



# ATTACHMENTS

## LOCAL PLANNING PANEL MEETING

Wednesday 29 May 2024  
at 2:00pm



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**ATTACHMENT/S**

**REPORT NO. LPP7/24**

**ITEM 1**

- 1. DRAFT CONDITIONS OF CONSENT**
- 2. ARCHITECTURAL PLANS**
- 3. LANDSCAPE PLANS**
- 4. DA/1047/2019 - APPROVED PLANS**
- 5. DA/1047/2019 - CLAUSE 4.6 SUBMISSION**

## DRAFT CONDITIONS OF CONSENT

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**Date of this modification:**

**Details of this modification:** Reduction in retail floor space and provision of a 'Direct to Boot' facility

**Conditions Added:** Nil

**Conditions Deleted:** Nil

**Conditions Modified:** 1 and 4

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**ATTACHMENT 1 - ITEM 1**

**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*

<b>Plan No.</b>	<b>Plan Title</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Council Reference</b>
DA004, Rev 04	Site Plan	MSK Architects	20.03.20	D07974267
DAD111, Rev 04	Demolition – Ground Floor	MSK Architects	20.03.20	D07974267
DAD112, Rev 04	Demolition – First Floor	MSK Architects	20.03.20	D07974267
DAD113, Rev 04	Demolition - Roof	MSK Architects	20.03.20	D07974267
DAD114, Rev 04	Sections 01 – Demolition Works	MSK Architects	20.03.20	D07974267
DAD115, Rev 04	Sections 02 – Demolition Works	MSK Architects	20.03.20	D07974267
DAP120, Rev 04	Basement Floor Plan	MSK Architects	20.03.20	D07974267
DAP121, Rev 04	Ground Floor Plan	MSK Architects	20.03.20	D07974267
DAP122, Rev 04	First Floor Plan	MSK Architects	20.03.20	D07974267
DAP123, Rev 04	Second Floor Plan	MSK Architects	20.03.20	D07974267
DAP124, Rev 04	Roof Plan	MSK Architects	20.03.20	D07974267
DAP126, Rev 04	Loading Area	MSK Architects	20.03.20	D07974267
DAP200, Rev 04	Sections 01	MSK Architects	20.03.20	D07974267
DAP201, Rev 04	Sections 02	MSK Architects	20.03.20	D07974267
DAP300, Rev 04	North & East Elevations	MSK Architects	20.03.20	D07974267

<b>Plan No.</b>	<b>Plan Title</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Council Reference</b>
DAP301, Rev 04	South & West Elevations	MSK Architects	20.03.20	D07974267
A0101 Rev 4	Specifications and Notes	Design Formations Architects	22.11.2023	
A0102 Rev 4	Access Notes	Design Formations Architects	22.11.2023	
A0201 Rev 4	Site Analysis	Design Formations Architects	22.11.2023	
A0301 Rev 4	Site Calculation Diagrams	Design Formations Architects	22.11.2023	
A1001 Rev 4	Site Plan	Design Formations Architects	22.11.2023	
A1101 Rev 4	Basement Floor Plan	Design Formations Architects	22.11.2023	
A1102 Rev 4	Ground Floor Plan	Design Formations Architects	22.11.2023	
A1103 Rev 4	Level 1 Floor Plan	Design Formations Architects	22.11.2023	
A1104 Rev 4	Level 2 Floor Plan	Design Formations Architects	22.11.2023	
A1105 Rev 5	Roof Plan	Design Formations Architects	02.04.2024	
A2001 Rev 5	Elevations	Design Formations Architects	02.04.2024	
A2002 Rev 5	Elevations	Design Formations Architects	02.04.2024	
A2101 Rev 5	Sections	Design Formations Architects	02.04.2024	
A2102 Rev 5	Sections	Design Formations Architects	02.04.2024	
A2103 Rev 5	Sections	Design Formations Architects	02.04.2024	
A2104 Rev 5	Sections	Design Formations Architects	02.04.2024	
101, Issue A	Stormwater Plan – Level 1	Australian Consulting Engineers	30.08.19	D07974267
102, Issue A	Stormwater Plan – Level 2	Australian Consulting Engineers	30.08.19	D07974267
103, Issue A	Stormwater Plan – Roof	Australian Consulting Engineers	30.08.19	D07974267
101 Issue B	Stormwater Layout Plan Level 1	C & S Engineering Services	06.12.2023	
102 Issue B	Stormwater Layout Plan Level 2	C & S Engineering Services	06.12.2023	



103 Issue B	Stormwater Layout Plan Roof Plan	C & S Engineering Services	06.12.2023	
<del>000, Issue B</del>	<del>Landscape Coversheet</del>	<del>Site Image Landscape Architects</del>	<del>24.10.19</del>	<del>D07974267</del>
<del>101, Issue B</del>	<del>Landscape Plan</del>	<del>Site Image Landscape Architects</del>	<del>24.10.19</del>	<del>D07974267</del>
000, Issue C	Landscape Coversheet	Site Image Landscape Architects	13.12.2023	
101, Issue C	Landscape Plan	Site Image Landscape Architects	13.12.2023	
501, Issue C	Landscape Details	Site Image Landscape Architects	13.12.2023	

*Supporting Documentation*

<b>Document Title</b>	<b>Prepared by</b>	<b>Dated</b>	<b>Council Reference</b>
Environmental Noise Impact Assessment, Rev B	DK Acoustics Pty Ltd	12.06.2020	D07934018
Construction Traffic Management Plan	Road Delay Solutions	02.04.2020	D07896467
Transport Management Delivery Plan (TMDP), Issue C	Key Urban Planning	03.04.200	D07894560
Access Design Assessment Report	Design Confidence	13.11.2019	D07804898
Waste Management Plan, Revision B	Elephants Foot	24.10.2019	D07804897
Traffic Impact Assessment	TSA	23.08.2019	D07804896
BCA Report	Michael Wynn-Jones & Associates	03.09.2019	D07804882
Traffic Compliance Statement	Amber Organisation	20.12.2023	D08794127

**2. Signage**

This consent does not approve any signage shown on the plans. A separate development consent is required from Council unless permitted as exempt or complying development.

**3. Construction Certificate**

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

**4. Section 7.11 Development Contributions**

- a) In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979* and the ~~*Hornsby Shire Council Section 94 Development Contributions Plan 2014-2024*~~ Hornsby Shire Council Section 7.11 Contributions Plan 2020-2030, the following monetary contributions must be paid to Council to cater for the increased demand for community infrastructure resulting from the development:
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Description	Contribution (4)
Roads	\$405,570.70
Open Space and Recreation	\$0
Community Facilities	\$0
Plan Preparation and Administration	\$2,027.85
<b>TOTAL</b>	<b>\$407,598.55</b>

being for the shopping centre expansion comprising 2,089.39m<sup>2</sup> 3,911m<sup>2</sup> GFA of additional retail floorspace and based on a PVT rate of 7 PVT per 100m<sup>2</sup> GFA for the roads contribution.

- b) The value of this contribution is current as at ~~30 June 2020~~ 7 May 2024. If the contribution is not paid within the financial quarter that this condition was generated, the contribution payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 94 7.11 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

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

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 applicable in this Development Consent Condition.

- c) The monetary contribution must be paid to Council:
- i) Prior to the issue of the Subdivision Certificate where the development is for subdivision; or
  - ii) Prior to the issue of the first Construction Certificate where the development is for building work; or
  - iii) Prior to issue of the Subdivision Certificate or first Construction Certificate, whichever occurs first, where the development involves both subdivision and building work; or
  - 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.*

Council's Development Contributions Plan may be viewed at [www.hornsby.nsw.gov.au](http://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****5. Stormwater Drainage**

The stormwater drainage system for the development must be designed for an average recurrence interval (ARI) of 20 years and be gravity drained in accordance with the following requirements:

- a) Connected to the existing system.
- b) The stormwater drainage system must be designed by a qualified hydraulic engineer.

**6. 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*.

**7. Fire Safety Upgrade**

- a) To ensure the protection of persons using the building and to facilitate egress from the building in the event of a fire, the application for a construction certificate must demonstrate that the building addition will integrate with the performance solution, fire resistance levels and fire suppression equipment of the existing structure. An appropriately qualified practicing fire engineer shall determine that the existing structure is able to provide adequate means of fire compartmentation, smoke spread, fire suppression and egress. Details shall be provided with the construction certificate application.
- b) The existing steel beams and posts that are situated toward the rear of the basement carpark are not fire protected. The posts and beams shall be included in upgrade of the existing structure and shall be treated in accordance with Specification C1.1 of the National Construction Code - Building Code of Australia. Details of the upgrade shall be submitted with the construction certificate application.

**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.) must be submitted with the construction certificate application. The schedule shall distinguish between existing and proposed fire safety measures.

**9. Sydney Water – Approval**

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

*Note: Building plan approvals can be obtained online via Sydney Water Tap in™ through [www.sydneywater.com.au](http://www.sydneywater.com.au) under the Building and Development tab.*

**10. Pedestrian Access Management Plan**

A Pedestrian Access Management Plan (PAMP) is to be submitted with the Construction Certificate application detailing how pedestrian movements will be altered and managed during construction

works, particularly during any partial or total closure of footpaths. The PAMP must be consistent with the Council approved CMP.

#### 11. Construction Management Plan (CMP)

To assist in the protection of the public, the environment and Council's assets, a separate Construction Management Plan must be prepared by a suitably qualified environmental consultant in consultation with a qualified traffic engineer and AQF 5 arborist, and submitted to Council's Compliance Team at [compliance@hornsby.nsw.gov.au](mailto:compliance@hornsby.nsw.gov.au) for review and approval according to the following requirements:

- a) The CMP must detail the contact information for developers, builder, private certifier and any emergency details during and outside work hours.
- b) A Construction Traffic Management Plan (CTMP) detailing the following:
  - i) A detailed survey plan showing existing survey marks, vehicle access points and surrounding pedestrian footpaths.
  - ii) The order of construction works and arrangement of all construction machines and vehicles being used at the same time during all stages.
  - iii) A statement to confirm that no building materials, work sheds, vehicles or machinery shall remain in the road reserve without the written consent of Hornsby Shire Council.
  - iv) In accordance with the Roads and Maritime Services "Traffic control at work sites Manual 2018", 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 and shall provide pedestrian access and two-way traffic in the public road to be facilitated at all times.
  - vi) A plan showing the proposed location of site sheds, concrete pumps, crane and hoarding fencing locations, unloading and loading areas, and waste and storage areas throughout all stages of works.
  - vii) Details of parking arrangements for all employees and contractors, including layover areas for large trucks during all stages of works.
  - viii) The proposed truck routes to and from the site including details of the frequency of truck movements for all stages of the development.
  - ix) A statement confirming that the applicant and all employees of contractors on the site will obey any direction or notice from the Prescribed Certifying Authority or Hornsby Shire Council in order to ensure the above.
  - x) Details of the requirement for any Work Zones, Out of Hours permits, partial Road Closures or Crane Permits, and a statement that an application to Hornsby Shire



Council will be made to obtain such a permit. Any applicable approvals from RMS for use of RMS roads must also be submitted.

- c) A Construction Waste Management Plan detailing the following:
  - i) 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.
  - ii) General construction waste details including construction waste skip bin locations and litter management for workers.
- 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) The duration of each stage of works where the maximum level of noise and vibration are predicted to be emitted for.
  - iii) Details of mitigation measures that will meet acoustic standards and guidelines at each stage of works.
  - iv) Details of a complaints handling process for the surrounding neighbourhood for each stage of works.
- e) Dust suppression measures during demolition, excavation and construction.
- f) Details on the general operating procedures to manage environmental risk throughout all stages of works on the site.

**REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS**

**12. 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.

**13. 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; and/or
- c) Involve the enclosure of a public place or part of a public place; and/or

- 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.*

#### 14. 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.

#### 15. 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 a garbage receptacle and not in demolition and construction waste bins.

### REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION

#### 16. Building Materials and Site Waste

The filling or 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 prescriptive measure of Part 1B.6.1(h) Tree Preservation of the Hornsby Development Control Plan, 2013, of any tree to be retained.

#### 17. 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.

#### 18. Construction Work Hours

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

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

**19. Demolition**

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

- a) Demolition material must be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan; 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.

**20. 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*.

**21. 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.*

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

**23. Waste Management**

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

**24. Waste Management Details**

Requirements of the approved Waste Management Plan shall be complied with during all site preparation works, demolition and throughout all construction works. When implementing the Waste Management Plan, the developer is to ensure:

- a) The disposal of any demolition and construction waste must be undertaken in accordance with the requirements of the Protection of Environment Operations Act 1997.

- b) All waste on site is to be stored, handled and disposed of in such a manner as to not create air pollution, offensive noise or pollution of land and water as defined by the Protection of Environment Operations Act 1997.
- c) Generation, storage, treatment and disposal of hazardous waste is conducted in accordance with the relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by SafeWork NSW.
- d) All waste generated (including excavated materials) which cannot be reused or recycled must be transported to a facility which can lawfully accept it.
- e) All materials and resources that are to be stored on site during construction works are contained on the site. The provisions of the Protection of Environment Operations Act 1997 must be complied with when placing/stock piling loose material, disposal of concrete waste or activities which have potential to pollute drains and water courses.
- f) The storage of waste and recycling containers must be within the boundaries of the development site at all times. Public footways and roads must not be used for the storage of any waste and must be kept clear of obstructions during all construction works.
- g) Additionally, written records of the following items must be maintained during the removal of any waste from the site and such information submitted to the Principal Certifying Authority within fourteen days of the date of completion of the works:
  - i) The identity of the person removing the waste.
  - ii) The waste carrier vehicle registration.
  - iii) Date and time of waste collection.
  - iv) A description of the waste (type of waste and estimated quantity).
  - v) Details of the site to which the waste is to be taken.
  - vi) The corresponding tip docket/receipt from the site to which the waste is transferred (noting date and time of delivery, description (type and quantity) of waste).
  - vii) Whether the waste is expected to be reused, recycled or go to landfill.

*Note: In accordance with the Protection of the Environment Operations Act 1997, the definition of waste includes any unwanted substance, regardless of whether it is reused, recycled or disposed to landfill.*

#### **25. Local Traffic Committee – Works Zone**

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

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



**26. Compliance with CMP and PAMP**

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

**REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**
**27. Installation of Acoustic Barriers**

A 1.8m high sound barrier wall is to be installed to the outer perimeter of the second-floor level terraces and constructed using masonry and translucent glass panels.

**28. Driveway Drainage Grates**

In accordance with the recommendations of the approved Acoustic Report, the drainage grates installed across the driveways and carpark are to be securely locked or bolted down to reduce the noise emission resulting from cars driving over the grates.

**29. 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](http://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.

**30. Fire Safety Statement – Final**

In accordance with the *Environmental Planning & Assessment Regulation 2000*, upon completion of the building the owner must provide Council with a certificate in relation to each fire safety measure implemented in the building.

**31. Waste Management Details**

The following waste management requirements must be complied with:

- a) A report must be prepared by an appropriately qualified person, certifying the following:
  - i) A comparison of the estimated quantities of each waste type against the actual quantities of each waste type.  
*Note: Explanations of any deviations to the approved Waste Management Plan is required to be included in this report.*
  - ii) That at least 60% of the waste generated during the demolition and construction phase of the development was reused or recycled.  
*Note: If the 60% diversion from landfill cannot be achieved in the Construction Stage, the Report is to include the reasons why this occurred and certify that appropriate work practices were employed to implement the approved Waste Management Plan. The Report must be based on documentary evidence such as tipping dockets/receipts from recycling depots, transfer stations and landfills, audits of procedures etc. which are to be attached to the report.*
  - iii) All waste was taken to site(s) that were lawfully permitted to accept that waste.

- b) The bin storage area(s) must include water or a hose for cleaning, graded floors with drainage to sewer, sealed and impervious surface, adequate lighting and ventilation.
- c) The bin carting routes must be devoid of any steps and must be wholly within the site.

*Note: Ramps, lifts etc between different levels are acceptable. The use of the public footpath is not acceptable.*

### 32. Car Parking

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

- a) All parking areas and driveways are to be sealed to an all-weather standard, line marked and signposted.
- b) All parking for people with disabilities is to comply with AS/NZS 2890.6:2009 Off-street parking for people with disabilities.

### 33. External Lighting

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

### 34. Final Certification - Acoustics

Following the final inspection, a qualified Acoustic Consultant must provide certification that the building has been constructed in accordance with the recommendations of the approved Noise Assessment Report prepared by Acoustic Logic dated 12 June 2020.

## OPERATIONAL CONDITIONS

### 35. Use of Premises

This consent does not permit the fit-out and use of individual tenancies. A separate development application is required for the fit-out and use of individual tenancies prior to the occupation of the tenancies.

### 36. Hours of Operation

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

- a) Retail Operating Hours (existing approved shops)
  - i) Monday to Saturday 7:00AM to 12:00AM (Midnight)
  - ii) Sunday 8:00AM to 10:00PM
- b) Retail Operating Hours (proposed retail premises)
  - i) Monday to Saturday 7:00AM to 10:00PM
  - ii) Sunday 7:00AM to 8:00PM
- c) Second Floor Level Terraces

- i) Monday to Saturday 7:00AM to 11:30PM
- ii) Sunday 8:00AM to 10:00PM
- d) Loading Dock
  - i) Monday to Saturday 7:00AM to 10:00PM
  - ii) Sunday 8:00AM to 6:00PM

**37. 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.

**38. Waste Management**

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

- a) The manoeuvring areas adjacent to the main loading dock and the specialty loading dock shall be kept clear at all times to ensure that adequate area is available for delivery vehicles and waste collection vehicles to manoeuvre. No materials, bins or waste receptacles or compactors are to be stored in the manoeuvring area of the loading dock at any time other than as approved by Hornsby Shire Council.
- b) All commercial tenant(s) must keep written evidence on site of a valid contract with a licensed waste contractor(s) for the regular collection and disposal of the waste and recyclables that are generated on site.
- c) 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.
- d) Waste collection services must not take place between 8PM and 7AM weekdays or 8PM and 8AM on weekends and public holidays.
- e) A Work, Health & Safety (WHS) risk assessment is to be carried out by a suitably qualified person with qualifications in Work, Health & Safety Legislation with specific regard to waste management. The recommendations of the WHS Risk Assessment are to be implemented as required.

**39. Car Parking**

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

- a) All parking areas and driveways are to be sealed to an all-weather standard, line marked and signposted.
- b) Car parking, loading and manoeuvring areas to be used solely for nominated purposes.
- c) Vehicles awaiting loading, unloading or servicing shall be parked on site and not on adjacent or nearby public roads.
- d) All vehicular entry on to the site and egress from the site shall be made in a forward direction.

**40. Road Works**

- a) Subject to approval by the Hornsby Local Traffic Committee (LTC), the kerb blisters on Bellevue Street at the entrance to the shopping centre are to be replaced with a Wombat Crossing. The Wombat Crossing is to be designed in accordance with TfNSW and Austroads Guidelines and submitted to Council for LTC approval.
- b) Subject to approval by the Hornsby Local Traffic Committee (LTC), a single lane treatment is to be constructed on Wood Street 8m south of Bellevue Street. The single lane treatment is to be designed in accordance with TfNSW and Austroads Guidelines and submitted to Council for LTC approval.
- c) Any proposed landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists travelling along the footpath.
- d) A continuous BB centreline is to be provided from the Wood Street boundary to the first-floor level car park.
- e) Car parking spaces are not to be used for car wash activities.

**41. Mechanical Plant Operation**

- a) The number of mechanical plants on the roof of the building is restricted to the following numbers:
  - i) Five commercial condensing units above the food/retail outlets near the eastern terrace.
  - ii) Five commercial condensing units above the food/retail outlets near the northern terrace.
  - iii) Two kitchen exhaust fans above the food/retail outlets near the eastern terrace.
  - iv) Two kitchen exhaust fans above the food/retail outlets near the northern terrace.
- b) The air conditioning unit must not exceed a Sound Power Level greater than 80 dB(A).
- c) The kitchen exhaust fans must not exceed a Sound Power Level greater than 90 dB(A).
- d) The kitchen exhaust fans must be acoustically treated using internally lined ductwork and/or silencers.

**42. Noise Management**

- a) All noise generated by the proposed 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).
- b) The level of total continuous noise emanating from operation of all mechanical plant, including air conditioning units and processes in all buildings (LA10) (measured for at least 15 minutes) in or on the above premises, must be acoustically treated to reduce the noise emission level at nearby residences so that noise does not exceed the background level by more than 5dB(A) when measured at residential property boundaries.
- c) An acoustic assessment is to be undertaken by a suitably qualified environmental consultant within 60 days of commencement of the use of the first and second floor level retail premises in accordance with the Environment Protection Authority's Noise Policy for Industry (2017), *Council's Policy and Guidelines for Noise and Vibration Generating Development (Acoustic*



*Guidelines V.5, 2000*) and the *DECC's Noise Guide for Local Government (2004)*. The assessment must be held on site for review by Council if necessary. Should the assessment find that noise from the premise exceeds 5dB(A) above background noise levels at neighbouring receivers, appropriate measures must be employed to rectify excessive noise.

- d) The following maximum number of people are permitted inside the new cafes and restaurants and in the outdoor dining areas:
- i) Up to 76 people on the eastern terrace.
  - ii) Up to 65 people on the northern terrace.
  - iii) Up to 200 people inside the cafes and restaurants fronting the eastern terrace.
  - iv) Up to 100 people inside the cafes and restaurants fronting the northern terrace.
  - v) The Leq sound level of background music must not exceed 75dB(A) at 3 metres from the speakers.

#### **CONDITIONS OF CONCURRENCE – TRANSPORT FOR NSW (TfNSW)**

The following conditions of consent are from the nominated State Agency pursuant to Section 4.13 of the *Environmental Planning and Assessment Act 1979* and must be complied with to the satisfaction of that Agency.

#### **43. TfNSW Condition No. 1**

A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.

#### **44. TfNSW Condition No. 2**

A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Pennant Hills Road and The Comenarra Parkway during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>

#### **45. TfNSW Condition No. 3**

All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Pennant Hills Road and The Comenarra Parkway.

#### **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 (LSC) at [www.longservice.nsw.gov.au](http://www.longservice.nsw.gov.au).

*Note: The rate of the Long Service Levy is 0.25% of the total cost of the work (including GST).*

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

#### **Tree and Vegetation Preservation**

Hornsby Development Control Plan 2013 Tree and Vegetation Preservation provisions have been developed under Council's authorities contained in State Environmental Planning Policy (Biodiversity and Conservation) 2021 and the *Environmental Planning and Assessment Act 1979*.

In accordance with these provisions a person must not cut down, fell, uproot, kill, poison, ringbark, burn, or otherwise destroy the vegetation, lop, or otherwise remove a substantial part of the trees or vegetation to which any such development control plan applies without the authority conferred by a development consent, or a permit granted by Council.

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

*Note: 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).*

#### **Dial Before You Dig**

Prior to commencing any works, the applicant is encouraged to contact Before You Dig Australia (BYDA) at [www.byda.com.au](http://www.byda.com.au) for free information on potential underground pipes and cables within the vicinity of the development site.

#### **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 1800810443.

#### **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](http://www.environment.nsw.gov.au)

[www.adfa.org.au](http://www.adfa.org.au)

[www.safework.nsw.gov.au](http://www.safework.nsw.gov.au)

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

**Disability Discrimination Act**

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

**Covenants**

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

**Tenancy Fit-Out – Separate DA Required**

This consent does not permit the fit-out and use of individual tenancies. A separate development application is required for the fit-out of individual tenancies prior to the occupation of the building.

**Business Identification / Advertising Signage – Separate DA Required**

This consent does not permit the erection or display of any business identification or advertising signs. Most signs or structures require development consent. Applicants should make separate enquiries with Council prior to erecting or displaying any advertising signage.



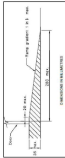
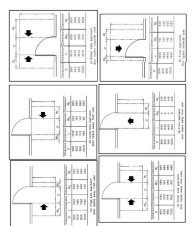




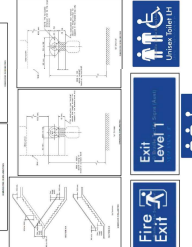
ACCESS NOTES

GENERAL ACCESS SPECIFICATIONS

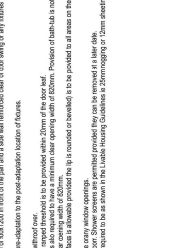
- Access to common use areas of Residential Buildings shall be provided in accordance with the following specifications:
  - Common use areas shall be provided with a height or thickness of more than 10mm and depth/width of more than 10mm from any internal corner.
  - Common use areas shall be provided with a height or thickness of more than 10mm and depth/width of more than 10mm from any internal corner.
- At a minimum 150mm clear space is required in front of any common use feature identified (BSC) areas provided in the development. Provide leg room up to the wall and hand and water supply.
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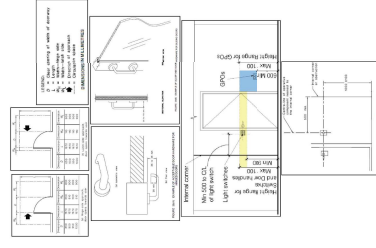
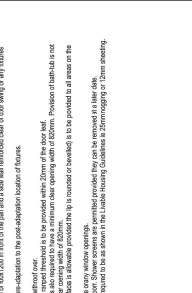
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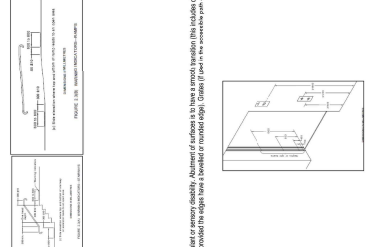
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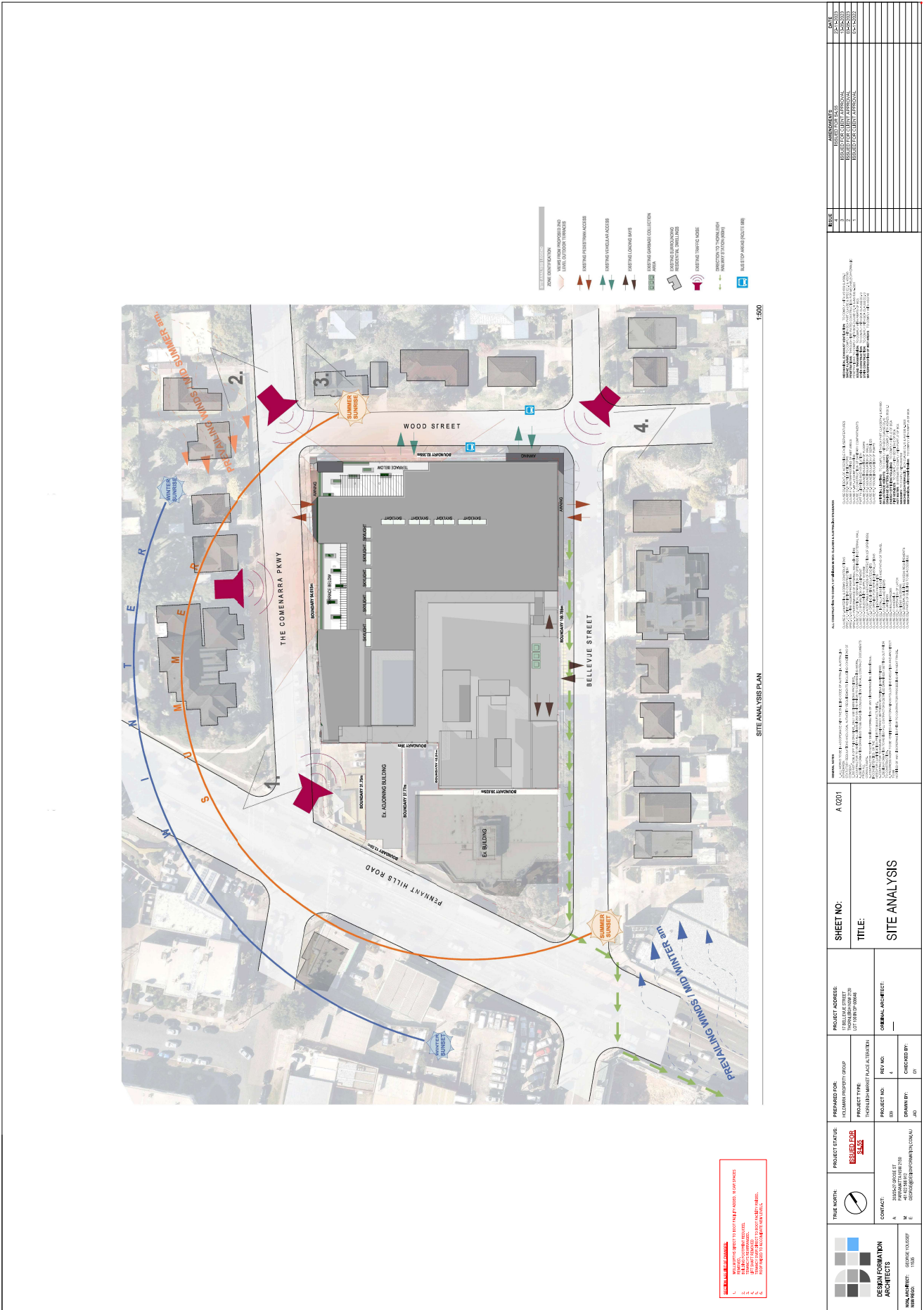
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3	ISSUED FOR PERMIT	15/05/2024

ATTACHMENT 2 - ITEM 1



**GENERAL COMMENTS:**  
 1. All measurements are to door thresholds, unless stated otherwise.  
 2. All dimensions are in metres.  
 3. All dimensions are to the centreline of the road, unless stated otherwise.  
 4. All dimensions are to the top of the kerb, unless stated otherwise.  
 5. All dimensions are to the top of the finished ground level, unless stated otherwise.

NO.	REVISION	DATE
1	ISSUED FOR PERMIT	15/05/2024
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3	ISSUED FOR PERMIT	15/05/2024
4	ISSUED FOR PERMIT	15/05/2024

**PROJECT ADDRESS:**  
 17 BELLEVUE STREET  
 LOT 1000 PHSMA

**PROJECT TYPE:**  
 THORNTON MARKET PLACE AT TREVINA

**PREPARED FOR:**  
 HAZELBANK PROPERTY GROUP

**PREPARED BY:**  
 DESIGN FORMATION ARCHITECTS

**DATE:**  
 15/05/2024

**SHEET NO.:**  
 A 0201

**TITLE:**  
 SITE ANALYSIS

**PROJECT NO.:**  
 4

**REV NO.:**  
 4

**CHECKED BY:**  
 DJ

**DATE:**  
 15/05/2024

**DESIGN FORMATION ARCHITECTS**

17 BELLEVUE STREET  
 LOT 1000 PHSMA

**CONTACT:**  
 A: PROJECT ARCHITECT  
 B: PROJECT MANAGER  
 C: DESIGNER

**SCALE:**  
 1:500

# ATTACHMENT 2 - ITEM 1

① BASEMENT FLOOR  
1:100

② GROUND FLOOR  
1:100

③ LEVEL 1  
1:100

④ LEVEL 2  
1:100

**SITE CALCULATIONS**

TOTAL SITE AREA	6,206.00 m <sup>2</sup>
GROSS FLOOR AREA	18,325.00 m <sup>2</sup>
BASEMENT GFA	6,700.00 m <sup>2</sup>
GROUND FLOOR GFA	7,865.00 m <sup>2</sup>
LEVEL 1 GFA	2,657.50 m <sup>2</sup>
LEVEL 2 GFA	1,102.50 m <sup>2</sup>
TOTAL APPROVED GFA	11,325.00 m <sup>2</sup>
PROPOSED FLOOR SPACE RATIO	1.84
APPROVED FLOOR SPACE RATIO	1.38

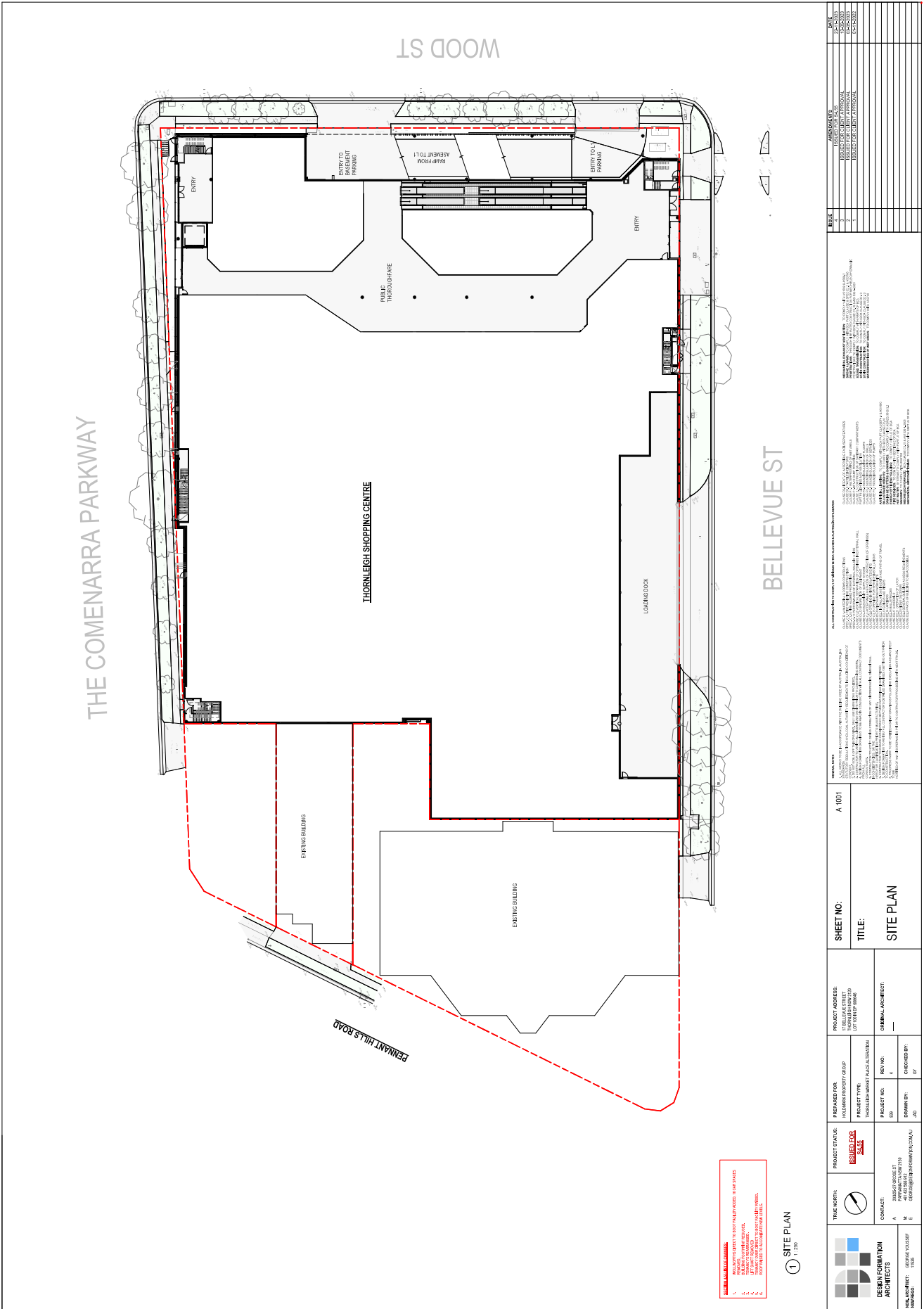
**NOTES:**

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<p><b>TRUE NORTH</b></p>	<p><b>PROJECT STATUS</b></p> <p>ISSUED FOR 2024</p>	<p><b>PREPARED FOR:</b> HULIMAN PROPERTY GROUP</p> <p><b>PROJECT TYPE:</b> THORNTON MARKET PLACE AT TERNUM</p>	<p><b>PROJECT ADDRESS:</b> 177 BELLAIR STREET LOT 10 AND 11 BOMAH</p>	<p><b>SHEET NO.:</b> A 03/11</p>	<p><b>DATE:</b> 15/05/2024</p>
<p><b>CONTACT:</b> A. PETERSON M. GIBSON</p>	<p><b>DESIGN FORMATION ARCHITECTS</b></p> <p>177 BELLAIR STREET BOMAH NSW 2146</p>	<p><b>PROJECT NO.:</b> 2024/001</p> <p><b>REV NO.:</b> A</p> <p><b>DRAWN BY:</b> JAC</p> <p><b>CHECKED BY:</b> GSI</p>	<p><b>GENERAL ARCHITECT</b></p>	<p><b>TITLE:</b> SITE CALCULATION DIAGRAMS</p>	<p><b>SCALE:</b> 1:100</p>

# ATTACHMENT 2 - ITEM 1



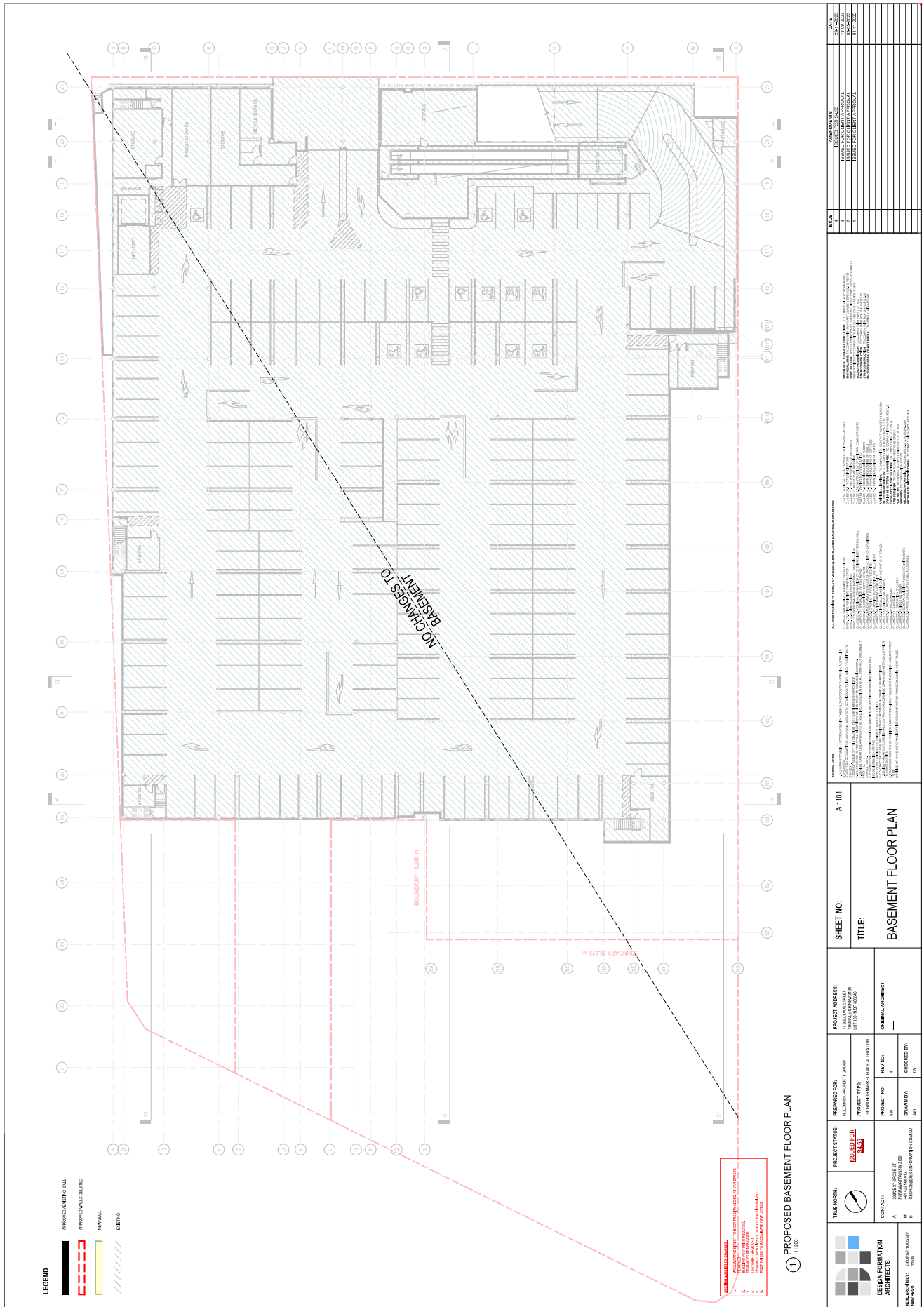


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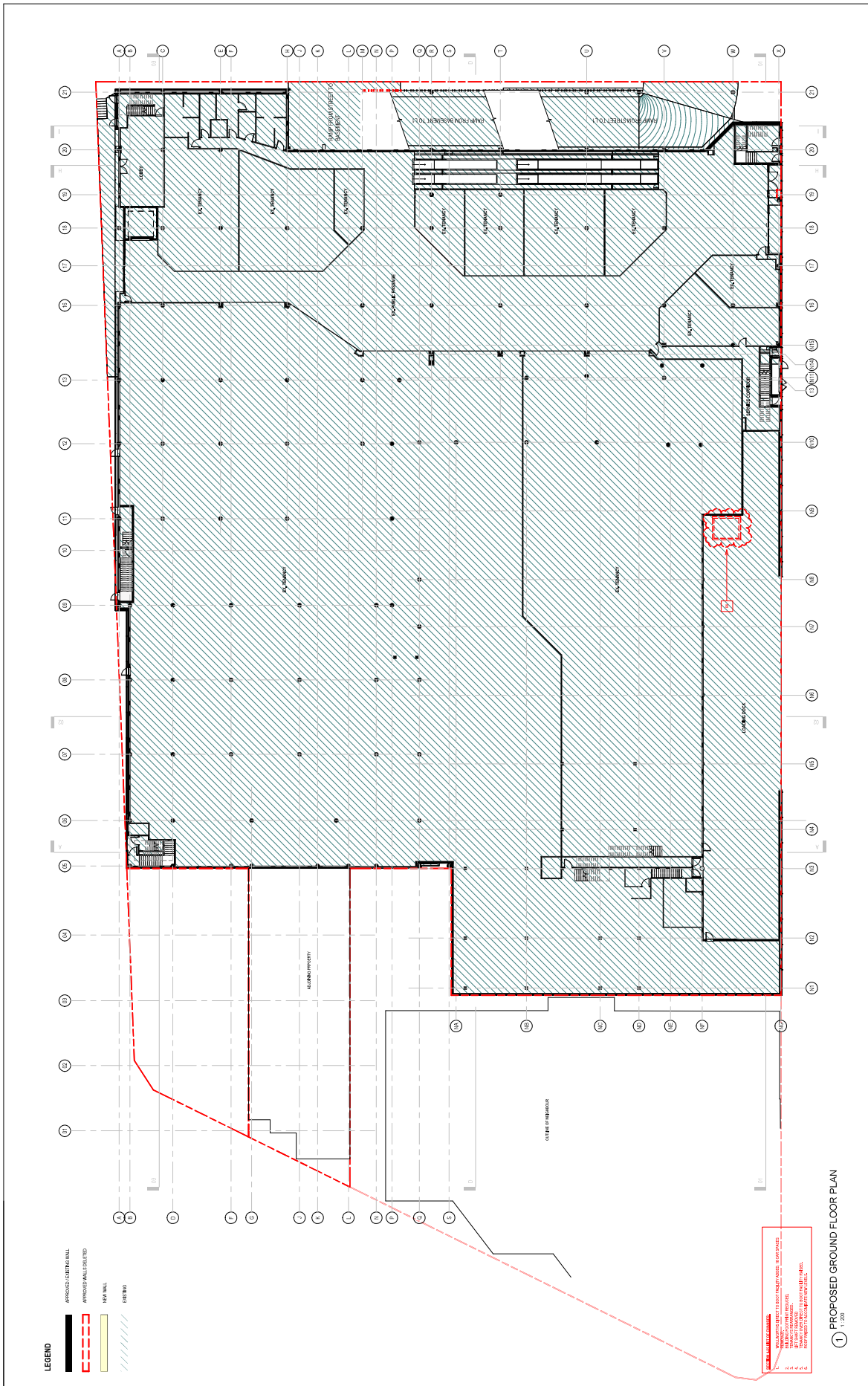
1 SITE PLAN  
 1:100

<p><b>DESIGN FORMATION ARCHITECTS</b>          10/11-13/15 WILSON STREET, SYDNEY NSW 1585          TEL: 02 9550 0000          WWW.DESIGNFORMATIONARCHITECTS.COM.AU</p>	<p><b>TRUE NORTH</b></p>	<p><b>PROJECT STATUS</b>          ISSUED FOR TENDERS</p>	<p><b>PREPARED FOR:</b>          HAZELBURN PROPERTY GROUP</p> <p><b>PROJECT TYPE:</b>          THORNLEIGH MARKET PLACE EXTENSION</p> <p><b>PROJECT NO:</b>          2024/001</p> <p><b>DRAWN BY:</b>          JAC</p>	<p><b>PROJECT ADDRESS:</b>          17 BELLEVUE STREET, LOT 10/11/13/15</p> <p><b>GENERAL ARCHITECT:</b></p>	<p><b>SHEET NO:</b>          A 10/11</p> <p><b>TITLE:</b>          SITE PLAN</p>	<p><b>DATE:</b>          15/05/2024</p> <p><b>SCALE:</b>          1:100</p>																	
	<p><b>REVISIONS:</b></p> <table border="1"> <tr> <th>NO.</th> <th>DESCRIPTION</th> <th>DATE</th> </tr> <tr> <td>1</td> <td>ISSUED FOR TENDERS</td> <td>15/05/2024</td> </tr> </table>	NO.	DESCRIPTION	DATE	1	ISSUED FOR TENDERS	15/05/2024	<p><b>APPROVALS:</b></p> <table border="1"> <tr> <th>ROLE</th> <th>NAME</th> <th>DATE</th> </tr> <tr> <td>DESIGNER</td> <td>[Signature]</td> <td>15/05/2024</td> </tr> <tr> <td>CHECKED BY</td> <td>[Signature]</td> <td>15/05/2024</td> </tr> <tr> <td>APPROVED BY</td> <td>[Signature]</td> <td>15/05/2024</td> </tr> </table>					ROLE	NAME	DATE	DESIGNER	[Signature]	15/05/2024	CHECKED BY	[Signature]	15/05/2024	APPROVED BY	[Signature]
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# ATTACHMENT 2 - ITEM 1

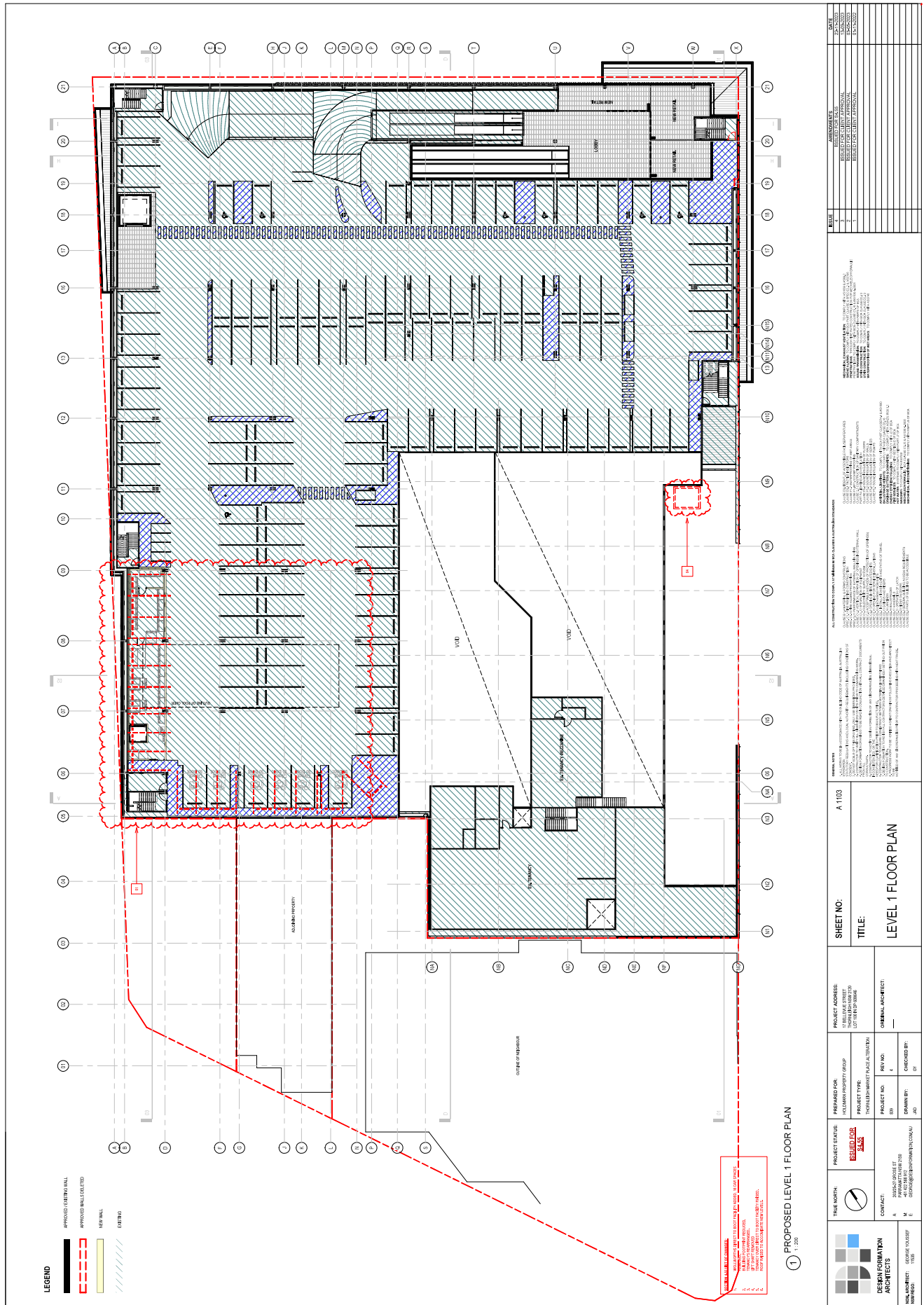


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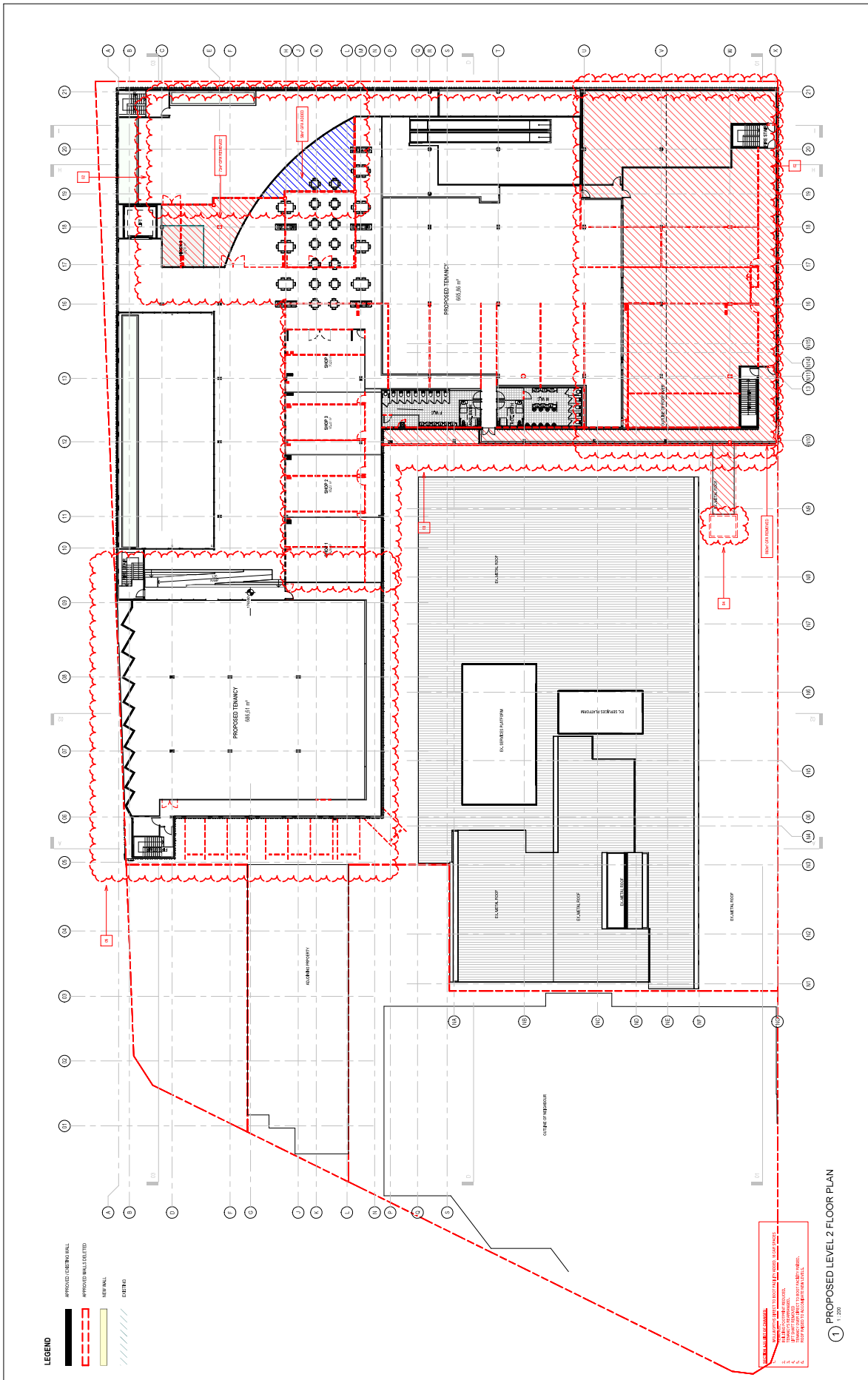


<p><b>REVISIONS</b></p> <table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>2024.05.29</td> <td>ISSUED FOR APPROVAL</td> </tr> <tr> <td>2</td> <td>2024.05.29</td> <td>ISSUED FOR APPROVAL</td> </tr> <tr> <td>3</td> <td>2024.05.29</td> <td>ISSUED FOR APPROVAL</td> </tr> </tbody> </table>		NO.	DATE	DESCRIPTION	1	2024.05.29	ISSUED FOR APPROVAL	2	2024.05.29	ISSUED FOR APPROVAL	3	2024.05.29	ISSUED FOR APPROVAL	<p><b>PROJECT ADDRESS:</b> 17 BELLAIR STREET LOT 10 (RIP) 200M</p>		<p><b>SHEET NO.:</b> A 1102</p>	
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2	2024.05.29	ISSUED FOR APPROVAL															
3	2024.05.29	ISSUED FOR APPROVAL															
<p><b>PREPARED FOR:</b> HULIMAN PROPERTY GROUP</p> <p><b>PROJECT TYPE:</b> THORNTON MARKET PLACE AT TERNUM</p>		<p><b>GENERAL ARCHITECT:</b> DESIGN FORMATION ARCHITECTS</p>		<p><b>TITLE:</b> GROUND FLOOR PLAN</p>													
<p><b>PROJECT STATUS:</b> ISSUED FOR APPROVAL</p>		<p><b>PROJECT NO.:</b> 4</p> <p><b>REV NO.:</b> 1</p> <p><b>DATE:</b> 2024.05.29</p>		<p><b>CHECKED BY:</b> JAC</p>													
<p><b>TRUE NORTH:</b> [North Arrow]</p>		<p><b>CONTACT:</b> A. PRINCEWILLIAMS M. THORNTON</p>		<p><b>DATE:</b> 2024.05.29</p>													
<p><b>DESIGN FORMATION ARCHITECTS</b> 10/110 PITT STREET SYDNEY NSW 2000 PH: 02 9550 0000 WWW.DESIGNFORMATIONARCHITECTS.COM.AU</p>		<p><b>1 PROPOSED GROUND FLOOR PLAN</b> 1:200</p>															

# ATTACHMENT 2 - ITEM 1



# ATTACHMENT 2 - ITEM 1



NO.	REVISION	DATE
1	ISSUED FOR RFP	15/06/2023
2	REVISED FOR APPROVAL	15/06/2023
3	REVISED FOR APPROVAL	15/06/2023
4	REVISED FOR APPROVAL	15/06/2023

**GENERAL NOTES:**  
 1. ALL WORK SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT ACT 2015.  
 2. ALL WORK SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (REPAIRS AND MAINTENANCE) REGULATIONS 2017.  
 3. ALL WORK SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (CONSTRUCTION) REGULATIONS 2017.  
 4. ALL WORK SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (DISPOSAL) REGULATIONS 2017.  
 5. ALL WORK SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (MATERIALS AND METHODS) REGULATIONS 2017.  
 6. ALL WORK SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (SAFETY) REGULATIONS 2017.  
 7. ALL WORK SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (ACCESS) REGULATIONS 2017.  
 8. ALL WORK SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (DISPUTES) REGULATIONS 2017.  
 9. ALL WORK SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (FINANCIAL) REGULATIONS 2017.  
 10. ALL WORK SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (ADMINISTRATIVE) REGULATIONS 2017.  
 11. ALL WORK SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (GENERAL) REGULATIONS 2017.  
 12. ALL WORK SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (MISCELLANEOUS) REGULATIONS 2017.  
 13. ALL WORK SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (UNDEVELOPED) REGULATIONS 2017.  
 14. ALL WORK SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (REPEATED) REGULATIONS 2017.  
 15. ALL WORK SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (FINAL) REGULATIONS 2017.

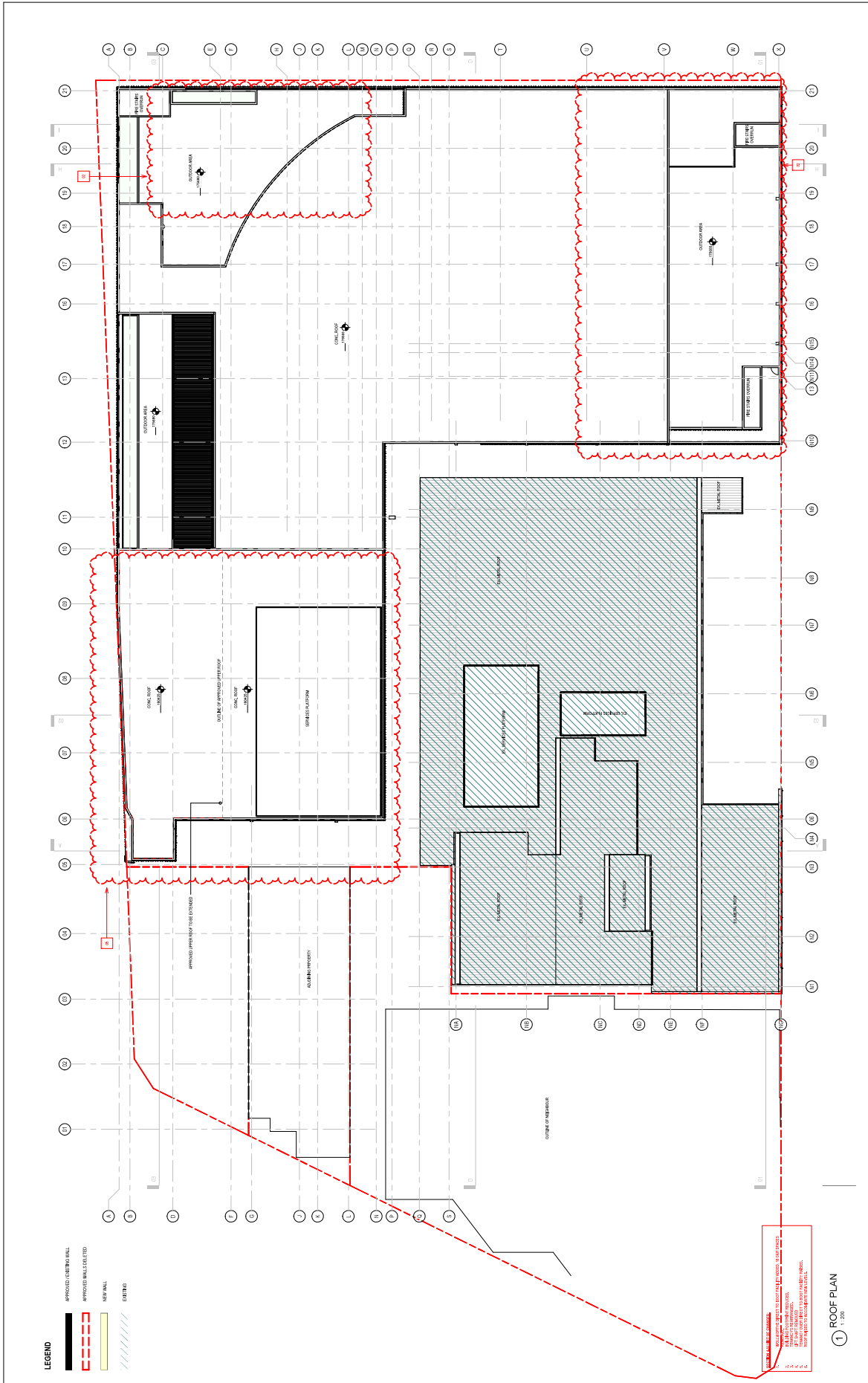
**GENERAL NOTES:**  
 1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT ACT 2015.  
 2. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (REPAIRS AND MAINTENANCE) REGULATIONS 2017.  
 3. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (CONSTRUCTION) REGULATIONS 2017.  
 4. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (DISPOSAL) REGULATIONS 2017.  
 5. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (MATERIALS AND METHODS) REGULATIONS 2017.  
 6. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (SAFETY) REGULATIONS 2017.  
 7. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (ACCESS) REGULATIONS 2017.  
 8. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (DISPUTES) REGULATIONS 2017.  
 9. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (FINANCIAL) REGULATIONS 2017.  
 10. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (ADMINISTRATIVE) REGULATIONS 2017.  
 11. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (GENERAL) REGULATIONS 2017.  
 12. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (MISCELLANEOUS) REGULATIONS 2017.  
 13. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (UNDEVELOPED) REGULATIONS 2017.  
 14. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (REPEATED) REGULATIONS 2017.  
 15. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE STRATA MANAGEMENT (FINAL) REGULATIONS 2017.

1. PROPOSED LEVEL 2 FLOOR PLAN  
 1:200

<b>PROJECT ADDRESS:</b> 17 BELLAIR STREET, LOT 17 OF RP 70944	<b>SHEET NO.:</b> A 1/04	<b>DESIGNER:</b> <b>DESIGN FORMATION ARCHITECTS</b> 10/15 BELLAIR STREET, HORNSTON NSW 2128 PHONE: (02) 9371 1111 EMAIL: INFO@DESIGNFORMATION.COM.AU
<b>PREPARED FOR:</b> HORNSTON PROPERTY GROUP	<b>TITLE:</b> LEVEL 2 FLOOR PLAN	<b>GENERAL ARCHITECT:</b> _____ <b>CHECKED BY:</b> DJ
<b>PROJECT TYPE:</b> THORNTON MARKET PLACE AT BELLAIR	<b>PROJECT NO.:</b> 4	<b>DATE:</b> 15/06/23
<b>DATE:</b> 15/06/23	<b>PROJECT STATUS:</b> ISSUED FOR RFP	<b>APPROVED BY:</b> _____

# ATTACHMENT 2 - ITEM 1





**LEGEND**

	APPROVED EXISTING WALL
	APPROVED WALL TO BE DEDICATED
	NEW WALL
	EXISTING

**GENERAL COMMENTS:**  
 1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.  
 2. ALL ROOF RISES ARE TO BE VERIFIED BY SURVEY.  
 3. THE ROOF RISE IS TO BE VERIFIED BY SURVEY.  
 4. THE ROOF RISE IS TO BE VERIFIED BY SURVEY.  
 5. THE ROOF RISE IS TO BE VERIFIED BY SURVEY.

1 ROOF PLAN  
1:200

<p><b>DESIGN FORMATION ARCHITECTS</b>                  10/11 BIRCHWOOD DRIVE, HORNSBY NSW 1590                  PH: (02) 9439 1000                  WWW.DESIGNFORMATIONARCHITECTS.COM.AU</p>		<p><b>CONTACT:</b>                  A. PROJECT ARCHITECT                  B. PROJECT MANAGER                  C. DESIGNER                  D. CHECKER</p>		<p><b>PROJECT NO:</b> A 115</p> <p><b>SHEET NO:</b> ROOF PLAN</p>		<p><b>PROJECT ADDRESS:</b>                  17 BELLAIR STREET                  LOT 100 OF DDM                  HORNSBY NSW 1590</p>		<p><b>DATE:</b>                  15/12/2023                  15/12/2023                  15/12/2023                  15/12/2023                  15/12/2023</p>	
<p><b>PREPARED FOR:</b>                  HULIMAN PROPERTY GROUP                  PROJECT TYPE:                  THORNTON MARKET PLACE AT THORNTON</p>		<p><b>PROJECT NO:</b> A 115</p> <p><b>REV NO:</b> 1</p> <p><b>DATE:</b> 15/12/2023</p>		<p><b>GENERAL ARCHITECT:</b></p> <p><b>CHECKED BY:</b> DJ</p>		<p><b>APPROVED FOR:</b>                  1. DESIGNER                  2. CHECKER                  3. PROJECT MANAGER                  4. PROJECT ARCHITECT</p>		<p><b>APPROVED FOR:</b>                  1. DESIGNER                  2. CHECKER                  3. PROJECT MANAGER                  4. PROJECT ARCHITECT</p>	
<p><b>GENERAL NOTES:</b>                  ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.                  ALL ROOF RISES ARE TO BE VERIFIED BY SURVEY.                  THE ROOF RISE IS TO BE VERIFIED BY SURVEY.                  THE ROOF RISE IS TO BE VERIFIED BY SURVEY.                  THE ROOF RISE IS TO BE VERIFIED BY SURVEY.</p>									

# ATTACHMENT 2 - ITEM 1

**DESIGNER'S COMMENTS:**

1. All dimensions are to face unless otherwise stated.

2. All dimensions are to be confirmed on site.

3. All dimensions are to be confirmed on site.

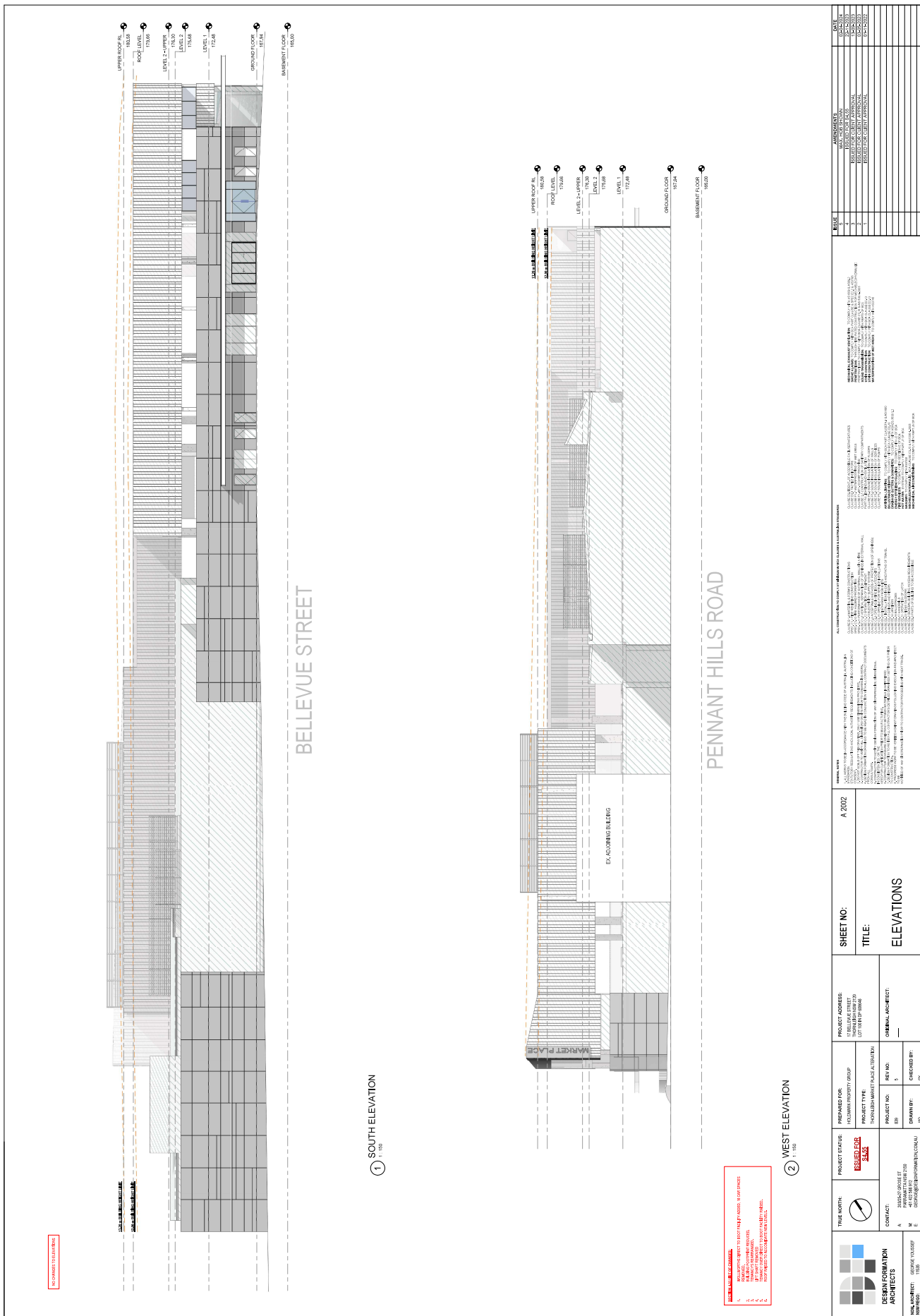
4. All dimensions are to be confirmed on site.

② NORTH ELEVATION  
1:50

① EAST ELEVATION  
1:50

<p><b>DESIGN FORMATION ARCHITECTS</b> 10/100 WOOD STREET SYDNEY NSW 1585</p>	<p><b>TRUE NORTH</b></p>	<p><b>PROJECT STATUS</b></p> <p>ISSUED FOR TENDERS</p>	<p><b>PREPARED FOR:</b> HULIMAN PROPERTY GROUP</p> <p><b>PROJECT NAME:</b> THORNLEIGH MARKET PLACE AT TERNUM</p> <p><b>PROJECT NO.:</b> 2024</p> <p><b>DATE:</b> 2024</p>	<p><b>PROJECT ADDRESS:</b> 177 WOOD STREET LOT 10/100 WOOD</p> <p><b>GENERAL ARCHITECT:</b> —</p>	<p><b>SHEET NO.:</b> A 2011</p> <p><b>TITLE:</b> ELEVATIONS</p>	<p><b>DATE:</b> 2024</p> <p><b>REVISED:</b> —</p> <p><b>REVISIONS:</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> <tr> <td>1</td> <td>2024</td> <td>ISSUED FOR TENDERS</td> </tr> <tr> <td>2</td> <td>2024</td> <td>ISSUED FOR TENDERS</td> </tr> <tr> <td>3</td> <td>2024</td> <td>ISSUED FOR TENDERS</td> </tr> </table>	NO.	DATE	DESCRIPTION	1	2024	ISSUED FOR TENDERS	2	2024	ISSUED FOR TENDERS	3	2024	ISSUED FOR TENDERS
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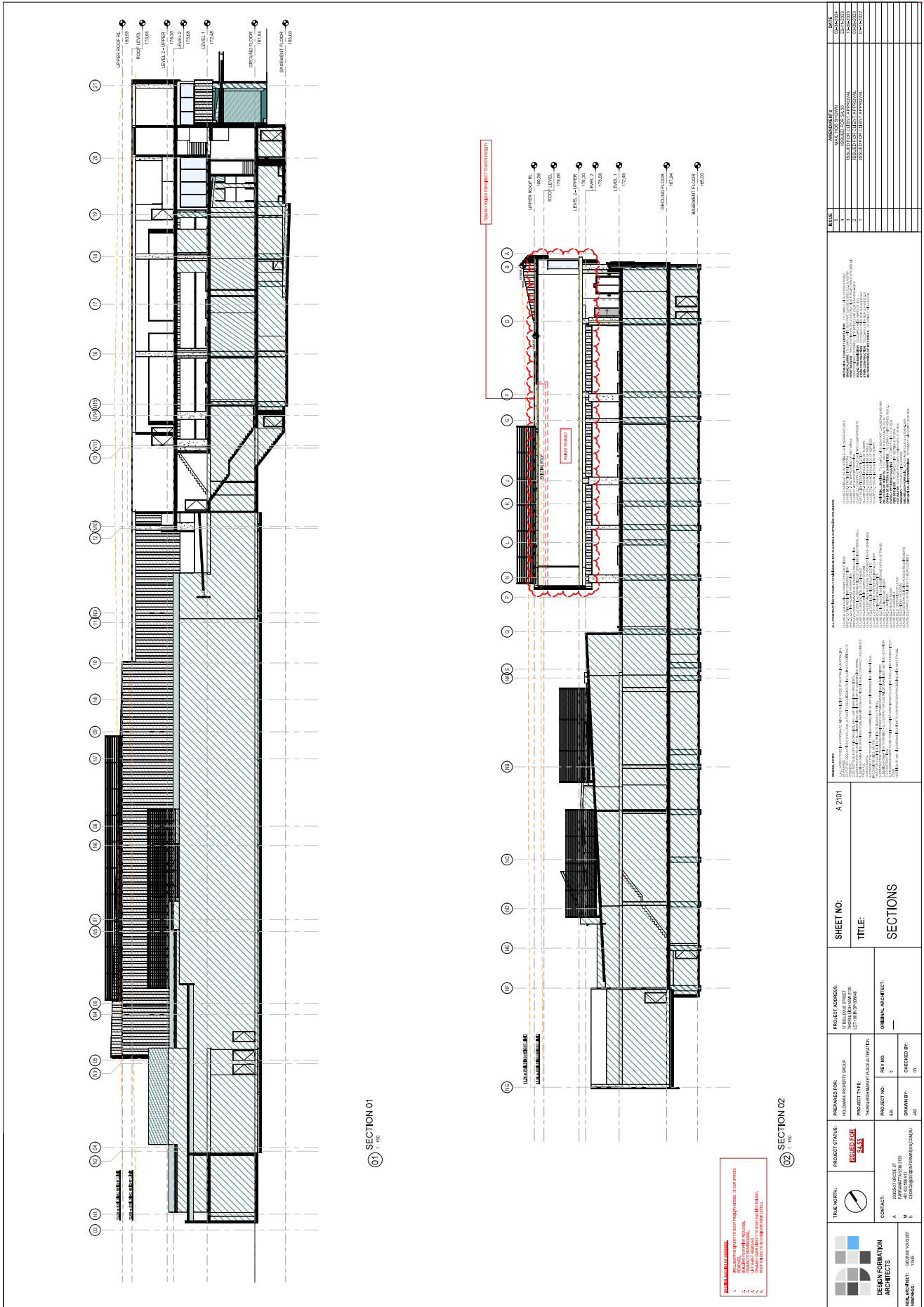
# ATTACHMENT 2 - ITEM 1



<p>DESIGN FORMATION ARCHITECTS 1/100 RIVERVIEW DRIVE MILLERS POINT NSW 1585 PH: (02) 9550 2222 WWW.DESIGNFORMATIONARCHITECTS.COM.AU</p>	<p>TRUE NORTH</p>	<p>PROJECT STATUS</p> <p><b>ISSUED FOR 3D</b></p>	<p>PREPARED FOR:</p> <p>HULIMAN PROPERTY GROUP</p> <p>PROJECT TYPE:</p> <p>THORNTON MARKET PLACE AT TREVINA</p>	<p>PROJECT ADDRESS:</p> <p>17 BELLEVUE STREET LOT 10 (RIP ID 3084)</p>	<p>SHEET NO.:</p> <p>A 202</p>	<p>DATE:</p> <p>17/05/2024</p>																			
	<p>CONTACT:</p> <p>A ARCHITECTS B PROJECT MANAGERS C DESIGNERS D STRUCTURAL ENGINEERS E CIVIL ENGINEERS F ELECTRICAL ENGINEERS G MECHANICAL ENGINEERS H PLUMBING ENGINEERS I LANDSCAPE ARCHITECTS J INTERIOR DESIGNERS K ENVIRONMENTAL ENGINEERS L SURVEYORS M COST ESTIMATORS N CONTRACTORS</p>	<p>GENERAL ARCHITECT</p>	<p>TITLE:</p> <p>ELEVATIONS</p>	<p>REVISIONS:</p> <table border="1"> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> <tr> <td>1</td> <td>17/05/2024</td> <td>ISSUED FOR 3D</td> </tr> <tr> <td>2</td> <td>17/05/2024</td> <td>ISSUED FOR 3D</td> </tr> <tr> <td>3</td> <td>17/05/2024</td> <td>ISSUED FOR 3D</td> </tr> <tr> <td>4</td> <td>17/05/2024</td> <td>ISSUED FOR 3D</td> </tr> <tr> <td>5</td> <td>17/05/2024</td> <td>ISSUED FOR 3D</td> </tr> <tr> <td>6</td> <td>17/05/2024</td> <td>ISSUED FOR 3D</td> </tr> </table>	NO.	DATE	DESCRIPTION	1	17/05/2024	ISSUED FOR 3D	2	17/05/2024	ISSUED FOR 3D	3	17/05/2024	ISSUED FOR 3D	4	17/05/2024	ISSUED FOR 3D	5	17/05/2024	ISSUED FOR 3D	6	17/05/2024	ISSUED FOR 3D
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5	17/05/2024	ISSUED FOR 3D																							
6	17/05/2024	ISSUED FOR 3D																							

# ATTACHMENT 2 - ITEM 1





# ATTACHMENT 2 - ITEM 1

**SECTION 03**  
1:100

**SECTION I**  
1:100

**GENERAL NOTES:**  
1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.  
2. ALL WORK IS TO BE ACCORDING TO THE CURRENT EDITIONS OF THE NATIONAL BUILDING REGULATIONS 2011 AND THE NSW BUILDING REGULATIONS 2018.  
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES.  
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE RELEVANT AUTHORITIES.  
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10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY APPROVALS FROM THE RELEVANT AUTHORITIES.

**REVISIONS:**  
NO. DESCRIPTION DATE  
1. ISSUED FOR PERMIT 20/05/2024  
2. ISSUED FOR PERMIT 20/05/2024  
3. ISSUED FOR PERMIT 20/05/2024  
4. ISSUED FOR PERMIT 20/05/2024

**PROJECT ADDRESS:**  
177 BELLAIR STREET  
LOT 17 OF RP 10044

**PREPARED FOR:**  
HULIMAN PROPERTY GROUP  
PROJECT TYPE:  
RESIDENTIAL MARKET SALE AT TENDERS

**PROJECT NO.:**  
R01

**DESIGNER/ARCHITECT:**  
DESIGN FORMATION ARCHITECTS  
PROJECT NO. A  
DRAWN BY: JAC  
CHECKED BY: GJ

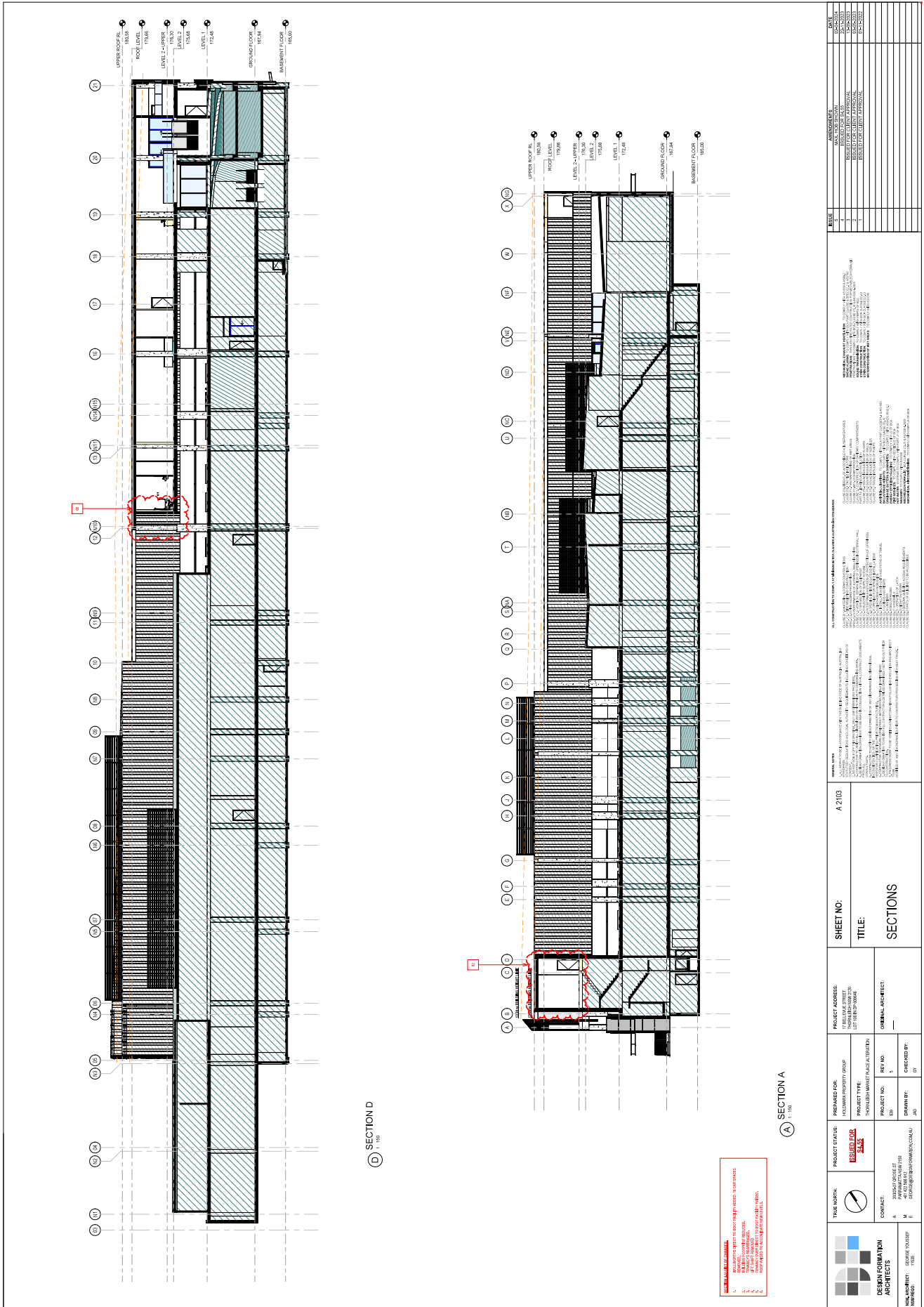
**TRUE NORTH:**  
[North Arrow]

**CONTACT:**  
A: PROJECT MANAGER  
M: PROJECT MANAGER  
E: PROJECT MANAGER

**DESIGN FORMATION ARCHITECTS**  
177 BELLAIR STREET  
SYDNEY NSW 1585

**SHEET NO.:** A 2102  
**TITLE:** SECTIONS

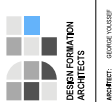

ATTACHMENT 2 - ITEM 1



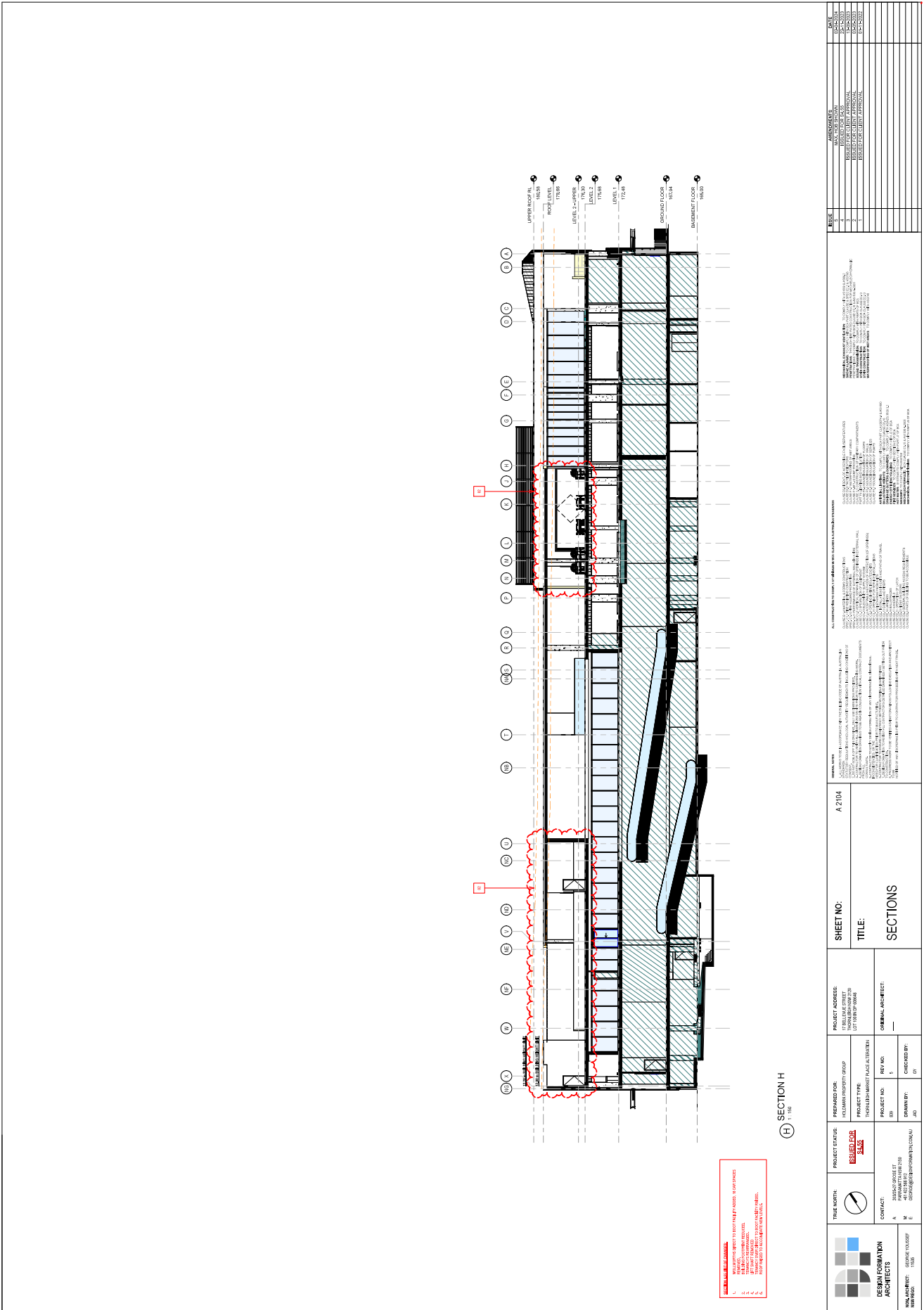
**GENERAL NOTES:**  
 1. CONSULT WITH US FOR ANY CHANGES TO THE DESIGN.  
 2. ALL WORK IS TO BE COMPLETED IN ACCORDANCE WITH THE CURRENT BUILDING REGULATIONS.  
 3. THE DESIGN IS BASED ON THE INFORMATION PROVIDED TO US. WE DO NOT TAKE RESPONSIBILITY FOR ANY OMISSIONS OR ERRORS.  
 4. THE DESIGN IS FOR INFORMATION ONLY. IT IS NOT TO BE USED FOR ANY OTHER PURPOSES.  
 5. THE DESIGN IS NOT TO BE USED FOR ANY OTHER PURPOSES.

SECTION D  
1:100

SECTION A  
1:100

 <p>DESIGN FORMATION ARCHITECTS                  1/100 WOODVILLE ROAD                  WOODVILLE NSW 2122</p>	<p>TRUE NORTH</p> 	<p>PROJECT STATUS  <b>ISSUED FOR TENDER</b></p>	<p>PREPARED FOR:                  HULIMAN PROPERTY GROUP                  PROJECT TYPE:                  THORNTON MARKET PLACE AT TERNUM</p>	<p>PROJECT NO.                  2024/001</p>	<p>PROJECT ADDRESS:                  177 BELLAIR STREET                  LOT 17 OF RP 103484</p>	<p>SHEET NO.:                  A 2103</p>	<p>DATE:                  15/05/2024</p>									
	<p>CONTACT:                  A: ARCHITECTS                  P: PROJECT MANAGER                  M: 02 9288 8128                  E: info@dfarchitects.com.au</p>	<p>GENERAL ARCHITECT</p>	<p>TITLE:                  SECTIONS</p>	<p>REVISIONS:</p> <table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>15/05/2024</td> <td>ISSUED FOR TENDER</td> </tr> <tr> <td>2</td> <td>15/05/2024</td> <td>ISSUED FOR TENDER</td> </tr> <tr> <td>3</td> <td>15/05/2024</td> <td>ISSUED FOR TENDER</td> </tr> </tbody> </table>	NO.	DATE	DESCRIPTION	1	15/05/2024	ISSUED FOR TENDER	2	15/05/2024	ISSUED FOR TENDER	3	15/05/2024	ISSUED FOR TENDER
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# ATTACHMENT 2 - ITEM 1

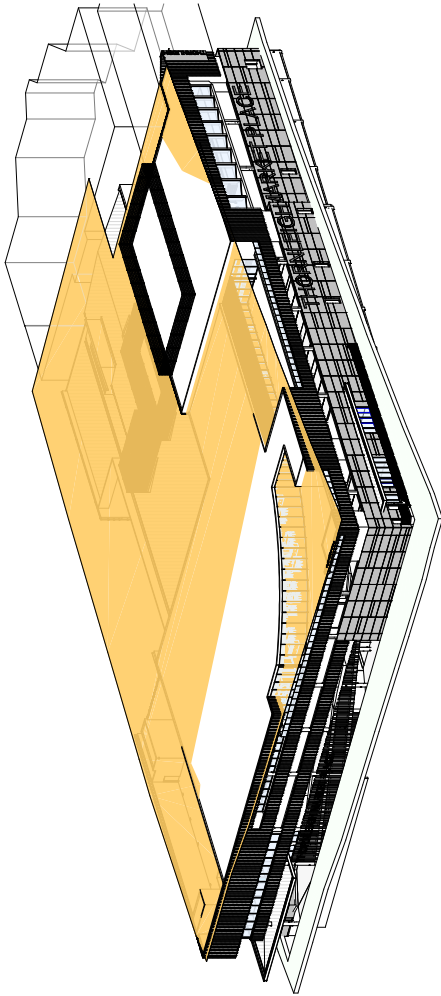


**GENERAL NOTES:**  
 1. CONSULT ALL APPLICABLE STANDARDS AND SPECIFICATIONS.  
 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.  
 3. REFER TO DRAWING TITLES FOR MATERIAL SCHEDULES.  
 4. REFER TO DRAWING TITLES FOR FINISHES.  
 5. REFER TO DRAWING TITLES FOR STRUCTURAL REQUIREMENTS.  
 6. REFER TO DRAWING TITLES FOR MECHANICAL AND ELECTRICAL REQUIREMENTS.  
 7. REFER TO DRAWING TITLES FOR PLUMBING AND SANITARY REQUIREMENTS.  
 8. REFER TO DRAWING TITLES FOR SPECIAL REQUIREMENTS.

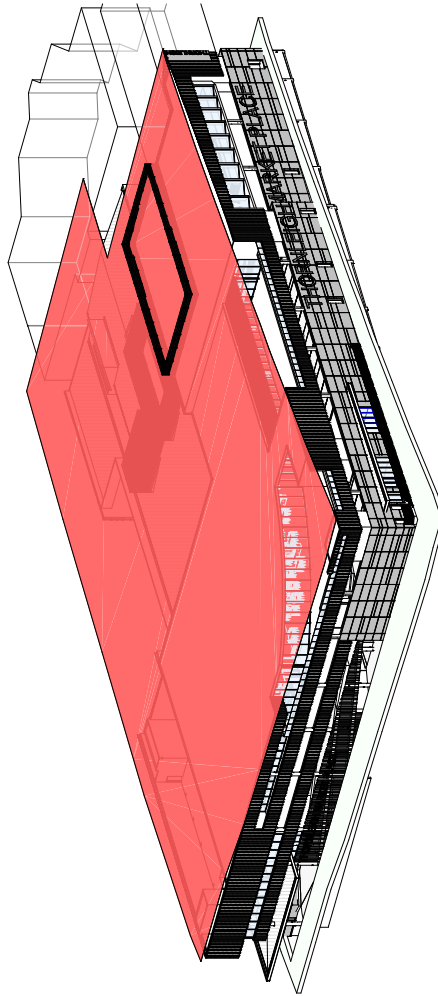
SECTION H  
 1:100

<p><b>DESIGN FORMATION ARCHITECTS</b>                  1/111 BATHURST STREET                  SYDNEY NSW 2000                  PH: (02) 9550 6600                  WWW.DESIGNFORMATIONARCHITECTS.COM.AU</p>	<p><b>TRUE NORTH</b></p>	<p><b>PROJECT STATUS</b>                  ISSUED FOR TENDER</p>	<p><b>PREPARED FOR:</b>                  HULIMAN PROPERTY GROUP  <b>PROJECT TYPE:</b>                  THORNTON MARKET PLACE AT TERNUM</p>	<p><b>PROJECT ADDRESS:</b>                  177 BATHURST STREET                  LOT 10/101/102/103/104</p>	<p><b>SHEET NO.:</b>                  A 2/14</p>	<p><b>DATE:</b>                  20/05/2024                  21/05/2024                  22/05/2024                  23/05/2024                  24/05/2024</p>																	
	<p><b>CONTACT:</b>                  A. PRINCE ARCHITECT                  B. PROJECT MANAGER                  C. DESIGNER                  D. CHECKER                  E. APPROVER</p>	<p><b>REVISIONS:</b></p> <table border="1"> <tr> <th>NO.</th> <th>DESCRIPTION</th> <th>DATE</th> </tr> <tr> <td>1</td> <td>ISSUED FOR TENDER</td> <td>20/05/2024</td> </tr> <tr> <td>2</td> <td>ISSUED FOR TENDER</td> <td>21/05/2024</td> </tr> <tr> <td>3</td> <td>ISSUED FOR TENDER</td> <td>22/05/2024</td> </tr> <tr> <td>4</td> <td>ISSUED FOR TENDER</td> <td>23/05/2024</td> </tr> <tr> <td>5</td> <td>ISSUED FOR TENDER</td> <td>24/05/2024</td> </tr> </table>	NO.	DESCRIPTION	DATE	1	ISSUED FOR TENDER	20/05/2024	2	ISSUED FOR TENDER	21/05/2024	3	ISSUED FOR TENDER	22/05/2024	4	ISSUED FOR TENDER	23/05/2024	5	ISSUED FOR TENDER	24/05/2024	<p><b>GENERAL ARCHITECT</b></p>	<p><b>TITLE:</b>                  SECTIONS</p>	<p><b>PROJECT NO.:</b>                  A</p> <p><b>REV NO.:</b>                  1</p> <p><b>DATE:</b>                  20/05/2024</p>
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4	ISSUED FOR TENDER	23/05/2024																					
5	ISSUED FOR TENDER	24/05/2024																					

# ATTACHMENT 2 - ITEM 1





① 12m HEIGHT PLANE DIAGRAM



② 13.2m HEIGHT PLANE DIAGRAM

**LEGAL NOTICE**  
 1. THIS DOCUMENT IS THE PROPERTY OF DESIGN FORMATION ARCHITECTS.  
 2. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED IN THIS DOCUMENT.  
 3. IT IS NOT TO BE REPRODUCED, COPIED, DISTRIBUTED, OR OTHERWISE MADE AVAILABLE TO ANY OTHER PARTY WITHOUT THE WRITTEN PERMISSION OF DESIGN FORMATION ARCHITECTS.  
 4. ANY UNAUTHORIZED USE OF THIS DOCUMENT IS STRICTLY PROHIBITED AND WILL BE SUBJECT TO LEGAL ACTION.

 <b>DESIGN FORMATION ARCHITECTS</b> 1/100 WILSON STREET HORNSBY NSW 2128 PH: (02) 9439 1000 WWW.DFA.COM.AU	TRUE NORTH 	PROJECT STATUS <b>ISSUED FOR TENDERS</b>	PREPARED FOR: HULIMAN PROPERTY GROUP PROJECT TYPE: THORNTON MARKET PLACE AT TERNUM	PROJECT ADDRESS: 17 BELLAIR STREET HORNSBY NSW 2128 LOT 10 OF DP 930441	SHEET NO: A 40/1 TITLE: HEIGHT PLANE DIAGRAMS	GENERAL ARCHITECT _____ CHECKED BY: DJ	PROJECT NO. 2024/001 DRAWN BY: JAC	REV NO. 1 CHECKED BY: DJ	DATE 25/05/2024 DRAWN BY: JAC CHECKED BY: DJ PROJECT NO. 2024/001 SHEET NO. A 40/1
	ALL INFORMATION IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED IN THIS DOCUMENT. THIS DOCUMENT IS THE PROPERTY OF DESIGN FORMATION ARCHITECTS. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED IN THIS DOCUMENT. IT IS NOT TO BE REPRODUCED, COPIED, DISTRIBUTED, OR OTHERWISE MADE AVAILABLE TO ANY OTHER PARTY WITHOUT THE WRITTEN PERMISSION OF DESIGN FORMATION ARCHITECTS. ANY UNAUTHORIZED USE OF THIS DOCUMENT IS STRICTLY PROHIBITED AND WILL BE SUBJECT TO LEGAL ACTION.								

# ATTACHMENT 2 - ITEM 1

# Thornleigh Marketplace Extension

## Section 4.55

### 2-12 The Comenarra Parkway Thornleigh

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C S455  
 B P10 Submission  
 A1 P10  
 Date 24.05.2024  
 Drawn: Check Date

CS 1M 13.07.2023  
 A1 P10  
 Date 24.05.2024  
 Drawn: Check Date

LEGEND

LEGEND

#### Drawing Schedule

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

Symbol	Botanic Name	Common Name	Size (m)	Pot Size	Spacing	Quantity
TREES	Magnolia 'Teddy Bear'	Dwarf Magnolia	5 x 3	200L	As Shown	7
SHRUBS & ACCENTS	Xanthoxylum chinensis	Xanthoxylum	1 x 1	300mm	As Shown	60
ROP	Rapanea indica Oriental Pear	Oriental Pear	1 x 1	300mm	As Shown	101
GRASSES AND GROUNDCOVERS	Eragrostis ciliaris	Evergreen Bandy	0.4 x 0.4	150mm	5m x 2	260
11	Trachypogon parviflorus	Star Grass	1.5 x 1	150mm	5m x 2	50



Client: Holdmark Property Group

Project: Thornleigh Marketplace Extension

SITE IMAGE  
 Level 1, 150 Belmont Street  
 Thornleigh NSW 1513  
 Australia  
 Tel: 61 2 9338 8000  
 www.hays.com.au  
 2024/05/24 10:00 AM  
 2024/05/24 10:00 AM

S455

Drawing Name: Landscape Coversheet

Scale: Drawing Number: 000 C  
 Job Number: SS19-4138

NOT FOR CONSTRUCTION

A1

# ATTACHMENT 3 - ITEM 1



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C	\$4.55	CS	NM	13.12.2023
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		AM	NM	24.10.2019
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		AM	NM	24.10.2019
		AM	NM	24.10.2019
		AM	NM	24.10.2019
		AM	NM	24.10.2019

**LEGEND**

- Boundary
- Proposed Tree (Refer Detail & Plant Schedule)
- Shrubs & Accents (Refer Detail & Plant Schedule)
- Groundcover/ Grasses (Refer Detail & Plant Schedule)
- Pergola Over



Client: **Holdmark Property Group**

Project: **Thornleigh Marketplace Extension**

SITE IMAGE



Level 1, 5/5 Bialla Street  
Thornleigh NSW 1585  
Australia  
Tel: 02 21 6332 000  
www.siteimage.com.au  
200 Years Road, Thornleigh NSW 1585

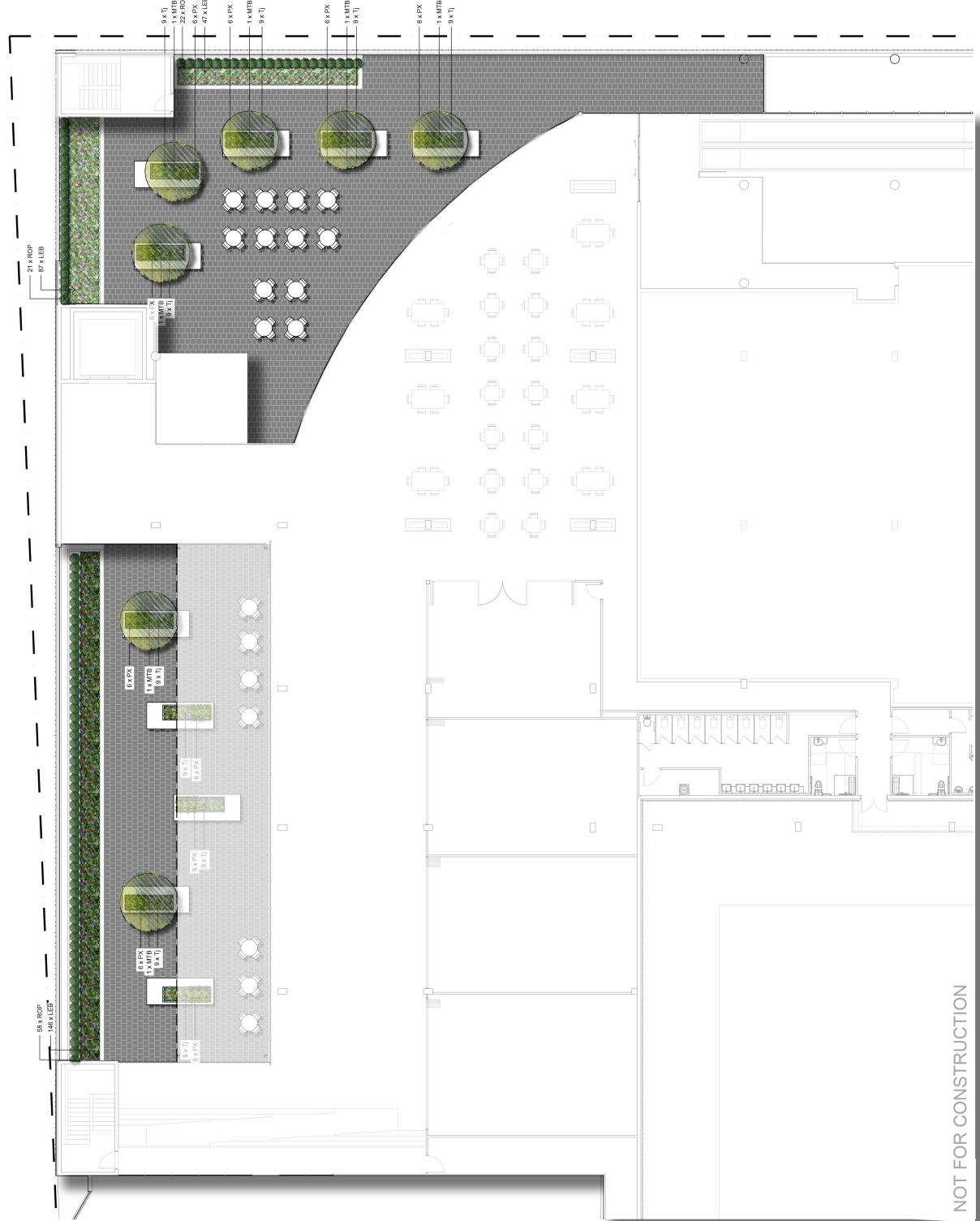
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Drawing Name: **Landscape Plan**

Scale: 1:100 @ A1

Job Number: **SS19-4138**

101 C

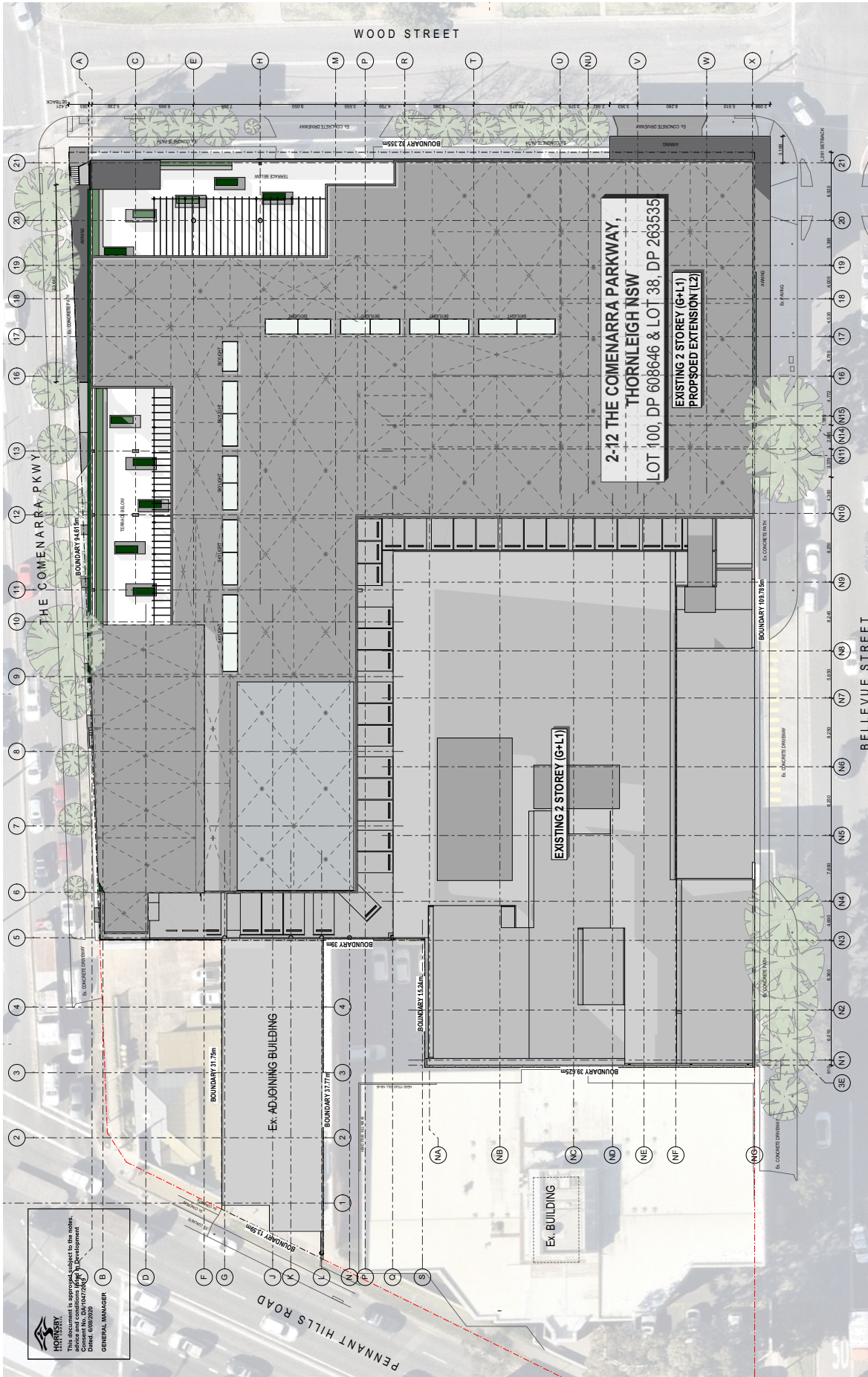


NOT FOR CONSTRUCTION

# ATTACHMENT 3 - ITEM 1







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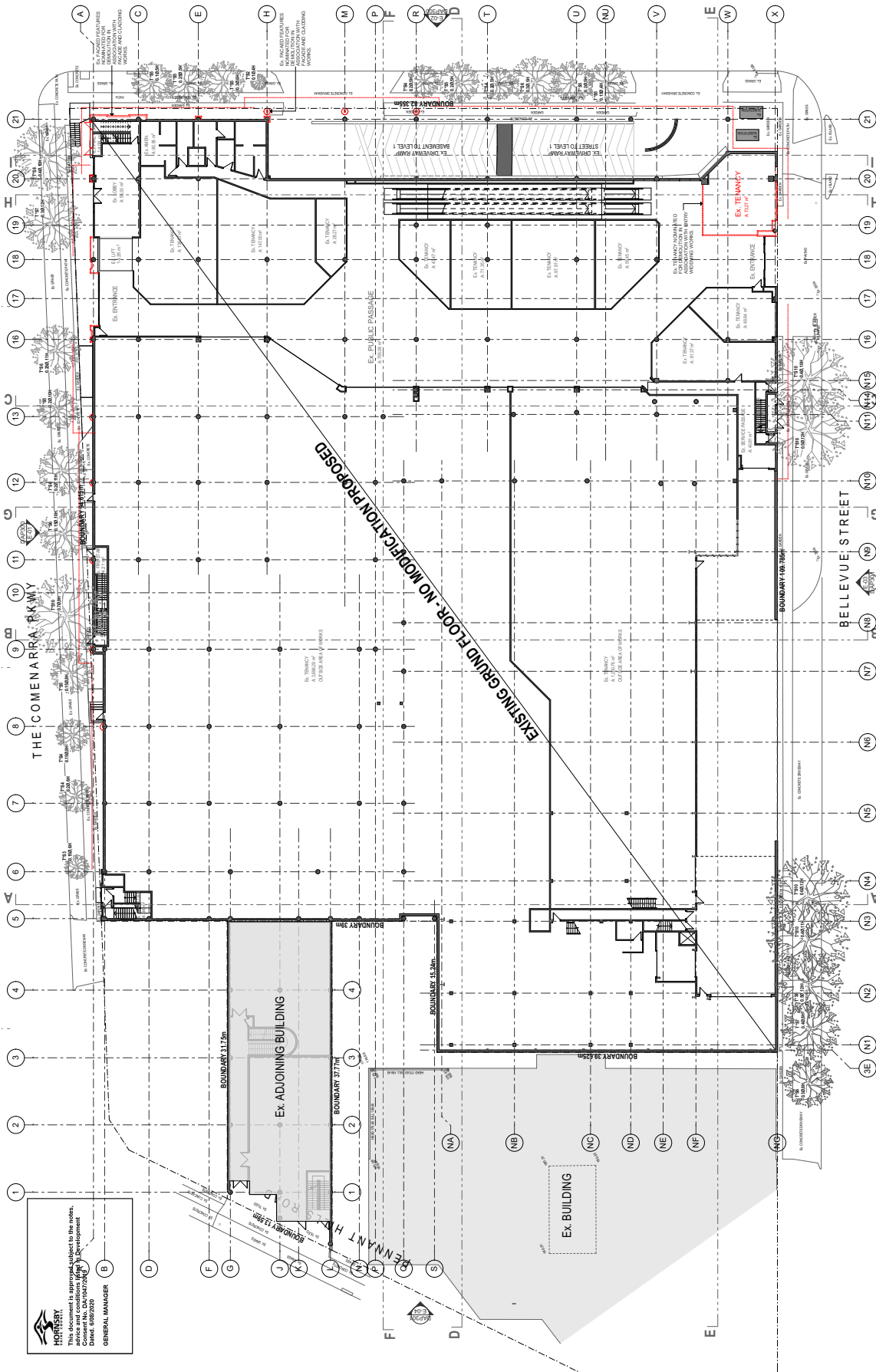
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**Project Information:**  
 PROJECT NO: 1287  
 DRAWING NO: DA004  
 DATE: 12/08/24  
 SCALE: 1:200  
 SHEET: 04

**Client:**  
 HOLMARR PROPERTY GROUP  
 212 THE COMENARRA PARKWAY THORNLEIGH NSW 20022020  
 P: 0851 85000  
 F: 0851 85000  
 W: www.holmarr.com.au

**Architect:**  
 DA ARCHITECTS  
 1/111 BELLEVUE STREET, THORNLEIGH NSW 20022020  
 P: 0851 85000  
 F: 0851 85000  
 W: www.daarchitects.com.au

# ATTACHMENT 4 - ITEM 1



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**GENERAL MANAGER**

**THORNLEIGH MARKETPLACE EXTENSION**  
 242/252/20  
 212 THE COMENARA PARKWAY THORNLEIGH NSW  
 PROJECT NO: 1287  
 DRAWING NO: DAD111  
 DATE: 04/05/2024



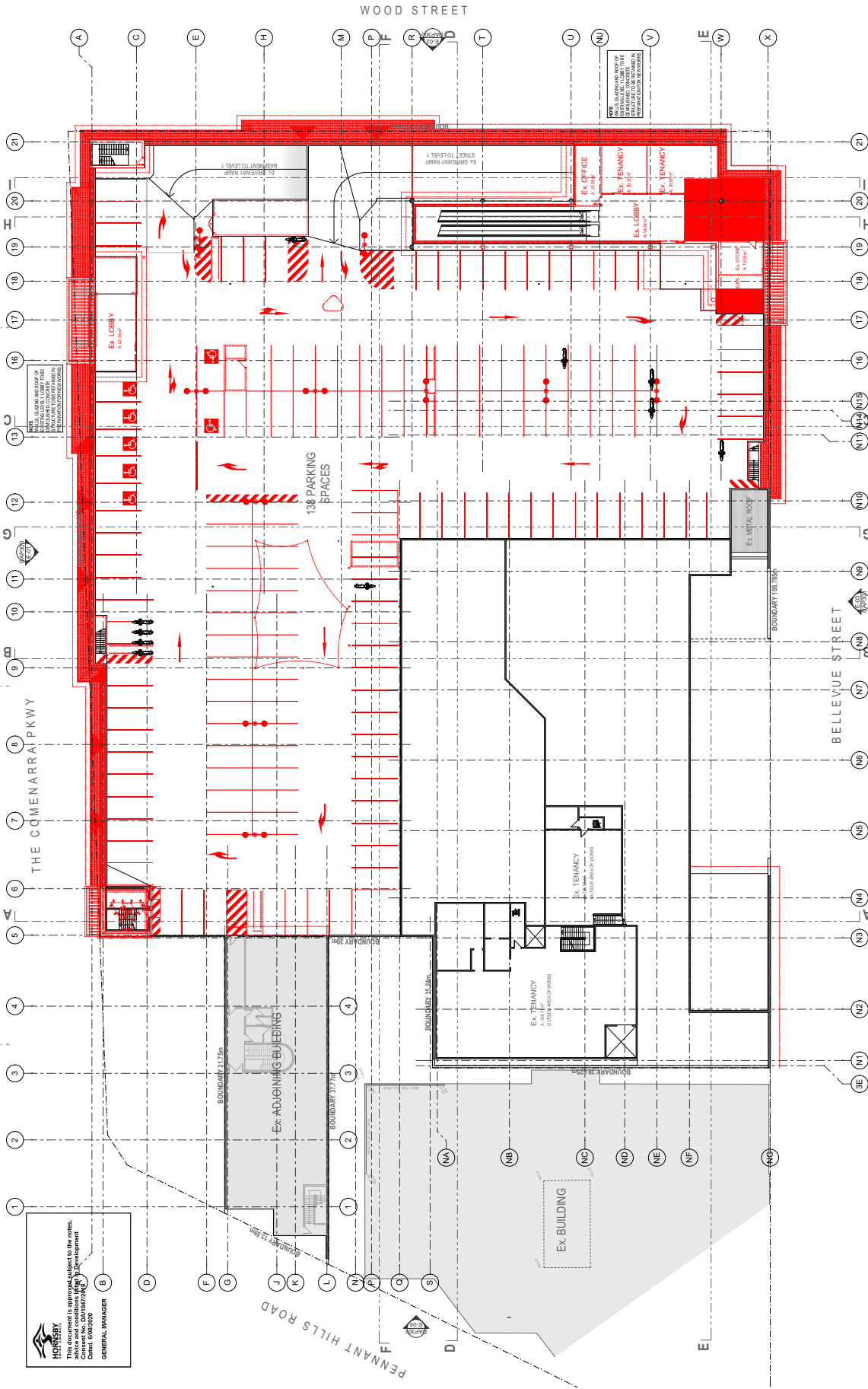
**MRK**  
 ARCHITECTS  
 1287  
 1287  
 1287  
 1287

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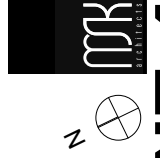
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21	ISSUED FOR DA SUBMISSION	04/05/2024	MRK	ISSUED FOR DA SUBMISSION

# ATTACHMENT 4 - ITEM 1



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 GENERAL MANAGER

**THORNLEIGH MARKETPLACE EXTENSION**  
 212 THE COMENARRA PARKWAY THORNLEIGH NSW  
 2022202  
 HOLMURK PROPERTY GROUP  
 DEMOLITION - FIRST FLOOR  
 1287  
 DAD112  
 04



**MRB CONSULTANTS**  
 1/100 BELLEVUE STREET, BELLEVUE NSW 2022  
 P 002 852 1234  
 W www.mrbconsultants.com.au

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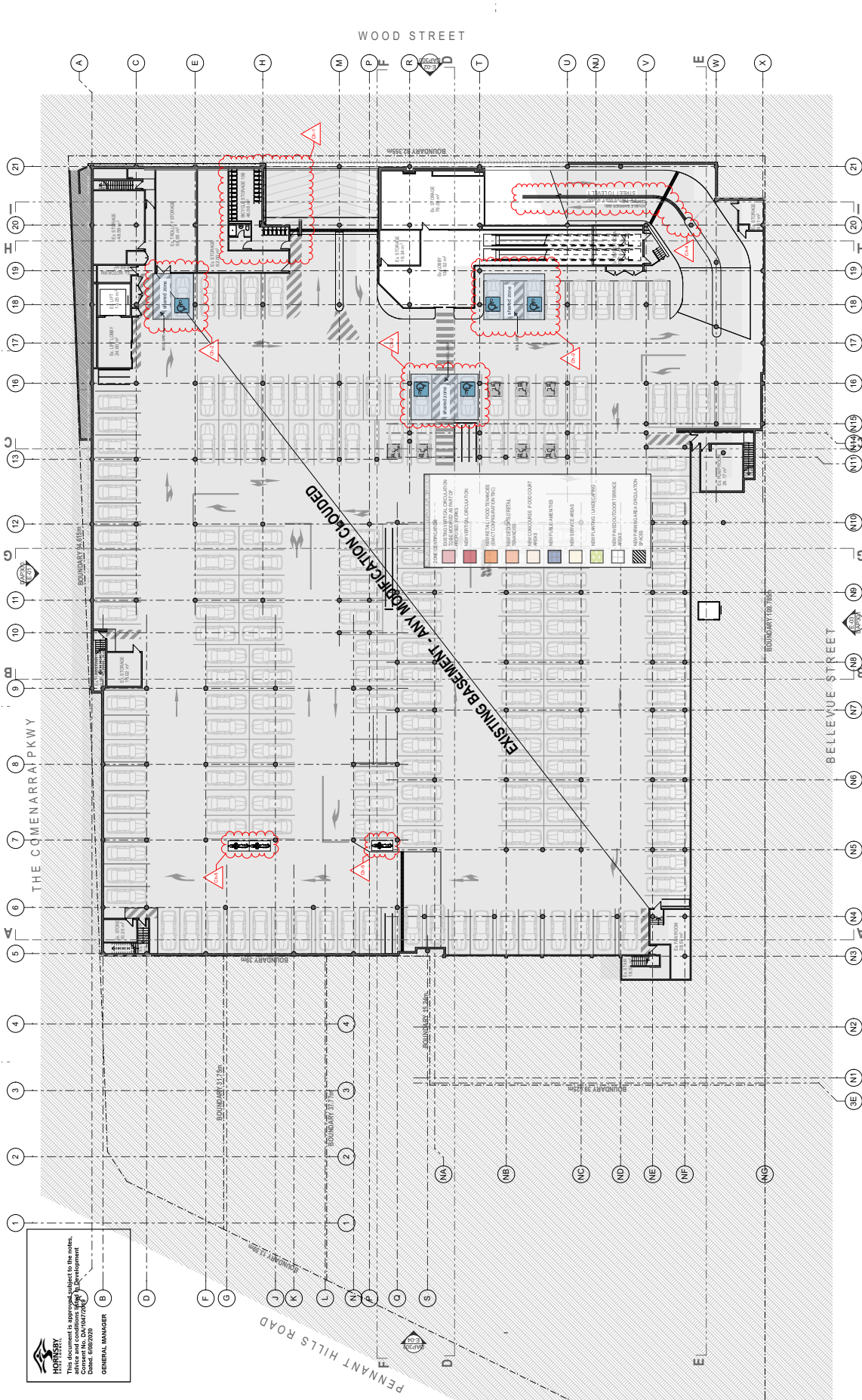
**MR**  
 MORTIMER & ROBERTS  
 ARCHITECTS  
 1287 DAD113 04

**THORNLEIGH MARKETPLACE EXTENSION**  
 2422228  
 212 THE COMENARRA PARKWAY THORNLEIGH NSW  
 PROJECT NO: 1287  
 DRAWING NO: DAD113  
 DATE: 04

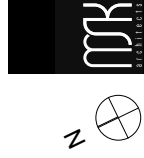
# ATTACHMENT 4 - ITEM 1







**THORNLEIGH MARKETPLACE EXTENSION**  
 242/242B  
 212 THE COMENARRA PARKWAY THORNLEIGH NSW  
 HOLLIMARK PROPERTY GROUP  
 PROPOSED BASEMENT FLOOR PLAN 1:200 11/24  
 PROJECT NO: 1287  
 DRAWING NO: DAP120  
 DATE: 04



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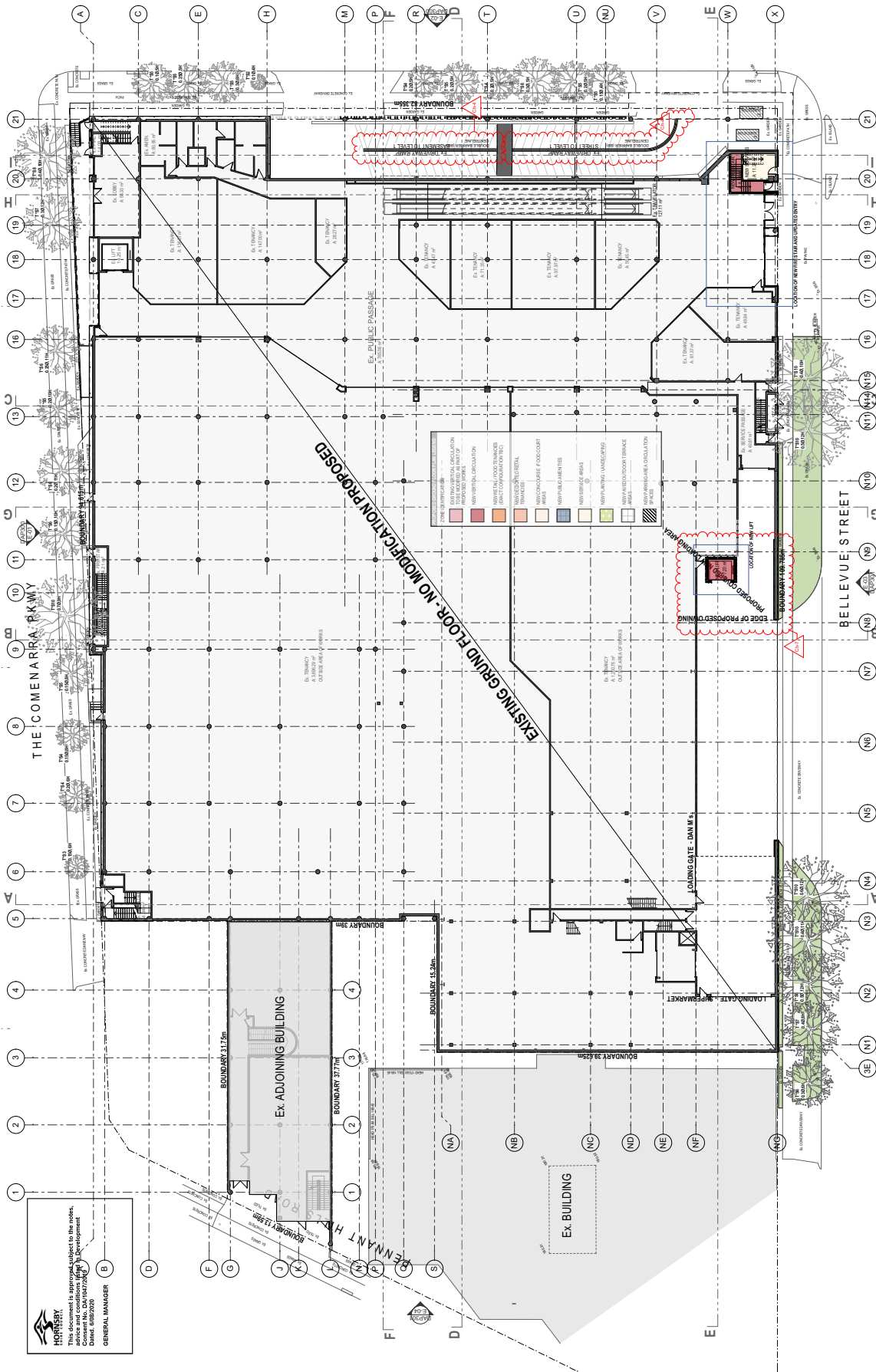
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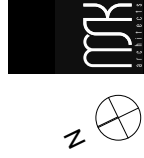
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# ATTACHMENT 4 - ITEM 1





**PROPOSED GROUND FLOOR PLAN**  
 PROJECT NO: 1287  
 DRAWING NO: DAP121  
 DATE: 13/06/24  
 CLIENT: THORNLEIGH MARKETPLACE EXTENSION  
 PROJECT: THORNLEIGH MARKETPLACE EXTENSION  
 212 THE COMENARIAN PARKWAY THORNLEIGH NSW  
 ARCHITECT: HOLMURK PROPERTY GROUP  
 ARCHITECT NO: 1386 1 184  
 SCALE: 1:500



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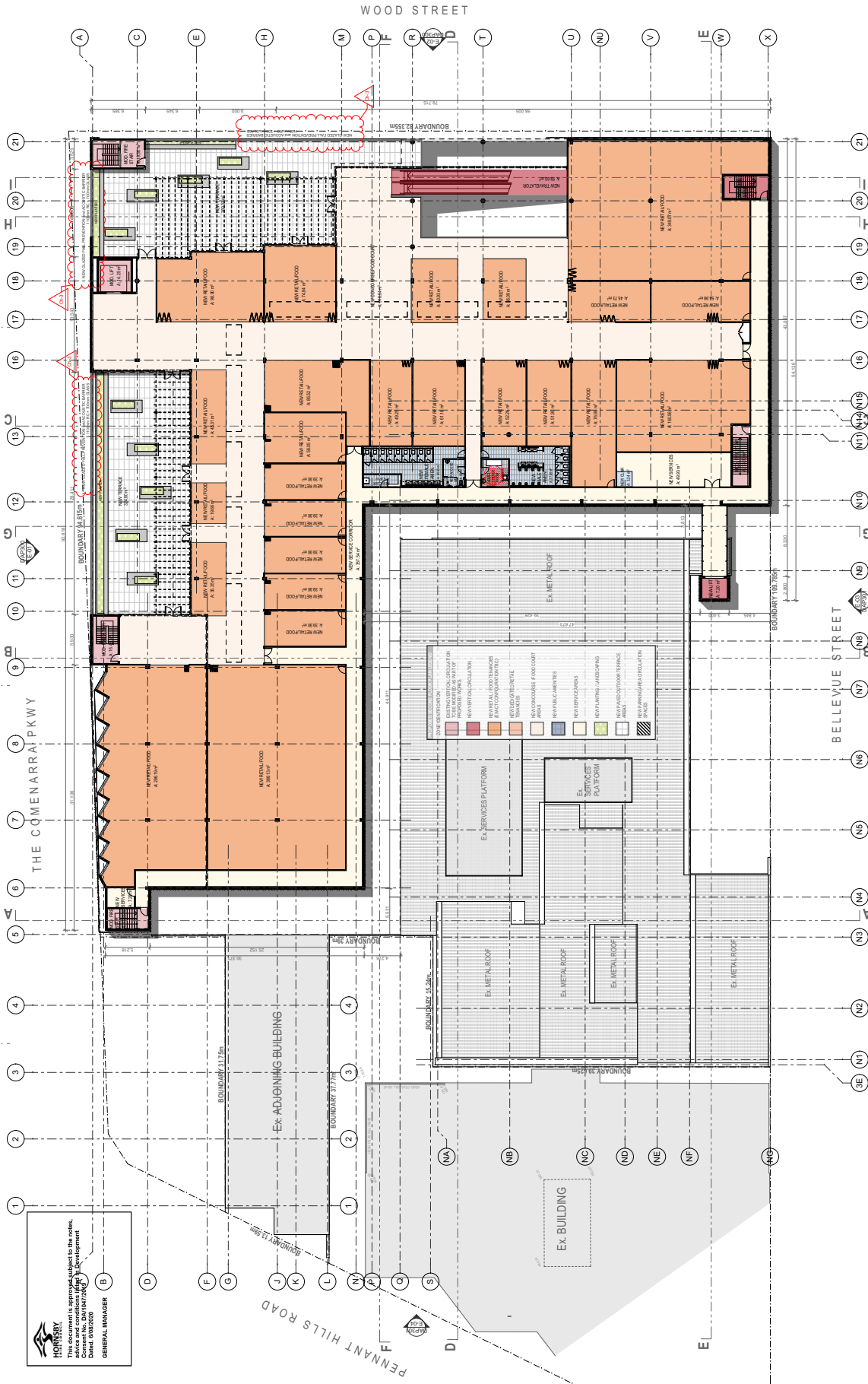
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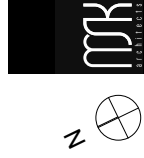






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PROJECT: THORNLEIGH MARKETPLACE EXTENSION 24022028  
 212 THE COMENARRA PARKWAY THORNLEIGH NSW  
 CLIENT: HORNLEIGH PROPERTY GROUP  
 ARCHITECT: MDR ARCHITECTS  
 PROPOSED SECOND FLOOR PLAN 1:500, 1:100  
 DRAWING NO: 1287  
 DATE: 04

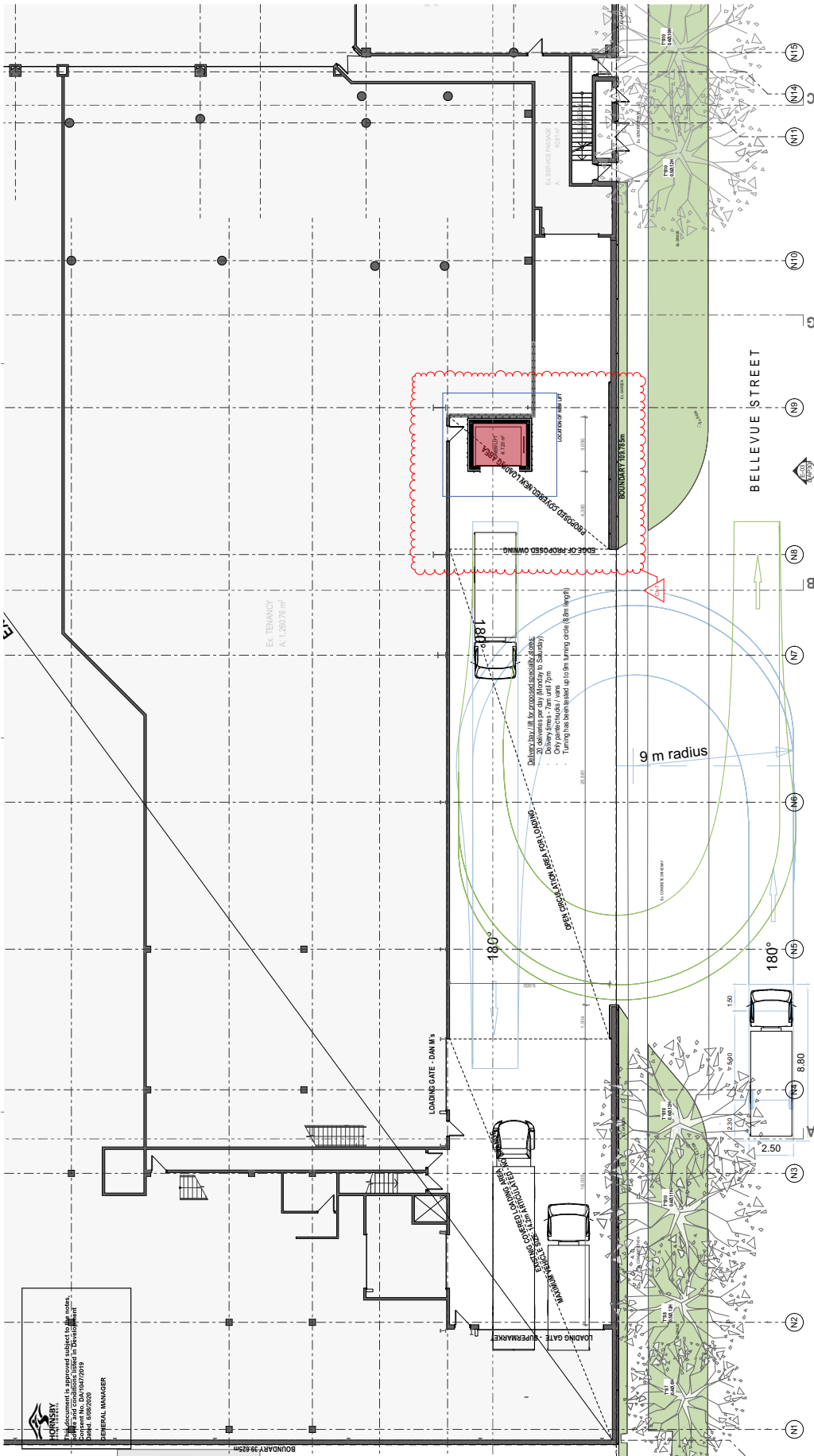


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20	PROPOSED SECOND FLOOR PLAN	12/05/2024	MDR
21	PROPOSED SECOND FLOOR PLAN	12/05/2024	MDR

# ATTACHMENT 4 - ITEM 1





LOADING AREA 1:100

DATE: 2023/02/28

PROJECT NO: 1287

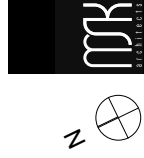
PROJECT TITLE: PROPOSED LOADING AREA

CLIENT: HORNLEIGH MARKETPLACE GROUP

DESIGNER: M&R ARCHITECTS

SCALE: 1:100, 1:50

DATE: 04



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General Notes

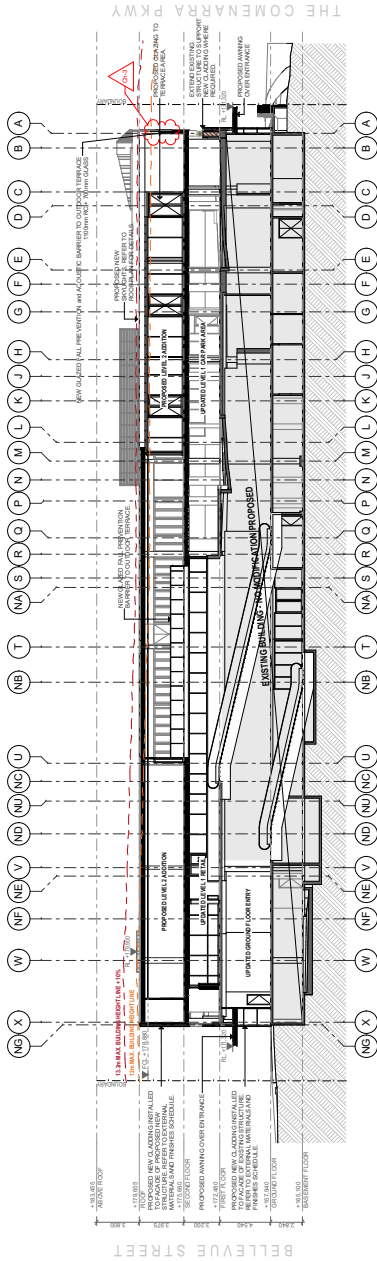
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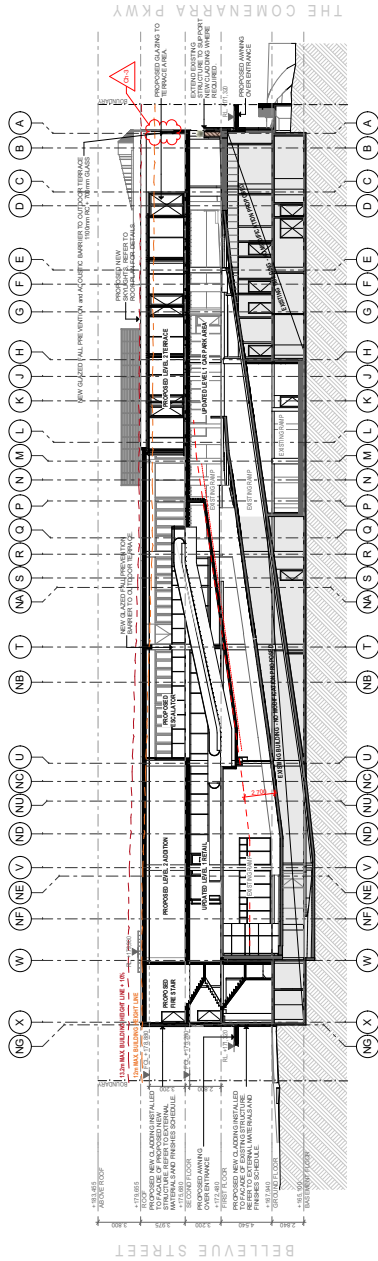




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 Date: 6/02/2020  
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Building Section 1:200



Building Section 1:200

NO.	REVISION	DATE	BY	DESCRIPTION
1	ISSUED FOR PERMIT APPLICATION			
2	ISSUED FOR PERMIT APPLICATION			
3	ISSUED FOR PERMIT APPLICATION			
4	ISSUED FOR PERMIT APPLICATION			
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**MR**  
 ARCHITECTS

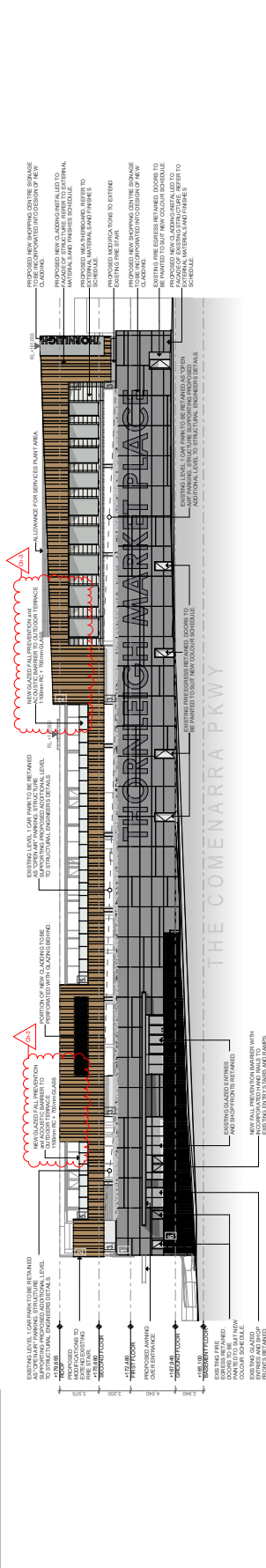
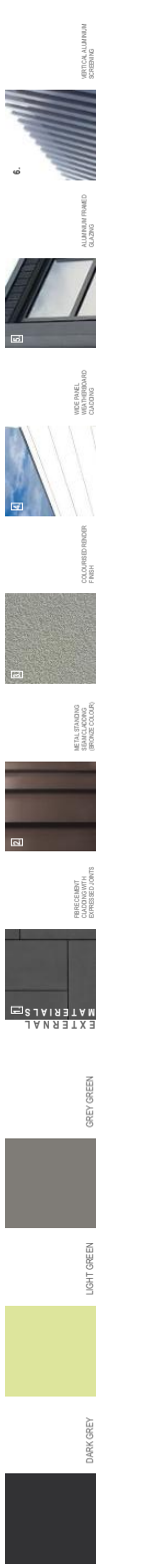
MR & MRS J. & K. HORNBY  
 1/111 BUNN STREET, HORNBY NSW 1590  
 P 081 650 1500  
 F 081 650 1501  
 W www.mrhornsby.com.au

**THORNLEIGH MARKETPLACE EXTENSION**  
 242 THE COMMONARA PARKWAY THORNLEIGH NSW

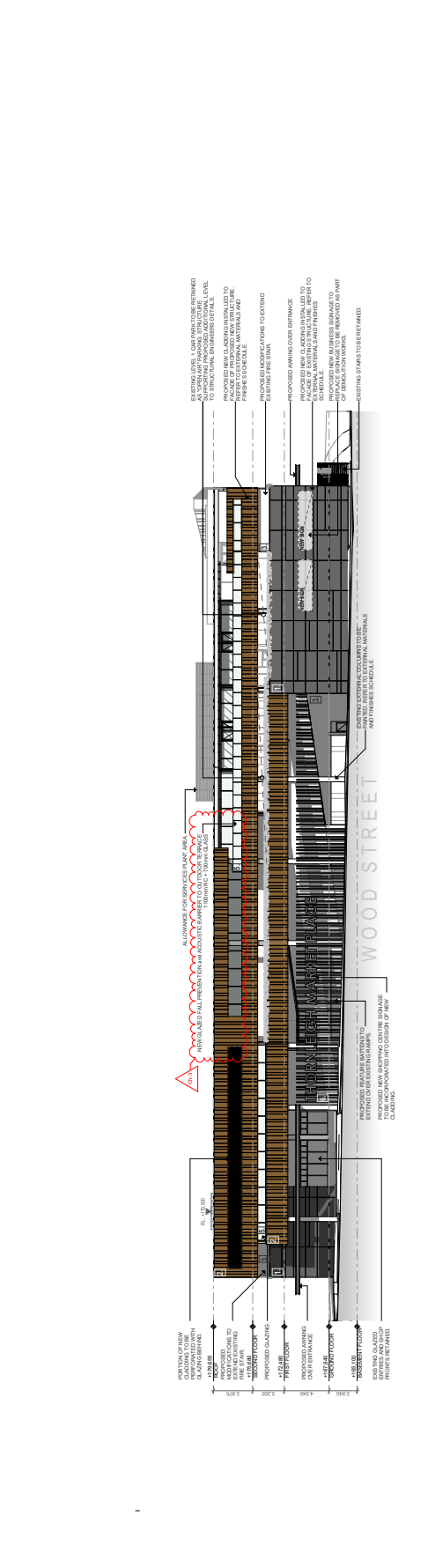
PROJECT NO: 1287  
 DRAWING NO: DAP201  
 DATE: 04/02/2020

# ATTACHMENT 4 - ITEM 1

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**E-01** NORTH ELEVATION 1:200



**E-02** EAST ELEVATION 1:200

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1	ISSUED FOR DA SUBMISSION	16/03/2020	DAVID WILSON	ISSUED FOR DA SUBMISSION
2	ISSUED FOR DA SUBMISSION	16/03/2020	DAVID WILSON	ISSUED FOR DA SUBMISSION
3	ISSUED FOR DA SUBMISSION	16/03/2020	DAVID WILSON	ISSUED FOR DA SUBMISSION
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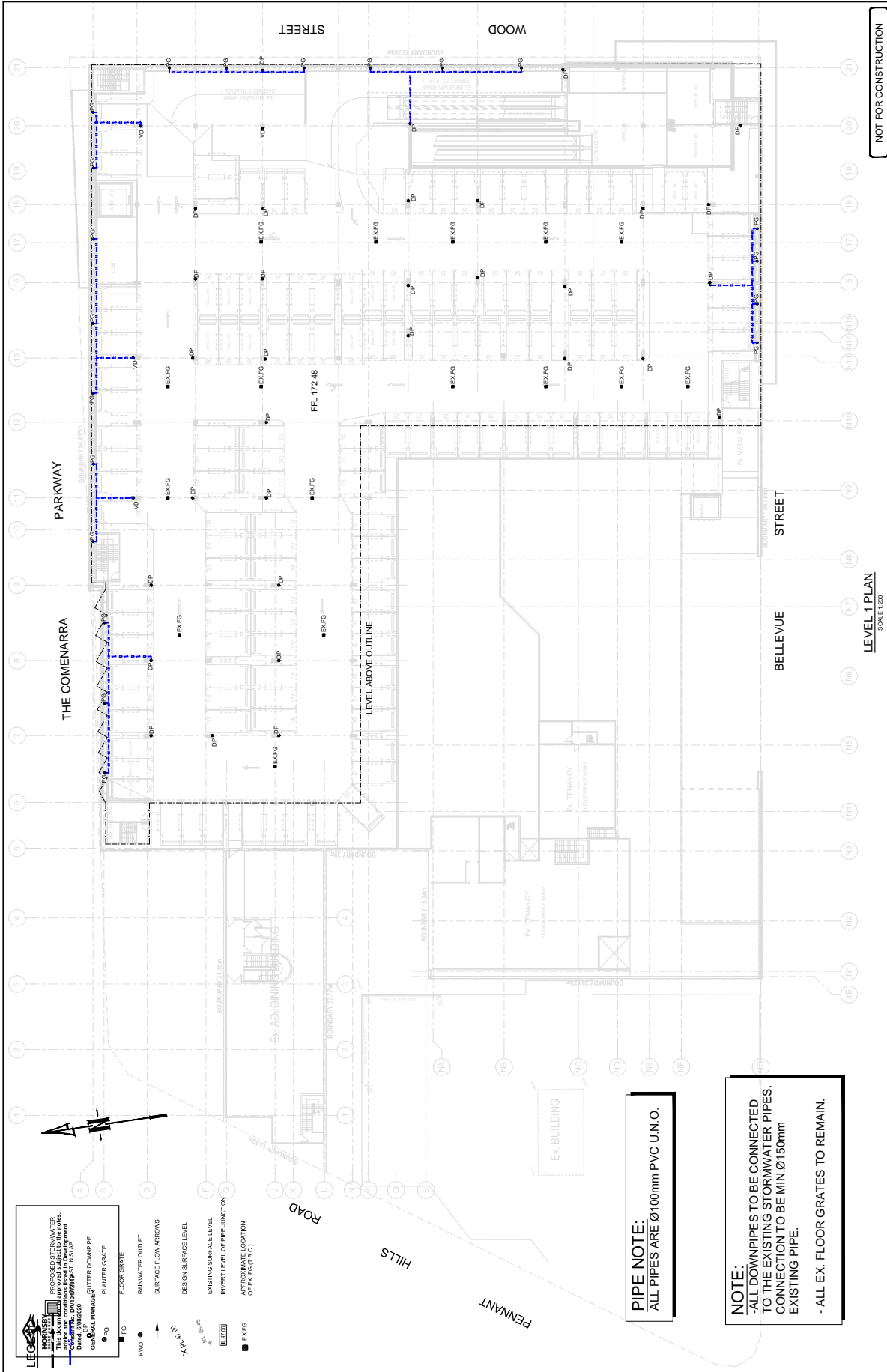
**THORNLEIGH MARKETPLACE EXTENSION**  
 24222328  
 212 THE COMENARRA PARKWAY THORNLEIGH NSW  
 HORNMARK PROPERTY GROUP  
 NORTH & EAST ELEVATIONS  
 1287  
 DAP300



# ATTACHMENT 4 - ITEM 1







**PIPE NOTE:**  
ALL PIPES ARE Ø100mm PVC U.N.O.

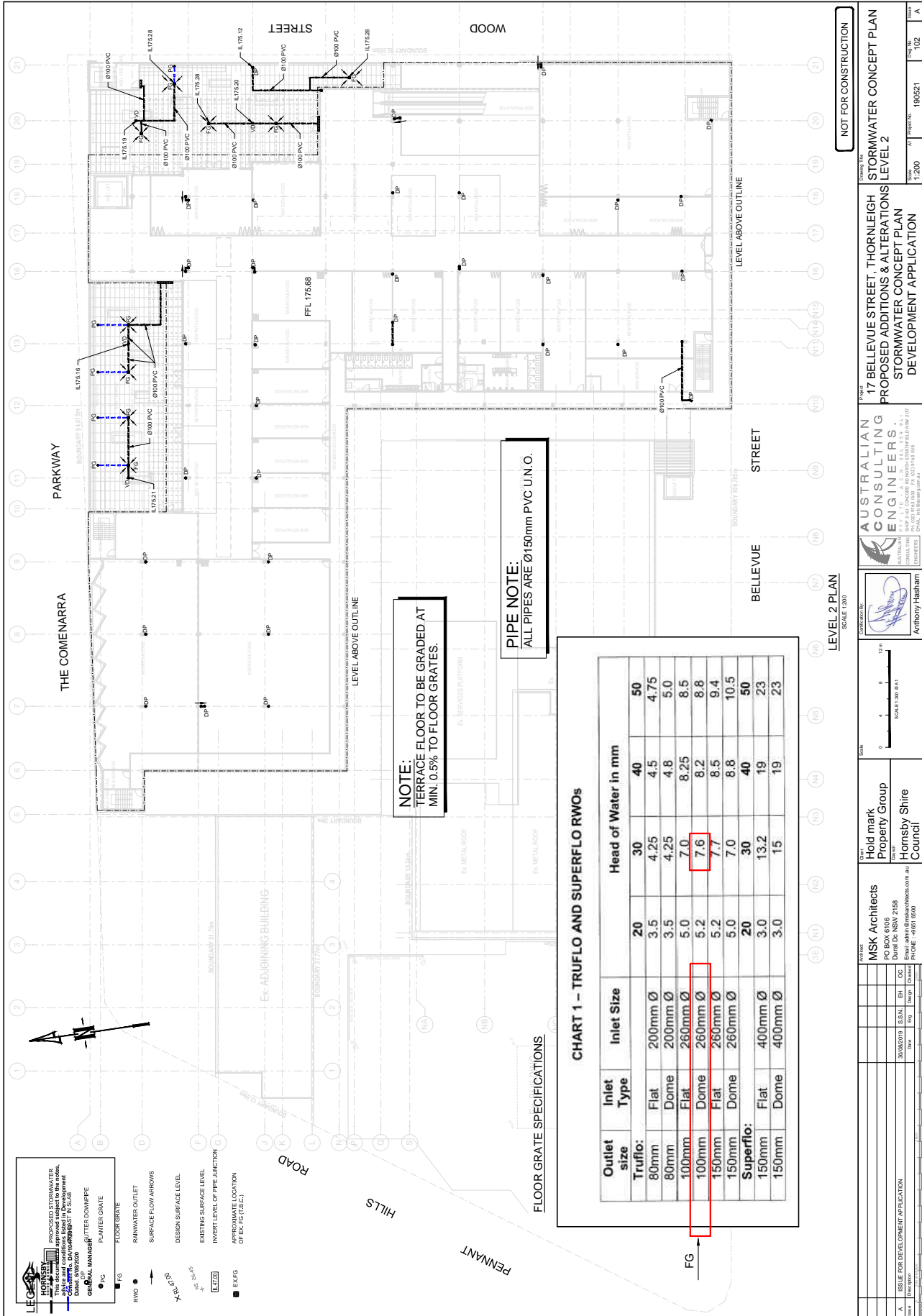
**NOTE:**  
-ALL DOWNPIPES TO BE CONNECTED TO THE EXISTING STORMWATER PIPES. CONNECTION TO BE MIN.Ø150mm EXISTING PIPE.  
- ALL EX. FLOOR GRATES TO REMAIN.

NOT FOR CONSTRUCTION

LEVEL 1 PLAN  
SCALE: 1:200

<p><b>CLIENT:</b> MSK Architects PO BOX 6106 DURIE DC NSW 2158 Email: info@mskarchitects.com.au Phone: (02) 9591 5041</p>		<p><b>PROPERTY GROUP:</b> Hornsby Shire Council</p>		<p><b>DATE:</b> 30/03/2019 <b>S.D.N.:</b> B1 <b>CC:</b> <b>Drawn:</b> <b>Checked:</b></p>	
<p><b>PROJECT:</b> 17 BELLEVUE STREET, THORNLEIGH PROPOSED ADDITIONS &amp; ALTERATIONS STORMWATER CONCEPT PLAN DEVELOPMENT APPLICATION</p>		<p><b>CONSULTANT:</b> AUSTRALIAN CONSULTING ENGINEERS P.O. Box 100, Thornleigh NSW 1585 Tel: 02 9399 1000 www.aec.com.au</p>		<p><b>DATE:</b> 19/05/21 <b>REVISED:</b> 10/1 <b>SCALE:</b> A</p>	

# ATTACHMENT 4 - ITEM 1

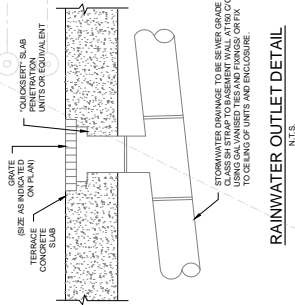


# ATTACHMENT 4 - ITEM 1



**CHART 1 – TRUFLO AND SUPERFLO RWOS**

Outlet size	Inlet Type	Inlet Size	Head of Water in mm
Truflow:			
80mm	Flat	200mm Ø	20
80mm	Dome	200mm Ø	3.5
100mm	Flat	260mm Ø	4.25
100mm	Dome	260mm Ø	4.8
150mm	Flat	260mm Ø	5.0
150mm	Dome	260mm Ø	7.0
Superflo:			
150mm	Flat	400mm Ø	5.2
150mm	Dome	400mm Ø	7.7
150mm	Flat	400mm Ø	7.0
150mm	Dome	400mm Ø	8.8
150mm	Flat	400mm Ø	30
150mm	Dome	400mm Ø	13.2
			19
			23
			15



**NOT FOR CONSTRUCTION**

**AUSTRALIAN CONSULTING ENGINEERS**  
Anthony Hasham

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PO BOX 6106  
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Phone: 9811 6000

**Hold mark Property Group**  
Hornsby Shire Council

**17 BELLEVUE STREET, THORNLEIGH**  
STORMWATER CONCEPT PLAN  
PROPOSED ADDITIONS & ALTERATIONS  
STORMWATER CONCEPT PLAN  
DEVELOPMENT APPLICATION

Scale: 1:500

# ATTACHMENT 4 - ITEM 1

# Thornleigh Marketplace Extension

## Landscape Development Application

### 2-12 The Comenarra Parkway Thornleigh



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0 For Submission 24 24.05.2024  
11 For Review 24 24.05.2024  
12 For Approval 24 24.05.2024  
13 For Approval 24 24.05.2024

LEGEND



Client: Holdmark Property Group

Project: Thornleigh Marketplace Extension



DEVELOPMENT APPLICATION  
Landscape Coversheet

Scale: 1:1000  
Drawing Number: SS19-4138  
Issue: 000 B

#### Drawing Schedule

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

#### PLANT SCHEDULE

Symbol	Botanic Name	Common Name	Size (m)	Pot size	Spacing	Quantity
MTB	Magnolia 'Teddy Bear'	Dwarf Magnolia	5 x 3	200L	As Shown	7
PX	Philodendron Xanadu	Xanadu	1 x 1	300mm	As Shown	60
ROP	Raphiolepis indica 'Oriental Pearl'	Oriental Pearl	1 x 1	300mm	As Shown	101
LEB	Lomandra Evergreen Baby	Evergreen Baby	0.4 x 0.4	150mm	5/m <sup>2</sup>	152
TJ	Trachelospermum jasminoides	Star Jasmine	15 x 1	150mm	5/m <sup>2</sup>	90

NOT FOR CONSTRUCTION

A1

# ATTACHMENT 4 - ITEM 1





CLAUSE 4.6 VARIATION REQUEST



**ATTACHMENT 5 - ITEM 1**

**CLAUSE 4.6 – EXCEPTIONS TO DEVELOPMENT STANDARDS**

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

---

**‘Thornleigh Marketplace’ No. 17 Bellevue Street, Thornleigh**

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

29<sup>TH</sup> MAY 2020


**CLAUSE 4.6 VARIATION REQUEST**

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

REPORT PREPARED BY:

**Peter Fryar**

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



**DIRECTOR,  
KEY URBAN PLANNING**

WAIVER

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

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## CLAUSE 4.6 VARIATION REQUEST



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

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

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

The property is known as Lots 100 in Deposited Plan 608646, No.17 Bellevue Street, Thornleigh (the “site”). The site is located on the southern side of The Commenara Parkway and has frontage to both Wood Street (82.355m) and Bellevue Street (109.785m), Thornleigh. The site has an area of 8,208 m<sup>2</sup> and experiences a fall from east to west to the frontage at Wood Street. Consequently, the grade of the site with cross fall from east to west and subsequent development for one large building (shopping centre) results in the existing built form protruding at a height greater at the eastern (Wood Street) frontage.

The existing development of the site was granted development consent by the Land and Environment Court of NSW in 2004 (*Fabcot Pty Ltd v Hornsby Shire Council* [2004] NSWLEC 358). A subsequent modification to the Court consent was approved on 22 June 2005. The proposed development detailed under the Statement of Environmental Effects prepared in support of the development application includes part demolition of the existing building and construction of an additional level of retail floor area above the rooftop car park (approx. 3,798.23 m<sup>2</sup>). An upgrade to the external façade of the building is proposed.

In consideration of this matter, we have:

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

**CLAUSE 4.6 VARIATION REQUEST**

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

**INTRODUCTION**

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

Clause 4.3 of the LEP states:

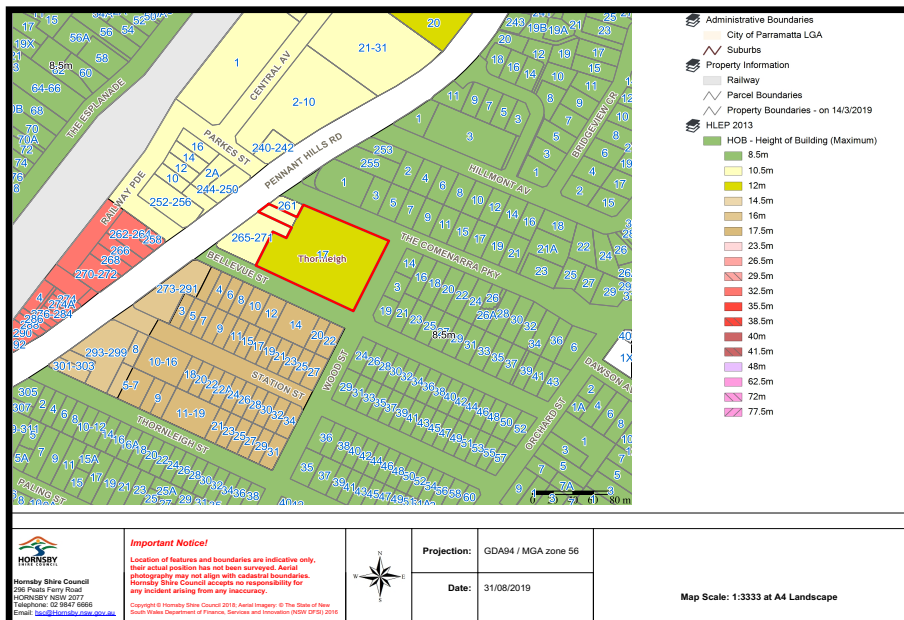
**“4.3 Height of buildings**

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

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

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

Figure 1- Extract of the LEP height map.

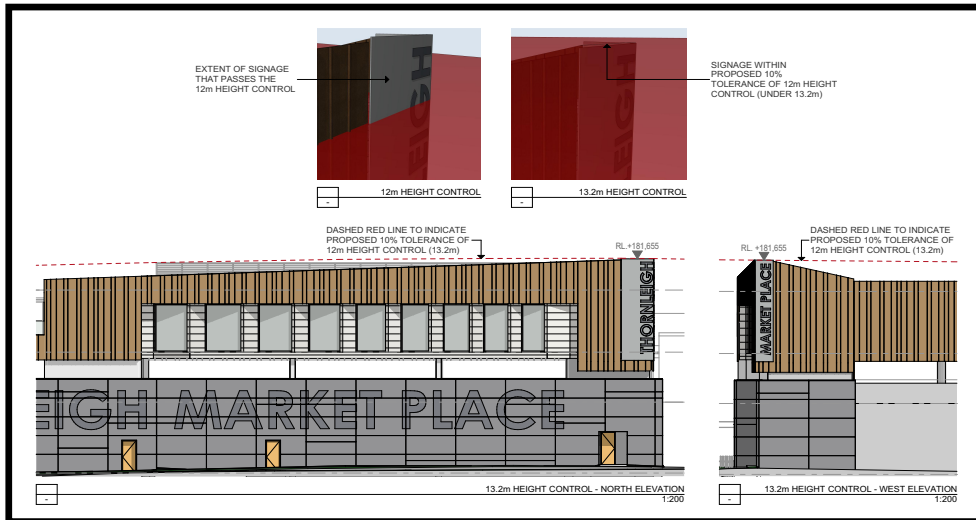


**CLAUSE 4.6 VARIATION REQUEST**

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

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

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



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

**“4.4 Floor space ratio**

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

- (a) *to permit development of a bulk and scale that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*
- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).*”

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

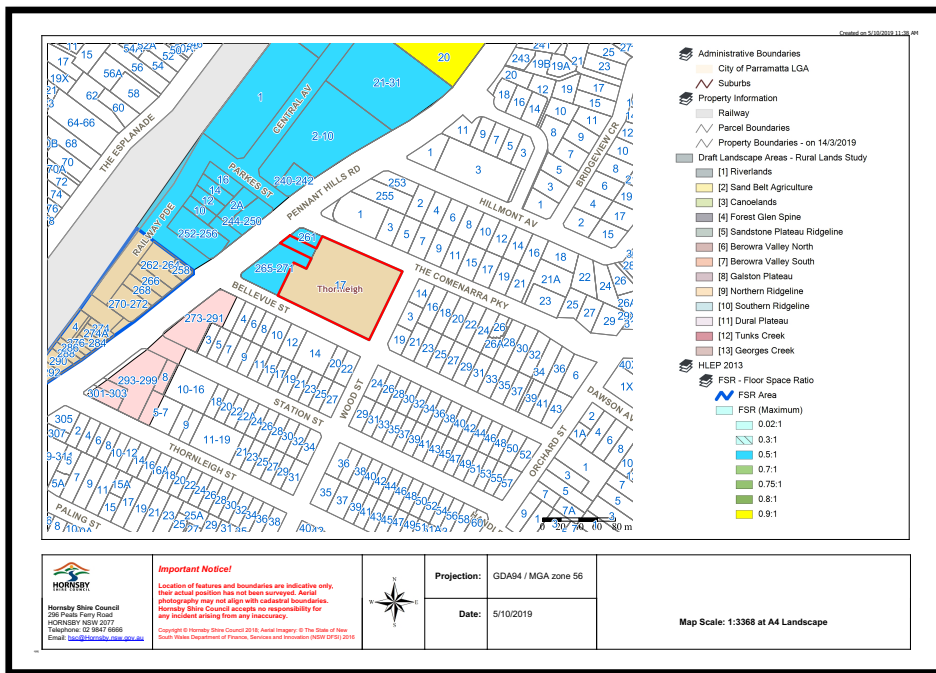
*“6 In the documents put before the Court, there are detailed assessment of the proposal by the planners, which demonstrates reasonable compliance with the current controls. However there is a non-compliance with the FSR development standard in cl 15 of the LEP. This non-compliance was dealt with by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

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

CLAUSE 4.6 VARIATION REQUEST

the site under the current LEP. The total 'gross floor area' proposed under the current development application is 11,362 m<sup>2</sup>. This represents an FSR for the proposed development of 1.38:1.

Figure 3 - Extract of the LEP FSR map.





**CLAUSE 4.6 VARIATION REQUEST**

**CLAUSE 4.6 FRAMEWORK**

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

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

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

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

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

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

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

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

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

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

After a detailed consideration of the issue (at [74-[81]), His Honour rejected the applicant's argument. At [78], His Honour held:

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

**CLAUSE 4.6 VARIATION REQUEST**

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

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

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

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

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

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

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

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

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

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

**CLAUSE 4.6 VARIATION REQUEST**

and other relevant case law.

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

## CLAUSE 4.6 VARIATION REQUEST

## DEVELOPMENT STANDARDS PROPOSED TO BE VARIED

**(1) HEIGHT STANDARD**

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

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

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

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

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

*"Height of Buildings Map means the Hornsby Local Environmental Plan 2013 Height of Buildings Map."*

Building height is defined in the LEP 2013 as:

*"building height (or height of building) means:*

*(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*

*(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like."*

**(2) FLOOR SPACE RATIO STANDARD**

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

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

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

*"Floor Space Ratio Map means the Hornsby Local Environmental Plan 2013 Floor Space Ratio Map."*

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

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

*(1) Objectives*

*The objectives of this clause are as follows:*

*(a) to define floor space ratio,*

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

**CLAUSE 4.6 VARIATION REQUEST**

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

**(2) Definition of "floor space ratio"**

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

**(3) Site area**

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

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

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

**(4) Exclusions from site area**

*The following land must be excluded from the site area:*

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

**(5) Strata subdivisions**

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

**(6) Only significant development to be included**

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

**(7) Certain public land to be separately considered**

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

**(8) Existing buildings**

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

**(9) Covenants to prevent "double dipping"**

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

**CLAUSE 4.6 VARIATION REQUEST**

lot.

(10) *Covenants affect consolidated sites*

If:

(a) a covenant of the kind referred to in subclause (9) applies to any land (**affected land**), and

(b) proposed development relates to the affected land and other land that together comprise the site of the proposed development,

the maximum amount of floor area allowed on the other land by the floor space ratio fixed for the site by this Plan is reduced by the quantity of floor space area the covenant prevents being created on the affected land.

(11) **Definition**

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

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

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

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

(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,

(b) the proportion or percentage of the area of a site which a building or work may occupy,

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

(d) the cubic content or floor space of a building,

(e) the intensity or density of the use of any land, building or work,

(f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,

(g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,

(h) the volume, nature and type of traffic generated by the development,

(i) road patterns,

(j) drainage,

(k) the carrying out of earthworks,

(l) the effects of development on patterns of wind, sunlight, daylight or shadows,

(m) the provision of services, facilities and amenities demanded by development,

(n) the emission of pollution and means for its prevention or control or mitigation, and

(o) such other matters as may be prescribed."

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



**CLAUSE 4.6 VARIATION REQUEST**

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

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

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

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

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

**NOTE:** Bold and underlining by author.

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

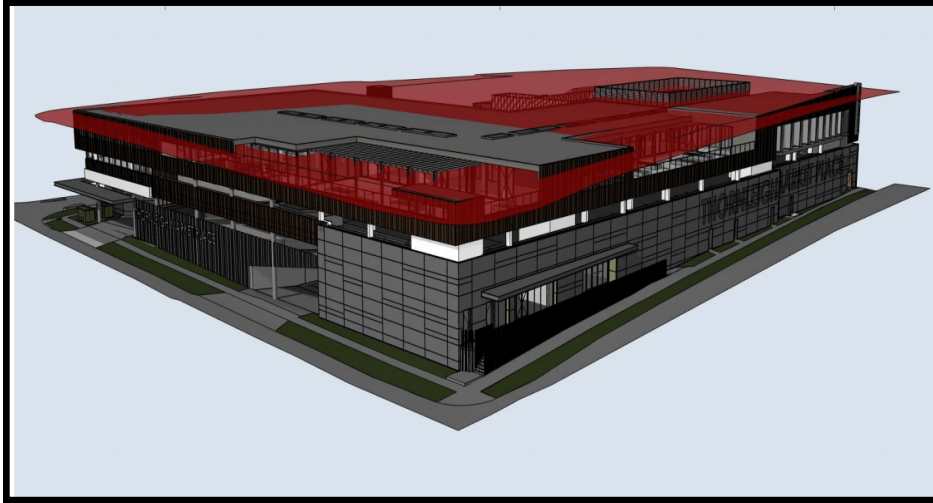
**EXTENT OF VARIATION SOUGHT****(1) HEIGHT STANDARD**

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

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

**CLAUSE 4.6 VARIATION REQUEST**

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



**(2) FLOOR SPACE RATIO STANDARD**

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

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

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

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

CLAUSE 4.6 VARIATION REQUEST

GFA:

- Proposed building: 11,362m<sup>2</sup>
- Site area: 8,208m<sup>2</sup>
- Proposed FSR: 1.38:1

## CLAUSE 4.6 VARIATION REQUEST

**JUSTIFICATION FOR CONTRAVENTION OF THE  
DEVELOPMENT STANDARDS**

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

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

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

## CLAUSE 4.6 VARIATION REQUEST

**ASSESSMENT AGAINST THE STATUTORY HEADS OF CONSIDERATION**

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

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

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

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

The relevant objective underpinning the building height development standard is:

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

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

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

The relevant objectives underpinning the floor space ratio standard are:

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

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

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

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

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

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

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

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

- *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable:*

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

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

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

Not applicable. The zoning of the site is appropriate.

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

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

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



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

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

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

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

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

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

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

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

Justice Preston said:

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

**CLAUSE 4.6 VARIATION REQUEST**

**Height Development Standard**

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

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

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

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

***“4.3 Height of buildings***

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

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

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

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

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

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

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

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

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

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

**Floor Space Ratio Development Standard**

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

***4.4 Floor space ratio***

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

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

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

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

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

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

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

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

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

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

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

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

**CLAUSE 4.6 VARIATION REQUEST**

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

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

- Justice Payne said:

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

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

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

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

## CLAUSE 4.6 VARIATION REQUEST

**SECRETARY'S CONCURRENCE**

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

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

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

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

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

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

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



**CLAUSE 4.6 VARIATION REQUEST****CONCLUSION**

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

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

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

**Peter Fryar**

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



**DIRECTOR,**  
**KEY URBAN PLANNING**

**ATTACHMENT/S**

**REPORT NO. LPP9/24**

**ITEM 2**

**1. DAS OVER 180 DAYS**

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

DA No.	Proposal	Address	Reason	Est. Date to LPP	Advice to Chair	No. Days at 29/5
DA/1022/2021	Torrens title subdivision of 1 lot into 60	36-56 David Road, Castle Hill	VPA >10 submissions	August	Council has provided final comments on the legal review of the draft VPA. Upon receipt of final version, the VPA will be placed on exhibition followed by a report to Council.  Additional information with the exception of the CTMP has been provided and referred to internal branches for comment and further assessment.	972
DA/411/2023	Demolition of existing structures and construction of a double storey commercial building with 2 basement parking levels	350-352 Galston Road, Galston	>10% height, >10% FSR >10 submissions and dedication of land	August	Applicant has provided a further set of draft amended plans which have been referred to Council's consultant planner.  The consultant will provide advice on the Draft plans and the applicant will be advised to either withdraw the application or lodge formal amended plans for Council to determine at the next available LPP meeting.	380
DA/794/2023	Demolition and construction 5 storey RFB - 20 units	21-25 Thornleigh Street, Thornleigh	SEPP 65	June	The application has also been referred to Water NSW.  Report to be prepared for June LPP meeting, subject to receiving concurrence.	281
DA/1125/2023	Demolition of structures and construction of a 76 place	76 New Line Road, Cherrybrook	>10 submissions	July	Amended plans including revised PoM have been submitted and referred to internal	219

## ATTACHMENT 1 - ITEM 2

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

DA No.	Proposal	Address	Reason	Est. Date to LPP	Advice to Chair	No. Days at 29/5
	childcare centre with basement car parking				branches for comment to enable a report to be prepared for the July LPP meeting.	
DA/1411/2023	Demolition of dwelling and construction of a centre based child care centre for 54 children with basement parking	46 Lords Avenue, Asquith	>10 submissions	June	Amended plans to be submitted to address concerns raised regarding provision of parking. Report to be prepared for June LPP meeting.	211

## ATTACHMENT 1 - ITEM 2