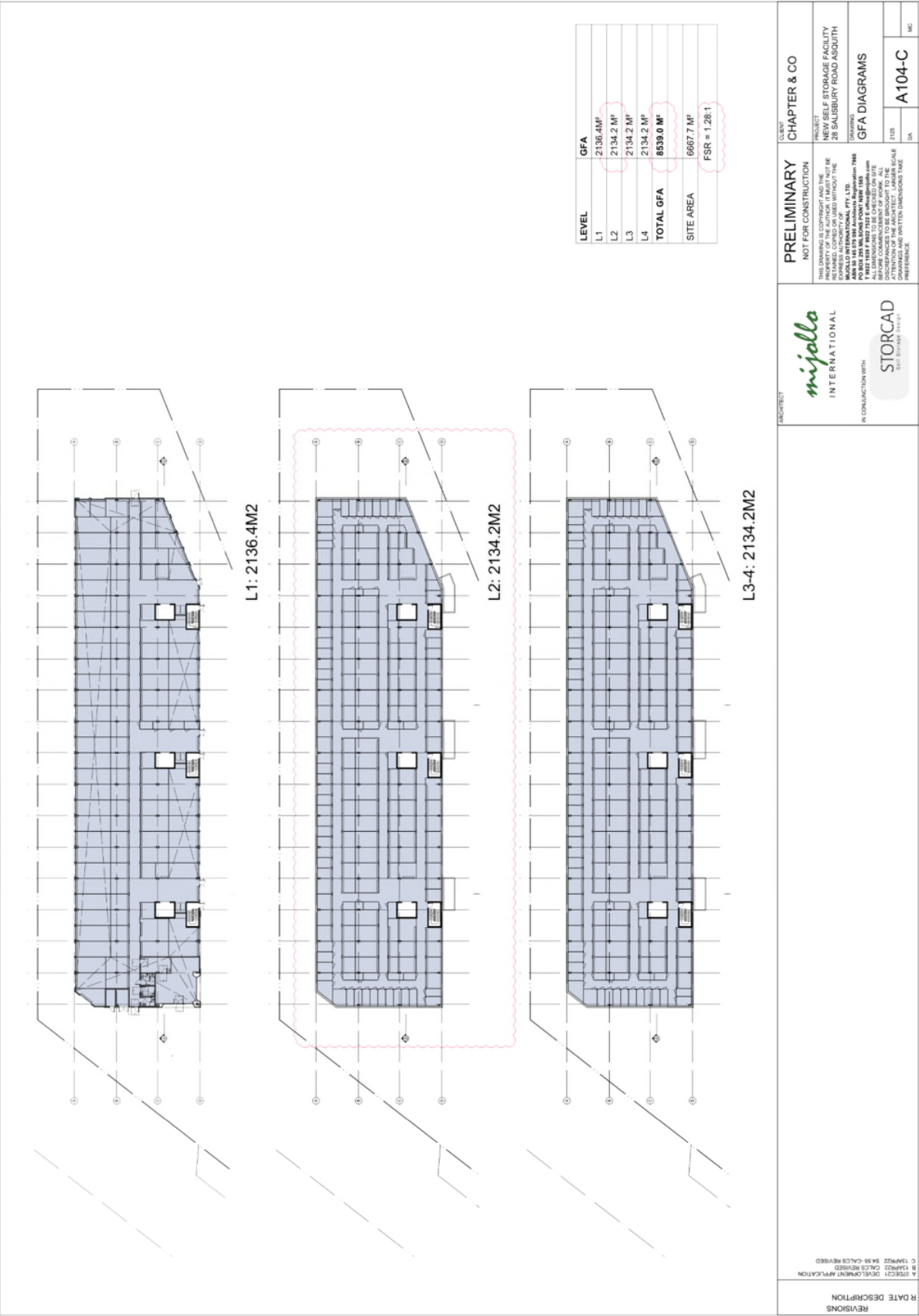
Disability Discrimination Act 1992

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.

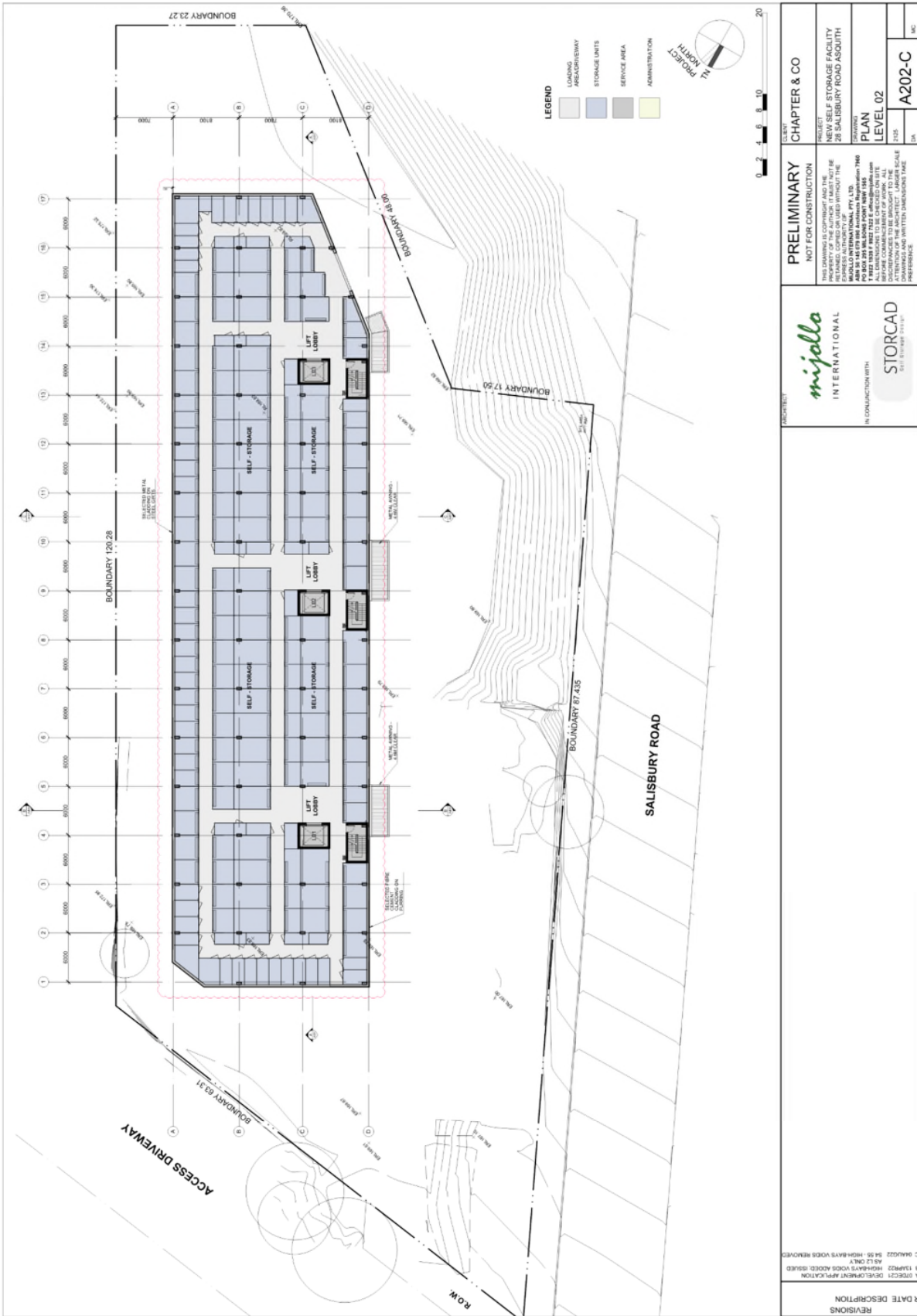
Telecommunications Act 1997 (Commonwealth)

If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800810443.

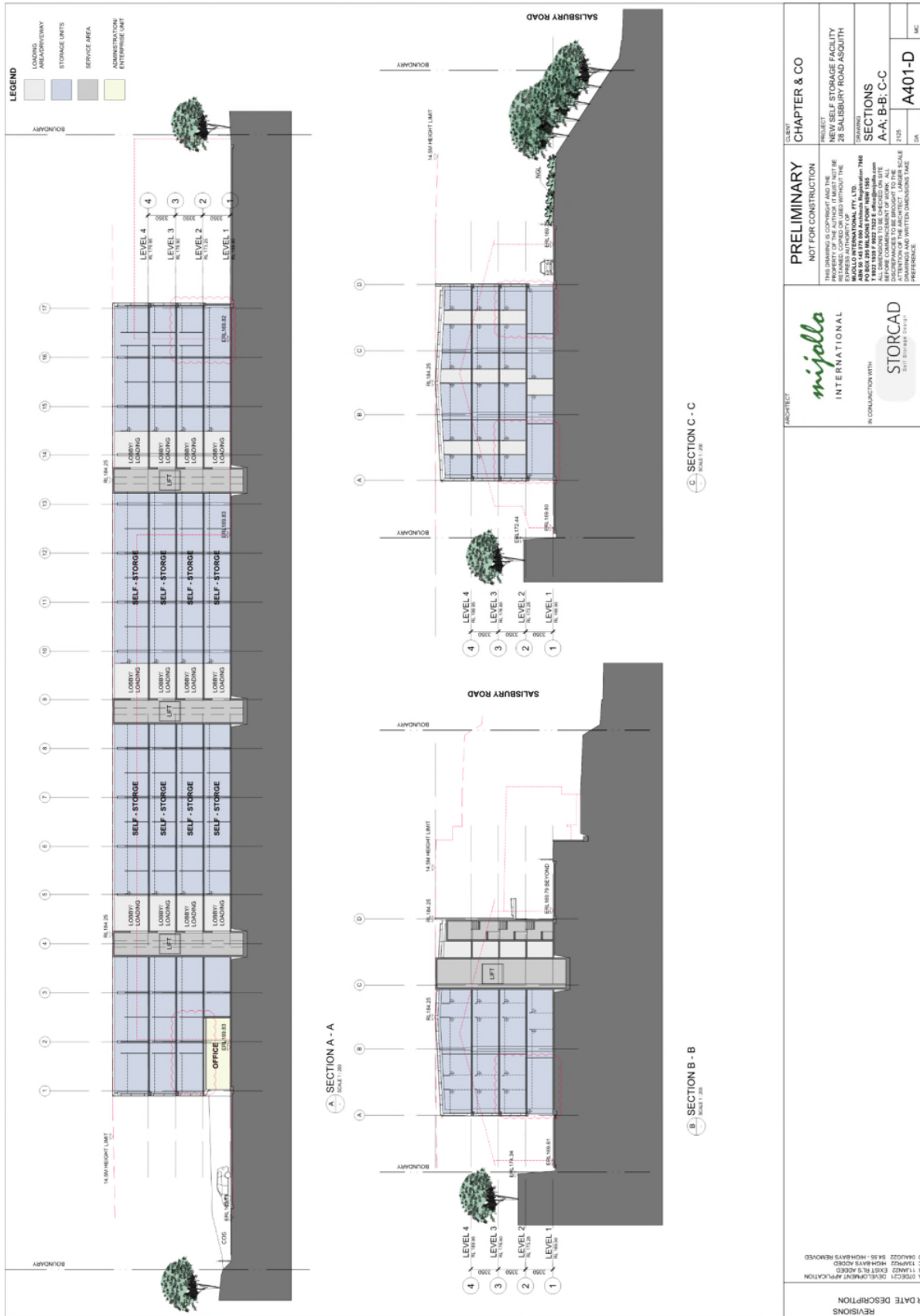
ITEM 2



ATTACHMENT 1 - ITEM 2

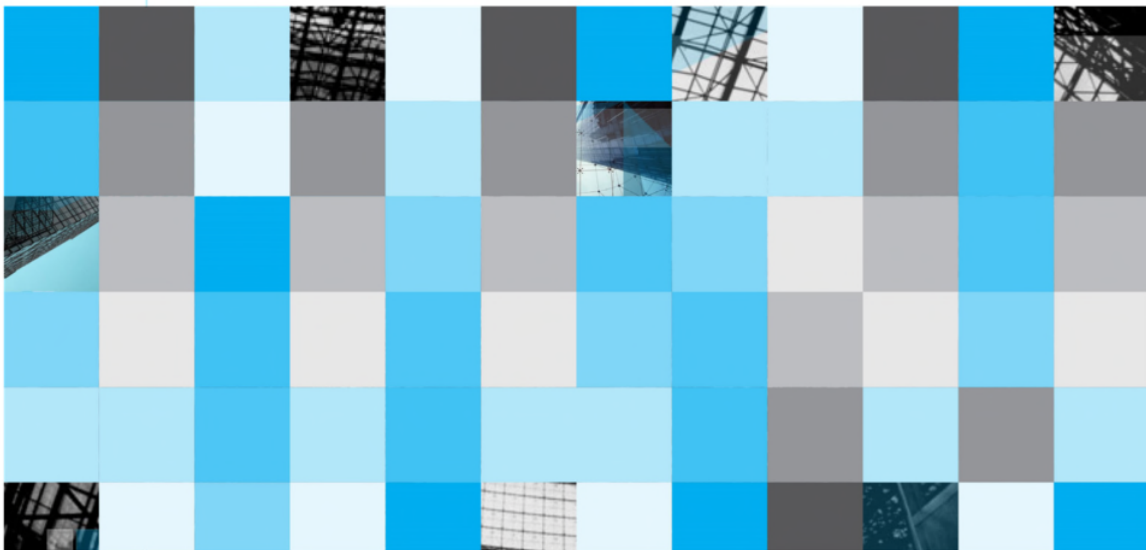


ATTACHMENT 1 - ITEM 2



ATTACHMENT 1 - ITEM 2

SUTHERLAND
& ASSOCIATES
PLANNING



28 Salisbury Road, Asquith

Section 8.2 Review

ATTACHMENT 2 - ITEM 2

SUTHERLAND & ASSOCIATES PLANNING

ABN 14 118 321 793 ACN 144 979 564

Section 8.2 Review

28 SALISBURY ROAD, ASQUITH

November 2022

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1.0 INTRODUCTION

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 at 28 Salisbury Road, Asquith.

On 25 August 2022, a Section 4.55(2) application was lodged with the Hornsby Council 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 amendment did not propose any change the approved Level 1 floor plan, however, the Level 2 floorplan was proposed to be amended to reflect the inserted regular height storage units.

The proposed modifications resulted 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.

However, the Local Planning Panel resolved on 26 October 2022 to refuse the proposed amendment 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 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.

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This submission formally requests a review of the refusal pursuant to section 8.2(1)(b) of the Environmental Planning and Assessment Act 1979 (the Environmental Planning and Assessment Act 1979).

This Section 8.2 application is accompanied by the following documents:

Document	Author
Amended Acoustic Assessment	Spectrum Acoustics

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2.0 BACKGROUND

2.1 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 1:

CGI of approved development

2.2 S4.55 Modification

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

However, since this approval, 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, on 25 August 2022, a Section 4.55(2) application was lodged with the Hornsby Council 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 to achieve conventional proportions for the self storage units on Level 1 and make use of the redundant volume on Level 2.

The proposed modifications resulted 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.

A numerical comparison of the approved development and amended proposal is provided below:

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
Bicycle spaces	5	5	No

On 26 October 2022, the Local Planning Panel resolved to refuse the proposed amendment 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 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:

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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.

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3.0 STATUTORY PLANNING FRAMEWORK

Pursuant to section 8.2(1)(b) of the *Environmental Planning and Assessment Act 1979* an applicant may request the council review a determination of an application for the modification of a development consent by a Council other than for complying development, designated development, or an application made by the Crown. The development is not complying development, designated development, or made by the Crown.

Clause 244(2)(a) of the *Environmental Planning & Assessment Regulation 2021* provides that an application for review of a determination of a modification application must be submitted on the NSW planning portal no later than 28 days after the determination. The modification application was determined on 26 October 2022 and this application has been submitted on the Planning Portal within the 28 day timeframe.

Section 8.3(2) of the *Environmental Planning and Assessment Act 1979* provides that a determination or decision cannot be reviewed after the period within which any appeal may be made to the Court has expired if no appeal was made, which is 6 months. At the time of lodgement, there is over 5 months remaining for Council to undertake the subject review, which provides Council sufficient time to assess and determine the application.

Whilst Section 8.3(3) allows amendments to be proposed to the application, no amendment to the actual development is proposed as part of this review. Rather, additional justification and acoustic assessment has been submitted in support of this request for a review.

As the determination was made by the Local Planning Panel, Section 8.3(5) provides that the review must also be conducted by the Local Planning Panel.

There are no regulations associated with the review of determination other than the regulation relating to the prescribed fee.

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4.0 REASONS FOR REFUSAL

4.1 Sufficient Environmental Planning Grounds

The first reason for refusal is as follows:

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.*

In the first instance, it is noted that there is no jurisdictional requirement to establish sufficient environmental planning grounds for a proposed variation to the FSR development standard within the context of an application to modify an approved development pursuant to S4.55 of the *Environmental Planning and Assessment Act 1979*.

Nonetheless, it is still necessary to generally consider the merit of the proposed variation and whether there are planning grounds to support the proposed extent of variation, or adverse impacts of such magnitude as to warrant refusal.

Whilst not directly relevant, the line of authority provided by *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, provides assistance in relation to the consideration of sufficient environmental planning grounds whereby Preston J observed that in order for there to be 'sufficient' environmental planning grounds (to justify a written request under clause 4.6), the focus must be on the aspect or element of the development that contravenes the development standard.

In this instance, the element which results in the additional contravention of the development standard is the insertion of a floor at Level 2 where there is none currently. The purpose of the insertion is to halve the height of the approved double-height storage units on 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 therefore 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.

This means that there are no external impacts, such as visual, shadow, landscaping etc associated with the proposed increase in Gross Floor Area, such as those which would ordinarily result from an external manifestation of increased floor space.

Having established that there are external impacts associated with the building, it is appropriate to consider whether the increased density internally within the approved envelope could result in any other impacts. The two potential areas of impact are traffic/parking associated with the increased patronage of the development, and potentially noise impacts associated with increased traffic to and from the site as well as increased activity within and around the building.

In relation to traffic and parking impacts, it is noted that 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:

- 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.

Council's assessment report agrees with the above conclusions and confirms that there are no unacceptable traffic or parking issues with the proposed modification, as follows:

.... 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.....

..... 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.....

In relation to noise impacts, this application for a S8.2 Review is supported by an Amended Acoustic Assessment prepared by Spectrum Acoustics which confirms that:

- the proposed modification to delete double-height ground floor storage units to increase the number of second floor units, resulting in 27% more units, is **acoustically indistinguishable** from the original proposal apart from the likelihood of an additional 3 – 6 vehicles per hour during morning and afternoon peaks.
- a worst-case daytime assessment of vehicle movements associated with the modification is an increase from 5 vehicles in a 15-minute period (daytime peak) to 6 vehicles in a 15-minute period (daytime peak), and the amended proposal would still comply with minimum noise emission criteria.
- A worst-case night time assessment of vehicle movements associated with the modification is an increase from 3 vehicles in a 15-minute period (daytime peak) to 4 vehicles in a 15-minute period (daytime peak) and the amended proposal would still comply with minimum noise emission criteria.

The proposed increase of 16.4% of the previously approved floor area does not result in any meaningful adverse impacts to the locality and the amended proposal is undistinguishable from the approved development, both externally and also in relation to traffic and noise impacts. On this basis, it is considered that sufficient planning grounds have been established to justify the proposed extent of variation to the FSR control. In the absence of meaningful adverse impacts, there are no planning grounds which would warrant refusal of the application.

For completeness, the grounds for support for the proposed extent of FSR variation as advanced in the original planning statement are provided below.

- 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.

4.2 Substantially the same development

The second reason for refusal is as follows:

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.

In the consideration of the issue of whether or not the amended proposal is 'substantially the same development', the Land & Environment Court case of *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] 106 LGERA 298 establishes a number of tests which are of assistance.

Furthermore, we are also reminded in *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] 106 LGERA 298 that it is the consent that is to be modified. The approved development consent is for the following purpose:

"Demolition of the existing buildings on the site and the construction of a four storey self-storage facility"

In the circumstance of the subject development consent, the amendments do not change the description of the approved development, which remains for demolition of the existing buildings and construction of a four storey self-storage facility, and do not affect the correct characterisation of the amended proposal as being *substantially* the same as that which has already been approved due to the description of the development.

Also of relevance to the issue of whether or not the amended proposal is 'substantially the same development', is that the Land & Environment Court consistently describes the Section 4.55 modification provision (previously Section 96) as "beneficial and facultative" and it is intended to assist the modification process rather than to act as an impediment to it and "It is to be construed and applied in a way that is favourable to those who seek to benefit from the provision" (*North Sydney Council v Michael Standley & Associates Pty Limited* [1998]).

An examination of the amended proposal against the tests which can be established by the various relevant caselaw and also largely informed by the Land & Environment Court case of *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] 106 LGERA 298, is provided below:

Test 1: Is the proposal a modification of the original proposal, in that it does not radically transform the original proposal?

The modification to the approved development represents a refinement and improvement and is not a radical transformation because it does not alter the fundamental nature of the approved development. Whilst the proposal inserts some additional floor area on Level 2, collectively the amended development is conceptually the same as that which has previously been approved. The proposed amendment remains for the demolition of existing structures and the construction of a four storey self-storage facility, the footprint and building proportions remains exactly the same; the use of the building for self-storage remains the same, the number of levels remains the same, the parking provision remains the same, and the vehicle access and egress and internal circulation is the same. The proposed internal reconfigurations on Level 2 do not render the approved development radically transformed when considered within the context of the overall approval for the site.

Test 2: Is the proposed development essentially or materially the same development as the development for which consent was originally granted?

In considering whether the proposed modified development is materially or essentially the same, it is necessary to undertake both a quantitative and qualitative assessment of the differences. The comparative task needs to assess not only the physical features of the changes, but also the environmental impacts of the changes.

Quantitative Assessment

The table below provides a quantitative comparison of the features of the approved development for the site and the proposed amendments.

On an assessment of the quantitative components of the consent which are approved, the application as proposed to be amended is essentially and materially the same development, with no change to any aspect other than gross floor area, and therefore substantially the same development.

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
Bicycle spaces	5	5	No

Qualitative Assessment

The site layout, building footprint and proportions is essentially the same as that which has been approved. In particular:

- The amended proposal continues to comprise a 4 storey self-storage facility.
- The external appearance of the approved building is unchanged.
- The number of parking spaces is unchanged.
- The vehicle access, egress and circulation is unchanged.
- The amount and configuration of landscaping on the site is unchanged.
- The architectural expression is unchanged.
- The use is unchanged.

Therefore, qualitatively, the amended proposed is considered to be essentially and materially the same as the approved development.

Test 3: Is the way in which the development is to be carried out essentially or materially the same?

There is no change to the way in which the development is to be carried out.

Test 4: Does the proposed modification affect an aspect of the development that was important, material or essential to the development when it was originally approved?

Development consent is approved for a four storey self-storage facility on the site. The proposal as amended retains the same use, features and facilities of the approved development.

The physical arrangement of open space, building and vehicular access and internal circulation necessary to facilitate the development all remain exactly the same.

There is no aspect of the approved development which was important, material or essential to the development when it was approved which is proposed to be removed or substantially altered. Accordingly, the proposed amendments to the approved development do not affect an aspect of the development that was considered an essential or critically important component of the overall development as originally approved.

In conclusion, having regard to the guidance provided by the relevant case law and having undertaken a detailed comparison of the quantitative and qualitative elements of the development, the proposed Section 4.55(2) modification application to the approved Development Consent DA/1349/2021 has been demonstrated to satisfy the "substantially the same development test" pursuant to Section 4.55(2)(a).

4.3 DCP provisions

The third reason for refusal is as follows:

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.

4.3.1 Scale

Part 5.1.1(a) of the Hornsby Development Control Plan 2013 states:

The maximum floor space ratio for industrial land shall be in accordance with the HLEP Floor Space Ratio Map as follows:

Table 5.1.1(a): Summary of HLEP FSR Provisions

HLEP Area	Maximum Floor Space Ratio
H	0.7:1
N	1:1

The reason for refusal simply states that the proposed amendment does not comply with this prescriptive measure. This is not disputed. However, it is noted that the approved development also does not comply with this prescriptive control. The Desired Outcomes of Section 5.1.1 of the Hornsby Development Control Plan 2013, are as follows:

- a. Development with a height, scale and intensity compatible with the character of the area.*
- b. Development that provides appropriate areas for access, car parking and landscaping.*

The proposed amendment does not result in any change to the approved height, scale, access, car parking and landscaping and so the amended proposal continues to satisfy these Desired Outcomes in the same way that the approved development does. Whilst the proposed amendment does result in an increase in the intensity of the use of the site, it has been demonstrated that this does not result in any meaningful adverse impact to the locality and therefore the development as proposed to be amended remains compatible with the character of the area.

4.3.2 Noise

In relation to noise impacts, this application for a S8.2 Review is supported by an Amended Acoustic Assessment prepared by Spectrum Acoustics which confirms that:

- the proposed modification to delete double-height ground floor storage units to increase the number of second floor units, resulting in 27% more units, is **acoustically indistinguishable** from the original proposal apart from the likelihood of an additional 3 – 6 vehicles per hour during morning and afternoon peaks.
- a worst-case daytime assessment of vehicle movements associated with the modification is an increase from 5 vehicles in a 15-minute period (daytime peak) to 6 vehicles in a 15-minute period (daytime peak), and the amended proposal would still comply with minimum noise emission criteria.
- A worst-case night time assessment of vehicle movements associated with the modification is an increase from 3 vehicles in a 15-minute period (daytime peak) to 4 vehicles in a 15-minute period (daytime peak) and the amended proposal would still comply with minimum noise emission criteria.

The proposal has now adequately addressed the 'Noise and Vibration' prescriptive measures within Parts 1C.2.5 (e) and (f) of the Hornsby Development Control Plan 2013.

4.4 Public Interest

The fourth refusal for refusal is as follows:

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.

Whilst Clause 4.6 does not apply to a variation to a development standard as part of a S4.55 modification application, Clause 4.6(4)(a)(ii) does provide that a proposal can be found to 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.

Objective of the Development Standard

The proposed amendment and associated increased variation to the FSR control is consistent with the single objective of the FSR development standard, as discussed below:

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

The amended proposal remains compliant with the 14.5 metre height control which applies to the site and retains the approved setbacks which are well in excess of the DCP requirements. In particular, whilst a nil side and rear setback is permissible the amended proposal retains the approved setbacks of between 6.9 metres and 20.665 metres from the site and rear boundaries. In addition, whilst a 5 metre front setback is required, the amended proposal retains the approved 21.945 metre front setback, which is more than 4 times the minimum requirement. The proposed amendment retains the approved building footprint which has been designed to sit within the footprint established by the existing buildings on the site and so the bulk and scale of the amended development is entirely as anticipated, and in fact less than, by the LEP and DCP controls which apply to the development.

In terms of the density of the development and infrastructure capacity, the proposed additional increase in density of storage area on the site 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 proposed increase in density as part of the modification application does not result in any adverse traffic impacts, noting that the proposed entire amended development 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 an 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 compared with a strictly compliant FSR. This is a particularly small traffic generation and will not result in any perceptible impact to the local road network.

It has been demonstrated that the amended proposal retains an identical bulk and scale as the approved development, which is as anticipated by the planning controls and the increased density does not result in any adverse impact or implication for infrastructure capacity. Accordingly, the proposed amended development remains consistent with the objective for the FSR control despite the additional variation.

Objectives of the Zone

The amended proposal remains consistent with the objectives of the IN1 General Industrial zone as discussed below:

- 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 amended proposal will continue to provide for a use which is compatible with industrial uses and will result in increased employment density on the site as a result of the employees who will be required to operate the facility. The specific nature of the amended proposal will also provide a facility that meets the day to day needs of workers in the area who will likely be customers of the facility.

For the reasons the amended proposal is considered to remain consistent with the objective of the IN1 General Industrial.

Summary

The proposed amendment to the approved development provides for additional self-storage units within the established environmental capacity of the site, without any external visual change or impact to the approved development, and without any meaningful adverse traffic or noise impact.

Self-storage is of significant benefit to the residential and business community and meets an important need within Asquith and the broader Hornsby local government area. There is rapidly increasing demand for self storage particularly by the residential sector as apartment living becomes more common due to the small storage provision within apartments.

The development, as proposed to be modified, will achieve a significant improvement to the streetscape which will be significantly enhanced as a consequence of the proposed development. The development as amended will improve the surveillance of the public domain and achieve an improved built form and landscape outcome for the site.

The amended proposal will provide for an increased employment density on the site that will directly contribute to the economic growth of the area and will provide a much needed storage facility, with an optimal amount of storage within the environmental capacity of the site, in an appropriate location which is close nearby residential population and business.

The amended development remains consistent with the objectives of the relevant planning provisions, and there are no undesirable environmental impacts arising from the proposed amendment. For these reasons the approval of the proposed amended to the approved development is considered to be in the public interest.

5.0 CONCLUSION

This submission requests that the Local Planning Panel review the determination for D/1349/2021/A.

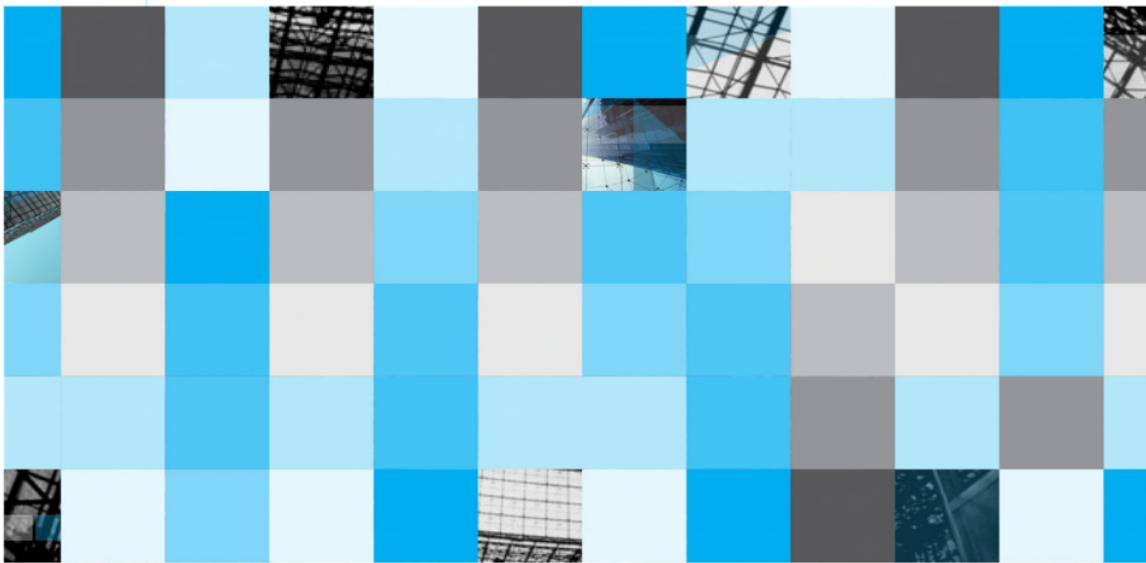
The submission is accompanied by a n Amended Acoustic Assessment to assist Council and the Local Planning Panel in supporting the review application.

This submission includes a detailed response in relation to the reasons of refusal and demonstrates that:

- There are sufficient environmental planning grounds to support the proposed additional variation to the FSR control;
- The modified development is substantially the same development as the development for which consent was originally granted;
- The proposal as amended does not result in any adverse impacts which would warrant refusal of the proposed modification. In particular, additional assessment is provided in relation to acoustic impacts which demonstrates that there are no meaningful acoustic impacts and the proposal as amended remains compliant with the relevant acoustic criteria; and
- The proposal as amended remains in the public interest, noting that the amendment optimises the delivery of self-storage within the demonstrated environmental capacity of the site.

The review has been made lawfully in accordance with section 8.2(1)(b) of the *Environmental Planning and Assessment Act 1979* and Clause 244(2)(a) of the *Environmental Planning & Assessment Regulation 2021*

**SUTHERLAND
& ASSOCIATES
PLANNING**



28 Salisbury Road, Asquith

Section 4.55 Planning Statement

ATTACHMENT 3 - ITEM 2

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
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by

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Section 4.55 Planning Statement - 28 Salisbury Road, Asquith

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.

Section 4.55 Planning Statement - 28 Salisbury Road, Asquith

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.

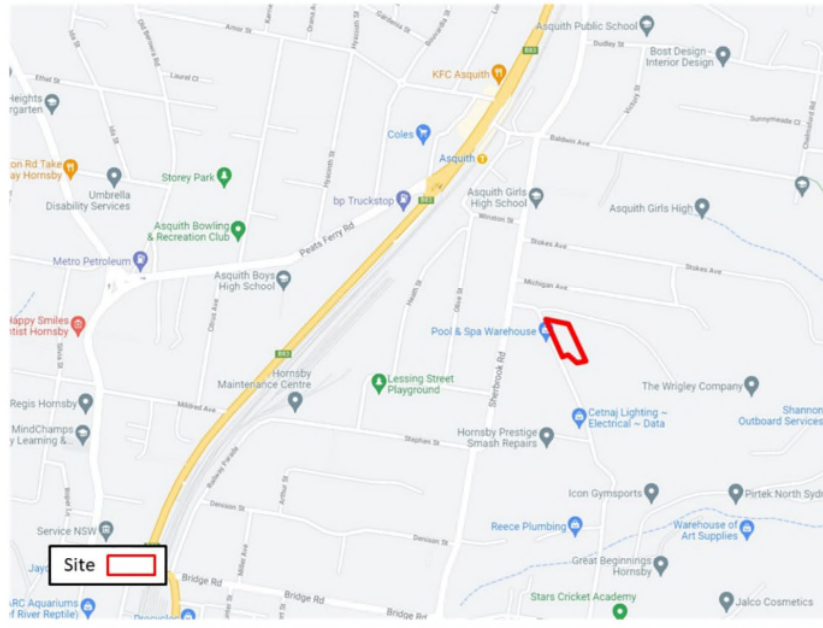


Figure 1:

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)

Section 4.55 Planning Statement - 28 Salisbury Road, Asquith

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.

Section 4.55 Planning Statement - 28 Salisbury Road, Asquith

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

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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.

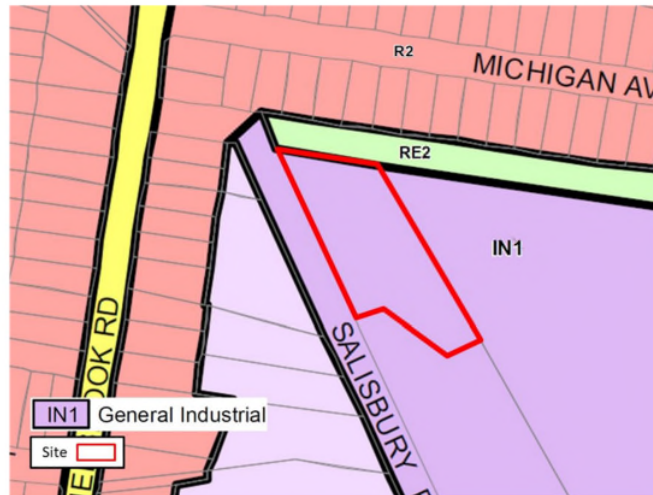


Figure 4:

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.

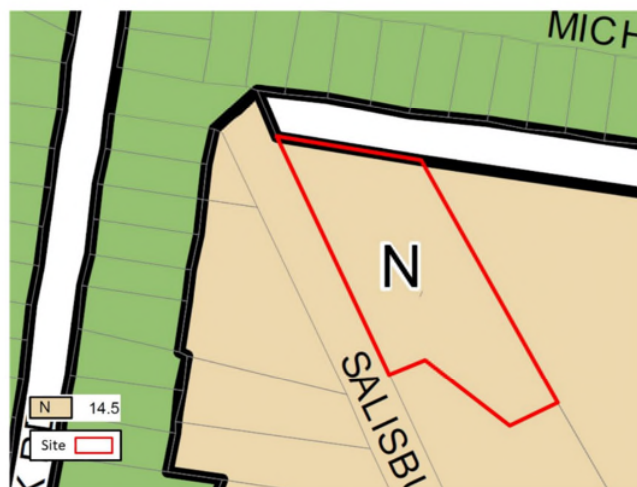


Figure 5:

Extract from the
HLEP Height of
Buildings Map

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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.

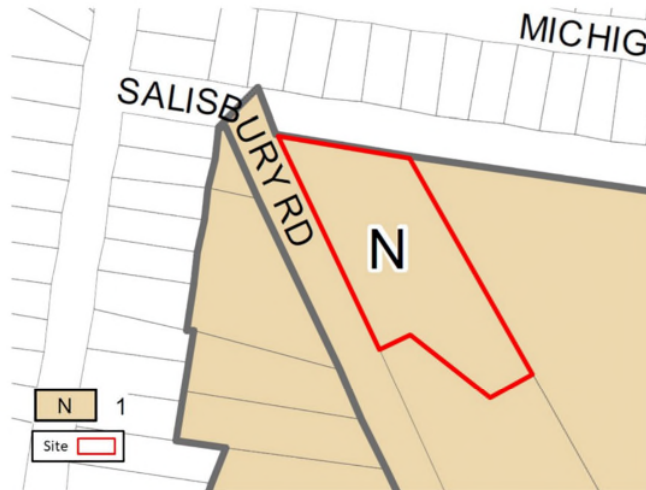


Figure 6:

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	

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Element	Control	Proposed
	<p>full length of each street frontage (other than a vehicle entry/exit/driveway).</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	a. Development that provides adequate communal open space on-site for employees.	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.
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>	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.
Prescriptive Measures (Vehicle Access)	a. Direct vehicular access to main roads should be avoided where alternative access is available via service lanes or local roads.	
Prescriptive Measures (Parking)	c. Parking should be provided to the rear of buildings or below ground level.	

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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, 	

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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.

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SUTHERLAND & ASSOCIATES PLANNING

APPENDIX A

AMENDED ACOUSTIC ASSESSMENT

A

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Doc. No: 212174-9425C

**Amended Acoustic Assessment
Modification to Approved Self-Storage Development
28 Salisbury Road
Asquith, NSW**

Prepared for:

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November 2022

MEMBER FIRM



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1.0 INTRODUCTION

This amended acoustic assessment addresses issues raised by Hornsby Council (Council) in their assessment of a S4.55 Modification application for an approved self-storage development at 28 Salisbury Road, Asquith, NSW. It incorporates our addendum report (212174-9425B dated May 2022) which addresses issues raised by Council following their assessment of our original report 212174-9425 dated February 2022 prepared to support the Development Application.

The proposed Modification to delete double-height ground floor storage units to increase the number of second floor units, resulting in 27% more units, is acoustically indistinguishable from the original proposal apart from the likelihood of an additional 3 – 6 vehicles per hour during morning and afternoon peaks.

The project site and nearest residential receivers are shown in **Figure 1** and a more detailed site layout is shown in **Figure 2**.



Figure 1. Project site and assessed residential receivers.

Council RFI (May 2022):

- d. The Revised Acoustic Assessment now considers the noise impacts on additional residential receivers, inclusive of the boundary between 4 and 6 Michigan Avenue, 12 Michigan Avenue and 132 Sherbrook Road. It is unclear why the other receivers, particularly those along the access driveway have not been assessed. Further explanation and justification for the exclusion of residential receivers must be provided.





Amended Acoustic Assessment – Asquith Self-storage Development

Response:

The three assessment locations were agreed with Stevie McCormack of Council's Environment Protection team via telephone conversation on 23 february 2022. R1 was agreed to be representative of the group of receivers on Michigan Avenue who may be impacted by noise from the eastern side of the storage facility. R2 was agreed to be the most impacted receiver from the site entrance. Residences between R2 and R1 are progressively at greater distance from the site's internal road and the height of the retaining wall increases from west to east, providing no screening to R2. R3 was agreed to be the most impacted receiver on Sherbrook Road (backing onto Salisburt Road) with respect to the western side of the storage facility.

Compliance with noise criteria at the potentially most impacted receivers implies compliance at adjoining receivers.



Figure 2. proposed site layout.

Council RFI (May 2022):

- e. The operational scenario used in the Revised Acoustic Assessment is based on 8.8m medium heavy rigid trucks (MHR). Council's Traffic Team have provided conditions limiting the size of vehicles accessing the site to MHR. As such, this is considered satisfactory.
- f. The operational noise scenario shown in figure 3 of the Revised Acoustic Assessment indicates that the noise assessed was from 5 trucks at 5 different storage units around the facility. It is unclear why the closest loading zones to the sensitive receivers have not been used. Further clarification regarding this aspect is sought.

Section 5.5 of the Traffic Impact Assessment (TIA) confirms that the allowance for site to accommodate 8.8m MHR vehicles (updated to 12.5m HRV's in March 2022) is for refuse collection and servicing and not as customers of the storage facility. This was misinterpreted in our original assessment. Refuse collection and servicing would not be common occurrences and would be limited to daytime hours only so that these vehicles would not access the site during evening or night.





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Section 6.1 of the TIA states that average traffic generation would be up to 13 vehicles per hour during peak morning and afternoon periods and up to 22 vehicles per hour as a 95th percentile. Our previous assessment of five customers, including MHR's, utilising the facility during a 15-minute noise assessment period at night was therefore incorrect.

2.0 REVISED SCENARIOS

In order to finalise Council's consideration of the potential noise impacts of the original proposal, the following was requested:

An Updated Acoustic Assessment or Addendum must be provided to Council for further review and assessment. The Updated Acoustic Assessment must address the following:

Provide justification for the sensitive receivers used in the assessment and reasoning for other residential receivers not being included.

Provide predicted noise levels at residential receivers from the closest loading zones;

Include the following noise sources in the cumulative noise impacts at each receiver:

Staff arrivals and departures (including doors closing);

Truck reversing alarms;

All truck doors (driver/passenger/rear) opening, closing and slamming.

Trucks driving along Sherbrook and Salisbury Roads.

Provide recommendations for additional noise attenuation measures to ensure noise levels from the development does not exceed more than 5dB above background at any time. (Note: Correction factors must also be less than 5dB above background levels).

Some notes in response to the above request:

- Justification for the assessed receivers has been provided above.
- Reversing alarms are transient and for such very low numbers of vehicle movements do not contribute appreciably to daytime LAeq noise levels.
- Maximum noise levels from reverse alarms are typically assessed at night.
- The 15-minute LAeq levels used in our previous report and this report included the transient actions of people opening and closing doors.
- Off-site traffic noise generation is considered separately from on-site noise emissions.

2.1 Daytime scenario

A worst-case daytime assessment of vehicle movements considered:

- 5 vehicles in a 15-minute period (daytime peak) with one of them being a HRV for refuse collection or servicing.
- **Increased to 6 vehicles for the s4.55 Modification.**
- Vehicles using the closest loading zone to each residential receiver as requested by Council with the other three sources evenly distributed throughout the site.
- The facility would only be staffed in daytime hours.



Amended Acoustic Assessment – Asquith Self-storage Development

2.2 Night time scenario

A worst-case night time assessment of vehicle movements would consider:

- 3 vehicles in a 15-minute period (daytime average) with no MHR's on site. Vehicles using the closest loading zone to each residential receiver as requested with the other source located nominally at the western side of the site.
- **Increased to 4 vehicles for the s4.55 Modification.**
- Reversing alarms are assessed against sleep disturbance criteria.
- The site would not be staffed during evening or night.

Noise sources for the revised scenarios are shown in **Figure 3**.

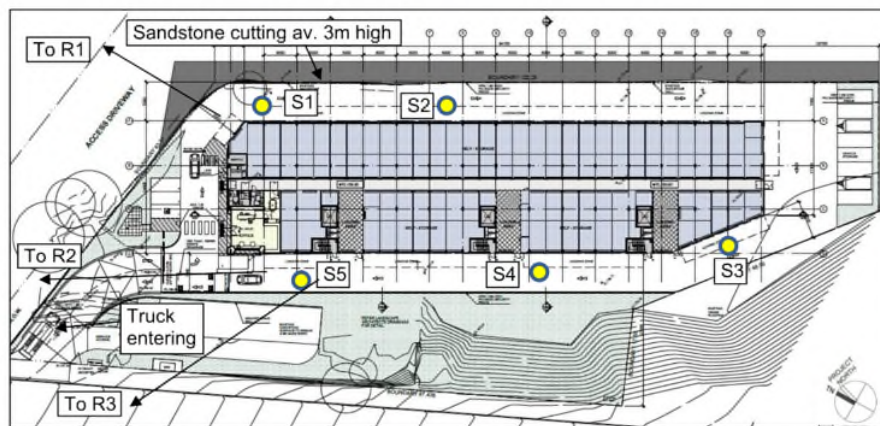


Figure 3. Operational noise scenario.

The night time scenario considers S1, S2 and S5 as Pantech removal vans. The daytime scenario considers S1, S2, S3 and S4 as Pantechs and S5 as a HRV. S1 and S5 are in the closest loading bays to respective assessed receivers.

2.3 Modifying Factors

Chapter 4 of the NPI defines several modifying factors for certain potentially annoying noise characteristics which attract a 5 dB penalty if applicable. The potentially applicable factor is:

- Intermittent Noise: a subjectively applied factor when levels from a source vary by more than 5 dB. Applicable only to the operational noise trigger level at night time.



Amended Acoustic Assessment – Asquith Self-storage Development

If the calculated night time noise levels at the assessed residential receiver when added to the existing background noise levels (assumed NPI default minimum 30 dB(A)) increases the background level by more than 5 dB then the intermittent noise factor is applied. Reverse alarms will attract a 5 dB tonality penalty.

2.4 Sleep Disturbance

The sleep disturbance screening level has been established as the NPI default minimum of **52 dB(A) L_{max}**.

The circulation of the site is in a clockwise direction. As such, a vehicle reversing at S1 or S2 will have its rear-mounted reverse alarm directed towards residences. A vehicle reversing at S3, S4 or S5 will have its reverse alarm directed away from residences. The difference in reverse alarm level at the front of a vehicle is at least 10 dB lower than the level at the rear of the vehicle, as determined from previous assessments of reverse alarms in extractive industries.

3.0 OFF-SITE TRAFFIC NOISE

3.1 Traffic noise criteria

In NSW, noise from vehicle movements associated with an industrial source is assessed in terms of the NPI if the vehicles are not on a public road. If the vehicles are on a public road, the *NSW Road Noise Policy* (RNP) applies. Noise from the Project must, therefore, be assessed against the project noise trigger levels of the NPI and also the criteria in the RNP.

The RNP recommends various criteria based on the functional categories of roads applied by Transport for NSW (TfNSW). The TfNSW differentiates roads based on a number of factors including traffic volume, heavy vehicle use, through or local traffic, vehicle speeds and applicable traffic management options. Vehicles accessing the Site will do so via Sherbrook and Salisbury Roads, which will be assessed as local roads for conservatism.

Table 1 shows the noise criteria relevant to local roads extracted from Table 3 of the RNP. For the assessment of traffic noise, the daytime period is from 7:00am to 10:00pm, whilst night is from 10:00pm to 7:00am.





Table 1 Road Traffic Noise Criteria

Situation	Recommended Criteria	
	Day (7am to 10pm)	Night (10pm to 7am)
Existing residences affected by additional traffic on existing local roads generated by land use developments	Leq (1-hour) 55	Leq (1-hour) 50

3.2 Assessment method

Vehicles generated by the site will be of a discrete rather than constant nature. There are many methods available for calculating the cumulative noise impact arising from discrete signals of various shapes. The methodology employed in this assessment was sourced from the US Environmental Protection Agency document No. 550/9-74-004 *Information on Levels of Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety, March 1974*. Spectrum Acoustics has adopted this methodology for Local government and State Significant projects in NSW for over 20 years.

The document refers to *triangular* and *trapezoidal* time signals, which are illustrated in **Figure 2**. A triangular time signal rises from the background level to a peak noise level and then immediately begins to subside. A triangular time signal is a good approximation of the Sound Pressure Level (SPL) signal of a single vehicle. The trapezoidal time signal is a good approximation of the SPL signal of a train.

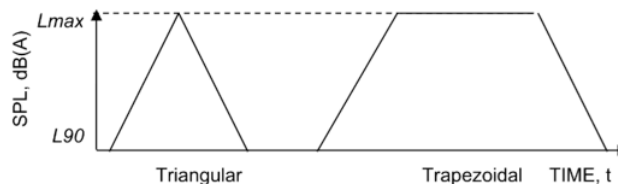


Figure 2 Triangular and trapezoidal noise signals

The value of $L_{eq,T}$ for a series of identical triangular time patterns having a maximum level of L_{max} is given by **Equation 1**.

$$L_{eq,T} = L_b + 10 \log \left[1 + \frac{ND}{T} \left(\frac{10^{(L_{max} - L_b)/10} - 1}{2.3} - \frac{(L_{max} - L_b)}{10} \right) \right] \quad (1)$$

Where;

- L_b is background noise level, dB(A)
- L_{MAX} is vehicle noise, dB(A)
- T is the time for each group of vehicles (min)
- N is number of vehicle trips
- D is duration of noise of each vehicle (min)



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For calculation purposes, L_{max} is the maximum vehicle noise at the assessment point(s), and has been based on numerous measurements of vehicle pass-by noise taken by Spectrum Acoustics. The background noise level is the level that existed prior to the introduction of the new noise, the L_{A90} level. The assessment period T corresponds to the stated criterion period, that is, 60 minutes.

4.0 NOISE ASSESSMENT

4.1 Predicted noise impacts

Table 3 shows calculations of daytime noise propagated from the site and impacting on the residential receiver R1. Daytime results for receivers R2 and R3, which are approximately the same distance from the site, are shown in **Table 4**. Night time predicted levels are shown in **Tables 5 and 6**.

Sound power level for the vehicle types were establish in our previous reports. Loss for distance is the standard hemispherical $1/R^2$ equation common to all noise propagation algorithms and barrier loss is the standard Maekawa edge diffraction over semi-infinite plane model used in some proprietary computer noise models.

TABLE 3. CALCULATED DAYTIME SPL AT RESIDENTIAL RECEIVER R1, $L_{Aeq}(15min)$									
Item	dB(A)	Octave Band Centre Frequency, Hz							
		63	125	250	500	1k	2k	4k	8k
S1 – Pantech + speech + roller door	75	57	59	61	66	68	72	65	53
S2 – Pantech + speech + roller door	75	57	59	61	66	68	72	65	53
Distance Loss S1 to receiver (40m)		-40	-40	-40	-40	-40	-40	-40	-40
Distance Loss S2 to receiver (60m)		-44	-44	-44	-44	-44	-44	-44	-44
Barrier loss S1 (min. 3.0m)		-5	-6	-7	-9	-12	-15	-18	-21
Barrier loss S2 (min. 3.0m)		-5	-6	-7	-9	-12	-15	-18	-21
S1 SPL @ receiver R1	23	12	13	14	17	16	17	7	0
S2 SPL @ receiver R1	19	8	9	10	13	12	13	3	0
TOTAL SPL at R1	25	13	14	15	18	17	18	8	0
27% increase for s4.55 MOD	+1								
Reverse alarm tonality penalty	+5								
Resultant total SPL at R1	31								
Day trigger level L_{eq} (15 min)	40								
Impact	-9								

Assuming a worst case that vehicle movements in the staff carpark could be instantaneously as loud as a Pantech at S1, a 5 dB reduction in barrier effect from the lower retaining wall/cut and a 10 dB reduced sound power since the operation of a staff vehicle would occur for an



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estimated 1.5 minutes and not the full 15 minutes, a level of 18 dB(A) is predicted at R1.

The cumulative noise impact from vehicles using the storage facility and staff vehicle movement could increase by 1 dB from the value in Table 3 and remain under the daytime noise trigger level.

TABLE 4. CALCULATED DAYTIME SPL AT RESIDENTIAL RECEIVERS R2 and R3, LAeq(15min)									
Item	dB(A)	Octave Band Centre Frequency, Hz							
		63	125	250	500	1k	2k	4k	8k
S3 – Pantech + speech + roller door	75	57	59	61	66	68	72	65	53
S4 – Pantech + speech + roller door	75	57	59	61	66	68	72	65	53
S5 – HRV + speech + roller door	77	59	61	63	68	70	74	67	55
Distance Loss S3 to receiver (170m)		-53	-53	-53	-53	-53	-53	-53	-53
Distance Loss S4 to receiver (140m)		-51	-51	-51	-51	-51	-51	-51	-51
Distance Loss S5 to receiver (100m)		-48	-48	-48	-48	-48	-48	-48	-48
S3 SPL @ receivers R2/R3	22	4	6	8	13	15	19	12	0
S4 SPL @ receivers R2/R3	24	6	8	10	15	17	21	14	2
S5 SPL @ receivers R2/R3	29	11	13	15	20	22	26	19	7
TOTAL SPL at R2/R3	31	13	15	17	22	24	28	21	9
27% increase for s4.55 MOD	+1								
Reverse alarm tonality penalty	+5								
Resultant total SPL at R1	37								
Day trigger level Leq (15 min)	40								
Impact	-3								

As for receiver R1, additional noise from the staff carpark would not increase the levels in Table 4.

TABLE 5. CALCULATED NIGHT TIME SPL AT RESIDENTIAL RECEIVER R1, LAeq(15min)									
Item	dB(A)	Octave Band Centre Frequency, Hz							
		63	125	250	500	1k	2k	4k	8k
S1 – Pantech + speech + roller door	75	57	59	61	66	68	72	65	53
S2 – Pantech + speech + roller door	75	57	59	61	66	68	72	65	53
Distance Loss S1 to receiver (40m)		-40	-40	-40	-40	-40	-40	-40	-40
Distance Loss S2 to receiver (60m)		-44	-44	-44	-44	-44	-44	-44	-44
Barrier loss S1 (min. 3.0m)		-5	-6	-7	-9	-12	-15	-18	-21
Barrier loss S2 (min. 3.0m)		-5	-6	-7	-9	-12	-15	-18	-21
S1 SPL @ receiver R1	23	12	13	14	17	16	17	7	0
S2 SPL @ receiver R1	19	8	9	10	13	12	13	3	0
TOTAL SPL at R1	25	13	14	15	18	17	18	8	0
27% increase for s4.55 MOD	+1								
Reverse alarm tonality penalty	+5								
Resultant total SPL at R1	31								
Night trigger level Leq (15 min)	35								
Impact	-4								





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The predicted level of 26 dB(A) in Table 5 when added to the adopted default minimum night time background level of 30 dB(A) results in a level of 31 dB(A). Introduction of noise from the facility increases the noise level without the facility by 1 dB. Since the increase in level is less than 5 dB the intermittency penalty does not apply. The tonality penalty is assumed to apply without full analysis.

TABLE 6. CALCULATED NIGHT TIME SPL AT RESIDENTIAL RECEIVERS R2 and R3, LAeq(15min)

Item	dB(A)	Octave Band Centre Frequency, Hz							
		63	125	250	500	1k	2k	4k	8k
S5 – Pantech + speech + roller door	77	59	61	63	68	70	74	67	55
Distance Loss S5 to receiver (100m)		-48	-48	-48	-48	-48	-48	-48	-48
S5 SPL @ receivers R2/R3	29	11	13	15	20	22	26	19	7
27% increase for s4.55 MOD	+1								
Reverse alarm tonality penalty	+5								
Resultant total SPL at R1	35								
Night trigger level Leq (15 min)	35								
Impact	0								

The predicted level of 30 dB(A) in Table 6 when added to the adopted default minimum night time background level of 30 dB(A) results in a level of 33 dB(A). Introduction of noise from the facility increases the noise level without the facility by 3 dB. Since the increase in noise level is less than 5 dB the intermittency penalty does not apply. The tonality penalty is assumed to apply without full analysis.

4.2 Sleep Disturbance

It was established in our previous reports that car doors, roller doors and other sources can produce maximum noise levels of 87 dB(A), Lmax. Council he reasonably requested an assessment of night time noise from reverse alarms.

Sound power levels for reverse alarms start at 97 dB(A) for use on road-going vehicles used in generally residential or suburban environments. Reverse alarms on mining trucks can be as loud as 112 dB(A). Reverse alarms are tonal at 1000-1250Hz.

For a Pantech at S1, distance and barrier losses as shown in Table 5 total 52 dB. The resultant level of 45 dB(A) at R1 is 7 dB below the default minimum sleep disturbance trigger level of 52 dB(A) and 2 dB below the trigger level when corrected for tonality.

For a HRV at S5, distance loss as shown in Table 6 and the -10dB directional loss discussed in Section 3.3 totals 58 dB. The resultant level of 39 dB(A) at R2/R3 is 13 dB below the default minimum sleep





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disturbance trigger level of 52 dB(A) and 8 dB below the trigger level when corrected for tonality.

4.3 Mechanical Plant

The original proposal does not include refrigerated units or other facilities that would require significant amounts of mechanical plant. Should any air conditioning plant be installed, it must be reviewed by an acoustical consultant against the criteria contained in this report, and certified as part of the construction certification. The Modified proposal includes no additional plant or equipment.

4.4 Off-site traffic

Some vehicles accessing the site would pass by residences on Salisbury Road which are positioned 12 from the centre line of the road. Some residences on Sherbrook Road are similarly close to the road. Considering the 50 km/h posted speed limit, up to 95 dB(A),L_{max} level averaged across the vehicle types that may access the site and a **maximum of 25 vehicles per hour (increased from 20 in our original assessment** and all assumed to pass by these residences), Equation 1 in Section 3.2 gives a level of 50 dB(A),Leq(1-hour). This is 5 dB below the daytime traffic noise criterion of 55 dB(A),Leq(1-hour). Lower levels of vehicle movements at night will also produce noise levels below the night time criterion of 50 dB(A),Leq(1-hour).

5.0 CONCLUSION

An amended acoustic assessment has been prepared to support an application to modify an approved self-storage development at 28 Salisbury Road, Asquith, NSW.

The assessment has found that the proposal would comply with default minimum noise emission criteria as adopted in our previous assessments of the development.





Amended Acoustic Assessment – Asquith Self-storage Development

This report contains no appendices

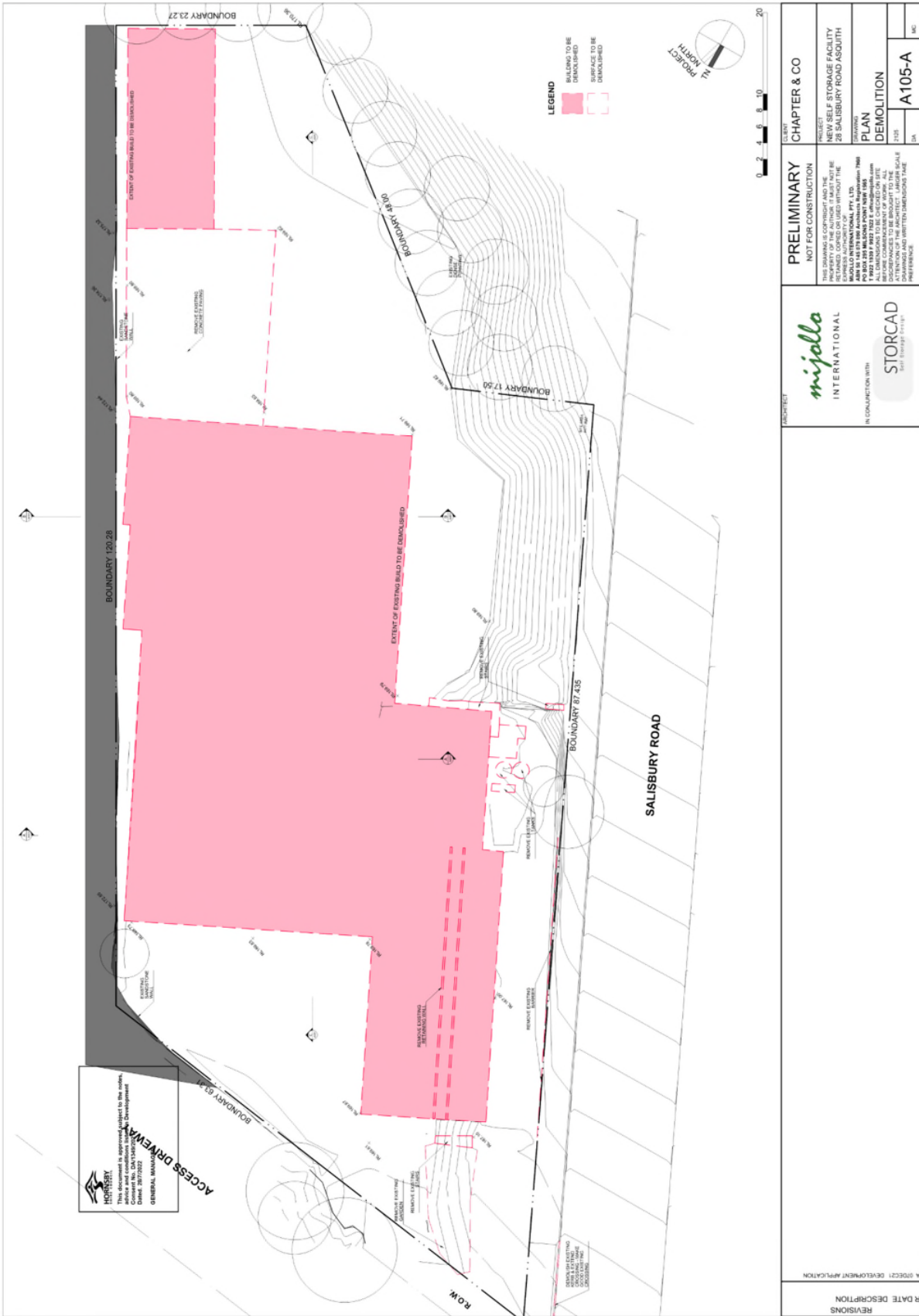
ATTACHMENT 4 - ITEM 2

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November 2022

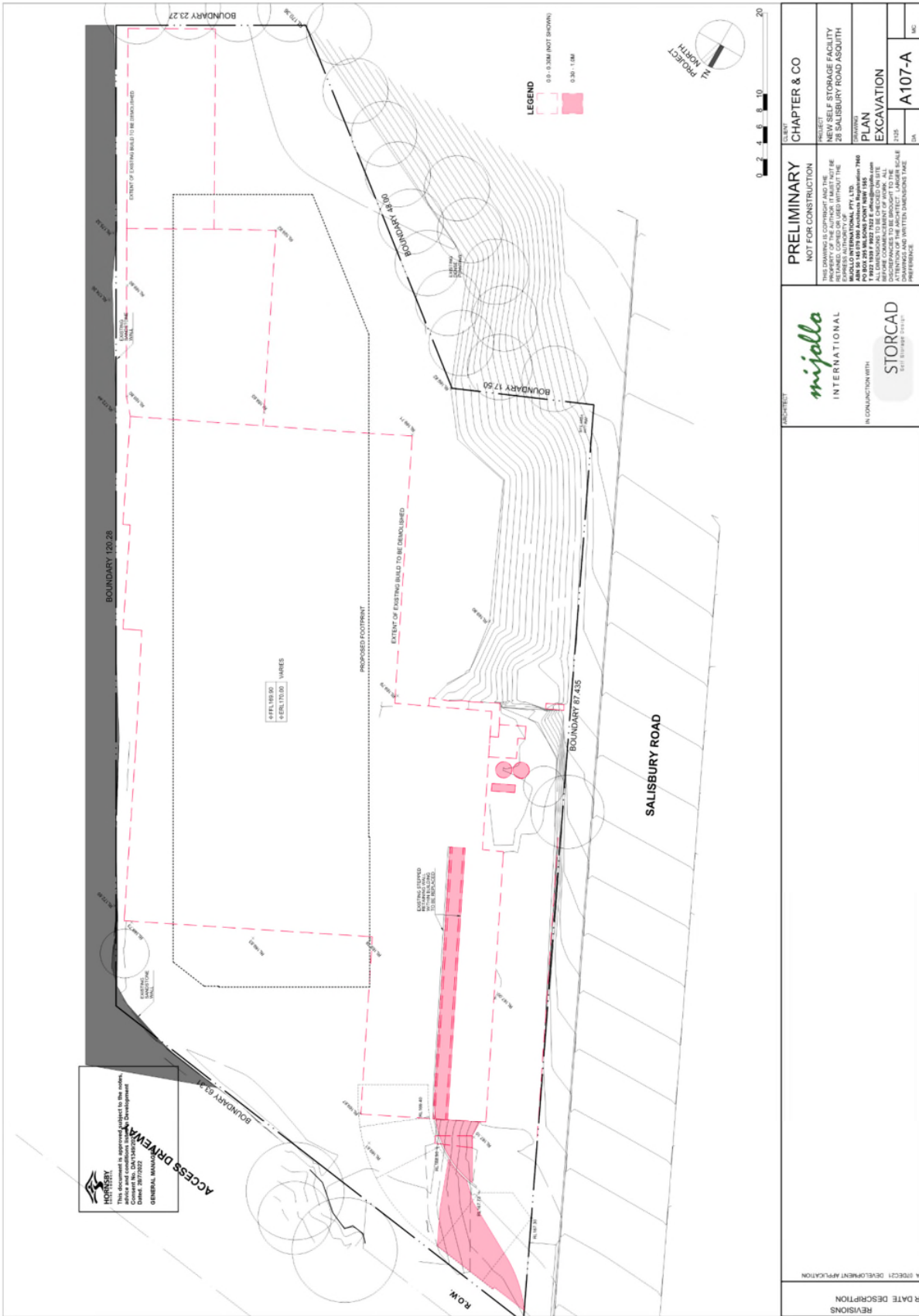


Appendix A

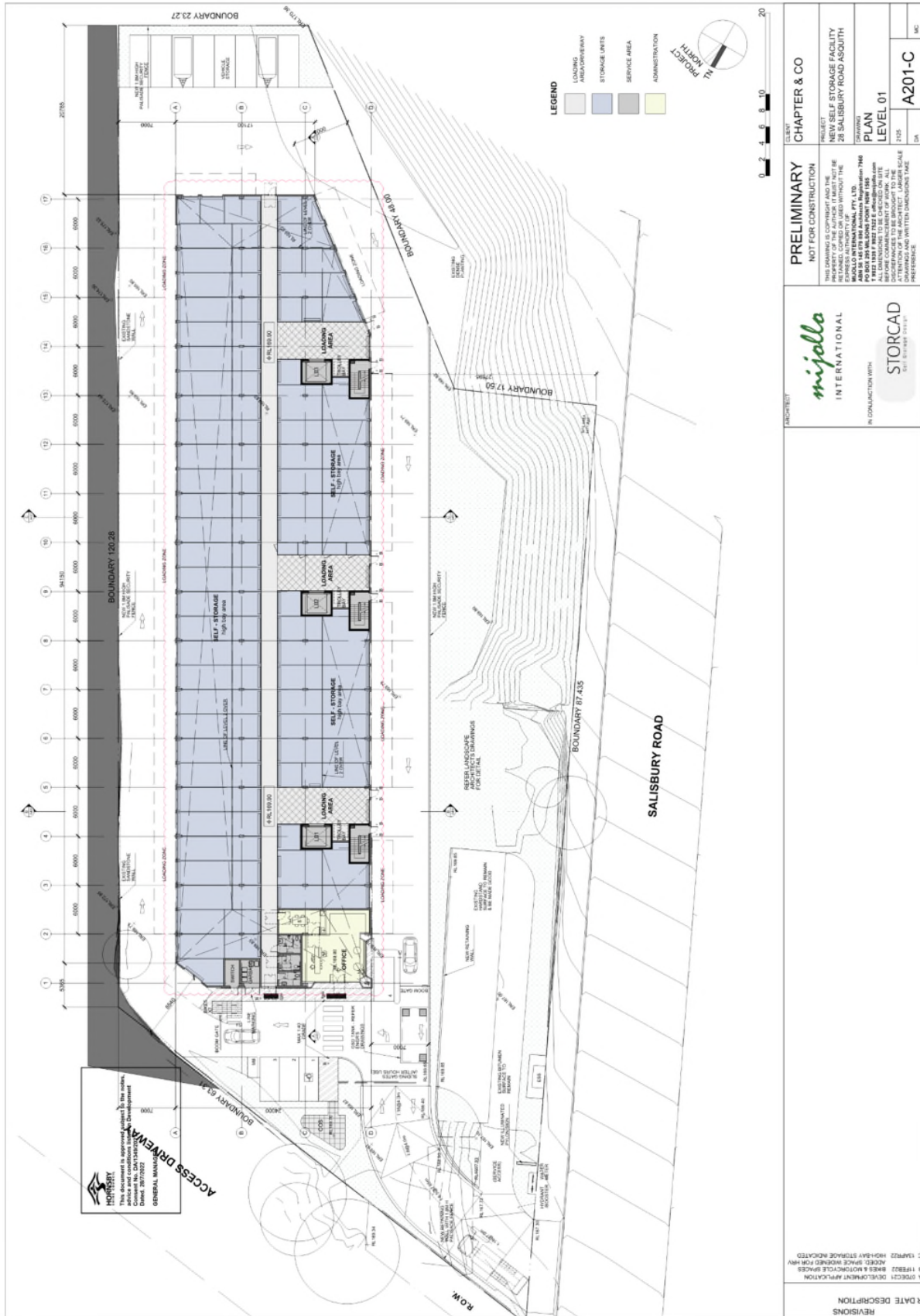




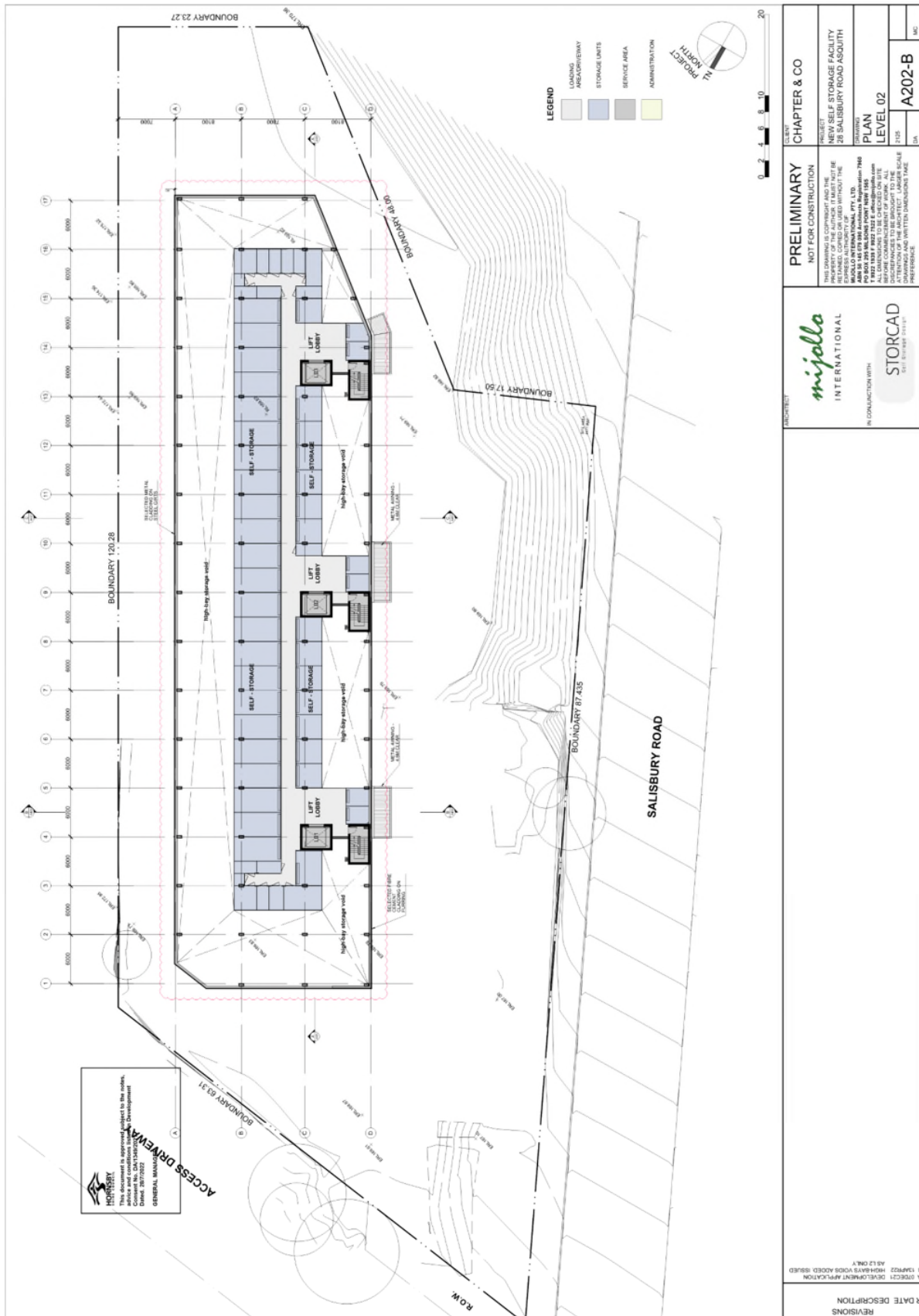
ATTACHMENT 5 - ITEM 2



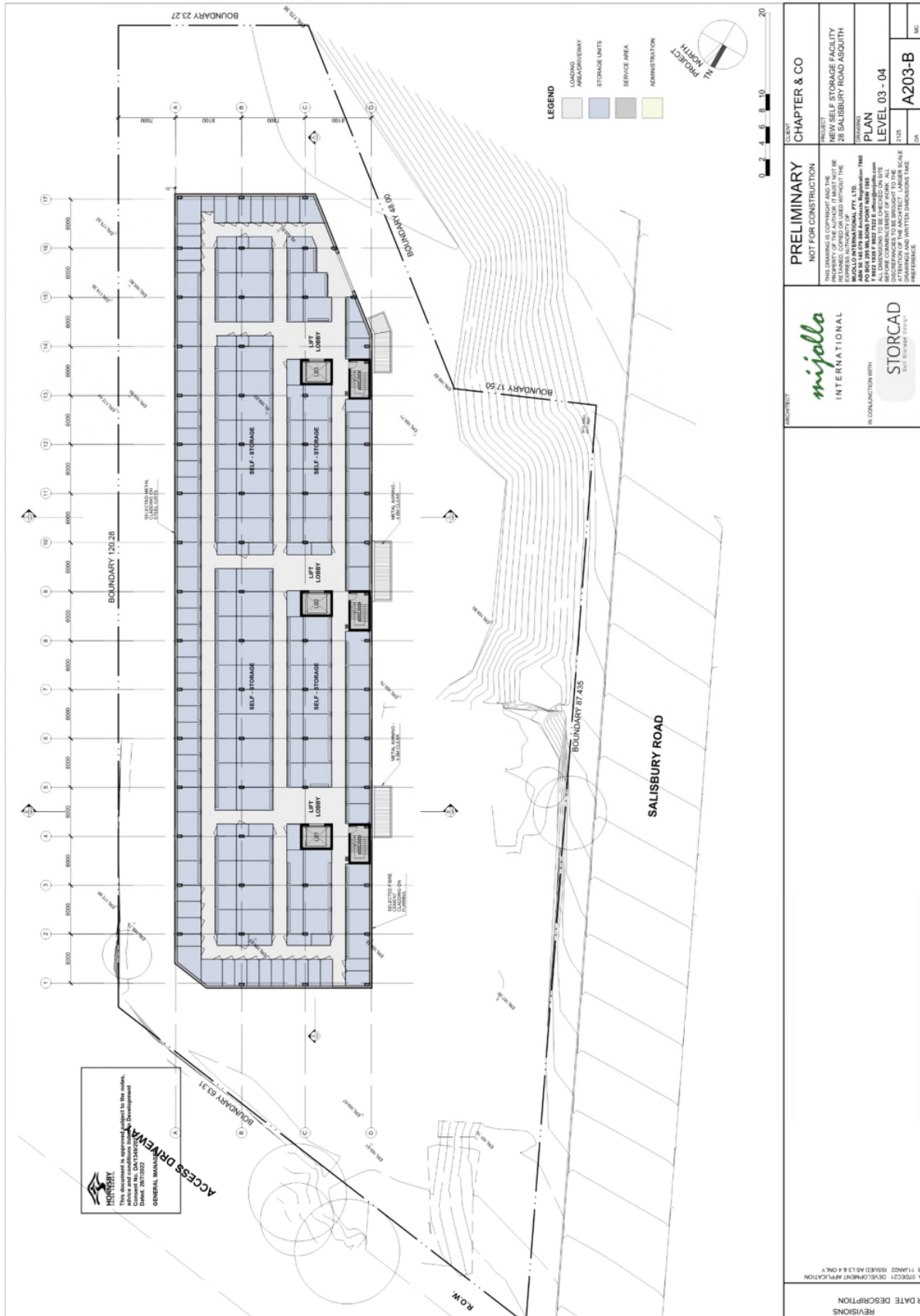
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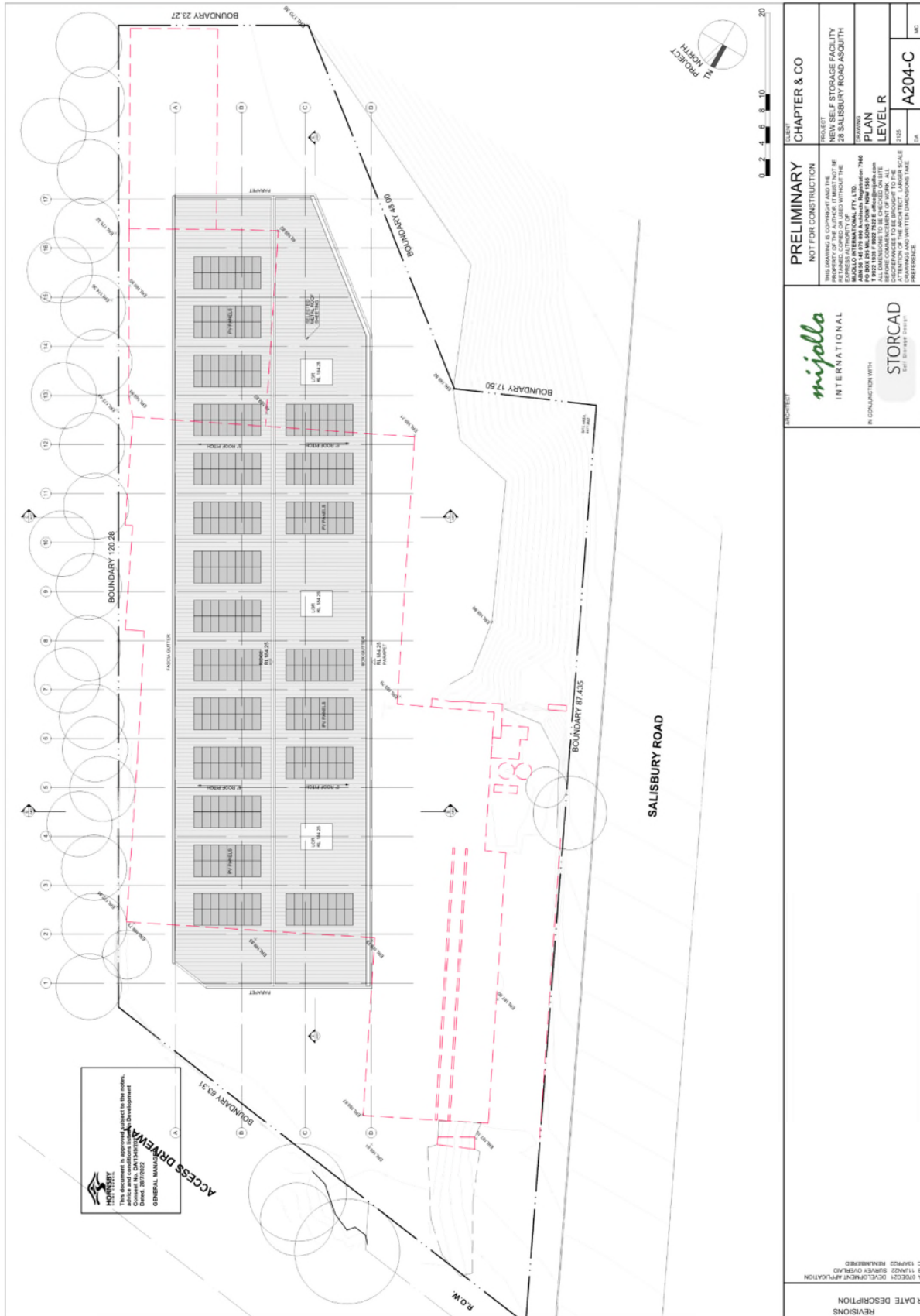
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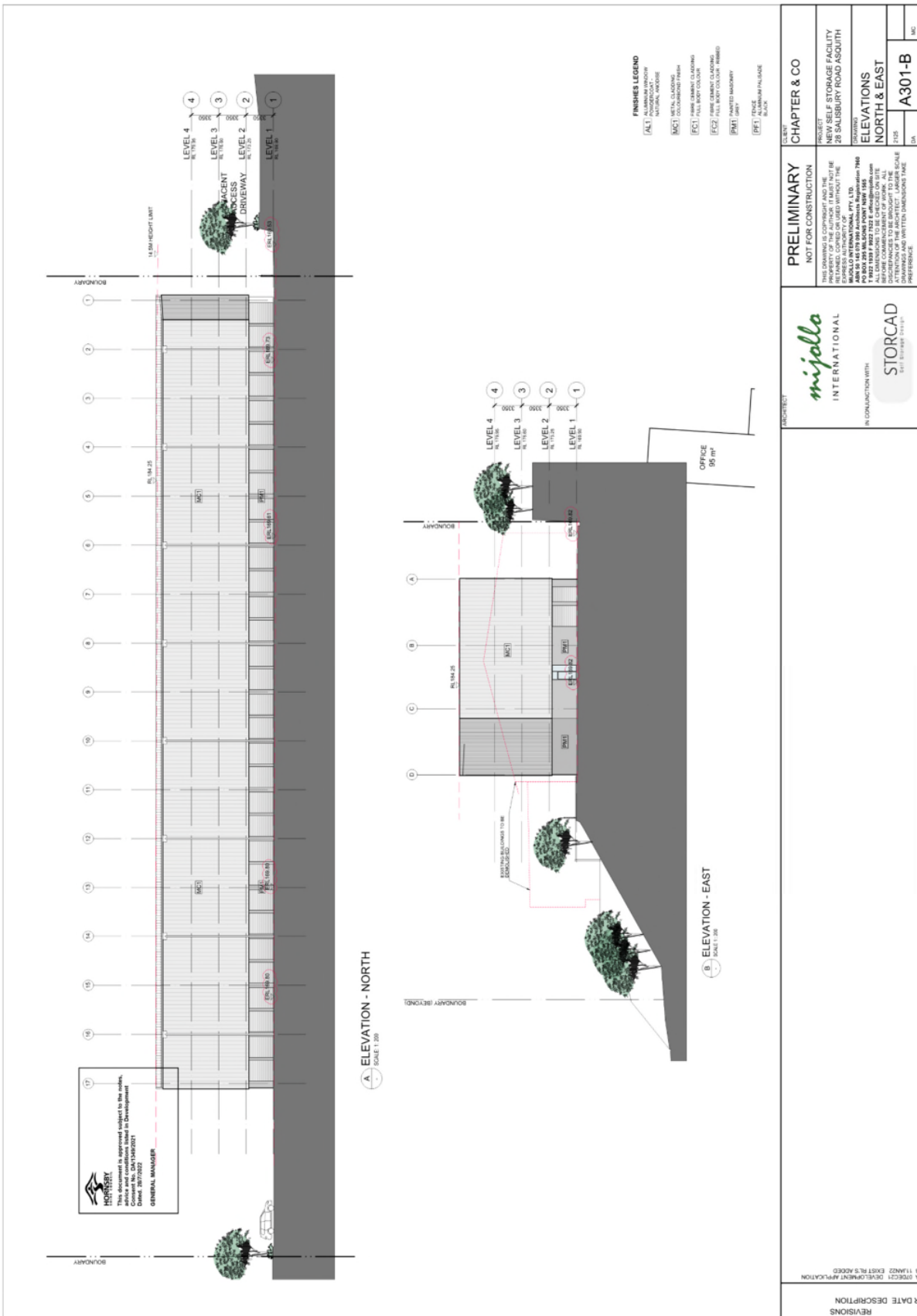
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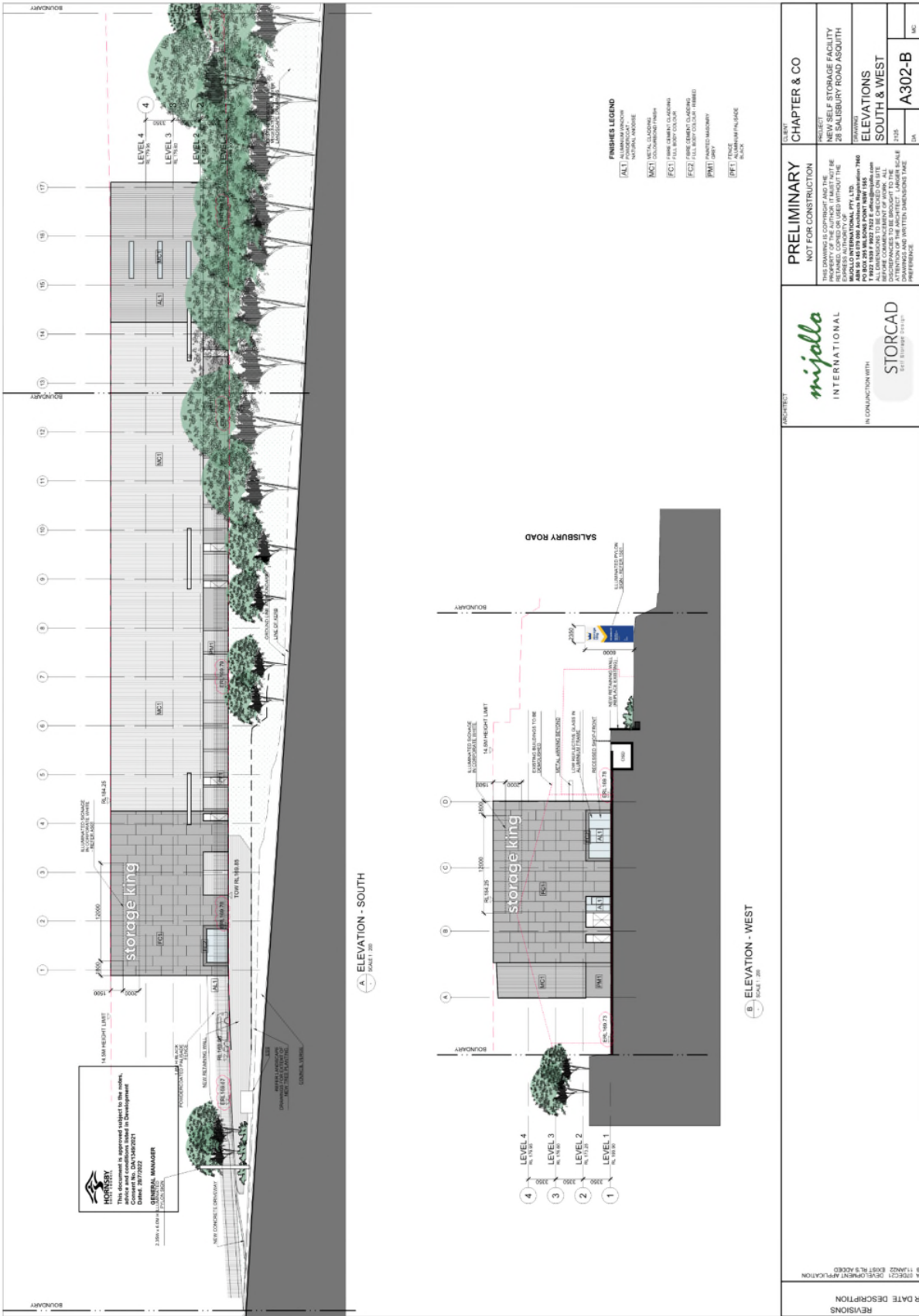
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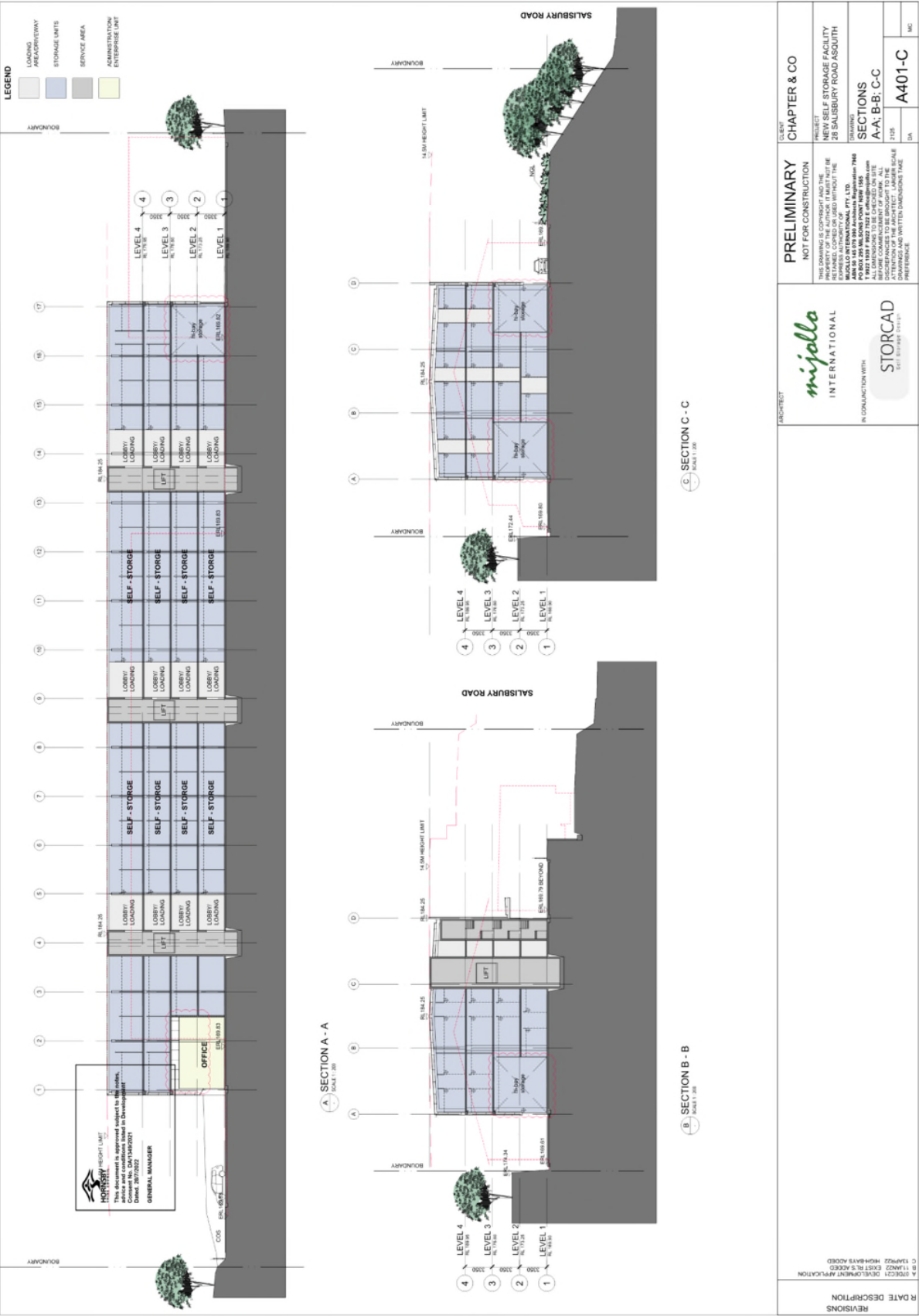
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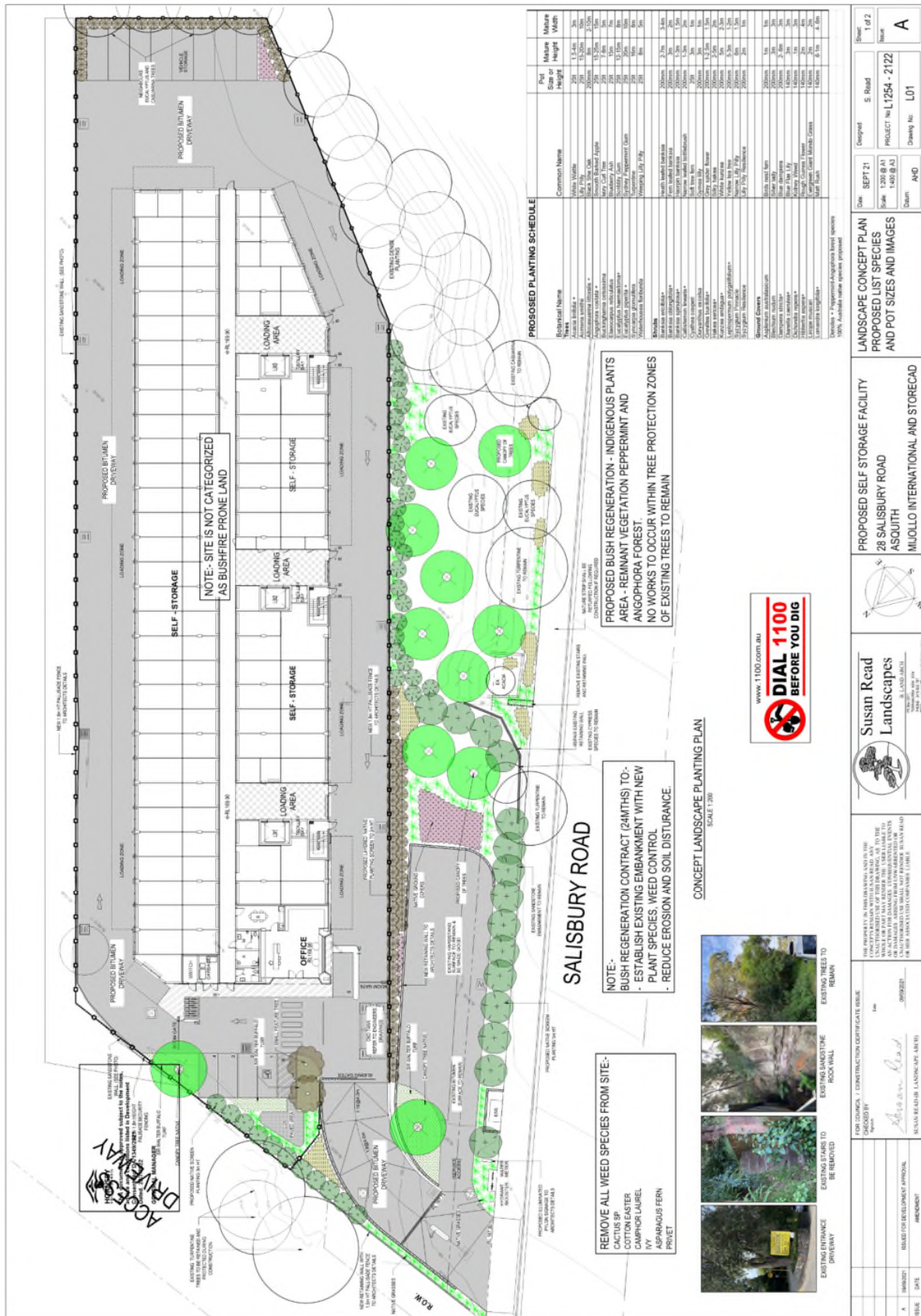


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3 REPORTING DEVELOPMENT APPLICATIONS FOR DETERMINATION BY THE HORNSBY LOCAL PLANNING PANEL OVER 180 DAYS

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. LPP5/23 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. DAs over 180 days

File Reference: F2013/00295-003

Document Number: D08584867

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 23/2
DA/1146/2020	Torrens title subdivision of 1 into 10	90-92 Franklin Road Cherrybrook	C	VPA	Apr	Council has completed the legal review of the proposed planning agreement and is currently negotiating the terms of the agreement with the applicant's legal team including acquisition of land required for road widening.	794
DA/1022/2021	Torrens title subdivision of 1 lot into 64	36-56 David Road Castle Hill	C	VPA	May	The applicant has supplied amended plans in response to Council's request for additional information with the exception of an amended BDAR. The BDAR has been delayed due to a discrepancy between the Arborist report and the amended BDAR which impacts credit obligations. The amended BDAR is due to Council by 10 February 2023. Upon receipt, the application will be re-notified. In the interim, Council staff have commenced reviewing the submitted information and Council is currently seeking to engage an independent planning assessment of the application.	511

ATTACHMENT 1 - ITEM 3

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 23/2
DA/1244/2021	Senior Living - 33 self-contained dwellings, demolition of existing structures, consolidation of 5 lots into 1	15B, 17, 19, 21 Penrhyn Ave, Beecroft and 579 Pennant Hills Road, West Pennant Hills	C	>10 submissions	Mar	Deferred by panel November LPP meeting. Amended plans and additional information received 3 February 2023. Report being prepared for the March meeting.	463
DA/121/2022	Demolition and construction of 5 storey RFB - 64 units	23-27 Balmoral Street Waitara	B	SEPP 65 + >10 submissions	May	Applicant submitted revised plans, which were reviewed by Council's Design Excellence Panel on 15 February. The application will be re-notified after the DEP review.	381
DA/585/2022	Boardwalk	Kangaroo Point - Brooklyn Rd	A	Designated development	Mar/ Apr	BDAR referred to Fisheries for concurrence on 23 January 2023. Upon receipt a report will be prepared for the next LPP meeting.	261
DA/737/2022	Recreational facility	639 Old Northern Road Dural	A	>10 submissions	Jun	Applicant to submit amended plans and supporting documentation by 19 March 2023 in response to the December 2022 Panel resolution.	220
DA/887/2022	Alterations and Additions to existing church	9 Chapman Ave Beecroft	C	>10% height contravention	Mar/ Apr	Additional information regarding heritage, and traffic and parking remains outstanding since October 2022. Upon receipt a report will be prepared for the next LPP meeting.	184

ATTACHMENT 1 - ITEM 3