



ELECTRONIC DETERMINATION BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

**Thursday 13 May 2021
at 6:30pm**



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2 ELECTRONIC - DA/123/2021 - TORRENS TITLE SUBDIVISION OF ONE ALLOTMENT INTO TWO - 11 ADAMSON AVENUE, THORNLEIGH

EXECUTIVE SUMMARY

DA No: DA/123/2021 (Lodged on 5 February 2021)

Description: Torrens title subdivision of one lot into two lots

Property: Lot 56 DP 13726, No. 11 Adamson Avenue, Thornleigh

Applicant: Land Prodevelopment

Owner: Mr John Peter Moait

Estimated Value: \$0

Ward: B

- The application involves Torrens title subdivision of one lot into two lots.
- The proposal does not comply with Clause 4.1 minimum subdivision lot size of the *Hornsby Local Environmental Plan 2013*. The applicant has made a submission in accordance with Clause 4.6 'Exceptions to development standards' of the *Hornsby Local Environmental Plan 2013* to vary the minimum lot size development standard. The submission is not considered well founded and is not supported.
- No submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as the variation to the development standard (minimum lot size) is greater than 10 percent.
- It is recommended that the application be refused.

RECOMMENDATION

THAT Development Application No. DA/123/2021 for Torrens title subdivision of 1 lot into 2 lots at Lot 56 DP 13726, No. 11 Adamson Avenue, Thornleigh be refused for the reasons detailed in Schedule 1 of LPP Report No. LPP9/21.

BACKGROUND

In November 2018 unauthorised tree clearing occurred to the rear of the site at the location of the mapped Blue Gum Shale Forest vegetation community.

On 14 May 2020 a pre-lodgement meeting (PL/25/2020) was held with the applicant's planner regarding the proposed Torrens title subdivision of one lot into two lots and creation of a shared accessway. Of note, Council advised that any area burdened by a Right of Carriageway (ROW) is to be excluded from the area calculation for the purposes of assessing the minimum subdivision lot size under the *HLEP*.

SITE

The 1,008m² site is located on the western side of Adamson Avenue and contains a single-storey timber clad cottage. The site is slightly oblique with a front boundary length of 15.51m and an average depth of approximately 66m. The site falls steadily from the front of the site to the rear.

Vehicular access to the site is from Adamson Avenue. A concrete driveway runs along the southern property boundary to a hardstand area at the rear of the cottage.

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

Vegetation to the front of the site comprises ornamental trees and shrubs. The rear of the site contains Blue Gum Shale Forest which is listed as Endangered Ecological Community under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1995* and a Critically Endangered Ecological Community under the NSW *Biodiversity Conservation Act 2016*.

PROPOSAL

The application proposes the Torrens title subdivision of 1 lot into 2 lots as follows:

- Lot 1 would have an area of 379m² excluding the Right of Carriageway (ROW) and would contain the existing dwelling.
- Lot 2 would have an area of 504m².

The proposed lots would have access from Adamson Avenue via the existing concrete driveway along the southern property boundary. Each lot would have a turning bay to allow for entry and exit in a forward direction.

No trees are proposed to be removed to facilitate the proposed development.

ASSESSMENT

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

1. STRATEGIC CONTEXT

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

The Greater Sydney Region Plan - A Metropolis of Three Cities has been prepared by the NSW State Government to guide land use planning decisions for the next 40 years (to 2056). The Plan sets a strategy and actions for accommodating Sydney's future population growth and identifies dwelling

targets to ensure supply meets demand. The Plan also identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

The NSW Government will use the subregional planning process to define objectives and set goals for job creation, housing supply and choice in each subregion. Hornsby Shire has been grouped with Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Ryde, Northern Beaches and Willoughby to form the North District. The Greater Sydney Commission has released the North District Plan which includes priorities and actions for Northern District for the next 20 years. The identified challenge for Hornsby Shire will be to provide an additional 4,350 dwellings by 2021 with further strategic supply targets to be identified to deliver 97,000 additional dwellings in the North District by 2036.

The proposed development would be generally consistent with the Greater Sydney Region Plan - A Metropolis of Three Cities and the North District Plan by contributing to achieving the dwelling targets for the region, however would result in an allotment not complying with the minimum allotment size under the HLEP.

2. STATUTORY CONTROLS

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

2.1 Hornsby Local Environmental Plan 2013

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

2.1.1 Zoning of Land and Permissibility

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

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

The proposed development is defined as ‘subdivision’ and is permissible in the zone with Council’s consent.

2.1.2 Minimum Subdivision Lot size

The objectives of Clause 4.1(1) of the *HLEP* are to provide for the subdivision of land at a density that is appropriate for the site constraints, development potential and infrastructure capacity of the land and to ensure that lots are of a sufficient size to accommodate development.

The minimum lot size within the R2 zone for this site is 500m².

Clause 4.1(3A) of the *HLEP* stipulates that “*If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size*”.

The application has been supported by legal advice (‘Advice’) prepared by Angela Pearman, Barrister, dated 24 September 2020. The Advice seeks to clarify whether the proposed Right of

Carriageway (ROW) area is to be included in the assessment of the minimum subdivision lot size for the purposes of Clause 4.1(3A) of the *HLEP*.

The Advice indicates that the *HLEP* does not contain definitions of a battle-axe or access handle, nor are those terms defined by the *Standard Instrument - Principle Local Environmental Plan*. The Advice specifies that a definition of battle-axe lot is, however, contained within the *State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH)*, where it is defined as a lot that has access to a road by an access laneway. The Advice suggests that the policy does not apply here, but the definition of battle-axe lot is nevertheless relevant when considering the interpretation of the clause. The Advice contends that the text of the provisions is to be the focus of interpretation but must not be defeated by too literal an adherence to its precise language and that an interpretation that promotes the purpose of the instrument is to be preferred to an interpretation that would not promote those purposes. The Advice maintains that in applying these principles to the case, it is relevant that the property is only accessible from Adamson Avenue via the proposed ROW over Lot 1.

The Advice contends that the rear lot resulting from the subdivision of land is plainly either “a battle-axe lot or other lot with an access handle” and that the front lot does not fall into the category of “other lot with an access handle”. The Advice concludes that the front lot is not a lot with an access handle, but rather a lot that will be burdened by a right of carriageway benefiting the rear lot and accordingly that Clause 4.1(3A) is not applicable to the calculation of the size of the front lot and meets the minimum lot size development standard.

The applicant’s interpretation of Clause 4.1(3A) of the *HLEP* is contrary to Council’s interpretation and application of the clause.

Council generally agrees with the summary of the applicant regarding the legal principles applying to the interpretation of environmental planning instruments. Council acknowledges that the definition of a “battle-axe lot” is provided in the *SEPP ARH* and is similar to the definition of the word as provided in dictionaries. It is agreed that the definition in the *SEPP ARH* cannot be imported into the *HLEP* to interpret the provisions.

Council considers that the term “access handle” signifies a portion of land that is purposely set aside in order to facilitate access to something or somewhere. Nothing about the term “access handle” suggests that it is necessarily within the bounds of any particular lot. Its use in the context of Clause 4.1(3A) of the *HLEP* indicates that it is an overarching term which includes both the “battle-axe” portion of a “battle-axe lot”, as well as other forms of access, such as a ROW.

In relation to the term “battle-axe lot”, Council understands that the definition provided in the Dictionary for the similar term “battle-axe block” is appropriate to apply. In that regard, a “battle-axe lot” should be taken to refer to a lot situated behind a lot with a street frontage and only accessible by a strip of land (being a form of “access handle”) running to the street frontage that is located within its legal boundaries. As proposed Lot 1 is clearly not a “battle-axe lot” it is necessary to consider whether proposed Lot 1 is an “other lot with an access handle”. In Council’s opinion, proposed Lot 1 is a “lot with an access handle” because there is an area wholly within its boundaries that is set aside giving access to Proposed Lot 2.

In Council’s view, Clause 4.1(3A) requires the area of the “access handle” to be excluded from the lot size of proposed Lot 1 consistent with the Clause 4.1 objective to “ensure that lots are of a sufficient size to accommodate development”.

In light of the above, Council has assessed proposed Lot 1 to have an area of 379m² (excluding the ROW) and Lot 2 to have an area of 504m². Proposed Lot 1 would not comply with the minimum

subdivision lot size development standard pursuant to Clause 4.1 of the *HLEP*. Section 2.1.4 of this report addresses the exception the development standard.

2.1.3 Height of Buildings

Clause 4.3 of the *HLEP* provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m. The existing dwelling to be retained has a height of 5.7m, which complies with this provision.

2.1.4 Exceptions to Development Standards

The application has been assessed against the requirements of Clause 4.6 of the *HLEP*. This clause provides flexibility in the application of the development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objectives of the zone. The objectives of the Minimum subdivision lot size development standard are to provide for the subdivision of land at a density that is appropriate for the site constraints, development potential and infrastructure capacity of the land and to ensure that lots are of a sufficient size to accommodate development.

Proposed Lot 1 would have an area of 379m² (excluding the ROW) and proposed Lot 2 would have an area of 504m². Proposed Lot 1 does not comply with the minimum 500m² subdivision lot size development standard prescribed under Clause 4.1 Minimum subdivision lot size of the *HLEP*.

In addition to the applicant's legal position that the proposal does not constitute a battle-axe lot or other lot with an access handle and the therefore the vehicular access should not be excluded in calculating the area of the allotment, the applicant has made a submission in support of a variation to the development standard in accordance with Clause 4.6 of the *HLEP*. The development application seeks to vary the development standard by 121m², representing a 27.53% variation to the development standard.

There are five common methods by which an applicant can demonstrate that compliance with a development standard is unreasonable or unnecessary in the circumstances of the development. Initially proposed for objections under clause 6 of *SEPP 1* in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 Pearson C summarised and applied these methods to written requests made under Clause 4.6 in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 [61-62]. These five methods are generally as follows:

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

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

The applicant states that the proposed variation is considered to be consistent with the objectives of the control and is justified as follows:

- *The site has a mild slope and is largely free of vegetation. The land is not bushfire prone and contains no mapped environmental features such as “watercourses” or “biodiversity”. There are no site constraints that would preclude subdivision and future development of the site.*
- *Proposed Lot 1 contains an existing cottage and the plan of subdivision supplied at Attachment A demonstrates that cottage complies with building envelope, landscaped area and parking requirements under the proposed subdivision arrangement, despite the ROC. On the evidence available there can be no question that proposed Lot 1 has development potential.*
- *The site is within an established residential neighbourhood serviced by reticulated sewer and water and overhead power lines. The cottage at proposed Lot 1 has existing service connections and connections to proposed Lot 2 will be provided in accordance with the requirements of the relevant service providers.*
- *The proposed subdivision arrangement achieves objective (a) although Lot 1 contains a ROC and is “undersized” according to council’s interpretation of the development standard.*
- *We submit that if development on proposed Lot 1 satisfies the development controls for dwelling houses set out in HDCP, it follows that the proposed lot area is a “sufficient size to accommodate development”.*
- *The plan of subdivision supplied with the development application and provided at Attachment A demonstrates that proposed Lot 1 (being an “undersized” lot according to council’s application of the minimum lot size standard) complies with relevant building setback, site coverage and landscaped area controls.*
- *Proposed Lot 1 can also accommodate sufficient parking and a compliant area of private open space.*
- *The area subject to the ROC is an existing driveway that will continue to service and provide access to proposed Lot 1. The ROC does not unduly burden or impinge on the development potential of proposed Lot 1.*
- *According to council’s interpretation of the development standard, the area associated with the ROC should be excluded from the lot area calculation of proposed Lot 1. The implication is that the area burdened by the ROC will limit the development potential of proposed Lot 1 and the residue area will not be sufficient to accommodate development. This is plainly not the case in this scenario.*
- *The area over which the ROC will be situated is currently utilised as a means of vehicular access to the hardstand parking area behind the building line of the existing cottage. The location and extent of the existing driveway and hardstand parking area is identified at Figure 3.*
- *We note that parking behind the front building line is encouraged by the applicable planning controls (Part 3.1.7(a) of HDCP) and observe that detached parking facilities behind the building line with driveway access along a side property boundary is characteristic of residential development in the locality.*

- *Under the subdivision proposal the area subject to the ROC will continue to be used as a driveway and to access parking associated with the existing cottage on proposed Lot 1. The area subject to the ROC is not for the exclusive use of proposed Lot 2 but rather will be for shared access and a fundamental (and retained) aspect of development on proposed Lot 1.*
- *There would be no material change to dwelling location or access and parking arrangement for proposed Lot 1 if alternative access to proposed Lot 2 were provided, illustrating the point that the proposed ROC will not impinge on the development potential of proposed Lot 1.*
- *We submit that a ROC benefiting proposed Lot 2 will not unduly burden or impinge on the development potential of proposed Lot 1 and to illustrate the point we present a hypothetical alternative to the access arrangement proposed by this subdivision application.*
- *In our hypothetical alternative, vehicular access to proposed Lot 2 is over the battle-axe lot to the south at 12A Sefton Road. A ROC over 12A Sefton Road would be created. This subdivision arrangement satisfies the minimum lot size standard by creating two lots of 504sqm. The land at 12A Sefton Road would have an area of approx. 530sqm discounting the access handle and land burdened by the ROC. The hypothetical arrangement is illustrated at Figure 4.*
- *In our hypothetical scenario numeric compliance with the minimum lot size standard (according to council's interpretation of the standard) is achieved. However, we submit that there will be no material change to dwelling location or access and parking arrangement for proposed Lot 1 if the alternative access arrangement for proposed Lot 2 were adopted.*
- *Utilising the existing driveway to service proposed Lot 2 is a logical and low-cost response to site specific circumstances. Given the driveway will be retained and utilised to access parking for proposed Lot 1 it is sensible that it also be used to access proposed Lot 2.*
- *There is no benefit to the "compliant" hypothetical alternative we have presented which will unnecessarily burden a neighbouring lot and ignores the fact that there is a practical means of access already available.*
- *Proposed Lot 1 contains an established dwelling and is demonstrably capable of satisfying applicable building envelope, private open space, landscaped area and car parking controls, despite the proposed imposition of a ROC.*
- *An objective of the minimum lot size development standard is to ensure that lots are of a sufficient size to accommodate development. We submit that if development on proposed Lot 1 satisfies the development controls for dwelling houses set out in HDCP, it follows that the proposed lot area is a "sufficient size to accommodate development".*
- *The plan of subdivision supplied with the development application and provided at Attachment A demonstrates that proposed Lot 1 (being an "undersized" lot according to council's application of the minimum lot size standard) complies with relevant building setback, site coverage and landscaped area controls. Proposed Lot 1 can also accommodate sufficient parking and a compliant area of private open space.*
- *Proposed Lot 1 is demonstrably capable of accommodating development in the manner anticipated by the relevant planning controls despite the proposed ROC to facilitate access to proposed Lot 2. Any suggestion that the ROC will impinge on or stifle orderly development of proposed Lot 1 is plainly incorrect in this scenario.*

- *We contest the implication that the proposed ROC will impinge on the development potential of proposed Lot 1 and have demonstrated that the “undersized” lot can accommodate development as anticipated by the planning controls.*
- *This variation request demonstrates that the proposal aligns with the objectives for Zone R2 and achieves the objectives for clause 4.1 despite non-compliance with the development standard.*
- *The development will contribute to housing stock in a manner encouraged by the applicable zone objectives and planning controls and it is conceivable that future development can be delivered without adverse impact on neighbouring properties. The proposal aligns with the public interest.*
- *The proposed development aligns with the objectives for development in Zone R2 given that the subdivision of land will allow for the delivery of additional low-density housing.*

Particular attention has recently been placed on the caselaw established in *Four2Five Pty Ltd v Ashfield Council* [2015] which underlined that consent authorities must be directly satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) of Clause 4.6, that is compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's submission to vary the 'Minimum subdivision lot size' development standard is not considered well founded for the following reasons:

The objectives of the development standard are not achieved notwithstanding non-compliance with the standard

The objectives of Clause 4.1 'Minimum subdivision lot size' of the *HLEP* are “to provide for the subdivision of land at a density that is appropriate for the site constraints, development potential and infrastructure capacity of the land and to ensure that lots are of a sufficient size to accommodate development”.

The applicant's submission maintains that the site contains no mapped environmental features such as watercourses or biodiversity. Council's maps indicate that the rear half of the site is constrained by Blue Gum Shale Forest which is listed as Endangered Ecological Community under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1995* and a Critically Endangered Ecological Community under the NSW *Biodiversity Conservation Act 2016*. It is noted that recent unlawful tree removal has occurred within this section of the site and the vast majority of this Critically Endangered Ecological Community has been removed, with the exception of four trees along the rear boundary. Notwithstanding, Blue Gum Shale Forest exists on adjacent sites within close proximity to the building envelope on Lot 2. As discussed under Section 2.6.2 of this report, the building envelope shown on the submitted plans is misleading and Council's assessment has determined that a compliant 200m² building envelope would be located between 5m-7m from 4 significant trees located at the rear boundary.

To enable a comprehensive assessment and a full appreciation of the potential impact of the proposed development on the mapped Blue Gum Shale Forest, the submission of an Arboricultural Impact Assessment and a Subdivision Plan with an accurate building envelope is required. In addition, an indicative design of a future dwelling house on proposed Lot 2 has not been provided to enable an understanding of how a dwelling house could address the site constraints whilst

maintaining compliance with the *HDCP*, as set in precedence in the planning principle resulting from *Parrott v Kiama [2004] NSWLEC 77*.

Council provides that the proposal is inconsistent with the objective of Clause 4.1(1)(a) of the *HLEP* as the subdivision design is not appropriate for the site constraints and it is anticipated that the size of the rear allotment would need to be increased to allow for a future dwelling house on Lot 2 whilst maintaining the health of these trees.

Environmental Planning Grounds – Clause 4.6(3)(b)

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

Council acknowledges that the proposal would comply with *HDCP* requirements including parking, site coverage, setbacks, landscaping and vehicle manoeuvrability. Notwithstanding, the applicant has not demonstrated that a future dwelling house could be sited on the rear allotment whilst maintaining the health of the trees to the rear of the site including trees on adjacent properties. In this regard, insufficient information has been provided to accurately determine whether there are sufficient environmental planning grounds to vary the development standard and whether the size of the rear allotment would need to be increased to allow for a future dwelling house on Lot 2.

Council is not satisfied that Clause 4.6(3)(b) of the *HLEP* has been adequately addressed.

That the development standard has been virtually abandoned or destroyed by the Council's own actions in departing from the standard

The *Hornsby Local Environmental Plan 2013 (HLEP)* was gazetted on 27 September 2013. Council has consistently maintained compliance with the minimum allotment size pursuant to Clause 4.1 of the *HLEP* for subdivision in R2 low density residential zones. Surrounding allotments comply or exceed the minimum allotment size.

It is considered that the proposed 121m² variation (representing a 27.53% variation) to the minimum lot size development standard is significant and would set an unwarranted precedent for similar lot size variations into the future. Given that previous applications within Hornsby Shire seeking to vary the minimum lot size development standard (of comparable merit and variance) have been refused by Council, approval of the application would signify the 'abandonment' and 'destruction' of Clause 4.1 of the *HLEP*.

Public Interest and Clause 4.6(4)

Clause 4.6(4) states that development consent must not be granted for development that contravenes a development standard unless:

- (a) *The consent authority is satisfied that:*
 - (i) *The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *The concurrence of the Planning Secretary has been obtained*

With regard to part (i), the written request has not adequately addressed the matters required to be demonstrated as outlined above.

With regard to part (ii), the proposed development is not considered to be in the public interest because it is inconsistent with the objectives of Clause 4.6 and the objectives for Minimum subdivision lot size contained within the *HLEP*.

With regard to (b) the concurrence of the Planning Secretary may be assumed by the Local Planning Panel in the instance that the application was approved.

Based on this assessment, it is considered that compliance with the development standard would be reasonable and necessary in the circumstances of the case. Accordingly, the Clause 4.6 submission is not supported.

2.1.5 Heritage Conservation

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

2.1.6 Earthworks

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

The proposed development necessitates earthworks to facilitate the provision of the vehicle turning areas and the on-site stormwater absorption trenches. Council's assessment of the proposed works and excavation concludes that the earthworks would be minor and that adjacent properties would be unaffected by the proposal with regard to stormwater flows and soil stability.

The proposal complies with the requirements of Clause 6.2 Earthworks of the *HLEP*.

2.2 State Environmental Planning Policy 55 Remediation of Land

The policy provides guidelines for the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Clause 7 requires Council to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.

Should the land be contaminated Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

The site has been historically used for residential purposes. It is not likely that the site has experienced any significant contamination, and further assessment under *SEPP 55* is not required.

2.3 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The application has been assessed against the requirements of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)*, which aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

Part 3 of the *Vegetation SEPP* states that a development control plan may make a declaration in any manner relating to: species, size, location and presence of vegetation. Accordingly, Part 1B.6.1 of the Hornsby Development Control Plan 2013 (HDCP) prescribes works that can be undertaken with or without consent to trees.

The application has been assessed against the requirements of the *Vegetation SEPP* and it has been determined that the proposal would not meet the objectives of the *Vegetation SEPP*. The matter is discussed further in Sections 2.6.2 and 2.6.6 of the report.

2.4 Sydney Regional Environmental Plan No. 20 Hawkesbury-Nepean River

The site is located within the catchment of the Hawkesbury Nepean River. Part 2 of this Plan contains general planning considerations and strategies requiring Council to consider the impacts of development on water quality, aquaculture, recreation and tourism.

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would comply with the requirements of the Policy.

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

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

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

2.6 Hornsby Development Control Plan 2013

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

Subdivision of one lot into two

HDCP – Part 6 Subdivision			
Control	Proposal	Requirement	Complies
Site Area	1,008m ²	N/A	N/A
Lot Area			
- Lot 1	379m ² (ex. ROW)	500m ²	No
- Lot 2	504m ²	500m ²	Yes
Minimum Lot Width			

- Lot 1	15.3m	12m	Yes
- Lot 2	15.15m	12m	Yes
Accessway Width	3.5m	3.5m	Yes
Indicative Building Envelope (Lot 2)	88m ²	200m ²	No
Setbacks on Lot 2			
- Front	6.37m	900mm	Yes
- Side (north)	2.5m	900mm	Yes
- Side (south)	2.5m	900mm	Yes
- Rear	14m	5m	Yes
Landscaping (Lot 2)	67%	20%	Yes
Open Space (Lot 2)	>24m ²	24m ²	Yes
Car Parking (Lot 2)	2 spaces	min. 2 spaces	Yes

Existing dwelling house on proposed Lot 1

HDCP – Part 3.1 Dwelling Houses			
Control	Proposal	Requirement	Complies
Site Area	379m ²	500m ²	No
Building Height	5.7m	8.5m	Yes
No. storeys	1 storey	max. 2 + attic	Yes
Site Coverage	21%	50%	Yes
Floor Area	125m ²	330m ²	Yes
Setbacks			
- Front	9m	6m	Yes
- Side (north)	1.5m	900mm	Yes
- Side (south)	4m	900mm	Yes
- Rear	11.75m	3m	Yes
Landscaped Area (% of lot size)	52%	20%	Yes
Private Open Space			
- minimum area	>24m ²	24m ²	Yes

- <i>minimum dimension</i>	>3m	3m	Yes
Car Parking	2 spaces	min. 2 spaces	Yes

As detailed in the above tables, the proposed development does not comply with a number of prescriptive requirements within the *HDCP*, namely the lot size of proposed Lot 1 and the indicative building envelope within proposed Lot 2. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with the relevant desired outcomes.

2.6.1 Lot Size

The prescriptive requirement of Part 6.2.1(b) of the *HDCP* states that “*In calculating the area of a lot resulting from a subdivision of land, the area of any accessway, right of carriageway or the like is to be excluded*”.

It is considered that the *HDCP* provides clarification to the application of Clause 4.1(3A) of the *HLEP* and explicitly indicates that a Right of Carriageway is to be excluded in calculating the area of a lot.

As addressed under Sections 2.1.2 and 2.1.4 of this report, proposed Lot 1 would not meet the minimum lot size requirements of the *HLEP* and the application has not demonstrated that compliance with the minimum Subdivision Lot Size development standard would be unreasonable and unnecessary in the circumstances of the case.

The proposal is contrary to the prescriptive measure of Part 6.2.1(b) of the *HDCP* and is considered unacceptable.

2.6.2 Indicative Building Envelope

The *HDCP* stipulates that subdivision lot design should identify a potential developable area accommodating:

- A building envelope of 200m² with a minimum dimension of 10 metres.
- A principal private open space area.
- An area for parking 2 cars behind the building line.
- Comply with the general subdivision provisions of the *HDCP*.

The submitted Subdivision Plan indicates a 184m² indicative building envelope on proposed Lot 2 (comprising a future dwelling and vehicle turning area).

As identified in Table 2.6 of this report, Council's assessment of the submitted Subdivision Plan has concluded that an 88m² building envelope is shown on proposed Lot 2, which is contrary to the minimum 200m² requirement. Council's calculation of the building envelope has excluded the vehicle turning area and has solely included the building footprint.

It is considered that a 200m² envelope with an identical front building line would achieve a setback of between 4.2m and 7.8m to the rear boundary, which would not comply with the 5m rear boundary setback requirement of the *HDCP*. In addition, a 200m² building envelope is likely to be located between 5m-7m from 4 trees which form part of the Critically Endangered Ecological Community (Blue Gum Shale Forest) to the rear of the site.

To enable a comprehensive assessment and a full appreciation of the potential impact of the proposed development on the mapped Blue Gum Shale Forest, the submission of an Arboricultural Impact Assessment, a Subdivision Plan with an accurate building envelope and/or an indicative

design of a future dwelling house on proposed Lot 2 would be required. Accordingly, insufficient information has been provided to determine whether a dwelling house could be sited on the proposed rear lot whilst maintaining the health of these four trees and trees on the adjacent sites.

In addition, Part 6.2.1(c) of the *HDCP* indicates that the size of the proposed lot may need to be greater than the area prescribed in order to achieve the minimum setbacks required from significant landscape features or to address site constraints. Insufficient Information has been provided to determine if the size of proposed Lot 2 would need to be increased to avoid impacts to trees within the site and adjacent sites.

Council did not request this information as the proposal cannot be supported due to the non-compliance with the minimum lot size.

The proposal is contrary to the prescriptive requirements of Part 6.2.1(c) and (f) of the *HDCP* and cannot be supported in this instance.

2.6.3 Privacy

The existing single storey dwelling house is proposed to be retained within proposed Lot 1. In this regard, the existing privacy and amenity afforded to the adjacent properties to the north and south would be maintained under this proposal.

The existing dwelling house on proposed Lot 1 would be located approximately 18m to the indicative building envelope on proposed Lot 2. It is considered that the separation is substantial and would provide for appropriate privacy between the two properties.

2.6.4 Transport and Parking

The proposed lots would have access from Adamson Avenue via the existing concrete driveway along the southern property boundary. Each lot would have a dedicated turning bay to allow for entry and exit in a forward direction.

The application has demonstrated that two vehicles would be accommodated behind the building line on each allotment in accordance with the *HDCP*.

The proposed Right of Carriageway would have a width of 3.5m comprising a 3m wide carriageway and a 500mm wide landscaped verge. The proposal complies with the *HDCP* in this respect.

2.6.5 Stormwater Management

The stormwater drainage plans prepared by MBC Engineering Pty Ltd Building, Civil and Structural Engineers have proposed an on-site absorption system to be located at the rear of proposed Lot 2. Section 1C.1.2 of the *HDCP* requires that where a property slopes away from the street and there is no inter-allotment drainage system or Council drainage system, the development is required to obtain an inter-allotment drainage easement over the downstream properties to pipe stormwater flows to the nearest Council system. In this case, the nearest Council system is a Drainage Easement located within No. 14A Sefton Road. The application does not comply with the *HDCP* in this regard.

Council's pre-lodgement meeting minutes (PL/25/2020) advised the proponent that the subdivision would require the creation of a stormwater easement over downstream properties and the provision of their written consent as part of any future subdivision proposal.

Council did not request this information as the proposal cannot be supported due to significant concerns relating to the proposed undersized lot.

The proposal is contrary to the desired outcomes and prescriptive measures of Parts 1C.1.2(f) and (g) of the *HDCP*.

2.6.6 Biodiversity

The prescriptive requirement of Part 1C.1.1(e) of the *HDCP* stipulates that development should maintain a 20m buffer to Endangered Ecological Communities.

As discussed under Section 2.6.2 of this report, a 200m² building envelope is likely to be located between 5m-7m to 4 trees which form part of the Critically Endangered Ecological Community (Blue Gum Shale Forest) to the rear of the site. The building envelope would also be in close proximity to Blue Gum Shale Forest on adjacent sites.

No ecological assessment or Arboricultural Impact Assessment has been provided assessing the impacts on threatened species, populations and ecological communities. It is considered that the future construction of a dwelling that would have unknown impacts on local flora and fauna and the surrounding Blue Gum Shale Forest.

The proposal is inconsistent with priority actions as prescribed by the NSW Scientific Committee, is supportive of key threatening processes listed under the *NSW BC Act 2016* and is non-compliant with the prescriptive measures of Part 1C.1.1(a) and Part 1C.1.1(d) of the *HDCP*.

The proposal does not meet the desired outcomes of Part 1C.1.1 Biodiversity of the *HDCP* and is considered unacceptable.

2.7 Section 7.11 Contributions Plans

Hornsby Shire Council Section 7.11 Contributions Plan 2020-2030 applies to the development as it would result in an additional 2 residential dwellings in lieu of the 1 existing residence. Accordingly, the requirement for a monetary Section 7.11 contribution would be imposed as a condition of consent if approval of the development was recommended.

3. ENVIRONMENTAL IMPACTS

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

3.1 Social Impacts

The residential development would result in a minor positive social impact by providing an additional dwelling house in the locality. Notwithstanding, Council considers that the proposal would have a detrimental social impact as approval would create an undesirable planning precedent for undersized subdivision in the locality.

3.2 Economic Impacts

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

4. SITE SUITABILITY

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

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

The rear of the site contains Blue Gum Shale Forest which is listed as Endangered Ecological Community under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1995* and a Critically Endangered Ecological Community under the NSW *Biodiversity Conservation Act 2016*. Insufficient information has been provided to accurately determine whether the siting of a future dwelling house on proposed Lot 2 would pose a detrimental impact to the Blue Gum Shale Forest to the rear of the subject site and within adjacent sites.

The application has not demonstrated that compliance with the minimum subdivision lot size development standard of Clause 4.1 of the *HLEP* is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development is inconsistent with the capability of the site and is considered unacceptable.

5. PUBLIC PARTICIPATION


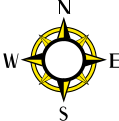
Section 4.15(1)(d) of the Act requires Council to consider “any submissions made in accordance with this Act”.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 16 February 2021 and 2 March 2021 in accordance with the Hornsby Community Participation Plan. During this period, Council received no submissions. The map below illustrates the location of those nearby landowners who were notified of the development.



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED		PROPERTY SUBJECT OF DEVELOPMENT	
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No submissions have been received in respect of the application.

5.2 Public Agencies

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

6. THE PUBLIC INTEREST

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

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

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

CONCLUSION

The application proposes the Torrens title subdivision of one allotment into two lots.

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

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

The reasons for this decision are:

- The development does not meet the objectives of Clause 4.1 Minimum lot size under the *Hornsby Local Environmental Plan 2013*.
- The applicant’s submission in accordance with Clause 4.6 ‘Exceptions to development standards’ of the *Hornsby Local Environmental Plan 2013* to vary the minimum lot size development standard is not considered well founded and is not supported.
- The proposed development does not comply with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013 with regard to stormwater management and protection of Endangered Ecological Communities.

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





RESPONSIBLE OFFICER

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

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

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1.  Locality Map
2.  Clause 4.6
3.  Subdivision Plan
4.  Stormwater Plan

File Reference: DA/123/2021
Document Number: D08127481

SCHEDULE 1**ITEM 2**

1. The proposed development is unsatisfactory having regard to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the proposal does not meet the objectives of Clause 4.1 Minimum Subdivision Lot Size of the *Hornsby Local Environmental Plan 2013* in that:
 - 1.1 The proposal has not demonstrated compliance with the minimum lot size requirement as shown on the Lot Size Map being 500m².
2. The proposed development is unsatisfactory having regard to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* as the applicant's submission in accordance with Clause 4.6 'Exceptions to development standards' of the *Hornsby Local Environmental Plan 2013* to vary the minimum lot size development standard is not considered well founded and is not supported.
3. The proposed development is unsatisfactory in respect to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* with regard to *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* as insufficient Information has been provided to determine whether a dwelling house could be sited on the proposed rear lot whilst maintaining the health of trees on the site and adjacent sites.
4. In accordance with Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the proposal does not comply with the desired outcomes and the prescriptive measures of *Hornsby Development Control Plan 2013* (HDGP) as follows:
 - 4.1 The proposal does not comply with the 'Lot Size' prescriptive measure within Part 6.2.1(b) of the *HDGP* as proposed Lot 1 would have an area of 379m².
 - 4.2 The proposal does not comply with the 'Residential Lands Subdivision' prescriptive measures within Parts 6.2.1(c) and (f) of the *HDGP* as insufficient Information has been provided to determine whether a dwelling house could be sited on the proposed rear lot whilst maintaining the health of trees on the site and adjacent sites.
 - 4.3 The proposal does not comply with the 'Stormwater Management' prescriptive measures within Parts 1C.1.2(f) and (g) of the *HDGP* as an inter-allotment drainage easement is required over the downstream property to service the proposed subdivision. Insufficient information has been provided in the form of written consent from the downstream property owners and suitable hydraulic plans.
 - 4.4 The proposal does not comply with the 'Biodiversity' prescriptive measures within Parts 1C.1.1(a) and (d) of the *HDGP* as insufficient information has been provided to determine the impact of the proposal on local flora and fauna and the surrounding Blue Gum Shale Forest.
5. In accordance with Section 4.15(1)(b) and (e) of *Environmental Planning and Assessment Act 1979*, it is considered that the proposed development would not be in the public interest and would result in undesirable environmental impacts.
6. The proposed development is unsatisfactory having regard to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*, it is considered that the site is not suitable for the proposed development.

- END OF REASONS FOR REFUSAL -



LOCALITY PLAN

DA/123/2021

No. 11 Adamson Avenue, Thornleigh

ATTACHMENT 1 - ITEM 2

balance.
P L A N N I N G

ATTACHMENT 2 - ITEM 2

clause 4.6 variation request

1 into 2 lot subdivision

11 Adamson Avenue, Thornleigh

Client Land Pro Development
Project No. 2020-0136
Document Type clause 4.6 variation request
Document Author Ryan Gill

Revision	Amendment Description	Date
FINAL	-	21.12.2020

Disclaimer

This report is dated 21 December 2020 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Balance Planning's opinion in this report. Balance Planning prepared this report on the instructions, and for the benefit only, of Land Pro Development (Instructing Party) for the purpose of supporting a development application (Purpose) and not for any other purpose or use.

To the extent permitted by applicable law, Balance Planning expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

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This report has been prepared with due care and diligence by Balance Planning and the statements, opinions and recommendations given by Balance Planning in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations above.

INTRODUCTION

This clause 4.6 variation request has been prepared to support an application proposing the subdivision of land at 11 Adamson Avenue, Thornleigh.

The proposal

The proposal involves a 1 into 2 lot subdivision to create a street-facing lot and an internal lot serviced by a right of carriageway (ROC). An existing cottage is to be retained on the street-facing lot (proposed Lot 1) and the internal lot (proposed Lot 2) is configured to accommodate a detached dwelling.

Zone and objectives

Hornsby Local Environmental Plan 2013 (HLEP) applies to the site. The site is within Zone R2 Low Density Residential and the proposed development is permitted with consent.

An extract of the zoning map with the site identified by a yellow line is provided at Figure 1.

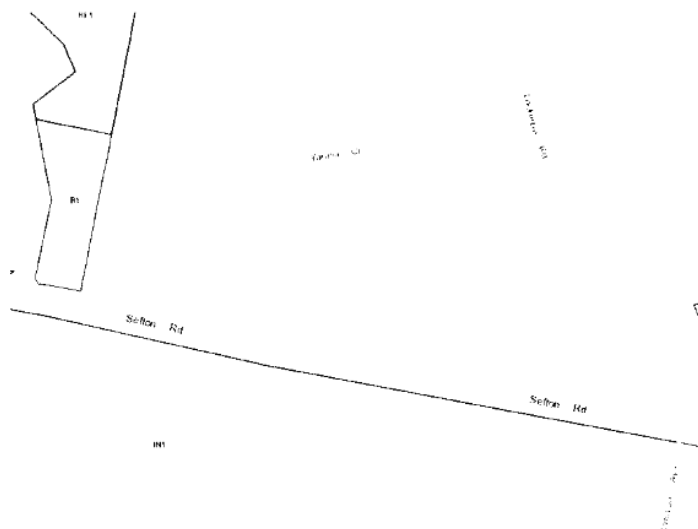


Figure 1 | Zoning Map extract (Source: NSW Govt)

The objectives for development in Zone R2 are:

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

The proposed development aligns with the objectives for development in Zone R2 given that the subdivision of land will allow for the delivery of additional low-density housing.

The development standard

Development standards relating to subdivision are set out at clause 4.1 *Minimum subdivision lot size* of HELP, which states:

4.1 Minimum subdivision size

...

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

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

(3A) *If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size.*

...

The minimum size shown on the relevant *Lot Size Map* is 500sqm. An extract of the *Lot Size Map* is provided at Figure 2.

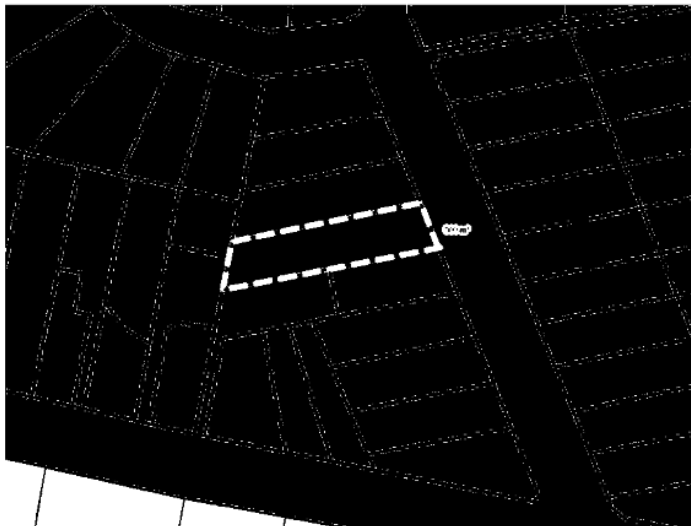


Figure 2 | Lot Size Map extract (Source: NSW Govt)

Legal opinion

We have obtained a legal opinion concerning the application of clause 4.1 *Minimum subdivision lot size* indicating that the proposed subdivision arrangement complies with the standard. The legal opinion is provided at Attachment A.

In brief, the legal opinion explains:

- Subclause 4.1(3) regulates the size of a lot “resulting from a subdivision of land”. The corresponding *Lot Size Map* indicates any lot resulting from the proposed subdivision must be a minimum of 500sqm.

- The only exclusion concerning calculation of lot size is at subclause (3A), which applies if a lot is a “battle-axe lot or other lot with an access handle”. In those circumstances, the area of the access handle is not to be included in calculating lot size.
- The rear lot resulting from the subdivision is a “lot with an access handle”. The plan of proposed subdivision retains the area of the ROC within the boundaries of the front lot. The area of the ROC is therefore appropriately excluded from the calculation of the size of the rear lot.
- The question that remains is whether the front lot falls within the category of “other lot with an access handle”. The front lot is not a lot with an access handle, but rather a lot that will be burdened by a ROC benefiting the rear lot. Subclause (3A) is therefore not applicable to the calculation of the size of the front lot.
- In these circumstances, the calculation of the lot sizes as proposed in the plan of subdivision adequately meets the development standard in clause 4.1 of HLEP.

We are advised that council has an alternative interpretation on how the standard is to be applied where a ROC is proposed for vehicular access.

The proposed subdivision arrangement would not comply with the clause 4.1 under council’s interpretation of the standard as the area associated with the ROC would be excluded from the lot size calculation of the street-facing lot.

The “variation”

Applying council’s interpretation of clause 4.1, proposed lot areas are as follows:

Table 1 | Lot details

Lot	Area	Complies
Lot 1	504sqm (379sqm excluding the area of the ROC)	No
Lot 2	504sqm	Yes

Proposed Lot 1 has an area of 379sqm excluding the area associated with the ROC which equates to a shortfall of 121sqm and a percentage variation of 24%.

JUSTIFICATION

This section of the written request provides a justification for the proposed variation and is presented in a manner consistent with that of a formal clause 4.6 variation request.

Compliance is unreasonable or unnecessary

Here we seek to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In doing so, we invoke one of the 'tests' established in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 ('Four2 Five Pty Ltd'), which suggests that if the objectives of the development standard are achieved notwithstanding non-compliance with the standard, strict compliance with that standard may be unreasonable or unnecessary.

The objectives of clause 4.1 and consideration of each in the context of the proposal is provided at Table 2.

Table 2 | Objectives of the development standard

Objective	Comment
(a) to provide for the subdivision of land at a density that is appropriate for the site constraints, development potential and infrastructure capacity of the land,	<p>The site has a mild slope and is largely free of vegetation. The land is not bushfire prone and contains no mapped environmental features such as "watercourses" or "biodiversity". There are no site constraints that would preclude subdivision and future development of the site.</p> <p>Proposed Lot 1 contains an existing cottage and the plan of subdivision supplied at Attachment A demonstrates that cottage complies with building envelope, landscaped area and parking requirements under the proposed subdivision arrangement, despite the ROC. On the evidence available there can be no question that proposed Lot 1 has development potential.</p> <p>The site is within an established residential neighbourhood serviced by reticulated sewer and water and overhead power lines. The cottage at proposed Lot 1 has existing service connections and connections to proposed Lot 2 will be provided in accordance with the requirements of the relevant service providers.</p> <p>The proposed subdivision arrangement achieves objective (a) although Lot 1 contains a ROC and is "undersized" according to council's interpretation of the development standard.</p>

Objective	Comment
(b) to ensure that lots are of a sufficient size to accommodate development	<p>We submit that if development on proposed Lot 1 satisfies the development controls for dwelling houses set out in HDCP, it follows that the proposed lot area is a "sufficient size to accommodate development".</p> <p>The plan of subdivision supplied with the development application and provided at Attachment A demonstrates that proposed Lot 1 (being an "undersized" lot according to council's application of the minimum lot size standard) complies with relevant building setback, site coverage and landscaped area controls.</p> <p>Proposed Lot 1 can also accommodate sufficient parking and a compliant area of private open space.</p> <p>A compliance summary for proposed Lot 1 outlining compliance with relevant planning controls is provided at Table 3.</p>

As detailed above, the objectives of clause 4.1 are achieved notwithstanding non-compliance because the "undersized" lot will not be unduly constrained by the proposed ROC and is demonstrably capable of accommodating development in a manner anticipated by the applicable development controls.

Strict compliance with clause 4.1 is unreasonable and unnecessary in the circumstances of the case.

Sufficient environmental planning grounds

Here we explain that there are sufficient environmental planning grounds to justify contravention of the development standard. Those environmental planning grounds are set out below and are specific to the site and to the development:

- The area subject to the ROC is an existing driveway that will continue to service and provide access to proposed Lot 1. The ROC does not unduly burden or impinge on the development potential of proposed Lot 1.

According to council's interpretation of the development standard, the area associated with the ROC should be excluded from the lot area calculation of proposed Lot 1. The implication is that the area burdened by the ROC will limit the development potential of proposed Lot 1 and the residue area will not be sufficient to accommodate development. This is plainly not the case in this scenario.

The area over which the ROC will be situated is currently utilised as a means of vehicular access to the hardstand parking area behind the building line of the existing cottage. The location and extent of the existing driveway and hardstand parking area is identified at Figure 3.

We note that parking behind the front building line is encouraged by the applicable planning controls (Part 3.1.7(a) of HDCP) and observe that detached parking facilities behind the building line with driveway access along a side property boundary is characteristic of residential development in the locality.

Under the subdivision proposal the area subject to the ROC will continue to be used as a driveway and to access parking associated with the existing cottage on proposed Lot 1. The area subject to the ROC is not for the exclusive use of proposed Lot 2 but rather will be for shared access and a fundamental (and retained) aspect of development on proposed Lot 1.

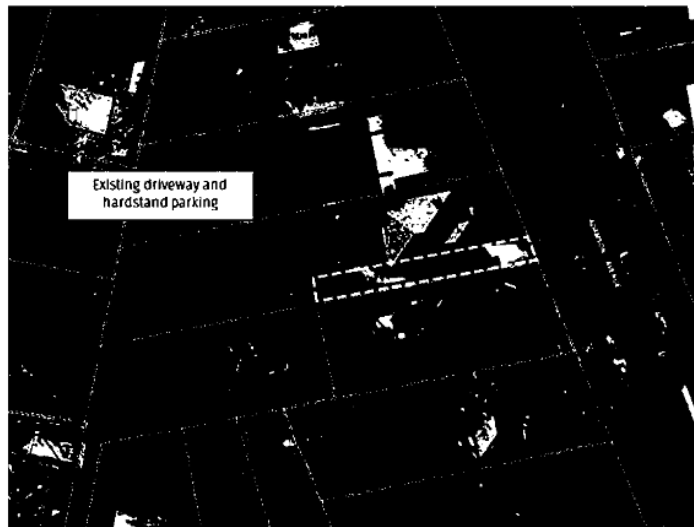


Figure 3 | Aerial photograph
(Source: Six Maps)

- There would be no material change to dwelling location or access and parking arrangement for proposed Lot 1 if alternative access to proposed Lot 2 were provided, illustrating the point that the proposed ROC will not impinge on the development potential of proposed Lot 1.

We submit that a ROC benefiting proposed Lot 2 will not unduly burden or impinge on the development potential of proposed Lot 1 and to illustrate the point we present a hypothetical alternative to the access arrangement proposed by this subdivision application.

In our hypothetical alternative, vehicular access to proposed Lot 2 is over the battle-axe lot to the south at 12A Sefton Road. A ROC over 12A Sefton Road would be created. This subdivision arrangement satisfies the minimum lot size standard by creating two lots of 504sqm. The land at 12A Sefton Road would have an area of approx. 530sqm discounting the access handle and land burdened by the ROC. The hypothetical arrangement is illustrated at Figure 4.

In our hypothetical scenario numeric compliance with the minimum lot size standard (according to council's interpretation of the standard) is achieved. However, we submit that there will be no material change to dwelling location or access and parking arrangement for proposed Lot 1 if the alternative access arrangement for proposed Lot 2 were adopted.

Utilising the existing driveway to service proposed Lot 2 is a logical and low-cost response to site specific circumstances. Given the driveway will be retained and utilised to access parking for proposed Lot 1 it is sensible that it also be used to access proposed Lot 2.

There is no benefit to the “compliant” hypothetical alternative we have presented which will unnecessarily burden a neighbouring lot and ignores the fact that there is a practical means of access already available.

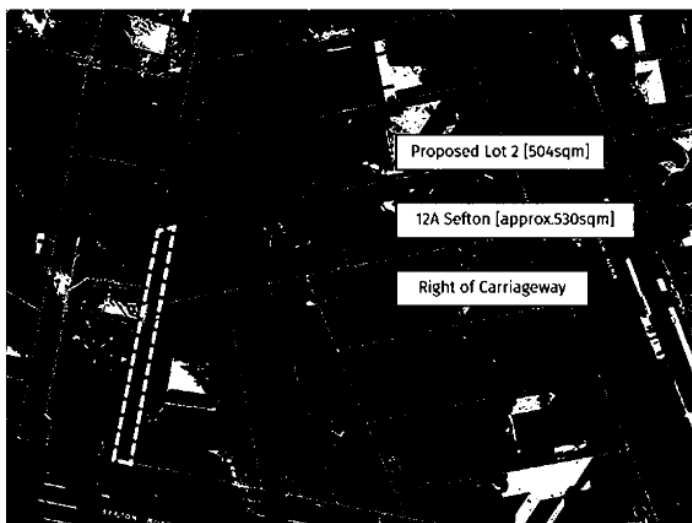


Figure 4 | Access alternative
(Source: Six Maps)

- Proposed Lot 1 contains an established dwelling and is demonstrably capable of satisfying applicable building envelope, private open space, landscaped area and car parking controls, despite the proposed imposition of a ROC.

An objective of the minimum lot size development standard is to ensure that lots are of a sufficient size to accommodate development. We submit that if development on proposed Lot 1 satisfies the development controls for dwelling houses set out in HDCP, it follows that the proposed lot area is a “sufficient size to accommodate development”.

The plan of subdivision supplied with the development application and provided at Attachment A demonstrates that proposed Lot 1 (being an “undersized” lot according to council’s application of the minimum lot size standard) complies with relevant building setback, site coverage and landscaped area controls. Proposed Lot 1 can also accommodate sufficient parking and a compliant area of private open space.

A compliance summary for proposed Lot 1 is provided at Table 3.

Table 3 | Compliance summary

Parameter	Requirement	Lot 1
Front setback	6m	>6m (existing)
Side setback	0.9m	>0.9m (existing)

Parameter	Requirement	Lot 1
Rear setback	8m	>8m
Site coverage	50%	125sqm (25%)
Landscaped area	20%	107.4sqm (21%)
Private open space	24sqm	>24sqm
Car parking	2 spaces	2 spaces

Proposed Lot 1 is demonstrably capable of accommodating development in the manner anticipated by the relevant planning controls despite the proposed ROC to facilitate access to proposed Lot 2. Any suggestion that the ROC will impinge on or stifle orderly development of proposed Lot 1 is plainly incorrect in this scenario.

We have explained that there are sufficient environmental planning grounds to justify the proposed contravention of clause 4.1.

We contest the implication that the proposed ROC will impinge on the development potential of proposed Lot 1 and have demonstrated that the “undersized” lot can accommodate development as anticipated by the planning controls. Utilising the existing driveway to service proposed Lot 2 is a logical and low-cost response to site specific circumstances.

The development is in the public interest

This variation request demonstrates that the proposal aligns with the objectives for Zone R2 and achieves the objectives for clause 4.1 despite non-compliance with the development standard.

The development will contribute to housing stock in a manner encouraged by the applicable zone objectives and planning controls and it is conceivable that future development can be delivered without adverse impact on neighbouring properties.

The proposal aligns with the public interest.

SUMMARY

This clause 4.6 variation request has been prepared to support an application proposing the subdivision of land at 11 Adamson Avenue, Thornleigh.

This written request addresses a purported variation to clause 4.1 *Minimum subdivision lot size* of HELP, although we submit that the proposed subdivision conforms to the standard and have supplied a legal opinion which sets out this position.

Under council's interpretation of the standard, the area associated with proposed ROC benefitting proposed Lot 2 is excluded from the lot size calculation of proposed Lot 1. The area of proposed Lot 1 is 379sqm representing a shortfall of 121sqm which equates to a percentage variation of 24%.

We have demonstrated that strict compliance with the development standard is unnecessary and unreasonable in the circumstances of the case given the development achieves the objectives of the standard notwithstanding non-compliance.

Further, we have explained that there are sufficient environmental planning grounds to justify contravening the development standard, namely that proposed Lot 1 can accommodate development as anticipated by the planning controls and utilising the existing driveway to service proposed Lot 2 is a logical and low-cost response to site specific circumstances.

Finally, this written request demonstrates that the development is in the public interest as it is consistent with the objectives of the standard and the objectives of Zone R2.

ATTACHMENT 2 - ITEM 2



ATTACHMENT A | LEGAL OPINION

ADVICE IN RELATION TO THE
SUBDIVISION OF LAND AT 11
ADAMSON AVENUE, THORNLEIGH

MEMORANDUM OF ADVICE

Angela Pearman
Barrister-at-Law
Martin Place Chambers
Level 32,
52 Martin Place
SYDNEY NSW 2000
DX 130 SYDNEY

Attention:

Raymond Ishac
RJI Legal
1A/101 Northumberland Road,
Auburn NSW 2144

ADVICE IN RELATION TO DEVELOPMENT FOR THE PURPOSE OF MULTI-DWELLING
HOUSING (TERRACES)

MEMORANDUM OF ADVICE

Background

My instructing solicitor acts for Michael Esber, a consultant at Balance Planning, who seeks advice with respect to subdivision of Lot 56 in Deposited Plan 13726, commonly known as 11 Adamson Avenue, Thornleigh (the **Property**), within the Local Government Area of Hornsby. The Property is therefore subject to the provisions of *Hornsby Local Environmental Plan 2013 (HLEP)* and *Hornsby Development Control Plan 2013 (HDCP)*.

The Property is an irregular shaped allotment with a site area of 1,008 square metres. It has a front boundary length of 15.51 metres, and average depth of approximately 66 metres.

The Property is improved by a single-storey timber clad cottage. Vehicular access to the site is from Adamson Avenue. A concrete driveway runs along the southern boundary to a hardstand area rear of the cottage.

It is proposed that the Property be subdivided into two lots, each of approximately 504 square metres. The rear lot will be accessed by a registered Right of Carriageway (**ROC**) over the front lot and will generally correspond with the existing concrete driveway.

Mr Esber has had preliminary discussions with Hornsby Council (**Council**) in relation to the proposal. Council has advised that any area burdened by the ROC should be excluded from the lot area calculation for the purposes of assessing the minimum subdivision lot size under the HLEP.

Advice Sought

I have been asked to provide advice in respect of the following question:

1. Whether the proposed ROC area is to be included in the assessment of the minimum subdivision lot size for the purposes of clause 4.1(3A) of the HLEP.

To assist in the preparation of my advice, I have been provided with the following documents:

- Site survey plan for the Property;
- Plan of proposed subdivision for the Property;
- Lot size map from HELP that applies to the Property;
- Excerpt of Chapter 6 of the HDCP.

Advice

The Property is zoned R2 Low Density Residential under the provisions of the HLEP. The objectives of that zone are:

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

Pursuant to clause 2.6 of the HLEP, the Property may be subdivided, but only with development consent.

The development standards relating to subdivision are found in clause 4.1 of the HLEP, which prescribes minimum lot sizes for lots created by subdivision in the Hornsby Local Government Area. It is, relevantly, in the following terms:

4.1 Minimum subdivision lot size

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

- (a) to provide for the subdivision of land at a density that is appropriate for the site constraints, development potential and infrastructure capacity of the land,*
- (b) to ensure that lots are of a sufficient size to accommodate development.*

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

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

(3A) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size.

...

Sub-clause 4.1(3) regulates the size of a lot 'resulting from a subdivision of land', in other words the 'product' or 'outcome' of the subdivision. Pursuant to the corresponding Lot Size Map

provided, the size of any lot resulting from the proposed subdivision of the Property must be a minimum of 500 square metres.

The only exclusion with respect to the assessment of lot size is found in subclause (3A), which applies if a lot is a battle-axe lot or other lot with an access handle. In those circumstances, the area of the access handle is not to be included in calculating the lot size.

The HDCP then provides relevant development controls within the Hornsby Local Government Area. Chapter 6 provides specific controls with respect to subdivision in the R2 zone. It repeats the prescribed development standard in clause 4.1 of the HLEP with respect to lot size and in some way provides further guidance with respect to clause 4.1(3A) in section 6.2.1 of the HDCP, which states:

In calculating the area of a lot resulting from a subdivision of land, the area of any accessway, right of carriageway or the like is to be excluded.

Figure 6.2(a) then provides, by way of an illustration, an example of the effect of the development standard. Of course, the HDCP does not operate to override any inconsistency between it and the HLEP.

The requirements of clause 4.1(3A) of the HLEP (and its equivalent in other local environmental plans) has had limited judicial consideration. The HLEP does not contain definitions of *battle-axe* or *access handle*, nor are those terms defined by the *Standard Instrument – Principle Local Environmental Plan*. The definition of *battle-axe lot* is, however, contained within the *State Environmental Planning Policy (Affordable Rental Housing) 2009*, where it is defined as a lot that has access to a road by an access laneway. That policy does not apply here, but the definition of *battle-axe lot* is nevertheless relevant when considering the interpretation of the clause. In any event, the role that definitions play in environmental planning instruments is to aid in the construction of a provision.

The process of statutory construction must always begin with consideration of the text itself: *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* [2009] HCA 41; 239 CLR 27 at [47]; *Valuer-General (NSW) v Fivex* (2015) 206 LGERA 450 at [26].

In *Cranbrook School v Woollahra Council* [2006] NSWCA 155; (2006) 66 NSWLR 379; 146 LGERA 313 at [36], McColl JA said:

"Environmental planning instruments are a species of delegated legislation, a statutory instrument... and should be interpreted in accordance with the general principles of statutory interpretation..."

This requires the text of the provisions being interpreted to be the focus of consideration (see *Carr v Western Australia* (2007) 232 CLR 138 at [6]). However, the manifest intention of a statute must not be defeated by too literal an adherence to its precise language (see *Minister v SZJGV* [2009] HCA 40, 238 CLR 642 at [20]).

Rather, the meaning of a provision in the HLEP has to be determined having regard to its context and purpose. Further, the "context" is to be understood in its widest sense: (see *Matic v Mid-Western Regional Council* [2008] NSWLEC 133 at [7]-[9]; *Wilson v State Rail Authority (NSW)* [2010] NSWCA 198 at [12]-[13]).

A construction that would promote the purpose or object underlying the instrument is to be preferred to a construction that would not promote that purposes or object: s. 33 *Interpretation Act* 1987.

The task of statutory construction must begin with a consideration of the text itself. Considerations of extrinsic materials cannot be relied upon to displace the clear meaning of the text. As stated in *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* [2009] HCA 41 at [47]:

"the language which has actually been employed in the text of legislation is the surest guide to legislative intention".

Leeming JA also held in *Valuer-General v Fivex Pty Ltd* [2015] NSWCA 53 at [26]:

"It is wrong to approach the question of construction by confining attention to the legislative purpose and disregarding the text. No particular theory or 'rule' of statutory interpretation, including that of 'purposive' construction, can obviate the need for close attention to the text and structure of the relevant provision"

Further, in *Cooper Brooks (Wollongong) Pty Limited v The Commissioner of Taxation* (1981) 147 CLR 297 at 304 and at 319 to 320 Sir Harry Gibbs, the Chief Justice, observed:

"It is only by considering the meaning of the words used by legislature that the Court can ascertain its intention and it is not unduly pedantic to begin with the assumption that the words mean what they say" (at p 304)

Applying these principles to the facts of the present case, it is relevant to note that the Property is only accessible from Adamson Avenue. Plainly, the rear lot will need to rely on access over the street facing lot. It is proposed such access will be provided by a ROC.

Pursuant to HDCP, the area of a ROC is to be excluded from calculating the area of a lot resulting from a subdivision of land.

The rear lot resulting from the subdivision of land is plainly, either *"a battle-axe lot, or other lot with an access handle"*. It is a lot that will be reliant upon an access handle via a ROC. It otherwise has no direct street frontage. The plan of proposed subdivision retains the area of the ROC within the boundaries of the front lot. The area of the ROC is therefore appropriately excluded from the calculation of the size of the rear lot.

The question that remains is whether the front lot falls within the category of *"other lot with an access handle"*. In my view, it does not. The front lot is not a lot with an access handle, but rather a lot that will be burdened by a right of carriageway benefiting the rear lot. Clause 4.1(3A) is therefore not applicable to the calculation of the size of the front lot.

In these circumstances, the calculation of the lot sizes as proposed in the plan of subdivision adequately meets the development standard in clause 4.1 of the HLEP.

I so advise.

24 September 2020



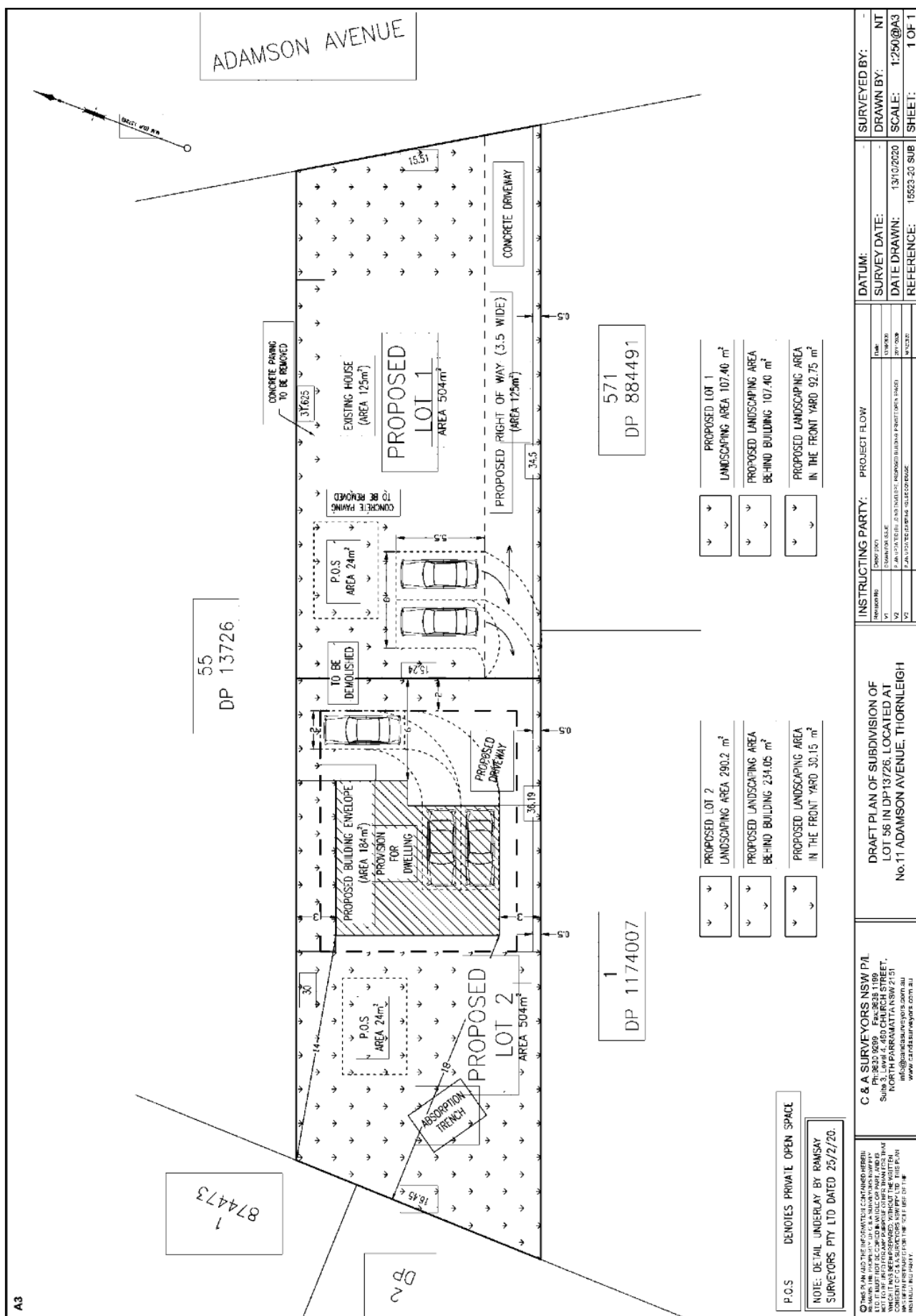
Angela Pearman

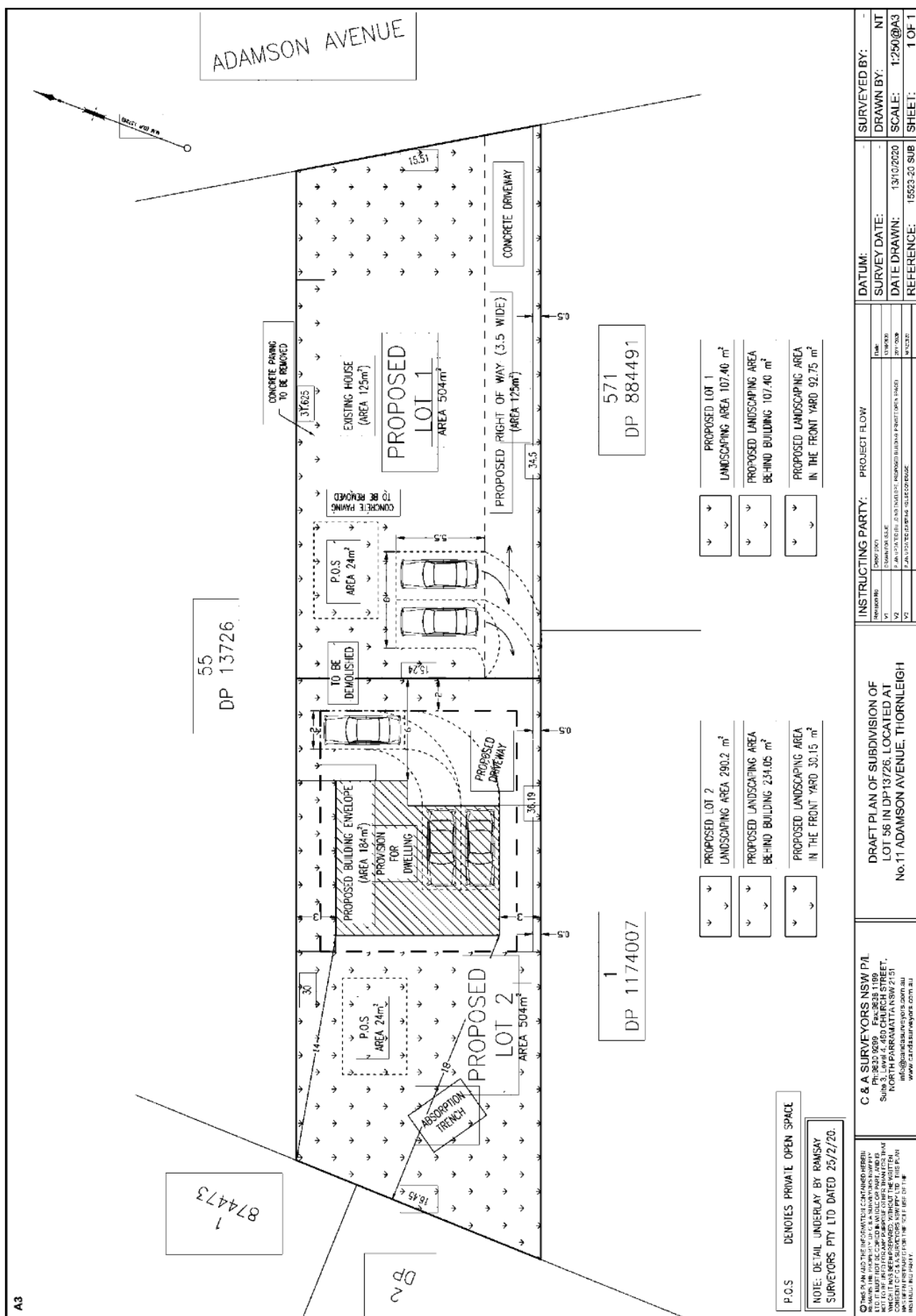
Martin Place Chambers

8227 9600



ATTACHMENT B | PLAN OF SUBDIVISION





ATTACHMENT 3 - ITEM 2

3 ELECTRONIC - DA/96/2021 - CONSTRUCTION OF AN INDOOR CRICKET FACILITY AND RECONFIGURATION OF EXISTING OUTDOOR PRACTICE NETS - MARK TAYLOR OVAL, 20X WAITARA AVENUE, WAITARA

.EXECUTIVE SUMMARY

DA No:	DA/96/2021 (Lodged on 1 February 2021)
Description:	Construction of an indoor cricket facility and reconfiguration of existing outdoor practice nets
Property:	Lot 300 DP 832745, Waitara Park - Mark Taylor Oval, 20X Waitara Avenue, Waitara
Applicant:	Mr Lewis McAulay
Owner:	Hornsby Shire Council
Estimated Value:	\$2,145,000
Ward:	B

- The site is owned by Council. In accordance with Council's adopted Policy '*Proposed Council Developments*' an independent assessment of the development application has been undertaken by Nicola Neil, *Octagon Planning Pty Ltd*.
- Nil submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as Council is the owner of the land.
- The report by Octagon Planning Pty Ltd is attached to this report for the Hornsby Local Planning Panels consideration. The independent consultant's report recommends approval of the application.

RECOMMENDATION

THAT Development Application No. DA/96/2021 for construction of an indoor cricket facility and reconfiguration of existing outdoor practice nets at Lot 300 DP 832745, Waitara Park - Mark Taylor Oval, No. 20X Waitara Avenue, Waitara be approved subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP11/21.

ASSESSMENT

In accordance with the referral criteria and procedural requirements for Independent Hearing and Assessment Panels, the assessment of the development application has been referred to an independent town planning consultant as the landowner is Hornsby Shire Council. The report by *Octagon Planning Pty Ltd* is held at Attachment 1 of this report.

CONCLUSION AND REASONS FOR RECOMMENDATION

The application proposes construction of an indoor cricket facility and reconfiguration of existing outdoor practice nets.

Council has referred the application to an independent planning consultancy to carry out an assessment of the application. The assessment concludes that the application should be approved.

It is recommended that the Hornsby Local Planning Panel approve the development application in accordance with the recommendation in the report prepared by *Octagon Planning Pty Ltd* and the conditions of consent held at Schedule 1 of this report.

The reasons for this decision are:

- The proposed development complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to tree preservation, stormwater, sustainability, traffic, noise and social impacts.

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

RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is Nicola Neil from Octagon Planning Pty Ltd.

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

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1.   Locality Map

-
2.   Consultant Report
 3.   Architectural Plans
 4.   Landscape Plan
 5.   Operational Management Plan

File Reference: DA/96/2021

Document Number: D08144725

ITEM 3

SCHEDULE 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.

ITEM 3**1. Approved Plans and Supporting Documentation**

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

Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council Reference
DA01 B	Masterplan	Turner Hughes Architects	30/03/2021	
DA02 C	Site / Location Plan	Turner Hughes Architects	30/03/2021	
DA03 A	Roof Plan	Turner Hughes Architects	30/03/2021	
DA04 A	Northern & Western Elevations	Turner Hughes Architects	30/03/2021	
DA05 A	Southern & Eastern Elevations	Turner Hughes Architects	30/03/2021	
DA06 A	Sections A, B	Turner Hughes Architects	30/03/2021	
DA07 A	Sections C, D	Turner Hughes Architects	30/03/2021	
LA.01	Landscape Plan	Hornsby Shire Council	16/04/2021	

Supporting Documentation

Document Title	Prepared by	Dated	Council Reference
Amended Acoustics Report, reference 301350004	Stantec Australia Pty Ltd	25/03/2021	D08137471

Document Title	Prepared by	Dated	Council Reference
Preliminary Construction Management Plan, Rev 03	Mostyn Copper	31/03/2021	D08138219
Stormwater Report, Project No. 6328	Enstruct	Dec 2020	D08101257
Tree Protection plan, T-01, Rev C	New Leaf Arboriculture	30/03/2021	D08137473
Arboricultural Impact Assessment	New Leaf Arboriculture	30/11/2020	D08101230
Site works, ENS-CV-020, Rev 4	Enstruct	26/03/2021	D08138275
BCA Report	Steve Watson & Partners	01/12/2020	D08101233
Waste Management Plan	Applicant	No date	D08101223
Operational Management Plan	Applicant	Jan 2021	D08101254
Geotechnical Assessment	JK Geotechnics	09/11/2020	D08101248
Drainage details, OSD Tank and Pit Schedule, ENS-CV-021, Rev 3	Enstruct	27/11/2020	D08101243

2. Removal of Trees and Tree Pruning

- a) This development consent permits the removal of tree numbered 5 as identified in the Arboricultural Impact Assessment prepared by New Leaf Arboriculture dated 30 November 2020 - D08101230.
- b) No pruning of trees is permitted.

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

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) A separate approval must be obtained from Council for all works within the public road reserve under Section 138 of the Roads Act.
- c) The Construction Certificate plans must be consistent with the Development Consent plans.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

4. Appointment of a Project Arborist

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

5. Geotechnical Engineering

The foundations and footings for the indoor cricket facility must be designed in accordance with the recommendations outlined in Section 4.2.2 and 4.2.3 of the geotechnical assessment report GK Geotechnics, reference 33318Brpt, dated 9 November 2020 as follows:

- a) The design of the footings for the proposed indoor cricket facility must take the adjoining basement car park for the PCYC into account so that the footings do not place additional surcharge loads on the basement retaining walls.
- b) All footings should be founded below a line drawn up at 1 Vertical in 1 Horizontal from the base of the basement walls. The proposed building is offset 1.5m from the external stairs of the basement and 4.5m from the main basement walls so the footings should be able to be founded below such a line. This will particularly be the case if the proposed building is supported on piles founded within the sandstone, which is likely,
- c) The design should consider bored piers but some difficulties with collapse of poorly compacted fill may be experienced requiring the use of temporary liners,
- d) Piers founded within the extremely weathered sandstone should be designed based on an allowable bearing pressure of 800kPa. Where piers are founded deeper within sandstone of at least low strength, an allowable bearing pressure of 1000kPa would be appropriate. These bearing pressures should be confirmed as part of the site-specific geotechnical investigation. In addition, the drilling of at least selected piers should be inspected by a geotechnical engineer during construction to confirm that the appropriate foundation material has been encountered.
- e) Higher bearing pressures are likely to be appropriate within the sandstone, however coring of the sandstone as part of the site-specific geotechnical investigation would be required to provide greater detail on the quality of the sandstone. If higher bearing pressures are required, the structural engineer will need to advise this so that the appropriate scope of the geotechnical investigation can be allowed for.

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 Analysis

- a) The application for a construction certificate must demonstrate that the situation of the new indoor cricket building will consider the Fire Resistance Level requirements such as loadbearing columns from the existing PCYC building situated to the South.
- b) Any supporting performance solution report or fire engineer's appraisal should address section CP1 and CP2 of the *Building Code of Australia – National Construction Code* for the existing PCYC building and situation of the new indoor cricket building.

8. Fire Safety Schedule

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

9. 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 under the Building and Development tab.

10. Identification of Survey Marks

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

11. Stormwater Drainage

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

- a) Connected to an existing Council piped drainage system with the following requirements:
 - i) A separate Subdivision Construction Certificate approval must be obtained from Council for all works within drainage easements vested in Council for the construction of a Junction pit at the point of connection to the existing Council piped drainage system.
 - ii) Connection to Council's drainage system shall include engineering design drawings of the junction pit in accordance with Council's AUS-SPEC Specifications.
 - iii) Prior to the issue of an Occupation Certificate a Compliance Certificate must be obtained from Council for the connection to Council's drainage system.

12. On Site Stormwater Detention

An on-site stormwater detention system must be designed by a chartered civil engineer and constructed generally in accordance with Project No. 6328 Drawing No. ENS-CV-020, Rev 4 dated 26/03/2021 and drawing No. ENS-CV-021 Rev 3 Dated 27.11.2020 by Enstruct Group Pty Ltd and the following requirements:

- a) Have a capacity of not less than 30.0 cubic metres, and a maximum discharge (when full) of 42.0 litres per second.
- b) Have a surcharge/inspection grate located directly above the outlet.

- c) Discharge from the detention system to be controlled via 1 metre length of pipe, not less than 50 millimetres diameter or via a stainless plate with sharply drilled orifice bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.
- d) Where above ground and the average depth is greater than 0.3 metres, a 'pool type' safety fence and warning signs to be installed.

Note: A construction certificate shall be obtained prior to the commencement of these works and are to be completed prior to the issue of an occupation certificate.

13. Water Quality Treatment

Stormwater quality treatment measures shall be designed generally in accordance with the Stormwater Report by Enstruct Project No. 6328. A qualified engineer shall prepare a validation report using MUSIC-link for Hornsby Council and a design certificate shall be submitted to the principal certifying authority certifying that the design meets the stormwater quality targets outlined in Table 1.C.1.2(b) of the Hornsby Development Control Plan 2013.

14. Vehicular Crossing – Boundary Levels

A separate application under the *Local Government Act, 1993* and the *Roads Act 1993* being an “*Application for Boundary Levels*” must be submitted to Council to obtain design levels at the front boundary for the design of the internal driveway, prior to the issue of a construction Certificate.

Note: A separate application to construct the vehicular crossing being an “Application to Construct Vehicular Crossing from Roadway to Property” is required to be submitted to Council for approval and can only be made by one of Council’s Authorised Vehicular Crossing Contractors. You are advised to contact Council on 02 9847 6940 to obtain a list of contractors.

15. Internal Driveway/Vehicular Areas

The driveway and parking areas on site must be designed and in accordance with *Australian Standards 2890.1, 2890.2, 3727* and the following requirements:

- a) Design levels at the front boundary must be obtained from Council;
- b) The driveway must be a rigid pavement;

Note: A construction certificate shall be obtained prior to the commencement of these works and are to be completed prior to the issue of an occupation certificate.

16. Construction Management Plan (CMP)

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

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

The CMP must include the following details:

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

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

Note: The location of all site sheds, concrete pumps, cranes, loading and unloading areas, waste and storage areas must be located wholly outside the tree protection zones and fencing
- xi) The total quantity and size of trucks for all importation and exportation of fill on site throughout all stages of works, and a breakdown of total quantities of trucks for each stage of works.
- xii) The number of weeks trucks will be accessing and leaving the site with excavated or imported fill material.

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

- iii) The maximum level of noise and vibration predicted to be emitted during each stage of construction.
- iv) The duration of each stage of works where the maximum level of noise and vibration are predicted to be emitted for.
- v) Details of mitigation measures, inclusive of respite periods, that will meet acoustic standards and guidelines at each stage of works.
- vi) Details of a complaints handling process for the surrounding neighbourhood for each stage of works.
- f) Identification of approved sediment and erosion control measures.
- g) The CMP must detail the contact information for developers, builder, private certifier and any emergency details during and outside work hours.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS
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17. Installation of Tree Protection Measures

- a) Trees to be retained and numbered 1,2,3,4,6,7,8,9 as identified on the Tree Location Plan prepared by New Leaf Arboriculture dated 30/03/2021, Rev C, D08137473 must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:
- b) Tree protection fencing for the trees to be retained numbered 1,2,3,4,6,7,8,9 must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with *Australian Standard AS4687-2007 Temporary fencing and hoardings*.
- c) The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates and liquids from entering the tree protection zone.
- d) All tree protection zones must have a layer of wood-chip mulch at a depth of between 150mm and 300mm.

18. 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.

19. Protection of Adjoining Areas

- a) 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:
 - i) Could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic.
 - ii) Could cause damage to adjoining lands by falling objects; and/or
 - iii) Involve the enclosure of a public place or part of a public place.
 - iv) Have been identified as requiring a temporary hoarding, fence or awning within the Council approved Construction Management Plan (CMP).
- b) To ensure safety for sportsground users all construction fencing is to be a minimum of 3 metres from the edge of the field of play.

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

20. 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; or
 - ii) Be a temporary chemical closet approved under the *Local Government Act 1993*; or
 - iii) Have an on-site effluent disposal system approved under the *Local Government Act 1993*.

21. Erosion and Sediment Control

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

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

22. 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.
- a) The garbage receptacle must have a tight-fitting lid and be suitable for the reception of food scraps and papers.

- b) The receptacle lid must be kept closed at all times, other than when garbage is being deposited.
- c) Food scraps must be placed in the garbage receptacle and not in demolition and construction waste bins.

REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION

23. 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.

24. Demolition

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

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

25. Environmental Management

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

26. Street Sweeping

To protect the surrounding environment, Street sweeping must be undertaken along Park Avenue following sediment tracking from the site from the intersection of Edgeworth David to Alexandria Parade during works and until the site is established.

The street cleaning services must undertake a street 'scrub and dry' method of service and not a dry sweeping service that may cause sediment tracking to spread or cause a dust nuisance.

27. 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.

28. Disturbance of Existing Site

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

29. Landfill

- a) Prior to fill material being imported to the site, a Waste Classification Certificate shall be obtained from a suitably qualified environmental consultant confirming the fill wholly consists of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material approved under the NSW Environment Protection Authority's Resource Recovery Orders and Exemptions.
- b) The required Waste Classification Certificate must be obtained by the Principal Contractor prior to fill being imported to the site and made available to Council at its request.

30. Excavated Material

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

31. Compliance with Construction Management Plan

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

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

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

33. Vehicular Crossing – Construction

A separate application under the *Local Government Act 1993* and the *Roads Act 1993* being an "Application to Construct Vehicular Crossing from Roadway to Property" must be submitted to Council for the installation of a new vehicular crossing and the removal of the redundant crossing. The vehicular crossing must be constructed in accordance with Council's *AUS-SPEC guidelines* and the following requirements:

- a) Crossing levels at the front boundary must be constructed to the design levels obtained from Council;
- b) Any redundant crossings must be replaced with integral kerb and gutter;
- c) The footway area must be restored by turfing;
- d) Approval must be obtained from all relevant utility providers that all necessary conduits be provided and protected under the crossing.

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

34. Construction Activities Prohibited on Playing Fields

To ensure no damage to playing fields during construction, construction related vehicular or pedestrian access is prohibited across the oval playing areas unless separately approved by Hornsby Council's Manager, Parks, Trees & Recreation.

35. Prohibited Actions Within the Fenced Tree Protection Zone

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

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

36. Maintaining the Health of Trees Approved for Retention

- a) The appointed project arborist must monitor and record any and all necessary actions required to maintain tree health and condition for trees numbered 1,2,3,4,6,7,8,9 on the approved plans.
- b) Tree Protection Measures must be maintained by the project arborist in accordance with Condition No.17 of this consent for the duration of works.

37. Approved Works within Tree Protection Zone incursions

- a) Where tree root pruning is required for the installation of piers, driveway or underground services, the pruning must be overseen by the AQF 5 project arborist and must be undertaken as follows:
 - i) Using sharp secateurs, pruners, handsaws or chainsaws with the final cut being clean.
 - ii) The maximum diameter of roots permitted to be cut is 20mm.

- b) The replacement driveway must be constructed using the following process:
 - i) Demolition must be done manually using small plant machinery only, no larger than a jackhammer.
 - ii) A layer of geotextile or rubber underlay must be installed between the sub-grade and concrete.
- c) The new driveway must be constructed using the following process:
 - i) To minimise soil compaction the proposed driveway must be built above grade using sensitive construction techniques.
 - ii) To minimise soil compaction all imported material in the vicinity of the replacement driveway must be distributed by hand.
- d) Where the building footprint enters or transects the Tree Protection Zones of trees to be retained numbered 6,7,8,9, sensitive construction techniques in the form of cantilevered or suspended slab design must be employed to create a 100mm clearance above existing soil grade.
- e) No changes of grade within the Tree Protection Zone of trees to be retained numbered 1,2,3,4,6,7,8,9 on the approved plans, are permitted.
- f) To minimise impacts within the Tree Protection Zone (TPZ) of trees numbered 1,2,3,4,6,7,8,9 on the approved plans, the installation of services must be undertaken as follows:
 - i) The AQF 5 project arborist must be present to oversee the installation of any underground services which enter or transect the tree protection.
 - ii) The installation of any underground services which either enter or transect the designated TPZ must be undertaken manually.
 - iii) For manually excavated trenches the AQF 5 project arborist must designate roots to be retained. Manual excavation may include the use of pneumatic and hydraulic tools.
- g) Where scaffolding is required, ground protection must be installed beneath the scaffolding in the following order:
 - i) Installation of a 100mm deep layer of woodchip.
 - ii) Installation of geotextile fabric ground covering.
 - iii) Installation of scaffold boarding above the woodchip and geotextile fabric.

38. Building Materials and Site Waste

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

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

39. Fire Safety Statement – Final

In accordance with the *Environmental Planning and 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.

40. Creation of Easements

The following matter(s) must be nominated on the plan of subdivision under s88B of the *Conveyancing Act 1919*:

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

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

41. Damage to Council Assets

To protect public property and infrastructure, any damage caused to Council's assets including the removal, damage, destruction, displacement or defacing of the existing survey marks as a result of the construction or demolition of the development must be rectified by the applicant in accordance with Council's AUS-SPEC Specifications. Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

42. Completion of Landscaping

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

Note: Applicants are advised to pre-order plant material required in pot sizes 45 litre or larger to ensure nurseries have stock available at the time of install.

43. Preservation of Survey Marks

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

44. Construction of Engineering Works

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

45. Landscape Establishment

The landscape works must be maintained into the future to ensure the establishment and successful growth of plant material to meet the intent of the landscape design. This must include but not be limited to watering, weeding, replacement of failed plant material and promoting the growth of plants through standard industry practices.

46. Replacement Tree Requirements

- a) The trees approved for removal under this consent, being trees numbered 5 must be offset through replacement planting of a minimum of 2x *Syncarpia glomulifera* trees.
- b) Council's landscape architect must be consulted as to the location of the replacement trees via devmail@hornsby.nsw.gov.au
- c) The size of tree replacement planting must comply with the following:
 - i) The pot size of the replacement trees must be a minimum 100 litres and located in mulched planted beds 1000mm long and min 600mm wide, with 3 x hardwood stakes.
 - ii) All replacement trees must be a minimum of 3 metres in height.
 - iii) All replacement trees must have the potential to reach a mature height greater than 10 metres.

47. Final Certification

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

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

OPERATIONAL CONDITIONS

48. Hours of Operation

- a) The hours of operation of the indoor cricket pitch facility are restricted to those times listed below:

Monday to Saturday 7:00am to 10:00pm

Sunday and public holidays 8:00am to 10:00pm

- b) All persons must vacate the facilities by 10:00pm.

49. Noise Management – Ongoing

- a) Appropriate signage must be installed and maintained at exit points to the building reminding persons to egress in a timely fashion and not loiter in the public domain areas to minimise potential noise impacts to neighbours.
- b) Signage must be installed near the entrance of the facility providing the contact details for the management of the cricket facility for complaint handling.
- c) Outdoor lighting must not be installed to illuminate the outdoor cricket pitches without separate approval of the Council.

50. Waste Management

The waste generated by the facility must be stored within the indoor cricket facility and be collected by a private contractor as per the approved operational management plan.

51. Noise – Plant and Machinery

The level of total continuous noise emanating from operation of all the plant, including air conditioning units and processes in all buildings (LA10) (measured for at least 15 minutes) in or on the above premises, must not exceed the background level by more than 5dB(A) when measured at all property boundaries.

An acoustic assessment is to be undertaken by a suitably qualified environmental consultant within 60 days of occupying the site 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, appropriate measures must be employed to rectify excessive noise.

52. 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.

- END OF CONDITIONS -

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 or Hornsby Council.

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

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

Tree and Vegetation Preservation

Hornsby Development Control Plan 2013 Tree and Vegetation Preservation provisions have been developed under Council's authorities contained in *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* 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). (HDGP 1B.6.1.c).

Disability Discrimination Act

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

Dial Before You Dig

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

Telecommunications Act 1997 (Commonwealth)

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

Asbestos Warning

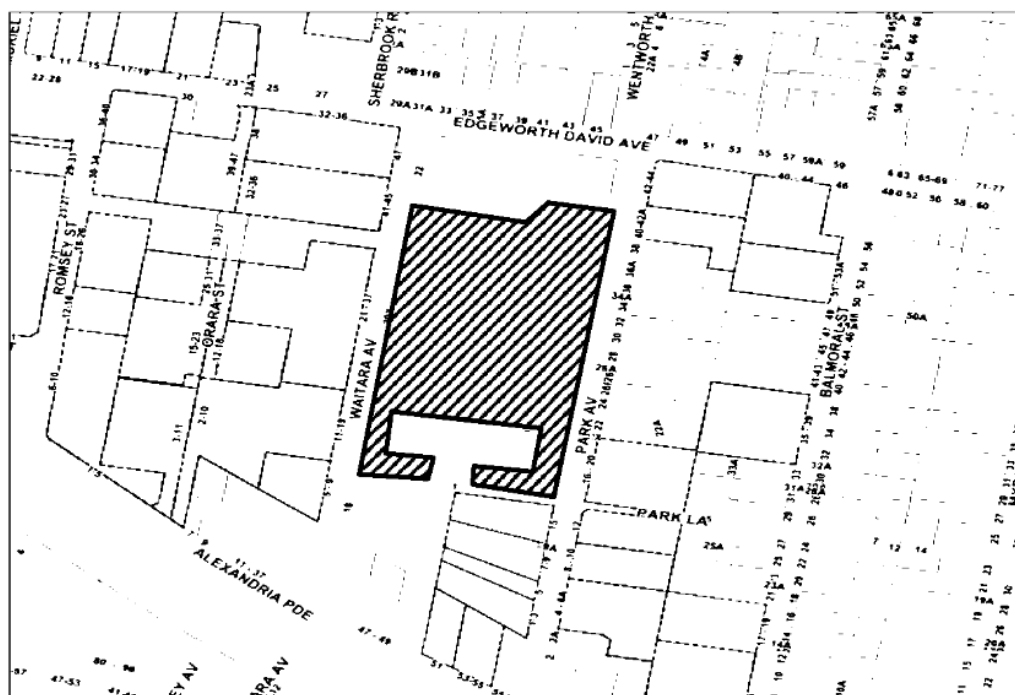
Should asbestos or asbestos products be encountered during demolition or construction works, you are advised to seek advice and information prior to disturbing this material. It is recommended that a contractor holding an asbestos-handling permit (issued by *SafeWork NSW*) be engaged to manage the proper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

www.environment.nsw.gov.au

www.adfa.org.au

www.safework.nsw.gov.au

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



LOCALITY PLAN
DA/96/2021
20X Waitara Avenue, Waitara

ATTACHMENT 1 - ITEM 3

CONSULTANT ASSESSMENT REPORT

DA No:	DA/96/2021 (Lodged on 01/02/2021)
Description:	Construction of an indoor cricket facility and reconfiguration of existing outdoor practice nets
Property:	Lot 300 DP 832745, Waitara Park - Mark Taylor Oval, No. 20X Waitara Avenue, Waitara
Applicant:	Mr Lewis McAulay
Owner:	Hornsby Shire Council
Estimated Value:	\$2,145,000

- The application involves construction of a new indoor cricket facility at Mark Taylor Oval.
- The proposal complies with the relevant development standards and planning instruments including state environmental planning policies, *Hornsby Local Environmental Plan 2013* and Hornsby Development Control Plan.
- No submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as the proposal is on land owned by Hornsby Shire Council.
- It is recommended that the application be approved.

BACKGROUND

Waitara Park has existed as a recreation facility since 1906. Waitara Oval was renamed Mark Taylor Oval in 2011 in honour of the former Australian cricket captain. The only notable recent development applications within the park have been the initial application in 2015 and subsequent modifications for the Police Citizens Youth Club (PCYC) building, which is on a separate Lot and DP.

SITE

The subject site is Waitara Park, a public recreation facility which comprises Mark Taylor Oval, grandstand, pavilion, children's playground, fitness equipment and ancillary facilities. Consistent with its use as a cricket oval, the site is generally flat. The site forms part of a larger recreational facility bounded by Edgeworth David Avenue to the north, Park Avenue to the east, Park Lane to the south and Waitara Avenue to the east. Lot 1020 DP 752053 in the northern part of the site contains six outdoor tennis courts and a tennis academy. Lot 301 DP 832745 to the south contains the Police Citizens Youth Club (PCYC) Hornsby Ku-ring-gai building. The park is largely surrounded by medium to high density housing, with a few remnant single dwelling houses to the north. The site is 300m north of Waitara Station and less than 1km from the centre of Hornsby.

Mark Taylor Oval is identified as heritage item 783 under *HLEP* and the street trees along Edgeworth David Avenue are identified as heritage item 475.

PROPOSAL

The application proposes a new indoor cricket facility in the south-eastern portion of the park. The proposed works comprise:

- Demolition of existing water tank and maintenance shed
- Construction of four (4) indoor cricket pitches
- Construction of a storage and equipment shed
- Reconfiguration of the existing five (5) outdoor cricket nets

One tree is proposed for removal as it is already dead. Eight other trees and one sapling are in close proximity to the development.

The facility will be operated by Northern Districts Cricket Club. The proposed maximum hours of operation are 7am to 10pm Monday to Sunday, though it is noted that practice is generally in the evenings. An access control system will be implemented and NDCC will be responsible for daily lockup. Waste generation during the operational phase is expected to be minimal and limited to amenity waste bins which will be managed under a new scheme by NDCC separate to existing Council waste management servicing the oval.

ASSESSMENT

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

1. STRATEGIC CONTEXT

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

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

The NSW Government will use the subregional planning process to define objectives and set goals for job creation, housing supply and choice in each subregion. Hornsby Shire has been grouped with Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Ryde, Northern Beaches and Willoughby to form the North District. The Greater Sydney Commission has released the North District Plan which includes priorities and actions for Northern District for the next 20 years. The identified challenge for Hornsby Shire will be to provide an additional 4,350 dwellings by 2021 with further strategic supply targets to be identified to deliver 97,000 additional dwellings in the North District by 2036.

The proposed development would be consistent with the *Greater Sydney Region Plan - A Metropolis of Three Cities* and *North District Plan*, by providing additional recreational facilities to support a growing population.

2. STATUTORY CONTROLS

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

2.1 Hornsby Local Environmental Plan 2013

The *Hornsby Local Environmental Plan 2013 (HLEP)* applies to all land within Hornsby Shire. An assessment of the development against the relevant sections of the *HLEP* is provided below.

2.1.1 Zoning of Land and Permissibility

The subject land is zoned RE1 Public Recreation under the *HLEP*. The objectives of the RE1 zone are:

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To protect and maintain areas of bushland that have ecological value.

The proposal is consistent with the objectives as it uses land for recreational purposes and protects the natural environment by retaining surrounding trees. The only tree proposed for removal is dead.

The proposed development is defined as recreation facility (indoor) and recreation facility (outdoor) and is permissible in the zone with Council's consent.

2.1.2 Principal Development Standards

Clauses 4.1, 4.3 and 4.4 of the *HLEP* provide controls for minimum lot size, maximum building height and maximum floor space ratio. The subject site is not subject to these controls. The proposed building is 9.3m. Maximum building heights for land surrounding the park range from 8.5m to 32.5m. The proposal is considered appropriate for the site.

2.1.3 Heritage Conservation

Clause 5.10 of the *HLEP* sets out heritage conservation provisions for Hornsby Shire. Mark Taylor Oval is identified as heritage item 783 under *HLEP* and the street trees along Edgeworth David Avenue are identified as heritage item 475. The Statement of Significance in the Office of Environment and Heritage database reads:

Local park and oval dating from c1920's. Grounds retain elements from 1930's and cultural trees from c1920's & 1930's. Also conserving indigenous trees from c1920/30's. Of local significance.

The item description in the database is as follows:

Park on flat land with central oval and brick grandstand of utilitarian design from c1930's. Bank of tennis courts on southern end. Cultural planting includes mature Camphor Laurel trees (to 18m) and Radiata Pine (to 15m) on western side. Possibly planted c1920-30. Also line of characteristic Oleanders on east side possibly from c1950. The eastern side (northern end) shows a section of precast paving footpath laid as part of relief work for unemployed in the 1930's. This scheme was the initiative of local Councillor PC Law. [The site was included in a 1993 Heritage Study and the Statement of Significance was last updated in 2001.]

It is noted in the Heritage Impact Statement (HIS) accompanying the DA that the refurbishment of the existing scoreboard is subject to a separate staging of proposed works.

At the close of the nineteenth century, George Collingridge and other Waitara residents successfully petitioned the Minister for Lands to formally identify Waitara Park, which appears on the 1902 subdivision plan. In 1906 it was proclaimed as a park for recreation purposes and the land obtained by Council. A new oval was opened in December 1922. The grandstand in the south-western corner of the park was constructed around 1929.

The Northern District Cricket Club (NDCC) was formed in 1906 and has been based at Waitara Park since 1924. Several Australian test players have played club cricket for NDCC, including former Australian captain Mark Taylor, after whom the oval was renamed in 2011.

The HIS provides a detailed assessment of the heritage significance of Waitara Park and concludes that the item satisfies the criteria for historical, associative, aesthetic and representative significance.

The HIS identifies the significant elements of the park to be the oval, the original native plantings (typically the Sydney Turpentine Ironbark Forest, now recognised as critically endangered), and the inter-war grandstand. The items to be demolished as part of the proposed development – the storage building and water tank – are deemed not to have heritage significance, as are the outdoor pitches which are to be refurbished.

The proposed works are sympathetically located to minimise view impacts and retain significant trees. The new building will improve the aesthetic appeal of the park. The upgrades will facilitate the park's ongoing use for cricket and long-standing association with NDCC.

The proposal is consistent with the Waitara Park Plan of Management 2015 as it will facilitate sporting activities in the community and provide facilities to meet the current and future needs of the local community and wider public.

Council's Principal Strategic Planner has provided comments pertaining to heritage impacts of the development. She notes that the storage building, and water tank slated for demolition were not in situ in the 1943 aerial imagery and suggests that the shed may date from the late 1990s when the electronic scoreboard was unveiled, and an earlier scoreboard was donated to St Pius School in Chatswood. The assessment notes that the new development is located away from the grandstand, which is "the principal building of heritage significance on the site" and will "sit comfortably" between the oval and the larger PCYC building. Heritage impact in terms of location, height, form, design and palette is considered to be minimal. The landscape element of the proposal is also considered to be appropriate as the replacement of dead tree number 5 with two mature trees "actively manages senescence while retaining the cultural landscape values of the site". In summary, "no concern is raised on heritage grounds to the proposed development". This assessment is supported.

2.1.4 Plan of Management

The location of the cricket facility is consistent with the existing Waitara Park Plan of Management 2015 Masterplan, which identifies the area subject of the proposal to be used for "cricket practice nets and wickets".

In addition, the proposal is consistent with the draft Waitara Park Plan of Management (currently on exhibition), which nominates the proposal area for "indoor cricket training facility and turf practice wickets".

2.1.5 Earthworks

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

A Geotechnical Assessment was submitted with the Development Application. Council's Environmental Protection Team reviewed this report and recommended conditions of consent to manage impacts.

2.2 State Environmental Planning Policy No. 55 Remediation of Land

Clause 7(1) of *State Environmental Planning Policy No. 55 Remediation of Land* (SEPP 55) requires that a Consent Authority must not grant development consent on land unless:

- a) *it has considered whether the land is contaminated, and*
- b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

As the site has been used for recreation purposes since 1906, it is unlikely that the land is contaminated and it is considered suitable for the proposed continuation of an existing use.

2.3 State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (Infrastructure) 2007 provides for certain proposed developments known as Traffic Generating Development, to be referred to NSW Roads and Maritime Services (RMS) for concurrence. There are no referral thresholds for recreation facilities under Schedule 3 and therefore the proposal falls under the category of "any other purpose". In this case, referral is required for developments generating 50 or more motor vehicles per hour for roads that connect to a classified road (Edgeworth David Avenue connects to the Pacific Highway at Hornsby). The traffic and parking assessment prepared by ttp transport planning concluded that the proposal "will not result in a discernible change" to existing vehicle movements, noting that peak demand was 70 players in the Thursday 4-8pm slot.

2.4 Sydney Regional Environmental Plan No. 20 Hawkesbury-Nepean River (No. 2 - 1997)

The site is located within the catchment of the Hawkesbury Nepean River. Part 2 of this Plan contains general planning considerations and strategies requiring Council to consider the impacts of development on water quality, aquaculture, recreation and tourism.

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would comply with the requirements of the Policy.

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

Section 3.42 of the *Environmental Planning and Assessment Act 1979* states that the principal purpose of a development control plan is to give effect to the aims of any environmental planning instrument that applies to the development; facilitate development that is permissible under any such instrument; and achieve the objectives of land zones. The provisions contained in a DCP are not statutory requirements

and are for guidance purposes only. Consent authorities have flexibility to consider innovative solutions when assessing development proposals, to assist achieve good planning outcomes.

2.6 Hornsby Development Control Plan 2013

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

HDCP – Part 7 Community Uses			
Control	Proposal	Requirement	Complies
Not located on battle-axe allotments or in cul-de-sacs			Yes
Setbacks	9.35m	3m	Yes
Landscaping to soften development			Yes
Located away from noise sensitive land uses			Yes
Does not encourage views onto residential areas			Yes
Overshadowing of adjoining open space		Max 50%	Yes
Overshadowing of adjoining residential private open space		Min 3 hours	Yes
Clear pedestrian and cyclist entrances			Yes
Windows and lobbies oriented to overlook street and communal open space			Yes
Building design complements desired future character and includes consideration of a variety of named elements			Yes

As detailed in the above table, the proposed development complies with the prescriptive measures within the HDCP.

The proposal is consistent with the requirements of Hornsby DCP Part 9 Heritage in that features and elements that contribute to heritage significance are retained, heritage items are not proposed for demolition, new work is located away from highly significant features and minimises adverse impacts on the setting of the heritage item, the building complements the heritage item in terms of scale, proportion, bulk, massing and detail, the building is well articulated, and materials are appropriate.

2.7 Section 7.12 Contributions Plan

The Hornsby Shire Council Section 7.12 Plan 2019-2029 does not apply to the development in accordance with *Section 2.7 exemptions and reductions* of this plan which stipulates that Council will provide an exemption from development contributions required for development applications made by or on behalf of the Council for community infrastructure including but not limited to, libraries, community facilities, child care facilities, recreational areas, recreation facilities, car parks and the like.

Accordingly, development contributions do not apply to the proposed development as the application is on behalf of the Council for community infrastructure that includes a recreation facility. It does not cause an increase in residential dwellings or commercial gross floor area and does not increase demand for public services, being a public facility itself.

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

3.1.1 Tree and Vegetation Preservation

The proposed development has been sited in order to retain the existing native trees which are approximately 100 years old. The Arboricultural Impact Assessment submitted with the Development Application recommends removal of one tree (identified as Tree 5, a *Syncarpia Glomulifera* (Turpentine)) as it is already dead. The report specifies a range of measures to protect the remaining eight trees and one sapling, and recommends planting of two replacement trees with a minimum mature height of 12m.

The landscape plan for the proposal includes planting of Lomandra Tanika, Clivia Minata, Philodendron Xanadu and Gynea Lily, generally along the western and southern boundaries of the development area with two areas of mass planting to fill in corners on the northern and southern elevations of the building.

Council's Landscape Architect has reviewed the proposal and recommends conditions of consent.

3.1.2 Stormwater Management

An On-Site Detention (OSD) system is proposed to manage the stormwater discharge rate of the Site to below pre-development 5% AEP flow rates as required by Council. The stormwater will then be discharged into the existing Council stormwater system via an existing onsite pit.

3.1.3 Sustainability

The Statement of Environmental Effects that accompanies the Development Application states that the following sustainable technologies are incorporated:

- Photovoltaic solar panels to generate electricity for lighting
- Maximized cross ventilation through mechanically controlled opening walls and highlight louvres to ensure adequate air flow without recourse to air conditioning
- Ventilated ridge capping to create “venturi effect” dispersal of hotter air
- Collection and on-site detention of roof and stormwater water with in-built filtration
- The latest cricket net arrangements allowing flexible layouts to be achieved
- Maintenance-free materials for roofing, walling and windows and wall systems

These measures are considered to result in a positive outcome for sustainability.

3.1.4 Waste

A Waste Management Plan for the handling of demolition and construction waste was submitted with the Development Application.

3.2 Built Environment

3.2.1 Built Form

The proposed building is single storey with a lightweight, modern design. It is expected to be a vast improvement on what is currently a neglected corner of the park containing an old water tank and storage shed, and damaged cricket nets that are no longer fit for purpose.

Council's Building Surveyor has reviewed the proposal and provided no objection subject to the inclusion of conditions of consent.

3.2.2 Construction Management

Council's Environmental Protection Team have reviewed the proposal and requested an amended Preliminary Construction Management Plan. The amended plan was considered satisfactory and Environmental Protection supported the proposal and recommended conditions of consent.

3.2.3 Traffic

A traffic and parking assessment has been submitted with the proposal which concludes that the proposal "will not result in a discernible change" to existing vehicle movements, noting that peak demand was 70 players in the Thursday 4-8pm slot. The report notes that demand for commuter parking is currently suppressed as more people work from home. However, the cricket facility's peak hours are generally in the evenings after commuters have left the area. The parking surveys carried out identified that the shared on-street car parking is capable of accommodating a worst-case scenario of 80 players attending training. Furthermore, the addition of indoor nets will extend training sessions to 10pm, which is likely to disperse the number of participants.

Council's Traffic Branch reviewed the proposal and recommended the DA be approved on traffic and parking grounds.

3.2.4 Noise

An acoustic assessment accompanies the Development Application. The assessment concludes that noise levels at the nearest sensitive receiver (22 Park Avenue, Waitara) are considered compliant (Indoor Facility - 39.8 dBA, Outdoor Cricket Pitches – 41.9 dBA) with the relevant criteria (43 dBA) and that no additional mitigation measures are required.

Council's Environmental Protection Team reviewed the proposal and requested an amended Acoustic Report, which was provided. The Environmental Protection Team reviewed the amended report and recommended conditions of consent to manage noise impacts.

3.3 Social Impacts

The proposed indoor cricket facility will improve the standard of sporting facilities in the area. The location is within walking distance of a densely populated area with excellent public transport links, which maximises the accessibility of the new facility.

Nicola Neil, Octagon Planning

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4. SITE SUITABILITY

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

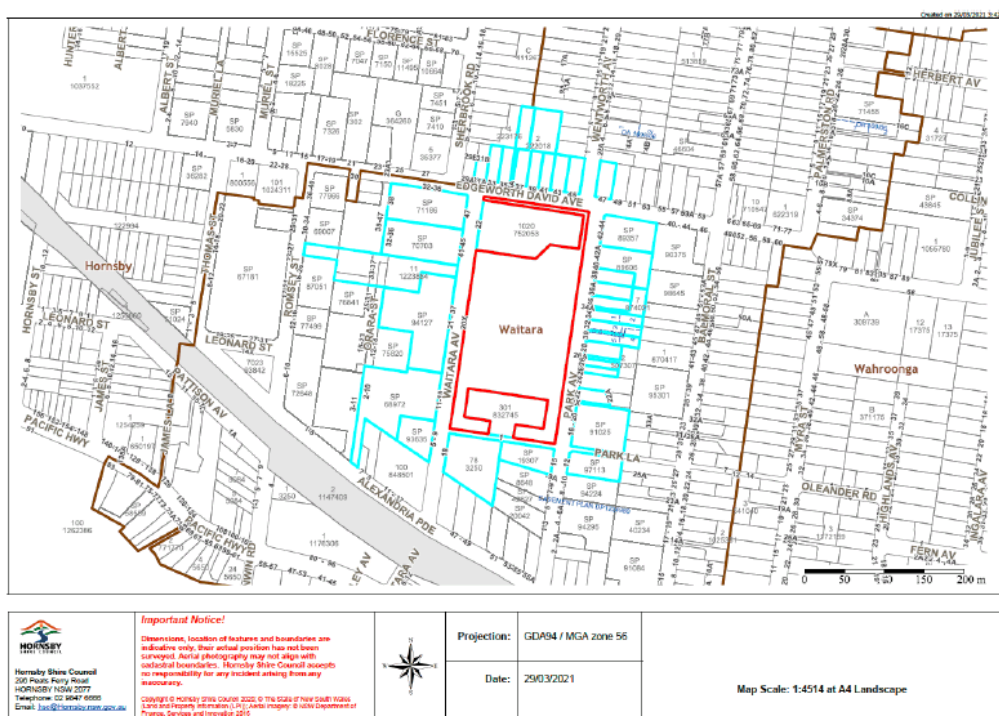
The subject site has not been identified as bushfire prone or flood prone land. The site has been used as a recreation facility for over 100 years and is considered to be capable of accommodating the proposed development. The scale of the proposed development is consistent with the capability of the site and is considered acceptable.

5. PUBLIC PARTICIPATION

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

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 9 February 2021 and 2 March 2021 in accordance with the Hornsby Community Participation Plan. During this period, Council received no submissions. The map below illustrates the location of those nearby landowners who were notified.



6. THE PUBLIC INTEREST

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

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

One issue that was raised during the assessment of this Development Application was that currently the cricket nets are publicly accessible. Council's Manager of Parks, Trees and Recreation provided a response that explained that the current practice nets are synthetic grass which can be used without limit. The other nets are turf and only used by Northern District Cricket Club, with usage managed to protect the surface. There are two options regarding public access to practice nets. First, Council can promote the six synthetic practice nets at James Park, 1.1km away from Waitara Park. Second, one of the tennis courts in the north of Waitara Park could be converted to synthetic practice nets. The Draft Waitara Park Plan of Management is currently on exhibition and public submissions will be considered with regard to provision of practice nets.

Waitara Park has undergone numerous improvements in recent years including the PCYC (with facilities for various sports including basketball, table tennis, gymnastics, boxing, wrestling and indoor soccer), a large playground, outdoor fitness equipment and new tennis courts. That being the case, and with alternative nets located less than fifteen minutes' walk away, the proposal is considered to have an overall positive impact on public recreational opportunities in the area.

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

CONCLUSION

The application proposes demolition of an existing water tank and maintenance shed, construction of four (4) indoor cricket pitches and a storage and equipment shed, and reconfiguration of the existing five (5) outdoor cricket nets.

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

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

The reasons for this decision are:

- The proposed development complies with the requirements of the relevant environmental planning instruments and the *Hornsby Development Control Plan 2013*.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to tree preservation, stormwater, sustainability, traffic, noise and social impacts

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

RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is Nicola Neil, an independent planning consultant at Octagon Planning.

Nicola Neil, Octagon Planning

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RECOMMENDATION

THAT Development Application No. DA/96/2021 for indoor cricket wickets and outdoor cricket practice nets at Lot 300 DP 832745, Waitara Park - Mark Taylor Oval, No. 20X Waitara Avenue, Waitara be approved subject to the conditions of consent detailed in Schedule 1 of this report.

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

1. Approved Plans and Supporting Documentation

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

Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council Reference
DA01 B	Masterplan	Turner Hughes Architects	30/03/2021	
DA02 C	Site / Location Plan	Turner Hughes Architects	30/03/2021	
DA03 A	Roof Plan	Turner Hughes Architects	30/03/2021	
DA04 A	Northern & Western Elevations	Turner Hughes Architects	30/03/2021	
DA05 A	Southern & Eastern Elevations	Turner Hughes Architects	30/03/2021	
DA06 A	Sections A, B	Turner Hughes Architects	30/03/2021	
DA07 A	Sections C, D	Turner Hughes Architects	30/03/2021	
LA.01	Landscape Plan	Hornsby Shire Council	16/04/2021	

Supporting Documentation

Document Title	Prepared by	Dated	Council Reference
Amended Acoustics Report, reference 301350004	Stantec Australia Pty Ltd	25/03/2021	D08137471
Preliminary Construction Management Plan, Rev 03	Mostyn Copper	31/03/2021	D08138219

Document Title	Prepared by	Dated	Council Reference
Stormwater Report, Project No. 6328	Enstruct	Dec 2020	D08101257
Tree Protection plan, T-01, Rev C	New Leaf Arboriculture	30/03/2021	D08137473
Arboricultural Impact Assessment	New Leaf Arboriculture	30/11/2020	D08101230
Site works, ENS-CV-020, Rev 4	Enstruct	26/03/2021	D08138275
BCA Report	Steve Watson & Partners	01/12/2020	D08101233
Waste Management Plan	Applicant	No date	D08101223
Operational Management Plan	Applicant	Jan 2021	D08101254
Geotechnical Assessment	JK Geotechnics	09/11/2020	D08101248
Drainage details, OSD Tank and Pit Schedule, ENS-CV-021, Rev 3	Enstruct	27/11/2020	D08101243

2. Removal of Trees and Tree Pruning

- a) This development consent permits the removal of tree numbered 5 as identified in the Arboricultural Impact Assessment prepared by New Leaf Arboriculture dated 30 November 2020 - D08101230.
- b) No pruning of trees is permitted.

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

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) A separate approval must be obtained from Council for all works within the public road reserve under Section 138 of the Roads Act.
- c) The Construction Certificate plans must be consistent with the Development Consent plans.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

4. Appointment of a Project Arborist

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

5. Geotechnical Engineering

The foundations and footings for the indoor cricket facility must be designed in accordance with the recommendations outlined in Section 4.2.2 and 4.2.3 of the geotechnical assessment report GK Geotechnics, reference 33318Brpt, dated 9 November 2020 as follows:

- a) The design of the footings for the proposed indoor cricket facility must take the adjoining basement car park for the PCYC into account so that the footings do not place additional surcharge loads on the basement retaining walls.
- b) All footings should be founded below a line drawn up at 1 Vertical in 1 Horizontal from the base of the basement walls. The proposed building is offset 1.5m from the external stairs of the basement and 4.5m from the main basement walls so the footings should be able to be founded below such a line. This will particularly be the case if the proposed building is supported on piles founded within the sandstone, which is likely,
- c) The design should consider bored piers but some difficulties with collapse of poorly compacted fill may be experienced requiring the use of temporary liners,
- d) Piers founded within the extremely weathered sandstone should be designed based on an allowable bearing pressure of 800kPa. Where piers are founded deeper within sandstone of at least low strength, an allowable bearing pressure of 1000kPa would be appropriate. These bearing pressures should be confirmed as part of the site specific geotechnical investigation. In addition, the drilling of at least selected piers should be inspected by a geotechnical engineer during construction to confirm that the appropriate foundation material has been encountered.
- e) Higher bearing pressures are likely to be appropriate within the sandstone, however coring of the sandstone as part of the site specific geotechnical investigation would be required to provide greater detail on the quality of the sandstone. If higher bearing pressures are required, the structural engineer will need to advise this so that the appropriate scope of the geotechnical investigation can be allowed for.

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 Analysis

- a) The application for a construction certificate must demonstrate that the situation of the new indoor cricket building will consider the Fire Resistance Level requirements such as loadbearing columns from the existing PCYC building situated to the South.
- b) Any supporting performance solution report or fire engineer's appraisal should address section CP1 and CP2 of the *Building Code of Australia – National Construction Code* for the existing PCYC building and situation of the new indoor cricket building.

8. Fire Safety Schedule

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

9. 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 under the Building and Development tab.

10. Identification of Survey Marks

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

11. Stormwater Drainage

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

- a) Connected to an existing Council piped drainage system with the following requirements:
 - i) A separate Subdivision Construction Certificate approval must be obtained from Council for all works within drainage easements vested in Council for the construction of a Junction pit at the point of connection to the existing Council piped drainage system.
 - ii) Connection to Council's drainage system shall include engineering design drawings of the junction pit in accordance with Council's AUS-SPEC Specifications.
 - iii) Prior to the issue of an Occupation Certificate a Compliance Certificate must be obtained from Council for the connection to Council's drainage system.

12. On Site Stormwater Detention

An on-site stormwater detention system must be designed by a chartered civil engineer and constructed generally in accordance with Project No. 6328 Drawing No. ENS-CV-020, Rev 4 dated 26/03/2021 and drawing No. ENS-CV-021 Rev 3 Dated 27.11.2020 by Enstruct Group Pty Ltd and the following requirements:

- a) Have a capacity of not less than 30.0 cubic metres, and a maximum discharge (when full) of 42.0 litres per second.
- b) Have a surcharge/inspection grate located directly above the outlet.

- c) Discharge from the detention system to be controlled via 1 metre length of pipe, not less than 50 millimetres diameter or via a stainless plate with sharply drilled orifice bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.
- d) Where above ground and the average depth is greater than 0.3 metres, a 'pool type' safety fence and warning signs to be installed.

Note: A construction certificate shall be obtained prior to the commencement of these works and are to be completed prior to the issue of an occupation certificate.

13. Water Quality Treatment

Stormwater quality treatment measures shall be designed generally in accordance with the Stormwater Report by Enstruct Project No. 6328. A qualified engineer shall prepare a validation report using MUSIC-link for Hornsby Council and a design certificate shall be submitted to the principal certifying authority certifying that the design meets the stormwater quality targets outlined in Table 1.C.1.2(b) of the Hornsby Development Control Plan 2013.

14. Vehicular Crossing – Boundary Levels

A separate application under the *Local Government Act, 1993* and the *Roads Act 1993* being an "Application for Boundary Levels" must be submitted to Council to obtain design levels at the front boundary for the design of the internal driveway, prior to the issue of a construction Certificate.

Note: A separate application to construct the vehicular crossing being an "Application to Construct Vehicular Crossing from Roadway to Property" is required to be submitted to Council for approval and can only be made by one of Council's Authorised Vehicular Crossing Contractors. You are advised to contact Council on 02 9847 6940 to obtain a list of contractors.

15. Internal Driveway/Vehicular Areas

The driveway and parking areas on site must be designed and in accordance with *Australian Standards 2890.1, 2890.2, 3727* and the following requirements:

- a) Design levels at the front boundary must be obtained from Council;
- b) The driveway must be a rigid pavement;

Note: A construction certificate shall be obtained prior to the commencement of these works and are to be completed prior to the issue of an occupation certificate.

16. Construction Management Plan (CMP)

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

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

The CMP must include the following details:

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

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

Note: The location of all site sheds, concrete pumps, cranes, loading and unloading areas, waste and storage areas must be located wholly outside the tree protection zones and fencing
 - xi) The total quantity and size of trucks for all importation and exportation of fill on site throughout all stages of works, and a breakdown of total quantities of trucks for each stage of works.
 - xii) The number of weeks trucks will be accessing and leaving the site with excavated or imported fill material.

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

- iv) The duration of each stage of works where the maximum level of noise and vibration are predicted to be emitted for.
- v) Details of mitigation measures, inclusive of respite periods, that will meet acoustic standards and guidelines at each stage of works.
- vi) Details of a complaints handling process for the surrounding neighbourhood for each stage of works.
- f) Identification of approved sediment and erosion control measures.
- g) The CMP must detail the contact information for developers, builder, private certifier and any emergency details during and outside work hours.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS
17. Installation of Tree Protection Measures

- a) Trees to be retained and numbered 1,2,3,4,6,7,8,9 as identified on the Tree Location Plan prepared by New Leaf Arboriculture dated 30/03/2021, Rev C, D08137473 must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:
 - b) Tree protection fencing for the trees to be retained numbered 1,2,3,4,6,7,8,9 must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with *Australian Standard AS4687-2007 Temporary fencing and hoardings*.
 - c) The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates and liquids from entering the tree protection zone.
 - d) All tree protection zones must have a layer of wood-chip mulch at a depth of between 150mm and 300mm.

18. 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; and
 - 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.

19. Protection of Adjoining Areas

- a) 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:

- i) Could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic;
- ii) Could cause damage to adjoining lands by falling objects; and/or
- iii) Involve the enclosure of a public place or part of a public place.
- iv) Have been identified as requiring a temporary hoarding, fence or awning within the Council approved Construction Management Plan (CMP).
- b) To ensure safety for sportsground users all construction fencing is to be a minimum of 3 metres from the edge of the field of play.

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

20. 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; or
 - ii) be a temporary chemical closet approved under the *Local Government Act 1993*; or
 - iii) have an on-site effluent disposal system approved under the *Local Government Act 1993*.

21. Erosion and Sediment Control

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

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

22. 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.
- a) The garbage receptacle must have a tight fitting lid and be suitable for the reception of food scraps and papers.
- b) The receptacle lid must be kept closed at all times, other than when garbage is being deposited.
- c) Food scraps must be placed in the garbage receptacle and not in demolition and construction waste bins.

REQUIREMENTS DURING DEMOLITION AND CONSTRUCTION**23. 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.

24. Demolition

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

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

25. Environmental Management

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

26. Street Sweeping

To protect the surrounding environment, Street sweeping must be undertaken along Park Avenue following sediment tracking from the site from the intersection of Edgeworth David to Alexandria Parade during works and until the site is established.

The street cleaning services must undertake a street 'scrub and dry' method of service and not a dry sweeping service that may cause sediment tracking to spread or cause a dust nuisance.

27. 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.

28. Disturbance of Existing Site

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

29. Landfill

- a) Prior to fill material being imported to the site, a Waste Classification Certificate shall be obtained from a suitably qualified environmental consultant confirming the fill wholly consists of Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material approved under the NSW Environment Protection Authority's Resource Recovery Orders and Exemptions.
- b) The required Waste Classification Certificate must be obtained by the Principal Contractor prior to fill being imported to the site and made available to Council at its request.

30. Excavated Material

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

31. Compliance with Construction Management Plan

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

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

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

33. Vehicular Crossing – Construction

A separate application under the *Local Government Act 1993* and the *Roads Act 1993* being an "Application to Construct Vehicular Crossing from Roadway to Property" must be submitted to Council for the installation of a new vehicular crossing and the removal of the redundant crossing. The vehicular crossing must be constructed in accordance with Council's *AUS-SPEC guidelines* and the following requirements:

- a) Crossing levels at the front boundary must be constructed to the design levels obtained from Council;
- b) Any redundant crossings must be replaced with integral kerb and gutter;
- c) The footway area must be restored by turfing;

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

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

34. Construction Activities Prohibited on Playing Fields

To ensure no damage to playing fields during construction, construction related vehicular or pedestrian access is prohibited across the oval playing areas unless separately approved by Hornsby Council's Manager, Parks, Trees & Recreation.

35. Prohibited Actions Within the Fenced Tree Protection Zone

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

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

36. Maintaining the Health of Trees Approved for Retention

- a) The appointed project arborist must monitor and record any and all necessary actions required to maintain tree health and condition for trees numbered 1,2,3,4,6,7,8,9 on the approved plans.
- b) Tree Protection Measures must be maintained by the project arborist in accordance with Condition No.17 of this consent for the duration of works.

37. Approved Works within Tree Protection Zone incursions

- a) Where tree root pruning is required for the installation of piers, driveway or underground services, the pruning must be overseen by the AQF 5 project arborist and must be undertaken as follows:
 - i) Using sharp secateurs, pruners, handsaws or chainsaws with the final cut being clean.
 - ii) The maximum diameter of roots permitted to be cut is 20mm
- b) The replacement driveway must be constructed using the following process:
 - i) Demolition must be done manually using small plant machinery only, no larger than a jackhammer.

- ii) A layer of geotextile or rubber underlay must be installed between the sub-grade and concrete.
- c) The new driveway must be constructed using the following process:
 - i) To minimise soil compaction the proposed driveway must be built above grade using sensitive construction techniques.
 - ii) To minimise soil compaction all imported material in the vicinity of the replacement driveway must be distributed by hand.
- d) Where the building footprint enters or transects the Tree Protection Zones of trees to be retained numbered 6,7,8,9, sensitive construction techniques in the form of cantilevered or suspended slab design must be employed to create a 100mm clearance above existing soil grade.
- e) No changes of grade within the Tree Protection Zone of trees to be retained numbered 1,2,3,4,6,7,8,9 on the approved plans, are permitted.
- f) To minimise impacts within the Tree Protection Zone (TPZ) of trees numbered 1,2,3,4,6,7,8,9 on the approved plans, the installation of services must be undertaken as follows:
 - i) The AQF 5 project arborist must be present to oversee the installation of any underground services which enter or transect the tree protection.
 - ii) The installation of any underground services which either enter or transect the designated TPZ must be undertaken manually.
 - iii) For manually excavated trenches the AQF 5 project arborist must designate roots to be retained. Manual excavation may include the use of pneumatic and hydraulic tools.
- g) Where scaffolding is required, ground protection must be installed beneath the scaffolding in the following order:
 - i) Installation of a 100mm deep layer of woodchip and;
 - ii) Installation of geotextile fabric ground covering and;
 - iii) Installation of scaffold boarding above the woodchip and geotextile fabric.

38. Building Materials and Site Waste

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

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

39. Fire Safety Statement – Final

In accordance with the *Environmental Planning and 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.

40. Creation of Easements

The following matter(s) must be nominated on the plan of subdivision under s88B of the *Conveyancing Act 1919*:

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

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

41. Damage to Council Assets

To protect public property and infrastructure, any damage caused to Council's assets including the removal, damage, destruction, displacement or defacing of the existing survey marks as a result of the construction or demolition of the development must be rectified by the applicant in accordance with Council's AUS-SPEC Specifications. Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

42. Completion of Landscaping

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

Note: Applicants are advised to pre-order plant material required in pot sizes 45 litre or larger to ensure nurseries have stock available at the time of install.

43. Preservation of Survey Marks

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

44. Construction of Engineering Works

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

45. Landscape Establishment

The landscape works must be maintained into the future to ensure the establishment and successful growth of plant material to meet the intent of the landscape design. This must include but not be limited to watering, weeding, replacement of failed plant material and promoting the growth of plants through standard industry practices.

46. Replacement Tree Requirements

- a) The trees approved for removal under this consent, being trees numbered 5 must be offset through replacement planting of a minimum of 2x *Syncarpia glomulifera* trees.
- b) Council's landscape architect must be consulted as to the location of the replacement trees via devmail@hornsby.nsw.gov.au
- c) The size of tree replacement planting must comply with the following:
 - i) The pot size of the replacement trees must be a minimum 100 litres and located in mulched planted beds 1000mm long and min 600mm wide, with 3 x hardwood stakes.
 - ii) All replacement trees must be a minimum of 3 metres in height.
 - iii) All replacement trees must have the potential to reach a mature height greater than 10 metres.

47. Final Certification

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

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

OPERATIONAL CONDITIONS**48. Hours of Operation**

- a) The hours of operation of the indoor cricket pitch facility are restricted to those times listed below:

Monday to Saturday	7:00am to 10:00pm
Sunday and public holidays	8:00am to 10:00pm

- b) All persons must vacate the facilities by 10:00pm.

49. Noise Management – Ongoing

- a) Appropriate signage must be installed and maintained at exit points to the building reminding persons to egress in a timely fashion and not loiter in the public domain areas to minimise potential noise impacts to neighbours;
- b) Signage must be installed near the entrance of the facility providing the contact details for the management of the cricket facility for complaint handling;
- c) Outdoor lighting must not be installed to illuminate the outdoor cricket pitches without separate approval of the Council.

50. Waste Management

The waste generated by the facility must be stored within the indoor cricket facility and be collected by a private contractor as per the approved operational management plan.

51. Noise – Plant and Machinery

The level of total continuous noise emanating from operation of all the plant, including air conditioning units and processes in all buildings (LA10) (measured for at least 15 minutes) in or on the above premises, must not exceed the background level by more than 5dB(A) when measured at all property boundaries.

An acoustic assessment is to be undertaken by a suitably qualified environmental consultant within 60 days of occupying the site 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, appropriate measures must be employed to rectify excessive noise.

52. 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.

- END OF CONDITIONS -

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 or Hornsby Council.

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

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

Tree and Vegetation Preservation

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

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

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

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

Disability Discrimination Act

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

Nicola Neil, Octagon Planning

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Dial Before You Dig

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

Telecommunications Act 1997 (Commonwealth)

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

Asbestos Warning

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

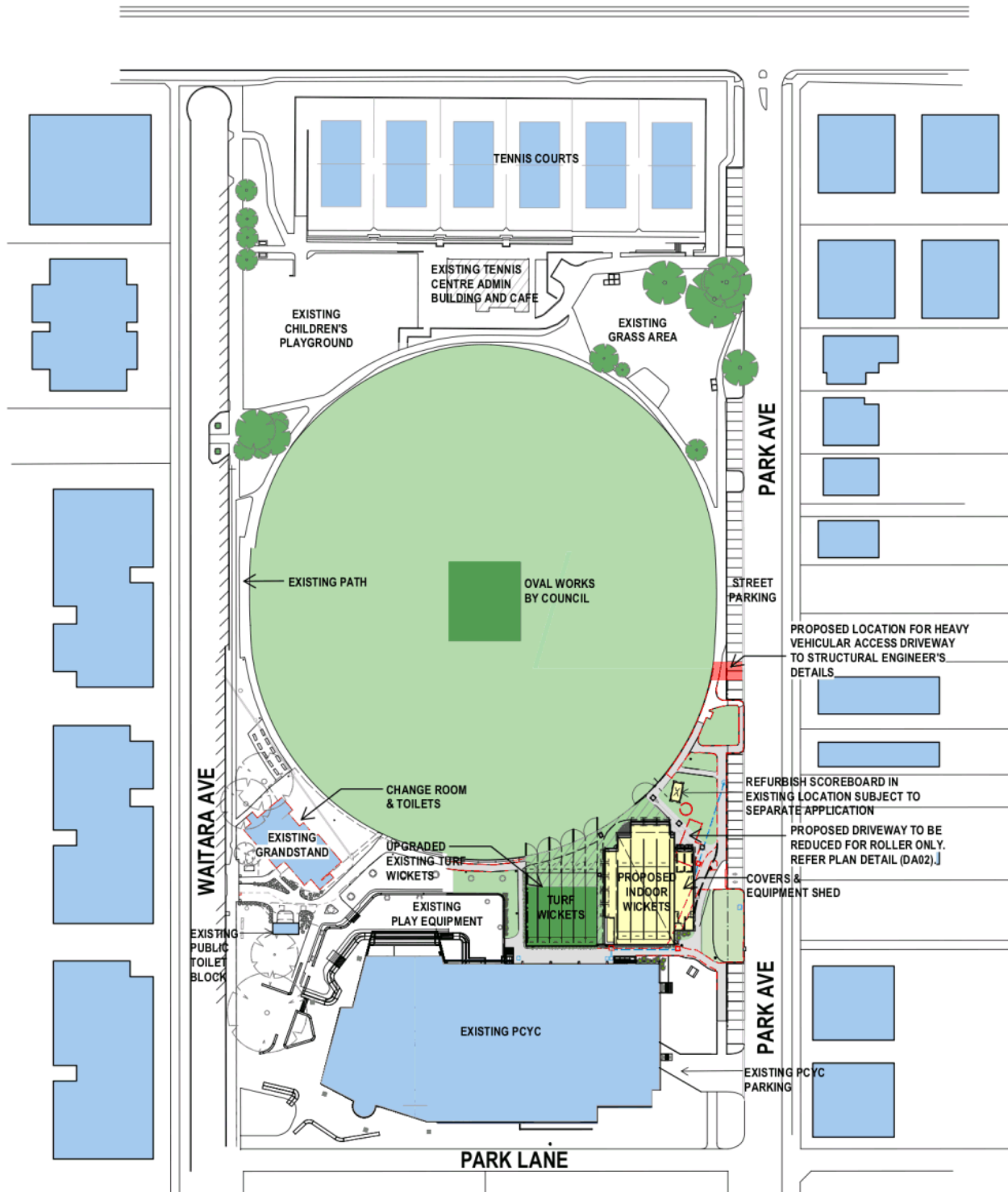
www.environment.nsw.gov.au

www.adfa.org.au

www.workcover.nsw.gov.au

Alternatively, telephone the *SafeWork NSW* Asbestos and Demolition Team on 8260 5885.

ATTACHMENT 3 - ITEM 3



PETER TOUT ARCHITECT FRAIA
Reg. Architect No. 6286
1/2, 121 ALEXANDER ST,
CROWSNEST NSW 2061

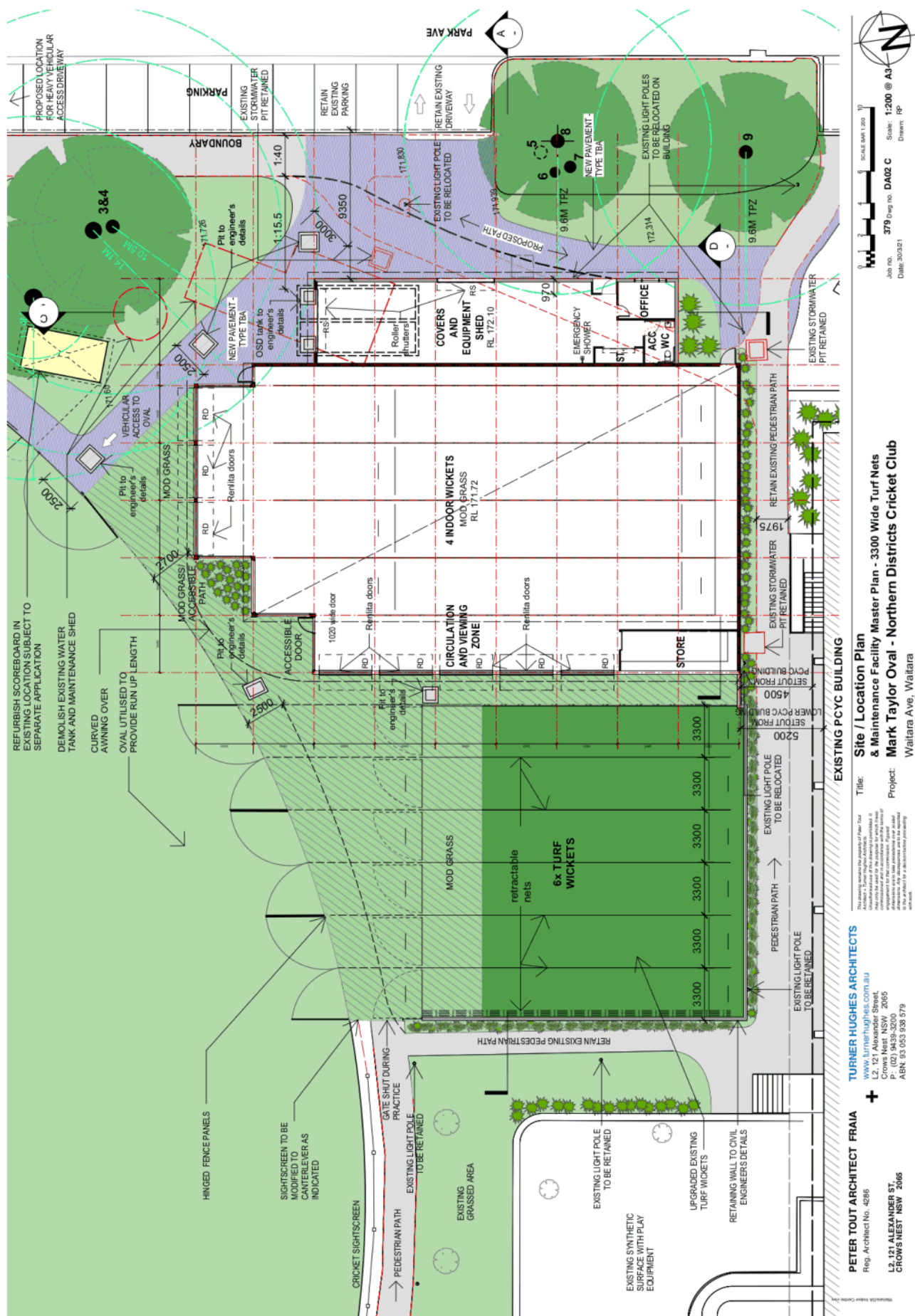
TURNER HUGHES ARCHITECTS
www.turnerhughes.com.au
1/2, 121 ALEXANDER ST,
CROWSNEST NSW 2061
P: (02) 9429 5036
ABN: 93 053 938 579

This drawing is a professional statement of the design and construction of the proposed works. It is not to be used for any other purpose without the written consent of the architect. The architect is not responsible for any errors or omissions in this drawing or for any consequences arising from its use.

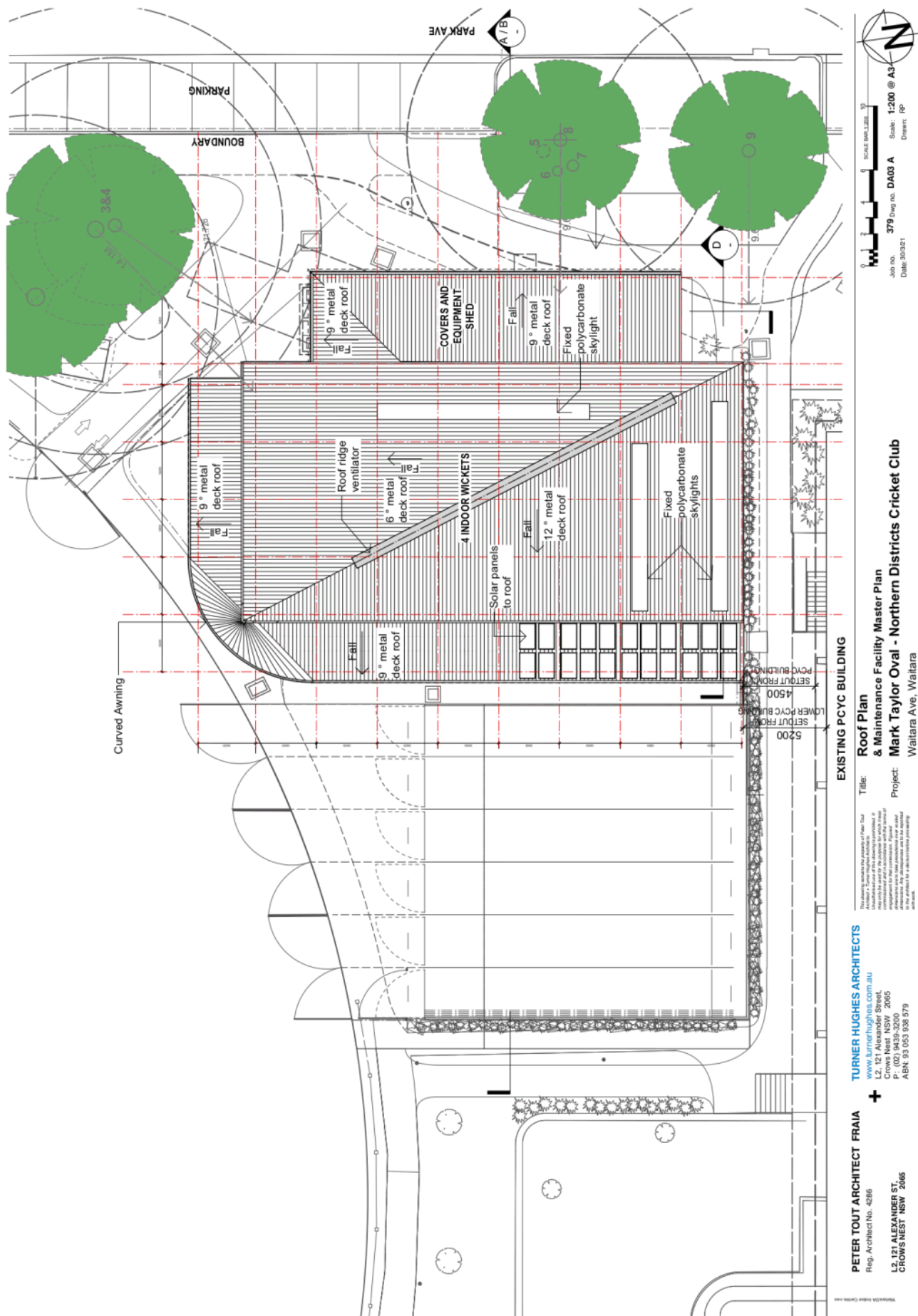
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& Maintenance Facility Master Plan
Project: Mark Taylor Oval - Northern Districts Cricket Club
Waitara Ave, Waitara

Job No. 379
Date: 30/03/21
Drawing No. DA01 B
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ATTACHMENT 3 - ITEM 3



ATTACHMENT 3 - ITEM 3

①
COLLARBOND ROOF



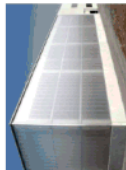
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PANEL



③
VERTICAL BI-FOLD
DOORS



③a
FIXED MULTICELL
POLYCARBONATE
SHEETING



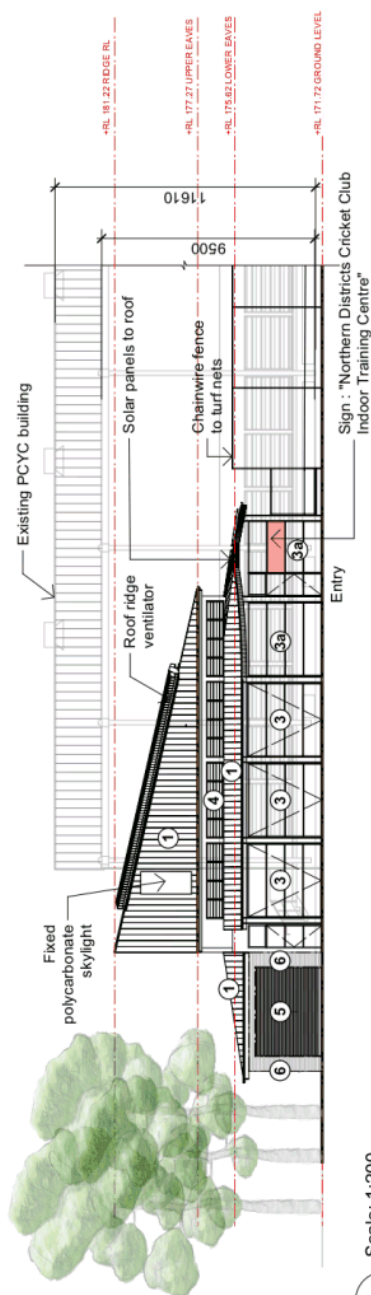
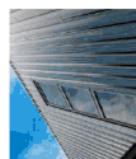
④
OPERABLE
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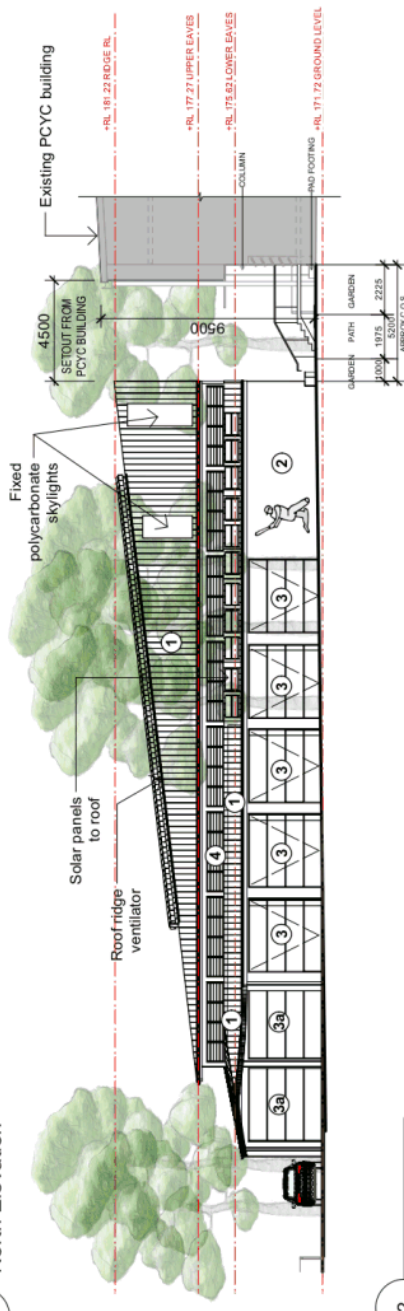
⑤
ROLLER
SHUTTER



⑥
COLORBOND
METAL SHEETING



1 Scale: 1:200
North Elevation



2 West Elevation

PETER TOUT ARCHITECT FRAIA
Reg. Architect No. 4286
L2, 121 ALEXANDER ST,
CROW'S NEST NSW 2066

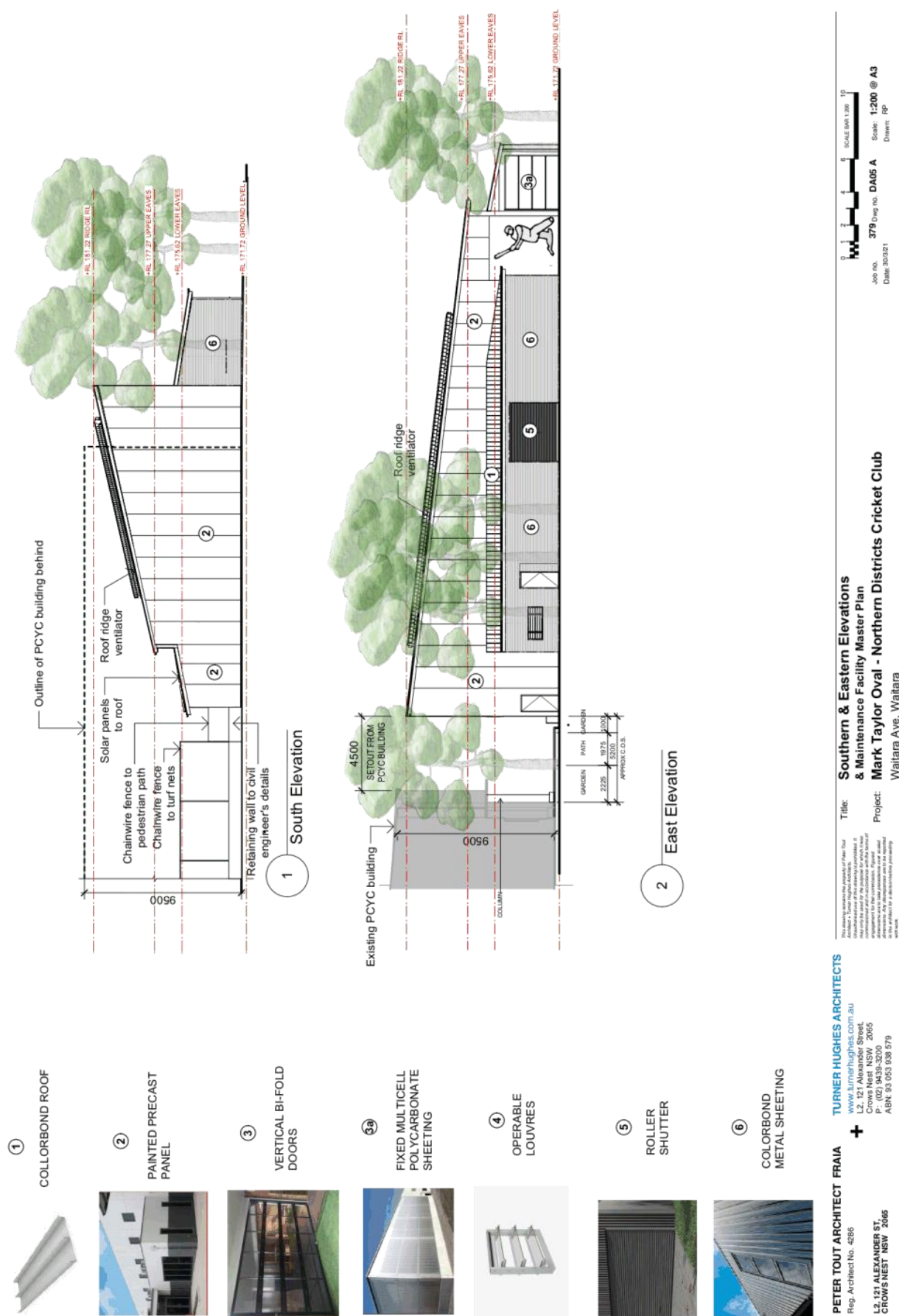
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www.turnerhughes.com.au
L2, 121 Alexander Street,
Crow's Nest NSW 2066
ABN 53 053 938 579

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& Maintenance Facility Master Plan
Project: Mark Taylor Oval - Northern Districts Cricket Club
Waitara Ave, Waitara

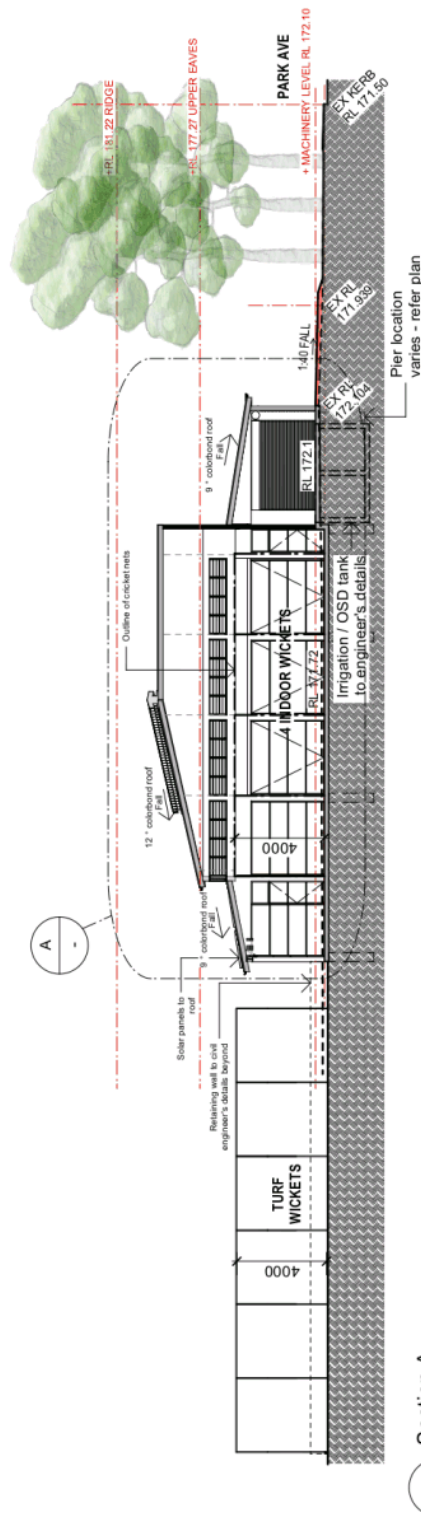
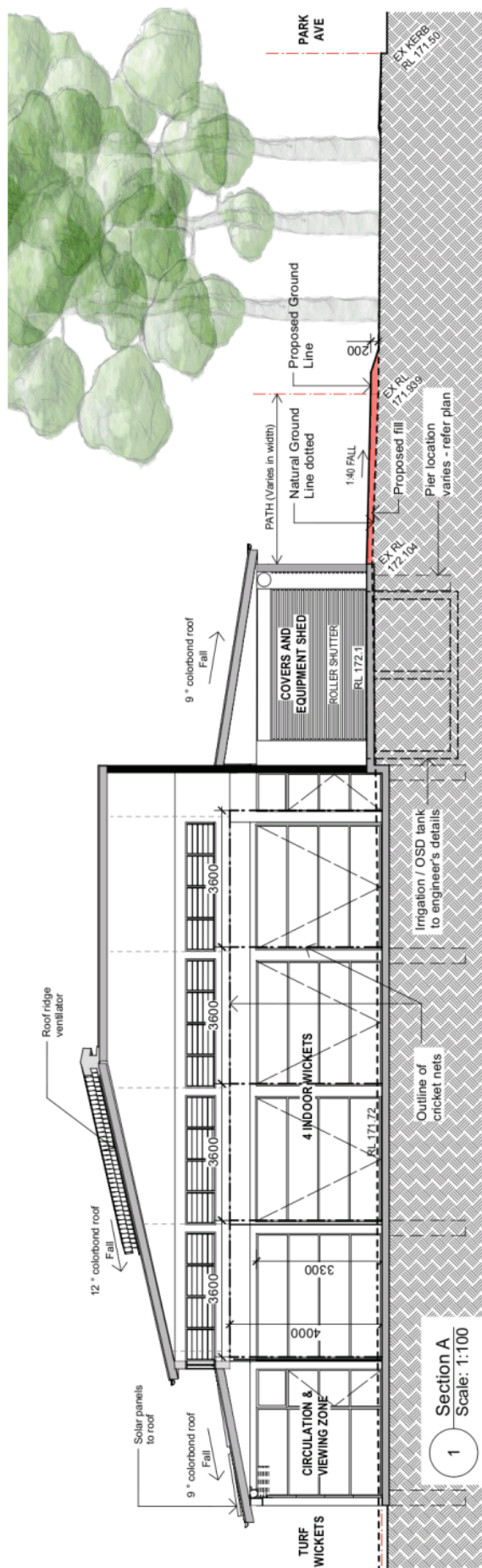
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ATTACHMENT 3 - ITEM 3



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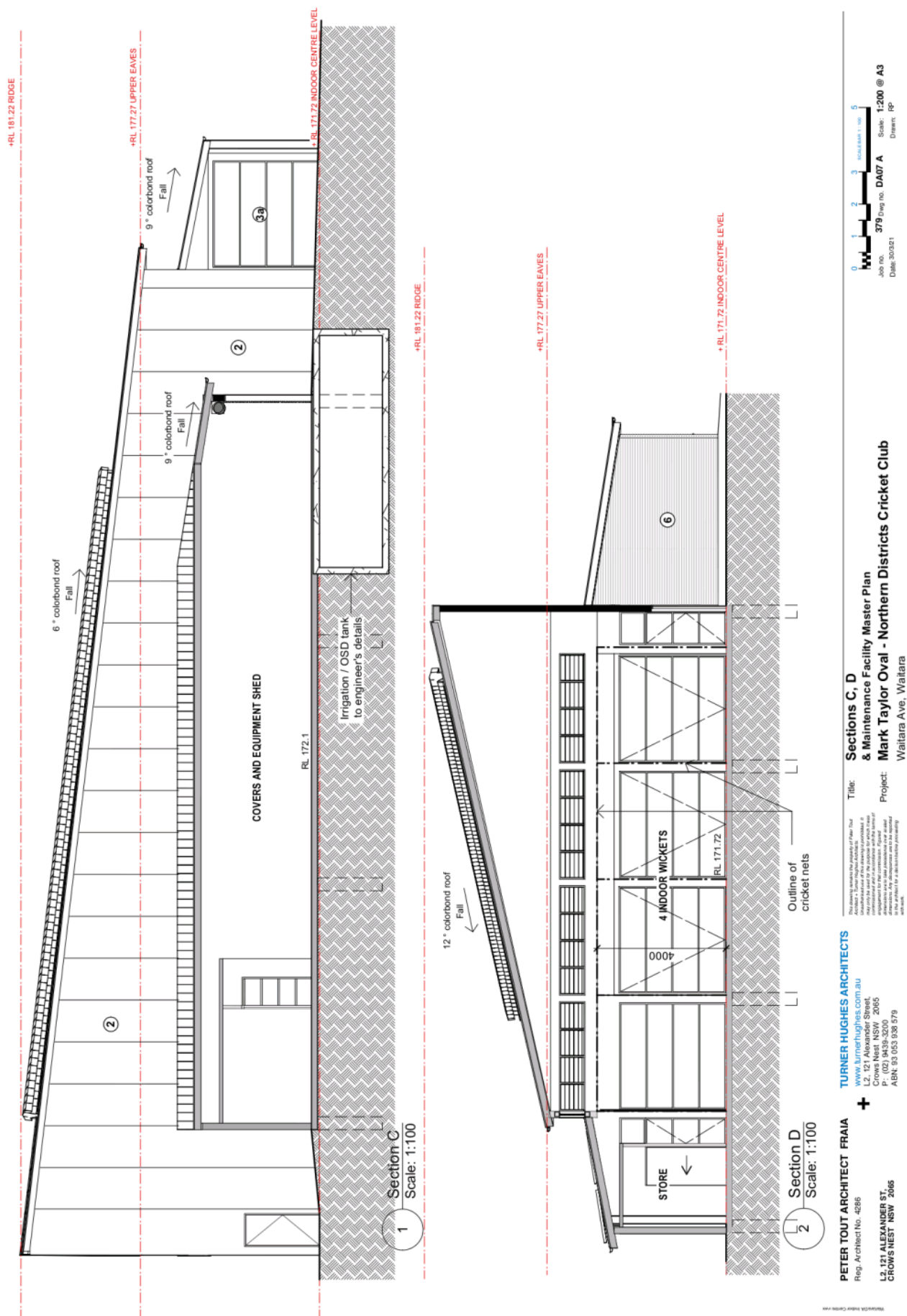
PETER TOUT ARCHITECT FRAIA
Reg. Architect No. 4286
L2, 121 ALEXANDER ST,
CROW'S NEST NSW 2066
ABN 53 053 938 579

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CROW'S NEST NSW 2066
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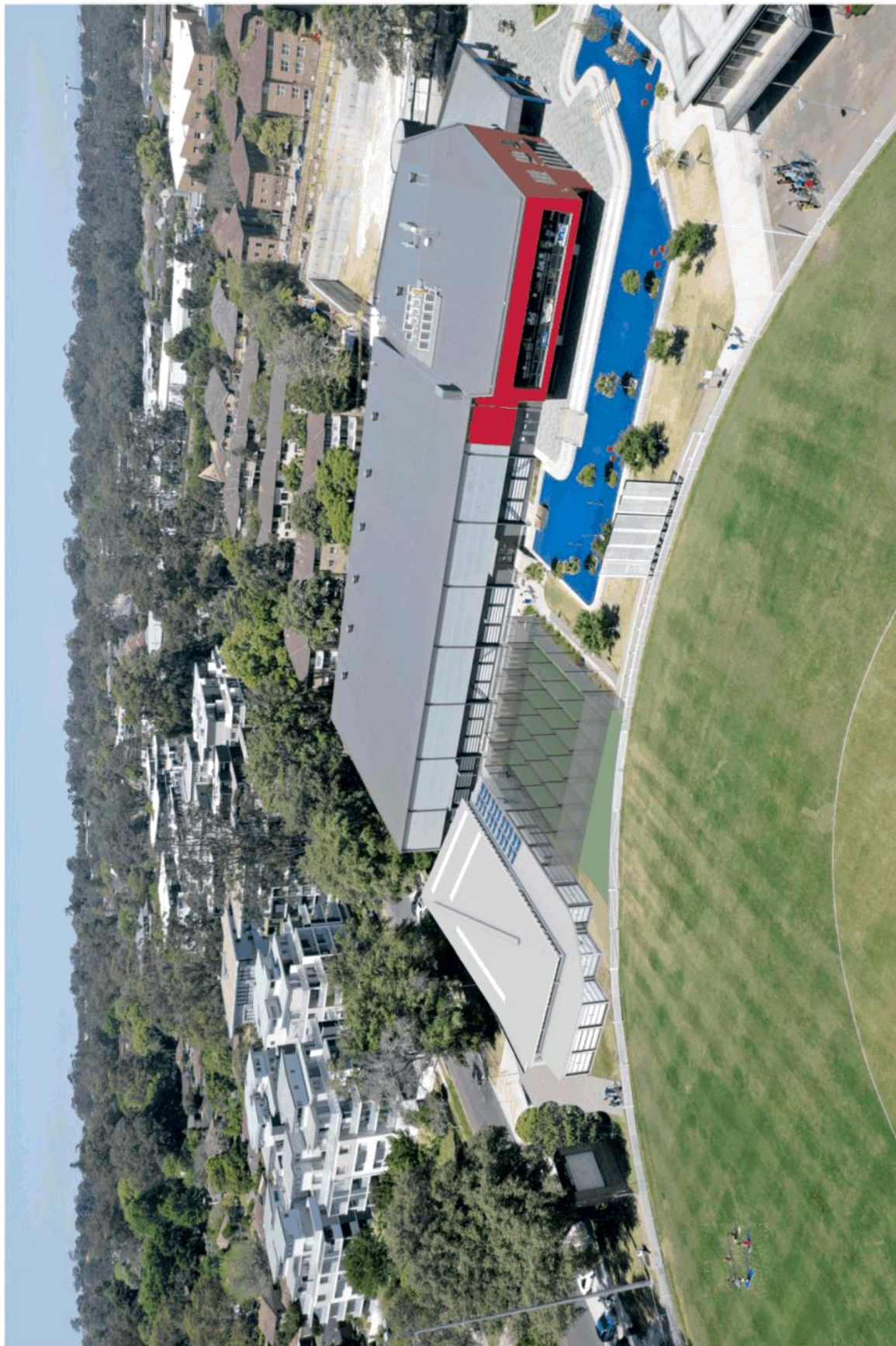
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Mark Taylor Oval - Northern Districts Cricket Club
Waltara Ave, Waltara

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ATTACHMENT 3 - ITEM 3



ATTACHMENT 3 - ITEM 3



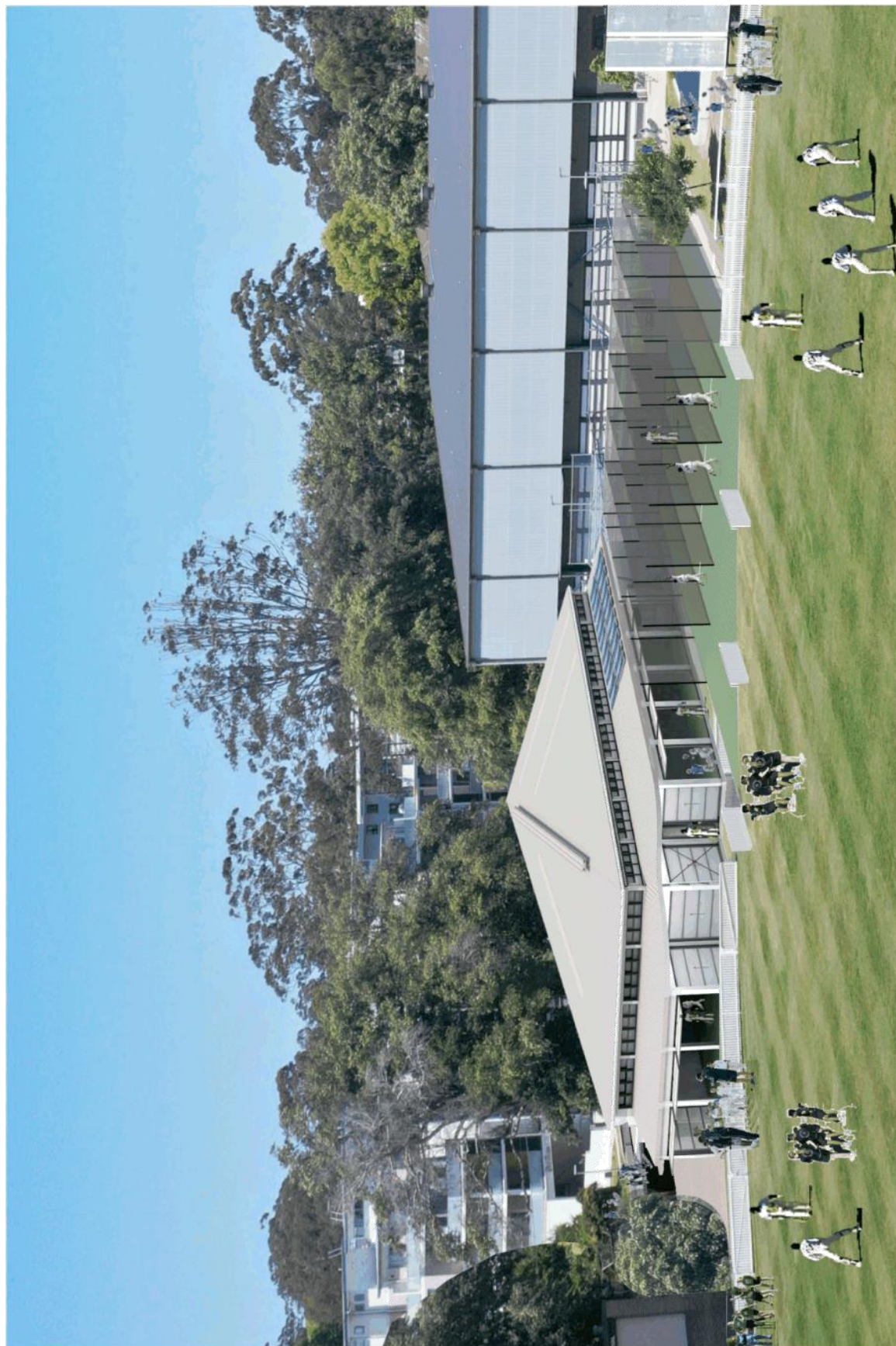
**Photomontage - Aerial
& Maintenance Facility Master Plan**
Project: Mark Taylor Oval - Northern Districts Cricket Club
Waitara Ave, Waitara

PETER TOUT ARCHITECT FRAIA
Reg. Architect No. 4286
L2-121 ALEXANDER ST
CROWS NEST NSW 2066
ABN 53 653 938 579

TURNER HUGHES ARCHITECTS
www.turnerhughes.com.au
L2-121 Alexander Street,
Crows Nest NSW 2066
ABN 53 653 938 579

Job no. 379
Date 27/11/20
Scale NTS @ A3
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PETER TOUT ARCHITECT FRAIA
Reg. Architect No. 4286
L2, 121 ALEXANDER ST
CROWS NEST NSW 2066

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TURNER HUGHES ARCHITECTS
www.turnerhughes.com.au
L2, 121 Alexander Street,
Crows Nest NSW 2066
ABN 53 653 938 579

THE ARCHITECTS AND ENGINEERS HAVE PREPARED THIS PHOTOMONTAGE FOR THE PURPOSES OF THE MARK TAYLOR OVAL MAINTENANCE AND TRAINING FACILITY MASTER PLAN. THE PHOTOMONTAGE IS NOT A REPRESENTATION OF THE PROPOSED FACILITY AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE.

Title:

**Photomontage - Training Mode
& Maintenance Facility Master Plan**

Project:

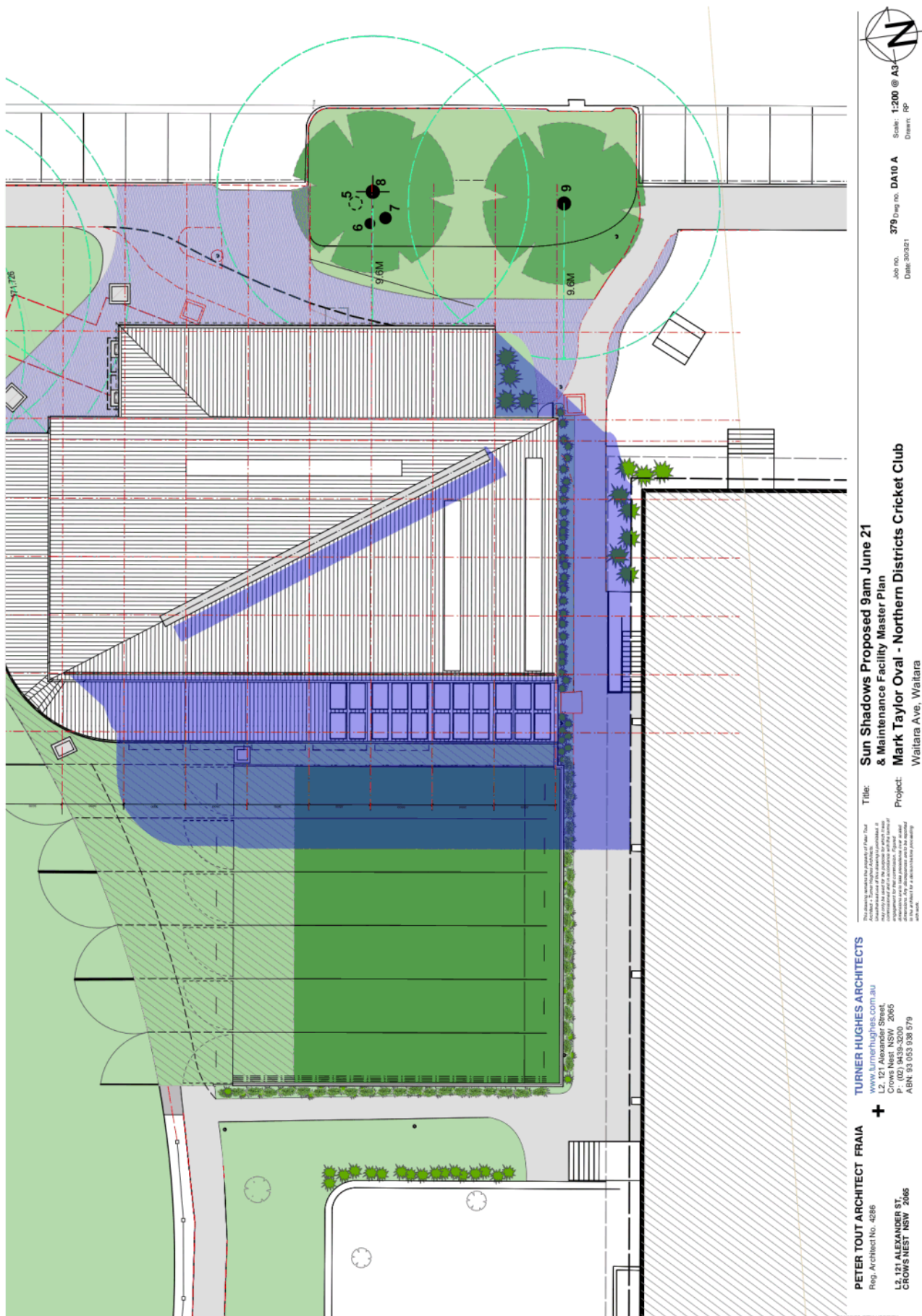
Mark Taylor Oval - Northern Districts Cricket Club
Waitara Ave, Waitara

Job no. 379
Date 27/11/20

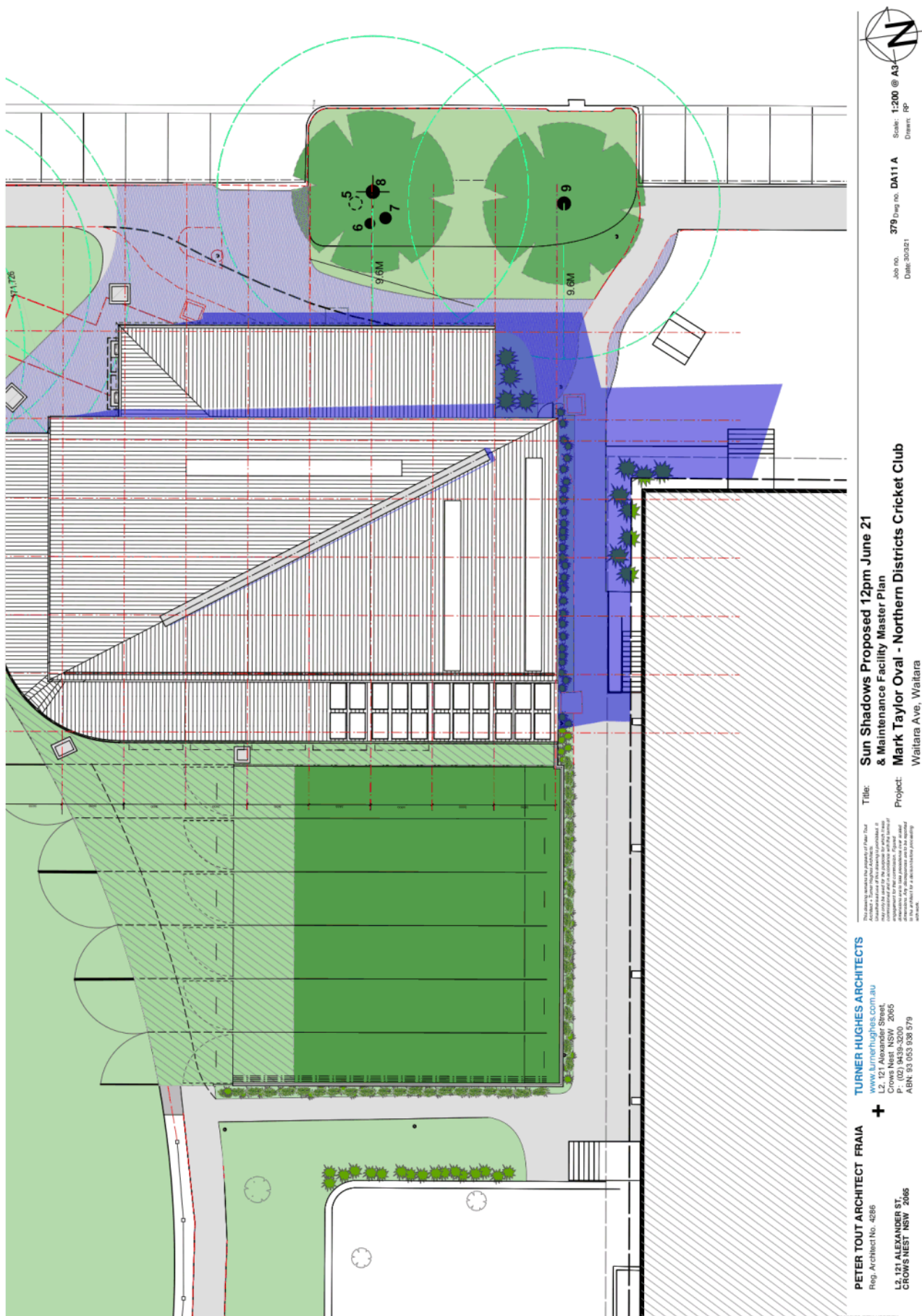
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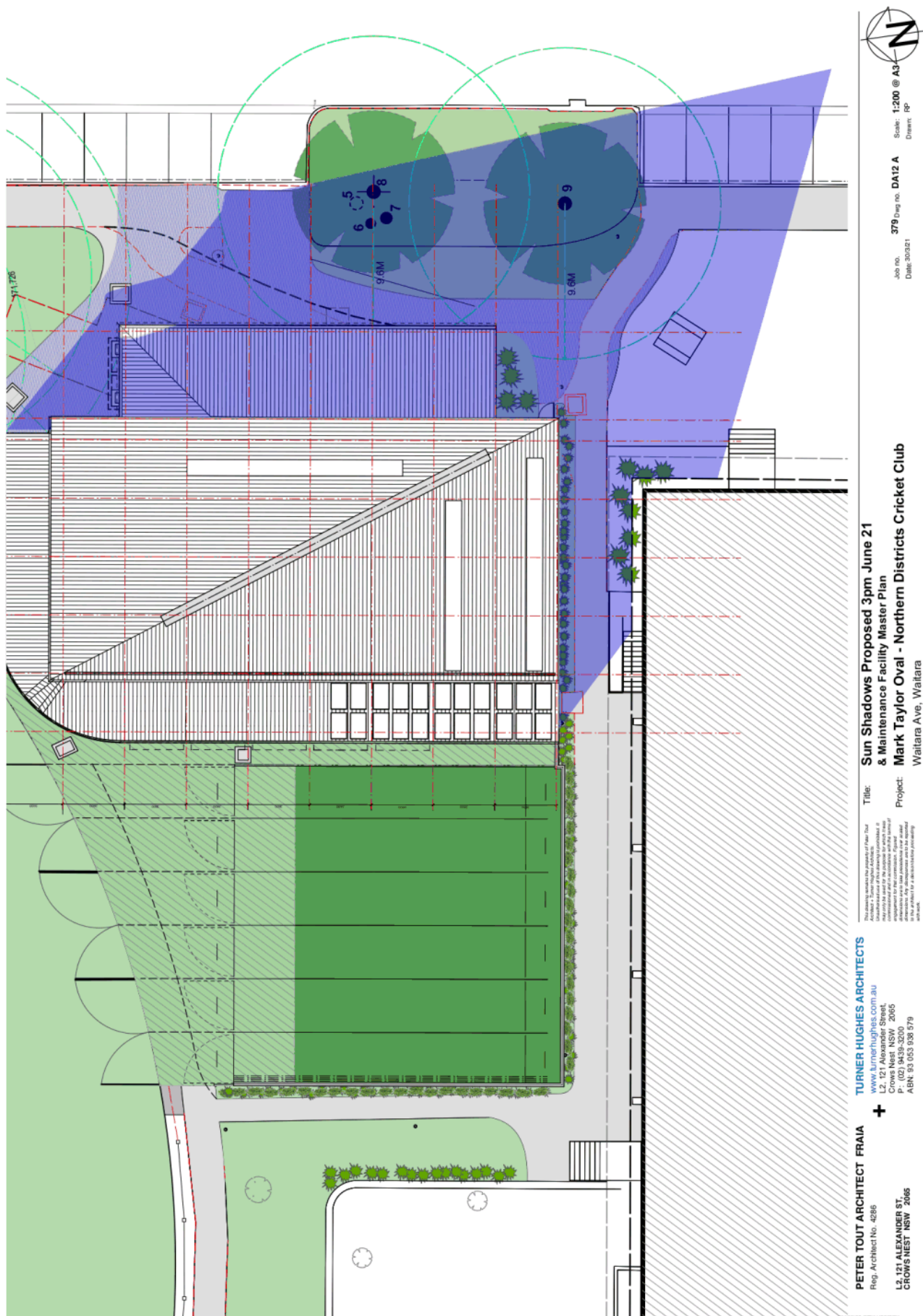
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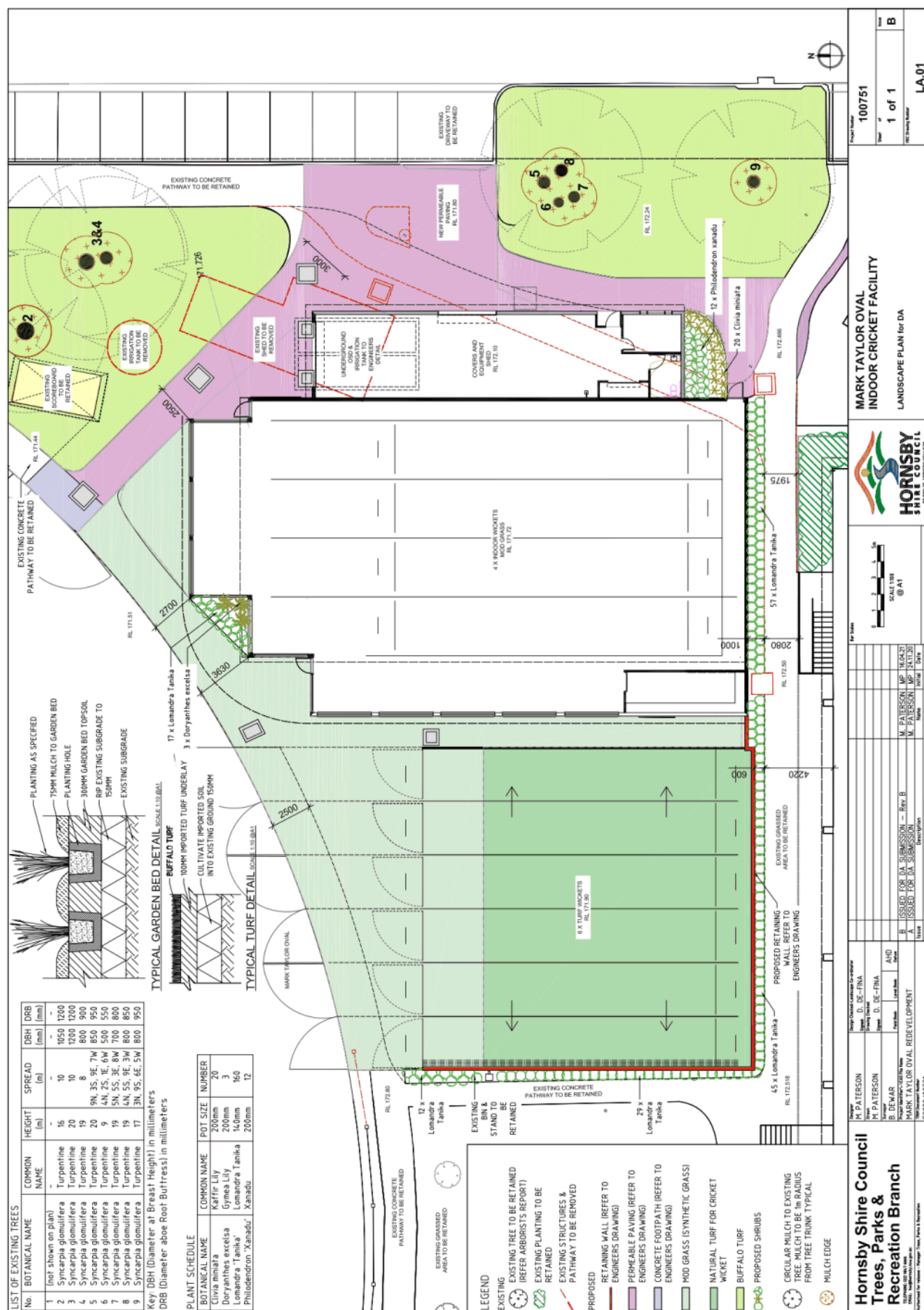


ATTACHMENT 3 - ITEM 3



ATTACHMENT 3 - ITEM 3

ATTACHMENT 4 - ITEM 3



Indoor Cricket Facility Waitara Oval, Waitara Operational Management Plan

Jan 2021

ATTACHMENT 5 - ITEM 3

INTRODUCTION

This Operational Management Plan has been prepared in support of a Development Application submission to Hornsby Shire Council (HSC). The Indoor Cricket Training Facility is to be leased by Northern Districts Cricket Club and will be used for the sole purpose of Cricket Training. There are no other proposed uses for the facility.

NDCC will be responsible for the management, booking, usage, cleaning, maintenance and security of the Indoor Facility.

FACILITY DETAILS

1.1 Name

It is envisaged that the Indoor Cricket Facility building will not have an isolated name within this development, however it will look to come under and adopt the Mark Taylor Oval name.

1.2 Location

The site is located at Waitara Oval, Waitara Ave, Waitara. Immediately surrounded by a mix of medium density residential apartment buildings.

The Site is located approximately 22kms North West of the Sydney CBD and is a part of the Hornsby Shire Council area and is in close proximity to a number of services that will support the Facility. These facilities include;

- Hornsby Train Station – 250m
- Hornsby Westfields – 400m

1.3 Hours of Operation

The Indoor Cricket Indoor will have maximum hours of operation from:

- 7am – 10pm Monday to Friday; and
- 7am – 10pm Saturday & Sunday.

1.4 Facility

The Indoor Cricket facility will include the following facilities and functions:

- 4 x Practice Cricket lanes;
- Storage Shed;
- Viewing area;
- Accessible Bathroom;
- Underground water storage for irrigation;
- Maintenance Shed;

1.5 Water and Environmental Approach

The facility will house 2 x separate water catchment tanks underneath the Facility.

The Facility will utilise where possible rainwater tanks for purposes of amenities and irrigation. Hornsby Shire Council are responsible for maintaining Waitara Oval and the use of the Irrigation stored water will be monitored and managed by HSC.

1.6 Pedestrian and Vehicular Access

Pedestrian access will continue to be provided around Waitara Ave with use of the 2.5m width concrete path to remain. Access to the Facility will be via the Northern End with a direct route off/on the current public pathway around Waitara Oval.

1.7 Fire & Safety

The site will have a dedicated fire and emergency safety management plan, which will be in updated and put into action at Project Completion.

1.8 Security

The Facility will implement an access control system monitored by Northern District Cricket Club (NDCC).

NDCC will be responsible for daily lockup of the facility.

Contractors working at site will be required to adhere to Hornsby Shire Council's standard procedures.

1.9 Waste Management

The generated waste of the Facility is minimal and will be limited to amenity waste bins. The collection of these bins will be managed under a new cleaning scheme by NDCC separate to the existing Council waste management servicing Waitara Oval.

Details will be subject to the lease agreement between Hornsby Shire Council and NDCC.

The waste management plan will be reviewed monthly as the facility and associated waste volumes stabilise.

1.10 Noise Control

The Development Application has been supported by an acoustic report and the design of the Indoor Cricket Facility has adopted the recommendations for noise mitigate where appropriate.

Within the building, textures and materials will be chosen with acoustic characteristics (where appropriate) to minimise the noise to the adjacent areas surrounding the facility.

1.11 Complaint Handling

NDCC will nominate a single point of contact for complaint handling, with details to be provided by way of signage near the entry of the facility.